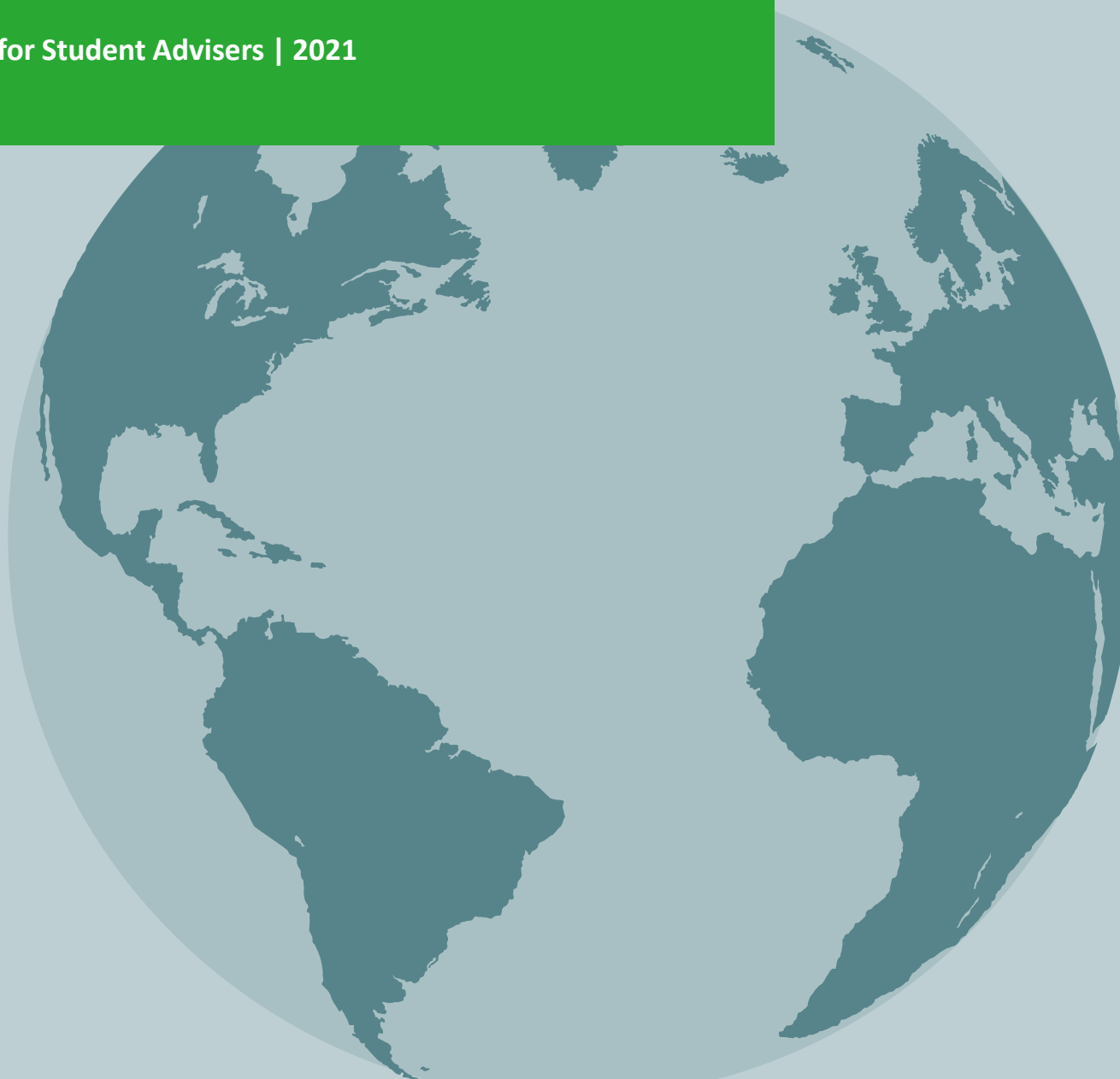




Dorothee Frings

Residency and Social Security Law for International Students

Guidance for Student Advisers | 2021



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Foreword

At the time we published this compendium, the corona pandemic was in full swing and was having a strong impact on global mobility and on the situation of international students in Germany.

International students continue to choose Germany as an attractive study destination, despite the challenges currently posed by the coronavirus crisis, which include problems entering the country and obtaining funding.

Studies and empirical data show that German degrees are very attractive for international students. This is a long-term trend and one which is encouraged by the legal framework in Germany. Germany has become much more open to the immigration of highly-qualified young people in recent years.

Since August 2017, a number of important changes have been made to the law on residence permits for study purposes, on switching degree programmes and what happens when a student drops out of university. The rules on the financing of studies have also changed since August 2019, particularly with regard to refugees.

The German Skilled Immigration Act, which came into force in March 2020, has also introduced significant changes. At present, certain special regulations have been introduced in response to the pandemic.

Information on residency and social security law is an essential element in successfully retaining international students in Germany. International students frequently ask student advisers, student service organisations and higher education institutions about precisely the issues discussed in this guide. This is more than ever the case during the current pandemic.

We are very grateful to Prof. Dr. jur. Dorothee Frings for writing this compendium for advisers in student service organisations and higher education institutions in Germany. It provides advisers and international students alike with a systematic introduction to the relevant residency and social security law and also deals in depth with current issues.

The compendium provides understandable explanations and illustrative examples of how residence, employment and social welfare benefit law applies to the legal status of different groups of international students. The contents reflect the state of play in the autumn of 2020 and includes information on the impact of Brexit.

We hope that you will find this publication useful, easy to use and motivating in your work advising international students.

Achim Meyer auf der Heyde
Secretary General
Deutsches Studentenwerk

Dorothee Frings
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Guidance for Student Advisers

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I Introduction

The following guidance outlines the legal position of students who are not German citizens (international students). These may be:

1. people who have come to study in Germany from a country outside the EU/EEA/Switzerland (third-country nationals) (Chapter II);
2. EU/EEA/Swiss nationals and members of their family (even if they are from a third country) who enter Germany for study purposes (Chapter III);
3. refugee students who have not (yet) been granted protection status in Germany and whose residence in Germany is either temporarily permitted or tolerated (Chapter IV); and
4. third-country nationals studying in Germany who hold a residence title which has not been issued for study purposes but on family, humanitarian or other grounds (Chapter V).

Each chapter considers (1) various aspects of a person's legal residence status, including (2) their right to enter the employment market and their fundamental employment rights and (3) their entitlement to social welfare benefits, such as BAföG, ALG II, family benefits and housing benefit.



II Residence of third-country nationals for study purposes, Sections 16b, 16c, 17, 20 Residence Act (AufenthG)

The focus of this chapter is on the situation of third-country nationals studying in Germany who do not already have the right to free movement in the EU on other grounds or who are not entitled on other grounds to be resident in Germany.

Students who are nationals of a third country but who are related to EU/EEA/Swiss nationals are a special case. This group of students is covered by the Act on the General Freedom of Movement for EU Citizens (FreizügG/EU) rather than the Residence Act (AufenthG). This applies, for example, to the Turkish husband of a Bulgarian national working in Germany or to a 20-year-old student from China whose mother (who is also a Chinese national) is married to a French citizen who runs a business in Germany. This group of persons is treated in much the same way as EU citizens (refer to Chapter III).

Third-country nationals studying in Germany who were resident in Germany on other grounds and who remain resident throughout their studies are discussed in Chapters IV and V.

1 How can third-country nationals obtain a residence permit to study in Germany?

The immigration of third-country nationals for educational purposes is dealt with in Chapter 2, Part 3 of the Residence Act (AufenthG). The relevant provisions were amended in the German Skilled Immigration Act (Fachkräfteeinwanderungsgesetz, Federal Law Gazette, August 20, 2019, p. 1307), which came into force on March 1, 2020.

The general principles in Sec. 16 AufenthG emphasise three aspects in particular:

Internationalism: General education, international understanding and relations in the global scientific community.

Business in Germany: Securing skilled labour and promoting international development.

Priority for public safety: No immigration that affects the security interests of the Federal Republic of Germany.

In addition to residence permits for the purpose of studying for a degree or for a doctorate (Sec. 16b (1) AufenthG), the Residence Act also includes rules on

- seeking a place at a higher education institution (Sec. 17 (2) AufenthG);
- attendance at a preparatory course leading directly to admission to a higher education institution (Sec. 16b (1) AufenthG);
- internships (Sec. 16b (1) and Sec. 16e AufenthG);
- resident permits for students from a higher education institution in another EU Member State (Sec. 16c AufenthG); and
- seeking appropriate employment after students have completed their studies (Sec. 20 (3) AufenthG).

1.1 When must a residence permit for study purposes be issued to third-country nationals (legal entitlement)?

Sec. 16b (1) AufenthG gives you a legal entitlement to the issue of a visa or residence permit if you meet certain conditions. This follows from Directive (EU) 2016/801, which was implemented on August 1, 2017. Legal entitlement differs significantly from discretion. The immigration authority (Ausländerbehörde), which is responsible at the local level for residence, immigration and related issues, has no discretion in this matter and must issue the residence permit under Sec. 16b (1) AufenthG if all the following conditions are met.

You must therefore go through the following questions to determine whether there are irrefutable grounds for granting you a residence permit or entry visa for study purposes (refer to 1.6 in this chapter).

1.1.1 What requirements must I meet to obtain approval of admission to study (on a degree course or for a PhD)?

You can demonstrate that you have met the legal requirements for admission to study if

1. you have been admitted by a higher education institution to a full-time course of study; or
2. you have been conditionally admitted subject to participation in a preparatory language course, a language examination or compulsory internship; or
3. you have been admitted to a preparatory college or similar institution.

Most candidates submit their applications via www.uni-assist.de/en/

Uni-assist creates preliminary review documentation (VPD) for some degree programmes. This certificate contains information about the school and higher education certificates you have obtained in your country of origin and whether they qualify you for admission. You must send your actual application to the relevant higher education institution directly.

If you wish to study for a PhD degree, you can also submit the approval given to your doctoral project by the higher education institution as evidence.

1.1.2 How can I show that I am self-sufficient?

The biggest problem most international students who are applying to study at a higher education institution have is to show that they are self-sufficient, i.e. that they can support themselves financially. This requirement is not in Sec. 16b AufenthG – it is a general requirement which you must meet to obtain any form of residence permit (Sec. 5 (1) No. 1 AufenthG). Proof that you are self-sufficient also includes showing that you have adequate health insurance (refer to 1.1.3).

You will be considered to be self-sufficient (Sec. 2 (3) Sentence 5 AufenthG) if **the money you have is at least equal to the maximum rate of BAföG** as stipulated in Secs. 13 and 13a (1) Federal Training Assistance Act (BAföG). At the present time this is €861/month or €10,332/year. The actual amount of money which you need is announced once a year by the Federal Ministry of the Interior (BMI) (Announcement on Sec. 2 (3) Sentence 6 of the Residence Act on the Minimum Amount Required to Cover Living Expenses of July 2019; this announcement currently still stipulates the no longer applicable amount of €853). If you pay less than €325 for your accommodation, the amount of money you must demonstrate that you have is reduced accordingly.

Example

Maja has been admitted to study at a higher education institution and wants to move to live with a friend in Esslingen. The friend confirms that she can have a room of 15m² for €100 a month. In this case, Maja only has to show that she has a monthly income of €636 (€861 less €225 = difference between €100 and €325) or an annual income of €7,632.

Other study-related costs (tuition fees) are not taken into account (16.0.10 General Administrative Regulation, Residence Act (VwV AufenthG)).

There are a number of ways of demonstrating how much income you have:

- You can present confirmation from a German bank that you have at least €10,332 in a **blocked bank account** from which you can only withdraw 1/12 of the deposited amount one month at a time. In many cases, you will be able to open this kind of account with a branch of a German bank in your own country or through another bank.
- You can deposit an irrevocable **bank guarantee** for at least €10,332 with a German bank. However, banks charge very high fees for guarantees. Alternatively, you can submit a declaration given by someone else living in Germany who undertakes to support you (Sec. 68 AufenthG, refer to box below).

Declaration of commitment (Sec. 68 AufenthG)

If someone else agrees to assume responsibility for supporting you financially, they must make a declaration to the immigration authority which is responsible for the town in which you live in which they commit themselves to repaying any social welfare benefits granted to you from public funds to cover your living expenses or your health and nursing care costs. This commitment also extends to the costs of legal deportation or of custody leading to deportation. A claim for reimbursement can be sent as an official decision directly to the person who has provided the guarantee and enforced against them. The authorities do not need to go to court to do this.

The commitment remains in effect for a period of *five years* starting from the time you enter Germany or you are issued a residence permit. The commitment ceases to apply before this if you are issued with a different residence title (family, gainful employment), but not if you apply for asylum. The person making the commitment is liable for the full costs of your deportation. The commitment cannot be withdrawn or revoked.

A declaration of commitment can only be made by someone who

- has a place of residence in Germany;
- is a German citizen or who holds a residence title for a long-term stay; and
- whose net income is sufficient to cover the full living expenses of one other person, taking into account maintenance obligations to children/spouses, without falling below the minimum income level from which money cannot be deducted (this is the so-called “attachment limit” and, in 2020, is €1,180 for a person who has no maintenance obligations).

The person making such a commitment to you should insist that you have full health insurance and liability insurance cover.

- You can provide evidence of your parents’ **maintenance payments** by declaring their income and financial circumstances. In cases such as these, the immigration authorities often ask for a notarised declaration and bank statements for the last six months or an additional bank guarantee.
- You can show proof of a **scholarship** equal to at least €861 from public funds, from a recognised grant organisation or from public funds in your country of origin if the Federal Foreign Office, the German Academic Exchange Service (DAAD) or any other organisation in Germany which grants scholarships has established the contact with the German higher education institution.
- Your living expenses will be considered to be covered if you are **eligible for BAföG** (Sec. 2 (3) Sentence 2 No. 5 AufenthG).

The first time you receive a residence permit you will not be able to claim that you will be able to support yourself by working, because this would contradict the purpose of your residence, which is to study. **The immigration authorities can (at their discretion) make further concessions:**

You don’t necessarily have to show that you have enough money to pay your way for an entire year; it’s enough to show you have enough money for half a year (16.0.8.3 VwV AufenthG). If you can only show that you have **€5,166 for half a year**, your residence permit will still be issued for at least one year. After six months you will have to provide evidence that you are self-sufficient (16.0.8.3 VwV AufenthG).

Some student service organisations (the STWs, which provide services to all students in higher education in Germany) offer service packages which may include things like accommodation, insurance and semester fees. The actual services offered vary from place to place. These reduce the amount you must have by the price of the service package, provided this includes accommodation (16.0.8.2 VwV AufenthG).

Permitted additional income can also be taken into account when your residence permit is due for renewal (16.0.9 VwV AufenthG). The immigration authorities can, however, ask you to provide evidence that you are able to pay your way every time you renew your residence permit. They may also ask that you demonstrate that at least some of the money you have is available in the form of bank deposits or other forms of security. The immigration authorities can be more generous, however, and count any additional income you earn towards the €861/month you must have, provided this is earned from work you are permitted to do (refer to 2.1 in this chapter) and provided that your studies are not impaired or unduly prolonged as a result.

1.1.3 How can I demonstrate that I have health insurance?

If you have already been admitted for study at a higher education institution at the time you enter Germany, you will not have any difficulties. This is because you will be covered by German statutory health insurance (SHI). You are covered as soon as you enrol (Sec. 5 (1) No. 9 SGB V). However, you must have been accepted by a statutory health insurance company of your choice before you can enrol on a course.



At the present time (and initially through to the 2020/2021 winter semester), higher education institutions are allowing students to enrol even if they cannot show that they have health insurance if they are unable to enter Germany because of the pandemic and if they will initially be studying only digitally from their country of origin (HRK Circular 150, GKV Circular 2020/806).

You should ask your adviser to check in advance whether priority will be given to in-kind benefits which are paid for by health insurance in your own country.

Treaties or legal agreements (Regulation (EC) No. 883/2004) have been made with the following states:

- All EU/EEA states and Switzerland (if, for example, your parents are habitually resident in one of these countries or you are earning income in one of these states in parallel to your studies)
- Bosnia and Herzegovina
- Kosovo
- North Macedonia
- Montenegro
- Serbia
- Turkey
- Tunisia
- Israel (maternity assistance only)

In-kind benefits

Healthcare benefits that you are able to receive by presenting a health insurance card and which are then settled with insurers in another country are referred to as in-kind benefits (in contrast to cash benefits). In-kind benefits refer to free healthcare which is provided in a Member State or treaty state to beneficiaries who are insured in another Member State or treaty state. The healthcare provider (doctor, hospital, etc.) charges these services to your local health insurance company. This health insurance company then claims back the costs from healthcare providers (insurance institutions) in the other Member States through the national liaison agencies of the participating Member States.

How to get in-kind benefits: The first thing to do is to get a certificate of insurance from your EU/EEA state, Switzerland or treaty state. **Within the EU/EEA/Switzerland** in-kind benefits are provided in compliance with Regulation (EC) No. 883/2004 (refer also to Chapter III, 3.1). You must have a **European Health Insurance Card, EHIC**, to show that you are insured. With this card you can go straight to a doctor or hospital for treatment. For longer periods of residency in Germany, some health insurance companies may issue you with a German health insurance card.

There are a number of different **insurance institutions** in the **treaty states**. However, these insurance institutions must either be public or state-regulated or, alternatively, the provider of the health care system in your country of origin. The treaties do not apply to private insurance companies.

You must submit the **certificate issued by the insurance institution** to a statutory health insurance company of your choice in Germany. This company will then issue you with a **health insurance card**. This doesn't mean that you are insured with the statutory health insurance scheme. It simply means that the company will charge the costs to the insurance institution in your own country.

If priority is not given to in-kind benefits, the following arrangements are possible:

If you have **compulsory statutory insurance for students** (Sec. 5 (1) No. 9 SGB V), you may be exempted from statutory health insurance (SHI) if you are able to demonstrate to a health insurance company that you have equivalent cover if you become ill (Sec. 8 (1) No. 5 and (2) Sentence 4 SGB V). Many **private insurance companies** offer private insurance for international students which is cheaper than the insurance provided by the student SHI. However, it is **really not a good idea to obtain exemption from SHI**. This is because cheaper private insurance contracts do not offer the same level of cover as SHI. In particular, private insurance excludes pre-existing conditions because you will not have had a prior health check. In most cases, private insurance does not cover the costs of psychotherapy, which can often be important bearing in mind the stress that you can easily experience as an international student. Some insurance contracts even exclude support during pregnancy. **What is more, once you have been exempted from SHI you cannot change your mind again.**

The situation is very different if you are still at the stage of **applying for a place at a higher education institution** and you have initially come to Germany to prepare for study, either at a preparatory college, an external institution or in a compulsory internship (unless, in exceptional cases, you are working and paying social insurance contributions). Unless you were previously resident in an EU Member State or in a treaty state you will not usually be able to join the SHI scheme. This also applies to **PhD students** who are not employed by a higher education institution.

Some SHI companies allow students who are attending a preparatory college to join the health insurance scheme voluntarily at school student rates. If you fall within this category, you can obtain standard insurance cover at the same rates offered to students. It is important to remember, however, that this form of insurance only applies for as long as you are attending a preparatory college.

PhD students can also obtain compulsory insurance cover by taking up part-time work for which they are paid more than €450. This is because they are not considered students within the meaning of Sec. 6 (1) No. 3 SGB V (Federal Social Court (BSG) ruling of June 7, 2018 – B 12 KR 16/16 R). However, if you have recently entered Germany to prepare for studies at a higher education institution you are only permitted to work during semester breaks (Sec. 16b (3) Sentence 2 AufenthG).

In this case **the only option available to you is to obtain private insurance cover** with all the disadvantages which have already been pointed out. The best thing you can do if you do not have any chronic or acute illnesses at the time you enter Germany is probably to take out the group insurance cover recommended by the German National Association for Student Affairs (DSW). However, if you have any pre-existing conditions, you should try to obtain normal private health insurance. In this case, you will need to have a health check. Private health insurance costs at least €300/month.

1.1.4 What language skills do I need?

The language skills you will need are usually checked by each higher education institution **and depend on the degree programme** you are interested in studying. If you intend to study a degree programme which is taught in German, you will have to present proof of proficiency in German equivalent to Level 2 KMK (Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany)/DSH/TestDaF Level 4 or a comparable certificate of language proficiency.

You will be asked to present one of these certificates when you apply through uni-assist.

You will need to show that you have level B1 German language skills to be accepted by a preparatory college. You will also have to take an admission exam if you wish to study German and/or mathematics. Visas are only issued on a discretionary basis for admission exams (Sec. 17 (2) AufenthG). Another option is to sit the exam while you are in the country as a tourist; if you are accepted by a preparatory college, you will then be legally entitled to a visa (issued in your country of origin!).

If the higher education institution you want to study at does not carry out language tests, you may need to present proof of your language skills in order to obtain a visa (Sec. 16b (1) Sentence 3 AufenthG).

1.1.5 Can I get a residence permit even if I don't have a passport?

As a rule you have to have a passport in order to obtain a visa or a residence permit (Secs. 5 (1) No. 4, 3 AufenthG).

There are a very few cases in which exceptions may be made. For example:

- a. If you hold a **refugee passport, a passport for a stateless person** or any other internationally recognised passport substitute issued by another government.
- b. You may also be issued a **German travel document for foreign nationals** by a German diplomatic mission abroad or an immigration authority (Secs. 7 (1), 5, 6 Regulation on Residence, AufenthV) if you are unable or it would be unreasonable to expect you to obtain your own national passport. German diplomatic missions very rarely issue papers of this kind because doing so encroaches on the sovereignty of another state. This kind of document is only usually issued if there are urgent humanitarian, political or family reasons why someone must travel to Germany. If such reasons apply to you, it is a good idea to contact the Federal Foreign Office (which is the supervisory authority for all German diplomatic missions).

Examples

A higher education institution is searching all around the world for PhD students to work on a specific topic. The relevant institute is awarding scholarships for these students. An applicant with Afghan nationality has graduated from a higher education institution in Iran. She is not able to obtain an Afghan passport, but she can prove her identity by means of her degree certificates and birth certificate. In this case, the institute needs to demonstrate to the German embassy in Tehran and the Federal Foreign Office that the applicant's doctoral project is of outstanding importance for the future of science in Germany.

The 19-year-old **Vara** is a Syrian citizen and is living in a refugee camp in Lebanon. She has been admitted to a German higher education institution, has the necessary German language skills and her parents, who live in Germany, have made a commitment to pay her living expenses. She can't get a Syrian passport but she does have several documents which prove her identity. In this case, if the immigration authority agrees, the German diplomatic mission can issue a study visa.

If you are applying to study at a German higher education institution, are already legally resident in Germany and are in the process of applying for a residence permit under Sec. 16b AufenthG (refer to 1.6.1), you may also be eligible for a travel document for foreigners (Secs. 6 No. 2, 5 AufenthV). However, you may be asked to make strenuous efforts to obtain a passport from the diplomatic mission for and the authorities in your country of origin. While you are still endeavouring to obtain a passport you may be able to obtain a **residence permit under Sec. 16b AufenthG or a substitute identity document (Sec. 55 (1) No. 1 AufenthV)**. This then documents your legal residence in Germany but does not enable you to travel outside of Germany.

1.1.6 What kind of public safety concerns or bans on residence might prevent me obtaining a residence permit?

Even if you meet the general requirements, you could still be turned down if there are any public safety concerns (Sec. 5 (1) No. 2 in conjunction with Sec. 54 (1) AufenthG). A Berlin court issued a legal ruling on a case such as this in which someone who had applied to study at a German university in a field with military relevance had previously been involved with the military in Iran (Berlin Administrative Court (VG), September 8, 2017 – 19 K 414.17 V).

Diplomatic missions and immigration authorities may refer a case to the Federal Office of Administration (Bundesverwaltungsamt) before issuing a visa or residence permit. The Bundesverwaltungsamt then checks the applicant's data with Germany's Foreign Intelligence Service (BND), Federal Office for the Protection of the Constitution (BfV), Military Counter-intelligence Service (MAD), Federal Criminal Police Office (BKA), Federal Police, Customs Criminal Investigation Bureau or possibly also with a State Office for the Protection of the Constitution, a state criminal investigation department or responsible police authorities (Sec. 73 Abs. 2 AufenthG).

You will not be issued a residence permit either if you are subject to a **ban on entry or residence** under Sec. 11 AufenthG. You might be subject to one of these bans if you were previously resident in Germany and were deported, if you have been expelled from German territory or if you have previously applied for asylum and received a negative notice with a ban on residence.

1.1.7 Are there any other reasons why I might not be issued a residence permit?

The most important reason for denying a residence permit for study in Germany is if the authorities have good reason to believe that you will use a residence permit for reasons other than the reasons for which you applied for it (Sec. 19f (4) No. 6 AufenthG).

The VG Berlin initially granted the authorities a wide margin of discretion to assess this (VG Berlin, June 29, 2018 – 17 K 448.17 V). Immigration authorities were rejecting applications if they believed that an applicant's school grades were not good enough for study purposes at a higher education institution in Germany, even if the applicant had already been admitted to a degree programme.

However, the European Directive now demands proof or concrete indications that an applicant might be expected to reside in Germany **“only for other purposes and not for other purposes as well”** (VG Berlin, November 30, 2018 – 26 K 117.16 V).

This means that the reasons given for denying your application for residence for study purposes must include concrete indications that you would not primarily use your residence status to engage in study.

You will not be issued a residence permit under Sec. 16b AufenthG if

- the higher education institution to which you have been admitted was primarily established for the purpose of admitting international students (Sec. 19f (4) No. 1 AufenthG);
- the higher education institution is insolvent or has suspended or has never commenced its operations or business activities (Sec. 19f (4) Nos. 2 – 5 AufenthG).

You will not be issued a residence permit under Sec. 16b AufenthG if

- you have been granted protection status in any other EU Member State (an exception applies if you have been granted protection status and have already studied for two years (Sec. 16b (7) AufenthG) or you have applied for protection status in another EU Member State (Sec. 19f (1) No. 1 AufenthG);
- you have been granted toleration status in another EU Member State (Sec. 19f (1) No. 3 AufenthG);
- you are entitled to freedom of movement within the EU for other reasons (Sec. 19f (1) Nos. 4 and 5 AufenthG); or
- you hold an EU Blue Card (or equivalent status) in another EU Member State (Sec. 19f (3) Sentence 1 AufenthG).

The thinking underlying the first two cases is to avoid so-called secondary migration within Europe – in other words, to oblige refugees to remain in the European countries which are responsible for their admission procedure.

If you are entitled to freedom of movement or hold an EU Blue Card you are subject to special rules on the transfer of residence within the EU/EEA/Switzerland (Sec. 2 FreizügG/EU, Secs. 38a, 9a AufenthG).

1.2 How can I get a residence permit for study purposes (under discretionary powers)?

If you do not meet one of the conditions for legal entitlement to residence, you may still be able to obtain a residence permit under Sec. 16b AufenthG. However, the immigration authority can still exercise discretion in weighing up the relative merits of a student's individual interests and the public

interest. This discretionary power allows the immigration authority to take matters into account which they are not allowed to consider when you have a legal entitlement. The public interest might be considered to outweigh any other interests if there is even the slightest suspicion that you might use your residence permit for other purposes or might become a burden on public funds. Nonetheless, any such decision must reflect a careful balancing of interests. Decisions may not be made arbitrarily.

1.2.1 How can I obtain a residence permit to apply for admission to a degree programme or to take an examination for admission to a higher education institution?

The immigration authority has the discretionary power under Sec. 17 (2) AufenthG to issue a **residence permit to enable you to look for a place at a higher education institution**. This residence permit can be issued for a period of **up to nine months** and can be used to go to higher education institutions for advice or to make applications. Even when you are in Germany, this procedure usually goes through uni-assist.

This type of residence permit or corresponding visa is especially relevant if you need to take an examination in Germany, e.g. if you have been **admitted to take an exam for admission to a preparatory college**.

This kind of visa or residence permit is issued subject to the following conditions:

- You must produce evidence that you meet the **requirements for admission** to a degree programme at a German higher education institution. It is enough to produce evidence that you meet the requirements for admission to a preparatory college or for preparation for a higher education entrance examination (Feststellungsprüfung). In most cases you can find out whether your school leaving certificates are enough for this purpose or whether you need to meet further requirements by consulting the KMK database – <https://anabin.kmk.org> (in German).
- You must be able to demonstrate that you are **self-sufficient**. This means that you must show that your income is equal to the maximum rate of BAföG plus 10% – at the present time this is €947.10 (€861 + €86.10) a month, or for a nine-month visa €8,523.90 (Sec. 2 (3) Sentence 6 AufenthG). The evidence to show that you are self-sufficient is the same as that which must be produced for the degree programme (refer to 1.1.2 in this chapter).
- You must have a **passport** and the authorities must **not have any grounds for expelling you**, for **refusing you entrance or residence** (Sec. 11 AufenthG) or any **public safety concerns** regarding your residence.

Alternatively, you can apply for a residence permit to take a **language course without admission to a higher education institution under Sec. 16f AufenthG**. In this case, you don't have to meet any specific requirements for school leaving certificates or conditions for admission to a degree course at a higher education institution, however, the immigration authority does have discretion in assessing whether your motivation for residing in Germany is plausible. You must be resident in Germany for the primary purpose of learning German and must therefore attend a language course for at least 18 hours a week (VG Berlin, ruling of February 28, 2014 – 4 K 81.13 V; VwV AufenthG No. 16.5.1.1). Residence permits issued for such a short-term specific purpose are subject to an assessment of your willingness to leave the country again after the course has ended. Your application for a visa may be turned down if the overall circumstances suggest that you knew from the very start that the real aim of entering the country was to study at a higher education institution (OVG Berlin-Brandenburg, ruling of March 15, 2018 – OVG 2 B 6.17). In all other respects, the requirements are the same as those which apply to a residence permit issued to enable you to look for a place at a

higher education institution. This means that in this case too you will have to show that you have an income of €947.10 for every month you stay in the country (Sec. 2 (3) Sentence 6 AufenthG).

1.2.2 How can I obtain a residence permit if admission depends on requirements other than proof of my language skills?

As soon as you have been admitted to study at a higher education institution subject to the condition that you take part in measures to prepare you for study or that you sit a language examination, you will be legally entitled to a residence permit under Sec. 16b (1) AufenthG (refer to 1.1.1 in this chapter).

On the other hand, if your admission to a higher education institution is subject to other conditions, such as in particular demonstrating that you have a certain level of prior knowledge in the subject you wish to study, the immigration authority has discretionary power to decide whether or not to issue you a residence permit (Sec. 16b (5) AufenthG). This applies, for example, if you are only admitted to study for a Master's degree if you present evidence that you have completed certain modules of a Bachelor's degree or have completed professional training of some kind.

The immigration authority also has discretionary power to issue a residence permit to you if you are **taking part in measures to prepare you for study (i.e. at a preparatory college), attending a language course or if you are doing a compulsory internship, provided that you have not yet been admitted to study at a higher education institution** (Sec. 16b (5) AufenthG).

The immigration authority can make its decision dependent on its assessment of the public interest.

1.2.3 How can I obtain a residence permit for part-time study?

Residence permits for part-time study are also only issued at the discretion of the immigration authority (Sec. 16b (5) Sentence 1 No. 1 c) AufenthG). In practice, residence permits for this purpose are subject to very stringent conditions. The immigration authorities fear that you may use your residence for other purposes or that you may end up studying for far too long. In any case, you will need to give the immigration authority specific reasons for not studying full-time.

It can be particularly difficult if you have already started studying full-time but now want to switch to part-time study. If you want to switch from full-time to part-time study you must apply for a new residence permit (this is at any rate the view adopted by most courts at present: OVG NRW of October 17, 2019 – 18 B 907/19; dissenting opinion from OVG Bremen of February 8, 2011 – 1 B 322/10). However, you will only be issued a new residence permit for study purposes if you have a legal entitlement to one (Sec. 16b (4) AufenthG). By law you are not able to switch from full-time to part-time study: you have no legal entitlement to a residence permit for part-time study and can only obtain one at the discretion of the immigration authority.

1.2.4 Can refugees who have been admitted in another EU Member State obtain a residence permit to study in Germany?

If you are recognised as a refugee or have been granted subsidiary protection in another EU Member State, you will only be able to obtain a residence permit to study in Germany if you

- have already started studying on a degree programme in another EU Member State;
- have already studied for two years at a higher education institution in another EU Member State;
- have been admitted to undertake part of your studies at a higher education institution in Germany; and

- are studying within the framework of a bilateral or multinational agreement between higher education institutions.

The law in this area is quite complex. In order to prevent secondary migration within the EU, Sec. 19f (1) No. 1 AufenthG says that if you have protection status of any kind in another EU Member State, you are not initially legally entitled to a residence permit for study purposes under Sec. 16b (1) AufenthG. Nonetheless, you may under certain conditions be able to apply for the discretionary issue of a residence permit under Sec. 16b (7) AufenthG. The applicable discretionary rule reflects the concept of European mobility in Sec. 16c AufenthG (refer to 1.8 in this chapter).

If you are granted residence in this form, you can also take up gainful employment to the usual extent (refer to 2.1 in this chapter).

If you graduate from a higher education institution in Germany, you are entitled to an 18-month residence permit for the purpose of seeking employment under Sec. 20 (3) No. 1 AufenthG.

Example

Machmud is a Syrian citizen and a recognised refugee in Spain. He has been studying mechanical engineering in Barcelona for eight semesters. He is issued with a residence permit for one year (two semesters) under Sec. 16b (7) AufenthG to enable him to study at RWTH Aachen University as part of an exchange programme. In Aachen he is awarded sufficient credits for modules completed in Barcelona that he can write his Bachelor's thesis (in English) during the exchange programme. Under Sec. 20 (3) No. 1 AufenthG he is now legally entitled to a residence permit for 18 months so that he can seek employment in Germany (for the relevant requirements, refer to 1.10.1 in this chapter).

1.3 Can I get a residence permit for an internship?

Study-related internships are subject to a number of different rules.

1.3.1 Can I get a residence permit for a compulsory internship before I start studying?

It depends on whether you have already been admitted to a higher education institution or not:

1. If you are required to do an **internship to meet the conditions for admission**, you are legally entitled to a residence permit if conditional admission has already been granted (Sec. 16b (1) AufenthG). You are then only able to do additional work during the first year of your residence in semester breaks (Sec. 16b (3) Sentence 2 AufenthG).
2. You may be granted a residence permit to do an **internship in preparation for studies (including compulsory internships)** at the discretion of the immigration authority if you have been firmly accepted by a company or institution (Sec. 16b (5) No. 3 AufenthG). You are only permitted to engage in gainful employment as part of the internship or during semester breaks (Sec. 16b (5) Sentence 3 AufenthG).

If the degree programme regulations require you to do an internship, the payment you get while you are working is allowed to be lower than the minimum wage (Sec. 22 (1) No. 1 Minimum Wage Act (MiLoG)).

1.3.2 Can I get a residence permit for a voluntary pre-study internship?

The immigration authority may, at its discretion, issue you a residence permit if your pre-study internship directly serves the purpose of preparing you for study. This must be confirmed by your higher education institution.

You can also do a voluntary internship while you are attending a preparatory college or taking part in any other measures to prepare you for study. However, during the first year of your residence you can only do this during semester breaks. In your second year you can also do a half-day internship for the maximum number of hours of work stipulated in Sec. 16b (3) AufenthG.

If your internship is for an agreed period of up to three months, the payment you receive for the internship can be lower than the minimum wage as it is then classified as an orientation internship (Sec. 22 (1) No. 2 MiLoG).

1.3.3 Can I also get a residence permit for an internship after I have completed my studies?

You are legally entitled to a residence permit to do an EU study-related internship (Sec. 16e AufenthG). This rule covers an internship which you start after graduating in Germany as well as an internship in Germany which you are required to do by a higher education institution in another country. Don't forget that the Minimum Wage Act (MiLoG) must be complied with. In most cases you must be paid a wage for your internship which is at least equal to the minimum wage (2020: €9.35, 2021: €9.85 an hour; refer to Sec. 22 (1) MiLoG).

Residence permits are only issued in these cases when a wide range of requirements are met.

- The actual work you do in your internship must be commensurate with the level of your academic qualifications.
- You must start your internship within two years of graduating or during your higher education studies. Compulsory internships during degree programmes in Germany are already covered by residence permits issued under Sec. 16b AufenthG.
- You must be self-sufficient or have a secure source of financing for your living expenses throughout the duration of the internship. You are considered to have met this requirement if you have monthly financial resources which are equal to the maximum rate of BAföG of €861 (Sec. 2 (3) Sentence 5 AufenthG).
- You must present an internship contract which:
 - describes the programme of the internship, including its educational objectives or learning components;
 - specifies the duration of the training programme;
 - states the conditions under which you will work and be supervised;
 - stipulates your working hours and
 - the legal relationship between you and the institution for which you will be working (Sec. 16e (1) No. 2 AufenthG).
- The company or institution offering the internship must submit a declaration of commitment for your living expenses, including any deportation costs, for the entire period of your internship (Sec. 16e (1) No. 5 AufenthG).

The residence permit is issued for a **maximum period of six months** (Sec. 16e (2) AufenthG). Once you have completed your internship you will only be eligible for a six-month residence permit to seek employment under Sec. 20 (2) AufenthG and not for an eighteen-month residence permit to seek employment under Sec. 20 (3) No. 1 AufenthG. This means that it is not worth applying for a residence permit to do a six-month internship immediately after you have graduated rather than for

a residence permit to seek employment, as this would not extend the amount of time available to you to find employment.

1.3.4 How can I do an internship in Germany if I am studying at a higher education institution in another country?

If you are studying at a higher education institution outside Germany (whether in an EU Member State or in a third country), you are also legally entitled to a residence permit for a study-related internship under Sec. 16e AufenthG, if

- you are still studying at a higher education institution; or
- you graduated within the last two years.

All the other requirements for an EU internship also apply (refer to 1.3.3).

If you have come to Germany to do an internship and are in the country for the first time, you can seek employment for which your degree qualifies you and then apply for a **residence permit for employment purposes** under Sec. 18b AufenthG **before the residence permit issued** under Sec. 16e AufenthG **expires**.

If you do not meet the requirements, in particular if the company or institution providing the internship does not wish to provide a declaration of commitment or if you graduated more than two years ago, you are still able to apply for a residence permit for the purpose of seeking employment under Sec. 20 (2) AufenthG for six months.

1.4 Can I bring my family with me or can they join me here in Germany later?

Both are possible, if you meet a number of requirements.

1.4.1 Who will the German authorities accept as members of my family?

Except in extreme exceptions, only spouses (or registered civil partners) and unmarried children under the age of 18 have the right as third-country nationals to come to Germany to join a member of their family. If you have stepchildren or grandchildren, they only have a subsequent right to immigrate for family reunification purposes via their own parents and not directly via you.

1.4.2 What requirements must my husband, wife or registered civil partner meet?

Subsequent immigration for family reunification is also subject to legal entitlements for applicants and discretionary powers for the authorities. These are set down in Secs. 30, 29, 27 and 5 AufenthG.

You will be **legally entitled to bring a family member with you or to family reunification at a later time** if you meet the following requirements:

- You were already married in your country of origin or at the time you were granted a residence permit.
- You are expected to be resident as a student for longer than one year, based on the predicted total period of your residence.
- Neither you nor your spouse may have been forced into marriage nor may you have married for reasons of convenience (Sec. 27 (1a) AufenthG).
- Your spouse or registered partner must be at least 18 years old at the time he or she enters Germany.

- You must be able to prove that you and your spouse or registered partner can pay for all your living expenses (refer to 1.4.4 in this chapter).
- You must be able to prove that you both have adequate accommodation (Secs. 29 (1) No. 2, 2 (4) AufenthG; VwV AufenthG 12m² per person and 10m² for children aged two to five).
- You and your partner must have a command of German up to level A1 (Secs. 30 (1) No. 2, 2 (9) AufenthG); various exceptions apply (refer to 1.4.5 in this chapter).
- The family member or members coming to join you in Germany must have passports.
- The family members may not present any public safety concerns, there must not be a public interest in expelling them or in banning their entry into the country under Sec. 11 AufenthG.

If you **only get married while you are resident in Germany or if you are planning to study in Germany for less than one year**, the immigration authority has discretionary powers to allow a family member to come with you or to immigrate to Germany later. You and your spouse must also meet the other requirements.

If you **separate** from your spouse or registered partner while you are resident in Germany, your spouse or registered partner will not acquire an independent right to reside under Sec. 31 AufenthG. This is because your residence permit cannot be converted into a permanent settlement permit (Sec. 31 (1) Sentence 2 AufenthG). Alternatively, they could obtain a residence permit for the purpose of vocational training (Secs. 16a, 16b AufenthG) or for gainful employment (Secs. 18a, 18b, 19c, 21 AufenthG), provided that they are self-sufficient. Any maintenance payments you make can also be taken into account in determining whether your former spouse or registered partner has sufficient income (refer to 1.4.4 in this chapter).

1.4.3 What conditions must children meet?

Children can also come to Germany with their parents or immigrate to Germany at a later time if the following requirements, which are set down in Sec. 32 AufenthG are met.

- Both parents or the parent with sole custody must hold a residence title (Sec. 16b AufenthG). Decisions regarding custody of a child which have been made in another country are recognised in Germany, provided they do not violate “ordre public”, because for example the wishes of an older child have not been taken into account (BVerwG, November 29, 2012 – 10 C 4/12).
- You must be able to prove that you can pay for your child’s or children’s living expenses (refer to 1.4.4).
- You must be able to prove that you have adequate accommodation for your child or children. Adequate accommodation is 12m² for children aged six and older and 10m² for children aged two to five (VwV AufenthG 2.4.2).
- Your child or children must have passports.
- The authorities must not have any grounds for expelling your child or children, they must not be subject to a ban on residence and there must not be any public safety concerns regarding their residence, etc.

As a rule, if you **share the right of care and custody** for a child or children with someone else, the child or children can come to Germany if you present a declaration of consent by the other parent or a binding official decision to this effect. In this context, “as a rule” means that this right can only be refused if there are special circumstances for not allowing a family reunification.

The conditions which must be met for your family to join you in Germany **at a later time** are the same, if your children are **under 16**.

Children who are **older than 16** will only be permitted to join you at a later time if they understand and speak German or if there are other reasons which suggest that they will have no difficulty integrating into German society.

If your children **come of age** (reach adult age) while one of their parents is still studying in Germany, they will be issued a residence permit under Sec. 34 AufenthG. This residence permit has nothing to do with the residence permits held by you or the child's other parent and will be renewed until the requirements stipulated in Sec. 35 AufenthG for a settlement permit are met (including the requirement for five years' residence).

1.4.4 How can I show that I am self-sufficient?

You must provide evidence that you have available funds which are at least equal to the minimum SGB II/SGB XII subsistence rates plus the cost of your accommodation (Secs. 5 (1) No. 1, 2 (3) AufenthG). Apart from the evidence which you can provide as a student (already discussed in 1.1.2 in this chapter), any income which members of your family earn in Germany can also be taken into account. This is because Sec. 30 AufenthG residence permits include an unrestricted work permit (Sec. 4a (1) AufenthG). The unavoidable living expenses incurred for the residence of family members are calculated in line with the minimum subsistence rates stipulated in SGB II/SGB XII.

Example calculation of income needed to demonstrate that you are self-sufficient

Sascha is 27 years old. He is from Russia and wishes to study at the Humboldt University in Berlin. His wife and two children aged three and six wish to come with him to Germany. Sascha's relatives have found an 80m² flat for him. The rent, including water and heating, is €1,200/month.

The first step is for Sascha to show that he is self-sufficient and has income equal to the BAföG rate of €861.

He must have enough money to cover his family's expenses up to the minimum subsistence rates stipulated in SGB II/SGB XII plus their accommodation costs. He must also be able to pay his family's health insurance.

Standard requirement levels (2021):

Wife €401
Child, aged 3 €283
Child, aged 6 €309

Accommodation costs:

3 x €300 = €900 (an equal share of the rent for each person, not including Sascha's share).

Total requirements for all members of the family: €1,893

This amount is reduced by the wife's entitlement to **child benefit** of €438 (Secs. 62 (2) No. 2, 66 (1) EStG) to €1,455. This means that the family must be able to show that they have a total **income of at least €2,316/month**.

Health insurance: If Sascha has not yet enrolled on a degree course, the whole family will only be able to obtain private health insurance cover. After he has enrolled, Sascha will be insured with a statutory health insurance scheme which will also provide free cover for his family. It would be foolish to claim exemption from compulsory insurance in this case.

1.4.3 What language requirements must I meet?

You will only be able to obtain a visa to allow your spouse to join you in Germany if she or he can demonstrate written and spoken knowledge of the German language (basic knowledge according to Sec. 2 (9) AufenthG) corresponding to Level A1 of the Common European Framework of Reference for Languages (Recommendation no. R (98) 6 of March 17, 1998 of the Committee of Ministers of the Council of Europe to Member States concerning the Common European Framework of Reference for Languages – CEFR).

You do not need to meet this requirement if

- you are from a privileged industrialised country (Australia, Canada, Israel, Japan, New Zealand, South Korea, USA) (Sec. 30 (1) Sentence 3 No. 4 AufenthG, Sec. 41 (1) AufenthV);
- the family members joining you in Germany are graduates or are engaged in corresponding gainful employment and can be expected to integrate into German society without assistance from the state (Sec. 30 (1) Sentence 3 No. 3 AufenthG, Sec. 4 (2) IntV);
- they are unable to learn the language for health reasons (Sec. 30 (1) Sentence 3 No. 2 AufenthG); or
- it would be unreasonable to expect one of the family members joining you to learn the language (Sec. 30 (1) Sentence 3 No. 6 AufenthG). The criteria in the latter case are very tough and proof must usually be presented that strenuous efforts have already been made in vain to learn the language.

1.4.4 What other reasons might prevent members of my family joining me in Germany?

All the members of your family must each have a passport. In certain cases it might be impossible for family members to obtain a national passport or unreasonable to expect them to do so. In this case it may be possible to obtain German travel documents for foreign nationals (refer to 1.1.5 in this chapter).

If members of your family were resident in Germany in the past it is essential to check whether they are subject to a ban on entry and residence under Sec. 11 AufenthG. This might be the case if they have been deported or expelled in the past (Sec. 11 (1) AufenthG), if they have failed to leave the country within a stipulated period of time (Sec. 11 (6) AufenthG) or if they had applied for asylum and their case was turned down as obviously unfounded (Sec. 11 (7) AufenthG).

There must not be any other public interest in expelling any of the members of your family: such an interest might be based on the fact that they have committed a crime in Germany or in another country (Sec. 54 AufenthG).

The German diplomatic mission abroad decides whether any additional security screening is required (Sec. 73 (1a) and (2) AufenthG).

Examples

The Chinese student Li is 22 years old and wishes to come to Germany with her 26-year-old husband. She has been admitted to study for a Bachelor's degree in bioinformatics. This degree programme normally takes seven semesters to complete. Her husband has obtained an A1 language certificate from the Goethe Institute in China. Together the two of them have €25,000 in a blocked bank account with the Deutsche Bank. They have been told that they can live in a flat in a hall of residence for a monthly rent of €500. Both of them have Chinese passports and

neither of them has previously lived in Germany. There are no public safety concerns regarding the couple.

Li's husband is legally entitled to accompany his wife to Germany. They should apply for visas to the German diplomatic mission as the husband is also eligible for the fast-track procedure for students (refer to 1.6.3 in this chapter).

Ludmilla is 20 years old and came to Germany from Ukraine to work as an au-pair in Munich. She was granted a residence permit under Sec. 19c (1) AufenthG. During her stay she met and fell in love with the Australian medical student Tom. They marry while Ludmilla is still working as an au-pair. Ludmilla can show that she is working as a service worker in a home for the elderly.

As Ludmilla already holds a residence permit, she can apply in Germany for a residence permit for the subsequent immigration of dependants under Sec. 30 AufenthG (Sec. 39 No. 1 AufenthV). She is self-sufficient. She does not need a language certificate (owing to Tom's privileged status as an Australian) and she meets all the other requirements. However, the two of them were not married at the time that Tom was granted his residence permit under Sec. 16b AufenthG. The immigration authority can therefore exercise discretionary powers in reaching a decision on the application. In this particular case, however, there is no discernible and substantial public interest in not issuing the permit.

On the other hand, if Ludmilla was seeking asylum and didn't have a visa or if she had entered the country as a tourist on a Schengen visa, the fact that she did not have a visa would prevent her being issued a permit in Germany and she would have to make her application for a visa from Ukraine.

1.5 How can I apply for a residence permit for study purposes in Germany?

Sec. 5 (2) AufenthG (General prerequisites for granting residence titles) states that you can only obtain a residence title if you have entered the country on a visa that precisely defines the purpose for which you will be resident in Germany. The purpose of this rule is to ensure that entry into Germany can be controlled and that the legitimate reasons and conditions for residence in Germany can be checked before a person actually arrives.

There are exceptions to this rule, however. For example, someone who is already permitted to reside in Germany can, in certain circumstances, apply to the responsible immigration authority in Germany for a residence permit under Sec. 16b AufenthG for the purpose of studying.

1.5.1 Can third-country nationals who hold a residence permit for other reasons or who hold a provisional residence document apply to an immigration authority in Germany for a residence permit for study purposes?

If you have a residence title for Germany, you can apply to the immigration authority for a residence permit for study purposes. This is typically the case, for example, if you were in Germany as an au pair, or in a voluntary service scheme or other short-term employment with a residence permit under Sec. 19c (1) AufenthG, you took part in a language course or schooling under Sec. 16f AufenthG, or

you completed an EU training programme under Sec. 16e AufenthG and you intend to study on a Master's degree programme immediately after.

It is important to remember in these cases that the residence permit must not have expired when you make your application for a residence permit under Sec. 16b AufenthG. When you make your application, you will be issued a provisional residence document which extends the validity of your previous residence permit until a decision has been reached on your application under Sec. 16b AufenthG (Sec. 81 (4) AufenthG).

However, if you apply too late – i.e. after your previous residence permit has already expired – the immigration authority can only order that the previous residence permit continues to be valid if this is necessary in order to avoid undue hardship (Sec. 81 (4) Sentence 2 AufenthG).

Even if you apply for your existing residence permit to be renewed for the same purpose before it expires and a provisional residence document is then issued, you can still apply to the immigration authority for a residence permit under Sec. 16b AufenthG.

Example

Anna has come to Germany from Georgia to take part in a voluntary service scheme. Her residence permit under Sec. 19c (1) AufenthG expires and she applies for it to be renewed. There is a problem, however, because she has already exhausted the maximum period of time allowed for voluntary service. Despite this, she still receives a provisional residence document for the period during which the application is being assessed. Two weeks later she manages to gain admission to a degree programme in social work as well as a declaration of commitment under Sec. 68 AufenthG from a relative who is living in Germany. She can now apply for the residence permit under Sec. 16b AufenthG even though her previous residence permit has already expired but continues to be valid.

1.5.2 I hold a national visa (long-stay visa). Can I apply to the immigration authority in Germany for a residence permit for study purposes?

Yes, you can. If you have entered Germany as a third-country national on a long-stay visa, either to join your family or to work, and your plans subsequently do not work out (but not because they were never genuine in the first place), you can apply to the responsible immigration authority in Germany for a residence permit for study purposes.

Example

Fatima has travelled from Jordan on a visa to join her husband who is living in Germany. Shortly after her arrival she discovers that her husband now has a lover and she leaves him. She had not yet applied for a residence permit for family reunification under Sec. 28 AufenthG and she is no longer entitled to such a permit. However, Fatima could still obtain a residence permit for study purposes in Germany if she has been admitted to study at a higher education institution and is able to support herself, possibly from maintenance paid by her husband.

1.5.3 Can citizens of certain countries apply to an immigration authority in Germany for a residence permit for study purposes?

As a rule, the citizens of certain countries can apply to an immigration authority in Germany for a residence title if they have legitimately entered the country without a visa (Sec. 41 AufenthV). The relevant countries are:

- Australia, Brazil, Canada, El Salvador, Honduras, Israel, Japan, New Zealand, South Korea, USA

1.5.4 Who cannot apply inside Germany for a residence permit for study purposes?

If you do not yet have a residence title in Germany, do not have a provisional residence document or a long-stay visa and if you are not from a privileged country, you must first apply for a visa in the country in which you were previously resident.

In particular, you cannot switch from residence as an asylum seeker, from toleration status or from a Schengen visa (tourist) to a residence permit under Sec. 16b AufenthG.

1.6 Applying for a visa

The visa application procedure is explained in the following:

1.6.1 Where must I make my application for a visa?

You must make your application for a visa to a German diplomatic mission (which can be either an embassy or consulate). The diplomatic mission which is responsible depends on the place where you are habitually resident; in most cases, this is the place where you are permanently resident. You must have lived at this place for six months or have long-term permission to reside. This means that you cannot make an application for a visa in a country in which you are not officially permitted to reside. For example, a Somali citizen who has been living for some time in Italy can only apply to the German embassy in Rome for a visa if he already has permission to reside from the Italian authorities. If the German embassy in the relevant country is closed (e.g. Syria), one or more German diplomatic missions in neighbouring states are explicitly designated as responsible.

If there are several German diplomatic missions in a particular country (i.e. consulates as well as an embassy), the responsible mission is the one which has been designated as such for the place where you live. You will find all the information you need on the websites of the German embassies.

In most cases, you will need to make an appointment on the Internet or via a call centre before you can go to the diplomatic mission. You must state that your intention is to study in Germany because appointments are often arranged according to the purpose of a person's intended residence. Students usually receive preferential treatment.

1.6.2 What documents must I present?

When you go to your appointment you will have to present all the documents which are needed for the issue of a residence permit under Sec. 16b AufenthG – proof of admission, evidence of your ability to support yourself, passport, in some cases a language certificate.

If you want members of your family to accompany you, you will also have to present marriage certificates and certificates of parentage. Depending on your country of origin, you may also be asked to present a certificate of authentication or an apostille.

You must also present evidence that you are habitually resident in the country in which you are making your application.

You must also present two passport photographs.

The precise list of documents that you need to present is usually sent to you with confirmation of your appointment at the German embassy.

The fee is €75. You will be exempt from fees if you have a German- or EU-funded scholarship.

1.6.3 How long does the procedure take?

The fast-track procedure under Sec. 31 (1) Sentence 5 AufenthV applies to applications for a residence permit under Sec. 16b AufenthG. The diplomatic mission sends your data to the responsible immigration authority (at the place you will be living or the location of the higher education institution, if it is not yet clear where you will be living) and this then has three weeks and two days (from the date on which it receives your data) to approve or turn down your application. After this time limit has expired, your application will be deemed to have been approved even if you have not received an answer.

This means that you can expect your application for a visa to be answered within seven weeks. If any documents are missing, a security check has to be made or the responsible immigration authority has any objections, the application procedure can take up to three months. The biggest problem you will have, however, is the waiting period for an appointment to apply for your visa. In its response to a minor interpellation from the parliamentary group Bündnis 90/Die Grünen of December 19, 2019 (BT-Drs. 19/15956), the German government was forced to admit that waiting times at diplomatic missions in Guinea, Iran, Cameroon, Morocco, Nigeria, and Pakistan (for Afghanistan nationals) can be longer than 52 weeks. If you wish to study at a German higher education institution, it is therefore a good idea to make an appointment with the German diplomatic mission even if you have not yet been admitted to study. In principle, the responsible immigration authority may also issue preliminary approval for the issue of a visa (Sec. 31 (3) AufenthV) to speed up the procedure.

You do not need any approval at all (Sec. 34 AufenthV) if

- you have received a publicly funded scholarship to study (Sec. 34 No. 3 AufenthV); or
- you have completed schooling at a German school in another country or at a school which is funded from Germany and you have passed a higher education entrance examination for study in Germany and hold the necessary German language diploma (Sec. 34 Nos. 5 – 7 AufenthV).

These applications only take between two and three weeks to process.

1.6.4 How can I lodge a complaint if my application is processed too slowly or if it is turned down?

The official decision in which you are told that your application for a visa has been turned down does not usually inform you about the legal steps you can take. You cannot appeal against these decisions. The only thing you can do is to bring an action directly before the Administrative Court in

Berlin against the Federal Foreign Office, which is the superior authority for all German diplomatic missions. But because you have not been instructed on the legal remedies available to you, you must bring this action within one year.

Alternatively, you can start a so-called “remonstration procedure”. You can file this procedure with the visa authority or the Federal Foreign Office. This is not a formal legal remedy, but the diplomatic mission or the Federal Foreign Office must then reassess the legality of its decision. It is therefore a good idea to use this procedure before bringing a court action. Your application must be written in German and must be submitted with your signature. You must cite reasons and include any other documents which may be relevant. If the remonstration procedure is turned down, you will be informed about the legal remedies available to you and can then bring a court action within one month.

1.6.5 What must I do immediately after I have entered Germany?

- You must rent accommodation and **register with your local registration office** (usually located in your local town hall) within two weeks. You do not have to register your residence at the local registration office if you are only temporarily resident for a period of up to three months (Sec. 27 (2) BMG). However, you must register your new address within two weeks of moving into a house or flat (Sec. 17 BMG) or within three months if you are living in a hostel/hotel/youth hostel or similar (Sec. 29 (1) BMG). It is an administrative offence not to register and you may face a fine (usually of between €20 and €50) if you do not.
- You must **enrol** at your higher education institution or obtain certification from the relevant educational institution that you are taking part in measures to prepare you for study.
- You must **open a bank account**. Under the Payment Accounts Act (ZKG), anyone who is legally resident in Germany may have a bank account, even if they do not yet have any accommodation (Sec. 31 (1) ZKG).
- You must **apply** to the immigration authority for a **residence permit** under Sec. 16b AufenthG. Delays frequently occur because the immigration authority is unable to provide appointments at short notice. You must make your application before your visa expires, preferably in writing or by fax if you are unable to go to the immigration authority in person. If you still do not have a registered address at this time, you must provide an address to which documents can be sent (this can be with a private person or an organisation for the homeless) and at which you can be reached (Sec. 15 VwVfG).

1.7 How long can I study in Germany?

It is impossible to generalise, as it depends on the type of degree programme you are studying on and your individual circumstances.

1.7.1 For how long are residence permits issued?

Your **first residence permit** will be issued for at least one year and at most two years. The residence permit will be issued for a shorter period of time if your course of study takes less than two years (Sec. 16b (2) AufenthG). The residence permit should be renewed for two years if you can show that you can support yourself financially throughout this period and if your study progress up to this point shows that you will be able to complete the degree programme within a reasonable period of

time (VwV AufenthG 16.1.1.6). This does not apply if your residence for study purposes is planned to be for a shorter period of time.

As a rule, you are granted a maximum of two years' **residence to prepare for study** (VwV AufenthG 16.0.6). This is not a legal upper limit, however, but merely a predicted period of time (OVG NRW of June 5, 2012 – 18 B 1483/11; OVG Saxony of March 7, 2016 – 3 B 378/15; VG Freiburg of February 21, 2017 – 6 K 977/17). This means that your residence permit cannot be withdrawn if you only continue to study for a slightly longer period of time. If, on the other hand, it is already apparent that you will only be able to complete your preparations for study if you remain in Germany for significantly longer than two years, your residence may be terminated even before the two-year period has ended.

Example

Ramon travelled to Germany on August 30, 2018 and entered a preparatory college on October 1, 2018. He did not pass his first examination in July 2019 nor his second examination in July 2020. Based on the progress he has made so far, he will only be able to take the examination again in July 2021. The immigration authority had issued a residence permit which was valid up to September 25, 2020. Ramon cannot expect his residence permit to be renewed. The immigration authority could also issue an official decision in August 2020 to restrict the subsequent length of time for which his residence permit will be valid.

You must **apply for renewal** before your residence permit expires (Sec. 81 (1) AufenthG).

Your application does not have to be made in writing.

If your residence permit is not immediately renewed, you will be issued a provisional residence document. The document maintains all your existing rights, particularly regarding gainful employment and social welfare benefits (Sec. 81 (4) Sentence 1 AufenthG).

If you only apply for renewal after your residence permit has expired, the immigration authority can only order that your previous residence permit continues to be valid if this is necessary in order to avoid undue hardship (Sec. 81 (4) Sentence 3 AufenthG). This is usually assumed to be the case if you have been prevented from applying for renewal because of illness or if you are suffering from mental stress as a result of an adverse event or similar factors.



You must make sure that your residence permit does not expire while you are on holiday in your own country. You can ask the immigration authority to renew your residence permit in advance or to issue you with a provisional residence document (Sec. 81 (4) AufenthG) to cover the period following the expiry of your residence permit. If necessary, you can also apply by email from abroad for your residence permit to be renewed. The BMI Circular of April 9, 2020 (<https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2020/corona/rundschreiben-20200409.html> (in German)) accepts that in some circumstances you may be prevented from returning to Germany owing to the coronavirus crisis and permits immigration authorities to send provisional residence documents by courier service to diplomatic missions through the Federal Foreign Office. If you do not apply for your residence permit to be renewed, you may find that you are not allowed to enter Germany if your residence permit has expired. You will then have to apply for a new visa.

You will also be assumed to be subject to undue hardship if you were unable to apply for renewal in good time because your residence permit was subject to an invalidating condition (OVG Saxony of July 10, 2019 – 2 M 21/19). This invalidating condition is a secondary provision under which your residence permit ceases to be valid if your enrolment at your higher education institution is terminated. This condition is only included by a few immigration authorities but is generally admissible (most recently: VG Dresden of April 21, 2015 – 3 L 228/15).

The **fee for a residence permit** – whether for one or two years – is €100 (Sec. 45 No. 1 AufenthG).

1.7.2 What is considered to be a reasonable length of time for completing a degree programme?

It is not a problem if you exceed the average duration of studies – not the normal duration of studies – by up to three semesters (VwV 16.1.1.6.2). Ultimately, the decision made by the immigration authority always depends on whether, at the time a prediction is made, you can still be expected to complete your studies successfully within a reasonable period of time (Sec. 16b (2) Sentence 4 AufenthG). This means that the assessment made by the immigration authority is always forward rather than backward looking (OVG Magdeburg of February 14, 2020 – 2 M 3/20; VG Karlsruhe, ruling of April 3, 2017 – 7 K 7667/16).

In administrative practice and case law a **maximum duration of 10 years** for the entire period of residence for study, including the period used to prepare for study and excluding time engaged in studying for a PhD, has been established as a general limit (VwV AufenthG 16.2.7).

The progress you have made on your studies can also be assessed for the renewal of a residence permit even before the normal duration of studies has been exceeded (OVG Saxony of May 3, 2019 – 3 B 96/19).

Your previous performance, including in particular the study and examination credits you have been awarded, are also assessed in addition to the amount of time your studies usually take to complete. The immigration authority must also take account of any language difficulties that may slow down your progress when you first start studying. It is therefore important to show that your performance has improved over the course of your studies.

Example

Marie is enrolled on a Bachelor's degree programme in mechanical engineering at the TU Dresden. This degree normally takes seven semesters to complete. On average students study for nine semesters. Up to 12 semesters are considered to be appropriate. However, the immigration authority can ask Marie to submit a summary of her achievements every time she applies for her residence permit to be renewed to check whether she is making sufficient progress in her studies. The immigration authority cannot demand that she has taken all the planned examinations in the first phase of her studies.

You can also refer to any other individual reasons for slower progress, but you must in particular also outline why you think you will be able to complete your studies successfully within a reasonable period of time.

Examples from case law:

If the average duration of study is 8.3 semesters, a student will not be considered able to complete his or her studies within a reasonable period of time if they have achieved only 48 ECTS after nine semesters of study (OVG Bremen of April 1, 2014 – 1 B 47/14).

The immigration authority will also make a negative prediction if only 129 ECTS have been gained in 12 programme semesters, if students are normally expected to gain 180 ECTS in six semesters (VG Düsseldorf of July 4, 2019 – 2 L 489/19).

You will no longer be expected to complete your studies successfully if you work full-time while you are studying (OVG Berlin-Brandenburg of March 26, 2013 – OVG 7 S 18.13).

Renewal will also be refused if your study performance to date suggests that you will not be able to complete your studies within the maximum period of 10 years (VG Düsseldorf of November 18, 2019 – 2 L 1182/19; OVG Berlin-Brandenburg of November 17, 2016 – OVG 11 S 56.16).

1.7.3 What factors can be taken into account if it takes me longer to complete my studies than is considered appropriate?

Not only general language barriers, but also individual circumstances, such as illness-related delays, must be taken into account to determine the meaning of the indefinite legal term “appropriate period of time” as used in Sec. 16b (2) Sentence 4 AufenthG (VGH Bavaria of December 6, 2018 – 10 CS 18.2271).

You must be careful, however, if you are not expected to complete your studies within a reasonable period of time owing to illness. This is because the immigration authority may judge that it is unrealistic for you to become fit enough to study again within a reasonable period of time. The reasonable period of time for completing your studies will not be extended if you have been diagnosed as having a fear of examinations, for example (VG Düsseldorf of July 4, 2019 – 2 L 489/19 and of October 8, 2014 – 7 K 5722/12).

Measures to prepare for studies which take an excessive period of time to complete have also had a negative impact in case law on the overall prediction (VGH Bavaria of April 16, 2019 – 10 CS 19.445, note 7). If you only make very slow progress at the start of your degree programme, it is particularly important to emphasise and provide reasons for any changes which take place later.

It may be disproportionate for the immigration authority to refuse to renew your residence permit, even if the average duration of study has been significantly exceeded, if you are about to take and are expected to pass your final examination (OVG Berlin-Brandenburg of December 15, 2016 – OVG 6 S 26.16).

The immigration authority can also ask for the opinion of your higher education institution regarding your progress and its prediction about how much more time you will need to complete your studies (Sec. 16b (2) Sentence 5 AufenthG). If the average duration of studies has already been exceeded by three or more semesters, it is a good idea for you to ask the higher education institution to provide you with an opinion. The faculty/department examination board is responsible for this, but you may also be able to obtain an opinion from specific professors.

If the slow progress you are making in your studies is due to family, social or psychological problems, you may be able to obtain help from the STW’s psychological counselling services and the higher education institution’s international offices. They offer individual counselling, for example.

1.7.4 What could happen if I take a sabbatical semester?

A sabbatical semester as such does not have any negative consequences. However, you must make sure that:

- you have a good reason for interrupting your studies (because you are ill, because of pregnancy, maternity leave and subsequent care of a baby, or because of the serious illness of one of your close relatives in Germany or in your country of origin);
- the overall duration of study must still be appropriate and must on no account exceed the upper limit of 10 years.

Residence permits are sometimes issued with the condition that a sabbatical semester may only be taken with the approval of the immigration authority. If this is the case, you will have to provide information about the good reason you have for interrupting your studies and the amount of time it will take you to complete them (see above). You can appeal if the immigration authority does not give its approval to a sabbatical semester.

1.7.5 What degree programmes or job-related periods of practical training can I take up after I have completed my first degree?

The key issues here are for how long you have been given a residence permit and whether the reason you wish to remain in Germany constitutes a new purpose of residence.

The purpose of your residence may include:

- A consecutive Master's programme.
- Postgraduate, supplementary or complementary studies.
- A PhD (the total period of residence can be extended to up to 15 years if you have also completed your Bachelor's and Master's degrees in Germany). If you are studying for your PhD as part of your employment, a residence permit for the purpose of gainful employment under Sec. 18b (1) AufenthG is issued.
- Practical activities which form part of the prescribed training course or which are demonstrably necessary in order to achieve your training objective. You will be issued a residence permit for the purpose of gainful employment under Sec. 18b (1) AufenthG if you are doing an internship which is paid in accordance with the Minimum Wage Act (MiLoG).

If you are in **probationary training** leading to the Second State Exam, you will be issued a residence permit under Sec. 19c (3) AufenthG if you are a prospective civil servant or under Sec. 18b (1) AufenthG if you are working as a trainee in an employed rather than a civil servant position.

On the other hand, if you switch to a different degree programme and start studying again (not at another study location), this would change the purpose of your residence and you will need to apply for a new residence permit (refer to 1.9.1 in this chapter).

1.7.6 Do I have to complete all my studies within a maximum period of time?

In administrative practice and case law a **maximum duration of 10 years** for the entire period of residence for study has been established as a general limit (VwV AufenthG 16.2.7). This upper limit may not be exceeded, or only by a very short period of time if you are due to complete your studies very soon and it would not be possible to do this without a short extension to the time limit.

The 10-year maximum period is usually extended to the final upper limit of 15 years if you begin studying for a PhD immediately after completing a Bachelor's and Master's degree.

1.7.7 If I hold a residence permit for study, can I apply for a permanent settlement permit (Niederlassungserlaubnis)?

No. If you hold a residence permit under Sec. 16b AufenthG, you cannot then apply for a permanent settlement permit (Sec. 16b (4) Sentence 2 AufenthG). You will only be able to take steps to make your residence in Germany permanent after you have successfully completed your studies. However, half the period of time of your residence with a permit under Sec. 16b AufenthG will be credited towards your later entitlement to a permanent settlement permit under Sec. 9 (4) No. 3. This also applies to the issue of an EU long-term residence permit under Sec. 9b (1) No. 4 AufenthG. Refer to 1.10.7 on permanent settlement permits in this chapter.

1.7.8 How can my residence be terminated and what legal steps can I take?

In most cases, the immigration authority will terminate your residence by simply not renewing your residence permit. If your residence permit has expired and you no longer meet the conditions for it to be renewed (you will be able to complete your degree within a reasonable period of time, you are self-sufficient, you have complied with your passport requirements, you haven't committed any crimes), you will first be issued a **provisional residence document** under Sec. 81 (4) AufenthG for the period in which an administrative order ending your residence is being prepared.

You will then be sent a **hearing letter under Sec. 28 VwVfG** relating to the envisaged administrative order. You must read this letter very carefully! It will usually contain the full text of the administrative order and state a time limit within which you are able to respond. If you haven't already obtained legal advice or engaged the services of a lawyer, it is essential that you do this now. The statement you make during the hearing is the last opportunity you will have before an order is issued not to renew your residence permit. This order will also tell you in writing to leave Germany (Abschiebungsandrohung) within a specified period of time and inform you that if you do not leave the country by the deadline stated, you may be deported.

The **administrative order** must always be formally served on you (sent or presented to you in official form). You can challenge the administrative order, but the order itself still remains in effect (Sec. 84 (1) No. 1 AufenthG). An urgent appeal for suspension of enforcement and the deadline for leaving the country must be filed with the Administrative Court (Sec. 80 (5) VwGO).

You can also lodge an appeal to the Higher Administrative Court against the negative decision of the Administrative Court.

If an official decision (ruling on an objection – Widerspruchsbescheid) is issued on your objection (this is usually only the case if enforcement has been suspended in summary proceedings), you can bring an action before the Administrative Court. However, this action will not suspend the effect of the order either (Sec. 84 (1) No. 1 AufenthG). This must also be ordered by the court (Sec. 80 (5) VwGO). You can only appeal against a negative decision if your appeal is approved by the Administrative Court or the Higher Administrative Court (Sec. 124 VwGO).

Legal aid to cover the costs of the court case may be approved if there is a reasonable chance of success. You will have to discuss with your lawyer whether taking such action in your particular case is likely to be successful or is a good tactic. You should be aware that **you will incur legal costs for a lawyer and court costs in a case relating to the termination of your residence.**

You can file your complaint and urgent appeal with the **legal claims office at the Administrative Court**. But you should only do this if it is absolutely necessary in order to meet the deadline for challenging the administrative act. Although you are entitled to go to court without the support of a lawyer, it is definitely not a good idea to do this.

1.8 How does European mobility affect me?

Directive (EU) 2016/801 enables students from third countries who are studying in the EU to do part of their studies in another EU Member State without having to obtain another visa or new residence title.

In reality, however, this procedure is so bureaucratic that it involves just as much work, particularly for higher education institutions, as applying for a visa in the normal way. The rules on European mobility are in Sec. 16c AufenthG.

Third-country nationals who hold a residence title for study purposes in another EU/EEA state or Switzerland can stay in Germany without a residence title for up to 360 days, if they are taking part in a programme or if there is an agreement between higher education institutions in at least two Member States. They must, however, meet a number of requirements.

The Federal Office for Migration and Refugees (BAMF) checks whether you meet these requirements.

1.8.1 Where must I send an application for residence in Germany for study purposes if I am currently studying at a higher education institution in another EU Member State?

The Federal Office for Migration and Refugees (BAMF) is responsible for issuing the relevant certification to anyone wishing to study in Germany who is already enrolled at a higher education institution in the EU/EEA/Switzerland.

If possible, you should register for temporary residence in another EU Member State at the same time that you apply for a visa for the country in which you will be doing most of your study. But you can also register for temporary residence after you have actually started studying.

You do not have to contact the BAMF. This is done by your host higher education institution.

The higher education institution must notify the BAMF at least 30 days before you enter Germany.

The BAMF will also notify the responsible authorities in the Member State for which you have a residence title.

The BAMF can carry out security screening by passing on the data to the Federal Office of Administration (Bundesverwaltungsamt) and to all the security services (Sec. 73 (3c) AufenthG).

All decisions on whether to deny entry and residence or to issue certification of right to residence are taken by the BAMF alone (Sec. 75 No. 5a AufenthG).

The BAMF will issue you a certificate confirming your entitlement to enter and stay in Germany to study (Sec. 16c (4) AufenthG), which can also be sent to the higher education institution. Both you and the higher education institution must notify the immigration authority if there is any change in circumstances affecting fulfilment of the relevant requirements (Sec. 16c (5) AufenthG). Implementing this regulation is highly problematic because higher education institutions are not empowered to monitor whether their students meet residence requirements. This means that the obligation to notify any changes can only cover circumstances which the higher education institution finds out about in the normal course of its administrative activities (termination of enrolment).

The BAMF is responsible for issuing the certificate confirming your entitlement to enter and stay in Germany to study (Sec. 16c (4) AufenthG) or for denying you entry and residence (Sec. 19f (5)

AufenthG); after this the immigration authority is responsible for any further measures and decisions under residence law (Sec. 16c (5) AufenthG).

Example

Timo is from Georgia and is currently studying economics in Lyon (France). He wishes to go to the Ludwig Maximilian University in Munich for one semester on an ERASMUS student exchange. The higher education institution in Lyon contacts the International Relations Center (IRC) at the LMU Munich and sends it all the necessary documentation. The IRC and the LMU Munich notify the BAMF and send it documents relating to Timo's imminent stay in Munich. The BAMF now has 30 days to express any misgivings it might have about Timo's entry into Germany. Otherwise it issues certification allowing Timo to reside in Germany for up to 360 days without a residence permit.

The procedure is not yet up and running with all Member States (refer to the BAMF website: https://www.bamf.de/EN/Startseite/startseite_node.html, Topics – Migration and residence – FAQs on the REST-Directive). If there isn't an administrative office for the mobility procedure in other Member States, you will have to apply to the German embassy for a visa.

1.8.2 What documents do I need for residence for study purposes in the framework of EU mobility?

Your higher education institution must submit the following documents to the BAMF:

- Digital notification form (declaration of acceptance)
- A residence title issued by the other EU Member State
- Proof of enrolment at the partner higher education institution
- Bilateral or multilateral agreement between the higher education institutions
- Proof (translated into German or English) that you can support yourself and that you have health insurance
- A copy of your passport

1.8.3 When can I be refused residence for study in Germany under the EU's mobility arrangements?

The BAMF checks that all the documents have been submitted. The BAMF may ask you to answer more questions if it has any doubts about things such as whether you are enrolled or have health insurance or it may ask for confirmation from your bank or other documentary evidence (Sec. 19f (5) No. 1 AufenthG). The BAMF will deny you residence in Germany if you have acquired any documents by fraud or if they have been falsified or tampered with (Sec. 19f (5) No. 2 AufenthG).

The BAMF will also deny your residence if it has proof or concrete indications that you have come to Germany for some other reason (Sec. 19f (5) No. 3 in conjunction with Sec. 19f (4) No. 6 AufenthG).

You will also be denied residence if the BAMF believes that there is a public interest in expelling you, either because you have committed a crime or you have deceived the German authorities during a previous stay in Germany or in connection with an application you have made for a visa (Sec. 19f (5) No. 4 AufenthG). The BAMF can carry out security screening by passing on the data to the Federal Office of Administration (Bundesverwaltungsamt) and to all the security services (Sec. 73 (3c) AufenthG).

1.8.4 If I am studying at a higher education institution in Germany, how can I study temporarily at a higher education institution in another EU Member State?

If you are a third-country national and are studying at a higher education institution in Germany you are able to travel within the EU (excluding Ireland, Denmark and the United Kingdom).

If you intend to do some of your studying in the EU/EEA/Switzerland, you can state this when you make your application for a visa to come to Germany. If you do this, the German diplomatic mission will use the BAMF as its national liaison agency.

All Member States have national liaison agencies. Either you or your higher education institution can send your documents to them. The liaison agency issues a document certifying your right to enter and reside in the Member State. The actual procedures for presenting documents differ somewhat, however. Information is available at: <https://www.bamf.de/SharedDocs/Anlagen/DE/MigrationAufenthalt/info-mitteilungsverfahren-studium.html?nn=284534> (in German).

Example

Li-Ming is from China and wishes to study textile and clothing technology at the Hochschule Niederrhein – University of Applied Sciences. She applies to the German embassy in Beijing for a visa. Her plan is to study for one or two semesters later on at the University of Amsterdam. The Hochschule Niederrhein – University of Applied Sciences has an ERASMUS cooperation agreement with Amsterdam.

Li-Ming can state her wish to take advantage of the mobility arrangements when she applies for her visa for Germany. The German embassy will then send the documents she needs (see above) to the BAMF which in turn contacts the host higher education institution. However there is one problem: Li-Ming must be able to show that she can support herself financially and that she has health insurance for the entire period of her residence. The BAMF will also only issue the certification she needs after the residence title for the other Member State has been issued.

Alternatively, Li-Ming can arrange for the University of Amsterdam to apply on her behalf with the assistance of the international office at the Hochschule Niederrhein – University of Applied Sciences, i.e. when she is already a student there.

This procedure is not yet up and running with all Member States (refer to the BAMF website: <https://www.bamf.de/EN/Themen/MigrationAufenthalt/ZuwandererDrittstaaten/MobilitaetEU/MobilitaetStudent/mobilitaet-student-node.html>). You will have to apply for a visa to study in the other EU Member State if a liaison agency has not yet been set up. In reality, very few students use this application procedure in connection with the issue of a visa.

1.8.5 If I am studying at a higher education institution in Germany, how can I study temporarily at a higher education institution or do an international internship in a third country?

These days, many degree programmes (such as global studies) are taught in cooperation with higher education institutions in various third countries. It is also possible to study or do internships in the framework of general agreements with higher education institutions in third countries. The law on entry into and residence in Germany does not address this issue specifically. This means that the general rules on temporary residence abroad apply.

The first thing you must do is meet the requirements for entry into and residence in the third country you want to study in. If your higher education institution has an agreement with a partner institution abroad, it will help you do this. To begin with, you will usually have to apply to the relevant embassy or consulate for a **visa**. Whether or not you need a visa will depend on your citizenship and how long you intend to stay in the third country. Information is available from embassies and higher education institutions abroad.

If you spend some time in another country while you are studying in Germany, e.g. for a semester abroad, or a compulsory or voluntary internship, your German residence permit will only be valid for a **maximum period of six months** after which it will expire automatically (Sec. 51 (1) No. 6 and No. 7 AufenthG). You will not be able to extend this period by leaving the country for a short period and re-entering it. It is important that **you continue to be enrolled at the higher education institution in Germany** for the entire six months. You can also take a sabbatical semester. It is also a good idea to retain your place of permanent residence in Germany, or at least to ensure that you can be contacted at an official address (which could be with friends or relatives). This documents that you are only staying in the third country temporarily.

You can only stay in the third country for longer than six months if the immigration authority has approved the longer stay before the six-month period expires (Sec. 51 (1) No. 7 AufenthG).

You must apply for your residence permit to be renewed before you leave Germany if you know that it will expire while you are away. It is enough for you to obtain a provisional residence document to cover the period after your residence permit expires, as this will also allow you to re-enter Germany.

In exceptional cases, e.g. if there is no way of returning to Germany because of travel restrictions, illness or similar factors, you can also apply for your residence permit to be renewed from abroad.

The immigration authority can then send a provisional residence document to the nearest German diplomatic mission via the Federal Foreign Office.



Refer to the BMI Circular of April 9, 2020 on the difficulties of returning to Germany as a result of the coronavirus crisis (<https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2020/corona/rundschreiben-20200409.html>, Download 9.4.2020 (in German)).

You will have to apply to the German diplomatic mission for a visa to re-enter Germany if your residence permit expires while you are in the third country or if the six-month time limit has been exceeded. In certain exceptional cases in which you have not applied for your residence permit to be renewed in time, the immigration authority can order that the previous residence title remains valid in order to avoid undue hardship (Sec. 81 (4) Sentence 3 AufenthG).

You must make sure that your **passport is valid** because you will not be able to return to Germany without one.

1.8.6 How do the EU mobility arrangements apply to members of my family?

The EU mobility arrangements do not allow you to take members of your family with you from Germany to another EU Member State (refer to 1.8.1). You must apply for a visa for residence under Sec. 16b AufenthG if you wish to relocate your family while you are undertaking part of your studies in Germany.

1.9 Can I change the purpose for which my residence permit has been issued before I complete my studies?

There are only very limited options available for changing a residence permit issued under Sec. 16b AufenthG to a residence title for any other purpose.

1.9.1 Can I change to a different degree programme or to a different higher education institution?

A residence permit issued under Sec. 16b AufenthG is **not tied to a particular place of study or higher education institution**. This means that you can continue your studies on the same or a comparable degree programme at a different higher education institution.

If you **move somewhere else in Germany to study, you must make sure that you register your new address at the local registration office (town hall)**.

Your residence permit could also contain other **additional provisions about the higher education institution or degree programme** which the immigration authority may need to change. But you are legally entitled to retain the validity of your residence permit if all the other requirements have been met (prediction of progress on your degree studies, ability to support yourself, valid passport).

On the other hand, if you **change the degree programme you are studying on**, the purpose of your residence permit will need to be changed. This is because you can only get a residence permit under Sec. 16b (1) AufenthG for a specific degree subject (OVG NRW of October 17, 2019 – 18 B 907/19).

You will be legally entitled to a further residence permit, however, if you meet the requirements for the other degree programme.

This is now stipulated clearly in the German Skilled Immigration Act: In order to change to a different degree programme, you *“must re-apply for a residence permit, to which the applicant will, as a rule, be entitled (Sec. 16b (1)). ... The new legal situation reflects the requirements of Directive (EU) 2016/801, which foresees entitlement to the issue of a residence title in the event of a change in course of study or higher education institution.”* (BT-Drs. 19/8284 of March 13, 2019, p. 91).

Following this clarification in the explanatory memorandum to the law, immigration authorities can no longer refer to past case law based on the principle that you were required to leave the country and make a renewed application (see for example VG Braunschweig of February 22, 2018 – 4 B 331/17).

The immigration authority can, however, take account of whether **it believes you can be expected to complete another course of study within a reasonable period of time**. Lack of progress on your current degree programme may lead to a negative prediction (VG Kassel of August 13, 2018 – 4 L 1374/18.KS).

You can only be issued a new residence permit for a different degree programme if it appears likely that you will not exceed the total period of residence of 10 years (OVG Lüneburg of April 25, 2019 – 13 ME 86/19, note 8).

You will only be entitled to a new residence permit for a different purpose if you also have a legal entitlement to study on the new degree programme. This means that **a new residence permit is not usually issued for part-time study** (OVG NRW of October 17, 2019 – 18 B 907/19).

It is **not always easy to distinguish between continuing to study the same subject at a different higher education institution and a change of degree programme**. The administrative regulations tend to be pragmatic rather than strictly logical on this issue:

Any change of degree programme, including to a completely different degree subject, is **not considered a change of purpose if it takes place up to the third semester** (VwV AufenthG 16.2.5).

No change is considered to have been made, if

- the contents of your previous and new degree programmes are identical;
- all or most of your previous studies are credited;
- you study on a different programme for one semester as a bridging course.

1.9.2 Can I end my studies and switch to vocational training (apprenticeship)?

The principle that you are not allowed to change the purpose of your residence before completing your studies was abandoned in 2017. The Skilled Immigration Act has introduced more flexibility.

You can now switch to vocational training in the following circumstances:

- You start in-company vocational training (Sec. 16b (4) in conjunction with Sec. 16a (1) AufenthG).
- You enter school education which will lead to a quality vocational qualification – in any area of work (Sec. 16b (4) in conjunction with Sec. 16a (2) AufenthG).

The immigration authority has **discretionary power** under Sec. 16a AufenthG to issue a residence permit, but it must take into account that such a change is fundamentally welcomed by legislators to ensure that the skills and knowledge a person has already acquired when studying can be put to use in a nongraduate profession. This means that there must be good reasons for denying your application for a residence permit and specific grounds must be given if your residence is considered to be against the public interest. A residence permit might conceivably be denied if you have not used the time you have been in Germany for study and have only studied sporadically or not at all over a period of several years. You will also need the permission of the Federal Employment Agency (Bundesagentur für Arbeit (BA)).

Since March 2020, you are only required to show that you can **support yourself financially** up to the maximum rate of BAföG (Sec. 2 (3) Sentence 5 AufenthG).

Since 2019 you are also entitled to a **vocational training grant** (BAB) under Secs. 59 and 60 SGB III if you are doing in-company vocational training with a residence permit under Sec. 16a (1) AufenthG. This means you can support yourself without drawing on your own financial resources.

During your training you can **work up to 10 hours a week in an employed, but not self-employed basis** (Sec. 16a (3) Sentence 1 AufenthG). You do not need to have a separate work permit to do this. The immigration authority can permit you to do self-employed work (Sec. 21 (6) AufenthG), if this does not endanger your training in any way.

Example

Milla has given up her medical studies and has started training as a medical assistant. She must show that she has a monthly income of €861. Her gross trainee's pay is €900. After tax and contributions she is left with €760.

She is also eligible for a vocational training grant (BAB). The maximum amount she can receive is €723 plus travelling expenses (monthly ticket for trainees). For Milla this amounts to €800. She is calculated as having net income minus an allowance of €65 (totalling €695) in available funds. This means that Milla can claim €105 BAB, which brings her up to a total income of €865. She can support herself financially.

If you are in **school education**, you must show that your living expenses are covered in a different way, as is the case for higher education students.

As a rule, you will not be eligible for BAföG as long as you have a residence permit under Sec. 16a (2) AufenthG. The only exception is if you or one of your parents have been working in Germany for several years (Sec. 8 (3) BAföG).

Proof that you can support yourself also includes showing that you have adequate health insurance. If you were studying for a degree before you started your training, you can retain your insurance voluntarily at the lower school student rate (Sec. 240 (4) SGB V). If you were not previously in a statutory health insurance scheme, you will have to obtain private health insurance. This means that pursuing a school education is not a suitable pathway for international students who are unable to support themselves from their own means.

The **best way of switching** from residence for study purposes to residence for training purposes is to

- sign a training contract or gain admission to a specialised school;
- calculate how much money you need to support yourself;
- apply to the immigration authority with evidence of the above; and
- only withdraw your enrolment from your higher education institution once you have the other residence permit or the immigration authority has given you assurance that one will be issued.

1.9.3 Can I give up my studies and take up employment instead?

You can only switch from studying to working in two particular cases:

- You can work as a **skilled worker who has completed vocational training or a degree**. This may be a possibility if you have already completed vocational training in your country of origin and your training is recognised as equivalent to training in Germany. You might also be able to work if you have completed professional training in Germany, i.e. Dual Studies. You may also be able to switch to employment if you have studied previously and your degree qualifies you to work in a particular profession.
- If you have strong practical skills you can work in the **field of IT or communication technology**. This provision refers to Sec. 6 Regulation on the Employment of Foreign Nationals (BeschV). However, you must be able to show that you have worked in a similar capacity for at least three of the last seven years. You must have a contract of employment in Germany which states that you will be working in the field of IT or communication technology and that your salary is equal to at least 60% of the contribution assessment ceiling for the pension insurance scheme (in 2021 this is €4,260 a month or €51,120 a year). You must also show that you have level B1 German language skills. This last requirement may be waived in certain cases if you can show that you do not need to know German for your work.

Examples

Luda is from Ukraine. She has been conditionally admitted to a Master's degree programme in chemistry in Jena. First, however, she must pass a language examination at level B2. She had already graduated with a Bachelor's degree in chemistry in Ukraine and passed a German language examination at level B1. A pharmaceuticals company offers her a laboratory job several weeks before she starts to attend preparatory college. The job involves working on the development and testing of new medicines. Luda can switch to a residence permit under Sec. 18b (1) AufenthG because her Bachelor's degree in chemistry is recognised as equivalent to a German degree and she is able to support herself with her job.

Ali is from Iran. He has started studying physics at the University of Regensburg. Two years later he realises that it will be too difficult for him to complete his studies and he would really like to work again as an IT administrator. He had already been working part-time at an IT company while he was studying. The company would be prepared to take him on full-time immediately. He acquired his skills in this area of work while with a software company in Turkey in the four years before he started studying in Regensburg. He has not completed vocational training. The company offers Ali an annual salary of €54,000. This means that he meets the requirements for a residence permit under Sec. 19c AufenthG in conjunction with Sec. 6 BeschV.

1.9.4 Are there any other reasons for changing to another residence permit?

You can only obtain a residence permit other than for training or employment purposes if you have a **legal entitlement to a different residence permit** (Sec. 16b (4) AufenthG).

Such permits might be a residence permit for the purpose of family reunification following marriage or the birth of a German child.

Marriage in Germany can result in a legal entitlement to a residence permit, if

- your spouse is a German citizen (Sec. 28 (1) No. 1 AufenthG);
- your spouse holds a permanent settlement permit or EU long-term residence permit and is self-sufficient (Sec. 30 (1) No. 3 a) and b) AufenthG);
- your spouse has held a residence title for at least two years – toleration status (Duldung) or temporary permission to remain (Gestattung) is not enough – and is self-sufficient (Sec. 30 (1) No. 3 d) AufenthG);
- your spouse is entitled to asylum, is a recognised refugee or has been granted subsidiary protection and is self-sufficient (Sec. 30 (1) No. 3 c) AufenthG);
- your spouse holds an EU Blue Card, a residence permit for research purposes (Sec. 18d, 18f AufenthG) or an ICT card or mobile ICT card and is self-sufficient (Sec. 30 (1) No. 3 c) and g) AufenthG).

Your spouse must also meet the general requirements (there must be no grounds for expulsion, he or she must hold a passport and there must be no public safety concerns). You can also get married in another country if your spouse has a residence title for Germany.

The **birth of a German child** results in a legal entitlement to a residence permit under Sec. 28 (1) No. 3 AufenthG, if

- the parent has the right of care and custody and
- the parent lives with the child as part of the same family unit.

When is a child born as a German citizen?

1. One of the parents is a German citizen by birth. If this is the mother, then German nationality arises automatically. If this is the father, a paternity test is required to determine parenthood.

There are various possibilities:

- If the mother is married, the child is automatically considered to be the child of the man to whom the mother is married, unless established otherwise.
- If the mother is not married, the father can declare his paternity with the agreement of the mother, even if the father is married to someone else other than the mother. Paternity can be also declared prior to birth. Difficulties may arise if there is any suspicion that paternity is being recognised for fraudulent purposes.
- If the mother is not married and the father refuses to recognise his paternity, the mother can act as the child's legal representative to obtain recognition of the father's paternity in paternity establishment proceedings before a family court.
- If the mother is married to somebody else, the father can recognise paternity with the approval of the mother's husband.

2. Both parents are foreign nationals and at least one parent has been **legally resident in Germany for eight years** (excluding toleration status or merely temporary permission to remain) and holds a **permanent settlement permit at the time the child is born** or, in the case of EU/EEA/Swiss citizens, is entitled to long-term residence (Sec. 4 (3) StAG). If you are entitled to asylum, are a recognised refugee or have been granted subsidiary protection, the period of your asylum procedure will count towards the eight years.

In addition to formal custody, a family unit can be shown to exist if the parent assumes responsibility for the child, is in personal contact with it and actively maintains the parent-child relationship. The members of your family do not have to be all living in the same family household.

Example

Jannis is from North Macedonia and has been living in Hanover since 2018 with a residence permit under Sec. 16b (1) AufenthG. He was in a relationship with Adrijane, who is an Albanian citizen, and they have a daughter, who is now six months old. Adrijane is 22 years old and has been living in Germany since 2010 (residence as family member) and has had a permanent settlement permit since 2017. Jannis has recognised his paternity and both parents have made a declaration of joint parental care. The daughter lives with her mother. Jannis looks after his daughter on two days a week and consults with Adrijane as necessary. Owing to his precarious financial situation as a student, he is unable to pay any maintenance. Jannis can now apply for a residence permit under Sec. 28 (1) No. 3 AufenthG. He will then be eligible for BAföG (Sec. 8 (2) No. 1 BAföG).

You are only legally entitled to **join a non-German child to Germany subsequently** if the child is entitled to asylum, has been recognised as a refugee or is entitled to subsidiary protection (Secs. 36 (1), 36a AufenthG).

If you have a close relationship with a child in Germany, this may prevent you from being deported if the child's relationship with the other parent would be broken if you left the country.

Example

Anna is from Armenia and has been studying in Germany since 2012. Her daughter was born at the end of 2018. The father, Gregori, is a Georgian national and has had a settlement permit since 2019. He works as a construction engineer. Anna and Gregori are living together and have joint parental care. They cannot marry though, because Gregori has not yet obtained a divorce from his existing wife in Georgia. Anna initially retains her residence permit under Sec. 16b AufenthG as she is not legally entitled to a residence permit as a member of Gregori's family. It then turns out that Anna is no longer enrolled at her higher education institution because she has failed her last chance to pass examinations. Her residence permit will not be renewed. However, she cannot be deported because of the protected relationship between Gregori and his daughter (Art. 6 GG, Art. 3 UN Convention on the Rights of the Child). She must be granted toleration status or residence on humanitarian grounds under Sec. 25 (5) AufenthG as it will not be possible to deport her in the foreseeable future.

Toleration status can be granted if there are reasons why you cannot be deported. If your deportation has been temporarily suspended in this way for three months, you may be issued toleration status for vocational training purposes, which enables you take up vocational training or school education (Sec. 60c AufenthG). In these cases you do not need to demonstrate that you can support yourself and you will be eligible for benefits under the federal financial aid scheme (BAföG) for school students or for financial support for company-based trainees (BAB) from the Federal Employment Agency. Once you have completed your vocational training, you can obtain a residence permit under Sec. 19d AufenthG for a job for which you are now qualified.

1.10 What kinds of residence permit can be issued after I have graduated with a degree?

There is a fundamental political and economic interest and need in Germany to provide graduates who have trained in Germany with opportunities for working in the country as skilled workers.

1.10.1 When can I be issued a residence permit to enable me to seek work for which I am qualified?

You are legally entitled to a residence permit to seek work after you have graduated (Sec. 20 (3) AufenthG). This residence permit is issued for 18 months and cannot be renewed.

You will only be issued a new residence permit which enables you to seek work for a period of six months if you leave Germany after you have graduated (Sec. 20 (2) AufenthG). If you were previously able to look for work using a residence permit issued under Sec. 20 (3) AufenthG, you must spend at least as much time abroad as the time for which a residence permit was issued under Sec. 20 (3) AufenthG.

You must contact the immigration authority to obtain a new residence permit as soon as you receive the document certifying that you have passed your final examination or, at the very latest, when your enrolment at your higher education institution is terminated. The time at which the 18-month deadline begins is not specified in law. Some immigration authorities issue a residence permit under Sec. 20 (3) AufenthG for 18 months as of the time your application is made; other immigration authorities consider the 18-month period to begin at the time you complete your studies. This actual

time is stipulated in the examination regulations for your degree programme and is usually the day on which you are notified in writing that you have passed the final examination (VwV AufenthG 16.0.5).

You must meet the general requirements:

- Evidence that you have completed your studies successfully
- Evidence that you can support yourself financially. You must be able to demonstrate that you can support yourself up to the standard requirement levels defined in SGB II/SGB XII plus the costs of accommodation and health insurance. Proof can be provided of financial assets, parental maintenance, a declaration of commitment under Sec. 68 AufenthG or evidence of income from your own gainful employment. You must have enough income to ensure that you do not need to apply for supplementary social assistance.

Calculation example for people living alone

Gross income: €1,500 (variant: €1,800)

Net income: €1,150 (variant: €1,300)

Rent: €500 (including water and heating)

Standard requirement level: €446 (2021)

Total requirement: €946

Deductible income: €1,150 - €100 - €180 - €15 = €855

(variant: €1,300 - €100 - €180 - €20 = €1,000)

The deductions result from Sec. 11b (2) and (3) SGB II.

In this example, your income does not cover your requirements and is therefore not sufficient.

Variant: Your income is higher than your requirements and your living expenses are covered.

- There must not be any public interest in expelling you: You may be refused a residence permit for the purpose of seeking work if you committed a crime while you were studying.

If you are issued a residence permit under Sec. 20 (3) AufenthG **you are allowed to engage in any form of gainful employment**. However, you mustn't forget that you only have 18 months to look for appropriate employment. As soon as you have taken up highly qualified employment for which a residence title for work purposes can be issued, you should have your residence permit changed immediately, as this has implications for a permanent settlement permit (referred to 1.10.7 in this chapter).

1.10.2 How can I obtain a residence permit for employment purposes?

You can be issued a residence permit for skilled workers holding a university degree under Sec. 18b AufenthG to work in a job **for which your degree qualifies you**. In contrast to the rules which applied up to February 2020, according to which you had to work in a position which was appropriate to your academic qualifications, the situation is now much more flexible. Of course, you still have to perform skilled work, but you can also do a job which only requires in-company training or school education.

In law you do not have to have a full-time job or work for a certain number of hours. The main requirement, however, is that you can support yourself financially (refer to 1.10.1 above), including any family members you are responsible for (spouse and children under 18). The immigration authority has discretionary powers to issue a residence permit, however it must take account of the intention of the law which is to enable the employment of skilled workers from other countries in order to "guarantee the supply of skilled workers and to strengthen the social security systems" (Sec. 18 (1) AufenthG).

A residence permit under Sec. 18b (1) AufenthG can only be issued with the approval of the Federal Employment Agency. The Federal Employment Agency only checks whether the conditions of work are appropriate and, in particular, that you are being paid a salary in line with customary market or collectively agreed conditions (Sec. 39 (2) AufenthG).

Examples

Lea has graduated in Germany with a Bachelor's degree in social work. She has an offer for a personnel recruiting job with a large food company. The company has offered her a gross monthly salary of €3,800. This is not an area in which qualified social workers usually work but the job does require professional knowledge in the fields of communication, psychology, project development and social insurance law. Usually graduates with a degree in business administration work in this field. Nonetheless, Lea's social work degree does qualify her for the actual work she is expected to do.

Ramon has graduated with a Bachelor's degree in applied chemistry from the TH Cologne, University of Applied Sciences. He has found a position as a chemical laboratory assistant at the University of Cologne, where he will initially earn a gross monthly salary of €3,000. Most people working in the job Ramon now has have completed vocational training (apprenticeship). However, the Chamber of Industry and Commerce examination which must be taken by those aspiring to become chemical laboratory assistants is very challenging. The fact that Ramon's Bachelor's degree is in applied chemistry qualifies him to do this job.

The Immigration Act for Skilled Workers (Fachkräfteeinwanderungsgesetz, which has been in force since March 1, 2020) creates especially high barriers for people aged 45 or over who have graduated with a degree from a higher education institution. These graduates must earn a salary which is at least as high as 55% of the contribution assessment ceiling for the pension insurance scheme. In 2021, this is equal to a gross monthly salary of €3,905. This requirement does not apply if you can show that you have built up an adequate alternative source of income for your retirement in old age (Sec. 18 (2) No. 5 AufenthG). You can present evidence of such alternative provision for old age in the form of vested rights in a pension fund in another country with which Germany has concluded a bilateral social insurance treaty (refer to the DRV website: https://www.deutsche-rentenversicherung.de/DRV/EN/Home/home_node.html, International – Social Security Agreement). Provision for old age can also be demonstrated in the form of assets, i.e. private life insurance policies. There is only one exception to this condition on the issue of a residence permit under Sec. 18b (1) AufenthG, and that is if there is a special public interest in you working in a particular job.

A residence permit under Sec. 18b (1) AufenthG is granted for a **period of four years if you have a permanent contract of employment** or **for the period of your contract if you have a fixed-term contract of employment**. Your residence permit only entitles you to work in the job specified on it. If you change job and work for a new employer, the supplementary provisions which apply to the work permit (supplementary sheet to the electronic residence title, eAT) will need to be changed (Sec. 4a (3) Sentence 3 AufenthG). You must inform the immigration authority of termination of your employment within 14 days (Sec. 82 (6) AufenthG). In most cases, you will then be granted a reasonable period of time (six months) to look for and find new employment.

1.10.3 How can I obtain an EU Blue Card?

An EU Blue Card may be issued for some graduate jobs. The EU Blue Card has a number of advantages. The EU Blue Card is a residence title which is subject to the same rules for third-country

nationals in all EU Member States. It is based on binding EU law (Directive 2009/50/EC). The rules for this residence title are in Sec. 18b (2) AufenthG and are different from those for a residence title under Sec. 18b (1) AufenthG:

- You must be employed in a job **which is commensurate with your qualifications**. This is not usually work for which someone who has completed in-company training or school education would normally be considered.
- You must **earn a certain minimum salary**. Two levels apply here. If you are employed in a so-called **STEM profession** (mathematics, engineering, science, IT, medicine), you must earn at least 52% of the contribution assessment ceiling for the pension insurance scheme (equal to a gross monthly income of **€3,692** in 2021). If you are employed in any other graduate profession, you must earn at least two thirds of the contribution assessment ceiling for the pension insurance scheme (equal to a gross monthly income of **€4,733** in 2021).

You have a legal entitlement to an EU Blue Card. You only need the consent of the Federal Employment Agency if your monthly salary is less than €4,733 (Sec. 18b (2) Sentence 1 AufenthG). As is the case with a residence permit under Sec. 18b (1) AufenthG, the Federal Employment Agency does not perform a labour market test.

The EU Blue Card provides the following **advantages** which you do not have with a residence permit under Sec. 18b (1) AufenthG:

- If you only have a fixed-term employment contract, the EU Blue Card is issued for a period which only expires three months after your fixed-term employment terminates. This allows you enough time to apply for a new job. If you have a permanent employment contract or if the term of your contract of employment is longer than four years, your residence permit will be issued for a period of four years (Sec. 18 (4) Sentence 2 AufenthG).
- You only have to inform the immigration authority of a change in job in the first two years. The immigration authority must always accept such a change if you meet the requirements for the EU Blue Card (Sec. 18b (2) Sentence 4 AufenthG).
- You are legally entitled to family reunification and do not have to present evidence of knowledge of German (Secs. 30 (1) Sentence 1 No. 3 g) and Sentence 3 No. 5, 32 (1) Sentence 1 No. 5 AufenthG).
- The time periods for a permanent settlement permit are reduced (refer to 1.10.7 in this chapter).

1.10.4 How else can I obtain a residence permit for the purpose of gainful employment?

- **Residence permit for the purpose of gainful employment commensurate with a vocational training qualification (Sec. 18a AufenthG)**. You can work in a non-graduate profession even after you have graduated, if you have acquired the relevant qualification for the job, either in Germany or in another country. If you have qualified abroad, you will also need to establish the equivalence of your qualifications (refer to <https://www.anererkennung-in-deutschland.de/html/en/index.php>). This might be relevant if you hold two very different qualifications, e.g. you have qualified as an electrician in your country of origin and then came to Germany to study for a Bachelor's degree in physics. In this case, you could work as an electrician. It may be difficult in some cases to distinguish between a residence permit under Sec. 18a and Sec. 18b AufenthG if you have completed Dual Studies, for example, and then work in an area for which in-company vocational training is required.

- **Residence permit for research purposes (Sec. 18d AufenthG).** You are entitled to a residence permit for research purposes if you have a contract for a research project with a research institution which is or will be recognised by the BAMF. The research institution ought to provide a guarantee for your living expenses. However, in practice this is not asked for if you are working for a public institution (public university) or an institution which (as is true of many institutions) is financed from public funds (Sec. 18d (2) AufenthG). You will not be issued this type of residence permit if the research you are doing is part of a full-time PhD degree (Sec. 19f (3) Sentence 2 AufenthG).
- **Residence permit for other employment purposes (allowed under the Ordinance on the Employment of Foreigners, BeschV) (Sec. 19c (1) AufenthG).** This provides international students with a number of options to enable them to carry out qualifying or bridging activities where difficulties exist on the labour market.
 - **For executive staff** within the meaning of Sec. 3 BeschV: managerial employees, members of a legal entity with powers of representation or someone who, in particular, has special company-specific knowledge for qualified employment in Germany.
 - **For the employees of an international company** who produce, adjust, monitor, dismantle, etc. machines, systems, IT programs, exhibition structures, etc., for periods of longer than 90 days and up to three years (Sec. 19 (2) BeschV). If these descriptions apply to you, it is not your professional qualification or the subject you have studied that is important but simply the position you have in the company. You do, however, need the consent of the Federal Employment Agency, which it can grant without a labour market test.
 - **For voluntary service** (Sec. 14 BeschV): in particular, national voluntary service and the various forms in which it is possible to work a voluntary year. You can do voluntary service for a maximum period of one year.
 - **As a professional athlete** with an annual income equal to at least 50% of the contribution assessment ceiling for the pension insurance scheme (equal in 2021 to an annual salary of €42,600) under Sec. 22 No. 4 and 5 BeschV.
 - **For an artistic or performance activity** carried out as an employee (Sec. 25 BeschV).
 - **As models, advertising characters or dress models** (Sec. 22 No. 6 BeschV).
- **Citizens of certain industrialised countries** (Andorra, Australia, Canada, Israel, Japan, Monaco, New Zealand, San Marino, South Korea and USA) can be issued a residence permit for any, including unskilled, work under Sec. 19c (1) AufenthG, but only after a labour market test has been undertaken by the Federal Employment Agency (Sec. 26 (1) BeschV).
- **Residence permit for employment with a high degree of practical occupational skills in the field of IT or communication technology (Sec. 19c (2) AufenthG).** This provision refers to Sec. 6 Regulation on the Employment of Foreign Nationals (BeschV). In order to obtain a residence permit you must be able to show that you have worked in a similar capacity for at least three of the last seven years and have been earning at least 60% of the contribution assessment ceiling for the pension insurance scheme (equal in 2021 to a gross salary of €4,260 a month) and have B1 German language skills (not required in specific cases).
- **Residence permit for employment in which there is a public interest (Sec. 19c (3) AufenthG).** In very unusual cases graduates may sometimes be employed in a job for which they do not need their academic qualification but which is of outstanding public importance.
- **Residence permit for civil servants (Sec. 19c (4) AufenthG).** This can be relevant to teachers and lawyers in probationary training leading to their Second State Exam. Probationary training in an employment rather than civil servant relationship is subject to Sec. 18b AufenthG.

1.10.5 How can I obtain a residence permit to work on a self-employed basis?

If you have graduated from a German higher education institution you have a privileged right to a residence permit for the purpose of self-employment under Sec. 21 (2a) AufenthG.

The only requirement is that

- your self-employment is **connected with the knowledge you have acquired in your studies**;
- you can **support yourself financially** (see calculation example in 1.10.1); and that
- there is no public interest in expelling you and you hold a valid passport.

You can then engage in commercial and freelance work.

Example

Rose has graduated from the Friedrich Schiller University Jena with a Bachelor's degree in business administration. She is very practical and good working with her hands. She has been creating her own jewellery for some time. She would like to set up her own shop and run courses for others. She has some capital of her own and a realistic business plan. This line of business has little to do with what she studied in Jena, but does demand planning, marketing and bookkeeping skills.

If you are older than 45, you will only be issued this residence permit if you can demonstrate that you have made sufficient provision for old age (Sec. 21 (3) AufenthG).

1.10.6 I have been issued a residence permit for the purpose of seeking work. Can I change it back into a residence permit for study purposes?

You do have a fundamental legal entitlement to a residence permit for the purposes of full-time study (Sec. 16b (1) AufenthG), even if your further study is not related in any way to your first degree. There is no reason why, if you hold a residence permit under Sec. 20 (3) AufenthG, you shouldn't apply for a different kind of residence permit, including one under Sec. 16b AufenthG. Account will, however, be taken of the fact that the purpose of looking for a job was not fulfilled. This means that the immigration authority will check very carefully to determine whether you are misusing the time you are spending in Germany for study purposes (Sec. 19f (4) No. 6 AufenthG) and whether you will be able to complete your second degree programme within a maximum period of 10 years starting from the time you entered Germany to begin your studies.

1.10.7 How can I obtain a permanent settlement permit?

You cannot obtain a permanent settlement permit under Sec. 9 AufenthG while you are studying (Sec. 16b (4) Sentence 2 AufenthG) or while you have a residence permit for the purpose of seeking work (Sec. 20 (4) Sentence 4 AufenthG). You can only obtain permanent resident status (by obtaining a settlement permit) after you have been granted residence for work purposes. This is subject to particular time limits, which are calculated using **half the time you have been resident for study purposes (maximum two years)**:

- Residence permit under Sec. 18a AufenthG (employment with professional qualification), Sec. 18b (1) AufenthG (employment with university degree), Sec. 18d AufenthG (research): **4 years**.
- EU Blue Card and command of German up to level B1: **21 months**.
- EU Blue Card and command of German up to level A1 (only for degree programmes undertaken in English): **33 months**.

- Self-employment: **3 years**.
- Residence for other purposes (Sec. 19c AufenthG): **5 years**.

The following requirements must also be met:

- You must still have a job or be self-employed at the time you make your application.
- You must be able to support yourself and your family financially.
- You must have paid pension insurance contributions for the same period as the period of your residence in Germany or be covered by private retirement pension insurance which provides comparable benefits.
- There must be no public safety and order reasons for not issuing you a residence permit and you must not have committed any serious crimes.
- You must be able to demonstrate that you possess a basic knowledge of the legal and social system and way of life in Germany. You must demonstrate this knowledge by presenting the certificate which shows that you have passed the examination “Life in Germany” at the end of an Integration Course (does not apply if you are self-employed).
- You must have sufficient living space for your entire family – 12m² per person or 10m² per child under six (does not apply if you are self-employed).

Periods of study do not count as contribution periods towards the statutory pension scheme unless you were already working and compulsorily insured (including as a working student) during this period. The courts have yet to rule on whether pension contributions from mini-jobs count towards this.

The immigration authority has discretionary powers to issue a permanent settlement permit for self-employed people before five years have passed. This discretion allows public interests which are not otherwise explicitly stated to be taken into account.

1.10.8 How can I become a German citizen?

You cannot be naturalised as a German citizen if you only hold a residence permit for study purposes.

You will only acquire a legal entitlement to naturalisation (Sec. 10 StAG) if

- you have been legally resident in Germany for **eight years, seven years** if you have successfully completed an Integration Course, or **six years** if you have shown you have made particular progress towards integrating in Germany, in particular by acquiring a level B2 command of the German language. Any time you have spent studying will count towards this period if you hold a residence title for work purposes (but not for research or ICT) at the time of your application;
- you demonstrate that you are committed to the free democratic system of the Federal Republic of Germany;
- you are self-sufficient;
- you have not committed any serious crimes;
- you have knowledge of the legal and social system and way of life in Germany and can demonstrate this by presenting the certificate which shows that you have passed the examination “Life in Germany”;
- you have renounced your previous nationality, unless this is impossible or there are important grounds for retaining your previous nationality (refer to Application Guidance for more details; StAG 12.1.2).

The requirements which must be met to obtain a permanent settlement permit or to be naturalised differ. This is particularly true as regards provision for old age. In certain cases it may even be easier to acquire German citizenship than a permanent settlement permit.

2 Can I work in Germany while I am studying and what are my rights?

Many international students need to work at least part of the time in order to pay their way while they are studying. The **restrictions on work** arise from Sec. 16b (3) AufenthG. In specific cases, more extensive permits may be issued by the immigration authority.

These restrictions do not affect your **rights in employment law which**, in Germany, are **not affected by your citizenship, your residence status or your status as a student**. This means that your employer cannot refuse to pay you on the grounds that the law does not permit non-German nationals to work. There is an important link between both levels, however, because your **employer must check your residence title for any restrictions on employment before she or he completes a contract of employment with you** (Sec. 4a (5) AufenthG).

International students are also covered by social insurance law in the same way as everyone else in Germany, even if they are habitually resident in a third country (e.g. Turkish students during an ERASMUS exchange). Special rules do apply to students, however, regardless of their nationality or habitual residence (including privileges for working students).

Income from gainful employment is also subject to **tax in Germany**. You can, however, opt for a different form of taxation if you come from a country which has a double taxation agreement with Germany. A list of the relevant countries can be found on the website of the Federal Ministry of Finance <https://www.bundesfinanzministerium.de/Web/EN/Issues/Taxation/Double-taxation/double-taxation.html>.

You will have to talk to a tax adviser if you need more detailed information.

The following are therefore important and must be taken into account whatever work you do:

- **Work permit (immigration authority)**
- **Labour law (employer, works council, trade union)**
- **Social insurance (health insurance, long-term care insurance, pension insurance, unemployment insurance, accident insurance)**
- **Taxes (tax authority)**

2.1 What work can I do if I do not have a specific permit?

Sec. 16b (3) AufenthG distinguishes between two phases for the purpose of work permits:

1. Measures to prepare for study in the first year of residence:

Apart from during holidays, you are not allowed to do any paid work while you are preparing for study. There is no further limitation on working during holiday periods, although you are not allowed to be self-employed. The relevant supplementary provisions will be provided with your electronic residence permit (eAT).

2. Measures to prepare for study from the second year of residence onwards and during the time in which you are studying or working towards a PhD:

You are allowed to work for up to 120 whole or 240 half days, or any combination of the two. This will also be provided as a supplementary provision to your eAT.

Only working days (i.e. as stipulated in your contract of employment) count, not calendar days. Days on which you take time off work due to illness count as working days, because you cannot study when you are ill.

Calculation example

For example, five half days a week less holidays and public holidays are equal to a total of around 230 half days (53 x 5 minus 5 x 5 holiday + 10 public holidays).

Or: Six weeks full-time employment during a five-day week are equal to 30 whole days, which leaves you with a further 90 whole or 180 half days on which you can work.

You cannot simply add up all the hours (OVG NRW of May 17, 2011 – 17 B 5/11). **Up to four hours count as half a day and more than four hours count as a whole day.**

You can work for any length of time as a student assistant, including for STWs, student bodies or committees, provided this is not detrimental to your studies. According to the actual wording of the law on “student jobs” (Sec. 16b (3) Sentence 1 AufenthG) there is no restriction on the type of employment at this stage, which means that you can also be self-employed.

The immigration authority will check up on you if the evidence available about your ability to support yourself or length of time you are studying for arouses suspicions that you are exceeding the amount of time you are allowed to work for.

Whether or not you are allowed to work and the residence law has nothing to do with your social insurance obligations or employment rights (refer to 2.4 – 2.9).

Excursus: Turkish citizens

Turkish employees enjoy special rights on the basis of the EU-Turkey Association Agreement. Under this Agreement students who also work can acquire the status of an employee and as a result specific residence rights. Under Article 6 of Association Council Decision 1/80, this status is acquired as a result of any form of employment within the meaning of EU law. It is enough to be marginally employed (OVG Lüneburg of October 20, 2011 – 11 ME 280/11: A Turkish student who is regularly employed for just 16 hours a month has a right to residence under the Association Agreement), for example, as a non-skilled auxiliary employee.

The Turkish student then has the following **rights of residence**:

1. First phase after one year: provided the student continues to work in the same job.
2. Second phase after three years: provided the student continues to work in the same area of work, including for another employer.
3. Third phase after four years: the student retains his or her status provided he or she continues to work or becomes involuntarily unemployed.

A right to reside is not acquired, however, if the student exceeds the scope of permitted work stipulated in Sec. 16b (3) AufenthG (OVG NRW of May 17, 2011 – 17 B 5/11; VG Düsseldorf of April 7, 2011 – 8 K 3345/08).

2.2 In what circumstances will I be allowed to engage in further gainful employment?

The immigration authority will only permit you to do any further work (in most cases, subject to the agreement of the Federal Employment Agency) in exceptional cases, such as if your work actually helps rather than hinders your studies.

Example

Karim is in the 10th semester of his degree in physics. By August 2020 he had already used up 80 days of his entitlement to work temporarily. A company is now offering him a full-time internship from September to November during which he will be able to carry out laboratory tests which he can use for his final thesis. In this case, his employment contributes directly to the success of his studies.

The immigration authority can, at its discretion, also permit you to pursue **self-employment** (Sec. 21 (6) AufenthG). This should be fairly straightforward if the self-employed work you do is not additional to but instead of a job, particularly if this is customary in your field of study.

Example

Svenja is studying history. She could work as an exhibition guide in a history museum. Such jobs are usually only paid on an hourly fee basis, however. In this case, the job is related to Svenja's studies and jobs of this kind are always worked on a self-employed basis. The immigration authority can grant permission for Svenja to be self-employed under Sec. 21 (6) AufenthG.

2.3 What types of gainful employment can the members of my family engage in?

If you have a residence permit under Sec. 16b AufenthG, the members of your family are eligible for a residence permit under Secs. 30, 32 AufenthG and can then engage in any form of gainful employment (Sec. 4a (1) AufenthG).

2.4 How am I insured while I am working?

As an international student you are now compulsorily insured in exactly the same way as German students.

It is important to realise, however, that if you are enrolled as a student you are not obliged in the same way as other employees to have **health and long-term care insurance cover** if you are only working for 20 hours a week or less (Sec. 6 (1) No. 3 SGB V). This limit has been set by the Federal Social Court (BSG) because employees who work more than 20 hours a week are no longer deemed to be full-time students but as doing an on-the-job degree course (BSG of November 11, 2003 – B 12 KR 24/03 R; see critical comments: Felix, KrV 2020, p. 45 – 51). No matter how many hours you work, you do not have to have health and long-term care insurance if you only work during semester holidays. You are only compulsorily insured if you work more than 20 hours a week over a period

of longer than three months. If you work less than this, you will continue to be classified as a student working in a mini-job (Sec. 8 (1) No. 2 SGB IV).

Practical advice

As an international student this means, in particular, that if you have obtained exemption at the start of your studies from compulsory health insurance for students (refer to 3.1 in this chapter), you are not eligible for compulsory insurance cover unless you regularly work more than 20 hours. However, if you work this much, you can easily find yourself exceeding the permitted time limit of 120 days a year. An exception is possible, however, if you take up a student job in your higher education institution (refer to 2.1 in this chapter). This option is rare, however, because most higher education institutions or STWs do not employ students for more than 20 hours a week.

But if you are required to pay compulsory insurance contributions on your earnings, your insurance cover will be continued as voluntary insurance after your job comes to an end if you are unable to show that you have any other form of insurance (family insurance, student insurance, private insurance) (Sec. 188 (4) SGB V).

Working students must always pay **compulsory pension insurance contributions** and do not have any privileges in this respect. There are two important exceptions:

- **Jobs which pay up to €450** are subject to compulsory pension insurance contributions, but you personally only have to pay a contribution of 3.6% (the employer must pay 15%); if you work in a private household, you have to pay a contribution of 13.6% on your wages (the employer pays 5%). If you are doing a mini-job, you can apply in writing to your employer at any time to be exempted from compulsory pension insurance contributions. It is only a good idea to obtain exemption in these cases if you are planning to return to your country of origin and your pension entitlement is not portable (you cannot take it with you) on the basis of a social insurance agreement (for a list of the relevant countries and further information refer to: https://www.deutsche-rentenversicherung.de/DRV/EN/International/international_node.html).
- **Temporary work which is limited from the very start to a maximum of three months or 70 days a year** is considered to be short-term student work (not professional work) under Sec. 8 (1) No. 2 SGB IV and is fully exempt from compulsory insurance contributions. Any periods you work in various different jobs will be added up together. You can benefit from these rules when you are preparing for your studies during the first year of your residence and you are only allowed to work during holidays (refer to 2.1). For the duration of the coronavirus crisis the length of time you can do seasonal farm work up to the end of October 2020 has been extended to 5 months or 115 days.

Students enjoy the same privileges with regard to **unemployment insurance** as they have with their health insurance. You will only be compulsorily insured if you work more than 20 hours (Sec. 27 (4) Sentence 1 No. 2 SGB III).

Whatever work you do, you will be covered by **statutory accident insurance** for the time you spend in your company or at your place of work and on the way to your work (Sec. 2 (1) No. 1 SGB VII). Accident insurance is provided by commercial and agricultural institutions (self-administrating alliances known as BGs, Secs. 121 et seq. SGB VII) and public accident insurance institutions (Sec. 125

SGB VII). Contributions to accident insurance are paid by your employer (Sec. 150 SGB VII). This insurance is additional to the accident insurance you have as a student (refer to 3.3 in this chapter).

2.5 Am I protected against discrimination when I apply for a job?

The **General Equal Treatment Act (AGG)** prohibits discrimination of any kind in employment and training on the grounds of race or ethnic origin, sex, religion, disability, age or sexual orientation.

Discrimination in recruitment procedures and **advertisements for jobs** is also prohibited. A potential employer is not allowed to ask for a “young woman to work at the hotel’s reception”, for example, or for a “native German speaker to fill a temporary position” or to advertise a job for a “shop assistant: only applicants without a head scarf need apply”. But in certain cases the work involved may allow the employer to make certain demands, such as for acting roles, a female social worker to work in a women’s refuge, female teachers in certain federal states; female judges may be required not to wear a headscarf, and work in certain church organisations that involves propagating certain religious beliefs may be reserved for people of the applicable belief.

These criteria may only be applied at interviews and in the following selection procedure if they are essential for the work concerned. For this reason, potential employers are not allowed to ask applicants about their religion at a **job interview** (with the exception of Church organisations) or to ask whether they are pregnant, whether they are planning to start a family and certainly not about the sex of their partner. If you are asked these questions at an interview, you do not have to tell the truth because if you refuse to answer you may expect to be disadvantaged in the application procedure.

Questions about severe **disabilities** are more difficult because companies which have at least 20 employees are required by Sec. 154 SGB IX to employ a certain number of people with severe disabilities. Employers which fail to take on the right proportion of people with severe disabilities are required by Sec. 160 SGB IX to pay a compensatory levy instead. Employers therefore have a legitimate interest in knowing whether you have a severe disability or not; but they must tell you why they are asking you this question. You are not required to tell a potential employer that you have a severe disability, but you are not allowed to give false information (v. Roetteken in: v. Roetteken, AGG, 2020, p. 427 et seq.).

Example

Samuel is studying electrical and electronic engineering. Five years ago, he had a kidney removed in Israel, his country of origin, because of a carcinoma. If Samuel presents the relevant documents to the Federal Office of Administration, he could apply for a severe disability pass. But he is not obliged to apply for a pass and he doesn’t have to say anything about his pre-existing illness at his job interview, as long as it does not have any impact on the work he is applying to do. If he has a severe disability pass, there are certain questions he will not have to answer, but he mustn’t deny that he has a severe disability.

Applicants with a severe disability must always be invited to interviews, unless they are clearly unsuitable for the job on offer (BAG, ruling of January 20, 2016 – 8 AZR 194/14). This applies in particu-

lar to employers in the public sector, such as higher education institutions, STWs, local authorities, and federal and state institutions (LArbG Berlin-Brandenburg of August 29, 2019 – 10 Sa 563/19).

If you are discriminated against during the recruitment procedure, you are entitled under Sec. 15 (2) AGG to **compensation** equal to three pre-tax monthly salary payments. You do not have to prove that you would have been given the job had it not been for the discrimination.

In many cases, however, it is difficult to prove that you have been discriminated against because employers do not have to disclose the reasons why they decide to employ somebody or not. But it is enough if you can **provide evidence** that suggests that you have been turned down for a job for the discriminating reasons referred to above (Sec. 22 AGG; ECJ of April 19, 2012 – C-415/10, “Meister” note 42 et seq.; BAG of June 26, 2014 – 8 AZR 547/13, note 31). It is important that you make your claim to compensation in writing within the period stipulated in Sec. 15 (4) AGG: this is **two months** from the time at which your application is turned down or from the time at which you become aware that you will not be considered for the job.

2.6 What minimum wage am I entitled to?

In Germany, pay is regulated under the Minimum Wage Act (MiLoG) and according to minimum wages agreed for particular branches of industry and collective bargaining agreements.

The general minimum wage (€9.50 from January 1, 2021 and €9.60 from July 1, 2021) always applies in those cases in which higher pay is not stipulated by law or in a collective bargaining agreement. The minimum wage also applies to internships, but only if they are covered by the MiLoG. **Sec. 22 MiLoG states that the minimum wage does not have to be paid for**

- orientation internships of up to three months;
- compulsory internships which are a requirement for admission to a degree programme;
- compulsory internships worked as part of a degree programme;
- voluntary internships worked during a degree programme of up to three months, provided that you have not already done an internship in the same company;
- entry qualification measures under Sec. 52a SGB III.

Other minimum wages, which are negotiated in collective bargaining agreements and which are declared to be generally binding under the Posted Workers Act (AEntG), apply in the following sectors:

- construction, roofing, building cleaning, waste management, meat processing, laundries, mail delivery, mining, vocational training and continuing professional development, care work.

For details refer to the Customs website: https://www.zoll.de/EN/Home/home_node.html, Private individuals – Work – Minimum conditions of employment.

In many sectors other collective bargaining agreements apply, but only for companies which have joined these collective bargaining agreements. Staff at higher education institutions, STWs or local authorities are covered by the Collective Agreement for Public Employees in German Federal States (TVöD).

2.7 What are my most important legal employment rights?

Your employment rights and duties are derived from:

- your contract of employment;
- collective bargaining agreements (the TVöD in the public sector);
- law.

Employment and labour law applies equally to everyone, regardless of their nationality or residence status. Anything else would violate the prohibition of discrimination under the General Equal Treatment Act (AGG).

The protection which some employment law provides employees can be weakened in some contracts of employment or collective bargaining agreements. In most cases, however, employers must provide at least the level of protection stipulated in employment law. The outcome is that some contracts of employment may be invalid. If a contract of employment refers to a collective bargaining agreement or if an employer is bound by a collective bargaining agreement, the provisions of the collective bargaining agreement have priority over the contract of employment (unless the relevant provisions are also unlawful). The most important employment protection regulations are discussed in the following.

Mini-jobs:

Many students have mini-jobs. Work as a student assistant is also a mini-job. The Part-Time and Limited Term Employment Act (TzBfG) states that a part-time employee may not be treated worse due to his or her part-time work than a comparable full-time employee (Sec. 4 TzBfG; Griese in Küttner, 2020, Minijob A. note 2). In reality, the prohibition of discrimination is often violated, in particular when an employer does not continue to pay wages during sickness or fails to comply with holiday regulations. Even at higher education institutions, some students only get paid for the hours they work and do not receive any sick pay or paid holiday.

Working hours:

As a general rule, you are not allowed to work for longer than eight hours a day, although this limit may be extended to a maximum of 10 hours a day if your average daily working hours do not exceed eight (Sec. 3 Hours of Employment Act, ArbZG). There must be set breaks and you're not allowed to work more than six hours in one go without a break (Sec. 4 ArbZG). You must be given an uninterrupted rest period of at least 11 hours between shifts (Sec. 5 ArbZG). You must have at least 15 Sundays a year without work (Sec. 11 (1) ArbZG). There are numerous exceptions to these rules under collective bargaining agreements or which may apply in emergencies or require special approval. The Youth Protection Act applies to those aged under 18.

On-call work:

On-call work is subject to special regulations in Sec. 12 TzBfG. Your contract of employment may state that you must work as workloads require. This on-call work can only be worked if it is agreed in the contract. If your contract of employment does not say anything about your working hours, your job is regarded as full-time employment. Your contract of employment must stipulate minimum weekly or daily working hours. If it doesn't do this, you will be considered to have a minimum 20-hour working week or three-hour working day. Zero hours contracts are prohibited (Raif/Ginal, ArbRAktuell 2020, p. 244, 245). Your agreed minimum working hours may only be increased by a maximum of 25% and your maximum working hours may only be reduced by up to 20%. This means

that if you have agreed to work 20 hours a week, this can be increased to 25 hours or reduced to 16 hours. Your working hours may also be irregularly distributed, but must always enable you to earn an income in line with the agreed working hours. Different rules may be arranged in collective bargaining agreements. You must be given four days advance notice of when you must work a shift (Sec. 12 (3) TzBfG).

Health and safety at work:

Sec. 618 (1) German Civil Code (BGB) requires employers to furnish and maintain premises, devices and equipment in a way which protects employees against danger to life and limb as far as is possible given the nature of their work. This applies to service work as well. The Health and Safety Protection of Workers at Work Act (ArbSchG) and the Workplace Ordinance (ArbStättV) contain more detailed provisions for actual practice at various kinds of workplaces. If your health suffers as a result of your work, your accident insurance is initially required to provide compensation. If your employer does not meet the legal requirements, you are entitled to refuse to do work which it would be unreasonable to expect you to do (Sec. 273 (1) BGB).

Sick pay and holiday pay:

Payment of wages and salaries on public holidays: You must be paid for any hours you do not work because of public holidays (Sec. 2 Act on the Payment of Wages and Salaries on Public Holidays and in Case of Illness, EntgFG). This means that your contract of employment cannot link your payments to specific working days or, if you are a student assistant, make your pay conditional on a specific university event taking place or, if you deliver newspapers, a newspaper being published (BAG of October 16, 2019 – 5 AZR 352/18).

Illness: If you are sick for no fault of your own, you must continue to be paid for six weeks. You will only receive sick pay for the same illness if you have not been given a sick note by a doctor in the last six months since the end of the first period in which you were unable to work or in the last 12 months since the time at which you originally fell ill.

Examples

Sonja works as a waitress four hours a day three days a week. She suffers from a slipped disc and goes on sick leave for four weeks. She then works for two more months after which the pain in her back becomes so bad again that she has to take sick leave again for four more weeks. She no longer receives sick pay. As she does not have employee health insurance (refer to 2.4 in this chapter), Sonja is not eligible for sickness benefit during this period either.

Ruben works as a care assistant for 20.5 hours a week. He falls ill with cancer and goes on sick leave for four months. He receives sick pay for the first six weeks. After the first six weeks of his illness he receives sickness benefit because he is insured as an employee with a health insurance scheme. He then resumes work for six months but has to go on sick leave again because of the same cancer. Ruben again receives six weeks sick pay and then sickness benefit.

Continued payment of wages owing to short-term incapacitation: Employers are required to release their employees from work on continued pay if they are incapacitated for a short period (Sec. 616 BGB). Legal opinion differs on when incapacitation may be considered to be limited to a “relatively insignificant period of time”. Each specific case is considered separately taking account of the length of employment and the reason why the employee is incapacitated (Stöß/Putzer, NJW 2020, p. 1465, 1467 et seq.). But in most cases, you can only be absent from work for a few days under this

rule. Bearing in mind the coronavirus crisis, it may be acceptable to be absent from your workplace for a few hours if you currently have no childcare, but not for several weeks at a time. This is because Sec. 56 (1a) Infection Protection Act (IfSG) provides for compensation of 67% of your post-tax income for six weeks (Sec. 56 (2) Sentence 2 IfSG).

Most collective bargaining agreements also entitle employees to take time off for special family occurrences. In the public sector, for example, the TVöD entitles employees to time off for the birth of a child, if you move house, the death of a close relative (Sec. 29 TVöD) and similar events including further time off of up to three days in some cases (Sec. 29 (3) TVöD).

Time off from work:

Illness of a child: If a child aged younger than 12 who lives in your household and who has statutory health insurance (family insurance with either of its parents) becomes ill, one of the parents is permitted to take time off from work if a doctor has certified that the child needs care. In this case, either parent is allowed to take up to 10 days off from work per year and child; single parents can take up to 20 days off work. If there are several children in your family, you can take up to 25 days off work (single parents can take 50 days) a year (Sec. 45 (3) SGB V). Employers are not obliged to continue paying wages and salaries, although this is stipulated in some collective bargaining agreements. You will receive sickness benefit while you are unable to work, provided that you are covered by a statutory health insurance scheme as an employee. Compulsory student insurance cover does not include sickness benefit (Sonnhoff in: Schlegel/Voelzke, jurisPK-SGB V, 2019, Sec. 45 note 30). Private insurance does not usually pay sickness benefit either.

This means that you will only receive childcare sick pay to care for an ill child if you work more than 20 hours a week.



In the light of the coronavirus crisis, childcare sick pay will be payable for five more days per parent in 2020 or 10 days for a single parent (Sec. 45 (2a) SGB V).

Caregiver leave: Under Sec. 2 Caregiver Leave Act (PflegeZG) you are entitled to up to 10 days off work if you need to look after close relatives (husband/wife, parents, parents-in-law, children, grandchildren, grandparents, brothers/sisters) if they are in acute need of care and you need to organise their care and support. You are not entitled to sick pay in this case. You may receive care support benefit (Sec. 44a (3) SGB XI) if the person who needs care is entitled to long-term care benefits, regardless of whether you yourself are covered by this insurance (Böhm 2015, Sec. 2 note 22).

Under Sec. 3 of the Caregiver Leave Act you are entitled to take time off work completely or for part of your working time to care for a close relative, but only if your employer has more than 15 employees. No matter how many employees your employer has, you are always entitled to time off work to look after children aged under 18 (Sec. 3 (5) PflegeZG) or relatives who are dying (Sec. 3 (6) PflegeZG). You will not be entitled to sick pay in this case but the family member's long-term care insurance will pay towards your health and long-term care insurance (Sec. 44a (1) SGB XI) and make contributions to your pension insurance scheme (Sec. 44 SGB XI).

Release from work for important personal reasons: Quite apart from the employer's obligation to continue paying you under Sec. 616 BGB, you are also entitled to unpaid time off work for important personal reasons. This applies in particular if you have to look after your child because its normal carer is unavailable or if your child's kindergarten or school has closed (LArbG Mainz of July 31, 2019

– 2 Sa 299/18). You have this right under Art. 7 of Directive (EU) 2019/1158 on work-life balance for parents and carers (for more details, refer to: Stoye/Thoma, ZESAR 2020, p. 10 – 18).

Holiday entitlements:

The Federal Vacation Act (BurlG) stipulates that all employees (including people doing mini-jobs; see above) are entitled to annual leave of at least 24 working days (which under Sec. 3 BurlG includes all calendar days which are neither Sundays nor public holidays). If you normally work five days a week, this means that you are entitled to 20 days of leave a year. The number of days of leave you are entitled to is reduced accordingly if you work part-time.

Example

24 working days' annual leave = 2 working days/month = 2/6 of the agreed working time/month. Example: Janis works in a restaurant for six hours on two evenings a week, i.e. the equivalent of 12 hours a week. He is entitled to 2.8 hours paid leave a month.

You are only entitled to take paid leave if you have been at work with your employer for six months (Sec. 4 BUrlG). If your job comes to an end before you are able to take your paid leave, you are entitled to have the value of your holiday entitlement paid out to you (Sec. 5 (1) BUrlG). You do not have to pay back any money if you have taken too much paid leave (Sec. 5 (3) BUrlG). You cannot be bound by a contract of employment or collective bargaining agreement to take less than the minimum paid leave. Many collective bargaining agreements, such as the TVöD, include holiday entitlements of 30 days a year and some collective bargaining agreements provide for longer holidays depending on how long you have been working for your employer.

Duty to provide work:

It may sound a little strange, but as an employee you have a right to work. This right applies to the work agreed in your contract. This means that your employer cannot simply reduce the number of hours you work but must provide the amount of work agreed in your contract. You can only be expected to do any more work than this voluntarily, unless something else is agreed in your contract of employment.

It is just as important that you are employed in the way and at a level which was agreed in your contract of employment. The employer cannot simply tell you to carry out any other activities which are below the level of qualified work which was agreed in your contract of employment.

Rights attached to temporary agency work:

Many international students are employed by companies which then send them to work for other companies. If you work for an agency operating in this sector, your contract of employment is with the agency. However, it is the client company in which you actually do your work which has the right to tell you how exactly you must do your work. The assignment of employees and their employment rights are stipulated in the Temporary Agency Work Act (AÜG). The most important elements of this law are:

- You can only work for the same client company for a maximum of 18 months. If you work for longer than 18 months, you will automatically become the client company's employee. This maximum period may be altered by or by reference to a collective bargaining agreement.
- The employing agency is not allowed to give you a temporary contract of employment which automatically ends when your deployment with the client company comes to an end. You may be offered fixed-term contracts for periods of up to two years with at most three renew-

als (Sec. 14 TzBfG). If you are only employed for very short periods of time (one or a few days), you must be aware that when your contract of employment is renewed for the fourth time it is automatically changed into a permanent contract. It is more complicated if there are interruptions between different deployments with the same client company. In this case it depends on whether you have a so-called circumvention agreement. If this is the case, you should ask for individual legal advice from a lawyer who specialises in employment law or from a trade union (refer also to 2.8).

- You are entitled to be paid the same amount as the employer's regular employees. However, you may find that this principle of equal treatment has been overridden by a collective bargaining agreement for the first nine months of your employment (Sec. 8 AÜG).
- Your temporary agency work contract must inform you about all your rights (Sec. 11 AÜG).
- Apart from very few exceptions, temporary agency work is prohibited in the building trade (Sec. 1b AÜG) and there are also plans to ban it in the meat processing industry (Health and Safety Protection Monitoring Act, Bundestag Printed Matter 19/21978 of August 31, 2020).
- The agency you work for must be officially licensed. If your agency is not licensed, you automatically become the client company's own employee.

The protective rights provided under Sec. 1 (3) No. 2b AÜG do not apply between two public sector workplaces, unless otherwise agreed in the TVöD. This exception has been criticised as it is difficult to reconcile with EU law (Directive on Temporary Agency Work 2008/104/EC).

General duty of care:

Both parties to a contract of employment must – as in all contractual relationships – respect each other's rights. The employer's duties in this respect are referred to as its duties of care; the employee's duties are referred to as duties of loyalty. Employers must handle your private property with care (this means, for example, that they must provide you a locker for you to put your things in), they must protect your health and safety, make sure your data are not stolen or used by anyone else and must take account of your private needs when planning holidays or other operational matters. These duties of care only apply to the extent that such protection is feasible given the nature of the work with the employer (Sec. 618 BGB). Employees must not do anything which would damage their employer's business. This includes not giving away any business secrets. If a crime is committed at your place of work, your duty to keep activities in the business you are working for secret is overridden by the public's interest in knowing about what is happening (whistleblower – European Court of Human Rights, ruling of July 21, 2011 – 28274/08; Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law). The legal situation in Germany has not yet been clarified (Schmolke, NZG 2020, p. 5 – 12).

Employers have a particular duty of care which arises from the ban on harassment under the General Equal Treatment Act (AGG):

Prohibition of harassment (Sec. 3 (3) AGG)

Harassment takes place if you are subject to any unwanted and discriminating conduct (as defined in the General Equal Treatment Act) which is intended to violate your dignity as a person. The unwanted conduct must also be such as to create an intimidating, hostile, degrading, humiliating or offensive environment (BAG of June 22, 2011 – 8 AZR 48/10, note 43). This usually means that it is not enough for someone to behave in this way just once. All the conduct you are confronted with must be taken into account, even if some forms of behaviour do not on their own add up to harassment (BAG of May 18, 2017 – 8 AZR 74/16).

Do not hesitate to tell your employer if you are the object of repeated racist insults at work. You should also inform your works council, if there is one where you work. Your employer must take action to prevent discrimination of this kind at your place of work, including if necessary by dismissing the employee who is insulting and harassing you (LAG Baden-Württemberg of December 19, 2019 – 3 Sa 30/19).

Nonetheless, the courts still set a very high bar for “serious interference with general personality rights” and your case will need to be argued precisely and comprehensively. You should inform your works council or employee representation body, disabled employees’ representative or equal opportunities officer if there is one at the place where you work. Wherever you work, the employer must ensure that there is a competent department to which you can complain (Sec. 13 AGG). You can also seek help from the Federal Anti-Discrimination Agency and other regional agencies (See: https://www.antidiskriminierungsstelle.de/EN/Home/home_node.html).

Prohibition of sexual harassment (Sec. 3 (4) AGG)

Sec. 3 (4) of the General Equal Treatment Act (AGG) defines sexual harassment as any unwanted conduct of a sexual nature, including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature as well as comments of a sexual nature which takes place with the purpose or effect of violating the dignity of the person concerned. In contrast to harassment under Sec. 3 (3) AGG, a single occurrence of conduct of a sexual nature is sufficient to meet this definition (BAG of June 29, 2017 – 2 AZR 302/16; BAG of November 20, 2014 – 2 AZR 651/13). Whether conduct is of a sexual nature does not depend solely on the subjective intention of the person acting in this way. In particular, this means that “I didn’t mean it in that way” is no defence against an allegation of sexual harassment (BAG of June 29, 2017 – 2 AZR 302/16; Arendt in Schaub/Linck ArbR-HdB, 2019, Sec. 36 note 47). Sexual harassment at the workplace is not always driven by sexual desire. It can also be an expression of hierarchical position and abuse of power (Köhler/Koops BB 2015, 2807, 2809). If you are sexually harassed, you should immediately contact your works council, employee representation body, equal opportunities officer or the competent department (Sec. 13 AGG) for complaints. You can also seek help from the Federal Anti-Discrimination Agency (see above) or call the national “Violence against women” number which is available 24 hours a day: 08000 116 016.

Your legal rights:

You must file any complaint with the labour courts within three weeks. This three-week period only begins when an existing employment relationship is terminated. Your contract of employment or collective bargaining agreements may stipulate different time periods. You can file your complaint with the legal claims office at the labour court yourself. You do not have to worry about the costs of bringing a case before a labour court (lower court only). Each party pays their own costs.

If you are a trade union member, you will receive legal advice and legal representation from your **trade union**. You can also get help from the DGB’s **Fair Mobility Project** advisory centres, the **Employee Chambers** and the **Public Legal Information Centre, Hamburg**. Most international students have very little money at their disposal and can therefore apply to the **local court for a document enabling them to obtain initial advice from a lawyer**.

In summary: you have an absolute right to continue being paid when you are off work ill, to paid holiday and to work conditions which do not expose you to discrimination. For any matters relating to hours of work, the type of work you are asked to do and the time limits for taking legal action you should read your contract of employment or, if the place where you work has one, the collective bargaining agreement.

2.8 Am I protected against dismissal?

The basic dismissal notice period is stipulated in Sec. 622 BGB. The notice period during a probationary period – but for no longer than the first six months – is 14 days. Otherwise the notice period is four weeks to the 15th or to the end of the month. If you have been with your employer for two years, the notice period is longer (refer to Sec. 622 (2) BGB).

Protection against dismissal is provided by the **Protection Against Dismissal Act (KSchG)**. This law only applies to your employment if the establishment you are working for has **more than 10 employees** (Sec. 23 KSchG; the exceptions are insignificant for international students), you have been **employed there for longer than six months** and there are no justifiable social grounds for your dismissal.

If you are not protected against dismissal, your employer can dismiss you without stating why.

If you are protected against dismissal, there are three different ways in which your employment can be terminated:

- **Dismissal for reasons related to your conduct:** This form of dismissal is only possible if you have broken your contract of employment. Contracts of employment are usually breached because the employee repeatedly comes late to work, refuses to do certain work, acts in a way which is detrimental to the establishment, commits theft or fraud, etc. If an employee commits a minor breach of contract, the employer must issue a warning before dismissing the employee. This is not necessary if the employee has committed a serious breach of contract and the employment relationship can then – but only then – be terminated without notice.
- **Dismissal for reasons related to your person:** You can be dismissed for reasons which do not imply that you are at fault in any way. The main reason why you might be dismissed in this case is if you are ill and it looks as if your illness will result in continuing absence from work in the future and this would be damaging for the establishment where you are working. You could also be dismissed if you have a disability which is incompatible with the demands of your work, but only with the approval of the Integration Office and after close examination of alternative employment options for you.
- **Dismissal for operational reasons:** You can be dismissed for operational reasons. This means that your job has been eliminated, either due to rationalisation or restructuring, or because the workforce has been reduced owing to a drop in incoming orders or other business-related reasons. In these cases the employer must make a “social selection”, taking account of the time for which you and other employees have been working for the establishment, your age, the number of people who are dependent on your income and any serious disability you may have (Sec. 1 (3) KSchG). The fact that your firm has too little work as a result of the coronavirus crisis is not a good enough reason to dismiss you. The existence of the establishment you work for must be seriously threatened even after it has made use of the short-time work allowance and other forms of state aid.

You should seek legal advice if you think you have been wrongly dismissed in any way. Trade union members can obtain legal advice and representation at labour courts. If you are on a low income (refer to SGB II/SGB XII requirement levels), you can apply to the local court for a document enabling you to get advice from a lawyer (you will find an application form and information sheet on the Federal Ministry of Justice and Consumer Protection website at https://www.bmju.de/DE/Service/Formulare/Formulare_node.html (in German)).

The fee for this is €15. This is one of the few opportunities to obtain free legal advice in employment law matters.

Special rules apply to **fixed-term employment contracts**:

Your employer can only employ you **for a fixed term** for a maximum of two years, unless the employer has grounds for not employing you permanently. A fixed-term employment contract may only be renewed three times. If your fixed-term contract remains in place for longer than the maximum period or it is renewed more than three times, your contract will automatically become a **permanent contract of employment** (Sec. 14 (2) TzBfG). You cannot be given a fixed-term contract of employment without any stated reason if you have already been employed with the same employer previously. If this is the case, your contract of employment will be considered permanent from the very start. This does not apply to previous periods of employment which took place longer than three years previously (BVerfG of June 6, 2018 – 1 BvL 7/14).

There are three exceptions to this rule:

- Sometimes a collective bargaining agreement may contain other rules.
- The period is extended to four years if a company is relaunched.
- The period is five years if you are older than 52 and were unemployed for at least four months before taking up your job.

You may be given an **employment contract for a fixed term if the stated reason** is, in particular, that the contract is for work on a time-limited project, funding for the job is only available for a certain period of time, the work you are doing is by its nature only temporary, you were previously a trainee with the same employer or have done an internship (as a student), you have been working to cover someone else's temporary absence (i.e. parental leave) or the work is on a probationary basis (Sec. 14 (1) TzBfG). Unlimited extensions are also permitted provided the work still only needs to be done for a limited period of time. This is no longer the case, however, if the work is something that constantly needs to be done in the establishment or department in which you work, even if the work is paid for from public funds (BAG of August 21, 2020 – 7 AZR 572/17). It can sometimes be difficult in the field of science and research to decide when exactly this is the case.

A fixed-term contract of employment can only be terminated if this has been explicitly agreed in your contract of employment or if you are dismissed because of something you have done.

You are **entitled to a reference** when your employment comes to an end (Sec. 109 GewO or collective bargaining agreement, e.g. Sec. 35 TVöD). If you are not given a reference, you can bring a case before a labour court. In this case you do not have to bring a legal claim within the same short period, but you must nonetheless bring your claim within the time limit stipulated in the relevant collective bargaining agreements.

2.9 What protection do I have during and after pregnancy?

You don't have to tell your employer that you are pregnant when you start a new job (refer to 2.5).

Expectant and nursing mothers may **not work between the hours of 8 p.m. and 6 a.m.**, work on-call hours (Sec. 5 Maternity Protection Act, MuSchG) or work on Sundays and public holidays. **Overtime** is also prohibited and you must not work longer than 8.5 hours a day (Sec. 4 MuSchG). If you are working part-time, you are not allowed to work overtime if, over the course of a month, this would mean working longer than your agreed average weekly working hours (Sec. 4 (1) Sentence 4 MuSchG).

Your **workplace** must be adapted to the conditions of your pregnancy and your employer must offer you a personal interview (Sec. 10 (2) MuSchG) and in cases of doubt involve the supervisory authority (such as the trade supervisory office).

In many cases employers have to **prohibit further work** because the workplace is not appropriate and there is no alternative workplace available. It is often people working in the health care professions, with children and young people or who frequently go on business trips who are prohibited from working. In some cases doctors can also prohibit you from working. If you are told to stop working, you will still be paid (Sec. 18 MuSchG) and your employer will be able to reclaim the money paid to you.

Maternity protection begins six weeks before delivery, but you are not prohibited from working before the birth itself (Sec. 3 (1) MuSchG). You are not allowed to work at all for eight weeks after delivery (Sec. 3 (2) MuSchG). If you have twins, your child weighs less than 2,500 grammes at birth, is born with a disability or is born prematurely and needs more care as a result, you will continue to have maternity protection for 12 weeks after delivery (Sec. 3 (2) MuSchG). The period of protection for premature births is extended by the period of time which could not be used prior to birth.

During maternity protection, women who are working in socially insured employment are entitled to maternity benefit from the statutory health insurance scheme (Sec. 19 MuSchG) and an allowance from their employer which tops their income up to the level of their normal post-tax salary (Sec. 20 MuSchG). Refer to 3.8 in this chapter if you are not insured.

You will not lose your entitlements to **paid leave** while you are prohibited from working or are in maternity protection – you can even take your holiday after you have taken your parental leave (Sec. 24 Sentence 2 MuSchG).

You are **protected against dismissal** while you are pregnant and up to four months after delivery. This also applies if you work for a small firm and during your probationary period (Sec. 17 MuSchG). This also applies if you have a miscarriage after the 12th week of pregnancy (Sec. 17 (1) No. 2 MuSchG). However, this only applies if your employer knows that you are pregnant, although you can tell the employer this up to two weeks after you have been given notice of your dismissal. You must have been pregnant at the time you were dismissed.

There are certain exceptions to the ban on dismissal. This is the case if you are dismissed for reasons which have nothing to do with your pregnancy. Such reasons include your employer becoming insolvent, the closure of the establishment or parts of it, or if you breach your contract of employment. You can only be dismissed in these cases, however, with the approval of the authority responsible for employment protection (in each federal state: <https://www.bmfsfj.de/bmfsfj/themen/familie/familienleistungen/aufsichtsbehoerden-fuer-mutterschutz-und-kuendigungsschutz--informationen-der-laender/73648> (in German)) (Sec. 17 (2) MuSchG).

After your maternity protection has ended you are entitled to **parental leave**. This also applies if you are doing a mini-job, regardless of how much progress you have made on your studies. You are entitled to take parental leave for up to three years. This entitlement usually ends on your child's third birthday (Sec. 15 (2) Parental Allowance and Parental Leave Act (BEEG)). You can opt to take parental leave at any time during the first three years after the birth of your child. You must inform your employer seven weeks in advance at the latest. If your employer asks, you must also say when you wish to take parental leave within the next two years (Sec. 16 (1) BEEG). You can only extend or change the period of your parental leave within these two years with your employer's consent (Sec. 16 (3) BEEG). This also applies to the actual times you take your parental leave if you decide to

take time off in more than two separate periods (Sec. 16 (1) Sentence 5 BEEG). You can take part of your parental leave, up to 24 months, in a period between your child's third and eighth birthday. In this case, you must tell your employer 13 weeks in advance that you wish to take parental leave. Each parent is equally entitled to parental leave and the periods of up to three years can also be taken by both parents at the same time (Sec. 15 (3) BEEG).

Your employer must negotiate with you if you ask to work shorter working hours during your parental leave (Sec. 15 (5) BEEG). You are entitled to work part-time during your parental leave, if

- your employer has more than 15 employees;
- you have been working for the same employer for over six months;
- you ask to work between 15 and 30 hours a week for at least two months during your parental leave;
- there are no urgent operational reasons for not allowing you to work part-time (this reason is rarely accepted!); and
- you tell your employer at least seven weeks in advance (or 13 weeks in advance if your child is older than three) in writing (Sec. 15 (7) BEEG).

If you have **compulsory employee's statutory health insurance**, you will continue to be insured during your parental leave without having to pay any contributions if you are no longer earning any money on which you are required to pay social insurance contributions. This does not apply if you are compulsorily insured as a student (Sec. 5 (1) No. 9 SGB V) or voluntarily insured with a statutory health insurance scheme. You must pay the contributions yourself (BSG of November 30, 2016 – B 12 KR 6/15 R). Privately insured employees do not receive any employer allowances either during this period.

Your employer can reduce your **paid leave** during your parental leave, but must make an explicit declaration to this effect. Your employer can make this declaration at any time during your parental leave (BAG of May 19, 2015 – Ref.: 9 AZR 725/13).

When your parental leave comes to an end you are entitled to reduce your working hours (Sec. 8 TzBfG). Your employer can only refuse to allow you to work shorter working hours for urgent operational reasons. In larger establishments and in certain circumstances you are entitled to reduce your working hours for a limited period of time (Sec. 9a TzBfG).



You are not eligible for parental allowance (refer to 3.7 in this chapter) for the entire period of your parental leave. If you have a residence permit under Sec. 16b AufenthG, you must make up any financial gap from your own resources.

2.10 What rights and obligations do I have if I am self-employed (freelance work, service contract and professional activities)?

As an international student, you need permission from the immigration authority for most kinds of self-employed work (refer to 2.2 in this chapter).

If you are self-employed, your employment is not protected. However, it is necessary to **differentiate carefully**, because there are still many types of employment in which you might be asked to charge the person giving you work a fee, even though this is not always legally permissible. You

cannot choose. You can only make a freelance contract if you are not working on the premises of and with the resources of the person you are working for and he or she cannot tell you how exactly you must do your work. Typically a legal freelance contract will include obligations which have nothing to do with times of work, but which relate to a specific service or outcome. Freelance contracts are typically made for one-off lectures, workshops, training units, the organisation of events like conferences, short-term project contracts, tradesman work for single customers, individual support in youth work, IT services for various customers, translations, expert opinions, individual research jobs or scientific articles. Crowdworkers, who are not required to accept work from their platform operators, are also self-employed (LArbG Munich of December 4, 2019 – 8 Sa 146/19). Cleaning work in a private household or establishment, night watch work at a hospital, assisting a professor, providing personal assistance for people with disabilities or service work at trade fairs do not count as self-employment.

If you are self-employed, you are not socially insured and must pay tax on your income yourself.

You can only join a **statutory health and long-term care insurance scheme** if you were subject to compulsory insurance before you became self-employed, e.g. you were covered by compulsory health insurance for students (Sec. 5 (1) No. 9 SGB V) or were an employee working more than 20 hours a week (Secs. 5 (1) No. 1, 6 (1) No. 3 SGB V).

Artists and certain kinds of writing professions are exempt (Sec. 5 (1) No. 4 SGB V). If you are an artist or writer, you will be able to join the **Artists' Social Fund** and will have the privilege of only having to pay half of the normal social insurance contributions yourself (Sec. 10 Artists' Social Insurance Act, KSVG). You can only join this scheme if you have been working full-time as an artist or writer for a lengthy period of time.

If you are self-employed, you can join the **accident insurance scheme** voluntarily (Sec. 6 SGB VII). If this applies to you, you should ask the responsible self-administrating alliance (BG) for advice about the relevant risk and contributions.

In Germany, self-employed work is classified either as a **business** or as a **profession**. These two forms of work are defined in Sec. 6 Industrial Code (GewO). You only have to register a business with your local supervisory body if it requires commercial premises or involves public sales (markets, trade fairs, tourism and travel) or if your business is subject to commercial oversight (a licence is required, refer to Secs. 30 et seq. GewO). If you do not register your business, you must apply to the tax authorities for a tax identification number.

Self-employed people are also required to charge value-added tax. This means that they must declare and pass on **value-added tax to the tax authorities** and can claim back any value-added tax (input tax) they have paid themselves. Freelancers and proprietors of small businesses whose revenues do not exceed €17,500 a year do not have to charge and pass on value-added tax. It is worth claiming this exemption if your business has only very few expenses. Businesses which generate profits exceeding €24,500 a year are also required to pay **trade tax**.

If you are self-employed you are required to file a **tax return**. However, you do not have to file a tax return if your earnings are lower than €9,696 a year (in 2021). This means that if you have an income (profit) below this threshold, you are not required to file tax returns if you do not have any other form of income (such as a scholarship or wages/salary). You must file your tax return by July 31 of the following year via the federal and state tax authorities' ELSTER electronic portal. If you don't have a tax identification number, you can ask for one from the Federal Central Tax Office (BZSt, info@identifikationsmerkmal.de).

If you are habitually resident in another country, you may be able to pay tax in that country on any income you have in Germany. But you must always inform the German tax authorities first. You can consult a registered tax consultant for advice on how double taxation agreements apply to you (for a fee).

2.11 What rights and obligations do I have if I do voluntary work?

Many students do voluntary work while they are studying because it enables them to gain experience related to the work they want to do after graduating, because of their social and political commitments, because they want to build up networks, want to improve their language skills, for social reasons or simply to add to their curriculum vitae.

Many towns and cities have their own volunteering agencies which offer all sorts of work opportunities.

You don't need a permit from the immigration authority to do voluntary work as it is, by definition, not gainful employment. Non-profit organisations or charitable institutions sometimes pay their volunteers a small amount of money to cover their expenses (travelling expenses, telecommunication, etc.). Up to €720 a year can be paid tax-free (Sec. 3 No. 26a Income Tax Act (EStG)).

Voluntary work is not subject to employment law and can therefore be terminated by either party at any time. If you are doing voluntary work and have agreed by contract to work certain hours or for a certain length of time, this could be interpreted as an employment relationship and therefore entitle you to a wage or salary.

You must be covered by statutory accident insurance while you are doing voluntary work (refer to 3.3 in this chapter).

In some fields of work, such as for non-profit or public institutions, such as STWs, higher education institutions, social welfare associations or in sport or the arts, you can declare income of up to €3,000 a year as a so-called "trainer flat rate". You are not required to pay tax on this amount (Sec. 3 No. 26 EStG) and it will not be deducted from any social welfare benefits you may be entitled to.

3 What social welfare benefits am I eligible for while I am studying?

3.1 How can students who hold a residence permit under Sec. 16b AufenthG obtain health insurance?

In Germany's state-run health care system (consisting of **statutory health insurance scheme**) all citizens are required to obtain insurance to cover health-related life risks. The regulations on membership in this system, the benefits it provides and the contributions you must pay are in SGB V. But not all health insurance is organised by the state. The system is more complicated because it is also possible to obtain private health insurance.

The contributions you pay towards the statutory health insurance scheme depend on how much money you earn or on your status (student), not on how much of a risk you pose to the insurance scheme. Family members can be co-insured at no charge. There are over 100 health insurance companies. If you are compulsorily insured, you can decide which statutory company to join. You then pay your contributions to the company and it issues you with a health card and approves the medical services you obtain. This is very much like an insurance policy. In reality though, you join the scheme automatically if you are compulsorily insured.

Private health insurance (comprehensive insurance) can be taken out by people who are not subject to compulsory insurance, or who are eligible for voluntary cover with the statutory health insurance scheme or who have been exempted from mandatory membership. If you have private health insurance, the premiums you pay depend on the risk you represent, i.e. your age and any pre-existing conditions. Private health insurance does not provide free family insurance and the medical services you can expect to receive differ according to the insurance policy you sign.

When you **start studying you will be compulsorily insured** (Sec. 5 (1) No. 9 SGB V). You can be exempted from this insurance (Sec. 8 (1) No. 5 SGB V) if you can show that you have taken out private insurance which covers medical services equal to those for which you are required to obtain insurance under Sec. 193 (3) Insurance Policy Act (VVG) (Sec. 8 (2) Sentence 4 SGB V).

If you decide to take out private health insurance, you will not be able to return to the statutory health insurance scheme. Once you are privately insured you are privately insured forever (Sec. 8 (2) Sentence 3 SGB V). This applies at least until there is an **interruption** (of at least one month between the official end of your semester and the start of the next part of your degree studies, including when you are progressing from a Bachelor's degree to a Master's degree) in your studies and you are exempted again (BSG of May 25, 2011 – B 12 KR 9/09 R; LSG Berlin-Brandenburg of February 27, 2013 – L 1 KR 10/13 B ER).

Example

Selim has graduated from Erfurt with a Bachelor's degree in computer studies and sat his last exam on June 30, 2020. He was exempted from statutory health insurance when he started studying. He now wants to continue studying for a Master's degree in the winter semester of 2020/2021. Selim cannot return to the statutory health insurance scheme because his exemption remains in force until the end of the semester on August 31, 2020 and there is no interruption because his Master's degree programme begins on September 1, 2020. The fact that actual teaching starts later doesn't matter.

In some higher education institutions the winter semester always starts on October 1 (because the summer semester only ends on September 30). If a student transfers to a higher education institution where this is the case, there will be an interruption and the student will be compulsorily insured again, provided the student has not yet reached the upper age limit (which is usually 30).

Foreign nationals with a residence permit under Sec. 16b AufenthG, however, are not subject to compulsory statutory insurance when they are **preparing for study or applying for a place to study** (Sec. 5 (11) SGB V) or if they have **enrolled at a preparatory college** (Plagemann in Münchner Anwaltshandbuch Sozialrecht, 2018, note 69).

You can only voluntarily join the statutory health insurance scheme immediately following compulsory membership in another scheme (Sec. 188 (4) SGB V) or if you have been compulsorily insured in Germany or any other EU Member State for at least two of the last five years (Sec. 9 (1) No. 1 SGB V).

Nonetheless, some health insurance companies **offer voluntary insurance to students at preparatory colleges at a reduced school student rate** (refer also to 1.1.3).

In most cases, international students who are preparing for study are required under Sec. 193 (3) VVG to take out **private insurance** because they are not eligible to join the statutory health insurance scheme.

Enrolled PhD students are not compulsorily insured either (BSG of June 7, 2018 – B 12 KR 15/16 R; LSG Berlin-Brandenburg of December 7, 2016 – L 9 KR 4/16; LSG Baden-Württemberg of April 24, 2015 – L 4 KR 2691/14; critique of this case law: Reinert, NZS 2015, p. 609 et seq.). **However, if you were previously compulsorily insured as a student, you can opt to remain in the statutory health insurance scheme voluntarily.** If you do any **part-time work in which you earn more than €450** you will also become compulsorily insured as an employee because PhD students are no longer privileged as working students.

Students often take out private insurance which does not cover all their health risks. In many cases, this insurance does not cover the treatment costs for pre-existing conditions, psychotherapy or rehabilitation services or, in many cases, even the costs incurred during pregnancy and for the birth of a child. **You are therefore strongly advised to remain with the statutory health insurance scheme and not to take out private insurance when you begin studying.**

International students often only manage to migrate for study purposes when they are considerably older. In these cases the regular and absolute age limits in compulsory insurance scheme are especially important. **Insurance is only compulsory up to the age of 30.** The age limit can be higher if there are certain family-related or personal reasons why you cannot start or complete your degree programme earlier. These reasons may be that you were only admitted to study later, perhaps because of an entrance examination (Feststellungsprüfung) at your preparatory college or because you were on a language course in preparation for study. The reasons why you cannot start studying must have applied prior to your 30th birthday (BSG of October 15, 2014 – B 12 KR 1/13 R; LSG Baden-Württemberg of September 29, 2011 – L 11 KR 1015/10; LSG Saarbrücken of November 21, 2012 – L 2 KR 31/12; Schäfer-Kuczynski, SGB 2015, p. 696 et seq.). This also means that you must have entered Germany for study purposes before you reach the age of 30 in order to be able to join the student insurance scheme under Sec. 5 (1) No. 9 SGB V. The Federal Social Court (BSG of October 15, 2014 – B 12 KR 17/12 R) has also **set an absolute limit at the age of 37.** This is not regarded as a violation of

the prohibition of discrimination under Art. 25 BRK (Luik, jM 2015, p. 288 et seq.). You will then only be able to retain your membership of the statutory health insurance scheme by becoming a voluntary member, which is much more expensive (Sec. 240 (4), (4a) SGB V).

You will automatically acquire **voluntary statutory health insurance** when your student insurance cover comes to an end, unless you declare that you wish to leave the scheme within two weeks of being informed of this option by the health insurance company and if you can show that you have some other form of health insurance cover (Sec. 188 (4) in conjunction with Sec. 9 (1) Sentence 1 No. 1, (2) SGB V; Felix in: jurisPK-SGB V, Sec. 188 note 20 et seq.). If you are voluntarily insured in the statutory health insurance scheme, unlike in the student insurance scheme the contributions you pay depend on your circumstances. You will be required to pay the maximum contribution rate if you do not inform the health insurance company about how much money you earn. This rate can be changed subsequently if you provide information about your income within 12 months (Sec. 240 (1) Sentence 2 SGB V).

Example

Achmad came to Germany from Libya when he was 24. He first took a higher education entrance examination (privately insured). Two years later he began studying for a degree in civil engineering (and switched to the student statutory health insurance scheme). He is now 32 years old and studying in his 12th semester. The statutory health insurance scheme extended his membership by two years owing to Achmad's chronic asthma, for which he has been in hospital several times. His compulsory membership ends, however, when he becomes 33. Achmad can remain in the statutory health insurance scheme voluntarily for the rest of his degree course, but not at the student rate.

If you are **temporarily resident for a few semesters of study** as part of your overall degree programme, you will only be compulsorily insured if you cannot show that you have some other form of insurance in the country you are residing in. You will normally receive in-kind benefits (refer also to 1.1.3 in this chapter and Chapter III, 2.1) from the local health insurance scheme responsible for you at your parent higher education institution if you are an ERASMUS or other exchange student enrolled at a higher education institution in another EU/EEA state or Switzerland. If you are from a state with which Germany has entered a bilateral treaty on the coordination of social welfare benefits (treaty state), you will in some cases be able to claim in-kind insurance benefits (refer to 1.1.3 in this chapter). In all other cases, you will be covered by the statutory health insurance scheme when you enrol, or you will be exempted if you can show that you have private insurance cover.

Students who are under 25 are covered by **family insurance** if one of their parents is insured with the statutory health insurance scheme (including as a voluntary member). There is an exception to this rule if one of your parents is privately insured and their income is higher than the contribution assessment ceiling and more than the parent who is insured in the statutory health insurance scheme. Family insurance can also be acquired through your spouse or registered civil partner.

It doesn't matter what residence status your parents or spouse have or whether or not you live together in the same family household. But the family member who is studying must be habitually resident in Germany. You are considered to be habitually resident if you intend to stay in the country for a lengthy period of time for study purposes. "Permanent (open-ended) residence under aliens law is not a necessary prerequisite for the assumption of a habitual residence within the meaning of Sec. 10 (1) Sentence 1 No. 1 SGB V" (BSG of April 30, 1997 – 12 RK 29/96; SG Aachen of November 12, 2013 – S 20 SO 13/13 WA, note 35).

Family insurance cover is provided by law (automatically) and is not contingent on a waiting period or risk assessment. It provides personal and legally separate insurance for the child or spouse (Felix in: Schlegel/Voelzke, jurisPK-SGB V, Sec. 10 SGB V, note 7).

You are covered by your family's own insurance until you reach the age of 25. Attendance at a preparatory college is treated as vocational training, but not the period in which you are applying for a place at a higher education institution – unless this takes place within a limited four-month period between the time you leave school and the time you take up your studies. PhD students are not considered to be in vocational training (LSG Saxony of March 7, 2012 – L 1 KR 186/11).

Example

The 22-year-old **Rose** has come to Germany from Guinea on a study visa under Sec. 16b AufenthG. Her mother had fled to Germany three years previously and holds a residence permit as a recognised refugee under Sec. 25 (2) AufenthG. She works in a job in which she pays social insurance contributions and is therefore in the statutory health insurance scheme. As a student, Rose is now insured as a family member in her mother's statutory health insurance.

Children include **biological and adopted children as well as stepchildren and foster children** who are primarily maintained by the carer who is covered by statutory health insurance. Even a married child can be insured through his or her parents.

The **children of family members who are insured through their family are also covered by the same health insurance scheme** (Sec. 10 (1) Sentence 1 SGB V). However, family health insurance does not extend indefinitely to other relatives as well. For example, if your spouse is insured through his or her parents, you cannot then also obtain insurance cover through this family connection (Sec. 5 (7) SGB V). Instead you would continue to be covered by compulsory student health insurance (Sec. 5 (1) No. 9 SGB V).

You can no longer obtain family insurance cover if you earn more than €538.33 before tax and contributions.

If you come to study in Germany from a third country it is possible, in a few cases, to remain insured in your country of origin if that country has entered a **treaty with Germany on the provision of in-kind benefits in the case of illness**. Under these treaties anyone who is covered by a statutory health insurance scheme in one treaty country is entitled to care and treatment in the other treaty states as well, provided that the law of the country in which care and treatment is provided does not require the patient to pay the costs themselves (in-kind benefit). If you are a student from a treaty state (refer to 1.1.3 in this chapter for details) and you can show that you are insured in your country of origin, the health insurance company of your choice will issue you a qualification certificate or a health card which entitles you to medical services which are more or less the same as those to which people who are insured in Germany are entitled.

This means that if you are from a treaty state, it is worthwhile checking whether you are insured or can get insurance – possibly through your parents – in your country of origin. This will save you paying expensive private insurance and compulsory student insurance.

3.2 What benefits do statutory health and long-term care insurance schemes provide?

Statutory health insurance benefits are defined in Chapter 3 of SGB V, Secs. 11 – 68. The scope of these benefits is the same for all types of insurance. **You are not entitled to sickness benefit for yourself or to childcare sick pay** if you have student or family health insurance (Secs. 44 (2) No. 1, 45 SGB V). This is the case if you are working while you are studying and take advantage of the rule which allows you to work up to 20 hours a week without paying insurance contributions.

Example

Lyla has a three-year-old daughter and is working 12 hours a week as a care assistant while she studies. If her daughter cannot go to her kindergarten because she is ill, Lyla will be released from work by her employer but won't receive any sickness benefit from the health insurance scheme to cover her absence from work to look after her daughter.

Depending on the statutes of your particular health insurance company, you may be entitled to additional health services (Sec. 11 (6) SGB V), non-prescription drugs, treatments and aids as well as health-related services from non-licensed providers. You should ask your health insurance company to find out what **services it offers under its statutes**.

Health care services also include **“medical rehabilitation”**. These services are intended to compensate for any disadvantages that you may suffer as a result of a disability – although only to the extent that your immediate basic needs cannot be otherwise met (Sec. 43 (1) No. 1 SGB V). Statutory health insurance services are limited to medical measures which are focused on curing a health condition and which are either prescribed or performed by physicians (Plagemann in: Schlegel/Voelzke, jurisPK-SGB V, Sec. 11 SGB V, note 23; SG Halle of November 19, 2014 – S 24 R 4/10). Rehabilitation services also include vision aids, walking aids and training, hearing aids, standing aids, inhalers or treatment in rehabilitation hospitals following major operations or serious illnesses (Sec. 40 (3) Sentence 1 SGB V). Complex in- and outpatient services in rehabilitation facilities also play a significant role in the treatment of **psychiatric disabilities, including addictive disorders** (LSG Baden-Württemberg of October 10, 2017 – L 11 KR 131/16). Medical rehabilitation services and criteria are defined in the Rehabilitation Guideline issued by the Federal Joint Committee (December 2019; <https://www.g-ba.de/informationen/richtlinien/23/> (in German)). You must apply for these services separately (Sec. 40 (3) Sentence 1 SGB V).

You **have to pay part of the costs** of drugs, cures and hospital treatment. These charges are limited to 2% of your income or 1% of your income if you are chronically ill. You will have to provide evidence of your actual income status so that the charges you have to pay can be calculated. You will be assumed to have an income which is at least as high as a BAföG grant. The maximum annual charge for students with chronic illnesses in the 2021 academic year is €102.36. Excess charges paid by you will be reimbursed by your health insurance company.

3.3 When am I covered by statutory accident insurance?

After you enrol you are automatically covered by your higher education institution's own accident insurance. You are entitled to accident insurance benefits if you have an **accident** while you are studying, including while you are travelling to and from your higher education institution (Sec. 2 (1) No. 8c SGB VII). **Occupational illnesses** may also be covered by statutory accident insurance.

Students rarely suffer such illnesses. However, they might handle dangerous substances in laboratories, come into contact with tropical diseases during field trips or be exposed to harmful substances during practical work. It is therefore important to differentiate between accidents which arise from activities relating to your degree studies and accidents which simply happen to occur at the same time that you are studying. In order to qualify as an accident at work, the accident must have some kind of spatial and organisational connection with the higher education institution. This does not include accidents which occur when you are studying at home, even if you are writing a final, exam-relevant piece of work (SG Detmold of March 10, 2015 – S 14 U 162/12; Bieresborn in: Schlegel/Voelzke, May 2020, Sec. 2 SGB VII note 193 et seq.).

You are covered by the statutory accident insurance scheme if you fall off your bike on the **way home from a seminar** and break your shoulder. But you will not be covered if you interrupt your journey to or from your higher education institution for more than two hours to engage in entirely private activities (BSG, ruling of October 27, 2009 – B 2 U 23/08 R; Bavarian LSG of September 11, 2018 – L 3 U 365/17). You are not covered if you have an accident on the way from a seminar to a fitness studio, if you are not studying sport! It would be different if you were involved in **university sport** or were attending a university tournament or similar (BSG of November 27, 2018 – B 2 U 15/17 R; LSG NRW of April 30, 2019 – L 15 U 609/17). If you are doing an **internship that you have organised yourself**, you are not covered by the accident insurance provided by your higher education institution, but by the establishment at which you are doing your internship. This is also the case if you are doing a compulsory internship (LSG Thuringia of December 22, 2016 – L 1 U 319/16).

Accident insurance benefits are not affected in any way by your legal residential status. They take precedence over entitlement to statutory health insurance benefits and are often more comprehensive than the latter because they also cover travel costs, non-prescription drugs, etc. and no charges are payable.

3.4 Am I eligible for benefits under the federal financial aid scheme (BAföG)?

You are not eligible for BAföG (Sec. 8 (2) BAföG) if you have a residence permit for study purposes under Sec. 16b AufenthG.

There is an exception to this rule **if you or your family have been previously resident in Germany** (Sec. 8 (3) BAföG), i.e.

- if you had your habitual legal residence in Germany for five years before you applied for BAföG and were also in gainful employment in Germany for that period;
- at least one of your parents has been in gainful employment and legally resident in Germany for three of the last six years. In the event of involuntary unemployment, previous employment of six months is sufficient.

Eligibility will ensure that you are self-sufficient (refer to 1.1.2 in this chapter). Your residence rights are not affected in any way if you receive BAföG (Sec. 2 (3) Sentence 2 No. 5 AufenthG).

Excursus: Turkish citizens

Turkish students are also eligible for BAföG if:

- at least one of their parents is working or has worked in Germany; and
- has a residence title which does not merely permit him or her to remain in Germany until the process of applying for residence has been completed; and
- the child (as the person's descendant) must be legally living with the relevant parent. This doesn't mean that the Turkish student must study from his or her parent's home. It is enough if the child has lived in the parents' household at some time in the past.

3.5 In what exceptional circumstances am I eligible for SGB II benefits from the local government social welfare office (Sozialamt) or the local employment agency (Jobcenter)?

As a rule, **no full-time students are eligible for ALG II benefits** (Sec. 7 (5) SGB II), regardless of the country they are from or their residence status. If you are not eligible for BAföG you are therefore also excluded from ALG II benefits (BSG of September 6, 2007 – B 7b AS 28/06 R; LSG Berlin-Brandenburg of July 5, 2006 – L 10 AS 545/06; LSG Hamburg November 24, 2005 – L 5 B 256/05 ER AS).

There are a number of exceptions to this rule:

- You may be eligible during **sabbatical semesters**. This is only the case if you do not study or take any examinations during this period (BSG of March 22, 2012 – B 4 AS 102/11 R; LSG Saxony of December 21, 2017 – L 7 AS 160/15).
- **The children of students** are eligible for social assistance and benefits to cover the costs of the child's share of rent (per capita principle) under Secs. 7 (2), 19 SGB II.
- **Pregnant women and single parents** are eligible for benefits to cover additional needs under Sec. 27 (2) SGB II.
- You may also be eligible for a **loan in cases of hardship** (Sec. 27 (3) SGB II).

If you have a residence permit for study purposes, you are not excluded from these exceptional benefits if you are habitually resident in Germany (in other words, you are not just enrolled for one or two semesters). You will be considered capable of gainful employment within the meaning of Sec. 8 (2) SGB II because you are permitted to take up limited employment (LSG Saxony of March 31, 2015 – L 3 AS 148/15 B ER). This means that if you have a residence permit under Sec. 16b AufenthG you will also be eligible to receive benefits if you are taking a sabbatical semester, to receive benefits for your children or to obtain a loan in cases of hardship.

Your residence status may, however, be jeopardised if you claim social welfare benefits to cover your living expenses (including under SGB II) because you would then no longer meet one of the main criteria (being able to support yourself financially) for obtaining a residence permit under Sec. 16b AufenthG (Sec. 5 (1) No. 1 AufenthG).

Action will not necessarily be taken to end your residence, however, if you are only receiving benefits because of a **special exceptional situation** and it is therefore perfectly legitimate for you not to meet the usual requirements ("As a rule, a residence title is issued subject to the condition that ... the foreigner is able to cover his or her living expenses ...", Sec. 5 (1) No. 1 AufenthG).

This requirement is usually applied very strictly and exceptions to the rule are only allowed to bridge temporary shortfalls in income. If you have been issued a residence permit under Sec. 16b AufenthG, the following situations are significant:

- **If you have a child who was born in Germany** and who has been or will be granted a residence permit under Sec. 33 AufenthG, you may be allowed to receive financial support for a limited period of time if this is necessary in order to pay for childcare and to finish your degree. You may be eligible for benefits to finance a sabbatical semester during pregnancy or after the birth of a child, in order to cover childcare costs and any additional needs. Benefits can also be provided to parents in the form of a loan. The VwV AufenthG states: *“Section 2 (3) must be applied in a way which conforms with the values enunciated in Article 6 Basic Law (GG) and the principle of proportionality. This means that, in rare exceptional cases, the receipt of certain specific welfare benefits under SGB II or XII may be acceptable, such as if a student is pregnant” (VwV 2.3.1.1).*
- **If you fall ill unexpectedly, if an existing condition suddenly worsens or you have an accident** you may be temporarily dependent on financial support (particularly during sabbatical semesters, or you may need a loan to cover your living expenses) in order to finish your degree. The Jobcenter will only pay benefits if you are not expected to become totally disabled (and as such unable to work) for longer than six months as a result of your illness (Sec. 8 (1) SGB II, Sec. 43 (2) Sentence 2 SGB VI). At the same time, you must only require assistance for a limited period of time. In particular, it must be possible for you to complete your studies within a reasonable period of time (taking account of your illness). On the other hand, if your illness is likely to prevent you completing your studies in the foreseeable future, you should check whether you can argue that there are reasons why you cannot be deported (refer also to 1.9.4 in this chapter).



- If you suddenly and **unexpectedly find that you haven't got any money – which could happen if the company you work for has had to close down because of the coronavirus crisis** – your situation ought to be considered a case of hardship and you should be eligible for benefits in loan form. This is also a case in which the usual requirement that you must be able to support yourself financially (Sec. 5 (1) No. 1 AufenthG) does not apply. In this context, the Federal Ministry of the Interior wrote to all German immigration authorities on April 9, 2020 (Ref.: M3-51000/2#5) stating that “the requirement of proof of a person's ability to support themselves will [should] be temporarily waived if the person has been able to support themselves in the past through gainful employment but is unable to do so at present owing to the impact of the coronavirus.”



Caution: If you have provided evidence under Sec. 68 AufenthG that somebody else (usually a relative) has entered a commitment to support you, the Jobcenter will ask this person to pay back any money it has paid out to you.

Before you approach the Jobcenter you should always talk with the immigration authority first to make sure that you know under what conditions you will be allowed to remain in Germany in these circumstances.

You must also be able to support yourself **while you are looking for work** with a residence permit under Sec. 20 (3) AufenthG. **Entitlement to SGB II benefits are excluded under Sec. 7 (1) Sentence 2 No. 2b SGB II** as the sole purpose of your right to reside in Germany is to look for work. Sec. 23 (3) Sentence 1 No. 2 SGB XII excludes benefits in the same way.

However, you may be eligible for benefits if **you have been legally resident in Germany for five years** (Sec. 7 (1) Sentence 4 SGB II; SG Dresden of October 28, 2019 – S 29 AS 3154/19 ER, note 28). By the time you have graduated you will probably have been in Germany five years. In this case, the **Jobcenter** must provide you assistance in an emergency – unless the Federal Employment Agency has classed you as suffering total disability under Sec. 44a SGB II (SG Dresden of October 28, 2019 – S 29 AS 3154/19 ER, note 31).

Under Sec. 23 (3) Sentence 3 SGB XII you are eligible for one month's minimum subsistence assistance to tide you over in an **emergency** if you have been resident in Germany for five years. The scope of this assistance and the time for which it is provided must be extended if there are medical reasons why you cannot return to your own country (refer also to the non-acceptance ruling of the BVerfG of December 4, 2019 – 1 BvL 4/16 with reference to the BSG ruling of August 9, 2018 – B 14 AS 32/17 R on EU citizens). **Applications must be made to the local government social welfare office (Sozialamt).**

If your residence permit **is not extended or has been subsequently changed to expire on a certain date** because you cannot guarantee that you can support yourself, you will be **required to leave Germany and will consequently be eligible for asylum seekers benefits under Sec. 1 Asylum Seekers' Benefits Act (AsylbLG) until you leave the country.** The immigration authority must first change your residence status and issue a temporary suspension of deportation (toleration status). You will then receive benefits on a par with SGB XII benefits from your 19th month of residence (including previous periods of study). However, you will then be subject to residence restrictions (Sec. 61 (1d) AufenthG) and will only be able to obtain benefits (Sec. 11 (2) AsylbLG) at the place at which you are required to reside (which in most cases will be the place where you usually live, Sec. 61 (1d) Sentence 2 AufenthG). **Applications must be made to the local government social welfare office (Sozialamt).**

3.6 Am I eligible for child benefit (Kindergeld)?

The entitlement of students with a residence permit under Sec. 16b to child benefit was changed on March 1, 2020 (Gesetz zur Förderung der Elektromobilität, Federal Law Gazette 2019, Part I No. 48, p. 2451):

You are eligible for child benefit as a student if you are a parent and have a residence permit under Sec. 16b AufenthG and if

- you are in gainful employment;
- you are on parental leave (and remain employed as defined in Sec. 15 BEEG); or
- you are receiving ALG I (which is unlikely if you are a full-time student).

Gainful employment is not defined more precisely in law and the courts have not yet clarified its meaning. But the new rules are derived from Directive 2011/98/EU of December 13, 2011 *“on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State”* according to which you must be granted family benefits if you are in gainful

employment, no matter what residence status you have (Art. 12). For this reason, only the term “gainful employment” as defined in European law applies (refer also to Chapter III, 3.2). Gainful employment can be an activity which is not entirely trivial and which is subject to German employment and labour law (ECJ, ruling of February 21, 2013 – C-46/12). This is not true of compulsory internships undertaken during your studies or of any other internships to which minimum wage regulations (Sec. 22 MiLoG) and other employment rights do not apply. Otherwise it’s enough if you are in gainful employment for a minimum of around five hours a week (refer also to Chapter III, 3.2). You don’t necessarily have to be paying social insurance. The new rules have not yet been implemented in work instructions issued by the Federal Central Tax Office.

It is therefore very important, if you are a parent and are earning a small amount of money while studying, to apply for child benefit as payment of these benefits can only be backdated six months.

To obtain child benefit you must apply to the family benefits office (which is run by the Federal Employment Agencies). You must provide your and your child’s tax identification number (which you are given automatically at the time of birth and registration) with your application (Sec. 139b AO). Sometimes you will be asked to produce a birth certificate or an extract from the register of births.

Turkish students are eligible for child benefit

- if they are covered by statutory health insurance in Germany, whether compulsorily or voluntarily;
- if they are in gainful employment; or
- if they have been in Germany for longer than six months.

A much lower amount (treaty child benefit) can be claimed for **children living in Turkey:**

- €5.11/month for the first child,
- €12.78/month for the second child,
- €30.68/month for the third child and
- €35.79/month for every further child.

Citizens of: Bosnia and Herzegovina, Kosovo, Montenegro, Serbia

as the successor states to the social insurance treaty signed with Yugoslavia are only eligible for child benefit if they are working and liable for compulsory social insurance contributions, if they are receiving unemployment benefit, or if they are on parental leave. However, under the new rules there are very few other situations, except perhaps when you terminate your enrolment at your higher education institution, in which you will be eligible for family benefits.

Citizens of Algeria, Tunisia and Morocco

who are studying are eligible for child benefit under Euro-Mediterranean Association Agreements with the EU if they are either in gainful employment or in a statutory health insurance scheme.



If you receive child benefit for one child for at least one month in 2020, the child benefit fund will pay you a “child bonus” (a special compensatory payment for the problems caused by the pandemic) of €300. This also applies if you are only eligible for child benefit from December 2020. You are not eligible if you are receiving treaty child benefit for children living in Turkey.

3.7 What other family benefits am I eligible for?

The Promotion of Electromobility Act, Federal Law Gazette 2019 Part I No. 48, p. 2451 also made the eligibility of students with a residence permit under Sec. 16b AufenthG for all other family benefits dependent on gainful employment, parental leave (continued employment as defined in Sec. 15 BEEG) or receipt of ALG I.

Parental allowance (Sec. 1 (7) No. 2b BEEG): There are different types of parental allowance. In its basic form, parental allowance is paid to both parents together or to single parents for 14 months (Sec. 4 (1) BEEG), less the benefits received during maternity protection. The minimum parental allowance is €300 (Sec. 2 (4) BEEG), to which mini-jobbers are also entitled. Otherwise parental allowance is equal to 67% (subject to increasing and reducing factors) of net income (Sec. 2 (1) BEEG). There are many different combinations in which parental allowance can be obtained and it is a good idea to ask for professional advice from a pregnancy advice service about the model which has the most tax advantages for you. You can find an adviser using the “Familienplanung” search engine: <https://www.familienplanung.de>, Beratung – Beratungsstelle finden (in German).

Supplementary child allowance (Sec. 6a (1) No. 1 BKGG): Supplementary child allowance tops up child benefit if the parents’ income is not high enough to cover the living expenses of their children. The greatest difficulty is reaching the minimum income level of €600 for single parents or €900 for couples. You can only apply for supplementary child allowance if you have at least this income and you have applied for housing benefit (Wohngeld). The maximum possible supplementary child allowance is €185 a month. The method used to calculate this benefit is complicated. However, you can work out how much money you are entitled to on the Internet: <https://www.arbeitsagentur.de/familie-und-kinder/kiz-lotse> (in German). Applications for supplementary child allowance must be sent to the family benefits office, in the same way as applications for child benefit.

Maintenance advance: Maintenance advance is provided exclusively to the **children of single parents**. The allowance is paid if the other parent doesn’t pay any or enough maintenance. The reasons why the other parent doesn’t pay any maintenance are irrelevant. They only become relevant if the maintenance advance office attempts to recoup the money from the nonpaying parent. Maintenance advance is

- €174 a month for children up to the age of 5
- €232 a month for children between the ages of 6 and 11
- €309 a month for children aged 12 and over

Applications for a maintenance advance must usually be submitted to the local youth welfare office (Jugendamt). The necessary forms are available either from the youth welfare office or the local authority.

Child benefit under social security law: Child benefit under social security law can be received by young people up to the age of 25 who are studying, if they are no longer able to establish contact with their parents (living abroad). This form of child benefit is an alternative to child benefit under tax law (refer to 3.6), to which all parents who are liable for income tax in Germany (regardless in most cases of their actual income) are entitled. In specific cases, this benefit may be relevant to students with a residence permit under Sec. 16b AufenthG whose parents are no longer alive, who can no longer be located as a result of war or civil war, or who have been completely separated from the family for other reasons. The amount of child benefit paid is the same in both cases (as of January 1, 2021: €219).

3.8 What pregnancy and maternity benefits am I eligible for?

You will have full maternity protection if you are employed (refer to 2.9 in this chapter). Since 2018, employed students also enjoy maternity protection (Sec. 1 (2) No. 8 MuSchG).

Maternity benefit of up to €13 a day is only paid if you are covered by compulsory health insurance for students or are voluntarily covered by statutory health insurance.

If you have family insurance, are privately insured or insured in another EU Member State (ERASMUS students), you are entitled to a total of €210 maternity benefit from the Federal Office for Social Security. In both cases, your employer will pay the difference between €13 and the money you earn.

Students who are compulsorily or voluntarily insured and who are not employed (including self-employed students) are only entitled to €210 maternity benefit.

Example

Sonja is privately insured. She works part-time = €40 per working day = €200 a week = €28.60 per calendar day. The employer pays €15.60 per calendar day for 14 weeks. The Federal Office for Social Security pays her a one-off amount of €210.

Pregnant students can receive significant support from the **Federal Mother and Child Foundation (Bundesstiftung Mutter und Kind)**. You are not automatically eligible for benefits from this foundation. The actual amount available is not stipulated and is paid from a fund according to criteria which are defined anew every year. However, women on low incomes almost always receive several hundred euros and it is definitely worth applying for. This financial assistance is only paid out through a pregnancy counselling service, which you can easily find using the “Familienplanung” search engine: <https://www.familienplanung.de/beratung/beratungsstelle-finden/> (in German).

International students are eligible for **childcare support** under Secs. 22 et seq. SGB VIII provided by a day care mother or day care centre. As a parent, you only have to pay towards the costs to the extent that you can afford this (Sec. 90 SGB VIII). Day care places are arranged by the local youth welfare office.

In special cases, for example if one parent is suffering from a mental disorder, international students can also claim **family childrearing support** to help care for a child. This support can be provided by a trained family helper, a specialist supervisory youth officer, in the form of day care with social work support, placement in a foster family or educational residential care. All these services are provided by the youth welfare office. If you don't feel comfortable contacting the youth welfare office, you could first go to the Kinderschutzbund (which works “to improve children's living conditions, to protect them from violence, and to eliminate child poverty in every form” <https://www.dksb.de/en/home/>) or a child guidance clinic (Erziehungsberatungsstelle). Both of these institutions will treat your concerns with confidentiality, provided that the child's well-being is not acutely at risk.

Sec. 6 SGB VIII stipulates that these services are available to all children who are legally resident or whose residence is tolerated in Germany.

The purpose of childcare and child raising support is not to ensure that you have enough money to live on; this means that you can make use of these services without any risk to your residence in

Germany. Immigration authorities cannot require you to have more income than the BAföG rate and the minimum SGB II/SGB XII subsistence rates for your child.

Youth welfare offices are subject to data protection rules which prevent them passing on information to the immigration authority. They will only disclose confidential information if this is permitted under Sec. 65 SGB VIII.

Youth welfare offices also help international students **establish paternity** and to **enforce claims to maintenance** for a child. Single parents can also apply for assistance.

3.9 Am I eligible for housing benefit (Wohngeld)?

You may be eligible for benefits under the Housing Benefit Act (Secs. 3, 7 WoGG) if you have a residence permit under Sec. 16b AufenthG and provided you are not receiving benefits under Sec. 27 SGB II in the form of grants (Sec. 7 (1) No. 2 WoGG) and provided you are not entitled to BAföG (Sec. 20 (2) No. 1 WoGG). You are eligible for housing benefit if the people you live with do not receive any social welfare benefits. In this case 50% of your BAföG grant, excluding any child care supplement, will be counted as income. Housing benefit is **only granted if you have sufficient income to cover all but your housing costs**.

Whether or not your residence permit is renewed may be affected if you receive housing benefit because this is only paid to ensure that you have enough money to live on (Sec. 2 (3) AufenthG, 2.3.1.3 VwV AufenthG). Housing benefit is a public welfare benefit for which you have not paid any contributions.

Your residence status will not be negatively affected simply because you receive housing benefit. Your residence status will not be affected if you do not need housing benefit to cover your living expenses, in other words, if you can show that you have an income of at least €861 from other sources (BVerwG of November 29, 2012 – 10 C 4/12, note 29). Rents are very high in many towns and cities and housing benefit is extremely useful for many students who have an income of at least €861 but who cannot support themselves entirely from this amount.

Example

Sascha earns €450 a month in a part-time job and receives €420 from his parents. This means that he can support himself and his residence permit can be renewed. There is a problem though, he is studying in Frankfurt am Main and has to pay €500 a month for his flat. He is entitled to between €160 and €180 housing benefit (the exact amount depends on factors such as incidental service charges and other expenses).

3.10 Can I get a certificate of eligibility for social housing (Wohnberechtigungsschein)?

As a student, you are entitled to apply for a certificate of eligibility for social housing (Sec.5 WoBindG). This will not have any effect on your residence status because this certificate is not a public service which is provided to ensure you have enough money to live on.

Your actual entitlement will depend on whether you are only temporarily resident in Germany (Sec. 5 WoBindG and Sec. 27 (2) Public Housing Support Act, WoFG). Some housing authorities will ask you to present a residence permit which is valid for at least one year. However, the residence title you have cannot be used to predict how long you will be allowed to stay in Germany (VG Berlin of July 17, 2017 – VG 8 K 193.17). Your length of stay in Germany can only be predicted on the basis of the purpose of your residence. You will be entitled to a certificate of eligibility for social housing if you have a residence permit which has been issued for an entire degree programme. If in doubt, you should ask the immigration authority for a certificate.

3.11 Am I eligible for disability benefits?

The concept of “inclusion and education” was included in Sec. 75 SGB IX on January 1, 2018. This now also covers assistance for those in higher education and continuing professional development. Sec. 76 SGB IX also promotes assistance to enhance “social inclusion” (in areas such as housing, leisure activities, etc.).

If you are over 18 and have a disability when you enter Germany, this assistance is only available from agencies which provide integration assistance under Secs. 90 et seq. SGB IX. The relevant agency depends on the law in the federal state in which you live. You are entitled to receive advice from any agency which provides such assistance. If you have a disability and have questions about your benefits rights, the first places to go are the STW social advisory service (<https://www.studentenwerke.de/en/content/here-you-will-find-contact-persons-social>), the Studying with Disabilities Information and Advice Centre (IBS) (studium-behinderung@studentenwerke.de or 030/ 29 77 27-64) or the Centres for Additional Independent Participation Advice (EUTB) (<https://www.teilhabeberatung.de/de-Is/beratung/beratungsangebote-der-eutb> (in German)).

Under Sec. 100 (1) SGB IX, if you hold a residence permit under Sec. 16b AufenthG you only have a discretionary entitlement, because you are not permanently resident (Coseriu in Knickrehm/Kreikebohm/Waltermann 2017, Sec. 23 SGB XII, note 5). These benefits are only provided “if this is justified in an individual case”. In this way the law makes it a little more difficult to receive benefits. Not only is discretion exercised to weigh up the relative merits of individual and public interests, benefits can only be granted for very good reasons. This means in effect that benefits are only granted in exceptional cases. It is not enough for you to need support. What counts is whether you could have foreseen your need and whether you would suffer severe consequences which you could not anticipate or compensate for in any other way if your application for benefits is turned down (refer also to Coseriu in Schlegel/Voelzke, jurisPK SGB XII, August 2018, note 25).

This means that you will not usually be granted benefits if you hold a residence permit under Sec. 16 AufenthG if you were aware of your needs when you entered Germany. In this case you are therefore considered to be responsible for meeting these needs in order to pursue your studies.

On the other hand, you may have a very good reason for claiming the benefits if

- you have already successfully completed a considerable portion of your studies and you only then became disabled in such a way that, if you do not receive any support, you would have to end your studies, so that the investment you and society as a whole have made over many years would be entirely wasted;
- you would, if you do not receive any support, suffer social and occupational exclusion because, for example, of a lack of prospects for a career without a higher education degree.

Here too, however, the requirement is that you could not foresee this consequence when you started studying;

- your health status could be stabilised and studies continued if benefits were provided for a short period;
- turning down your application for benefits would result in your breaking off your studies and this would also have an unanticipated impact on members of your family and, in particular, on your children's needs.

Discretionary entitlements can become legal entitlements if these are set down in bilateral agreements.

Excursus: Turkish citizens

Turkish citizens are covered by the European Convention on Social and Medical Assistance (ECSMA). Turkey is the only third country which has joined this Convention. Article 1 ECSMA entitles the nationals of Contracting Parties who are lawfully present in Germany to social and medical assistance on the same conditions and to the same extent to which Germany supports its own nationals. Benefits which promote educational and social inclusion are designed in much the same way as other welfare benefits and are consequently covered by the Convention (refer also to Coseriu in Schlegel/Voelzke, jurisPK SGB XII, August 2018, note 31 et seq.). This means that Turkish citizens are entitled to benefits designed to foster inclusive education and social participation if they hold a residence permit under Sec. 16b AufenthG, regardless of their association status (refer to Sec. 4 (5) AufenthG).

You can find more details in the guidance for “International students and applicants with disabilities and chronic conditions: residence law and entitlements to social welfare benefits” published by the Studying with Disabilities Information and Advice Centre (IBS): <https://www.studentenwerke.de/de/content/internationale-studierende-mit> (in German) (or German and English: “Which social security rights claims do students from third countries with disabilities and chronic illnesses have?” published by the Studying with Disabilities Information and Advice Centre (IBS): <https://www.studentenwerke.de/de/node/1288652>).

3.12 Grants and loans

International students with a residence permit under Sec. 16b AufenthG are excluded from most social welfare benefits in Germany and are therefore especially dependent on scholarships, grants and loans. At the present time, many students are no longer earning any money from part-time jobs because of the coronavirus crisis. The anticipated rise in unemployment will also make it more difficult for students to pay for their studies in the future.

The Federal Ministry of Education and Research (BMBF) website www.stipendienlotse.de (in German) provides information about how to get a scholarship. Unfortunately, many scholarships depend on students being entitled to BAföG. But there are also local scholarships available and information about these can be obtained from student service organisations and the international offices of higher education institutions.



Payments of BMBF interim financial aid will be resumed from November 20, 2020 through to March 31, 2021. You will be able to apply for support from the responsible student service organisations if you find yourself in an emergency situation due to the pandemic. Information is available on the following website: <https://www.überbrückungshilfe-studierende.de/start>.

The temporary provision of KfW student grants is particularly important at present. Until March 31, 2021, international students with a residence permit under Sec. 16b AufenthG can obtain a student loan which provides monthly disbursements of up to €650. You must be resident in Germany to qualify and you must not be studying beyond the 10th semester. You can apply for this student loan through a student service organisation (STW) or a bank. These loans are interest free up to December 31, 2021 and only have to be paid back after you have completed your degree. Details can be found at: <https://www.kfw.de/inlandsfoerderung/Privatpersonen/Studieren-Qualifizieren/index-2.html>.



There is absolutely no problem receiving scholarships, grants and loans while you are studying in Germany. These sources of money are not considered to be public services to ensure that you have enough money to live on and do not therefore have any negative effect on your rights of residence.

3.13 Can I be exempted from paying television and radio licence fees?

The BVerwG ruled on October 30, 2019 (Ref.: 6 C 10.18) that students who are not receiving grants can also be exempted from paying licence fees in cases of hardship if their income does not exceed the minimum subsistence level (subsistence rates under SGB II/XII). This calculation is based on the standard requirement levels (€446 a month in 2021 for single people) plus rent (including water and heating) and health and long-term care insurance. The allowances stipulated in Sec. 11b SGB II are also deducted from earned income.

Example

Soraya receives €300 a month from her parents and also earns an average of €600 a month in a part-time job. A €200 allowance is deducted from her earned income (refer to Sec. 11b (2) Sentence 1 and (3) Sentence 2 No. 1 SGB II). Her exemption is therefore calculated on the basis of a total income of €700. Soraya pays rent (including water and heating) of €300 and pays €60 for private health insurance. Her total requirements are therefore:

€439 standard requirement level + €300 for accommodation and heating + €60 insurance = €799.

Soraya is entitled to be exempted from paying television and radio licence fees.

This means that all international students can present evidence of their income to be exempted from these fees. It is also possible to get licence fees for the last three years paid back, if you can present evidence of your income for the entire period.

The online application for exemption has not yet been updated to take account of the change in the law and cannot therefore be used by students on a low income. Until the situation changes, you should make an informal written application.



III European Union Member States, Iceland, Lichtenstein, Norway and Switzerland

Most EU law on freedom of movement and rights of residence not only applies to the **Member States of the EU** (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, [United Kingdom]) but also to the **other member states of the European Economic Area, EEA** (Lichtenstein, Norway, Iceland) and **Switzerland**. In the following, “EU citizen” refers to the citizens of all these countries. The law which applies to the residence of students from the EU/EEA/Switzerland is set down in the Treaty on the Functioning of the European Union (**TFEU**), which covers the basic rights of freedom of movement and nondiscrimination, the **Citizens’ Rights Directive** 2004/38/EC, transposed into national law by the **Act on the General Freedom of Movement for EU Citizens** (FreizügG/EU), and the Charter of Fundamental Rights of the European Union (**CFR**), which enshrines the fundamental rights of all EU citizens as regards the application of EU law.

In contrast, most of the employment and labour law which applies to EU citizens is derived from national rules. EU law which has substantial influence in certain areas (such as antidiscrimination law, temporary agency work, etc.) applies to all employees, regardless of their nationality. EU law has a major influence on the rules applying to posted workers, i.e. the conditions under which an employer can send an employee to work temporarily in another EU country.

Social security law has not yet been harmonised within the EU/EEA/Switzerland and the EU has no powers to impose rules on the social security systems of the Member States. In contrast, the **Regulation (EC) No. 883/2004 on the coordination of social security systems** for all cross-border situations is precise and legally binding and has been put into effect in the Implementing Regulation 987/2009. Annex VI of the Agreement on the European Economic Area included the EEA states in these regulations; Switzerland was included through Annex II of the Agreement on the Free Movement of Persons between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part. These rules also cover third-country nationals who migrate within the EU/EEA/Switzerland (Reg. (EU) No. 1231/2010). This is especially relevant for ERASMUS students who can take health insurance cover with them from one EU Member State to another.

Another important law is the **Freedom of Movement for Workers Regulation (EU) 492/2011**, which applies to all working students and to students who need labour market integration services.

1 Can EU citizens and citizens from the EEA or from Switzerland live in Germany without any form of permit?

EU citizens can enter and reside in Germany for up to three months without any permit or specific reason; all they need is a passport or ID card (Sec. 2 (5) FreizügG/EU). Even if borders are temporarily closed (coronavirus crisis), EU citizens are not breaking the law by staying in Germany. However, it is an administrative offence to avoid border controls. **EU citizens do not have residence titles**, but their relatives (refer to 1.2 in this chapter) and Swiss citizens do. The latter receive a **residence permit-Switzerland**. This residence permit has only a declaratory effect, as freedom of movement is derived from EU law and is not granted by the immigration authorities.

You do not have to register your residence at your local town hall if you are only temporarily resident for a period of up to three months (Sec. 27 (2) BMG). However, you must register your address within two weeks of moving into a house or flat (Sec. 17 BMG) or the address of your hostel/hotel/youth hostel or similar after three months (Sec. 29 (1) BMG). It is an administrative offence not to register and you may face a fine (usually of between €20 and €50) if you do not.

1.1 Do I have the right to freedom of movement?

EU citizens who entered Germany to study and who stay in Germany for longer than three months have the right to freedom of movement if

- they are **self-sufficient** and
- they have comprehensive **health insurance** cover (Sec. 4 Sentence 1 FreizügG/EU).

Your income will not be checked as long as you do not claim social welfare benefits to cover your living expenses.

In the first five years of your residence, the immigration authority can issue an official decision that your free movement has been terminated (Sec. 5 (4) FreizügG/EU), if you are considered to be receiving “unreasonable” social security or basic allowance payments. This decision must take account of the length of time for which you are anticipated to receive benefits (ECJ of September 19, 2013 – C-140/12 “Brey”). However, free movement can only be withdrawn if you actually receive tax-financed benefits to cover your living expenses under SGB II/SGB XII, which is rarely the case with students as they are excluded from SGB II/SGB XII benefits.

Example

Marie is a Latvian citizen. She has travelled to Germany to study. She has a serious mobility impairment and cannot finance her studies from her own earned income. Marie’s residence in Germany cannot be ended as long as she manages to finance her studies from her own means or with the support of other people. However, she will lose her right to reside if she claims benefits to cover her living expenses (she would theoretically be entitled to temporary benefits under Sec. 23 (3) SGB XII).

The right to freedom of movement may arise on other grounds and may therefore not be affected by whether you can support yourself financially or not:

- Through gainful employment: If you **work at least five hours a week in a part-time job** (LSG Bavaria of February 6, 2017 – L 11 AS 887/16 B ER; LSG Berlin-Brandenburg of February 27, 2017 – 18 AS 2884/16; BSG of September 12, 2018 – B 14 AS 18/17 R), you are considered to be in employment for the purposes of EU law and must therefore be treated in the same way as German citizens under social security law (refer also to 3.2 in this chapter).
- The **children and stepchildren** of EU citizens who have the right to freedom of movement also have the right to freedom of movement **up to the age of 21 and beyond provided** they derived this right from their parents prior to their twenty-first birthday.
- **As the spouse** of an **EU citizen** who is gainfully employed or who has permanent residence status.
- **As the spouse of a German citizen.**

In all these cases you are also eligible for BAföG.

Example

Valentina (20) is from Bulgaria. She has been admitted to study sociology at the Humboldt University Berlin. She and her mother go to Berlin where they then live with an acquaintance for a short while. After a few days, her mother finds an eight-hour-a-week job in a private household. Valentina has the right to freedom of movement regardless of whether she can support herself financially or not because she is the child of a worker in EU law (and is also entitled to BAföG; refer to 3.2 in this chapter).

Students from EU or EEA states or Switzerland acquire a **permanent right to reside** if they have **resided in Germany for five years** and have had comprehensive health insurance throughout this time (either statutory, private or foreign) and if they have not claimed social assistance under SGB II/SGB XII. This right is not affected by benefits to top up earned income. You can apply to the immigration authority for a **document certifying permanent residence** (Sec. 5 (5) FreizügG/EU). This card can be useful for proving to public authorities which administer social welfare benefits that you must be treated in the same way as a German citizen.

Transitional **Brexit-related** arrangements apply to British citizens. **British citizens** will continue to enjoy freedom of movement and will not require a residence title up to the end of 2020. After that they should be able to change to a residence title under the AufenthG which grants much the same legal rights as previously. The relevant legal rules have not yet been agreed and students from the United Kingdom will probably need a residence permit under Sec. 16b AufenthG, unless they are able to derive a better status from a relative. British students who have been resident in Germany for five years will be issued a settlement permit.

→ Refer to VI Annex 1, **Brexit and its impact on citizens of the United Kingdom of Great Britain and Northern Ireland**, p. 133

1.2 When do the family members of EU/EEA/Swiss citizens have the right to freedom of movement?

The family members of EU citizens have the right to free movement if the EU citizen has acquired the right to free movement in Germany. Students must then either be self-sufficient and have comprehensive health insurance for themselves and their family or have the status of worker (while studying).

Family members who are EU/EEA/Swiss citizens do not require permission to reside.

Family members who are nationals of a third country require a residence card. Residence cards are issued by the immigration authority within a period of six months for a period of five years (Sec. 5 (1) FreizügG/EU). It makes no difference how long it will take the principally entitled EU citizen to complete his or her studies.

Family members of Swiss citizens also receive a **residence permit-Switzerland**.

Nonworking students can only pass on their right to free movement to the following family members:

- Spouses and registered civil partners
- Own children who receive maintenance (Sec. 4 Sentence 2 FreizügG/EU)

They must not be receiving supplementary social assistance to provide a subsistence level of income (SGB II/SGB XII) and evidence that the family has comprehensive health insurance must be produced.

Example

Kupsu is from Finland and is studying at the Goethe University in Frankfurt am Main. She has a scholarship. While she is studying for her degree, she marries Ali, a refugee from Iraq, who has only been granted toleration status. As a member of Kupsu's family, Ali has a derived right to free movement if he is self-sufficient and has comprehensive health insurance. This means that Ali could take up work (full-time employment subject to compulsory social insurance contributions) which would enable him to be self-sufficient. However, Kupsu's parents could pay more maintenance and Ali could get family insurance cover through Kupsu's student insurance scheme. He would then be issued a residence card, regardless of whether he entered the country illegally or not.

The right to reside can be derived from **students with the status of worker** for the following family members:

- The children of the student's spouse or registered civil partner.
- Immediate relatives or those of the partner, provided that they are paid maintenance.

In these cases, it is possible to claim supplementary social assistance under SGB II/SGB XII and there is no need to obtain comprehensive health insurance yourself.

Example

Jurek is from the Czech Republic. He is studying at the Friedrich Schiller University Jena and working 10 hours a week as a student assistant. He is married to Swetlana, a Russian citizen, who is staying in Germany on a tourist visa with her 10-year-old daughter from her first marriage. Swetlana and her daughter both have the right to free movement in Germany, they don't need a new visa to reunite the family and are entitled to apply for benefits from the local employment agency.

It makes no difference in EU law if **spouses have separated**, provided that no petition has been made for divorce and both spouses still live in Germany. In the case of a divorce, the spouse continues to have the right to reside if the couple has been married for either **three years (one of which in Germany)**, they **have a child together for whom they share custody**, or it is possible to argue for a **case of hardship**, in particular because it would be unreasonable to continue the marriage due to violence or other serious impairment of individual rights (Sec. 3 (5) FreizügG/EU).

The **children and the spouse who has parental custody of them** retain their right to reside following the death of the EU citizen or if the EU citizen leaves Germany (Sec. 3 (4) FreizügG/EU) for as long as the children are attending an educational institution (although the courts have not yet ruled on whether a kindergarten can also be considered to be an educational institution).

Family members are entitled to permanent residence if they have been living in Germany with the principally entitled EU citizen for five years (Sec. 4a (5) FreizügG/EU). They can then get a **permanent residence card** (Sec. 5 (5) Sentence 2 FreizügG/EU). Other specific cases of permanent residence are covered by Section 4a (3) and (4) FreizügG/EU.

2 Can students from EU or EEA states or from Switzerland take up any kind of gainful employment?

Yes, if you are from any of these states, you have the right to work, regardless of whether you are resident in Germany or not. Family members with a residence card can also do any kind of paid work.

2.1 How are EU citizens insured when they are working?

The rules on the mandatory payment of social insurance contributions on earned income apply to all employees, regardless of your nationality. Whether or not you are required to pay social insurance contributions has nothing to do with where you live, but with where you work.

The situation is different if you are **posted abroad**: this is the case if you work for a foreign company which has sent you to work in Germany but you remain subject to the social insurance regulations in the country in which your employer is based. The regulations of Directive (EU) 2018/957 on the posting of workers and Art. 12 Regulation (EC) No. 883/2004 on the coordination of social security systems apply if you are posted within the EU. It is also possible for students from the EU to work as posted workers. If a student from Poland is employed in Germany by a Polish nursing firm, either in a private household or in a nursing home (as a temporary agency worker), his or her health, unemployment and pension insurance contributions are determined by Polish law. Proof that the worker is insured must be provided by presenting the A1 portable document in Germany. If you are a posted worker, you must be in possession of this document.

Self-employed workers are also subject to the social security law in force at the place where they work (Art. 11 (3) a) Reg. (EC) No. 883/2004). In Germany you are required by law to obtain health and long-term care insurance if you are not automatically covered by the statutory system (Sec. 193 (3) VVG).

If you were insured in a state system in another EU/EEA state or in Switzerland before taking up self-employment in Germany, you can **obtain voluntary cover with a German statutory health insurance scheme in the first three months**. This could be particularly attractive if you do not have compulsory student insurance.

Example

Ellen is from Estonia. At the age of 32, she moved to Dresden to study saxophone at the Dresden College of Music. She is too old for the compulsory student insurance scheme (Sec. 5 (1) No. 9 SGB V). She works as a freelance saxophone teacher in Dresden and is able to use her previous compulsory insurance in Estonia to obtain cover from a statutory health insurance company of her choice in Germany.

If you don't obtain cover with a German health insurance scheme in the first three months, you will be admitted to a statutory health insurance scheme **under Sec. 2 (1) No. 13 SGB V** on the basis of your previous compulsory insurance in another EU Member State. A health insurance company of your choice determines whether you are compulsorily insured. It is important that you present evidence that you were previously insured in a state system or general social security system and that you are currently self-employed. The minimum amount of time you must be working as a self-

employed person is not absolutely clear. But you should be working for at least four to five hours a week (the same amount of time which applies if you are an employee), as otherwise your work might be considered to be of no more than marginal importance (ruling of the ECJ of December 20, 2017 – C-442/16).

The situation is more difficult **if you are insured in an EU/EEA state or Switzerland and take up work in Germany** on which you are not required to pay compulsory health and long-term insurance contributions (mini-job, working student privilege).

In this case you are both a student and a worker (ECJ of February 21, 2013 – C 46/12 Styrelsen).

The German statutory health insurance national liaison agency (Deutsche Verbindungsstelle Krankenversicherung-Ausland, DVKA) assumes that the German insurance system becomes responsible as soon as you start a part-time job or paid internship. This means that you are either compulsorily insured with the student statutory health insurance scheme or you must obtain voluntary or private insurance cover, for example if you are over the age limit, are a PhD student or are enrolled at a preparatory college.

This is particularly problematic **if you are insured (without having to pay any contributions) with your family or simply on the grounds of your residence in another Member State** (refer to 3.1 in this chapter for more details). This is all the more so given that German students on a low income also remain insured with their family with the statutory health insurance scheme.

This specific issue has not yet been ruled on by the ECJ. However, the ECJ ruling of April 23, 2015 (Ref.: C-382/13 C. E. Franzen, H. D. Giesen, F. van den Berg v Raad van bestuur van de Sociale verzekeringsbank), which concerns non-insured workers in marginal employment in Germany, does clarify the respective responsibilities of the agency at the place of work and at the place of residence. If the insurance system at your place of work is responsible, but doesn't provide insurance cover (the ECJ ruling related to pension insurance) for your employment, it will depend on whether the law of the state in which you are resident stipulates that benefits must be paid despite your (marginal) employment in another Member State or whether you must be provided insurance cover. However, you must not end up with entitlements in both countries (ECJ Id., note 64 et seq.). The ECJ (ruling of September 19, 2019 – C-95/18 and C-96/18, Franzen II; note Becker, ZESAR 2020, p. 170 et seq.) has now developed these considerations and confirmed that the state in which you are working – even if only in marginal employment – is fundamentally responsible for your social insurance. If the state in which you are resident (the place of residence of your family) provides non-contributory benefits simply on the grounds of residence, these cannot be excluded on the grounds of another employment which is not linked to insurance benefits.

In reality the implementation of these rules remains problematic:

- You are required to notify your insurer, health service or assisting health insurance company in Germany of **any paid work** you do.
- The agency which is responsible in your country of origin can revoke your EHIC (refer to 3.1 in this chapter).
- If it doesn't do this, your EHIC will continue to be accepted in Germany
- The German national liaison agency can initiate mediation proceedings.

Submission to the ECJ should be sought, as legal certainty can only be obtained by an ECJ ruling.

2.2 Are students from EU Member States subject to special employment law regulations?

No. The numerous employment protection standards (equal pay for temporary agency workers, working time rules, prohibition of discrimination, etc.) in EU law apply to all workers, regardless of nationality. The most important employment and labour law regulations are discussed in Chapter II, 2.4 – 2.11.

2.3 What special rules apply when students from EU Member States (also) work in their country of origin?

Many students from EU or EEA states or from Switzerland continue to have their habitual centre of interest in a neighbouring country. If you are working in Germany, you are classified as a **frontier worker** under Art. 1 f) Reg. (EC) No. 883/2004. Your insurance obligations are determined by German law. At the same time, you have certain privileges under Reg. (EC) No. 883/2004. In particular, if you are a frontier worker (employee or self-employed) with statutory or voluntary health insurance in Germany, you can also be issued an insurance card by the responsible insurance agency in the country in which you live and can obtain medical treatment there as well (Art. 17 Reg. (EC) No. 883/2004).

Conversely, this also applies if you are living and studying in Germany but working part-time in a neighbouring country. In fact, in this case you will have access to more health services because most other countries do not exclude students from health insurance cover as workers.

Example

Laurent is a 33-year-old French citizen. He is studying mechanical engineering in Freiburg where he lives with his girlfriend. He and a friend run a company in Strasbourg which organises hikes for tourists in the Vosges mountains. He is too old to be in the German compulsory student insurance scheme but he does have statutory social insurance and pays contributions in France on the grounds of his work there. He therefore has a health insurance card (carte Vitale) from France. With this insurance cover Laurent can have a health card (EHIC) issued to him in Germany from a health insurance company of his choice. This card can be used to pay for all the medical services covered by it.

It is more complicated if **you work in two different EU Member States** while you are studying. In this case, compulsory insurance is based on the country in which you live, unless the work you do in that country only makes up an insignificant share of the work you do as a whole (Art. 13 Reg. (EC) No. 883/2004). Art. 14 (8) subparagraph 3 Implementing Reg. (EC) No. 987/2009 includes a rule of presumption under which a substantial part of your work is presumed to be exercised if at least 25% of your working time or income is attributable to activity in the country in which you live.

Example

In the case previously discussed, **Laurent** earns around €12,000 a year from his company in Strasbourg, for which he works an average of 15 hours a week. He now takes on an additional part-time student job in Freiburg for three hours in the week for which he is paid €1,400 a year. Laurent remains in the French statutory health insurance scheme.

It would be different, however, if Laurent was employed for eight hours a week for a research project in Freiburg for which he was paid approximately €4,000 a year. In this case, his activity at the place where he lives would constitute a significant proportion of his gainful employment and he would therefore no longer be required to pay insurance contributions in France. It is problematic, however, that his work in Germany does not mean he must automatically pay insurance contributions (working student privilege). However, Laurent can become voluntarily insured in Germany with reference to his previous statutory insurance in France.

For **tax purposes** the treaties between the two states is key. In principle, you must pay income tax in Germany if you live in Germany, even if you earn money in another country (Sec. 1 (1) EStG). You may be liable for tax in both countries. This depends on the arrangements agreed in the double taxation agreement between the two countries. There is no uniform EU law in this area. Information is provided on the website of the Federal Ministry of Finance on international tax law (<https://www.bundesfinanzministerium.de/Web/EN/Home/home.html>, Issues – Taxation – Double Taxation).

You will need to consult a tax adviser (for a fee) for more detailed information.

3 What social welfare benefits are students from the EU/EEA/Switzerland eligible for during their stay in Germany?

Under primary EU law, the nationals of all Member States are Union citizens (Art. 20 TFEU), have the right to free movement (Art. 21 (1) TFEU) and must be treated equally (Art. 18 TFEU), subject only to provisions in secondary law.

3.1 Which health insurance system is responsible for students from the EU/EEA/Switzerland?

The following applies to EU citizens and to students from the EEA and Switzerland:

Whether or not you are required to take out compulsory student health insurance (Sec. 5 (1) No. 9 SGB V) depends on whether, based on your place of residence, Germany is the responsible Member State or whether the ties you have to your parental family are such that you continue to have your habitual centre of interest in the other country (Art. 11 Reg. (EC) No. 883/2004). It is also important whether you derive your income in the place where you are studying, i.e. in Germany, or whether your parents are providing you maintenance (Art. 11 Reg. (EC) No. 987/2009).

If you are insured in your country of origin and that is also where you have your habitual centre of interest, insurance in your country of origin takes precedence over compulsory student insurance (refer to Sec. 5 (1) No. 9 SGB V). This also applies if you are insured with your family.

You need a **European Health Insurance Card (EHIC)** or a Provisional Replacement Certificate (PRC). Health insurance companies in Germany are often willing to take account of the length of your residence in Germany and may issue you a health insurance card on this basis.

Refer to 2.1 in this chapter on insurance in your country of origin if you take up part-time employment in Germany.

An EHIC or health card entitles you to receive in-kind health benefits.

Principles governing in-kind benefits:

In-kind benefits are the non-monetary services provided to insured persons in Germany by statutory health insurance schemes: these are outpatient and inpatient treatment, drugs and therapies, etc.

These services are all provided at the same level as services normally provided by statutory health insurance schemes.

The scope of services depends on how long you are planning to be resident in Germany. If you are planning to take your entire degree in Germany, and not just study for one or two semesters, you will to all intents and purposes be entitled to all the health services which can be normally paid for with the health card.

Your card is used to settle the cost of any services you use. The health insurance company charges the insurance agency in another Member State via the German liaison agency.

Nursing care in kind is also paid for.

The health card does not cover monetary benefits, such as

- long-term care allowance,
- sickness benefit or
- maternity benefit.

3.2 When are students from the EU/EEA/Switzerland eligible for benefits under the federal financial aid scheme (BAföG)?

If you originally entered Germany in order to study, the fact that you have **taken up your studies alone does not entitle you to BAföG**.

But as soon as you acquire the status of worker by **taking up work** or by engaging in self-employed activities you **become fully entitled to support if you meet all the other requirements. Any parental income in your country of origin will be taken into account in particular.**

Principle

Under EU law, workers and their families have an unrestricted right to reside and are fully entitled to social services (Art. 45 TFEU, Art. 7 (2) Reg. (EU) No. 492/2011). The right to free movement and the fundamental right to equal treatment also applies to the self-employed (Art. 49 TFEU, Art. 24 Directive 2004/38/EC).

Workers:

Two requirements must be met:

- The work must be subject to employment and labour law. This excludes internships that are not subject to the law on minimum wages, employment promotion measures, etc. Mini-jobs are subject in full to employment and labour law (refer to Chapter II, 2.7).
- The work must not be of a completely secondary nature. This excludes occasional jobs such as babysitting, or activities which are merely engaged in for the purpose of claiming benefits. However, you don't necessarily have to be paying social insurance contributions. Recent social court rulings have recognised that someone is a worker if they work around five hours a week or 20 – 25 hours a month (BSG of September 12, 2018 – B 14 AS 18/17 R: initially for €100 then €250 a month; LSG Bavaria of February 6, 2017 – L 11 AS 887/16 B ER: 5 hours a week/€187 a month; LSG Berlin-Brandenburg of February 27, 2017 – 18 AS 2884716: 5 hours a week/€180 a month).

The **BAföG administrative regulations** are not very precise. They correctly state that any work you do *“must in any case be a real and genuine activity of economic value, which is not so small in scale as to be completely secondary and marginal.”* The regulations then point out that: *“Economic activity will usually be recognised as an employment relationship within the meaning of Paragraph 1 Number 4 if the relationship has existed for at least six months.”* This doesn't mean that you are only entitled to BAföG after you have worked for six months. **You acquire the status of a worker from the very first day on which you take up your employment.**

BAföG can also be claimed (Sec. 8 BAföG) by the following persons:

- Students who are married to a German citizen.
- Students whose marital partners have permanent residence status or are working.
- Students, even if they are over 21, whose parents or stepparents have permanent residence status or are working. These students must have had the right to free movement before they reached the age of 21 or have received maintenance from their parents.
- Students who are eligible for permanent residence.
- Students who were previously workers and whose studies are related to their work or who have become unemployed through no fault of their own.

Examples

Salvatore is 20 years old. He arrived in Munich from Italy and started learning German. He only began studying medicine two years later at the age of 22. His father (his parents have been divorced for 15 years) lives in Cologne, where he works for a car manufacturer. As the child of a worker, he has the right to free movement and is eligible for BAföG even after he has reached the age of 21, when he will no longer be able to derive his right of free movement from his father.

Roseline is 19 years old. She comes to Germany from France to work as an au pair. She then works as a temp in a clothing store. She later starts making bags herself which she sells at markets. She is 24 before she decides to start studying. As she has had health insurance throughout the previous five years, initially in France and then later as an employee and finally by paying voluntary contributions to the statutory health insurance scheme, and has not claimed any SGB II benefits from her local employment agency, she now has permanent residence status and is eligible for BAföG, if her parents' income is too low.

Example

Floriana is from Romania. At the age of 23 she arrives in Germany with a Bachelor's degree in tourist business administration and works in a travel agency in Leipzig from July 2019 to March 2020. She loses her job because of the coronavirus crisis (dismissal due to operational reasons). As she is unlikely to get a new job in the foreseeable future, she decides to start a Master's degree in business administration at the University of Leipzig. In this situation, she is entitled to BAföG (Sec. 8 (1) No. 4 BAföG).



EU citizens can also benefit from current special corona BAföG rules. Any money earned by EU citizens working in an industry or field which contributes to the containment of the pandemic will not be counted towards their income for BAföG purposes until the pandemic has come to an end in Germany (Sec. 21 (4) No. 5 BAföG).

3.3 When are students from the EU/EEA/Switzerland eligible for SGB II benefits from the local employment agency (Jobcenter) under the social security code?

Students from the EU/EEA and Switzerland are not eligible for SGB II benefits because they only have a right to reside if they are self-sufficient (Sec. 4 FreizügG/EU). If they are not self-sufficient, they are excluded from benefits under Sec. 7 (1) Sentence 2 No. 2 SGB II as the payment of benefits would deprive them of their right to reside. This applies even if the immigration authority has not initiated a procedure to determine the end of your right to free movement under Sec. 5 (4) FreizügG/EU.

In this case, you will also be excluded from benefits under Sec. 27 SGB II (additional needs allowances, benefits in cases of hardship), as these benefits can only be claimed if you are eligible under Sec. 7 (1) SGB II and are only excluded from benefits on the grounds that you are in training (in this case, studying) (Söhngen in Schlegel/Voelzke, jurisPK-SGB II, 2020, Sec. 27 note 8).

EU citizens who are **pregnant or ill** are only eligible for **temporary benefits under Sec. 23 (3) SGB XII**. You can only claim these benefits for one month within a period of two years. The benefits are restricted to support with accommodation, food, hygiene and medical treatment of acute and painful conditions and in the event of pregnancy and maternity. If necessary in specific circumstances, it is possible to claim other benefits to prevent particular hardship (Sec. 23 (3) Sentence 6 SGB XII). Most of the related constitutional issues have been addressed in case law. The LSG Berlin-Brandenburg (of July 11, 2019 – L 15 SO 181/18) ruled that benefits can be claimed if no final judgement has been made determining loss of eligibility. In this case, however, only reduced benefits can be claimed. The LSG NRW (of March 28, 2018 – L 7 AS 115/18 B ER) and the LSG Baden-Württemberg (of March 28, 2018 – L 7 AS 430/18 ER-B) have ruled that claimants are eligible for benefits for an unlimited period if they are seriously ill. The SG Darmstadt (of January 14, 2020 – S 17 SO 191/19 ER) has submitted this issue for decision to the Constitutional Court (BVerfG).

Students from the EU/EEA and Switzerland are eligible for benefits under Sec. 7 (6) SGB II (the original rule applies) and under Sec. 27 SGB II (additional needs, cases of hardship) as are children (Secs. 7 (2), (19), (22), (23), (28) SGB II) in the following circumstances:

- You take up paid work (employment or self-employment) of at least 4 – 5 hours a week (Sec. 7 (1) Sentence 2 SGB II); if you lose your job involuntarily (owing to the coronavirus crisis, for example), you retain your status as a worker for six months. If you have been working for at least one year, you retain your status as a worker thereafter, provided that you are seeking work (Sec. 2 (3) FreizügG/EU).
- You have been resident in Germany for five years (Sec. 7 (1) Sentence 4 SGB II; Sec. 4a FreizügG/EU). Short periods of absence or absence for up to one year for an important reason do not affect your eligibility (refer to Sec. 4a (6) FreizügG/EU).
- Your right to reside is derived from your spouse or a parent or if an immediate relative who has the right to free movement in Germany is providing maintenance, even if such maintenance does not cover your entire requirements (Sec. 3 FreizügG/EU).
- Your right of residence is derived from a child in school or in vocational training if you or the other parent are from an EU/EEA country or Switzerland and are or have been in gainful employment in Germany (Art. 10 Regulation 492/2011).
- Your right of residence is derived from a child in school or in vocational training if you or the other parent are from an EU/EEA country or Switzerland and are or have been in gainful employment in Germany (Art. 10 Reg. (EU) No. 492/2011).
- Your right of residence could be derived from the regulations applying to the Residence Act (AufenthG), in particular for the parents of a German child or if you cannot be deported to your country of origin (Sec. 11 (1) Sentence 11 FreizügG/EU).

Examples

Anna is from Lithuania. She arrived in Germany in early 2015. She registered her residence on February 1, 2015 and started studying social work in the autumn of 2016. She is pregnant and is due to give birth on September 1, 2020. She would like to take a sabbatical semester in the winter of 2020/2021 and apply for benefits from her local employment agency to cover this period. As Anna has already been living and registered in Germany for five years, she is no longer excluded from benefits under Sec. 7 (1) Sentence 4 SGB II. She is also entitled to permanent residence under EU law because she has had health insurance for five years and has not claimed any SGB II benefits (Sec. 4a (1) Sentence 1 FreizügG/EU).

Fatima is from Spain. She moved to Germany in 2017 with her 12-year-old daughter and began studying dentistry in the winter semester of 2018/2019. She works part-time in a hospital. She has a contract of employment under which she works a nightshift once a week. Although as a student she is excluded from local employment agency benefits under Sec. 7 (5) SGB II, as a worker she can claim social assistance for her daughter (Secs. 19, 23 SGB II), 50% of her accommodation costs (Sec. 22 SGB II) and benefits from the education package (Sec. 28 SGB II) as well as an additional needs allowance for single parents (Sec. 27 (2) SGB II). Fatima must also apply for child benefit and maintenance advance. These will both be deducted from the benefits paid to her.

Igor is from Slovenia and has been studying in Regensburg since 2018. He is the father of a six-month-old child. The child is a German citizen and he shares custody of the child with the child's mother. He would like to interrupt his studies for one year to take parental leave while the child's mother returns to work. He has not worked in the past and he does not have enough

savings to cover the period of parental leave. Igor, too, is eligible for benefits under SGB II, if he is no longer excluded from benefits under Sec. 7 (5) SGB as a student. He can derive his right to reside from the legal right of third-country nationals as the parent of a German child for which he does in fact exercise care and custody (Sec. 28 AufenthG). This right is derived from the most-favoured clause in Sec. 11 (1) Sentence 11 FreizügG/EU.

3.4 Are students from the EU/EEA/Switzerland eligible for child benefit (Kindergeld)?

Students from the EU/EEA and Switzerland are eligible in Germany for child benefit for their children if their **claims are covered by Sec. 62 EStG** and provided that such payments are provided for in **Regulation (EC) No. 883/2004**.

Since the amendment of Sec. 62 EStG in 2019, these two legal regulations are no longer in step with each other.

Child benefit is only paid **in the first three months** of residence if one of the parents is gainfully employed in Germany (Sec. 62 (1a) EStG). This rule does not conform with EU law, **particularly in the case of students**, as they are entitled to the right to reside for as long as they are self-sufficient and they may not be deprived of family benefits while they enjoy free movement under Reg. (EC) No. 883/2004. The Bremen Fiscal Court ruled on 28 August 2020 (2 K 99/20) that this rule contravenes European law and referred the matter to the ECJ (case C-411/20).

It is not disputed that students who are resident in Germany and who are parents are eligible for child benefit **from the fourth month of their registered residence** or registration with the immigration authority or tax authority (Sec. 62 (1a) Sentence 3 EStG). In order to qualify, these students must be self-sufficient, have health insurance or have the status of workers on the basis of part-time work.

You are also eligible if you **were previously gainfully employed in Germany**, even if you are not presently self-sufficient. Whether you are in gainful employment or not is irrelevant (Sec. 62 (1a) Sentence 3 EStG).

Any child benefits paid in another Member State are deducted from the amount of child benefit paid in Germany (Sec. 68 (2) Reg. (EC) No. 883/2004).

The Member State in which the child lives is irrelevant (Art. 67 Reg. (EC) No. 883/2004). The parent or grandparent in whose household the child lives is the primary claimant of child benefit. However, this person can also empower the parent living in Germany to make the claim.

Examples

Tessa is a single parent and moved with her two children from Salzburg to Munich on February 1, 2020. The children have been enrolled in primary school since March 1, 2020 and Tessa is enrolled at the Ludwig Maximilian University in Munich. She supports herself from savings. Tessa is not eligible for child benefit until May 1, 2020. As of May 1, 2020, she is eligible under Sec. 62 EStG. She and her children have the right to free movement because they have health insurance (Tessa is covered under the student statutory health insurance scheme and her children are insured as members of her family) and are not claiming any benefits. Tessa should

consider claiming child benefit for the first three months as well as she is eligible under Art. 67 Reg. (EC) No. 883/2004.

If Tessa takes up part-time work on March 1, 2020 (in a supermarket), because the beginning of the semester has been postponed owing to the coronavirus crisis, she will be eligible for child benefit from March onwards. She continues to be eligible, even if she loses her job again and even if she finds herself dependent on social assistance for herself and her children during the course of her studies.

Agate is from Poland. She has been studying in Berlin since the winter semester of 2019/2020 and earns €200 as a student assistant. Her six-year-old son is living with his father in Warsaw (not in the same household with Agate). He works part-time and receives €29 child benefit from the Polish state. Agate is also eligible for child benefit in Germany (Sec. 62 (1a) Sentence 3 EStG, Art. 68 Reg. (EC) No. 883/2004). Under German law, the father must apply for the child benefit because the child is living in his household (Secs. 67, 64 (2) EStG). He can transfer the power to make this application to Agate. Under Art. 60 (1) Sentence 2 Reg. (EC) No. 987/2009 (Implementing Regulation to Reg. (EC) No. 883/2004), the child benefit office must take account of Agate's application if the father does not make the application himself. The amount of German child benefit is reduced by €29 to €175.

The child's registration in Germany (**tax identification number**) or other Member State must be submitted (Sec. 62 (1) Sentence 2 EStG). Family benefits offices are required to obtain tax identification numbers themselves from the authorities in the country of origin (Art. 2 (2) Reg. (EC) No. 987/2009).

The family benefits offices – which are the central authorities for internationally-related benefits – then check themselves whether the free movement requirements are met (Sec. 62 (1a) Sentence 4 EStG). The immigration authority must be informed if benefits are refused (Sec. 62 (1a) Sentence 5 EStG). Child benefits offices can temporarily suspend payment of these benefits without sending an official decision (Sec. 71 EStG).

3.5 What other family benefits are students from the EU/EEA/Switzerland eligible for?

As well as child benefit, you can also apply for:

Child benefit under social security law: This can be claimed by students who are full orphans or who can no longer establish contact with their parents (Sec. 1 (2) BKGG).

Supplementary child allowance: Under Sec. 6a BKGG, this depends on the amount of child benefit you are paid and is only available to you if you are eligible for child benefit (refer to 3.4).

Maintenance advance: This depends exclusively on the child having the right of free movement. Local youth welfare offices do not have the authority to verify the right of free movement themselves, but must assume that this exists (presumption of free movement) until the immigration authority comes to a different conclusion (VGH Bavaria, ruling of May 14, 2020 – 12 CE 20.985). The maintenance advance is not subject to social security coordination rules and benefits are only paid for children who are habitually resident in Germany.

Parental allowance: This is only payable if the parent has the right of free movement (Sec. 1 (7) BEEG). If parental allowance is paid on the basis of gainful employment, the right of free movement is derived directly from the status as a worker. More information is only required if you claim the basic amount of €300 available to those who are not in work (Sec. 2 (4) BEEG). The Federal Social Court has finally ruled that the presumption of the right of free movement continues to apply until the immigration authority issues a negative official decision (BSG, ruling of March 27, 2020 – B 10 EG 5/18 R).

3.6 What pregnancy and maternity benefits am I eligible for?

Students from EU/EEA countries and Switzerland who are covered by the German statutory health insurance scheme, whether as students, as family members or voluntarily, are eligible for all insurance-based benefits (refer to Chapter II, 3.8).

If you are insured in another EU Member State – or are family insured or privately insured – you are eligible for a single maternity benefit payment of €210, which is paid out by the Federal Office for Social Security, but not to the daily amount of €13 which students in part-time work who are compulsorily insured in the statutory health insurance scheme are entitled to.

You can obtain all other **statutory health insurance scheme pregnancy and maternity benefits** as in-kind benefits (EHIC or a health card). But you are not entitled to **direct home help support** for any other children while you are still in hospital, for example, as this is a monetary and not an in-kind benefit (Sec. 24h SGB V with reference to Sec. 38 (4) SGB V).

All EU citizens, as well as anyone who is pregnant and all parents, are eligible for support from the Federal Mother and Child Foundation and from the youth welfare services (refer to Chapter II, 3.8).

3.7 Are students from the EU/EEA/Switzerland eligible for housing benefit (Wohngeld)?

EU citizens can apply for housing benefit, provided that they are not receiving BAföG (Sec. 20 (2) No. 1 WoGG) or SGB II benefits in grant form (Sec. 7 (1) No. 2 WoGG). If you are receiving BAföG, you may still be entitled if you are living in the same household with someone who is not receiving either SGB II/SGB XII/AsylbLG benefits or BAföG (refer also to Chapter II, 3.9). Housing benefit is only granted if you have sufficient income to cover all but your housing costs. If you have an **income of at least approximately €550** (the actual amount also depends on the health insurance you have) and are a single parent, you may be eligible for housing benefit.

These benefits have no effect on your right to reside as they are designed to provide help with accommodation costs and are not social assistance. **It can be very important to make use of these benefits, particularly in university towns and cities where rents can be very high.**

3.8 Can students from the EU/EEA/Switzerland get a certificate of eligibility for social housing (Wohnberechtigungsschein)?

If you are a student from an EU/EEA state or Switzerland, you are entitled to apply for a certificate of eligibility for social housing (Sec. 5 WoBindG).

Your actual entitlement will depend on whether you are only temporarily resident in Germany (Sec. 5 WoBindG and Sec. 27 (2) Public Housing Support Act, WoFG). If you are an EU citizen, you will be assumed, for the purposes of the WoBindG, to have your habitual residence in Germany, unless you are only studying for one or two semesters as an official exchange student in Germany, such as under the ERASMUS programme.

3.9 Are students from the EU/EEA/Switzerland eligible for disability benefits?

Benefits which promote participation and education as well as social participation for people with disabilities can be very important for students: in the context of their studies, in their leisure time and their accommodation. You may be eligible for personal assistance to support you while studying, sign language interpreting services, study-related aids and help redesigning your flat or a motor vehicle, as well as mobility support, rehabilitative sport, etc.

Until the end of 2019, EU citizens were generally excluded from integration assistance in the first three months of their residence if they were not gainfully employed. This has changed with the amendment of the integration assistance rules and their integration in SGB IX (Sec. 100 (1) SGB IX).

Integration assistance is only provided to people who are not German citizens and who do not have a permanent residence title on a discretionary basis (Sec. 100 (1) SGB IX). However, you cannot be treated less favourably than a German citizen if you are an EU citizen with the right to free movement. This is because it is illegal to discriminate against EU citizens in matters concerning social assistance (Art. 24 (1) Directive 2004/38/EC on the right of citizens of the Union). This is referred to explicitly in Sec. 100 (1) Sentence 3 SGB IX.

EU citizens who are studying and their family members are therefore legally entitled to integration assistance if they are financially self-sufficient and have health insurance (Sec. 4 FreizügG).

The authorities only have a discretionary right to decide on whether to provide you integration assistance while you are looking for work after graduating if you are not gainfully employed and are not self-sufficient.

However, the agency responsible for integration assistance is only responsible if the habitual centre of your interest is in Germany. If you return to your family on a regular basis, if you receive maintenance from your family and you are insured in your country of origin, for example, the country of origin must help you to attend your higher education institution (ECJ of July 25, 2018 – C-679/2016; commentary Oppermann, ZESAR 2019, p. 136 et seq.).

3.10 Can students from the EU/EEA/Switzerland be exempted from paying television and radio licence fees?

If you are an EU citizen and receive BAföG or comparable student grant support from another EU/EEA state or from Switzerland, you only need to submit evidence that you are receiving support in order to be exempted from television and radio licence fees. You can apply for exemption online (<https://www.rundfunkbeitrag.de/>, Bürgerinnen und Bürger – Formulare – Befreiung oder Ermäßigung beantragen (in German)).

Low-income students from the EU/EEA or Switzerland can also apply for exemption. The BVerwG ruled on October 30, 2019 (Ref.: 6 C 10.18) that students who are not receiving grants can also be exempted from licence fees in cases of hardship if their income does not exceed the minimum subsistence level (subsistence rates under SGB II/XII). But you must include evidence of your income with your application for exemption. This evidence must plausibly show that you are able to live from your income in Germany. If you have applied for housing benefit, you can submit the calculation which was made for this benefit.

You can get licence fees for the last three years paid back if you can present evidence of your income for the entire period. The online application for exemption has not yet been updated to take account of the change in the law and cannot therefore be used by students on a low income. Until the situation changes, you should make an informal written application.



IV Asylum seekers and foreign nationals with toleration status

People from all around the world seek protection in Germany from persecution, violence and hunger. If you apply for recognition as a refugee under the Geneva Convention, you will be categorised as an **asylum seeker** and will be issued **temporary permission to remain** for the duration of your asylum procedure by the Federal Office for Migration and Refugees (BAMF). Temporary permission to remain merely documents your right to remain for the duration of your asylum procedure, it does not grant you legal residence in Germany. Your residence (including requirements to reside in a particular town or federal state) and your access to the employment market are subject to the regulations in the Asylum Act (AsylG). Your entitlements under social security law are detailed in the Asylum Seekers' Benefits Act (AsylbLG).

Students with a residence permit under Sec. 16b AufenthG can also apply for asylum. If you apply for asylum, this will not initially affect your residence status (Sec. 10 (2) AufenthG). You can send your written application to the BAMF head office. You will not be required to live in a reception facility or in a particular location. Some students apply for asylum because they are no longer able to finance their studies. You should be very cautious about doing this. If your residence permit under Sec. 16b AufenthG is not renewed because you are no longer self-sufficient, you will be issued with temporary permission to remain and to receive AsylbLG benefits. The rest of your procedure can involve numerous restrictions, but the greatest danger is that your claim for asylum could be rejected. If your claim for asylum is turned down, you will not be able to get back your residence permit – either to study, to do vocational training or to work and you will be required to leave Germany and return to your country of origin. **You should definitely get legal advice before you decide to apply for asylum. If you don't, the consequences can be grave.**

In contrast to the status as an asylum seeker, **toleration status (Duldung)** merely suspends the date of your deportation (Sec. 60a AufenthG). You are still required to leave Germany. You might be given toleration status as soon as you enter the country, once your legal residence has ended or after your application for asylum has been turned down.

There are **two categories** of toleration status:

- Your deportation may be impossible at present for **“reasons of law” or “reasons of fact”** (Sec. 60a (2) Sentence 1 AufenthG). It may not be possible to deport you at the present time because, for example, you are acutely ill, you are at an advanced stage of pregnancy or because of protected family links to family members who have the right to stay in Germany. One particularly important “reason of fact” preventing you being deported, for example, is if you don’t have a passport or passport substitute. You need one of these before you can be deported. If you don’t have any of these papers you are required to cooperate with the authorities and do everything possible and everything that can be reasonably expected of you to obtain a passport or substitute passport. If you don’t cooperate, your toleration status will be changed to **“toleration status for persons whose identity is not verified”** under Sec. 60b AufenthG. With this status you will not be allowed to work and your freedom of movement will be restricted.
- You can be granted toleration status on **humanitarian grounds** (Sec. 60a (2) Sentence 3 AufenthG). You might be given this status to tide you over a short period until the end of a school year, a measure organised by the Federal Employment Agency or ongoing medical treatment, or to allow you to remain while your application for a residence permit is being processed or for the duration of a petition procedure. Other special forms of humanitarian toleration status may enable you to take up vocational training under Sec. 60c AufenthG or temporarily suspend your deportation to allow you to work (Sec. 60d AufenthG). These forms of humanitarian toleration are rarely relevant for students.

Your toleration status will expire as soon as you leave Germany. **Access to the labour market** is governed by Sec. 32 BeschV and Secs. 60a (6), 60b AufenthG. You will be eligible for **social welfare benefits** under the Asylum Seekers’ Benefits Act (AsylbLG).

1 When are asylum seekers and foreign nationals with toleration status allowed to study in Germany?

1.1 Can asylum seekers and foreign nationals with toleration status study in Germany?

Yes. No matter what residence status you have, you can apply to study at a higher education institution anywhere in Germany. This doesn’t mean that asylum seekers and nationals with toleration status can move their place of residence to be near to the higher education institution. There are two stages in the procedure:

1. If you are an asylum seeker (with temporary permission to remain) and are **living in a reception centre** (Sec. 47 AsylG), such as a so-called AnKER centre, initial reception centre, or central accommodation facilities, you are very unlikely to be permitted to move to other

- accommodation or to a particular town or city, because taking up studies is not considered to be a compelling reason (Sec. 49 (2) AsylG). Asylum seekers are often required to continue living in a reception centre in a particular federal state for up to 18 months. In some cases, they are required to stay for even longer (refer to Sec. 47 (1) Sentence 3, (1a) and (1b) AsylG). During this period, you are not allowed to leave the area where you have been told you must live; you even need special permission to travel briefly outside of this area.
2. If you are an asylum seeker (with temporary permission to remain) and have been **allocated to a local authority**, you can apply to be relocated within the same federal state (Sec. 50 (4) AsylG) or to a different federal state (Sec. 51 AsylG). This is only possible in order to protect your right to live together with your closest relatives, or for similar reasons. The wish to start studying somewhere is not usually a good enough reason. You will only be able to move for special reasons which are based on your previous work history or the likely duration of your asylum procedure, or if the higher education institution can demonstrate that it has a special scientific interest in admitting you. You will be allowed to leave the town or city to which you have been allocated for a temporary period of time, as long as you retain your place of residence there. This means that you could study at a higher education institution somewhere else, but the cost of your accommodation will not be financed (Sec. 11 (2) AsylbLG).
 3. If you are a foreign national with toleration status (**Duldung**), you have to live in the place you are allocated to for as long as you continue to receive asylum seekers benefits (Sec. 61 (1d) AufenthG). You can apply to have this restriction on your residence changed, but you will only be successful if the immigration authority at the place where you wish to study agrees. This is unlikely to be the case if the immigration authority believes you will have recourse to public funds. Your application to move somewhere else is more likely to be successful if you can demonstrate that you will be able to support yourself from a scholarship or with a part-time job (refer to 2.2 in this chapter).

1.2 Can foreign nationals with toleration status obtain temporary suspension of deportation for study purposes?

You are not automatically entitled to have your deportation suspended to enable you to study. But in certain circumstances, this may be possible.

If certain very specific conditions are met, you may be able to obtain “toleration status for vocational training purposes” (Sec. 60c AufenthG). This form of toleration only applies to in-company or school-based training and education. **The fact that you are studying never results automatically in a legal right to toleration status.** However, you may still be able to obtain toleration status on humanitarian grounds under Sec. 60a (2) Sentence 3 AufenthG in circumstances which are not covered by Sec. 60c AufenthG. The immigration authorities have a very wide margin of discretion in these cases and you will have very little chance of getting a court to reach a different decision. If you are already studying, you have a very good chance of being granted toleration status to enable you to finish your studies, if you are within reach of graduating or if there is a public interest in you completing your studies or engaging in subsequent research activities.

Example

Ahmad from Afghanistan came to Germany in 2015. His application for asylum was turned down by the BAMF in January 2017. His court appeal against the official decision was rejected in August 2019. Since that time, Ahmad has been tolerated (his deportation has been suspended) because he does not fall within the group of people who are being deported to Afghanistan. Ahmad has been studying bioinformatics since the winter semester of 2017 and expects to graduate with a Bachelor's degree by the end of 2021. Even if the ban on deportation to Afghanistan ceases to apply, the immigration authority could still grant Ahmad toleration status on humanitarian grounds to enable him to complete his studies. Ahmad will be able to complete his degree studies within a foreseeable period of time and Germany has a relevant economic interest in retaining graduates in this discipline.

1.3 Can toleration status for vocational training purposes be obtained for Dual Studies?

Yes, if the requirements for toleration status for vocational training purposes are met.

If you are pursuing a so-called “Duales Studium” in Germany (this is a course in which degree students alternate between studying at a higher education institution and interning at a company), you are eligible for toleration status for vocational training purposes. Paragraph 60c Residence Act (AufenthG) covers two types of toleration status for training purposes:

a. Vocational training which begins during an ongoing asylum procedure (Sec. 60c (1) No. 1 AufenthG)

You may be granted toleration status for training purposes immediately following the final non-appealable rejection of your application for asylum, if

- you present a passport or if your identity has been established;
- your in-company training (which must last for at least two years) leads to a recognised professional qualification under the Vocational Training Act (Berufsbildungsgesetz);
- you do not come from a safe country of origin if you arrived in Germany or made a formal application for asylum in Germany after August 31, 2015;
- you are not subject to security reservations and do not have any convictions (equal to more than 50 daily rate units) and are not subject to an expulsion order.

b. Vocational training which (only) begins during tolerated residence (Sec. 60c (1) No. 2 AufenthG)

In this case you must meet the following requirements in addition to those listed above:

- You must have been granted toleration status for other reasons at least three months previously (Sec. 60c (2) No. 2 AufenthG).
- No action has yet been initiated to terminate your residence in Germany (Sec. 60c (2) No. 5 AufenthG). This means that you will not receive toleration status for vocational training purposes, if:
 - a medical examination of your ability to travel has been ordered;
 - you have applied for assistance to return to your country of origin;
 - your return journey has been booked;

- other specific and comparable measures have been initiated, unless deportation is not possible;
- a Dublin procedure has been initiated.

You must establish your identity for the authorities within stipulated time limits which must also be complied with if you have not yet started or considered starting vocational training or a “Duales Studium” (Sec. 60c (2) No. 3 AufenthG):

- If you entered Germany before the end of 2016, you must have established your identity at the time you apply for toleration status for training purposes.
- If you entered Germany in the period from 2017 to 2019, your identity must be established by June 30, 2020.
- If you entered Germany after 2020, your identity must be established within six months.

These deadlines also apply during the asylum procedure. However, you don't need to obtain a passport at this time. You may also be granted discretionary toleration status for vocational training purposes if your identity cannot be established, or not within the envisaged time limits, but it can be shown that you have taken all the necessary and reasonable steps to establish your identity (Sec. 60c (7) AufenthG). When immigration authorities exercise discretion in these cases, they must bear in mind that the coronavirus pandemic has led to the closure (sometimes for months at a time) of some embassies and consulates. Some embassies and consulates are working with restrictions and are unable to contact many authorities in countries of origin

After you have completed your training, **you may be granted toleration status for six months** (Sec. 60c (6) Sentence 2 AufenthG) during which time you can look for a job. If you find a position in the profession for which you have qualified, you will be issued a **residence permit under Sec. 19d AufenthG**.

1.4 Can a foreign national with toleration status apply for a residence permit for study purposes under Sec. 16b AufenthG?

No. Although there is a legal entitlement to the issue of a residence permit under Sec. 16b AufenthG, you must have applied for a visa properly from outside Germany or you must have held authorisation to reside in Germany during a previous period of residence (Sec. 39 No. 1 AufenthG). If circumstances, such as travel restrictions during the coronavirus crisis, make it impossible for you to travel, the visa procedure may be waived under Sec. 5 (2) Sentence 2 AufenthG. However, the visa procedure cannot be waived if you entered Germany by crossing the border illegally and there is therefore a public interest in your expulsion (Sec. 5 (1) No. 2 AufenthG).

1.5 Are foreign nationals with toleration status eligible for a residence permit after they have completed their studies?

Yes. Section 19d AufenthG includes a special rule which enables you to switch your status from toleration status to legal residence. A special rule in Sec. 19d (1) No. 1 AufenthG enables a residence permit to be issued to graduates of German higher education institutions to enable them to work “in a position commensurate with their vocational qualification”. This means that you must have a contract of employment which contains a job description appropriate to the content and level of your degree.

This residence permit is issued for two years. After these two years, the residence permit may be changed into a residence permit for the purpose of gainful employment under Sec. 18b AufenthG.

2 Can asylum seekers and foreign nationals with toleration status work in Germany while they are studying?

Access to the employment market for asylum seekers and foreign nationals with toleration status depends on how long they have been resident in Germany, the type of accommodation they have, where they are originally from and their obligations to cooperate.

As a rule, asylum seekers and foreign nationals with toleration status are not allowed to work on a self-employed basis.

2.1 Can I get a work permit during my asylum procedure?

Two phases of the asylum procedure are relevant for this purpose:

Phase 1: Residence in a reception centre (such as a so-called AnKER centre, initial reception centre, or central accommodation facilities)

- Asylum seekers are not permitted to work during the **first nine months** (Sec. 61 (1) AsylG).
- The immigration authority can issue permission to work beginning in the **10th month**. If you find a job after this time, you will need the approval of the Federal Employment Agency before you can begin work. The Federal Employment Agency will only give you permission to work after it has checked the conditions of employment. The Federal Employment Agency's approval is not required for in-company training, placements or voluntary work (Sec. 61 (1) No. 2 AsylG, Sec. 32 BeschV).
- Asylum seekers from so-called **safe countries of origin** (all the Balkan states, Ghana and Senegal) are not allowed to engage in any form of gainful employment (Sec. 61 (1) No. 3 AsylG).
- Asylum seekers whose claims for asylum are **dismissed** as "**obviously unfounded**" or "**inadmissible**" are not allowed to work either, unless the administrative court rules that this ban on working should not apply as long as the case is being dealt with by the courts (Sec. 61 (1) No. 4 AsylG).
- Asylum seekers who have been granted **toleration status** (because their asylum claim has been rejected but court proceedings are still pending) are entitled to a work permit six months after toleration status has been granted (not after six months of residence) (Sec. 61 (1) Sentence 3 AsylG).

Phase 2: Asylum seekers accommodated by local authorities

- You are eligible for a work permit after **three months'** residence in Germany (Sec. 61 (2) AsylG). This is relevant in particular if you have children under 18 who must be released from federal state reception centres after six months (Sec. 47 (1) AsylG).
- People from so-called **safe countries of origin** and asylum seekers whose claims have been

dismissed as **“obviously unfounded”** or **“inadmissible”** are **not permitted to work** even when they are accommodated by local authorities.

2.2 When are foreign nationals with toleration status eligible for a work permit?

Foreign nationals with toleration status (who are no longer in an asylum procedure) are eligible for work permits **three months after** their initial registration. If you find a job after this time, you will need the approval of the Federal Employment Agency before you can begin work. The Federal Employment Agency will only give you permission to work after it has checked the conditions of employment. The Federal Employment Agency’s approval is not required for in-company training, placements or voluntary work (Sec. 4a AufenthG, Sec. 32 BeschV).

Foreign nationals with toleration status are eligible for an **unlimited work permit** for any kind of employment **after four years** (Sec. 32 (2) No. 5 BeschV).

But, a **strict ban on working** is issued:

- On all foreign nationals with toleration status who come from **so-called safe countries of origin** (Balkan states, Ghana and Senegal) who have entered Germany or made a formal application for asylum from September 1, 2015 (Sec. 60a (6) No. 3 AufenthG).
- Foreign nationals with toleration status who have entered Germany with the intention of **obtaining social welfare benefits under the German Asylum Seekers’ Benefits Act (AsylbLG)** (Sec. 60a (6) No. 1 AufenthG).
- Foreign nationals with toleration status who **cannot be deported for reasons for which they are themselves responsible** (Sec. 60a (6) No. 2 AufenthG). This primarily concerns people who have not cooperated sufficiently in establishing their identity. These people are then issued with “toleration status for persons whose identity has not been verified” under Sec. 60b AufenthG. This excludes the option of switching to a toleration status for training purposes (Sec. 60c (2) No. 1 AufenthG). Residence restrictions may also be imposed, even if this means that the person has to interrupt their studies (Sec. 60b (5) AufenthG). AsylbLG social welfare benefits are also reduced (refer also to 3.4 in this chapter).

2.3 Do asylum seekers and foreign nationals with toleration status have the same employment rights as German students?

Yes. As it is people whose residence status is particularly insecure who are often exploited or whose rights are violated at work, it is very important to know about the occupational health and safety/employment protection rights described in Chapter II, 2.4 to 2.9.

3 What social welfare benefits are asylum seekers and foreign nationals with toleration status entitled to while they are studying?

Asylum seekers (with permission to reside) and students with toleration status have far fewer rights to social welfare benefits than other students as they do not have legal residence rights.

3.1 Are asylum seekers and foreign nationals with toleration status eligible for compulsory student insurance cover?

Yes. Compulsory student insurance cover is not related in any way to your habitual or legal residence and is provided as soon as you enrol for a degree course. However, asylum seekers and students with toleration status must pay the costs of insurance cover themselves or obtain grant support in the first 18 months of residence. These costs are not covered by the AsylbLG. You will only be required to take out voluntary insurance when your compulsory student insurance cover comes to an end if you are no longer entitled to health services under Secs. 4 and 6 AsylbLG (LSG Rhineland-Palatinate of July 4, 2019 – L 5 KR 311/18; refer to 3.2).

3.2 What health care is available to asylum seekers and foreign nationals with toleration status who do not have compulsory student insurance cover?

Asylum seekers and foreign nationals with toleration status who are not (yet) enrolled for a specific degree subject only receive **limited health services under the AsylbLG in the first 18 months** of residence. This covers health care in cases of acute or painful illness (Sec. 4 AsylbLG) as well as services which are essential to the maintenance of health (Sec. 6 AsylbLG). In some local authorities in certain federal states (Berlin, Brandenburg, Bremen, Hamburg, Lower Saxony, NRW, Rhineland-Palatinate, Schleswig-Holstein, Thuringia) you may be issued a health card if you are entitled to benefits under Secs. 4 and 6 AsylbLG. This health card enables you to get inpatient or outpatient care directly (Sec. 264 (1) Sentence 2 SGB V). In other federal states or local authorities, you will need a qualification certificate from the social welfare office (which is responsible for asylum seekers benefits).

Asylum seekers and foreign nationals with toleration status are entitled to benefits and services equal to those provided under SGB XII (analogous benefits) **18 months after they have initially registered in Germany**. This does not apply to foreign nationals with toleration status who have lost their residence status because they have provided false information or have failed to cooperate with the authorities (Sec. 2 AsylbLG).

Analogous benefits include sickness allowances under Secs. 47 et seq. SGB XII, which correspond to the benefits provided by the statutory health insurance scheme. The health insurance company you have opted to join will issue you with a **health card** which enables you to get inpatient and outpatient care directly (Sec. 264 (2) Sentence 1 SGB V). This is not the same thing as statutory health insurance and you therefore **do not have any right to continued voluntary insurance** if you are no longer eligible for benefits under AsylbLG when you have an income of your own. You will need to apply to the social welfare office, not your health insurance company, for the approval of certain health services (such as rehabilitation or treatments and aids).

As a student, you must claim this form of sickness allowance if you do not have compulsory student insurance – that is if you are attending a preparatory college, are studying for a PhD or if you are too old to be in the scheme.

3.3 When are asylum seekers and foreign nationals with toleration status eligible for BAföG benefits?

Asylum seekers are not eligible for BAföG unless they or their parents have been in gainful employment for several years in Germany (refer also to Chapter II, 3.4).

Foreign nationals with toleration status are eligible to claim BAföG after they have been resident in Germany for 15 months (Sec. 8 (2a) BAföG). However, foreign nationals with toleration status may also find this difficult if they have already studied in their country of origin (see Chapter V, 3.2).

3.4 When are asylum seekers and foreign nationals with toleration status eligible for benefits from the local government social welfare office (Sozialamt) or the local employment agency (Jobcenter) to cover their living expenses?

Asylum seekers and foreign nationals with toleration status are not entitled to any SGB II Jobcenter benefits. **This group of people must make all claims for benefits to the social welfare office under the AsylbLG.**

If you are seeking asylum (and you have temporary permission to remain) or have toleration status, you can continue to receive **benefits under Sec. 3 AsylbLG while you are studying during the first 18 months of your residence**. However, throughout this period you will face the financial challenge of paying contributions to the statutory health insurance scheme as well as tuition fees, either from the low standard requirement level (€359/month in 2021), from scholarships or from third-party support.

SGB XII will apply to you after your 19th month of residence: you are then eligible for analogous benefits under Sec. 2 AsylbLG (refer to 3.2). However, the exclusion of benefits for people in vocational training under Sec. 22 SGB XII is modified:

Since September 1, 2019 **students are also entitled to benefits analogous to those provided under SGB XII**; however, the social welfare office can decide whether to provide you support as a grant or a loan (Sec. 2 (1) Sentence 3 AsylbLG). It would be appropriate in this case to provide a 50-50 mix of grant and loan, which is how BAföG beneficiaries are treated.

Foreign nationals with toleration status who are already entitled to BAföG (15 months after entering Germany) are also eligible for supplementary social assistance if they live with their parents and the BAföG they receive does not provide a subsistence level of income (Sec. 2 (1) Sentence 2 No. 2 AsylbLG).

After 19 months of residence the social welfare office pays the contributions to the student statutory health insurance scheme under Sec. 32 SGB XII.

3.5 Are asylum seekers and foreign nationals with toleration status entitled to child benefit (Kindergeld)?

Asylum seekers and nationals with toleration status **are not eligible for child benefit** (Sec. 62 (2) EStG). This exclusion applies to parents who are seeking asylum or have toleration status in Germany as well as to any children living in Germany.

Full orphans or students who are unable to contact their parents are also excluded from child benefit (Sec. 1 (3) BKGG).

However, certain groups of people are eligible for child benefit:

- **This is the case, for example, if your deportation has been temporarily suspended for employment purposes (toleration status):** If you have toleration status for employment purposes (Beschäftigungsduldung, Sec. 60d AufenthG), which always extends to your marital partner and unmarried children under the age of 18, you are also eligible for child benefit from January 1, 2020 (Sec. 62 (2) No. 5 EStG, Sec. 1 (3) No. 5 BKGG). This only applies to a very small group of people because toleration status for employment purposes can only be granted to people who entered Germany before August 1, 2018 and who have already been working for at least 18 months in the country. This means that students are only eligible for this benefit via their parents as taking up a degree course while doing a full-time job is all but inconceivable.
- **Turkish citizens:** Turkish citizens can claim child benefit under supranational law:
 - Students who are Turkish citizens who are automatically covered by student health insurance, who pay voluntary contributions to the statutory health insurance scheme or who are employed – even if only marginally – are eligible for child benefit because they are then either categorised as workers under Decision No. 3/80 of the EU/Turkey Association Council of September 19, 1980 or
 - because they are eligible under Art. 1 (1) d) of the Provisional European Treaty (Act of May 7, 1956, Federal Law Gazette II 1956, p. 507) after they have been resident in Germany for six months (BFH of June 17, 2010 – III R 42/09).
- **Euro-Mediterranean Association Agreements: Algeria, Morocco, Tunisia:** Eligibility for child benefit is also established under the Euro-Mediterranean Association Agreements between the EU and Maghreb States (Algeria 2005, OJ. L 265 of October 10, 2005; Morocco 1996, OJ. 2000 L 70.2; Tunisia 1995, OJ. 1998 L 97.2). Child benefit can only be claimed if you are covered by German social insurance (student or voluntary membership in the statutory health insurance scheme) or if you are employed, on parental leave or are receiving ALG I unemployment benefit.
- **Treaties with the successor states of the former Yugoslavia:** Only Bosnia and Herzegovina, Kosovo, Montenegro and Serbia benefit from the old social insurance treaties with Yugoslavia. The treaties with North Macedonia and Croatia (which is irrelevant, because it is an EU Member State) have expired. In these cases, child benefit is only paid if the recipient is working and required to pay social insurance contributions. According to the Federal Fiscal Court (Bundesfinanzhof (BFH)), mini-jobs are not considered to be subject to mandatory social insurance contributions (BFH of February 21, 2008 – III R 79/03), however, this ruling may be revised bearing in mind the obligation to pay pension insurance contributions on income derived from a mini-job.

3.6 What other family benefits are asylum seekers and foreign nationals with toleration status entitled to?

Asylum seekers and foreign nationals with toleration status are not eligible for either supplementary child allowance, parental allowance or maintenance advance.

However, you are entitled to supplementary child allowance (Sec. 6a BKG) if you receive child benefit as a national of a treaty state.

The following special rules apply to parental allowance and maintenance advance:

- **Temporary suspension of deportation for employment purposes (Beschäftigungsduldung):** If you have toleration status for employment purposes (which always covers your marital partner and any unmarried children under the age of 18), you are eligible (since January 1, 2020) for parental allowance and maintenance advance.
- **Turkish citizens:** Turkish citizens who are working and the members of their family are eligible for family benefits under Art. 3 (1) ARB No. 3/80, regardless of their residence status. This does **not apply to maintenance advance**, however, as this is not included in the coordination of social security. You are only eligible for **parental allowance** if you are in at least **one social insurance system**, either as a compulsory or voluntary member of the statutory health insurance scheme and you have your **place of residence in Germany**. It is not sufficient to have a right to reside merely for the purpose of processing your procedure. For this reason, Turkish citizens are **not eligible** for family benefits (with the exception of child benefit and supplementary child allowance) **during their asylum procedure**. If you are given protection status, however, you will be entitled to back payment of family benefits (BSG of October 5, 2006 – B 10 EG 6/04 R). **Foreign nationals with toleration status** are eligible for child benefit if there is either a long-term obstacle to deportation (such as for family reasons) or if toleration status been granted for a long-term purpose including, for example, completing university studies (BMFSFJ, Directive on BEEG 1.7.2.5 and 1.7.2.6, February 2020, <https://www.elterngeld.net/richtlinien.html>, accessed on May 20, 2020 (in German)).
- **Algerian, Moroccan and Tunisian citizens:** On the basis of Euro-Mediterranean Association Agreements (Art. 65 Euro-Mediterranean Agreement with Morocco and Tunisia, Art. 68 Euro-Mediterranean Agreement with Algeria), citizens of the Maghreb states are subject to the same principles as regards **parental allowance** as Turkish citizens (BMFSFJ, Directive on BEEG 1.7.2.5 and 1.7.2.6, February 2020, <https://www.elterngeld.net/richtlinien.html> (in German), accessed on May 20, 2020). This also does not cover maintenance advance.

3.7 What benefits can asylum seekers and foreign nationals with toleration status claim during pregnancy and following the birth of a child?

Sec. 3 AsylbLG **does not provide for the payment of an additional needs allowance** during pregnancy or for single parents. There is no provision for one-off benefits either. However, it is possible to apply for help with specific needs, either in the form of household effects under Sec. 3 AsylbLG or as benefits under Sec. 6 AsylbLG.

If **benefits analogous to SGB XII are paid after the 19th month of residence** (Sec. 2 AsylbLG), you are also eligible for an additional needs allowance for pregnancy and for the birth of a child.

The help provided by the **Federal Mother and Child Foundation (Bundesstiftung Mutter und Kind)** is particularly important, given that the available benefits are limited in the first 18 months. These benefits are not subject to any restrictions. For more details refer to Chapter II, 3.8.

Refer to Chapter II, 3.8 for **maternity benefit** payments.

3.8 Are asylum seekers and foreign nationals with toleration status eligible for housing benefit (Wohngeld)?

Asylum seekers and foreign nationals with toleration status are eligible for housing benefit if they have an income of their own and are not in receipt of asylum seekers benefits (Sec. 3 (5) No. 2 and No. 4 WoGG). A single person must have **an income of at least €500 – €550 a month**.

3.9 Can asylum seekers and foreign nationals with toleration status get a certificate of eligibility for social housing (Wohnberechtigungsschein)?

Asylum seekers are not eligible for certificates of eligibility for social housing because they do not have permanent residence within the meaning of Sec. 27 (2) WoFG. This is only assumed to be the case if an asylum seeker is expected to be resident for at least one year.

Foreign nationals with toleration status can only get a certificate of eligibility for social housing if the immigration authority confirms that their residence will not be terminated within the next year (this is the case, for example, under Secs. 18 and 8.1 of the Housing Use Regulations of December 12, 2009 which apply in NRW (NRW Ministerial Gazette, 2014, No. 17)). This applies in particular if you have **toleration status for vocational training purposes**, such as for Dual Studies (VG Berlin of July 2, 2019 – 8 K 202.18).

3.10 Are asylum seekers and foreign nationals with toleration status eligible for disability benefits?

Asylum seekers and foreign nationals with toleration status are not eligible for benefits under Secs. 90 et seq. SGB IX if they are receiving asylum seekers benefits (Sec. 3 AsylbLG in the **first 18 months**). The required assistance can be obtained under Sec. 6 AsylbLG **if it necessary to safeguard health or cover the special needs of children**. Although this is a discretionary power, the element of discretion is reduced and a claim may be granted if basic rights to life and health are affected or a child's well-being is threatened. You may, in particular, be eligible for assistance benefits or support with the maintenance of a household, help paying for aids, mobility and therapy for psychiatric illnesses or nursing services. You will not usually be granted benefits solely for the purpose of studying as these are not necessary for the safeguarding of health. The **children of students** may also be entitled to early intervention support, speech therapy and school support (Frings et al., 2018, note 1173, p. 370).

If you receive analogous benefits under Sec. 2 AsylbLG (**from the 19th month**), you may also be eligible for benefits under Secs. 90 et seq. SGB IX (Sec. 2 (1) Sentence 1 AsylbLG). However, the restrictions under Sec. 100 (1) SGB IX apply. These restrictions limit the provision of integration assistance to people who do not have a long-term residence title, which is **then only provided on discretion** and only as far as considered justified in individual cases. In this respect, these criteria do not differ substantially from those in Sec. 6 AsylbLG. The main thing is whether a decision not to grant benefits would affect your basic rights. In reality, official decisions are frequently refusing benefits without further examination (with reference to Sec. 100 (1) SGB IX). Official decisions made in this way without exercising administrative discretion are unlawful.



V Students who hold a residence permit for purposes other than study

As well as the groups of people already discussed, there are of course other students who are not German citizens who have not come to Germany for the purpose of studying.

Most of these people are residents for educational purposes who have **established residence (permanent settlement permit)** and whose legal status while they are studying is much the same as that of German students, unless they leave Germany for a longer period of time or have difficulties renewing their national passport.

Temporary residence permits are issued **for three main reasons: residence for purposes of gainful employment, vocational training and education, for family reasons, or for humanitarian reasons.** Temporary residence permits may also be issued in one or two other special cases.

1 What must I bear in mind when I begin studying?

1.1 Are there any special rules which apply to admission to study?

No. Admissions differ only according to whether you obtained your higher education entrance qualification in Germany, or whether certificates obtained in another country have to be recognised or not, or whether you are required to attend preparatory courses (higher education entrance examination, language certificates).

1.2 Could my right of residence be jeopardised if I begin studying?

If you begin studying, your existing right to reside may be affected in the following cases:

- **The purpose of your residence no longer applies or has changed.** This applies in particular to residence permits issued for the purpose of gainful employment or vocational training. This type of residence permit is tied to a specific place of work, to self-employment or vocational training/continuing professional development. This means that you can start studying, but only if you continue with your previous activities. As you will probably find it very difficult to engage in full-time study and work at the same time to support yourself, the only realistic option is likely to be a form of on-the-job degree. On the other hand, it is often possible to study on a Master's degree programme while working. If you give up gainful employment, you have to have your residence permit changed to allow you to study under Sec. 16b AufenthG. You will only be able to do this if you can show that you are self-sufficient (refer to Chapter II, 1.1.2).
- **You can no longer meet the self-sufficiency requirement.** In most cases, your residence permit depends on you being self-sufficient throughout your stay in Germany. In this respect, you are allowed to receive BAföG and family benefits to cover your cost of living (Sec. 2 (3) AufenthG), but you are not allowed to be in receipt of top-up SGB II/SGB XII benefits. The key factor therefore is whether you are eligible for a vocational training grant. In some cases, residence permits are issued on humanitarian grounds for which you are not required to be self-sufficient. These residence permits are usually issued to refugees with a protection status conferred by the BAMF (Sec. 25 (1), (2), (3) AufenthG) or to persons who are recognised as refugees (Sec. 23 (1), (2), (4) AufenthG). This group of people can claim social welfare benefits of any kind while they are studying.

1.3 Are there any special rules which apply if I undertake part of my studies in another country?

Yes. Students who are not German citizens must first clarify what kind of visa they need in order to study in another country.

Anyone who has a residence title in an EU Member State can travel to any other EU or EEA state or to Switzerland for 90 days without a visa. This does not apply to the United Kingdom and the Republic of Ireland.

This period may be extended under special rules for the duration of the coronavirus crisis.

If you wish to stay in another country for longer than 90 days, the type of visa you require will depend on your nationality. You will have to clarify this with the relevant consular diplomatic mission.

You should also be aware that your German residence title will expire if you do not comply with certain time periods:

- **Temporary residence permits** expire if the holder remains outside of Germany for longer than six months (Sec. 51 (1) No. 7 AufenthG). A residence title will expire even earlier than this if the authorities have the overall impression at the time you leave the country (cancellation of registration at your place of residence, sale of property, departure with your family, resignation from work) that you are intending to leave Germany permanently (Sec. 51 (1) No. 6 AufenthG).
- **Permanent settlement permits** only expire after 12 months if you have been lawfully resident in Germany for 15 years (Sec. 51 (10) Sentence 2 AufenthG). These permits do not however expire if you can show that you are self-sufficient and there is no serious public interest in expelling you (Sec. 51 (2) AufenthG). Except if there is a serious public interest in expelling you (Sec. 51 (2) Sentence 2 AufenthG) the permanent settlement permit held by someone who is married to a German citizen does not expire at all. In all other cases, permanent settlement permits expire in the same way as temporary residence titles.
- **EU long-term residence permits** (Sec. 9a AufenthG) only expire after 12 months (Sec. 51 (9) No. 3 AufenthG).
- **The EU Blue Card** and residence permits for the members of the holder's family also only expire after 12 months (Sec. 51 (10) Sentence 1 AufenthG).

2 Do third-country nationals with other residence titles have an unlimited right to work while they are studying?

The labour market is not open in quite the same way to all holders of residence titles. It always depends on what type of residence permit you have and what the immigration authorities have written in your residence permit.

2.1 What is the situation if a residence permit is issued with a work permit?

If your residence permit does not stipulate any restrictions, it functions as a full work permit (Sec. 4a (1) AufenthG). In this case you can do any job you wish or engage in any form of commercial or self-employed activity.

An unlimited work permit is provided with the following residence titles:

- Permanent settlement permit (Secs. 9, 18c, 26, 35 AufenthG) and EU long-term residence permit (Sec. 9a AufenthG).
- All family residence permits (Secs. 28, 30, 31, 32, 34, 36 AufenthG).
- Residence permits issued on humanitarian grounds under Secs. 22 (admission in individual cases), 23 (2) (admission as contingent), 23 (4) (resettlement), 23a (cases of hardship), 25 (1) (right to asylum), 25 (2) (recognition as refugee and subsidiary protection), 25a (right to remain of well-integrated young people), 25b (right to remain of people who have had toleration status for a number of years) AufenthG.
- Residence permit upon return to Germany (Sec. 37 AufenthG) and for former German citizens (Sec. 38 AufenthG).
- Residence permit for jobseekers after completion of vocational training or study in Germany (Sec. 20 (3) AufenthG).

2.2 What is the situation if a residence permit only allows me to work in a specific job?

If a residence title stipulates a specific form of employment or self-employed activity, you are not allowed to engage in any other activity. But you can apply for a work permit for other activities or to do the same work for another employer. Part-time work may also be permitted if this does not negatively affect the purpose of your residence (Sec. 4a (1) to (3) AufenthG).

The following residence titles place restrictions on gainful employment:

- Residence permit for the purpose of vocational training (Sec. 16a AufenthG), for measures regarding the recognition of foreign professional qualifications (Sec. 16d AufenthG), or for a training programme (Sec. 16e AufenthG),
- Residence permit for the purposes of employment (Secs. 18a, 18b (1), 18d, 18f, 19c, 19e AufenthG),
- EU Blue Card (Sec. 18b (2) AufenthG),
- ICT Card and Mobile ICT Card (Secs. 19, 19b AufenthG),
- Self-employment (Sec. 21 AufenthG).

If you start studying while you are working in accordance with the purpose of your residence permit, you may need to change your job (place of work) or contract of employment (hours of work). You will usually need the approval of the Federal Employment Agency to do this and any such change is subject to the discretionary powers of the immigration authority. The Federal Employment Agency usually only checks the conditions of work; the immigration authority is mainly concerned that you will continue to be self-sufficient and will not be dependent on supplementary social assistance. It must be plausible for you to both work and study at the same time.

Example

Soraya from Montenegro has graduated in business administration in Germany (Bachelor's degree) and is now working for a large food corporation in Cologne. She has a residence permit under Sec. 18b (1) AufenthG which allows her to do this work. She has reached an agreement with her employer to do a Master's degree focusing on human resource management. Her employer will release her from work for eight hours a week for this purpose. Soraya intends to study in Munich and to switch to a company branch in Munich for this purpose. The next step is for her to have the place of work changed in the work permit entered in her residence permit. The Federal Employment Agency will agree to this change because the new agreement does not involve any disadvantages for Soraya and the immigration authority – which will now be in Munich – will change the conditions attached to the residence permit accordingly because she will still be self-sufficient in the same way as before and she can plausibly work and study at the same time.

Residence permits for the purpose of vocational training allow you to work part-time for up to 10 hours a week (Sec. 16a (3) AufenthG).

2.3 What is the situation if I can only work with the permission of the immigration authority?

Some residence titles enable you to work, but only with the permission of the immigration authority, which it will only give if certain specific requirements are met:

- Residence permit for the purpose of looking for a vocational training position (Sec. 17 (1) AufenthG), place at a university (Sec. 17 (2) AufenthG) or a job (Sec. 20 (1) and (2) AufenthG). The residence permit may not be issued with a work permit.
- Residence permits issued on humanitarian grounds under Secs. 23 (1), 25 (3), 25 (4) Sentence 1, 25 (4a) Sentence 1, 25 (4b), 25 (5) AufenthG do not allow you to do all forms of work, but they are issued (under Sec. 31 BeschV) with a general work permit which allows you to engage in any form of work as an employee. You will need separate permission to engage in self-employed work.

3 What social welfare benefits are students who hold other residence titles entitled to while they are studying?

As a general rule, it is reasonable to assume that with a permanent right to reside (permanent settlement permit and EU long-term residence permit) you are eligible for the same social welfare benefits as German citizens.

Residence permits issued on family grounds enable you to obtain social welfare benefits, although restrictions apply to BAföG benefits and integration assistance.

Residence permits for employment purposes are very similar, but only if the activity you engage in is not intended to be temporary from the very start.

Residence permits for educational purposes or for the purpose of looking for a vocational training position, a place at a university or for a job exclude most social welfare benefits.

Residence permits issued on humanitarian grounds differ according to whether they provide a long-term right to reside or only temporary residence.

3.1 Are there any special rules which apply to compulsory health insurance for students or to family insurance?

No. If you come to study in Germany from a third country and your parents or marital partner are covered by the statutory health insurance scheme, you will be primarily insured as a member of their family up to the age of 25 (Sec. 10 SGB V). If you are not insured with your family, you will usually have been previously insured (as an employee, school student, family member, etc.) and can become a voluntary member of the statutory health insurance scheme while you are preparing for your studies. As soon as you enrol for a degree course at a higher education institution you will become a member of the compulsory student insurance scheme (Sec. 5 (1) No. 9 SGB V). You would be at a serious disadvantage if you were to obtain exemption and take out private insurance cover as you will almost certainly be planning to remain in Germany for the long term and possibly to start a family (with family-insured children).

3.2 When are students who hold other residence titles eligible for BAföG benefits?

There are three different types of claim you can make:

You can claim BAföG without a waiting period (Sec. 8 (2) No. 1 BAföG) if:

- You are a student with a family residence permit as a marital partner or child (including over 18), if the right to reside is derived from a principally entitled German citizen, or family member with a permanent settlement permit or EU long-term residence permit.
- You have been granted asylum or are a recognised refugee or have been given subsidiary protection status (Sec. 25 (1) and (2) AufenthG).
- You have been admitted from abroad on humanitarian grounds (Secs. 22, 23 AufenthG).
- You have been given the right to remain in Germany on humanitarian grounds (23a, 25a, 25b AufenthG).
- You hold a residence permit because you have returned to Germany or are a former German citizen (Secs. 37, 38 AufenthG).

You can claim BAföG after a previous period of residence (residence permit, toleration or temporary permission to remain) of 15 months (Sec. 8 (2) No. 2 BAföG) if:

- You are a student with a family residence permit as a marital partner or child (including over 18), if your right to reside is derived from a principally entitled family member who holds a (temporary) residence permit or you have subsequently obtained an independent right to remain (Sec. 31 AufenthG). This also enables the marital partners of students to claim BAföG even if the principally entitled family member is not eligible for BAföG. This takes no account of family members of people who hold an EU Blue Card whose entitlement to BAföG is derived directly from Art. 13 of the EU Blue Card Directive 2009/50/EC.

- You have a residence permit derived from an obstacle to deportation (Sec. 25 (3) and (5) AufenthG).
- You have been granted long-term residence on humanitarian grounds (Sec. 25 (4) Sentence 2 AufenthG, Sec. 8 (2) No. 2 BAföG).

You are not eligible for BAföG if:

- You are a student residing in Germany for educational and employment purposes (Secs. 16 – 21 AufenthG).
- Your residence permit has only been issued on temporary humanitarian grounds (Secs. 25 (4) Sentence 1, 25 (4a), 25 (4b) AufenthG).

Particular problems may arise – especially if you are a refugee – if you have already started studying or have completed a degree in your country of origin (refer to Knuth, SozSich 2020, p. 193 et seq.):

If you have already completed studies in your country of origin, you will not usually be eligible for funds to support further study (Sec. 7 (1) BAföG). However, this depends on your previous studies actually qualifying you to work in Germany or if it is considered reasonable for you to work in your country of origin (BVerwG of August 8, 2019 – 5 C 6/18).

Reference can only be made to the pursuit of an occupation in your country of origin if you had a genuine choice at the time you began studying between study in your country of origin and in Germany. This principle was developed to ensure that you are not able to obtain funding for further study in Germany if you have previously freely chosen to study in another country.

The BAföG administrative regulations (VwV 7.1.15) focus exclusively on whether the country you have left would have imposed legal restrictions to prevent you travelling to Germany to study. The BVerwG (August 8, 2019 – 5 C 6/18, note 19 et seq.) has explicitly ruled that this interpretation is too narrow; account must also be taken of whether you meet the conditions for admission to study at a higher education institution in Germany. The VwV are therefore not applicable in this respect.

Refugees with protection status as well as the family members of Germans or ethnic German resettlers cannot be expected to return to their country of origin (BVerwG of April 10, 2008 – 5 C 12.07).

The reasons why you have come to Germany may not be taken into account either and in this respect BAföG-VwV 7.1.15 (3a) does not apply either (BVerwG of August 8, 2019 – 5 C 6/18, note 28, 29).

What is critical, however, is whether the professional qualifications you have acquired can be used in Germany.

If your university degree has not been recognised professionally, you will not be able to use it to work in a regulated profession in Germany (BVerwG of April 10, 2008 – 5 C 12.07).

An across-the-board determination of equivalence with a Bachelor's degree, which is usual practice from the Central Office for Foreign Education (ZAB), without being able to work in a regulated profession (such as in teaching or as a social worker) will not usually be sufficient to meet this requirement (OVG Saarland of March 18, 2019 – 2 A 295/18).

In the case of non-regulated professions (mathematicians, chemists, historians, sociologists, etc.), the key issue is whether your qualification is equivalent to a German university qualification and whether it qualifies you on its own for a job in the labour market. You will have to obtain an expert opinion from the Federal Employment Agency to determine this.

If you started studying in your country of origin, your eligibility for benefits depends on how many of the modules you have completed (per semester) are recognised.

3.3 In what exceptional circumstances are students who hold other residence titles eligible for SGB II benefits from the local employment agency (Jobcenter)?

As a rule, third-country nationals who hold other residence titles are entitled to SGB II benefits.

This is not the case if you have a residence title on the basis that you

- are not habitually resident in Germany (intern, seasonal worker, holiday worker, etc.);
- are not in gainful employment in the first three months of your residence;
- have only come to Germany to look for work (residence permit under Secs. 17 (1), 20 AufenthG);
- are eligible under AsylbLG (residence permit under Sec. 25 (4) Sentence 1, Sec. 25 (5) in the first 18 months of residence).

If you have a permanent settlement permit or EU long-term residence permit or have been granted protection status as a refugee (Sec. 25 (1) to (3) AufenthG) you will be eligible for SGB II benefits, e.g. for additional needs relating to pregnancy and single parenthood, requirements for children or benefits during a sabbatical semester. However, these benefits may jeopardise your right to reside, if your residence title has been granted on the basis that you are self-sufficient. In these cases you will need to discuss the matter with the immigration authority (refer also to Chapter II, 3.5).

3.4 When are students who hold other residence titles eligible for family benefits?

The eligibility of third-country nationals for family benefits differs since March 1, 2020 according to residence status. However, all family benefits, including child benefit tax rebates, are subject to the same legal regulations:

- Child benefit tax rebates: Sec. 62 (2) EStG
- Child benefit under social security law (orphans): Sec. 1 BKGG
- Supplementary child allowance: Sec. 6a BKGG
- Parental allowance: Sec. 1 BEEG
- Maintenance advance: Sec. 1 UHVG

You will be fully eligible for family benefits in most cases, no matter what residence title you have, provided you are allowed to work (even if only to a limited extent) for at least six months.

You are not eligible for these benefits if you are resident temporarily

- in a study-related internship (Sec. 16e AufenthG);
- as an au-pair (Sec. 19c AufenthG);
- in a seasonal job (Sec. 19c AufenthG);
- in a voluntary position (Sec. 19c AufenthG); or
- if you are in Germany to look for work.

If you have been granted one of the following residence titles on humanitarian grounds you will only be eligible for family benefits if either you or the other parent of your child(ren) have taken up gainful employment, are on parental leave or are receiving ALG I unemployment benefit; or have been resident in Germany without interruption for at least the previous 15 months (beginning with initial registration following entry into Germany):

What social welfare benefits are students who hold other residence titles entitled to while they are studying?

- If admitted under federal state regulations (Sec. 23 (1) AufenthG)
- On the basis of a decision by a hardship commission (Sec. 23a AufenthG)
- On the grounds of an obstacle to deportation in your country of origin (Sec. 25 (3) AufenthG)
- For temporary or long-term residence (Sec. 25 (4) AufenthG)
- As a victim-witness in criminal cases of human trafficking (Sec. 25 (4a) AufenthG)
- For temporary residence as a result of exploitation at work (Sec. 25 (4b) AufenthG)
- For long-term residence on the grounds of an obstacle to deportation in Germany (Sec. 25 (5) AufenthG)

The special rules which apply to students and measures regarding the recognition of foreign professional qualifications are discussed in Chapter II, 3.6 and 3.7.

3.5 When are students who hold other residence titles eligible for housing benefit (Wohngeld)?

Your eligibility for housing benefit is not affected by the type of residence title you have (Sec. 3 (5) No. 3 WoGG). You will only receive housing benefit if you are able to pay for all your costs yourself apart from your rent. You are not eligible for housing benefit if you are receiving BAFöG, SGB II/SGB XII or AsylbLG benefits (Secs. 7 (1), 20 WoGG).

3.6 Can students who hold other residence titles get a certificate of eligibility for social housing (Wohnberechtigungsschein)?

You will only be able to get a certificate of eligibility for social housing if you are “permanently resident” (Sec. 27 (2) WoFG). This means that you are resident for at least one year. This means that you will not be eligible if it is foreseeable from the very beginning that you will only be resident in Germany for a limited period of time. If there are any doubts, you should ask the immigration authority to confirm that your right to reside will not be terminated within the next 12 months.

3.7 Are international students who hold other residence titles entitled to disability benefits?

If you have been issued a residence title for reasons other than to study in Germany, you will usually (but not always) be legally eligible for benefits which promote educational and social inclusion under SGB IX. If you do have a legal entitlement, benefits are provided on a discretionary basis to the extent justified in individual cases.

Under Sec. 100 (1) SGB IX, eligibility is restricted to third-country nationals who hold residence titles enabling them to reside permanently in Germany:

Students who hold a **permanent settlement permit** (permanent right to reside) have the same inclusion and participation rights as German citizens.

If the BAMF has recognised your claim to asylum or granted you refugee status (residence permit under Sec. 25 (1) or (2) AufenthG), you are legally entitled to all social welfare benefits and, as such, integration assistance under SGB IX as primary law because Art. 23 of the 1951 Refugee Convention (Geneva Convention) and Art. 29 (1) of the Qualification Directive (2011/95/EU) guarantee you are provided the same assistance as nationals.

You are also legally entitled to integration assistance (Sec. 100 (1) SGB IX) if you have been permitted to enter Germany under Secs. 22, 23 (1), (2) or (4) AufenthG or granted a permit for permanent residence (Secs. 23 (1), 23a, 25a, 25b AufenthG). This also applies if you hold a residence permit under Sec. 25 (4) Sentence 2 AufenthG (renewal of residence permit in cases of hardship) or under Sec. 25 (4a) Sentence 3 AufenthG (renewal for witnesses in human trafficking procedures in cases of hardship) because such permits are issued to facilitate permanent residence.

If you have come to Germany to join your family (family reunification) and you hold a residence permit under Secs. 28, 30, 31, 32, 34, or 36 AufenthG, you will probably remain permanently in Germany and therefore have a legal entitlement if the person in your family with principal entitlement to stay in Germany holds a permanent residence permit (Coseriu in: Schlegel/Voelzke 2014, Sec. 23 SGB XII, note 28).

You will not be considered to be permanently resident if the members of your family you have joined (family reunification) are students (Sec. 16b AufenthG), are in vocational training (Sec. 16a AufenthG), are participating in a language course (Sec. 16f AufenthG), are trainees (Sec. 16e AufenthG), are volunteers (Sec. 19c AufenthG), are posted workers (ICT Card, Secs. 19, 19b AufenthG), are researchers (Secs. 18d, 18f AufenthG) or are engaged in temporary gainful employment (Secs. 19c, 21 AufenthG).

With certain residence permits issued on humanitarian grounds it may be difficult to determine the precise status.

Difficulties may arise with residence permits issued to persons given subsidiary protection (Sec. 25 (2), 2nd alternative AufenthG) and to persons whose deportation is prevented by obstacles in the destination country (Sec. 25 (3) AufenthG). In both these cases, your residence permit will only be renewed until such time that the BAMF withdraws its findings (Secs. 73b, 73c AsylG). This may result in a permanent settlement permit being issued after five years and may consequently be deemed to establish permanent residence. In these cases the deciding issue ought to be whether there is an overwhelming probability of open-ended future residence, not whether you have already been resident for a minimum period of time (Winkler in Neumann et al., 2020, Sec. 100 SGB IX, note 10).

If you hold a residence permit on humanitarian grounds you may not be eligible for integration assistance under SGB IX if you continue to receive asylum seekers benefits under AsylbLG (Sec. 100 (2) SGB IX). Residence permits under Sec. 25 (4) Sentence 1 AufenthG are only issued for a temporary purpose. This is also true of residence permits issued under Sec. 25 (4a) Sentence 1 AufenthG (during proceedings against human traffickers) and under Sec. 25 (4b) AufenthG (for the clarification of claims arising from an exploitative employment relationship). During the first 18 months of residence, benefits are based exclusively on the general clause (maintenance of health or children's needs) of Sec. 6 AsylbLG. Eligibility for integration benefits is restored from the 19th month under Sec. 2 (1) Sentence 1 AsylbLG, although only on a discretionary basis (Sec. 100 (1) SGB IX).

Nationals from countries which are signatories to the European Convention on Social and Medical Assistance (the only non-EU signatory to the ECSMA is Turkey, refer to <https://www.coe.int/en/>

What social welfare benefits are students who hold other residence titles entitled to while they are studying?

web/conventions/full-list/-/conventions/treaty/014, accessed on August 7, 2020), regardless of the residence title they hold, are eligible for integration assistance as the principle of equal treatment with nationals (Art. 1 ECSMA) under Sec. 100 (1) Sentence 3 SGB IX has primary application (Lower Saxony-Bremen LSG of January 8, 2015 – L 8 SO 314/14 B ER). **This means that citizens of Turkey who hold a residence permit are always eligible.**



VI Annex

- 1 Brexit and its impact on citizens of the United Kingdom of Great Britain and Northern Ireland**
- 2 Guide for advisers**
- 3 Table of social welfare benefits**

Brexit and its impact on citizens of the United Kingdom of Great Britain and Northern Ireland

The **Brexit agreement reached between the EU and the United Kingdom** includes provisional arrangements which affect British citizens who **were legally resident in Germany up until the end of 2020**. These agreements have been incorporated into German legislation in a package of laws which came into effect on January 1, 2021. British citizens and members of their family continue to have the right to free movement under previously applicable rules. This group of British citizens must obtain a residence document from the immigration authority (**GB residence document**) by the end of June 2021. Certifications of permanent residence will continue to be valid. Family relatives can use the residence card or permanent residence card up to the end of 2021. Rights of residence for family members acquired separately prior to the end of 2020 will continue to be valid for the future.

Example

Jack from the UK and Samira from Mexico were married from 2016 to 2019 and have been studying together in Berlin since 2016. Jack returned to the UK in mid-2020. Samira continued studying in Berlin. With her residence card she will still have the right to reside in Berlin throughout 2021 because she was married to an EU citizen for three years (Sec. 3 (4) FreizügG/EU).

British citizens who hold a GB residence document and their family will continue to have the right to **free movement within the EU**. (There are, however, restrictions for countries which do not apply the Schengen Agreement in full, i.e. Cyprus, Republic of Ireland, Bulgaria, Romania and Croatia.)

Example

Sady, a British citizen, has been studying in Berlin since 2019. She can

- take part in an expedition to Greece in May 2021,
- study in Switzerland for one semester in 2021/2022,
- do a harvest job in France during the 2021 semester holidays.

There are a number of other constellations as well which may grant family members residence rights under the transitional Brexit provisions.

Third-country nationals with British child

International students from third countries who are living with and paying maintenance to a British child in Germany had the right to free movement up to the end of 2020. This right was derived from a ruling of the ECJ (of 19 October 2004 – C-200/02, Chen). This right still applies.

Example

Fatima is from Syria. She is currently studying in Leipzig. Her daughter was born in April 2020. The paternity of the child was acknowledged by a British citizen. As long as Fatima is able to cover the living expenses of her daughter – including with child benefit, maintenance advance or maintenance – she will be issued a residence card or GB residence document regardless of her status as a student.

Children (of any nationality) of British citizens

retain their residence rights until they have completed their education or training (including a degree programme at a higher education institution) even if the British parent no longer has the right to free movement in Germany.

Example

Razim, a Turkish citizen, is living with his mother in Hamburg and is in the fourth semester of his degree course. His father is a British citizen and had lived and worked in Germany from 2000 to 2010. He now lives in the United Kingdom. Razim retains his right of residence, regardless of age or income, until he has completed his studies in Germany.

Under current arrangements it is possible for adult children to join a British parent in Germany who has the right to free movement.

Examples

Mandy (19) has finished her schooling in the UK and wishes to study in Berlin as from July 2021. Her father has been living in Rostock for the last 10 years, although he is now receiving basic ALG-II unemployment benefit.

As a member of the same family as an EU citizen with the right to free movement (long-term residence) Mandy is eligible for a GB residence document and to claim BAföG.

James (25) has graduated in the UK with a Bachelor's degree and now wants to move to be with his mother in Osnabrück. He can live in her house there and study for a Master's degree. As a direct-line relative he has residence rights as long as his mother pays (at least part of) his living expenses.

Since 1 January 2021, students from the United Kingdom who are not relatives of a British citizen with the right to free movement are subject to **the Residence Act and the regulations applying to international students from third countries.**

In the future, students from the United Kingdom will be among the privileged group of third-country nationals who

- do not require a visa to enter the country, even if they are planning to stay in Germany for a longer period of time (Sec. 41 AufenthV),
- can, even if they hold a residence permit under Sec. 16b AufenthG, apply to the immigration authority for a residence permit for a different purpose (Sec. 41 AufenthV),
- can also obtain a residence permit for any unskilled employment (Sec. 26 (1) BeschV).

Example

Robert is from the UK and wants to study computer science for one summer semester at the Frankfurt University of Applied Sciences. He can apply to the immigration authority for the City of Frankfurt am Main for a residence permit under Sec. 16b AufenthG. If he decides in 2023 that computer science is not the right degree for him and that he would prefer to accept an offer of a job as a barkeeper, he will be able to switch to a residence permit under Sec. 19c AufenthG.

Guide for advisers

Subject	Residence law: Social law: Employment and labour law: Other:
Name	
Address	<input type="checkbox"/> No current residence <input type="checkbox"/> Non-registrable accommodation <input type="checkbox"/> Residence hall
(Last) registered	on:
Nationality	<input type="checkbox"/> EU/EEA/Switzerland <input type="checkbox"/> Third-country national
Age, date of birth	
Passport/ID card	
Residence title	issued on: valid until:
Previous periods of residence in Germany	
Family members in Germany	Spouse/Registered civil partnership Nationality: Residence status under: Separated/Divorced since: Children: 1. / 2. / 3. / Nationality: Residence status under: Age: Kindergarten/School: Parent of child/children:
Other relatives in Germany	Parents: Adult children: Siblings: Other:

Degree programme	Preparation from: _____ to: _____ Admission date: Subject: Higher education institution: Enrolment date: Number of semesters: ECTS: Previous degree programmes:
Membership in statutory health insurance scheme	
Membership in a statutory health system in the EU/EEA/Switzerland	Evidence?
Privately insured in Germany	
Current illnesses/Pregnancy, including spouse	
BAföG, received or applied for	
Social welfare benefits	received since ... or applied for on ... <input type="checkbox"/> Child benefit: <input type="checkbox"/> Supplementary child allowance: <input type="checkbox"/> Parental allowance: <input type="checkbox"/> Maintenance advance: <input type="checkbox"/> Housing benefit: <input type="checkbox"/> SGB II: <input type="checkbox"/> AsylbLG: <input type="checkbox"/> Other:
Gainful employment, including spouse	Ongoing since: Granted until: Terminated on: Other complaints or requests:
Criminal offences	
Other reasons for residence	
Legal representation by a lawyer	
Interpreters	
Other advisory agencies/ Volunteer support	

Table of social welfare benefits

Residence status	BAföG	Family benefits
Proof of arrival/Asylum Seekers' Registration Certificate (BüMA)	No	No*
Temporary permission to remain	No	No*
Toleration status (temporary suspension of deportation)	16 months after initial registration of residence	No*
Humanitarian residence permit		
Sec. 22 AufenthG Case-by-case admission decision	Yes	Yes
Sec. 23 (1) AufenthG Regulations governing old cases	Yes	Yes
Sec. 23 (2) AufenthG Group admission decisions (Jewish women from the former Soviet Union, Iraqis)	Yes	Yes
Sec. 23 (4) AufenthG Resettlement refugees	Yes	Yes
Sec. 23a AufenthG Decision by the Hardship Commission	Yes	If you are in gainful employment, are receiving parental allowance (Elterngeld) or unemployment benefit (ALG I); otherwise after 15 months' residence
Sec. 25 (1) or (2) AufenthG Recognised refugees and persons entitled to subsidiary protection	Yes	Yes
Sec. 25 (3) AufenthG Obstacles to deportation in the destination country	16 months after initial registration of residence	If you are in gainful employment, are receiving parental allowance (Elterngeld) or unemployment benefit (ALG I); otherwise after 15 months' residence

Residence status	BAföG	Family benefits
Sec. 25 (4) Sentence 1 AufenthG Temporary residence	After five years of employment or if one of your parents has been in employment for three of the last six years	If you are in gainful employment, are receiving parental allowance (Elterngeld) or unemployment benefit (ALG I); otherwise after 15 months' residence
Sec. 25 (4) Sentence 2 AufenthG Period of residence extended in cases of hardship	16 months after initial registration of residence	If you are in gainful employment, are receiving parental allowance (Elterngeld) or unemployment benefit (ALG I); otherwise after 15 months' residence
Sec. 25 (4a) AufenthG Victim-witnesses in criminal cases of human trafficking	Only if you or one of your parents have been in employment for several years	If you are in gainful employment, are receiving parental allowance (Elterngeld) or unemployment benefit (ALG I); otherwise after 15 months' residence
Sec. 25 (4b) AufenthG Criminal and civil proceedings for labour exploitation	Only if you or one of your parents have been in employment for several years	If you are in gainful employment, are receiving parental allowance (Elterngeld) or unemployment benefit (ALG I); otherwise after 15 months' residence
Sec. 25 (5) AufenthG Obstacles to deportation in Germany	16 months after initial registration of residence	If you are in gainful employment, are receiving parental allowance (Elterngeld) or unemployment benefit (ALG I); otherwise after 15 months' residence
Sec. 25a AufenthG Residence permit for well-integrated juveniles and young adults	Yes	Yes
Sec. 25b AufenthG Right to remain not dependent on time limits	Yes	Yes

Residence status	BAföG	Family benefits
Residence permit for the subsequent immigration of dependants		
Sec. 28 AufenthG To German nationals	Yes	Yes
Secs. 30, 32 AufenthG To foreign nationals who hold a permanent settlement permit	Yes	Yes
Secs. 30, 32 AufenthG To foreign nationals studying, working or engaged in research in Germany	16 months after initial registration of residence	Yes
Secs. 30, 32 AufenthG To foreign nationals in Germany on humanitarian grounds under Sec. 25 (1) or (2) AufenthG	According to the wording of the law after 16 months – incompatible with Articles 27, 23 Qualification Directive	Yes
Secs. 30, 32 AufenthG To foreign nationals in Germany on humanitarian grounds under Secs. 22, 23 (1) or Sec. 25 (3) AufenthG	16 months after initial registration of residence	Yes
Secs. 30, 32 AufenthG To foreign nationals with residence permits for the subsequent immigration of dependants	16 months after initial registration of residence	Yes
Residence permit for vocational training/work		
Sec. 16a AufenthG Trainees	Only if you or one of your parents have been in employment for several years	Yes
Secs. 16b, 16d AufenthG Degree programme, additional training	Only if you or one of your parents have been in employment for several years	Only if you are in - gainful employment - Parental leave - Receipt of ALG I benefits

Residence status	BAföG	Family benefits
Secs. 16e, 16f AufenthG Internship, language course, school attendance	Only if you or one of your parents have been in employ- ment for several years	No
Sec. 17 AufenthG Looking for vocational training or a place at a higher education institution	No	No
Secs. 18a, 18b, 19d AufenthG Employees working in Germany	Only if you or one of your parents have been in employ- ment for several years	Yes If your residence permit is valid for at least six months
Secs. 18d, 18f AufenthG Researchers	Only if you or one of your parents have been in employ- ment for several years	Yes, If your residence permit is valid for at least six months
Secs. 19, 19b ICT, mobile ICT, internal company transfer	Only if you or one of your parents have been in employ- ment for several years	Yes, If your residence permit is valid for at least six months
Sec. 19c AufenthG Other forms of employment	Only if you or one of your parents have been in employ- ment for several years	Ja, If your residence permit is valid for at least six months Exception: If it is clear from the outset that you will only be employed for a limited period of time (e.g. seasonal employment, exhibition booth construction)
Sec. 19e Voluntary service scheme	No	No
Sec. 21 AufenthG Self- employed persons working in Germany	Only if you or one of your parents have been in employ- ment for several years	Yes
Permanent residence		
Secs. 9, 9a AufenthG perma- nent settlement permit/EU long-term residence permit	Yes	Yes

* **Note on family benefits:**

Turkish citizens are eligible for family benefits if they are covered by a social insurance scheme. If this is not the case, they are eligible for child benefit after six months' residence.

Algerian, Tunisian and Moroccan citizens are eligible for child benefit if they are covered by a social insurance scheme.

Citizens of Bosnia and Herzegovina, Serbia and Montenegro are eligible for child benefit if they are employed and subject to compulsory social insurance.

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Contact

STW Student Social Advisory Service:

<https://www.studentenwerke.de/en/content/here-you-will-find-your-studentenwerk>
<https://www.studentenwerke.de/en/content/here-you-will-find-contact-persons-social>

Higher education institutions

International Offices/Akademische Auslandsämter der Hochschulen
<https://www.daad.de/en/study-and-research-in-germany/plan-your-studies/first-point-of-contact/>
Higher education institution general student committees (ASten)

Other advice centres

University Educational Guidance Guarantee Fund
<https://bildungsberatung-gfh.de/wen/>
Youth Migration Services (for young people with a migration background aged between 12 and 27)
Migration services for adults (from the age of 27)
Refugee councils
Asylum procedure counselling
Migration advice services provided by welfare organisations
Migrant self-help organisations
Advisory services for women with a migration background

Public institutions

IQ Competence Centre "Recognition in Germany"
<https://www.anerkennung-in-deutschland.de/html/en/index.php>.
The Federal Office for Migration and Refugees (BAMF) is responsible for your asylum procedure and your entitlement to language courses, and mobility in the EU
https://www.bamf.de/EN/Startseite/startseite_node.html.
Immigration authorities can provide information about your legal status.
The Federal Employment Agency provides financial assistance for the translation and recognition costs incurred for the purpose of taking up gainful employment.
Local government social welfare offices provide information about benefits for asylum seekers and foreign nationals with toleration status under Sec. 2 AsylbLG and Sec. 22 (1) Sentence 2 SGB XII.
Social affairs offices assess applicants' degree of disability.
The local employment agencies (Jobcenters) can provide you with information about the benefits for which students may be eligible in particular circumstances.
Youth welfare offices provide advice and support if you are looking for day care, help raising your child or with maintenance advances.

List of abbreviations**A**

AGG	General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz)
ALG	Unemployment Benefit (Arbeitslosengeld)
ARB	Decision of the Association Council (Assoziationsratsbeschluss)
ArbZG	Hours of Employment Act (Arbeitszeitgesetz)
AsylbLG	Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz)
AsylIG	Asylum Act (Asylgesetz)
AÜG	Temporary Agency Work Act (Arbeitnehmerüberlassungsgesetz)
AufenthG	Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act) (Aufenthaltsgesetz)
AufentV	Ordinance Governing Residence (Aufenthaltsverordnung)
AZR	Central Register of Foreigners (Ausländerzentralregister)

B

BA	Federal Employment Agency (Bundesagentur für Arbeit)
BAB	Vocational Training Grant (Berufsausbildungsbeihilfe)
BAföG	Federal Training Assistance Act (Bundesausbildungsförderungsgesetz)
BAG	Federal Labour Court (Bundesarbeitsgericht)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BEEG	Parental Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz)
BeschV	Regulation on the Employment of Foreign Nationals (Verordnung über die Beschäftigung von Ausländerinnen und Ausländern)
BFH	Federal Fiscal Court (Bundesfinanzhof)
BGB	Civil Code (Bürgerliches Gesetzbuch)
BKGG	Federal Child Benefit Act (Bundeskindergeldgesetz)
BMG	Federal Act on Registration (Bundesmeldegesetz)
BMI	Federal Ministry of the Interior (Bundesministerium des Innern)
BRK	Convention on the Rights of Persons with Disabilities (Behindertenrechtskonvention)
BSG	Federal Social Court (Bundessozialgericht)
BUrlG	Federal Vacation Act (Bundesurlaubsgesetz)
BVerfG	Federal Constitutional Court (Bundesverfassungsgericht)
BVerwG	Federal Administrative Court (Bundesverwaltungsgericht)

C

CEFR	Common European Framework of Reference for Languages (Gemeinsamer europäischer Referenzrahmen für Sprachen)
CFR	Charter of Fundamental Rights of the European Union

D

DAAD	German Academic Exchange Service (Deutscher Akademischer Austauschdienst)
DSW	German National Association for Student Affairs (Deutsches Studentenwerk)

E

eAT	Electronic residence title (elektronischer Aufenthaltstitel)
ECJ	European Court of Justice
ECTS	European Credit Transfer System
ECSMA	European Convention on Social and Medical Assistance
EHIC	European Health Insurance Card

EntgFG	Continued Payment of Remuneration Act (Entgeltfortzahlungsgesetz)
EstG	Income Tax Act (Einkommensteuergesetz)
EU	European Union (Europäische Union)
EEA	European Economic Area: EU Member States plus Iceland, Liechtenstein and Norway
F	
FreizügG/EU	Act on the General Freedom of Movement for EU Citizens (Freizügigkeitsgesetz EU)
G	
GewO	Industrial Code (Gewerbeordnung)
GG	Basic Law (German Constitution) (Grundgesetz)
H	
HRK	German Rector's Conference (Hochschulrektorenkonferenz)
I	
IntV	Ordinance on Integration Courses (Integrationsverordnung)
IRC	International Relations Center
J	
jM	Juris – Monthly Journal (Juris – Monatszeitschrift)
jurisPK	Juris – Legal Practice Commentaries (Juris – Praxiskommentar)
K	
KfW	German state-owned development bank (Kreditanstalt für Wiederaufbau)
KMK	Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in Germany (Kultusministerkonferenz)
L	
LarbG	Regional Labour Court (Landesarbeitsgericht)
LSG	Regional Social Court (Landessozialgericht)
M	
MiLoG	Minimum Wage Act (Mindestlohngesetz)
MuSchG	Maternity Protection Act (Mutterschutzgesetz)
N	
NRW	North Rhine-Westphalia (Nordrhein-Westfalen)
O	
OVG	Higher Administrative Court (Oberverwaltungsgericht)
P	
PflegeZG	Caregiver Leave Act (Pflegezeitgesetz)
PRC	Provisional Replacement Certificate
S	
SHI	Statutory health insurance
SG	Social Court (Sozialgericht)
SGb	Die Sozialgerichtsbarkeit – Journal of current social law (Die Sozialgerichtsbarkeit – Zeitschrift für das aktuelle Sozialrecht)
SGB	Social Code (Sozialgesetzbuch)
SGB I	Social Code – Book I – General Part (Sozialgesetzbuch I Allgemeiner Teil)

SGB II	Social Code – Book II – Basic Security for Jobseekers (Sozialgesetzbuch II Grundsicherung für Arbeitsuchende)
SGB III	Social Code – Book III – Employment Promotion (Sozialgesetzbuch III Arbeitsförderung)
SGB IV	Social Code – Book IV – General Rules for Social Security (Sozialgesetzbuch IV Gemeinsame Vorschriften für die Sozialversicherungen)
SGB V	Social Code – Book V – Statutory Health Insurance (Sozialgesetzbuch V Krankenversicherung)
SGB VI	Social Code – Book VI – Statutory Pension Insurance (Sozialgesetzbuch VI Rentenversicherung)
SGB VII	Social Code – Book VII – Employment Accident Insurance (Sozialgesetzbuch VII Unfallversicherung)
SGB VIII	Social Code – Book VIII – Children and Youth (Sozialgesetzbuch VIII Kinder- und Jugendhilferecht)
SGB IX	Social Code – Book IX – Rehabilitation and Participation of Disabled Persons (Sozialgesetzbuch IX Rehabilitation/Teilhabe)
SGB X	Social Code – Book X – Social and Administrative Procedures (Sozialgesetzbuch X Verwaltungsverfahren)
SGB XI	Social Code – Book XI – Social Care (Sozialgesetzbuch XI Pflegeversicherung)
SGB XII	Social Code – Book XII – Social Assistance (Sozialgesetzbuch XII Sozialhilfe)
SozSich	Soziale Sicherheit, journal (Soziale Sicherheit, Zeitschrift)
StAG	Nationality Act (Staatsangehörigkeitsgesetz)
STW	Student Service Organisations in Germany (Studenten- und Studierendenwerke)
T	
TFEU	Treaty on the Functioning of the European Union
TVöD	Collective Agreement for Public Employees in German Federal States (Tarifvertrag für den öffentlichen Dienst)
TzBfG	Part-Time and Limited Term Employment Act (Teilzeit- und Befristungsgesetz)
U	
UHVg	Maintenance Advance Act (Unterhaltsvorschussgesetz)
V	
VG	Administrative Court (Verwaltungsgericht)
VGH	Higher Administrative Court (Verwaltungsgerichtshof)
VVG	Insurance Policy Act (Versicherungsvertragsgesetz)
VwGO	Administrative court procedure (Verwaltungsgerichtsordnung)
VwV	Administrative provisions (Verwaltungsvorschriften)
VwVfG	Administrative Procedure Act (Verwaltungsverfahrensgesetz)
W	
WoBindG	Controlled Tenancy Act (Wohnungsbindungsgesetz)
WoFG	Public Housing Support Act (Wohnraumförderungsgesetz)
WoGG	Housing Benefit Act (Wohngeldgesetz)

Z

ZAB	Central Office for Foreign Education (Zentralstelle für ausländisches Bildungswesen)
ZESAR	Journal for European social, labour and employment law (Zeitschrift für europäisches Sozial- und Arbeitsrecht)
ZKG	Payment Accounts Act (Zahlungskontengesetz)

Residency and Social Security Law for International Students

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