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## **Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory**

### **Residence Act**

Residence Act in the version promulgated on 25 February 2008 (Federal Law Gazette I p. 162), last amended Article 10 (4) of the Act of 30.10.2017 (Federal Law Gazette I p. 3618)

#### **Chapter 1 General provisions**

##### **Section 1 Purpose of the Act; scope**

(1) This Act shall serve to control and restrict the influx of foreigners into the Federal Republic of Germany. It shall enable and organise immigration with due regard to the capacities for admission and integration and the interests of the Federal Republic of Germany in terms of its economy and labour market. At the same time, the Act shall also serve to fulfil the Federal Republic of Germany's humanitarian obligations. To this end, it shall regulate the entry, stay, economic activity and integration of foreigners. The provisions contained in other acts shall remain unaffected.

(2) This Act shall not apply to foreigners

1. whose legal status is regulated by the Act on the General Freedom of movement for EU Citizens, in the absence of any legal provisions to the contrary,
2. who are not subject to German jurisdiction according to the provisions of Sections 18 to 20 of the Courts Constitution Act,
3. who, by virtue of treaties on diplomatic and consular communication and on the activities of international organisations and institutions, are exempt from immigration restrictions, from the obligation to notify the foreigners authority of their stay and from the requirement for a residence title, and when reciprocity applies, insofar as this may constitute a prerequisite for such exemptions.

##### **Section 2 Definitions**

(1) A foreigner is anyone who is not German within the meaning of Article 116 (1) of the Basic Law.

(2) Economic activity is self-employment, employment within the meaning of Section 7 of Book Four of the Social Code and employment as a civil servant.

(3) A foreigner's subsistence is secure when he is able to earn a living, including sufficient health insurance coverage, without recourse to public funds. Drawing the following benefits shall not constitute recourse to public funds:

1. child benefits,
2. children's allowances,
3. child-raising benefits,
4. parental allowances,
5. educational and training assistance in accordance with Book Three of the Social Code, the Federal Education Assistance Act or the Upgrading Training Assistance Act,
6. public funds based on own contributions or granted in order to enable residence in Germany and
7. payments made in accordance with the Act on Advance Maintenance Payments.

A foreigner who is enrolled in a statutory health insurance fund shall be deemed to have sufficient health insurance coverage. Other family members' contributions to household income shall be taken into account when issuing or renewing a temporary residence permit allowing the subsequent immigration of dependants. For the purpose of issuing a temporary residence permit pursuant to Section 16, a foreigner's subsistence shall be deemed to be secure where he has funds in the amount of the monthly requirement as determined pursuant to Sections 13 and 13a (1) of the Federal Education Assistance Act. The Federal Ministry of the Interior shall announce the minimum amounts pursuant to sentence 5 in the Federal Gazette annually by 31 August for the following year.

(4) The space which is required to accommodate a person in need of accommodation in state-subsidised welfare housing shall constitute sufficient living space. Living space which does not comply with the statutory provisions for Germans with regard to condition and occupancy shall not be adequate for foreigners. Children up to the age of two shall not be counted when calculating the sufficient living space for the accommodation of families.

(5) Schengen states are states in which the following legal acts apply in their entirety:

1. Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19),
2. Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (OJ L 105, 13.4.2006, p. 1) and
3. Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (OJ L 243, 15.9.2009, p. 1).

(6) Temporary protection within the meaning of this Act is the granting of residence in application of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for the granting of temporary protection in the case of the mass influx of displaced foreigners and on measures to promote the balanced distribution of the burdens associated with the admission of these persons and the consequences of such admission among the member states (OJ L 212, 7.8.2001, p. 12).

(7) A foreigner to whom the legal status of long-term resident has been granted in a member state of the European Union pursuant to Article 2 (b) of Council Directive 2003/109/EC of 25 November 2003 concerning the legal status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44), most recently amended by Directive 2011/51/EU (OJ L 132, 19.5. 2011. p. 1), and not subsequently revoked is a long-term resident.

The EU long-term residence permit issued by another member state pursuant to Article 8 of Directive 2003/109/EC constitutes long-term residence status (EU).

(9) Basic knowledge of the German language corresponds to Level A1 of the Common European Framework of Reference for Languages (Recommendation no. R(98)6 of 17 March 1998 of the Committee of Ministers of the Council of Europe to Member States concerning the Common European Framework of Reference for Languages – CEFR).

(10) Elementary knowledge of the German language corresponds to Level A2 of the Common European Framework of Reference for Languages.

(11) Sufficient command of the German language corresponds to Level B1 of the Common European Framework of Reference for Languages.

(12) A foreigner has a good command of the German language if his knowledge of the language corresponds to Level C1 of the Common European Framework of Reference for Languages.

(13) A foreigner has international protection status if he enjoys international protection within the meaning of

1. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 30.9.2004, p. 12), or of

2. Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12. 2011, p. 9).

(14) The following may constitute concrete evidence within the meaning of Section 62 (3), sentence 1, no. 5:

1. the foreigner, despite being informed of the notification obligation, has in the past already eluded the authorities by changing his place of residence not only on a temporary basis without notifying the competent authority of an address at which he can be reached,

2. the foreigner deceives the authorities regarding his identity, in particular by suppressing or destroying identity or travel documents or claiming a false identity,

3. the foreigner has refused or failed to cooperate in establishing his identity, and it can be concluded from the particular circumstances of the case that he intends actively to prevent his deportation,

4. the foreigner has paid considerable sums of money to a third person so that this person will engage in activities pursuant to Section 96 to secure the foreigner's unlawful

entry, and these sums are so relevant given the foreigner's circumstances that it can be concluded that he will prevent deportation to ensure that the expenses were not in vain,

5. the foreigner has expressly declared that he intends to evade deportation,
- 5a. the foreigner constitutes a significant threat to the life and limb of others or to significant legally protected internal security interests, or
6. the foreigner has made other concrete preparations of comparable significance to evade imminent deportation and these preparations cannot be thwarted by using direct force.

(15) Insofar as Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for ascertaining which member state is responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31) concerning detention for the purpose of transfer is relevant, the evidence referred to in subsection 14 shall be regarded accordingly as objective criteria for presuming that there is a risk of the foreigner absconding within the meaning of Article 2 (n) of Regulation (EU) No 604/2013. Such evidence may also exist where the foreigner has left a member state prior to the conclusion of proceedings being conducted there to determine competence or to examine an application for international protection and the circumstances of his apprehension in the federal territory provide concrete indications that he does not intend to visit the competent member state in the foreseeable future. The provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction shall apply accordingly to the procedure for ordering detention for the purpose of transfer in accordance with Regulation (EU) No 604/2013, unless the procedure is regulated in another manner under Regulation (EU) No 604/2013.

## **Chapter 2**

### **Entry into and residence in the federal territory**

#### **Part 1**

#### **General**

#### **Section 3**

#### **Passport requirement**

(1) Foreigners may enter or stay in the federal territory only if they possess a recognised and valid passport or passport substitute, unless they are exempt from the passport requirement by virtue of a statutory instrument. For the purpose of residence in the federal territory, possession of a substitute identity document shall also suffice in order to meet the passport requirement (Section 48 (2)).

(2) In justified individual cases, the Federal Ministry of the Interior or the body designated by it may permit exemptions from the passport requirement before the foreigner enters the federal territory for the purpose of crossing the border, and for a subsequent stay of up to six months.

#### **Section 4**

#### **Residence title requirement**

(1) In order to enter and stay in the federal territory, foreigners shall require a residence title, in the absence of any provisions to the contrary in the law of the European Union or a statutory instrument and except where a right of residence exists as a result of the agreement of 12 September 1963 establishing an association between the European

Economic Community and Turkey (Federal Law Gazette 1964 II, p. 509) (EEC/Turkey Association Agreement). The residence titles shall be granted in the form of

1. a visa pursuant to Section 6 (1), no. 1 and (3),
2. a temporary residence permit (Section 7),
  - 2a. an EU Blue Card (Section 19a),
  - 2b. an ICT Card (Section 19b),
  - 2c. a Mobile ICT Card (Section 19d)
3. a permanent settlement permit (Section 9) or
4. an EU long-term residence permit (Section 9a).

The legal provisions governing temporary residence permits shall also apply to the EU Blue Card, the ICT Card and the Mobile ICT Card in the absence of any law or statutory instrument to the contrary.

(2) A residence title shall entitle the holder to pursue an economic activity insofar as this is laid down in this Act or the residence title expressly permits pursuit of an economic activity. Every residence title must indicate whether the pursuit of an economic activity is permitted. A foreigner who does not possess a temporary residence permit for the purpose of employment may be permitted to take up employment only if the Federal Employment Agency has granted its approval or a statutory instrument stipulates that taking up the employment concerned is permissible without the approval of the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval must be specified in the residence title.

(3) Foreigners may pursue an economic activity only if the residence title so allows. Foreigners may be employed or commissioned to perform other paid work or services only if they possess such a residence title. This restriction shall not apply to seasonal work, if the foreigner holds a seasonal work permit, nor to other economic activities if the foreigner is permitted by virtue of an intergovernmental agreement, a law or a statutory instrument to pursue an economic activity without requiring due authorisation via a residence title. Anyone employing a foreigner or commissioning a foreigner on a sustained basis to perform paid work or services for gain in the federal territory must ascertain whether the conditions pursuant to sentence 2 or sentence 3 apply. Anyone employing a foreigner in the federal territory must keep a copy of the residence title, of the seasonal work permit or of the certificate confirming permission to remain pending the asylum decision or confirming suspension of deportation, in electronic or paper form for the duration of the employment.

(4) (repealed)

(5) A foreigner who possesses a right of residence in accordance with the EEC/Turkey Association Agreement shall be obliged to furnish evidence of the existence of said right of residence through the possession of a temporary residence permit, unless he is in possession of a permanent settlement permit or an EU long-term residence permit. Said residence permit shall be issued on application.

## **Section 5**

### **General prerequisites for granting residence titles**

(1) The granting of a residence title shall generally presuppose

1. that the foreigner's subsistence is secure;
- 1a. that the foreigner's identity is established, as is his nationality, if he is not entitled to return to another state,
2. that there is no public interest in expelling the foreigner,
3. that, if the foreigner has no entitlement to a residence title, the foreigner's residence does not compromise or jeopardise the interests of the Federal Republic of Germany for any other reason and
4. that the passport requirement pursuant to Section 3 is met.

(2) The granting of a temporary residence permit, an ICT Card, a permanent settlement permit or an EU long-term residence permit shall further presuppose that the foreigner

1. has entered the country with the necessary visa and
2. has already furnished the key information required for granting the title in his visa application.

These requirements may be waived if the prerequisites qualifying a foreigner for the granting of a residence title are met or if special circumstances relating to the individual case concerned render a subsequent visa application procedure unreasonable. Sentence 2 shall not apply to granting an ICT Card.

(3) Application of subsections 1 and 2 shall be waived in the cases of a residence title issued pursuant to Section 24 or Section 25 (1) to (3); application of subsection 1, nos. 1 to 2 and 4 and subsection 2 shall be waived in the cases of Section 25 (4a) and (4b). Application of subsections 1 and 2 may be waived in the other cases of issuing a residence title pursuant to Chapter 2, Part 5. Where application of subsection 1, no. 2 is waived, the foreigners authority may point out that expulsion is possible on account of certain public interests in expelling the foreigner which are the subject of criminal or other proceedings still in progress; such interests must be specified individually. Application of subsection 2 shall be waived in the event of a residence title issued pursuant to Section 26 (3).

(4) A residence title shall be denied if there is a public interest in expelling the foreigner within the meaning of Section 54 (1) no. 2 or no. 4. Exceptions to sentence 1 may be approved in justified individual cases, if the foreigner divulges said activities or allegiances to the competent authorities and credibly distances himself from his actions posing a threat to security. In justified individual cases, the Federal Ministry of the Interior or the body designated by it may permit exceptions to sentence 1 before the foreigner enters the federal territory for the purpose of crossing the border, and for a subsequent stay of up to six months.

## **Section 6 Visas**

(1) A foreigner may be issued the following visas in accordance with Regulation (EC) No 810/2009:

1. a visa for the purpose of transit through the territory of the Schengen states or for planned stays in this territory of up to 90 days within a 180-day period (Schengen visa),
2. an airport transit visa for the purpose of passing through the international transit area at airports.

(2) In accordance with Regulation (EC) No 810/2009, Schengen visas may be extended up to a total stay of 90 days within a 180-day period. A Schengen visa may be extended by a further 90 days within the 180-day period concerned as a national visa on the grounds stated in Article 33 of Regulation (EC) No 810/2009/EC, to safeguard the interests of the Federal Republic of Germany or for reasons of international law.

(3) A visa for the federal territory (national visa) shall be required for longer stays; this visa shall be issued before the foreigner enters the federal territory. It shall be issued on the basis of applicable provisions for a temporary residence permit, EU Blue Card, ICT Card, permanent settlement permit or EU long-term residence permit. The duration of lawful stay with a national visa shall be offset against the periods of possession of a temporary residence permit, EU Blue Card, permanent settlement permit or EU long-term residence permit.

(4) An exceptional visa within the meaning of Section 14 (2) shall be issued as a visa within the meaning of subsection 1 no. 1 or subsection 3.

### **Section 7** **Temporary residence permit**

(1) The temporary residence permit (*Aufenthaltserlaubnis*) is a residence title which is limited in time. It shall be issued for the purposes of residence stated in the following Parts of this Act. In justified cases, a temporary residence permit may also be issued for a purpose of residence which is not covered by this Act.

(2) The temporary residence permit shall be subject to a time limit which takes due account of the intended purpose of residence. Should a vital prerequisite for issuance, extension or the duration of validity cease to apply, it shall also be possible to subsequently reduce the length of validity.

### **Section 8** **Extension of the temporary residence permit**

(1) Extending the temporary residence permit shall be subject to the same regulations as apply to issuance.

(2) As a general rule, the temporary residence permit may not be extended if the competent authority has prohibited an extension in the case of a stay which is of only a temporary nature in accordance with the purpose of residence or at the time the temporary residence permit was last extended.

(3) Before the temporary residence permit is extended, it must be ascertained whether the foreigner has fulfilled his obligation to duly attend an integration course. If a foreigner breaches his obligation to duly attend an integration course pursuant to Section 44a (1), sentence 1, this shall be taken into account in the decision on extending the temporary residence permit. Where no entitlement to issuance of the temporary residence permit exists, extension of the temporary residence permit shall be refused in the case of repeated and gross breach of the obligations pursuant to sentence 1. Where an entitlement to extension of the temporary residence permit applies only pursuant to this Act, extension may be refused unless the foreigner furnishes evidence that he has achieved integration into the community and society by other means. In deciding on this matter, due consideration shall be given to the duration of lawful stay, the foreigner's legitimate ties to the federal territory and consequences of the termination of residence for dependants of the foreigner who are lawfully resident in the federal territory. If a foreigner was or is obliged to attend an integration course pursuant to Section 44a (1),

sentence 1, the temporary residence permit should be extended for at most one year if he has not successfully completed the integration course or has not yet furnished evidence that that he has achieved integration into the community and society by other means.

(4) Subsection 3 shall not be applied to the extension of a temporary residence permit issued pursuant to Section 25 (1), (2) or (3).

### **Section 9 Permanent settlement permit**

(1) The permanent settlement permit (*Niederlassungserlaubnis*) is a residence title which is not limited in time. It shall entitle the holder to pursue an economic activity and may only be supplemented with a subsidiary provision in those cases which are expressly permitted by this Act. Section 47 shall remain unaffected.

(2) A foreigner shall be granted a permanent settlement permit if

1. he has held a temporary residence permit for five years,
2. his subsistence is secure,
3. he has paid compulsory or voluntary contributions into the statutory pension scheme for at least 60 months or furnishes evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company; time off for the purposes of child care or nursing at home shall be duly taken into account,
4. granting such a temporary residence permit is not precluded by reasons of public safety or order, according due consideration to the severity or the nature of the breach of public safety or order or the danger emanating from the foreigner, with due regard to the duration of the foreigner's stay to date and the existence of ties in the federal territory,
5. he is permitted to be in employment, if he is in employment,
6. he possesses the other permits required for the purpose of the permanent pursuit of his economic activity,
7. he has sufficient command of the German language,
8. he possesses a basic knowledge of the legal and social system and the way of life in the federal territory and
9. he possesses sufficient living space for himself and the members of his family forming part of his household.

The requirements of sentence 1, nos. 7 and 8 shall be deemed to be fulfilled if the foreigner has successfully completed an integration course. These requirements shall be waived if the foreigner is unable to fulfil them on account of a physical or mental illness or disability. The requirements of sentence 1, nos. 7 and 8 may also be waived in order to avoid hardship. The aforesaid requirements shall further be waived if the foreigner is able to communicate verbally in the German language at a basic level and has not been entitled to participate in an integration course pursuant to Section 44 (3), no. 2 or has not been obliged to participate in an integration course pursuant to Section 44a (2), no. 3. The requirements of sentence 1, nos. 2 and 3 shall also be waived if the foreigner is unable to fulfil them due to the grounds stated in sentence 3.

(3) In the case of cohabiting spouses, it shall suffice if the requirements in accordance with subsection 2, sentence 1, nos. 3, 5 and 6 are fulfilled by one spouse. The

requirement in accordance with subsection 2, sentence 1, no. 3 shall be waived if the foreigner is undergoing education or training which leads to a recognised school, vocational or higher education qualification. Sentence 1 shall apply accordingly in the cases covered by Section 26 (4).

(4) The following periods shall be taken into account with regard to the periods of possession of a temporary residence permit which are necessary in order to qualify for issuance of a permanent settlement permit:

1. the duration of former possession of a temporary residence permit or permanent settlement permit, if the foreigner was in possession of a permanent settlement permit at the time of leaving the federal territory, minus the duration of intermediate stays outside of the federal territory which led to expiry of the permanent settlement permit; a maximum of four years shall be taken into account,
2. a maximum of six months for each stay outside of the federal territory which did not lead to expiry of the temporary residence permit,
3. half of the period of lawful stay for the purposes of study or vocational training in the federal territory.

#### **Section 9a** **EU long-term residence permit**

(1) The EU long-term residence permit is a permanent residence title. Section 9 (1), sentences 2 and 3 shall apply accordingly. In the absence of any provisions to the contrary in this Act, the EU long-term residence permit shall be equivalent to the permanent settlement permit.

(2) A foreigner shall be issued an EU long-term residence permit pursuant to Article 2 (b) of Directive 2003/109/EC if

1. he has resided in the federal territory with a residence title for five years,
2. his subsistence and the subsistence of his dependants whom he is required to support is ensured by a fixed and regular income,
3. he has sufficient command of the German language,
4. he possesses a basic knowledge of the legal and social system and the way of life in the federal territory,
5. the granting of such a residence permit is not precluded by reasons of public safety or order, according due consideration to the severity or the nature of the breach of public safety or order or the danger emanating from the foreigner, with due regard to the duration of the foreigner's stay to date and the existence of ties in the federal territory and
6. he possesses sufficient living space for himself and the members of his family forming part of his household.

Section 9 (2), sentences 2 to 5 shall apply accordingly to sentence 1, nos. 3 and 4.

(3) Subsection 2 shall not apply if the foreigner

1. possesses a residence title pursuant to Part 5 which was not issued on the basis of Section 23 (2) or holds a comparable legal status in another member state of the European Union and if he has not been recognised as eligible for international protection in the Federal Republic of Germany or another member state of the European Union; the

same shall apply if he has applied for such title or such legal status, and the decision on this application is pending,

2. has applied for recognition as being eligible for international protection or for temporary protection within the meaning of Section 24 and the decision on this application is pending,
3. possesses a legal status in another member state of the European Union which corresponds to that described in Section 1 (2), no. 2,
4. resides in the federal territory with a temporary residence permit pursuant to Section 16 or Section 17 or
5. is resident for another purpose of an inherently temporary nature, in particular
  - a) by virtue of a temporary residence permit pursuant to Section 18, where the time limit on the approval granted by the Federal Employment Agency is based on a maximum term of employment imposed pursuant to Section 42 (1),
  - b) if an extension to his temporary residence permit has been prohibited pursuant to Section 8 (2) or
  - c) if his temporary residence permit serves to enable the foreigner to live together or to continue to live together as a family with a foreigner who himself is only resident in the federal territory for a purpose of an inherently temporary nature, where no independent right of residence would arise if the family unity ends.

#### **Section 9b Counting residence periods**

(1) The following periods shall be counted towards the necessary periods pursuant to Section 9a (2), sentence 1, no. 1:

1. periods of residence outside of the federal territory during which the foreigner possessed a residence title and
  - a) was resident abroad on account of having been sent to a foreign country in connection with his work, provided that such individual periods have not exceeded six months or a longer period stipulated by the foreigners authority pursuant to Section 51 (1), no. 7, or
  - b) the total periods do not exceed six consecutive months or, within the period stated in Section 9a (2), sentence 1, no. 1, a total of ten months,
2. previous periods of residence in the federal territory with a temporary residence permit, permanent settlement permit or EU long-term residence permit, where the foreigner was in possession of a permanent settlement permit or an EU long-term residence permit at the time of leaving the federal territory and the permanent settlement permit or the EU long-term residence permit has expired solely on account of residence outside of member states of the European Union or due to acquisition of the legal status of long-term residence in another member state of the European Union, up to a maximum of four years,
3. periods in which the foreigner was entitled to freedom of movement,
4. half of any periods of lawful stay for the purposes of study or vocational training in the federal territory,

5. in the case of foreigners eligible for international protection, the period between the date on which the application for international protection was filed and the date on which a residence title was issued on account of the fact that he was granted international protection.

Periods of residence pursuant to Section 9a (3), no. 5 and periods of residence in which the foreigner also met the conditions of Section 9a (3), no. 3 shall not be counted. Periods of residence outside of the federal territory shall not be deemed to interrupt the period of residence pursuant to Section 9a (2), sentence 1, no. 1 where the residence outside of the federal territory has not resulted in expiry of the residence title; such periods shall not be counted when determining the total duration of residence pursuant to Section 9a (2), sentence 1, no. 1. In all other cases, exit from the federal territory shall be deemed to interrupt the period of residence pursuant to Section 9a (2), sentence 1, no. 1.

(2) Periods during which the foreigner holds an EU Blue Card issued by another member state of the European Union shall be counted as periods required by Section 9a (2), sentence 1, no. 1, provided the foreigner

1. resided in said other member state of the European Union holding an EU Blue Card for at least 18 months and

2. has resided in the federal territory for at least two years holding an EU Blue Card when filing the application.

Periods of residence outside of the European Union shall not be counted. However, such periods shall not be deemed to interrupt the period of residence pursuant to Section 9a (2), sentence 1, no. 1 if they do not exceed twelve consecutive months and if they do not exceed a total of 18 months within the period laid down in Section 9a (2), sentence 1, no. 1. Sentences 1 to 3 shall apply accordingly to dependants of the foreigner who have been granted a temporary residence permit under Sections 30 or 32.

### **Section 9c Subsistence**

A foreigner shall be deemed to have a fixed and regular income within the meaning of Section 9a (2), sentence 1, no. 2 if

1. the foreigner has met his tax obligations,

2. the foreigner or his cohabiting spouse has paid contributions or made adequate provision for an old-age pension in Germany or abroad, if he has not been prevented from doing so by a physical or mental illness or disability,

3. the foreigner and his dependants living with him as a family unit are protected against the risk of illness and the need for nursing care by statutory health insurance or an essentially equivalent form of insurance coverage which applies for an indefinite period or is extended automatically and

4. the foreigner who obtains his regular income from an economic activity is entitled to perform the economic activity concerned and also possesses the other permits required to this end.

In the case of cohabiting spouses, it shall suffice if the requirements in accordance with sentence 1, no. 4 are fulfilled by one spouse. With regard to the contributions or provisions which are necessary pursuant to sentence 1, no. 2, no higher contributions or provisions shall be required than are provided for in Section 9 (2), sentence 1, no. 3.

### **Section 10 Residence titles and applications for asylum**

(1) In the absence of a legal entitlement, a foreigner who has filed an application for asylum may be granted a residence title prior to the legally valid completion of the asylum procedure only with the approval of the supreme *Land* authority, and only when vital interests of the Federal Republic of Germany so require.

(2) A residence title issued or extended by the foreigners authority after the foreigner has entered the federal territory may be extended in accordance with the provisions of this Act, irrespective of whether the foreigner has filed an application for asylum.

(3) A foreigner whose asylum application has been incontestably rejected or who has withdrawn his asylum application may be granted a residence title prior to leaving the federal territory only in accordance with the provisions of Part 5. If the asylum application has been rejected in accordance with Section 30 (3), nos. 1 to 6 of the Asylum Act, no residence title may be issued before the foreigner leaves the federal territory. Sentences 1 and 2 shall not apply in cases of entitlement to issuance of a residence title; sentence 2 shall further not apply if the foreigner meets the requirements for issuance of a temporary residence permit pursuant to Section 25 (3).

### **Section 11** **Ban on entry and residence**

(1) A foreigner who has been expelled, removed or deported shall be permitted neither to re-enter nor to stay in the federal territory, nor may he be granted a residence title, even if he is entitled thereto under this Act (ban on entry and residence).

(2) The ban on entry and residence shall be subject to a time limit imposed ex officio. The period shall begin to run when the foreigner leaves the country. In the event of expulsion, the period shall be set when the expulsion order is issued. In other cases, the period should be set upon when the deportation warning is issued, at the latest, however, when the foreigner is deported or removed. In addition to imposing a time limit, a condition may also be imposed in order to prevent a threat to public safety and order, in particular requiring the foreigner to provide proof that he is not subject to punishment or is not using illegal drugs. If the condition is not met before the time limit expires, a longer time limit issued ex officio when the time limit is imposed pursuant to sentence 5 shall apply.

(3) A discretionary decision shall be taken regarding the length of the time limit. It may exceed five years only if the foreigner was expelled on the ground of a criminal conviction or if he presents a serious threat to public safety and order. This period should not exceed ten years.

(4) If it is no longer required for the purpose of the ban on entry and residence, the ban on entry and residence may be revoked in order to uphold the legitimate interests of the foreigner, as or the period referred to in subsection 2 may be shortened. The ban on entry and residence should be revoked if the conditions for issuing a residence title pursuant to Chapter 2 Part 5 are met. The period referred to in subsection 2 may be extended on the grounds of public safety and order. Subsection 3 shall apply accordingly.

(5) No time limit shall be applied and the ban on entry and residence shall not be revoked if a foreigner has been deported from the federal territory on account of a crime against peace, a war crime or a crime against humanity, or on the basis of a deportation order pursuant to Section 58a. The supreme *Land* authority may permit exceptions to sentence 1 in individual cases.

(6) A ban on entry and residence may be imposed against a foreigner who has not

fulfilled his obligation to leave the country within the period allowed for departure, unless the foreigner was prevented from leaving through no fault of his own or has exceeded the period allowed for departure by an insignificant amount of time. Subsections 1 to 5 shall apply accordingly. The ban on entry and residence must be subject to a time limit when it is ordered pursuant to sentence 1. The first time a ban on entry and residence is ordered pursuant to sentence 1, the period should not exceed one year. Otherwise, the period should not exceed three years. A ban on entry and residence shall not be ordered where there are grounds for temporarily suspending deportation pursuant to Section 60a for which the foreigner was not responsible.

(7) The Federal Office for Migration and Refugees may impose a ban on entry and residence against a foreigner

1. whose asylum application was rejected as manifestly unfounded pursuant to Section 29a (1) of the Asylum Act, who was not granted subsidiary protection, for whom the existence of the conditions for imposing a ban on deportation pursuant to Section 60 (5) or (7) was not established and who is possesses no residence title or

2. whose application, pursuant to Section 71 or Section 71a of the Asylum Act, repeatedly did not lead to a follow-up asylum procedure.

The ban on entry and residence shall take effect when the decision on the application for asylum assumes legal validity. Subsections 1 to 5 shall apply accordingly. The ban on entry and residence must be subject to a time limit when it is ordered pursuant to sentence 1. The first time a ban on entry and residence is ordered pursuant to sentence 1, the period should not exceed one year. Otherwise, the period should not exceed three years.

(8) Except in the cases referred to in subsection 5, sentence 1, the foreigner may, before the ban on entry and residence expires, by way of exception be allowed to enter the federal territory for a short period if his presence is required for compelling reasons or if the denial of permission would constitute undue hardship. Subsection 5, sentence 2, shall apply accordingly in cases pursuant to subsection 5, sentence 1.

(9) If a foreigner enters the federal territory in contravention of a ban on entry and residence, the running of a fixed period shall be suspended during his stay in in the federal territory. The period may be extended in such cases, at the most, however, by the length of the original time limit imposed. The foreigner must be informed of this possibility when a time limit is imposed for the first time. Subsections 3 and 4, sentence 1, shall apply accordingly to a time limit extended pursuant to sentence 2.

## **Section 12**

### **Area of application; subsidiary provisions**

(1) The residence title shall be issued for the federal territory. Its validity in accordance with the provisions of the Convention Implementing the Schengen Agreement for residence in the territories of the contracting parties shall remain unaffected.

(2) The visa and the temporary residence permit may be issued and extended subject to conditions. Conditions, in particular geographic restrictions, may also be imposed subsequently on visa and temporary residence permits.

(3) A foreigner must shall immediately leave any part of the federal territory in which he may be staying without the permission of the foreigners authority in breach of a geographic restriction.

(4) The stay of a foreigner who does not require a residence title may be made subject to time limits, geographic restrictions, conditions and requirements.

(5) The foreigners authority may permit the foreigner to leave the residence area to which he is restricted on the basis of this Act. This permission shall be granted if an urgent public interest applies, if it is necessary for compelling reasons or if denying permission would constitute undue hardship. The foreigner shall need no permission to attend appointments at authorities or court hearings where his personal appearance is necessary.

### **Section 12a Residence rule**

(1) In order to promote their lasting integration into the way of life in the Federal Republic of Germany, foreigners who have been recognised as being entitled to asylum, having refugee status within the meaning of Section 3 (1) of the Asylum Act, who have been granted subsidiary protection within the meaning of Section 4 (1) of the Asylum Act or who have been granted an initial temporary residence permit pursuant to Section 22, Section 23 or Section 25 (3) shall be obliged to take up their habitual residence (place of residence) for a period of three years as from recognition or issuance of the temporary residence permit in that *Land* to which they have been allocated for the purposes of their asylum procedure or in the context of their admission process. Sentence 1 shall not apply where a foreigner, his spouse, registered domestic partner or minor child takes up or has taken up employment of at least 15 hours per week with full social security coverage, on account of which that person has an income amounting to at least the average monthly needs for individual persons pursuant to Sections 20 and 22 of Book Two of the Social Code, or that person takes up or has taken up vocational training or is pursuing his studies or is in a training relationship.

(2) A foreigner who is subject to the obligation under subsection 1 and who is living in a reception centre or other temporary accommodation may, within six months of recognition or admission, but no later than the expiry of the period referred to in subsection 1, be obliged, for the purpose of providing him with suitable accommodation, to take up residence in a specific place if this would not interfere with his lasting integration into the way of life in the Federal Republic of Germany. Insofar as, in an individual case, it was not possible to allocate suitable accommodation within six months, such allocation pursuant to sentence 1 may be made once within a further six months.

(3) In order to promote their lasting integration into the way of life in the Federal Republic of Germany, foreigners who are subject to the obligation pursuant to subsection 1 shall be obliged, within six months of recognition or the first issuance of a temporary residence permit, but no later than the expiry of the period applicable in accordance with subsection 1, to take up residence in a specific place if this can help them

1. acquire suitable accommodation,
2. acquire sufficient oral command of the German language equivalent to Level A2 of the Common European Framework of Reference for Languages and
3. enter paid employment, taking account of the local conditions on the vocational training and labour market.

(4) Foreigners who are subject to the obligation under subsection 1 may, in order to prevent social exclusion, also be obliged until the expiry of the period applicable under subsection 1, not to take up residence in a specific place, in particular if it is to be expected that they will not use German as their main language of communication at that

place. This decision shall take into account the situation of the local vocational training and labour market.

(5) An obligation imposed or allocation made pursuant to subsections 1 to 4 must be revoked upon application by the foreigner

1. if the foreigner furnishes proof, in the event of an obligation or allocation pursuant to subsections 1 to 3 to take up residence at another place, or in the event of an obligation pursuant to subsection 4 not to reside at a place, that

a) he or his spouse, registered domestic partner or minor child is in employment with full social security coverage within the meaning of subsection 1, sentence 2, has an income which secures his subsistence or a vocational training place or has been accepted to a higher education institution; or

b) his spouse, registered domestic partner or minor, unmarried children reside elsewhere,

2. to prevent hardship; in particular, hardship shall exist where

a) the competent youth welfare office estimates that the local child and youth welfare benefits and measures pursuant to Book Eight of the Social Code would be negatively affected,

b) acceptance by another *Land* has been confirmed on other urgent, personal grounds or

c) comparable unreasonable restrictions would arise for the person concerned on other grounds.

In the event of revocation pursuant to sentence 1 no. 2, the foreigner must be subject to an obligation pursuant to subsection 3 or 4, at most until the period referred to in subsection 1 expires, account having been taken of his interests.

(6) Where dependants subsequently immigrate to rejoin a foreigner who is subject to an obligation or allocation pursuant to subsections 1 to 4, the obligation or allocation shall also apply to the dependants subsequently immigrating at most until the period applicable to the foreigner pursuant to subsection 1 expires, unless the competent authority has ordered otherwise. Subsection 5 shall apply accordingly to the subsequently immigrating dependants.

(7) Subsections 1 to 6 shall not apply to foreigners who were recognised or initially granted a temporary residence permit within the meaning of subsection 1 before 1 January 2016.

(8) Objections and actions filed against obligations pursuant to subsections 2 to 4 shall have no suspensory effect.

(9) With regard to foreigners who are subject to the obligation pursuant to subsection 1, the *Länder* may, by way of statutory instruments of the *Land* government or other *Land* regulations, issue regulations specifying the organisation, procedure and suitable accommodation relating to

1. their distribution within the *Land* pursuant to subsection 2,

2. the procedure for allocation and obligations pursuant to subsections 2 to 4,

3. the requirements as to suitable accommodation within the meaning of subsections 2, 3 no. 1 and subsection 5, sentence 1, no. 1 (a), as well as the form of its proof,
4. the manner of furnishing proof of employment with full social security coverage pursuant to subsection 1, sentence 2, income which secures subsistence, and of having a vocational training place or being accepted to a higher education institution within the meaning of subsections 1 and 5, sentence 1, no. 1, (a),
5. the obligation to be taken up by the municipality determined as his place of residence and the admission process.

## **Part 2 Entry**

### **Section 13 Border crossing**

(1) Entry into and exit from the federal territory shall be permitted only at the approved border crossing points and within the stipulated traffic hours, in the absence of any exceptions which may be permissible on the basis of other statutory provisions or intergovernmental agreements. Foreigners shall be obliged to carry a recognised and valid passport or passport substitute in accordance with Section 3 (1) when entering or leaving the federal territory and to submit to the police control of cross-border traffic.

(2) A foreigner shall be deemed to have entered the federal territory only after having crossed the border and passed through the border checkpoint. Should the authorities charged with policing cross-border traffic allow a foreigner to pass through the border checkpoint for a specific temporary purpose prior to a decision on the refusal of entry (Section 15 of this Act, Sections 18, 18a of the Asylum Act) or during preparation, safeguarding and implementation of this measure, this shall not constitute entry pursuant to sentence 1 as long as the said authorities remain able to monitor the foreigner's stay. The foreigner shall otherwise be deemed to have entered the federal territory when crossing the border.

### **Section 14 Unlawful entry; exceptional visa**

(1) The entry of a foreigner into the federal territory shall be unlawful if he

1. does not possess a required passport or passport substitute in accordance with Section 3 (1),
2. does not possess the residence title required in accordance with Section 4,
- 2a. does possess the necessary visa pursuant to Section 4 upon entry, but obtained it by threat, bribery or collusion or by furnishing incorrect or incomplete information, for which reason it is revoked or annulled retrospectively, or
3. is not permitted to enter the federal territory in accordance with Section 11 (1), (6) or (7) unless he possesses a temporary entry permit in accordance with Section 11 (8).

(2) The authorities charged with policing cross-border traffic may issue exceptional visa and passport substitutes.

### **Section 15 Refusal of entry**

(1) A foreigner wishing to enter the federal territory unlawfully shall be refused entry at the border.

(2) A foreigner may be refused entry at the border if

1. there is a public interest in expelling the foreigner,
2. there is a well-founded suspicion that the foreigner does not intend to stay in the country for the stated purpose,
- 2a. he only possesses a Schengen visa or is exempted from the visa requirement for a short-term stay and intends to pursue an economic activity counter to Section 4 (3), sentence 1 or
3. he does not fulfil the conditions for entry into the territory of the contracting parties in accordance with Article 5 of the Schengen Borders Code.

(3) A foreigner who is exempted from the requirement for a residence title for a temporary stay in the federal territory may be refused entry if he does not fulfil the requirements of Section 3 (1) and Section 5 (1).

(4) Section 60 (1) to (3), (5) and (7) to (9) shall apply accordingly. A foreigner who has filed an application for asylum may not be refused entry if he is permitted to stay in the federal territory in accordance with the provisions of the Asylum Act.

(5) In order to ensure that a refusal of entry is effective where a ruling to refuse entry has been issued and cannot be enforced immediately, the foreigner concerned should be taken into custody (detention pending exit from the federal territory) by virtue of a judicial order. Section 62 (4) shall otherwise apply accordingly. Subsection 1 shall not apply in cases in which the judge declines to issue a corresponding judicial order or to extend the period of detention.

(6) Where the foreigner has reached the federal territory by air and has not entered pursuant to Section 13 (2) but has been refused entry, he shall be taken to the transit area of an airport or to a place of accommodation from which his exit from the federal territory is possible if detention pending exit from the federal territory is not applied for. The foreigner's stay in the transit area of an airport or in accommodation pursuant to sentence 1 shall require a judicial order no later than 30 days after arrival at the airport or, should it be impossible to ascertain the time of arrival, after the competent authorities become aware of the foreigner's arrival. The judicial order shall be issued to ensure that the foreigner leaves the federal territory. It shall be permitted only where exit is to be expected within the term of the order. Subsection 5 shall apply accordingly.

### **Section 15a**

#### **Allocation of foreigners who have entered the federal territory unlawfully**

(1) Foreigners who enter the country unlawfully without applying for asylum and who, when their unlawful entry has been detected, cannot be placed in custody pending deportation and deported or expelled directly from custody must be allocated to the *Länder* before deciding on the suspension of deportation or issuing a residence title. They shall not be entitled to be allocated to a specific *Land* or a specific town or location. Allocation to the *Länder* shall be carried out by a central allocation agency to be appointed by the Federal Ministry of the Interior. Unless another formula for allocation has been agreed among the *Länder*, the formula for the allocation of asylum applicants shall apply. Each *Land* shall appoint up to seven authorities to request allocation by the agency appointed in accordance with sentence 3 and to admit the allocated foreigners. If

the foreigner furnishes evidence prior to allocation that a household community exists between spouses or parents and their minor children or that other compelling reasons exist which conflict with allocation to a certain place, this shall receive due consideration in the allocation process.

(2) The foreigners authorities may require foreigners to present themselves to the authority requesting allocation. This shall not apply when due consideration is to be accorded to submissions in accordance with subsection 1, sentence 6. An obligation imposed in accordance with sentence 1 shall not be contestable. Any legal actions shall have no suspensory effect.

(3) The central allocation agency shall inform the authority which has requested allocation which reception centre is obliged to admit the foreigners concerned pursuant to sentences 2 and 3. If the *Land* whose authority has requested allocation has not filled its admission quota, the *Land's* reception centre located nearest to this authority with available admission capacity shall be obliged to admit the foreigners concerned. Otherwise, the reception centre designated by the central allocation agency on the basis of the allocation quota pursuant to Section 45 of the Asylum Act and the available accommodation capacities shall be obliged to admit the foreigners concerned. Section 46 (4) and (5) of the Asylum Act shall apply accordingly.

(4) In the cases covered by subsection 3, sentence 3, the authority which has requested allocation pursuant to subsection 3 shall order the foreigner to report to the reception centre designated as a result of the allocation process; in the cases covered by subsection 3, sentence 2, it may issue such an order. The foreigners authority shall forward the result of the interview to the authority requesting allocation, which shall notify the central allocation agency of the number of foreigners, stating the countries of origin and the results of the interview. Spouses and parents and their minor, unmarried children shall be registered and allocated as a group. The foreigner must stay at this reception centre until re-allocated to another location within the *Land*, but only until deportation has been suspended or a residence title has been issued; Sections 12 and 61 (1) shall remain unaffected. The *Land* governments shall be authorised to regulate allocation within the *Land* by statutory instrument, unless allocation is regulated by *Land* law on the basis of this Act; Section 50 (4) of the Asylum Act shall apply accordingly. The *Land* governments may assign the said authorisation to other bodies of the *Land*. Orders pursuant to sentence 1 shall not be contestable. Any legal actions shall have no suspensory effect. Sentences 7 and 8 shall apply accordingly, if an allocation order is issued on the basis of a *Land* law or a statutory instrument pursuant to sentence 5.

(5) Following allocation, the competent authorities may permit the foreigner to take up residence in another *Land*. Following a permitted change of residence, the foreigner shall be deducted from the quota for the *Land* from which he is released and added to the quota for the receiving *Land*.

(6) The provisions of subsections 1 to 5 shall not apply to persons who verifiably entered the federal territory prior to 1 January 2005.

### **Part 3 Residence for educational purposes**

#### **Section 16 Further education**

(1) For the purpose of full-time studies at a state or state-recognised university or a comparable educational institution, a foreigner shall be granted a temporary residence

permit in line with Directive (EU) 2016/801 of the European Parliament and the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.5.2016, p. 21), if he has been accepted by the educational institution. Residence for study purposes shall also extend to measures in preparation for studies and compulsory training. Measures in preparation for studies are

1. the attendance of a language course in preparation for studies, if the foreigner has been accepted for full-time studies and the acceptance depends on his attending the preparatory language course, and

2. the attendance of a preparatory or comparable course prior to studying, if the foreigner can prove that he has been accepted for the preparatory or comparable course. Proof of knowledge of the language in which the course of studies is to be conducted shall be required if the foreigner's knowledge of the language has not been tested in the decision on acceptance and language acquisition is not the aim of the preparatory measures for the course of study.

(2) The period of validity when the temporary residence permit for study purposes is issued for the first time and for each subsequent extension shall be at least one year and should not exceed two years. The period of validity shall be at least two years if the foreigner takes part in Union or multilateral programmes that comprise mobility measures or where he is covered by an agreement between two or more higher education institutions. Where the course of study takes less than two years, the temporary residence permit shall be granted only for the duration of the course of study. The temporary residence permit shall be extended if the purpose of residence has not yet been achieved and is achievable within a reasonable period of time. The host educational institution may be consulted to find out whether the purpose of residence is still achievable.

(3) The temporary residence permit shall entitle the holder to take up employment totalling no more than 120 days or 240 half-days per year, and to take up spare-time student employment. This shall not apply in the first year of residence during a stay for the purpose of preparatory measures for a course of study, except during holidays.

(4) The temporary residence permit may be granted or extended for a purpose other than the one referred to in subsection 1, if the foreigner has successfully completed his studies. Foreigners who have discontinued their studies may be granted a temporary residence permit or have one extended for a purpose other than the one referred to in subsection 1, if they meet the requirements for a temporary residence permit in the cases referred to in Section 16b (2) or pursuant to Section 17 and the vocational training is conducted in an occupation for which the Federal Employment Agency has made the determination pursuant to Section 39 (2) sentence 1 no. 2, or if a legal entitlement applies. During a course of studies a residence permit should as a general rule be granted or extended for a purpose of residence other than the one referred to in subsection 1 only if a legal entitlement applies. Section 9 shall not apply.

(5) After a foreigner has successfully completed his studies, his temporary residence permit shall be extended by up to 18 months for the purpose of seeking employment commensurate with this qualification, provided that foreigners are permitted to pursue this economic activity in accordance with the provisions contained in Sections 18, 19, 19a, 20 and 21. The temporary residence permit shall entitle the holder to pursue an economic activity in this period. Section 9 shall not apply.

(6) A foreigner may be granted a temporary residence permit, if

1. he has been accepted by a state or state-recognised or comparable educational institution

- a) for full-time studies, with acceptance dependent on a condition which does not aim at the attendance of measures to prepare for studies,
- b) for full-time studies, with acceptance dependent on attendance of a preparatory or comparable course, but the foreigner is unable to furnish proof of being accepted for a preparatory or comparable course pursuant to subsection 1, sentence 3, no. 2, or
- c) for part-time studies,

2. he has been enrolled in a preparatory language course, without having been accepted for a course of study by a state or state-recognised university or a comparable educational institution, or

3. he has been accepted for a preparatory company traineeship.

In the cases covered by sentence 1 no. 1, subsection 1 sentences 2 to 4 and subsections 2 to 5 shall apply accordingly. In the cases covered by sentence 1 nos. 2 and 3, subsections 2, 4 and 5 must be applied accordingly; the temporary residence permit shall allow holders to work only during holidays or as a trainee.

(7) A foreigner may also be issued a temporary residence permit for the purpose of applying for a course of study. The maximum permissible duration of residence for a foreigner applying for a place to study shall be nine months. The temporary residence permit shall not entitle the holder to take up employment or spare-time student employment. Subsection 4, sentence 3, shall apply accordingly.

(8) Before the temporary residence permit pursuant to subsection 1 or 6 is withdrawn, revoked or limited retrospectively pursuant to Section 7 (2), sentence 2, for reasons which lie within the responsibility of the educational institution and which are beyond the foreigner's control, the foreigner must be given the opportunity to apply for admission to another educational institution.

(9) A foreigner who has been granted international protection within the meaning of Directive 2011/95/EU in another member state of the European Union may be granted a temporary residence permit for study purposes, if he

- 1. has begun studies in another member state of the European Union,
- 2. has been accepted by a state or state-recognised university or a comparable educational institution for study purposes in the federal territory, and
- 3. wishes to carry out part of his studies at an educational institution in the federal territory, and
  - a) is obliged under the terms of reference for the course of studies to carry out part of his studies at an educational institution of another member state of the European Union,
  - b) is participating in an exchange programme between the member states of the European Union or in an exchange programme of the European Union, or
  - c) followed the studies begun under number 1 in another member state of the European Union for at least two years before moving to the educational

institution in the federal territory, and the residence in the federal territory for study purposes will not exceed 360 days.

A foreigner who applies for a residence title pursuant to sentence 1, no. 2 must submit to the competent authority documentation on his academic education to date and on the intended course of studies in Germany which verifies that the studies in the federal territory constitute a continuation of the studies completed to date. The temporary residence permit shall be granted for the part of the studies to be carried out in Germany. Subsection 3 shall apply accordingly. Section 9 shall not apply.

(10) Where the foreigner is under 18 years of age, the persons entitled to care and custody of the foreigner must consent to the planned stay.

(11) A temporary residence permit for study purposes or for applying for a course of study pursuant to subsections 1, 6 and 7 shall not be granted if one of the conditions mentioned in Section 20 (6), nos. 1 to 3 and 6 to 8 is met.

### **Section 16a Mobility of students**

(1) By derogation from Section 4 (1), a foreigner shall not require a residence title for stays for study purposes not exceeding 360 days, if the host educational institution in the federal territory has notified the Federal Office for Migration and Refugees that the foreigner intends to carry out part of his studies in the federal territory, submitting the following at the same time:

1. evidence that the foreigner has a residence title for study purposes from another member state of the European Union which is valid for the duration of the planned stay and falls within the ambit of Directive 2016/801,
2. evidence that the foreigner wishes to carry out part of his studies at an educational institution in the federal territory, because he is taking part in a Union or multilateral programme that comprises mobility measures or because he is covered by an agreement between two or more higher education institutions.
3. evidence that the foreigner has been accepted by the host educational institution,
4. the copy of the foreigner's recognised and valid passport or passport substitute,
5. and evidence that the foreigner's subsistence is secure.

The host educational institution must make the notification when the foreigner applies for a residence title in the ambit of Directive (EU) 2016/801 in another member state of the European Union. If, at the time of application, the host educational institution is not yet aware of the foreigner's intention to carry out part of his studies in the federal territory, it must make the notification as soon as it becomes aware of this intention. If the residence title pursuant to sentence 1, no. 1, has been issued by a non-Schengen state, and if the foreigner enters the federal territory via a non-Schengen state, the foreigner must carry a copy of the notification and present it to the responsible authorities at their request.

(2) If the notification was made at the time referred to in subsection 1, sentence 2, and if the foreigner is not denied entry and residence in accordance with Section 20c (3), the foreigner may enter the federal territory at any time during the validity of the residence title issued by another member state as referred to in subsection 1, sentence 1, no. 1, and stay there to study. If the notification was made at the time referred to in subsection 1 sentence 3 and if the foreigner is not denied entry and residence in accordance with Section 20c (3), the foreigner may enter the federal territory and stay there to study. The

foreigner shall be entitled to take up employment totalling no more than one-third of the period of residence, and to take up spare-time student employment.

(3) The foreigner and the host educational institution shall be required to inform the foreigners authority of any changes to the requirements stipulated in subsection 1.

(4) If a foreigner graduated from a German higher education institution as part of his stay pursuant to Section 16a, Section 16 (4), sentence 1 and subsection 5 shall apply accordingly to the granting of a temporary residence permit.

(5) If a foreigner is denied entry and residence pursuant to Section 20c (3), he must cease his studies immediately. The exemption from the obligation to hold a residence title, which previously applied pursuant to subsection 1, sentence 1, shall cease to exist.

(6) If, within 30 days of receipt of the notification referred to in subsection 1, sentence 1, the foreigner has not been denied entry and residence in line with Section 20c (3), the Federal Office for Migration and Refugees must issue the foreigner a certificate confirming his entitlement to enter and stay in the federal territory to study as part of short-term mobility.

### **Section 16b**

#### **Attending language courses and schools**

(1) A foreigner may be granted a temporary residence permit to attend language courses not in preparation for a course of study, to take part in a pupil exchange scheme, and, in exceptional cases, to attend school. A temporary residence permit for participation in a pupil exchange scheme may also be granted in cases where there is no direct exchange. Where the foreigner is under 18 years of age, the persons entitled to his care and custody must consent to the planned stay.

(2) Where the school education pursuant to subsection 1, sentence 1, serves to acquire vocational qualification, the temporary residence permit shall authorise its holder to work up to 10 hours per week in jobs which need not be related to such vocational qualification.

(3) After successful completion of such vocational training, the temporary residence permit may be extended by up to twelve months for the purpose of seeking a job commensurate with this qualification, provided that foreigners are permitted to fill the vacancy in accordance with Sections 18 and 21. The temporary residence permit shall entitle the holder to pursue an economic activity in this period. Section 9 shall not apply.

(4) If the temporary residence permit was granted to enable the foreigner to attend a language course not in preparation for a course of study, or to attend school, Section 16 (4), sentences 1 and 3 shall apply accordingly. If the temporary residence permit was granted to enable the foreigner to take part in a pupil exchange scheme, Section 16 (4), sentence 3 shall apply accordingly.

### **Section 17**

#### **Other educational purposes**

(1) A foreigner may be issued a temporary residence permit for the purpose of basic and advanced vocational training if the Federal Employment Agency has granted approval in accordance with Section 39 or it has been determined by statutory instrument pursuant to Section 42 or by intergovernmental agreement that such basic and advanced vocational training is permissible without the approval of the Federal Employment Agency. Any

restrictions imposed by the Federal Employment Agency in granting approval must be specified in the temporary residence permit. Section 16 (4), sentences 1 and 3 shall apply accordingly.

(2) Where such training serves to acquire vocational qualification, the temporary residence permit shall authorise its holder to work up to 10 hours per week in jobs which need not be related to such vocational training.

(3) After the foreigner has successfully completed such vocational training, the temporary residence permit may be extended by up to one year for the purpose of seeking a job commensurate with this qualification, provided that foreigners are permitted to fill the vacancy in accordance with Sections 18 and 21. The temporary residence permit shall entitle the holder to pursue an economic activity in this period. Section 9 shall not apply.

### **Section 17a** **Recognition of foreign professional qualifications**

(1) For the purpose of recognising professional qualifications which a foreigner has acquired abroad, he may be granted a temporary residence permit for up to 18 months to undertake a training measure and a subsequent examination, if a body responsible according to federal or *Länder* regulations regarding recognition of professional qualifications has determined that adaptation measures or further qualifications are necessary

1. to establish the equivalence of the professional qualification with a German professional qualification or

2. to grant authorisation to practise the profession or to issue permission to use the professional title in a regulated profession in Germany.

The training measure must be suited to enabling recognition of the foreigner's professional qualification or access to the profession. If the majority of the training measure is carried out in a business enterprise, issuance of the temporary residence permit presupposes that the Federal Employment Agency has granted approval in accordance with Section 39 or it has been determined by statutory instrument pursuant to Section 42 or by intergovernmental agreement that participation in the training measure is permissible without the approval of the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval shall be specified in the temporary residence permit.

(2) The temporary residence permit shall authorise the holder to pursue an economic activity which is independent of the training measure for up to ten hours per week.

(3) The temporary residence permit shall entitle the holder to pursue an economic activity which is not restricted in terms of time and whose requirements are closely connected to the specialist skills needed in the later employment if there is a concrete offer of a job for later employment in the profession which is to be recognised or which is covered by the authorisation to practise the profession applied for or permission to use the professional title applied for, this vacancy may be filled by foreigners in accordance with Sections 18 to 20 and the Federal Employment Agency has granted approval in accordance with Section 39 or it has been determined by statutory instrument pursuant to Section 42 or by intergovernmental agreement that the employment is permissible without the approval of the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval must be specified in the temporary residence permit.

(4) Once equivalence of the professional qualification has been established, the

authorisation to practise the profession has been granted or permission to use the professional title has been granted, the temporary residence permit may be extended for up to one year to allow the foreigner to seek employment commensurate with the recognised professional qualification, provided that foreigners are permitted to fill the vacancy pursuant to Sections 18 to 20. During this period the temporary residence permit shall authorise the holder to pursue an economic activity. Section 9 shall not apply.

(5) A foreigner may be granted a temporary residence permit in order to take an examination for the recognition of his foreign professional qualification if there is a concrete offer of a job for later employment in the profession which is to be recognised or which is covered by the authorisation to practise the profession applied for or by the permission to use the professional title applied for, foreigners are permitted to fill the vacancy in accordance with Sections 18 to 20 and the Federal Employment Agency has granted approval in accordance with Section 39 or it has been determined by statutory instrument pursuant to Section 42 or by intergovernmental agreement that the employment is permissible without the consent of the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval shall be specified in the temporary residence permit. Subsections 2 to 4 shall not apply.

#### **Section 17b** **Study-related training programmes EU**

(1) A foreigner may be issued a temporary residence permit for training purposes in accordance with Directive (EU) 2016/801, if the Federal Employment Agency has granted approval in accordance with Section 39 or it has been determined by statutory instrument pursuant to Section 42 or by intergovernmental agreement that such training is permissible without approval from the Federal Employment Agency, and

1. if the training programme is designed to enable the foreigner to gain knowledge, practice and experience in a professional environment,
2. if the foreigner presents a training agreement which provides for theoretical and practical training with a host entity, containing the following:
  - a) a description of the training programme, including the educational objective or learning components,
  - b) the duration of the training programme,
  - c) the conditions under which the trainee will work and be supervised,
  - d) the working hours and
  - e) the legal relationship between the trainee and the host entity,
3. if the foreigner provides evidence of having obtained a higher education degree within the two years preceding the date of application or of pursuing a course of study that leads to a higher education degree,
4. if the training is equivalent to the higher education degree or studies referred to in no. 3, in terms of both content and level, and
5. if the host establishment has undertaken in writing to bear the costs incurred by public bodies up to six months after termination of the admission agreement for
  - a) the foreigner's subsistence during an unlawful stay in the federal territory, and
  - b) deportation of the foreigner.

(2) The temporary residence permit shall be issued for the agreed duration of training, but not to exceed six months.

(3) Where the foreigner is under 18 years of age, the persons entitled to his care and custody must consent to the planned stay.

(4) A temporary residence permit for training purposes purposes in accordance with Directive (EU) 2016/801 shall not be granted if one of the conditions mentioned in Section 20 (6), nos. 1 to 3 and 6 to 8 is met.

#### **Part 4** **Residence for the purpose of economic activity**

##### **Section 18** **Employment**

(1) The admission of foreign employees shall be geared to the requirements of the German economy, according due consideration to the labour market situation and the need to combat unemployment effectively. International treaties shall remain unaffected.

(2) A foreigner may be granted a residence title for the purpose of taking up employment if the Federal Employment Agency has granted approval in accordance with Section 39 or it has been determined by statutory instrument pursuant to Section 42 or by intergovernmental agreement that such employment may be taken up without approval from the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval must be specified in the residence title.

(3) A temporary residence permit for the purpose of taking up employment pursuant to subsection 2 which does not require a vocational qualification may only be issued if regulated by an intergovernmental agreement or if issuance of approval for a temporary residence permit for the said employment is permissible by virtue of a statutory instrument in accordance with Section 42.

(4) A residence title for the purpose of taking up employment pursuant to subsection 2 which requires a vocational qualification may only be issued for employment in an occupation which has been approved by virtue of a statutory instrument in accordance with Section 42. In justified individual cases, a temporary residence permit may be issued for the purpose of taking up employment when there is a public interest, and in particular a regional, economic or labour market interest.

(4a) Foreigners in a civil servant relationship with a German employer shall be granted a temporary residence permit to discharge their official duties in the federal territory. The temporary residence permit shall be granted for three years, unless the employment is limited to a shorter period. After three years, a permanent settlement permit shall be granted, by derogation from Section 9 (2), sentence 1, nos. 1 and 3.

(5) A residence title pursuant to subsection 2 or Sections 19, 19a, 19b or 19d may only be granted if a concrete job offer exists and if any legally prescribed professional licence has been granted or promised.

(6) The granting or extension of a residence title pursuant to subsection 2, Sections 17b, 18d, 19, 19a, 19b, 19d, 20 or 20b, which does not require approval by the Federal Employment Agency owing to provisions in this Act, in a statutory instrument or an intergovernmental agreement, may be denied if there are grounds that would allow the authorities to deny the necessary approval pursuant to Section 40 (2) no. 3 or

subsection 3.

**Section 18a**  
**Temporary residence permit for the purpose of employment for qualified foreigners  
whose deportation has been suspended**

(1) A foreigner whose deportation has been suspended may be granted a temporary residence permit for the purpose of taking up employment commensurate with his vocational qualification if the Federal Employment Agency has granted approval in accordance with Section 39, and the foreigner

1.

- a) completed a vocational qualification in a state-recognised or similarly regulated occupation in the federal territory which requires formal training or a course of study at a higher education institution, or
- b) held a position of employment continuously for two years in the federal territory with a foreign higher education qualification which is recognised or otherwise comparable to a German higher education qualification and which is appropriate to that employment, or
- c) held a position of employment as a skilled worker continuously for three years in the federal territory which requires a vocational qualification and has not relied on public funds for his subsistence and that of his dependants or other members of his household within the year preceding the application for the temporary residence permit except for payments to cover the necessary costs for accommodation and heating, and

2. has sufficient living space at his disposal,

3. has sufficient command of the German language,

4. has not wilfully deceived the foreigners authority as to circumstances of relevance to his situation under residence law,

5. has not wilfully delayed or obstructed official measures to end his residence,

6. does not have any links to extremist or terrorist organisations and does not support such organisations and

7. has not been convicted of an offence wilfully committed in the federal territory; fines totalling up to 50 daily rates or up to 90 daily rates in the case of offences which, in accordance with the Residence Act or the Asylum Act, can only be committed by foreigners shall be ignored as a general principle.

(1a) Where deportation has been suspended pursuant to Section 60a (2), sentence 4, a temporary residence permit must be granted for a period of two years after the foreigner has successfully concluded this vocational training for employment commensurate with the professional qualifications acquired if the conditions referred to in subsection 1 nos. 2 to 7 are met and the Federal Employment Agency has granted approval in accordance with Section 39.

(1b) A temporary residence permit issued pursuant to subsection 1a shall be revoked if the employment relationship on which the issuance of the temporary residence permit was based is terminated for reasons relating to the person of the foreigner or if the foreigner has been convicted of an offence committed intentionally in the federal territory; fines totalling up to 50 daily rates or up to 90 daily rates in the case of offences which, in

accordance with the Residence Act or the Asylum Act, can only be committed by foreigners shall be ignored as a general principle.

(2) The approval of the Federal Employment Agency pursuant to subsections 1 and 1a shall be decided without an examination of priority pursuant to Section 39 (2), sentence 1, no. 1. Section 18 (2), sentence 2 and (5) shall apply accordingly. The temporary residence permit shall entitle the holder to take up any employment after he has been in an employed position commensurate with his vocational qualification for a period of two years.

(3) The temporary residence permit may be granted by derogation from Section 5 (2) and Section 10 (3), sentence 1.

#### **Section 18b** **Permanent settlement permit for graduates of German universities**

A foreigner who has successfully completed his studies at a state or state-recognised university or a comparable educational institution in the federal territory shall be granted a permanent settlement permit, if

1. he has held a residence title pursuant to Sections 18, 18a, 19a or 21 for two years,
2. he has a job commensurate with his degree,
3. he has paid compulsory or voluntary contributions into the statutory pension scheme for at least 24 months or furnishes evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company, and
4. the requirements of Section 9 (2), sentence 1, nos. 2 and 4 to 9 are met; Section 9 (2), sentences 2 to 6 shall apply accordingly.

#### **Section 18c** **Temporary residence permit for qualified skilled workers seeking employment**

(1) A foreigner with a German or a foreign higher education qualification which is recognised or otherwise comparable to a German higher education qualification and whose subsistence is secure may be granted a temporary residence permit for the purpose of seeking a job commensurate with this qualification for a period of up to six months. The residence permit shall not entitle the holder to pursue an economic activity.

(2) The temporary residence permit may not be extended beyond the maximum period mentioned in subsection 1. A temporary residence permit pursuant to subsection 1 may only be issued anew if the foreigner, after leaving Germany, stayed abroad for at least as long as he stayed in the federal territory on the basis of a residence title pursuant to subsection 1.

(3) Subsection 1 shall apply to foreigners already residing in the federal territory only if they possessed a residence title for the purpose of employment immediately before they were granted a temporary residence permit pursuant to subsection 1.

#### **Section 18d** **Participation in European Voluntary Service**

(1) A foreigner shall be granted a temporary residence permit for the participation in a European voluntary service scheme pursuant to Directive (EU) 2016/801, if the Federal Employment Agency has granted approval in accordance with Section 39 or it has been

determined by statutory instrument pursuant to Section 42 or by intergovernmental agreement that participation in the European voluntary service scheme is permissible without approval from the Federal Employment Agency and the foreigner provides an agreement with the host entity containing the following information:

1. a description of the voluntary service scheme,
2. the duration of the voluntary service scheme and the volunteering hours,
3. the placement and supervision conditions of the voluntary service,
4. the resources available to cover the foreigner's subsistence and accommodation costs and the minimum sum of pocket money he will have at his disposal throughout the stay, and
5. the training the third-country national will receive, where applicable, to help perform the voluntary service.

(2) The foreigner's residence title shall be granted for the agreed duration of participation in the European voluntary service scheme, but not to exceed one year.

(3) Where the foreigner is under 18 years of age, the persons entitled to his care and custody must consent to the planned stay.

(4) A temporary residence permit for the purpose of participating in a European voluntary service scheme in accordance with Directive (EU) 2016/801 shall not be granted if one of the conditions mentioned in Section 20 (6), nos. 1 to 3 and 6 to 8 is met.

### **Section 19** **Permanent settlement permit for highly qualified foreigners**

(1) A highly qualified foreigner may be granted a permanent settlement permit in special cases if if the Federal Employment Agency has granted approval in accordance with Section 39 or it has been determined by statutory instrument pursuant to Section 42 or by intergovernmental agreement that the permanent settlement permit may be granted without approval from the Federal Employment Agency in line with Section 39 and there is reason to assume that integration into the way of life in the Federal Republic of Germany and the foreigner's subsistence without state assistance are assured. The *Land* government may stipulate that issuance of the permanent settlement permit pursuant to sentence 1 requires the approval of the supreme *Land* authority or a body designated by it.

(2) Highly qualified persons in accordance with subsection 1 are, in particular,

1. researchers with special technical knowledge or
2. teaching personnel in prominent positions or scientific personnel in prominent positions.

### **Section 19a** **EU Blue Card**

(1) A foreigner shall be granted an EU Blue Card pursuant to Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (OJ L 155,18.6.2009, p. 17) for the purpose of employment commensurate with his qualification, if

1. he

- a) holds a German or a foreign higher education qualification which is recognised or otherwise comparable to a German higher education qualification or
- b) to the extent that this is stipulated by a statutory instrument pursuant to subsection 2 below, if he has a comparable qualification demonstrated by at least five years of professional experience,

2. the Federal Employment Agency has granted approval in accordance with Section 39 or it has been determined by statutory instrument pursuant to Section 42 or by intergovernmental agreement that the EU Blue Card may be issued without the approval of the Federal Employment Agency, and

3. if he receives a salary equal to or exceeding that stipulated by the statutory instrument under subsection 2.

(2) The Federal Ministry of Labour and Social Affairs may determine the following by means of statutory instruments:

- 1. the level of pay pursuant to subsection 1 no. 3,
- 2. professions in which five years of professional experience demonstrate a qualification comparable to a higher education degree, and
- 3. professions in which nationals of specific states shall be denied an EU Blue Card, because there is a lack of qualified workers in these professions in the country of origin.

Statutory instruments pursuant to nos. 1 and 2 shall require the approval of the Bundesrat.

(3) The EU Blue Card shall be issued for a maximum period of four years from the date of initial issue. Where the duration of the employment contract is less than four years, the EU Blue Card shall be issued or extended for the period covering the employment contract plus three months.

(4) Holders of the EU Blue Card wishing to change jobs within the first two years of employment shall require permission by the foreigners authority; such permission shall be granted if the conditions in subsection 1 are met.

(5) Foreigners

- 1. who meet the conditions in Section 9a (3) nos. 1 or 2,
- 2. who have applied for the determination of whether the conditions in Section 60 (5) or (7), sentence 1, or in Section 60a (2), sentence 1 are met,
- 3. whose entry into a member state of the European Union is subject to obligations arising from international treaties to facilitate the entry and temporary residence of specific categories of natural persons engaged in trade- or investment-related activities,
- 4. who have been admitted as seasonal workers in a member state of the European Union,
- 5. whose deportation has been temporarily suspended pursuant to Section 60a,
- 6. who come under Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1. 1997, p.1), for the duration of posting to Germany, or

7. who, owing to treaties between the European Union and its member states on the one hand and third countries on the other, enjoy rights of free movement equivalent to those of Union citizens  
shall not be issued an EU Blue Card.

(6) Holders of an EU Blue Card must be issued a permanent settlement permit, if they have held a position of employment in line with subsection 1 for at least 33 months and have made mandatory or voluntary contributions to the statutory pension insurance scheme for that period, or if they furnish evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company and if the requirements of Section 9 (2), sentence 1, nos. 2, 4 to 6, 8 and 9 are met and if they have basic German language skills. Section 9 (2) sentences 2 to 6 shall apply accordingly. The period referred to in sentence 1 shall be reduced to 21 months if the foreigner has a sufficient command of the German language.

### **Section 19b ICT Card for intra-corporate transferees**

(1) An ICT Card is a residence title pursuant to Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1) for the purpose of an intra-corporate transfer of a foreigner. An intra-corporate transfer is the temporary secondment of a foreigner

1. to a national entity belonging to the undertaking by which the foreigner is employed, if the undertaking is located outside the European Union, or
2. to a national entity of another undertaking of the group of undertakings to which the undertaking located outside the European Union belongs and by which the foreigner is employed.

(2) A foreigner shall be granted an ICT Card if

1. he will work as a manager or specialist in the host entity,
2. he has been employed by the undertaking or group of undertakings for at least six months immediately prior to the transfer and will be employed without interruption by the undertaking or group of undertakings during the transfer period,
3. the intra-corporate transfer will exceed 90 days,
4. the Federal Employment Agency has granted approval in accordance with Section 39 or it has been determined by statutory instrument pursuant to Section 42 (1) no. 1 or by intergovernmental agreement that the ICT Card may be issued without the approval of the Federal Employment Agency,
5. the foreigner provides a work contract valid for the duration of the intra-corporate transfer and, if necessary, an assignment letter stating
  - a) specific information regarding the place and kind of work and remuneration as well as other terms and conditions of employment granted during the intra-corporate transfer, as well as
  - b) evidence that, after completion of the intra-corporate transfer, the foreigner will be able to return to an entity belonging to the same undertaking or group of undertakings established outside the European Union at the end of the assignment, and

6. he provides evidence of his professional qualifications.

A manager within the meaning of this Act is a person holding a senior position, who primarily directs the management of the host entity, receiving general supervision or guidance principally from the board of directors or shareholders of the business or equivalent. This position shall include directing the host entity or a department or subdivision of the host entity; supervising and controlling work of the other supervisory, professional or managerial employees; and having the authority to recommend hiring, dismissing or other personnel action. A specialist within the meaning of this Act is a person who possesses specialised knowledge essential to the host entity's areas of activity, techniques or management, a high level of qualification and adequate professional experience.

(3) A foreigner shall also be granted an ICT Card if

1. he will work as a trainee employee in the context of an intra-corporate transfer, and

2. the conditions referred to in subsection 2, sentence 1, nos. 2 to 5 are met.

A trainee employee within the meaning of this Act is a person with a university degree completing a traineeship for career development purposes or in order to obtain training in business techniques or methods, and is paid during the transfer.

(4) The ICT Card shall be granted

1. for the duration of the transfer but no more than three years, for managers and specialists,

2. for the duration of the transfer but no more than one year, for trainee employees.

The maximum periods stipulated in sentence 1 must not be exceeded by an extension of the ICT Card.

(5) The ICT Card shall not be granted if the foreigner

1. owing to treaties between the European Union and its member states on the one hand and third countries on the other, enjoys rights of free movement equivalent to those of Union citizens,

2. is employed by an undertaking located in one of those third countries, or

3. is completing a training programme as part of his studies.

(6) Furthermore, the ICT Card shall not be granted if

1. the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees,

2. the foreigner, in the context of the entry and stay in several member states of the European Union envisaged in Directive 2014/66/EU, will spend more time in another member state than in the federal territory in the context of the transfer, or

3. the application is filed within six months of the end of the foreigner's last stay in the federal territory for the purpose of an intra-corporate transfer.

### **Section 19c**

#### **Short-term mobility for intra-corporate transferees**

(1) By derogation from Section 4 (1), a foreigner shall not be required to have a residence title for stays for intra-corporate transfers not exceeding 90 days within a 180-day period, provided the host entity in the other member state has notified the Federal Office for Migration and Refugees that the foreigner intends to take up employment in the federal territory, submitting the following at the same time:

1. evidence that the foreigner possesses a valid residence title issued by another member state of the European Union in accordance with Directive 2014/66/EU,
2. evidence that the national host entity belongs to the same undertaking or group of undertakings as the undertaking established outside the European Union by which the foreigner is employed,
3. a work contract or, if necessary, an assignment letter as stipulated in Section 19b (2), sentence 1, no. 5, which have already been presented to the competent authorities of the other member state, and
4. a copy of the foreigner's recognised and valid passport or passport substitute.

The host entity must make the notification when the foreigner applies for a residence title in the ambit of Directive (EU) 2014/66/EU in another member state of the European Union. If, at the time of application, the host entity in the other member state is not yet aware of the foreigner's intention to be transferred to an entity in the federal territory, it must make the notification as soon as it becomes aware of this intention. If the residence title pursuant to sentence 1, no. 1, has been issued by a non-Schengen state, and if the foreigner enters the federal territory via a non-Schengen state, the foreigner must carry a copy of the notification and present it to the responsible authorities at their request.

(2) If the notification was made at the time referred to in subsection 1, sentence 2, and if the foreigner has not been denied entry and residence in line with subsection 4, the foreigner may enter the federal territory at any time during the validity of the residence title issued by the other member state as referred to in subsection 1, sentence 1, no. 1, and stay there for the purpose of the intra-corporate transfer. (2) If the notification was made at the time referred to in subsection 1, sentence 3, the foreigner may enter the federal territory at any time during the validity of the residence title issued by the other member state as referred to in subsection 1, sentence 1, no. 1, and stay there for the purpose of the intra-corporate transfer.

(3) The foreigner must inform the foreigners authority without delay if the other member state extends the residence title in accordance with subsection 1, sentence 1, no. 1.

(4) The foreigners authority shall deny the foreigner entry and residence if

1. the remuneration the foreigner will be granted during the intra-corporate transfer is less favourable than that granted to comparable German employees,
2. the conditions of subsection 1, sentence 1, nos. 1, 2 and 4 are not met,
3. the documents presented pursuant to subsection 1 were fraudulently acquired, or falsified, or tampered with,
4. the foreigner has been staying in the European Union for more than three years, or, in the case of a trainee employee, for more than a year, or
5. there is a public interest in expelling the foreigner; Section 73 (2) and (3) shall apply accordingly.

In the cases covered by sentence 1, nos. 1 to 4, a rejection must be made no later than 20 days after the Federal Office for Migration and Refugees receives the complete

information pursuant to subsection 1, sentence 1. In cases covered by no. 5, a rejection may be made any time during the foreigner's stay. The foreigner and the competent authority of the other member state as well as the host entity in the other member state must be informed of the rejection. Where rejections are made within the allotted time, the foreigner must cease his employment without delay; the exemption from the residence title requirement pursuant to subsection 1, sentence 1, shall cease to exist.

(5) If, within 20 days of receiving the notification referred to in subsection 1, sentence 1, the foreigner has not been denied entry and residence in accordance with subsection 4, the Federal Office for Migration and Refugees must issue the foreigner a certificate confirming his entitlement to enter and stay in the federal territory for the purpose of an intra-corporate transfer in the context of short-term mobility.

### **Section 19d Mobile ICT Card**

(1) A Mobile ICT Card is a residence title pursuant to Directive 2014/66/EU for the purpose of an intra-corporate transfer within the meaning of Section 19b (1) sentence 2, if the foreigner possesses a residence title which is valid for the duration of the application procedure and has been issued by another member state pursuant to Directive 2014/66/EU.

(2) A foreigner shall be granted a Mobile ICT Card if

1. he will work as manager, specialist or trainee employee in the host entity,
2. the intra-corporate transfer will exceed 90 days,
3. he provides a work contract valid for the duration of the transfer and, if necessary, an assignment letter stating
  - a) specific information regarding the place and kind of work and remuneration as well as other terms and conditions of employment granted during the transfer, and
  - b) evidence that, after completing the transfer, the foreigner will be able to return to an entity belonging to the same undertaking or group of undertakings established outside the European Union at the end of the assignment, and
4. the Federal Employment Agency has granted approval in accordance with Section 39 or it has been determined by statutory instrument pursuant to Section 42 (1) no. 1 or by intergovernmental agreement that the Mobile ICT Card may be issued without the approval of the Federal Employment Agency.

(3) If the application for a Mobile ICT Card is filed at least 20 days prior to the beginning of the stay in the federal territory and if the residence title issued by the other member state continues to be valid, the foreigner's residence and employment shall be permitted for up to 90 days in a 180-day period until the foreigners authority decides on the application.

(4) The application shall be rejected if it was filed at the same time as a notification in line with Section 19c (1), sentence 1. Applications which were filed during the stay pursuant to Section 19c, but not in their entirety at least 20 days prior to the end of this stay, shall also be rejected.

(5) The Mobile ICT Card shall not be granted if, in the context of the intra-corporate transfer, the foreigner will stay longer in the federal territory than in other member states.

(6) The application may be rejected if

1. the maximum duration of the intra-corporate transfer pursuant to Section 19b (4) has been reached, or
2. the ground for rejection referred to in Section 19b (6) no. 3 applies.

(7) The national host entity shall be required to inform the competent foreigners authority without delay, as a rule within one week, of any changes to the conditions referred to in subsection 2.

## **Section 20 Research**

(1) A foreigner shall be granted a temporary residence permit for research purposes in line with Directive (EU) 2016/801 if

1. he
  - a) has concluded an effective admission agreement or a corresponding contract to carry out a research project with a research establishment which is recognised for the implementation of the special admission procedure for researchers in the federal territory, or
  - b) has concluded an effective admission agreement or a corresponding contract with a research establishment which conducts research, and
2. the research establishment has undertaken in writing to bear the costs incurred by public bodies up to six months after termination of the admission agreement for
  - a) the foreigner's subsistence during an unlawful stay in a member state of the European Union, and
  - b) deporting the foreigner.

In the cases covered by sentence 1, no. 1 (a), the temporary residence permit must be granted within 60 days of the application being made.

(2) The requirement pursuant to subsection 1, no. 2 should be waived where the activities of the research establishment are financed primarily from public funds. The requirement may be waived where there is a special public interest in the research project. Section 66 (5), Section 67 (3) and Section 68 (2), sentences 2 and 3 and (4) shall apply accordingly to the declarations furnished pursuant to subsection 1, no. 2.

(3) The research establishment may also submit the declaration pursuant to subsection 1, no. 2, to the body responsible for its recognition as a general declaration for all foreigners to whom a temporary residence permit is issued on the basis of an admission agreement concluded with it.

(4) The temporary residence permit shall be issued for at least one year. If the foreigner takes part in a Union or multilateral programme that comprises mobility measures, the temporary residence permit shall be granted for at least two years. By way of derogation from sentences 1 and 2, where the research project is completed in a shorter period, the term of the temporary residence permit shall be limited to the duration of the research project; in the cases covered by sentence 2, the period shall be at least one year.

(5) A temporary residence permit pursuant to subsection 1 shall entitle the holder to take up research at the research establishment specified in the admission agreement and to

take up teaching activities. Changes to the research project during the stay shall not cause this entitlement to expire.

(6) Subsection 1 shall not apply to foreigners

1. who are resident in a member state of the European Union because they have filed an application for recognition of refugee status or subsidiary protection within the meaning of Directive 2004/83/EC or for recognition of international protection status within the meaning of Directive 2011/95/EU, or who enjoy international protection within the meaning of Directive 2011/95/EU in a member state,
2. who reside in a member state of the European Union under the terms of an arrangement to provide temporary protection,
3. whose deportation has been suspended in a member state of the European Union on grounds of fact or law,
4. whose research activities constitute part of doctoral studies,
5. who are transferred by a research establishment in another member state of the European Union to a German research establishment as an employee,
6. who hold an EU long-term residence permit or a residence title issued by another member state of the European Union on the basis of Directive 2003/109/EC,
7. who, owing to treaties between the European Union and its member states on the one hand and third countries on the other, enjoy rights of free movement equivalent to those of Union citizens, or
8. who hold an EU Blue Card pursuant to Section 19a or a residence title issued by another member state of the European Union on the basis of Directive 2009/50/EC.

(7) After completing the research activities, the temporary residence permit shall be extended by up to nine months for the purpose of seeking employment commensurate with the researcher's qualification, provided that the host establishment has confirmed the completion and that foreigners are permitted to pursue this economic activity in accordance with Sections 18, 19, 19a, 20 and 21. The temporary residence permit shall entitle the holder to pursue an economic activity in this period.

(8) A foreigner who enjoys international protection within the meaning of Directive 2011/95/EU in a member state of the European Union may be granted a temporary residence permit for research purposes, if the requirements of subsection 1 are met and he has stayed in this member state for at least two years after being granted protection. Subsection 5 shall apply accordingly.

### **Section 20a** **Short-term mobility for researchers**

(1) By derogation from Section 4 (1), a foreigner shall not be required to have a residence title for stays for research purposes not exceeding 180 days within a 360-day period, if the host research establishment in the federal territory has notified the Federal Office for Migration and Refugees that the foreigner intends to carry out part of his research activities in the federal territory, submitting the following at the same time:

1. evidence that the foreigner possesses a valid residence title for research purposes issued by another member state in accordance with Directive (EU) 2016/801,

2. the admission agreement or a corresponding contract concluded with the host research establishment in the federal territory,
3. a copy of the foreigner's recognised and valid passport or passport substitute, and
4. evidence of the fact that the foreigner's subsistence is secure.

The host research establishment must make the notification when the foreigner applies for a residence title in the ambit of Directive (EU) 2016/801 in another member state of the European Union. If, at the time of application, the host research establishment is not yet aware of the foreigner's intention to carry out part of his research activities in the federal territory, it must make the notification as soon as it becomes aware of this intention. If the residence title pursuant to sentence 1, no. 1, has been issued by a non-Schengen state, and if the foreigner enters the federal territory via a non-Schengen state, the foreigner must carry a copy of the notification and present it to the responsible authorities at their request.

(2) If the notification was made at the time referred to in subsection 1, sentence 2, and if the foreigner has not been denied entry and residence in line with Section 20c (3), the foreigner may enter the federal territory at any time during the validity of the residence title and stay there for research purposes. If the notification was made at the time referred to in subsection 1, sentence 3, the foreigner may enter the federal territory at any time during the validity of the residence title issued by the other member state as referred to in subsection 1, sentence 1, no. 1, and stay there for research purposes.

(3) Foreigners who fulfil the requirements stipulated in subsection 1 shall be entitled to take up research in the host research establishment and to take up teaching activities.

(4) The foreigner and the host research establishment shall be required to inform the competent foreigners authority of any changes to the requirements stipulated in subsection 1.

(5) If a foreigner is denied entry and residence pursuant to Section 20c (3), he must cease his research activities immediately. The exemption from the obligation to hold a residence title, which applied pursuant to subsection 1, sentence 1, shall cease to exist.

(6) If the foreigner is not denied entry and residence in line with Section 20c (3), the Federal Office for Migration and Refugees shall issue the foreigner a certificate confirming his entitlement to enter and stay in the federal territory for research purposes as part of short-term mobility.

### **Section 20b** **Temporary residence permit for mobile researchers**

(1) A foreigner shall be granted a temporary residence permit for stays for research purposes which last more than 180 days but no more than one year, if

1. he holds a residence title issued by another member state in line with Directive 2016/801 for the duration of the procedure,
2. a copy of the foreigner's recognised and valid passport or passport substitute is submitted, and
3. the admission agreement or a corresponding contract concluded with the host research establishment in the federal territory is submitted.

(2) If the application for a temporary residence permit is filed at least 30 days prior to the beginning of the stay in the federal territory and if the residence title issued by the other member state continues to be valid, the foreigner's residence and employment shall be permitted for up to 180 days in a 360-day period until the foreigners authority decides on the application.

(3) Section 20 (5) shall apply accordingly to the entitlement to take up research and teaching activities.

(4) The foreigner and the host research establishment shall be required to inform the foreigners authority of any changes to the requirements stipulated in subsection 1.

(5) Section 20 (7) shall govern the extension of the temporary residence permit following the completion of the research activities.

(6) The application shall be rejected if it was filed at the same time as a notification in line with Section 20a (1), sentence 1. Applications which were filed during the stay pursuant to Section 20a (1), but not in their entirety at least 30 days prior to the end of this stay, shall also be rejected.

### **Section 20c**

#### **Grounds for rejection in the case of researchers, students, pupils, trainees, participants in language courses and European Voluntary Service**

(1) A temporary residence permit pursuant to Sections 16, 16b, 17b, 18d, 20 or 20b shall not be granted if the the host entity was established for the main purpose of facilitating the entry and residence of foreigners for the purposes mentioned in the individual provisions.

(2) A temporary residence permit pursuant to Sections 16, 16b, 17b, 18d, 20 or 20b may be denied if

1. insolvency proceedings have been instituted against the host entity's assets aiming to wind up the entity and its business,
2. the host entity and its business have been wound up in insolvency proceedings,
3. the institution of insolvency proceedings against the entity's assets has been refused for lack of assets, and its business has been wound up,
4. the host entity does not pursue any economic activity, or
5. there is proof or concrete indications that the foreigner would reside for purposes other than those for which he applies for the temporary residence permit.

(3) The foreigners authority shall deny the foreigner entry and residence if

1. the requirements stipulated in Section 16a (1) or Section 20a (1) are not met,
2. insolvency proceedings have been instituted against the host entity's assets aiming to wind up the entity and its business,
3. the host entity and its business have been wound up in insolvency proceedings,
4. the institution of insolvency proceedings against the entity's assets has been refused for lack of assets, and its business has been wound up,
5. the host entity does not pursue any economic activity,

6. the documents presented pursuant to Section 16a (1) or Section 20a (1) were fraudulently acquired, or falsified, or tampered with,
7. the host entity was established or operates for the main purpose of facilitating the entry and stay of foreigners for purposes referred to in Section 16a or Section 20a,
8. there is proof or concrete indications that the foreigner uses or will use the stay for purposes other than those stated in the notification pursuant to Section 16a (1) or Section 20a (1),
9. there is a public interest in expelling the foreigner; Section 73 (2) and (3) shall apply accordingly.

Denial pursuant to sentence 1, nos. 1 to 8 shall be made no later than 30 days after the the Federal Office for Migration and Refugees has received the complete notification pursuant to Section 16a (1), sentence 1, or Section 20a (1), sentence 1.. In cases covered by sentence 1, no. 9, denial may be made at any time during the foreigner's stay. The foreigner and the competent authority of the other member state as well as the notifying entity must be informed of the denial in writing.

### **Section 21 Self-employment**

(1) A foreigner may be granted a temporary residence permit for the purpose of self-employment if

1. an economic interest or a regional need applies,
2. the activity is expected to have positive effects on the economy and
3. the foreigner has personal capital or an approved loan to realise the business idea.

Assessment of the prerequisites in accordance with sentence 1 shall focus in particular on the viability of the business idea on which the application is based, the foreigner's entrepreneurial experience, the level of capital investment, the effects on the employment and training situation and the contribution to innovation and research. The competent bodies for the planned business location, the competent trade and industry authorities, the representative bodies for public-sector professional groups and the competent authorities regulating admission to the profession concerned must be involved in examining the application.

(2) A temporary residence permit for the purpose of self-employment may also be granted if special privileges apply according to agreements under international law on the basis of reciprocity.

(2a) A foreigner who has successfully completed his studies at a state or state-recognised university or a comparable educational institution in the federal territory or who holds a temporary residence permit as a researcher or scientist in accordance with Sections 18 or 20 may be issued a temporary residence permit for self-employment purposes by way of derogation from subsection 1. The envisaged self-employment must demonstrate a connection to the knowledge acquired during the higher education studies or the research or scientific activities.

(3) Foreigners older than 45 should be issued a temporary residence permit only if they possess adequate provision for old age.

(4) The period of validity of the temporary residence permit shall be limited to a maximum

of three years. By way of derogation from Section 9 (2), a permanent settlement permit may be issued after a period of three years, if the foreigner has successfully carried out the planned activity and adequate income ensures the subsistence of the foreigner and the dependants living with him as a family unit and whom he is required to support.

(5) By way of derogation from subsection 1, a foreigner may be granted a temporary residence permit for the purpose of self-employment. A required permit to practice the profession must have been issued or confirmation must have been provided that such permit will be issued. Subsection 1, sentence 3, shall apply accordingly. Subsection 4 shall not apply.

(6) A foreigner who will be or has been granted a temporary residence permit for another purpose may be permitted to pursue self-employment while retaining the aforesaid purpose of residence, if the permits required pursuant to other provisions have been issued or the authorities have indicated that such permits will be issued.

## **Part 5**

### **Residence under international law or on humanitarian or political grounds**

#### **Section 22**

##### **Admission from abroad**

A foreigner may be granted a temporary residence permit for the purpose of admission from abroad in accordance with international law or on urgent humanitarian grounds. A temporary residence permit must be granted if the Federal Ministry of the Interior or the body designated by it has declared, so as to uphold the political interests of the Federal Republic of Germany, that the foreigner is to be admitted. In the case of sentence 2, the temporary residence permit shall entitle the holder to pursue an economic activity.

#### **Section 23**

##### **Granting of residence by the supreme *Land* authorities; admission when special political interests apply; resettling persons seeking protection**

(1) The supreme *Land* authority may order a temporary residence permit to be granted to foreigners from specific states or to certain groups of foreigners defined by other means, in accordance with international law, on humanitarian grounds or in order to uphold the political interests of the Federal Republic of Germany. The order may be issued subject to the proviso that a declaration of commitment be submitted in accordance with Section 68. In order to ensure a nationwide uniform approach, the order shall require the approval of the Federal Ministry of the Interior.

(2) In order to safeguard special political interests of the Federal Republic of Germany, the Federal Ministry of the Interior may, in consultation with the supreme *Land* authorities, order foreigners from specific states or certain categories of foreigners defined by other means to be granted approval for admission by the Federal Office for Migration and Refugees. No preliminary proceedings shall take place pursuant to Section 68 of the Code of Administrative Court Procedure. The foreigners concerned shall be issued a temporary residence permit or permanent settlement permit, in accordance with the approval for admission. The permanent settlement permit may be issued subject to a condition restricting the permissible place of residence. The temporary residence permit shall entitle the holder to pursue an economic activity.

(3) The order may provide for Section 24 to be applied accordingly, either in part or in full.

(4) In consultation with the supreme *Land* authorities, the Federal Ministry of the Interior may, within the context of resettling persons seeking protection, order that the Federal Office for Migration and Refugees grant approval for admission to certain persons seeking protection who have been selected for resettlement (resettlement refugees). Subsection 2, sentence 2 to 5 and Section 24 (3) to (5) shall apply accordingly.

### **Section 23a**

#### **Granting of residence in cases of hardship**

(1) By way of derogation from the prerequisites for issuing and extending residence titles as stipulated in this Act as well as in Sections 10 and 11, the supreme *Land* authority may, on petition from a Hardship Commission to be established by the *Land* government by virtue of a statutory instrument, order a temporary residence permit to be issued to a foreigner who is enforceably required to leave the federal territory (hardship petition). According to the individual case concerned, the said order may be issued with due consideration as to whether the foreigner's subsistence is assured or a declaration of commitment is submitted in accordance with Section 68. A case of hardship will not generally be considered if the foreigner has committed an offence of considerable severity or if a concrete date has already been set for the foreigner's return. The authority to grant residence represents the public interest only and does not constitute any rights on the part of the foreigner.

(2) The *Land* governments shall be authorised to establish a Hardship Commission in accordance with subsection 1 by virtue of a statutory instrument, to specify the procedure, grounds for exclusion and qualified requirements pertaining to a declaration of commitment pursuant to subsection 1, sentence 2, including conditions to be met by the party submitting such a declaration, and to assign the authority to issue orders pursuant to subsection 1, sentence 1 to other bodies. The Hardship Commissions shall take action solely on their own initiative. No third parties may require a Hardship Commission to take up a specific individual case or to make a specific decision. A Hardship Commission may decide to file a hardship petition only after establishing that urgent humanitarian or personal grounds justify the foreigner's continued presence in the federal territory.

(3) If a foreigner who is dependent on social welfare and who has been issued a temporary residence permit in accordance with subsection 1 relocates to the area of responsibility of another institution, the social welfare institution in whose area of responsibility a foreigners authority has issued the temporary residence permit shall be required to reimburse the costs incurred by the local social welfare institution which now bears responsibility for the foreigner concerned for a maximum of three years from the date of issue of the temporary residence permit. The same shall apply accordingly to the subsistence payments stipulated in Section 6 (1), sentence 1, no. 2 of Book Two of the Social Code.

### **Section 24**

#### **Granting of residence for temporary protection**

(1) A foreigner who is granted temporary protection on the basis of a decision by the Council of the European Union pursuant to Directive 2001/55/EC and who declares his willingness to be admitted into the federal territory shall be granted a temporary residence permit for the duration of his temporary protection as assessed in accordance with Articles 4 and 6 of said directive.

(2) No temporary protection shall be granted if the conditions stipulated in Section 3 (2) of the Asylum Act or Section 60 (8), sentence 1 apply; the temporary residence permit shall be denied.

(3) The foreigners pursuant to subsection 1 shall be allocated to the various *Länder*. The *Länder* may agree quotas for admission to grant temporary protection and for allocation. Allocation to the various *Länder* shall be carried out by the Federal Office for Migration and Refugees. Unless another formula for allocation has been agreed among the *Länder*, the formula for the allocation of asylum applicants shall apply.

(4) The supreme *Land* authority or the body appointed by it shall pass an allocation ruling. The *Land* governments shall be authorised to regulate allocation within the *Länder* via statutory instruments, and may assign this authorisation to other bodies via statutory instruments; Section 50 (4) of the Asylum Act shall apply accordingly. The allocation ruling shall not be contestable. Any legal actions shall have no suspensory effect.

(5) The foreigner shall have no entitlement to stay in a specific *Land* or a specific place. He shall take up his accommodation and habitual residence at the place to which he is allocated in accordance with subsections 3 and 4.

(6) Self-employment must not be excluded. Section 4 (2) shall apply to taking up employment.

(7) The foreigner shall be provided with written notification of the rights and obligations pertaining to the temporary protection in a language which he is able to understand.

## **Section 25** **Residence on humanitarian grounds**

(1) A foreigner shall be granted a temporary residence permit if he is recognised as being entitled to asylum. This provision shall not apply if the foreigner has been expelled on serious grounds relating to public safety and order. Residence shall be deemed to be permitted up to the time the temporary residence permit is issued. The temporary residence permit shall entitle the holder to pursue an economic activity.

(2) A foreigner shall be granted a temporary residence permit if the Federal Office for Migration and Refugees has granted him refugee status within the meaning of Section 3 (1) of the Asylum Act or subsidiary protection status within the meaning of Section 4 (1) of the Asylum Act. Subsection 1, sentences 2 to 4 shall apply accordingly.

(3) A foreigner should be granted a temporary residence permit if a deportation ban applies pursuant to Section 60 (5) or (7). The temporary residence permit shall not be granted if departure for subsequent admission to another state is possible and reasonable or the foreigner has repeatedly or grossly breached duties to cooperate. It shall, further, not be granted where there is serious reason to believe that the foreigner

1. has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments which have been drawn up for the purpose of establishing provisions regarding such crimes,
2. has committed an offence of considerable severity,
3. is guilty of acts contrary to the objectives and principles of the United Nations, as enshrined in the Preamble and Articles 1 and 2 of the Charter of the United Nations, or
4. represents a risk to the general public or a risk to the security of the Federal Republic of Germany.

(4) A foreigner who is not enforceably required to leave the federal territory may be granted a temporary residence permit for a temporary stay if his continued presence in

the federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests. By way of derogation from Section 8 (1) and (2), a temporary residence permit may be extended if departure from the federal territory would constitute exceptional hardship for the foreigner due to special circumstances pertaining to the individual case concerned.

(4a) A foreigner who has been the victim of a criminal offence pursuant to Sections 232 to 233a of the Criminal Code should also be granted a temporary residence permit for a temporary stay, even if he is enforceably required to leave the federal territory. The temporary residence permit may only be issued if

1. the public prosecutor's office or the criminal court considers his presence in the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without his information,
2. he has broken off contact to the persons accused of having committed the criminal offence and
3. he has declared his willingness to testify as a witness in the criminal proceedings relating to the offence.

After conclusion of the criminal proceedings, the temporary residence permit should be extended if humanitarian or personal reasons or public interests require the foreigner's further presence in the federal territory.

(4b) A foreigner who has been the victim of a criminal offence pursuant to Sections 10 (1) or 11 (1), no. 3 of the Act to Combat Clandestine Employment or pursuant to Section 15a of the Act on Temporary Employment Businesses may also be granted a temporary residence permit for a temporary stay, even if he is enforceably required to leave the federal territory. The temporary residence permit may only be issued if

1. the public prosecutor's office or the criminal court considers the temporary presence of the foreigner in the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without his information and
2. the foreigner has declared his willingness to testify as a witness in the criminal proceedings relating to the offence.

The temporary residence permit may be extended if the remuneration owed to the foreigner by the employer has not yet been paid in full, and it would represent particular hardship for the foreigner to pursue his entitlement from abroad.

(5) A foreigner who is enforceably required to leave the federal territory may be granted a temporary residence permit if his departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. The temporary residence permit should be issued if deportation has been suspended for 18 months. A temporary residence permit may only be granted if the foreigner is prevented from leaving the federal territory through no fault of his own. Fault on the part of the foreigner shall apply in particular if he furnishes false information, deceives the authorities with regard to his identity or nationality or fails to meet reasonable demands to eliminate the obstacles to departure.

### **Section 25a**

#### **Granting of residence in the case of well integrated juveniles and young adults**

(1) A juvenile or adolescent foreigner whose deportation has been suspended should be granted a temporary residence permit if

1. he has resided in the federal territory for four years without interruption either by virtue of holding a temporary residence or permanent settlement permit, by virtue of his deportation having been suspended or by holding permission to remain pending the asylum decision,
2. he has successfully attended a school in the federal territory for, as a rule, four years or has acquired a recognised vocational or school-leaving qualification,
3. the application for the temporary residence permit is filed before he reaches the age of 21,
4. it appears, on the basis of his education and way of life to date, that he will be able to become integrated into the way of life in the Federal Republic of Germany and
5. there is no concrete evidence to suggest that the foreigner is not committed to the free democratic basic order of the Federal Republic of Germany.

For as long as the juvenile or young adult attends school, vocational training or higher education, claiming public benefits for the purpose of ensuring his subsistence shall not preclude the granting of the temporary residence permit. A temporary residence permit shall be denied if deportation has been suspended on the basis of false information furnished by the foreigner or on the grounds of deception by the foreigner about his identity or nationality.

(2) The parents or parent possessing the right of care and custody of a foreign minor who holds a temporary residence permit pursuant to subsection 1 may be granted a temporary residence permit if

1. deportation has not been prevented or delayed on the grounds of false information or deceit with regard to identity or nationality or due to a failure to meet reasonable demands to eliminate obstacles to departure and
2. subsistence is ensured independently by means of an economic activity.

The minor children of a foreigner who holds a temporary residence permit pursuant to sentence 1 may be granted temporary residence permits if they live with him as a family unit. A spouse or domestic partner who is living with the beneficiary referred to in subsection 1 as a family unit should be granted a temporary residence permit if the conditions of sentence 1 are met. Section 31 shall apply accordingly. A minor, unmarried child who is living with the beneficiary referred to in subsection 1 as a family unit should be granted a temporary residence permit.

(3) A temporary residence permit pursuant to subsection 2 shall not be granted if the foreigner has been convicted of an offence wilfully committed in the federal territory; fines totalling up to 50 daily rates or up to 90 daily rates in the case of offences which, pursuant to this Act or the Asylum Act, can only be committed by foreigners, shall be ignored as a general principle.

(4) The temporary residence permit may be granted by way of derogation from Section 10 (3), sentence 2, and shall entitle the holder to pursue an economic activity.

#### **Section 25b** **Granting of residence in the case of lasting integration**

(1) By way of derogation from Section 5 (1) no. 1 and (2), a foreigner whose deportation has been suspended should be granted a temporary residence permit if he has become

lastingly integrated into the way of life in the Federal Republic of Germany. This shall generally presuppose that the foreigner

1. has resided in the federal territory for at least eight years or, in the event that he is living with a minor, unmarried child as a family unit, for at least six years without interruption by virtue of his deportation having been suspended, on the basis of permission to remain pending the asylum decision or by holding a temporary residence or permanent settlement permit,

2. is committed to the free democratic basic order of the Federal Republic of Germany and possesses a basic knowledge of the legal and social system and the way of life in the federal territory,

3. ensures his subsistence primarily by means of pursuing an economic activity or it is to be expected, when considering his previous education, training, income and family situation, that he will be able to ensure his subsistence within the meaning of Section 2 (3); drawing housing benefits shall not be detrimental thereto,

4. possesses sufficient oral command of the German language equivalent to Level A2 of the Common European Framework of Reference for Languages and

5. can furnish proof that his school-age children are actually attending school.

Temporarily drawing social benefits shall not generally be detrimental to securing subsistence in the case of

1. students attending a state or state-recognised higher education institution as well as apprentices undergoing training in a recognised trade or in a government-sponsored pre-vocational training measure,

2. families with minor children who temporarily rely on supplementary social benefits,

3. single parents of minor children who, pursuant to Section 10 (1) no. 3 of Book Two of the Social Code, cannot reasonably be expected to take up employment or

4. foreigners caring for close relatives in need of long-term care.

(2) A temporary residence permit pursuant to subsection 1 must be denied where

1. the foreigner prevents or delays the termination of his residence by wilfully providing false information, by deceit regarding his identity or nationality, or non-compliance with reasonable requirements to cooperate in eliminating any obstacles to his departure or

2. there is a public interest in expelling the foreigner within the meaning of Section 54 (1) or (2) nos.1 and 2.

(3) The conditions of subsection 1, sentence 2, nos. 3 and 4 shall be waived if the foreigner is unable to fulfil them on account of a physical or mental illness or disability or on grounds of old age.

(4) A spouse, domestic partner and minor, unmarried children living with the beneficiary referred to in subsection 1 as a family unit should be granted a temporary residence permit under the conditions set out in subsection 1, sentence 2, nos. 2 to 5. Subsections 2, 3 and 5 shall apply. Section 31 shall apply accordingly.

(5) By way of derogation from Section 26 (1), sentence 1, the temporary residence permit shall be granted and extended for no more than two years. It may be granted by way of

derogation from Section 10 (3), sentence 2, and shall authorise the holder to pursue an economic activity. Section 25a shall remain unaffected.

## **Section 26** **Duration of residence**

(1) The temporary residence permit in accordance with this Part may be issued and extended in each instance for a maximum of three years, but for no longer than six months in cases covered by Section 25 (4), sentence 1 and (5) when the foreigner has not been legally resident in the federal territory for at least 18 months. The temporary residence permit shall be issued for three years to persons granted asylum status and foreigners granted refugee status within the meaning of Section 3 (1) of the Asylum Act. The temporary residence permit shall be issued for one year to persons granted subsidiary protection status within the meaning of Section 4 (1) of the Asylum Act; it may be extended for an additional two years. Foreigners who meet the requirements in Section 25 (3) shall be issued a temporary residence permit for at least one year. The temporary residence permits pursuant to Section 25 (4a), sentence 1, and (4b) shall be issued and extended for one year in each instance, temporary residence permits pursuant to Section 25 (4a), sentence 3, for two years in each instance; a longer period of validity shall be permissible in substantiated individual cases.

(2) The temporary residence permit must not be extended if the obstacle to departure or the other grounds precluding a termination of residence have ceased to apply.

(3) A foreigner who possesses of a temporary residence permit in accordance with Section 25 (1) or (2), sentence 1, first alternative, shall be granted a permanent settlement permit if

1. he has possessed a temporary residence permit for five years; by way of derogation from Section 55 (3) of the Asylum Act, the period of residence during the asylum procedure which preceded the issuance of the temporary residence permit shall be counted towards the period in which the foreigner is required to possess a temporary residence permit in order to be issued a permanent settlement permit,

2. the Federal Office for Migration and Refugees has not given notification in accordance with Section 73 (2a) of the Asylum Act that the conditions for revocation or withdrawal apply,

3. his subsistence is for the most part ensured,

4. he possesses sufficient command of the German language and

5. the conditions of Section 9 (2), sentence 1, nos. 4 to 6, 8 and 9 are met.

Section 9 (2), sentences 2 to 6, Section 9 (3), sentence 1, and Section 9 (4) shall apply accordingly; the condition set out in sentence 1, no. 3 shall also be waived if the foreigner has reached the statutory retirement age under Section 35, sentence 2, or Section 235 (2) of Book Six of the Social Code. By way of derogation from sentences 1 and 2, a foreigner in possession of a temporary residence permit pursuant to Section 25 (1) or (2), sentence 1, first alternative, must be granted a permanent settlement permit if

1. he has possessed a temporary residence permit for three years; by way of derogation from Section 55 (3) of the Asylum Act, the period of residence during the asylum procedure which preceded the issuance of the temporary residence permit shall be counted towards the period in which the foreigner is required to possess a temporary residence permit in order to be issued a permanent settlement permit,

2. the Federal Office for Migration and Refugees has not given notification in accordance with Section 73 (2a) of the Asylum Act that the conditions for revocation or withdrawal apply,

3. he possesses a good command of the German language,

4. his subsistence is for the most part ensured and

5. the conditions of Section 9 (2), sentence 1, nos. 4 to 6, 8 and 9 are met.

Section 9 (3), sentence 1, and Section 9 (4) shall apply accordingly in the cases referred to in sentence 3. Section 35 may be applied accordingly to children who entered Germany before reaching the age of 18. Sentences 1 to 5 shall also apply to foreigners who possess a temporary residence permit issued pursuant to Section 23 (4), unless the conditions for its withdrawal are met.

(4) A foreigner who possesses a temporary residence permit in accordance with this Part may otherwise be granted a permanent settlement permit if the conditions stipulated in Section 9 (2), sentence 1, are met. Section 9 (2), sentences 2 to 6 shall apply accordingly. By way of derogation from Section 55 (3) of the Asylum Act, the duration of residence pertaining to the asylum procedure preceding granting of the temporary residence permit shall count towards this qualifying period. Section 35 may be applied accordingly to children who entered Germany before reaching the age of 18.

## **Part 6**

### **Residence for family reasons**

#### **Section 27**

##### **Principles pertaining to the subsequent immigration of dependants**

(1) The temporary residence permit to enable foreigners to be joined by foreign dependants so that they can live together as a family (subsequent immigration of dependants) shall be granted and extended to protect marriage and the family in accordance with Article 6 of the Basic Law.

(1a) The subsequent immigration of dependants shall not be permitted

1. if it is established that the marriage has been entered into or kinship established solely for the purpose of enabling the persons immigrating subsequently to enter and stay in the federal territory or

2. if there are concrete indications that one of the spouses has been forced into marriage.

(2) Subsections 1a and 3, Section 9 (3), Section 9c, sentence 2, Sections 28 to 31, Section 51 (2) and (10), sentence 2, shall apply accordingly to enable the establishment and maintenance of a registered partnership in the federal territory.

(3) The temporary residence permit for the subsequent immigration of dependants may be denied if the person to be joined by his dependants relies on benefits in accordance with Book Two or Book Twelve of the Social Code for the maintenance of other dependants or other members of his household. Section 5 (1), no. 2 may be waived.

(4) The period of validity of a temporary residence permit for the purpose of the subsequent immigration of dependants must not exceed the period of validity of the temporary residence permit held by the foreigner whom the dependants concerned are joining in the federal territory. It must be issued for this period if the foreigner who is to be joined in the federal territory by the dependants immigrating subsequently holds a

temporary residence permit pursuant to Sections 20, 20b or 38a, an EU Blue Card, an ICT Card or a Mobile ICT Card, or is entitled to stay in the federal territory in accordance with Section 20a. The period of validity of the temporary residence permit must not exceed that of the dependant's passport or passport substitute, however. The temporary residence permit must otherwise be issued for an initial period of at least one year.

(5) Residence titles issued pursuant to this Part shall entitle their holders to pursue an economic activity.

### **Section 28** **Subsequent immigration of dependants to join a German national**

(1) The temporary residence permit shall be granted to the foreign

1. spouse of a German,
2. minor, unmarried child of a German,
3. parent of a minor, unmarried German for the purpose of care and custody if the German's habitual residence is in the federal territory. By way of derogation from Section 5 (1), no. 1, it must be granted in the cases covered by sentence 1, nos. 2 and 3. By way of derogation from Section 5 (1), no. 1, it should be granted as a general rule in the cases covered by sentence 1, no. 1. By way of derogation from Section 5 (1), no. 1, the temporary residence permit may be granted to the parent of a minor, unmarried German who does not possess the right of care and custody of said child, if the family unit already exists in the federal territory. Section 30 (1), sentence 1, nos. 1 and 2, sentence 3 and subsection 2, sentence 1 shall apply accordingly in the cases covered by sentence 1, no. 1.

(2) As a rule, the foreigner must be granted a permanent settlement permit if he has possessed a temporary residence permit for three years, the family unit with the German continues to exist in the federal territory, there is no public interest in expelling the foreigner and the foreigner has a sufficient command of the German language. Section 9 (2) sentences 2 to 5 shall apply accordingly. The temporary residence permit shall otherwise be extended as long as the family unit continues to exist.

(3) Sections 31 and 34 shall apply subject to the proviso that the foreigner's residence title shall be replaced by the ordinary residence of the German in the federal territory. The temporary residence permit granted to a parent of a minor and unmarried German national for the purpose of care and custody must be extended after the child has come of age as long as the child lives with him in a family household and is in education or training which leads to a recognised school, vocational or higher education qualification.

(4) Section 36 shall apply accordingly to other dependants.

(5) (repealed)

### **Section 29** **Subsequent immigration of dependants to join a foreigner**

(1) For the purpose of subsequent immigration to join a foreigner,

1. the foreigner must hold a permanent settlement permit, an EU long-term residence permit, a temporary residence permit, an EU Blue Card, an ICT Card or a Mobile ICT Card, or he must be entitled to stay in the federal territory in accordance with Section 20a and

2. sufficient living space must be available.

(2) The requirements of Section 5 (1), no. 1 and subsection 1, no. 2 may be waived in the case of the spouse and the minor, unmarried child of a foreigner who possesses a temporary residence permit in accordance with Section 23 (4), Section 25 (1) or (2), a permanent settlement permit in accordance with Section 26 (3) or a permanent settlement permit in accordance with Section 26 (4) after being granted a temporary residence permit in accordance with Section 25 (2) sentence 1, second alternative. In the cases covered by sentence 1, these conditions must be waived where

1. the application for issuance of a residence title which is required in connection with the subsequent immigration of dependants is filed within three months of final recognition as a person entitled to asylum or final granting of refugee status or subsidiary protection or after a temporary residence permit has been issued in accordance with Section 23 (4) and

2. it is not possible for a foreigner and his dependants to live together as a family unit in a state which is not a member state of the European Union and to which the foreigner or his dependants have special ties.

The deadline stated in sentence 2, no. 1 shall also be deemed to be met if the foreigner files the application on time.

(3) The temporary residence permit may only be granted to the spouse and the minor child of a foreigner who possesses a temporary residence permit in accordance with Sections 22, 23 (1) or (2) or Section 25 (3) or (4a), sentence 1, Section 25a (1) or Section 25b (1) for reasons of international law, on humanitarian grounds or in order to safeguard political interests of the Federal Republic of Germany. Section 26 (4) shall apply accordingly. The subsequent immigration of dependants shall not be granted in the cases covered by Section 25 (4), (4b) and (5), Section 25a (2), Section 25b (4), Section 104a (1), sentence 1, and Section 104b.

(4) By way of derogation from Section 5 (1) and Section 27 (3), the temporary residence permit shall be granted to the spouse and the minor child of a foreigner or the minor child of the foreigner's spouse if the foreigner has been granted temporary protection in accordance with Section 24 (1) and

1. the family unit in the country of origin has been broken up as a result of the foreigner having fled the country of origin and

2. the dependant is admitted from another member state of the European Union or is located outside of the European Union and is in need of protection.

The granting of a temporary residence permit to other dependants of a foreigner who has been granted temporary protection pursuant to Section 24 (1) shall be subject to Section 36. Section 24 shall apply to dependants who are admitted pursuant to this subsection.

(5) (repealed)

### **Section 30** **Subsequent immigration of spouses**

(1) A foreigner's spouse shall be granted a temporary residence permit if

1. both spouses are at least 18 years of age,

2. the spouse is able to communicate in the German language at least on a basic level and

3. the foreigner
  - a) possesses a permanent settlement permit,
  - b) possesses an EU long-term residence permit,
  - c) possesses a temporary residence permit pursuant to Sections 20, 20 b or Section 25 (1) or (2),
  - d) has held a temporary residence permit for two years and the temporary residence permit is not subject to a subsidiary provision pursuant to Section 8 (2) or the subsequent issuance of a permanent settlement permit has not been ruled out by virtue of a rule of law,
  - e) possesses a temporary residence permit, if the marriage existed at the time said permit was granted and the duration of the foreigner's stay in the federal territory is expected to exceed one year,
  - f) possesses a temporary residence permit pursuant to Section 38a and the marriage already existed in the member state of the European Union in which the foreigner has the status of a long-term resident, or
  - g) possesses an EU Blue Card, an ICT Card or a Mobile ICT Card.

Sentence 1, nos. 1 and 2 shall have no bearing on issuance of the temporary residence permit if the requirements of sentence 1, no. 3 (f) are met. Sentence 1, no. 2 shall have no bearing on issuance of the temporary residence permit where

1. the foreigner holds a residence title pursuant to Section 23 (4), Section 25 (1) or (2), Section 26 (3) or possesses a permanent settlement permit pursuant to Section 26 (4) after being granted a temporary residence permit pursuant to Section 25 (2), sentence 1, second alternative, and the marriage already existed at the time when the foreigner established his main ordinary residence in the federal territory,
2. the spouse is unable to provide evidence of a basic German language skills on account of a physical or mental illness or disability,
3. the spouse's need for integration is discernibly minimal within the meaning of a statutory instrument issued pursuant to Section 43 (4) or the spouse would, for other reasons, not be eligible for an integration course pursuant to Section 44 after entering the federal territory,
4. by virtue of his nationality, the foreigner may enter and stay in the federal territory without requiring a visa for a period of residence which does not constitute a short stay,
5. the foreigner possesses an EU Blue Card, an ICT Card or a Mobile ICT Card or a temporary residence permit pursuant to Sections 20 or 20b,
6. the particular circumstances of the case mean that the spouse is unable to or it is unreasonable to expect the spouse to undertake efforts before entering the country to acquire basic German language skills,
7. the foreigner possesses a residence title pursuant to Sections 19 to 21 and the marriage already existed at the time when he established his main ordinary residence in the federal territory, or
8. the foreigner held a temporary residence permit pursuant to Section 20 immediately before a permanent settlement permit or an EU long-term residence permit was issued.

(2) By way of derogation from subsection 1, sentence 1, no. 1, the temporary residence permit may be issued to avoid particular hardship. Where the foreigner holds a temporary residence permit, the other conditions stipulated in subsection 1, sentence 1, no. 3 (e) may be waived.

(3) By way of derogation from Section 5 (1), no. 1 and Section 29 (1), no. 2, the temporary residence permit may be extended for as long as the marital cohabitation continues.

(4) Where a foreigner is simultaneously married to several spouses and lives together with one spouse in the federal territory, no other spouse shall be granted a temporary residence permit pursuant to subsection 1 or subsection 3.

(5) If the foreigner is entitled to stay in the federal territory pursuant to Section 20a, the spouse shall not need a residence title if it has been established that the spouse stayed in the other member state of the European Union lawfully as the foreigner's dependant. The requirements stipulated in Section 20a (1), sentence 1, nos. 1, 3 and 4, and the grounds for rejection pursuant to Section 20c shall apply accordingly to the spouse.

### **Section 31** **Independent right of residence of spouses**

(1) In the event of termination of marital cohabitation, the spouse's temporary residence permit shall be extended by one year as an independent right of residence unrelated to the purpose of the subsequent immigration of dependants if

1. marital cohabitation has lawfully existed in the federal territory for at least three years or
2. the foreigner has died while marital cohabitation existed in the federal territory and the foreigner possessed a temporary residence permit, permanent settlement permit or EU long-term residence permit up to this point in time, unless he was unable to apply for an extension in time for reasons beyond his control. Sentence 1 shall not apply if no extension of the foreigner's temporary residence permit is permissible or if it is not permissible to issue the foreigner a temporary residence permit or EU long-term residence permit because this is precluded by a rule of law on account of the purpose of residence or by a subsidiary provision attaching to the temporary residence permit pursuant to Section 8 (2).

(2) The requirement stipulated in subsection 1, sentence 1, no. 1 for marital cohabitation to have existed lawfully for three years in the federal territory shall be waived if necessary to enable the spouse to continue his residence in order to avoid particular hardship, unless an extension of the foreigner's temporary residence permit is not permitted. Particular hardship shall be deemed to apply especially if the marriage is not valid or has been suspended under German law owing to the spouse's minority, if the obligation to return to the country of origin resulting from the termination of marital cohabitation threatens to substantially harm the foreigner's legitimate interests, or if the continuation of marital cohabitation is unreasonable due to the harm to the foreigner's legitimate interests; in particular this is to be assumed where the spouse is the victim of domestic violence. Such legitimate interests shall also include the well-being of a child living with the spouse as part of a family unit. In order to avoid abuse, extension of the temporary residence permit may be denied if the spouse relies on benefits in accordance with Book Two or Book Twelve of the Social Code for reasons for which he is responsible.

(3) By way of derogation from Section 9 (2), sentence 1, nos. 3, 5 and 6, the spouse shall

also be granted a permanent settlement permit if the spouse's subsistence is ensured after the termination of marital cohabitation by maintenance payments from the foreigner's own funds and the foreigner possesses a permanent settlement permit or an EU long-term residence permit.

(4) Without prejudice to subsection 2, sentence 4, claiming benefits in accordance with Book Two or Book Twelve of the Social Code shall not preclude extension of the temporary residence permit. The temporary residence permit may thus be extended as long as the conditions for granting the permanent settlement permit or EU long-term residence permit have not been met.

### **Section 32** **Subsequent immigration of children**

(1) The minor, unmarried child of a foreigner shall be granted a temporary residence permit if the parents or the parent having the sole right of care and custody hold a temporary residence permit, an EU Blue Card, an ICT Card, a Mobile ICT Card, a permanent settlement permit or an EU long-term residence permit.

(2) If the minor, unmarried child is aged 16 or over and if he does not relocate his main ordinary residence to Germany together with his parents or the parent possessing the sole right of care and custody, subsection 1 shall only apply if the child speaks German and appears, on the basis of his education and way of life to date, that he will be able to integrate into the way of life in the Federal Republic of Germany. The first sentence above shall not apply if

1. the foreigner possesses a temporary residence permit pursuant to Section 23 (4), Section 25 (1) or (2), a permanent settlement permit pursuant to Section 26 (3) or a permanent settlement permit pursuant to Section 26 (4) after being granted a temporary residence permit pursuant to Section 25 (2), sentence 1, second alternative, or

2. the foreigner or his spouse living together as a family possesses a permanent settlement permit pursuant to Section 19, an EU Blue Card, an ICT Card or a Mobile ICT Card or a temporary residence permit pursuant to Sections 20 or 20b.

(3) Where parents share the right of care and custody, a temporary residence permit pursuant to subsections 1 or 2 should also be granted for the purpose of joining just one parent, if the other parent has given his consent to the child's stay in Germany or if the relevant legally binding decision has been supplied by a competent authority.

(4) A minor, unmarried child of a foreigner may otherwise be granted a temporary residence permit if necessary to prevent special hardship on account of the circumstances pertaining to the individual case concerned. The child's well-being and the family situation must be taken into consideration in this connection.

(5) If the foreigner is entitled to stay in the federal territory pursuant to Section 20a, the minor unmarried child shall not need a residence title if it has been established that the child stayed in the other member state of the European Union lawfully as the foreigner's dependant. The requirements stipulated in Section 20a (1), sentence 1, nos. 1, 3 and 4, and the grounds for rejection pursuant to Section 20c shall apply accordingly to the minor child.

### **Section 33** **Birth of a child in the federal territory**

By way of derogation from Sections 5 and 29 (1), no. 2, a child who is born in the federal

territory may be granted a temporary residence permit ex officio if one parent possesses a temporary residence permit, permanent settlement permit or EU long-term residence permit. Where both parents or the parent possessing sole right of care and custody hold a temporary residence permit, a permanent settlement permit or an EU long-term residence permit at the time of birth, the child born in the federal territory shall be granted a temporary residence permit ex officio. A child born in the federal territory whose mother or father possesses a visa or is permitted to stay in the federal territory without a visa at the time of the birth shall be permitted to stay in the federal territory until the visa or the lawful period of stay without a visa expires.

#### **Section 34 Children's right of residence**

(1) By way of derogation from Section 5 (1), no. 1 and Section 29 (1), no. 2, the temporary residence permit granted to a child shall be extended as long as a parent possessing the right of care and custody holds a temporary residence permit, permanent settlement permit or EU long-term residence permit and the child lives together with the said parent as part of a family unit, or if the child would have a right of return pursuant to Section 37 if he left the federal territory.

(2) When a child comes of age, the temporary residence permit granted to the child shall become an independent right of residence which is unrelated to the purpose of the subsequent immigration of dependants. The same shall apply to the granting of a permanent settlement permit and an EU long-term residence permit or if the temporary residence permit is extended accordingly pursuant to Section 37.

(3) The temporary residence permit may be extended as long as the conditions for granting the permanent settlement permit and the EU long-term residence permit have not yet been met.

#### **Section 35 Children's independent, permanent right of residence**

(1) By way of derogation from Section 9 (2), a minor foreigner who possesses a temporary residence permit in accordance with this Part shall be granted a permanent settlement permit if he has been in possession of the temporary residence permit for five years on reaching the age of 16. The same shall apply if

1. the foreigner is of age and has possessed a temporary residence permit for five years,
2. he has a sufficient command of the German language, and
3. his subsistence is ensured or he is in education or training which leads to a recognised school, vocational or higher education qualification.

(2) Periods in which the foreigner has attended school outside of the federal territory shall not normally be counted towards the required duration of possession of a temporary residence permit as stipulated in subsection 1.

(3) No entitlement to the granting of a permanent settlement permit pursuant to subsection 1 shall apply if

1. there is a public interest in expelling the foreigner which is based on the foreigner's personal conduct,

2. the foreigner has been sentenced to a term of youth custody of at least six months or a prison term of at least three months or a fine of at least 90 daily rates in the past three years due to an intentionally committed offence, or if a youth prison sentence has been suspended or

3. the foreigner's subsistence cannot be assured without claiming benefits in accordance with Book Two or Book Twelve of the Social Code or youth welfare pursuant to Book Eight of the Social Code, unless the foreigner is in education or training which leads to a recognised school or vocational qualification.

The permanent settlement permit may be granted or the temporary residence permit extended in the cases covered by sentence 1. If, in cases covered by sentence 1, no. 2, the foreigner is placed on probation or the term of youth custody is suspended, the temporary residence permit shall generally be extended until the end of the probationary period.

(4) The requirements stipulated in subsection 1, sentence 2, nos. 2 and 3 and subsection 3, sentence 1, no. 3 shall be waived if the foreigner is unable to fulfil them on account of a physical or mental illness or disability.

### **Section 36**

#### **Subsequent immigration of parents and other dependants**

(1) By way of derogation from Section 5 (1), no. 1 and Section 29 (1) no. 2, a temporary residence permit shall be issued to the parents of a minor foreigner who possesses a temporary residence permit pursuant to Section 23 (4), Section 25 (1) or (2), a permanent settlement permit pursuant to Section 26 (3) or a permanent settlement permit after being granted a temporary residence permit pursuant to Section 25 (2), sentence 1, second alternative, if no parent possessing the right of care and custody is resident in the federal territory.

(2) Other dependants of a foreigner may be granted a temporary residence permit for the purpose of subsequent immigration to join the foreigner, if necessary in order to avoid particular hardship. Section 30 (3) and Section 31 shall apply accordingly to adult dependants and Section 34 shall apply accordingly to minor dependants.

### **Part 7**

#### **Special rights of residence**

### **Section 37**

#### **Right of return**

(1) A foreigner whose habitual residence as a minor was in the federal territory shall be granted a temporary residence permit if

1. the foreigner lawfully resided in the federal territory for eight years prior to his departure and attended a school in the federal territory for six years,

2. the foreigner's subsistence is ensured by his own economic activity or by a maintenance commitment into which a third party has entered for a period of five years and

3. the application for the temporary residence permit is filed after the foreigner reaches the age of 15 and before he reaches the age of 21, and within five years of departure.

The temporary residence permit shall entitle the holder to pursue an economic activity.

(2) Derogation from the requirements stipulated in subsection 1, sentence 1, nos. 1 and 3 shall be possible in order to prevent particular hardship. The requirements stipulated in subsection 1, sentence 1, no. 1 may be waived if the foreigner has acquired a recognised school-leaving qualification in the federal territory.

(2a) Derogation from the requirements stipulated in subsection 1, sentence 1, nos. 1 to 3 shall be possible if the foreigner has been unlawfully forced into marriage by means of violence or threat of serious harm and has been prevented from returning to Germany, and he files the application for a temporary residence permit no more than three months after the coercive situation has ended and within five years of departure, and it appears, on the basis of the foreigner's education and way of life to date, that he will be able to become integrated into the way of life in the Federal Republic of Germany. Where the foreigner fulfils the requirements of subsection 1, sentence 1, no. 1, he shall be granted a temporary residence permit if he has been unlawfully forced into marriage by means of violence or threat of serious harm and has been prevented from returning to Germany, and he files the application for a temporary residence permit no more than three months after the coercive situation has ended and within ten years of departure. Subsection 2 shall remain unaffected.

(3) The temporary residence permit may be denied

1. if the foreigner was expelled or could have been expelled when he left the federal territory,
2. if there is a public interest in expelling the foreigner or
3. as long as the foreigner is a minor and his personal care in the federal territory is not assured.

(4) The fact that the foreigner's subsistence is no longer ensured on the basis of his own economic activity or that the maintenance commitment no longer applies due to expiry of the five-year period shall not preclude extension of the temporary residence permit.

(5) A foreigner who receives a pension from an institution in the federal territory shall generally be granted a temporary residence permit if he lawfully resided in the federal territory for at least eight years prior to his departure.

### **Section 38** **Residence title for former Germans**

(1) A former German

1. shall be granted a permanent settlement permit if he had been habitually resident as a German in the federal territory for five years when he lost his German nationality,
2. shall be granted a temporary residence permit if he had been habitually resident in the federal territory for at least one year when he lost his German nationality.

The application for a residence title pursuant to sentence 1 shall be filed within six months of obtaining knowledge of the loss of German nationality. Section 81 (3) shall apply accordingly.

(2) A former German who is habitually resident abroad may be granted a temporary residence permit if he possesses a sufficient command of the German language.

(3) In special cases, the residence title pursuant to subsection 1 or 2 may be granted by

way of derogation from Section 5.

(4) The temporary residence permit in accordance with subsection 1 or 2 shall entitle the holder to pursue an economic activity. The pursuit of an economic activity shall be permitted within the period for filing an application specified in subsection 1, sentence 2 and, if an application is filed, until the foreigners authority's makes a decision on the application.

(5) Subsections 1 to 4 shall apply accordingly to a foreigner who, for reasons beyond his control, has been treated as a German by German bodies to date.

#### **Section 38a**

### **Temporary residence permit for persons having the status of long-term residents in other member states of the European Union**

(1) A foreigner who has the status of a long-term resident in another member state of the European Union shall be granted a temporary residence permit if he wishes to stay in the federal territory for a period in excess of 90 days. Section 8 (2) shall not apply.

(2) Subsection 1 shall not apply to foreigners who

1. are dispatched by a service provider in connection with the cross-border provision of services
2. intend to provide any other form of cross-border services or
3. wish to work in the federal territory as seasonal workers or to take up employment as cross-frontier workers.

(3) The temporary residence permit shall entitle its holder to take up employment if the Federal Employment Agency has granted approval in accordance with Section 39 (2) or it has been determined by statutory instrument pursuant to Section 42 or by intergovernmental agreement that such employment may be taken up without approval from the Federal Employment Agency. The temporary residence permit shall entitle its holder to take up self-employment, provided the requirements referred to in Section 21 are met. Where the residence title pursuant to subsection 1 is issued for study purposes or for other educational purposes, Sections 16 and 17 shall apply accordingly. In the cases covered by Section 17, the residence title shall be issued without the approval of the Federal Employment Agency.

(4) A temporary residence permit issued pursuant to subsection 1 may be provided with a subsidiary provision pursuant to Section 39 (4) for no longer than twelve months. If the temporary residence permit is issued pursuant to subsection 1, the period referred to in sentence 1 shall begin when the holder is permitted to take up employment for the first time. After this period has elapsed, the temporary residence permit shall entitle the holder to pursue an economic activity.

#### **Part 8**

### **Involvement of the Federal Employment Agency**

#### **Section 39**

### **Approval of employment for a foreigner**

(1) A residence title which permits a foreigner to take up employment may only be granted with the approval of the Federal Employment Agency, in the absence of any provisions to the contrary in statutory instruments. Such approval may be granted if laid down in intergovernmental agreements, an act or a statutory instrument.

(2) The Federal Employment Agency may approve the granting of a temporary residence permit to take up employment pursuant to Section 18 or of an EU Blue Card pursuant to Section 19a if

1.

a) the employment of foreigners does not result in any adverse consequences for the labour market, in particular with regard to the employment structure, the regions and the branches of the economy, and

b) no German workers, foreigners having the same legal status as German workers with regard to the right to take up employment or other foreigners who are entitled to preferential access to the labour market under the law of the European Union are available for the type of employment concerned or

2. it has established, via investigations for individual occupations or for individual industries in accordance with sentence 1, no. 1 (a) and (b), that filling the vacancies with foreign applicants is justifiable in terms of labour market policy and integration aspects and the foreigner is not employed on terms less favourable than apply to comparable German workers. German workers and foreigners of equal status shall also be deemed to be available if they can only be placed with assistance from the Federal Employment Agency. The future or present employer of a foreigner who requires or has obtained approval for such employment must furnish the Federal Employment Agency with information on pay, working hours and other terms and conditions of employment.

(3) Subsection 2 shall also apply if approval from the Federal Employment Agency is required in order to take up employment in cases of residence for other purposes covered in Parts 3, 5 or 7.

(4) The approval may stipulate the duration and form of occupational activity and restrict the employment to specific plants or regions.

(5) The Federal Employment Agency may approve the granting of a permanent settlement permit pursuant to Section 19 if employment of the foreigner does not result in any adverse consequences for the labour market.

(6) Subsections 2 and 4 shall apply accordingly to the granting of a seasonal work permit. As for the rest, the legal provisions governing the approval by the Federal Employment Agency shall be applied to the work permit in the absence of any law or statutory instrument to the contrary. The Federal Employment Agency may determine demand-oriented admission figures with regard to approving the granting of a residence title for seasonal work and a seasonal work permit.

#### **Section 40 Grounds for denial**

(1) Approval pursuant to Section 39 must be denied if

1. the employment has come about on the basis of unlawful placement or recruitment or

2. the foreigner intends to take up employment as a temporary worker (Section 1 (1) of the Act on Temporary Employment Businesses).

(2) Approval may be denied if

1. the foreigner has culpably violated Section 404 (1) or (2) nos. 2 to 13 of Book Three of the Social Code, Sections 10, 10a or 11 of the Act to Combat Clandestine Employment or Sections 15, 15a or Section 16 (1), no. 2 of the Act on Temporary Employment Businesses,
2. important personal grounds relating to the foreigner exist, or
3. if the future employer or his representative as authorised by statutes or law has been subject to an incontestable fine within the past five years for a breach of Section 404 (1) or (2) no. 3 of Book Three of the Social Code, or if they have been subject to an incontestable fine or convicted to a term of imprisonment for a breach of Sections 10, 10a or 11 of the Act to Combat Clandestine Employment or of Sections 15, 15a or Section 16 (1), no. 2 of the Act on Temporary Employment Businesses; this shall apply accordingly to the host entity in the case of an intra-corporate transfer pursuant to Section 19b or 19d.

(3) Approval to issue an ICT Card pursuant to Section 19b or a Mobile ICT Card pursuant to Section 19d may be denied if

1. the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions,
2. insolvency proceedings have been instituted against the assets of the undertaking by which the foreigner is employed or against the host entity's assets aiming to wind up the undertaking or the entity and its business,
3. the undertaking by which the foreigner is employed or the host entity and its business have been wound up in insolvency proceedings,
4. the institution of insolvency proceedings against the assets of the undertaking by which the foreigner is employed or against the host entity's assets has been refused for lack of assets, and its business has been wound up,
5. the undertaking by which the foreigner is employed or the host entity does not pursue any economic activity,
6. the presence of the intra-corporate transferee is aimed at or results in affecting labour management disputes or negotiations.

#### **Section 41**

##### **Revocation of approval and withdrawal of the work permit**

The approval may be revoked and the seasonal work permit withdrawn if the foreigner is employed on less favourable terms than comparable German workers or the conditions stipulated in Section 40 are met.

#### **Section 42**

##### **Authorisation to issue regulations and instructions**

(1) The Federal Ministry of Labour and Social Affairs may determine the following by means of statutory instruments, with the approval of the Bundesrat:

1. types of employment for which no approval is necessary from the Federal Employment Agency (Section 17, sentence 1, Section 17a (1), sentence 3, Section 17b (1), Section 18 (2), sentence 1, Section 18d (1), Section 19 (1), Section 19a (1), no. 2, Section 19b (2), Section 19d (2),
2. occupational groups for which the employment of foreign labour can be approved in accordance with Section 18 and, where necessary, further conditions pertaining to the admission of such employees to the German labour market,

3. exceptions for nationals of certain states,
4. activities which for the purposes of enforcement of this Act are never, or only under certain conditions, to be regarded as employment.

(2) The Federal Ministry of Labour and Social Affairs may determine the following by means of statutory instruments, without the approval of the Bundesrat:

1. the conditions and the procedure for the Federal Employment Agency to grant approval; an alternative procedure for establishing priorities may be regulated as well,
2. details concerning restriction of the approval based on time, enterprise, occupation or region, in accordance with Section 39 (4),
3. exceptional cases in which approval may be granted by way of derogation from Section 39 (2),
4. types of employment for which no approval is required from the Federal Employment Agency in accordance with Section 4 (2), sentence 3,
5. cases in which foreigners whose deportation has been suspended may be permitted to take up employment by way of derogation from Section 4 (3), sentence 1,
6. the requirements and procedure for granting a seasonal work permit to nationals of states listed in Annex II to Regulation (EC) No 539/2001.

(3) The Federal Ministry of Labour and Social Affairs may issue instructions to the Federal Employment Agency on the implementation of the provisions of this Act and the statutory instruments issued in connection with it, of the provisions enacted by the European Union on access to the labour market and of the intergovernmental agreements on the employment of workers.

### **Chapter 3 Integration**

#### **Section 43 Integration course**

(1) Foreigners living lawfully in the federal territory on a permanent basis shall be provided with support in integrating into the economic, cultural and social life of the Federal Republic of Germany and are expected to undertake commensurate integration efforts in return.

(2) Integration efforts by foreigners shall be supported by a basic package of measures to promote integration (integration course). The aim of the integration course shall be to successfully impart the German language, legal system, culture and history to foreigners. In this way, foreigners are supposed to become acquainted with the way of life in the federal territory to such an extent as to enable them to act independently in all aspects of daily life, without the assistance or mediation of third parties.

(3) The integration course shall comprise a basic and advanced language course of identical duration to provide sufficient command of the language and an orientation course to impart knowledge of the legal system, culture and history in Germany. The integration course shall be coordinated and carried out by the Federal Office for Migration and Refugees, which may enlist the services of private or public organisations to this end. Reasonable fees should be charged for attending the integration course, according due consideration to the ability to pay. The person who is obliged to ensure the foreigner's subsistence shall also be obliged to pay such a charge.

(4) The Federal Government shall be authorised to regulate further details of the integration course, in particular the basic structure, the duration, the content and implementation of the courses, the criteria relating to the selection and approval of organisations carrying out the courses and the requirements and general conditions pertaining to proper and successful participation in the courses and the appurtenant certification, including arrangement for the payment of costs, the necessary transmission of data between the bodies involved and the processing of data by the Federal Office for Migration and Refugees in accordance with Section 88a (1) and (1a), via a statutory instrument without the approval of the Bundesrat. This shall not include the examination and certification requirements of the final integration course tests, which shall be defined by statutory instruments issued by the Federal Ministry of the Interior without Bundesrat approval.

(5) (repealed)

#### **Section 44** **Entitlement to take an integration course**

(1) A foreigner residing in the federal territory on a permanent basis shall be entitled to one-time enrolment in an integration course

1. upon receiving a temporary residence permit for the first time
  - a) for employment purposes (Sections 18, 21),
  - b) for the purpose of subsequent immigration by dependants (Sections 28, 29, 30, 32, 36),
  - c) on humanitarian grounds pursuant to Section 25 (1), (2), (4a), sentence 3, or Section 25b,
  - d) as a long-term resident pursuant to Section 38a or

2. upon receiving a residence title pursuant to Section 23 (2) or (4).

Permanent residence shall generally be assumed if the foreigner is issued a temporary residence permit valid for at least one year or has held a temporary residence permit for more than 18 months, unless the stay is of a temporary nature.

(2) The entitlement pursuant to subsection 1 shall lapse one year after the residence title establishing the entitlement has been issued or when said title expires. This shall not apply if the foreigner was unable to register for an integration course within that period for reasons beyond his control.

(3) The entitlement to take an integration course shall not apply

1. to children, juveniles and young adults who take up school education or continue their previous school education in the Federal Republic of Germany,
2. if the need for integration is discernibly minimal or
3. if the foreigner already has a sufficient command of the German language.

In cases covered by sentence 1, no. 3, the entitlement to take an orientation course shall remain unaffected by this proviso.

(4) A foreigner who is not, or is no longer, entitled to take an integration course may be allowed to do so if space is available in the course concerned. This provision shall apply accordingly to German nationals who do not have a sufficient command of the German

language and have special integration needs, as well as to foreigners

1. who have permission to remain pending the asylum decision and who are expected to be permitted to remain lawfully and permanently,
2. whose deportation has been suspended pursuant to Section 60a (2), sentence 3, or
3. who possess a temporary residence permit pursuant to Section 25 (5).

It shall be assumed that asylum applicants from a safe country of origin pursuant to Section 29a of the Asylum Act will not be permitted to remain lawfully and permanently.

#### **Section 44a** **Obligation to take an integration course**

(1) A foreigner shall be obliged to take an integration course if

1. he is entitled to take such a course in accordance with Section 44 and
  - a) is unable to communicate at least at a basic level in the German language or
  - b) does not have a sufficient command of the German language at the time a residence title is issued pursuant to Section 23 (2), Section 28 (1), sentence 1, no. 1 or Section 30 or
2. he receives benefits in accordance with Book Two of the Social Code and an integration agreement pursuant to Book Two of the Social Code provides for participation in an integration course or
3. he has special integration needs and the foreigners authority requires him to participate in an integration course, or
4. he belongs to the group of persons referred to in Section 44 (4), sentence 2, nos. 1 to 3, receives benefits under the Asylum Seekers Benefits Act and the competent benefit authority asks him to participate in an integration course

In cases covered by sentence 1, no. 1, the foreigners authority shall ascertain when issuing the residence title whether the foreigner is obliged to participate. In the cases covered by sentence 1, no. 2 the foreigner shall also be obliged to participate if the institution providing basic security for job seekers requires him to do so. In the cases covered by sentence 1, nos. 1 and 3, where benefits are received in accordance with Book Two of the Social Code for the measures pursuant to Section 15 of Book Two of the Social Code, the institution providing basic security for job seekers should, as a general rule, follow the obligation imposed by the foreigners authority. Where, in individual cases, the institution providing basic security for job seekers decides otherwise, it must notify the foreigners authority accordingly, which shall then revoke the obligation. The obligation shall be revoked where it is unreasonable to expect a foreigner to attend a part-time course in addition to pursuing an economic activity. Further, when issuing a residence title pursuant to Section 25 (1) or (2), the foreigners authorities may oblige a foreigner to take an integration course if he only has a basic command of the German language.

(1a) Except where the obligation is withdrawn or revoked, the obligation to duly participate in an integration course pursuant to subsection 1, sentence 1, no. 1 shall expire only if the foreigner has duly participated in the integration course.

(2) The obligation to take an integration course shall not apply to foreigners

1. who are in vocational training or any other form of training or education in the federal territory,

2. who furnish evidence of participation in comparable education measures in the federal territory or

3. for whom attendance on a sustained basis is infeasible or unreasonable.

(2a) Foreigners having a temporary residence permit pursuant to Section 38a shall be exempted from the obligation to take an orientation course if they prove that they have already participated in integration measures in another member state of the European Union in order to attain their legal status as a long-term resident.

(3) If a foreigner fails to meet his obligation for reasons for which he is responsible or fails to pass the final test, before extending his temporary residence permit the competent foreigners authority shall inform the foreigner of the possible consequences of his actions (Section 8 (3), Section 9 (2), sentence 1, nos. 7 and 8, Section 9a (2), sentence 1, nos. 3 and 4 of this Act, Section 10 (3) of the Nationality Act). The foreigners authority may take administrative enforcement measures in order to enjoin the foreigner to meet his obligation to take an integration course. In case of non-compliance with the obligation to take an integration course, the prospective charge to cover costs may also be levied in advance in a single sum by issuing an official notice of fees.

#### **Section 45 Integration programme**

The integration course should be flanked by additional integration measures organised by the Federation and the *Länder*, in particular social education and migration-specific advising services. The Federal Ministry of the Interior or the body appointed by it shall develop a nationwide integration programme which, in particular, shall identify the existing integration measures for foreigners and ethnic German resettlers which are available from the Federation, *Länder*, local authorities and private organisations, and make recommendations on the further development of the integration measures. The *Länder*, local authorities, the federal, *Land* and local government commissioners for issues relating to foreigners and the Federal Government Commissioner for Matters Related to Ethnic German Resettlers shall be involved in developing the nationwide integration programme and in compiling informational materials on existing integration measures. Religious communities, trade unions, employers' associations, voluntary welfare organisations and other social interest groups should also be involved.

#### **Section 45a Job-related language training; authorisation to issue statutory instruments**

(1) Integration into the labour market may be promoted by means of job-related German language training courses. As a rule these courses shall build on the general language training provided in the integration courses. Job-related language training shall be coordinated and conducted by the Federal Office for Migration and Refugees. The Federal Office for Migration and Refugees shall commission private or public institutions to run the job-related language training courses.

(2) Foreigners shall be obliged to take a job-related language training course if they are drawing benefits pursuant to Book Two of the Social Code and participation in the course is included in an integration agreement pursuant to Book Two of the Social Code. Labour market integration benefits pursuant to Book Two of the Social Code and active job promotion benefits pursuant to Book Three of the Social Code shall remain unaffected. Participation in job-related language training shall not be open to foreigners who have permission to remain pending the asylum decision pursuant to the Asylum Act and who are not expected to be given permission to remain lawfully and permanently. It shall be

assumed that asylum applicants from a safe country of origin pursuant to Section 29a of the Asylum Act will not be permitted to remain lawfully and permanently.

(3) The Federal Ministry of Labour and Social Affairs shall be authorised, by way of a statutory instrument not requiring the consent of the Bundesrat, and in agreement with the Federal Ministry of the Interior, to regulate further details of the job-related language training, in particular the basic structure, the target groups, the duration, the content and implementation of the courses, the criteria for selecting and approving institutions running the courses, and the requirements and general conditions pertaining to access to and proper and successful participation in the courses, including the final certificates and arrangements for the payment of costs, the necessary transmission of data between the bodies involved and the processing of data by the Federal Office for Migration and Refugees in accordance with Section 88a (3).

#### **Chapter 4 Administrative provisions**

##### **Section 46 Administrative orders**

(1) The foreigners authority may undertake measures to facilitate the departure of a foreigner who is enforceably required to leave the federal territory; in particular, it may oblige the foreigner to take up his residence at a place of its designation.

(2) A foreigner may be prohibited from leaving the federal territory in appropriate application of Section 10 (1) and (2) of the Passport Act. A foreigner may otherwise be prohibited from leaving the federal territory only if he intends to enter another state without possessing the necessary documents and permits. The departure ban shall be lifted as soon as the reason for its imposition ceases to apply.

##### **Section 47 Prohibition and restriction of political activities**

(1) Foreigners may pursue political activities within the bounds of the general statutory provisions. A foreigner's political activities may be restricted or prohibited if they

1. impair or endanger the development of informed political opinion in the Federal Republic of Germany, the peaceful co-existence of Germans and foreigners or of different groups of foreigners in the federal territory, public safety and order or any other substantial interests of the Federal Republic of Germany,
2. may be counter to the foreign policy interests of the Federal Republic of Germany or to the obligations of the Federal Republic of Germany under international law,
3. contravene the laws of the Federal Republic of Germany, particularly in connection with the use of violence,
4. are intended to promote parties, other organisations, establishments or activities outside of the federal territory whose aims or means are incompatible with the fundamental values of a system of government which respects human dignity.

(2) A foreigner's political activities shall be prohibited if they

1. endanger the free and democratic constitutional system or the security of the Federal Republic of Germany or contravene the codified standards of international law,

2. publicly support, advocate or incite the use of violence as a means of enforcing political, religious or other interests or are capable of inciting such violence or

3. support organisations, political movements or groups within or outside of the federal territory which have initiated, advocated or threatened attacks on persons or objects in the federal territory or attacks on Germans or German establishments outside of the federal territory.

#### **Section 47a**

##### **Duties to cooperate; checking photographs**

Foreigners shall be required, when requested by the authority entrusted with checking persons' identity, to present their passport, passport substitute or substitute identity document and enable the authority to check their faces against the photograph in the document. The same shall apply to the certificate confirming permission to remain pending the asylum decision pursuant to Section 63 (1), sentence 1, of the Asylum Act. Foreigners holding an arrival certificate pursuant to Section 63a (1), sentence 1, of the Asylum Act or one of the documents referred to in Section 48 (1), no. 2, shall be required to present, upon request, the arrival certificate or document to the authority entrusted with checking the information stated therein and enable the authority to check their faces against the photograph in the document.

#### **Section 48**

##### **Obligations relating to identification papers**

(1) On request, a foreigner shall be obliged to present and surrender

1. his passport, passport substitute or substitute identity document and

2. his residence title or a document confirming suspension of deportation to the authorities entrusted with enforcing the law on foreigners and to leave such documents with the said authorities for a temporary period, where necessary in order to implement or ensure measures in accordance with this Act. The obligation pursuant to sentence 1, no. 1, shall also apply if a German national also holds a foreign nationality, has been prohibited from leaving the country pursuant to Section 10 (1) of the Passport Act, and presenting, handing over and temporarily leaving the foreign passport or passport substitute is necessary to carry out or ensure the departure ban.

(2) In the case of a foreigner who neither possesses a passport or passport substitute nor can reasonably be expected to obtain one, it shall be sufficient for the purposes of the obligation to have and present identification papers to carry the certificate confirming a residence title or the suspension of deportation, provided that such document contains the foreigner's personal details and a photograph and is marked to indicate that it is a substitute identity document.

(3) If the foreigner does not possess a valid passport or passport substitute, he shall be obliged to cooperate in efforts to obtain the identity paper and to present, surrender to and leave with the authorities entrusted with enforcing this Act all such documents, other papers and data carriers as may be of importance in establishing his identity and nationality and in establishing and enforcing a possibility of returning him to another state. If the foreigner fails to meet his obligation and if there is reason to believe that he is in possession of such documents or data carriers, he and the objects on his person may be searched. The foreigner shall be required to tolerate this measure.

(3a) Analysis of the data carriers shall be permissible only as far as necessary to establish the foreigner's identity and nationality and to establish and enforce the

possibility of his return to another state in accordance with the provisions of subsection 3 and the purpose of the measure cannot be achieved by more lenient means. Where there is reason to believe that analysing data carriers would provide only insights into the core area of private life, the measure shall not be permissible. The foreigner must provide the access data required for the permissible analysis of data carriers. The data carriers may be analysed only by employees who are qualified to hold judicial office. Insights into the core area of private life which are acquired in the course of analysing data carriers may not be utilised. Records thereof shall be deleted immediately. A written record shall be made of the fact of their acquisition and deletion. Where personal data acquired in the course of analysing data carriers are no longer necessary for the purposes set out in sentence 1, they shall be deleted immediately.

(4) Where the passport requirement (Section 3 (1)) is waived pursuant to Section 5 (3) or Section 33, a substitute identity document shall be issued. Subsection 3 shall remain unaffected.

#### **Section 48a** **Collection of access data**

(1) Where the foreigner does not provide the access data needed to analyse devices used for telecommunications purposes, the commercial providers of telecommunication services or those involved in the provision of such services may be required, where the statutory conditions for the use of the data are met, to provide information about the data used to protect access to devices or to storage devices located in these devices or separate from them (Section 113 (1), sentence 2, of the Telecommunications Act).

(2) The foreigner must first be informed about the request for information.

(3) On the basis of a request for information pursuant to subsection 1, the commercial providers of telecommunication services or those involved in the provision of such services must immediately transmit the data necessary to provide the information. Section 23 (1) of the Judicial Remuneration and Compensation Act shall apply accordingly to compensation paid to service providers.

#### **Section 49** **Verifying, establishing and documenting identity**

(1) Subject to the conditions stipulated in Section 48 (1), the authorities entrusted with enforcing this Act may read out the biometric and other data stored on the electronic storage and processing medium of a document pursuant to Section 48 (1), nos. 1 and 2, obtain the required biometric data from the holder of the document and compare the biometric data. All other authorities to which data are transmitted from the Central Register of Foreigners pursuant to Sections 15 to 20 of the Act on the Central Register of Foreigners and the registration authorities shall also be authorised to take measures pursuant to sentence 1, insofar as they are permitted to verify the authenticity of the document or the holder's identity. Biometric data within the meaning of sentence 1 shall comprise only the fingerprints and the photograph.

(2) On request, every foreigner shall be obliged to furnish the authorities entrusted with enforcing the law on foreigners with information on his age, identity and nationality and to submit such declarations in connection with the procurement of return travel documents as are required by the diplomatic mission of the state whose nationality he possesses or putatively possesses and are in line with German law.

(3) In case of doubt regarding the foreigner's identity, age or nationality, the measures

necessary in order to establish his identity, age or nationality shall be taken

1. if the foreigner is to be granted entry or a residence title or his deportation is to be suspended or

2. if necessary in order to implement other measures in accordance with this Act.

(4) The foreigner's identity shall be verified by means of identification measures when allocation is carried out in accordance with Section 15a.

(5) The necessary measures should be taken in order to establish and document the foreigner's identity

1. if the foreigner intends to enter or has entered the federal territory with a forged or falsified passport or passport substitute;

2. if there are other reasons to believe that the foreigner is intending to re-enter the federal territory unlawfully, following refusal of entry or the termination of a stay in the federal territory;

3. in the case of foreigners who are enforceably required to leave the federal territory, insofar as removal or deportation come into consideration;

4. if the foreigner is refused entry and returned to a safe third country as specified in Section 26a (2) of the Asylum Act;

5. when he applies for a national visa;

6. when temporary protection is granted in accordance with Section 24 and in the cases covered by Sections 23 and 29 (3);

7. if a reason for denial pursuant to Section 5 (4) has been established.

(6) Measures within the meaning of subsections 3 to 5, with the exception of subsection 5, no. 5, are the taking of photographs and fingerprints, the taking of measurements and similar measures, including bodily intrusions undertaken by a physician in accordance with prevailing medical standards in order to establish the foreigner's age, provided that no ill effect on the latter's health is to be feared. The measures shall be permissible on foreigners aged 14 or over; any doubts as to whether the foreigner has reached 14 years of age shall be to the detriment of the foreigner. These measures shall only be permissible for the purpose of establishing the foreigner's identity if the identity cannot be established by other means, in particular via inquiries to other authorities, or if the identity cannot be established in time by such other means or if such other means would involve substantial difficulties.

(6a) Measures within the meaning of subsection 5, no. 5 are the taking of photographs and fingerprints.

(7) In order to determine the foreigner's country or region of origin, the foreigner's spoken word may be recorded on audio and data media. Such recordings may only be made if the foreigner is informed beforehand.

(8) The identity of a foreigner who is apprehended in conjunction with unlawful entry and is not refused entry, must be documented by means of identification measures. In accordance with sentence 1, only photographs and prints of all ten fingers may be taken. The identity of a foreigner below the age of 14 shall be documented under the conditions of sentence 1 only by taking a photograph.

(9) The identity of a foreigner who is residing in the federal territory without the required residence title must be documented by means of identification measures. In accordance with sentence 1, only photographs and prints of all ten fingers may be taken. The identity of a foreigner below the age of 14 shall be documented under the conditions of sentence 1 only by taking a photograph.

(10) The foreigner shall tolerate the measures pursuant to subsections 1 and 3 to 9.

#### **Section 49a** **Database for found documents**

(1) The Federal Office of Administration shall keep a database in which information shall be stored on identity documents issued by foreign public bodies and belonging to nationals of the states specified in Enclosure I to Regulation (EC) No 539/2001 (OJ L 81, 21.3.2001, p. 1) which are found in Germany (database for found documents). Such storage shall serve to establish a foreigner's identity or nationality and to enable the subsequent return of foreigners.

(2) When a public body comes into possession of a found document pursuant to subsection 1, said body shall forward the document to the Federal Office of Administration immediately after a period of seven days has elapsed, unless

1. it obtains knowledge of a notice of loss submitted by the holder or
2. it determines beyond doubt the holder's place of residence in Germany or
3. the found document is required for the purposes of criminal proceedings or as evidence in other proceedings.

In cases covered by sentence 1, no. 3 the public body shall transfer the information stipulated in Section 49b, nos. 1 to 3 which are contained in the found document to the Federal Office of Administration for entry in the database for found documents.

#### **Section 49b** **Contents of the database for found documents**

Only the following data shall be stored in the file pursuant to Section 49a (1):

1. information on the holder of the found document:
  - a) surname, name at birth, given names, spelling of the names according to German law,
  - b) date and place of birth,
  - c) sex,
  - d) nationality,
  - e) height,
  - f) eye colour,
  - g) photograph,
  - h) fingerprints,
2. information on the found document:
  - a) type and number,

- b) issuing state,
  - c) place and date of issue,
  - d) duration of validity,
3. other information:
- a) name of the body submitting the document,
  - b) information on retention or return
4. a photocopy of all pages of the found document,
5. photocopies of documents verifying return of the document to the issuing state.

## **Chapter 5 Termination of stay**

### **Part 1**

#### **Grounds establishing the requirement to leave the federal territory**

##### **Section 50**

##### **Requirement to leave the federal territory**

(1) A foreigner shall be obliged to leave the federal territory if he does not possess or no longer possesses the necessary residence title and a right of residence does not exist or no longer exists under the EEC/Turkey Association Agreement.

(2) The foreigner shall leave the federal territory without delay or, if a period has been allowed for departure, by the end of this period.

(2a) (repealed)

(3) The foreigner may meet his obligation to leave the federal territory by entering another member state of the European Union or another Schengen state only if his entry into and residence in such state is permitted. If this is the case, the foreigner who is obliged to leave the federal territory must be required to proceed to the territory of such state without delay.

(4) A foreigner who is obliged to leave the federal territory and who intends to change his address or to leave the district covered by the foreigners authority for more than three days shall be required to notify the foreigners authority accordingly beforehand.

(5) The passport or passport substitute of a foreigner who is required to leave the federal territory should be taken into custody until his departure.

(6) For the purpose of terminating residence of a foreigner, the police may use their search tools for wanted persons in order to determine the foreigner's whereabouts and to apprehend him, if his whereabouts are not known. A foreigner subject to a ban on entry and residence pursuant to Section 11 may be reported for the purposes of refusal of entry and, in the event of his being found in the federal territory, for the purposes of his apprehension. Section 66 of the Asylum Act shall apply accordingly to foreigners who have been allocated in accordance with Section 15a.

##### **Section 51**

##### **Termination of lawful residence; continued validity of restrictions**

(1) The residence title shall expire in the following cases:

1. upon expiry of its period of validity,
2. upon the occurrence of an invalidating condition,
3. upon withdrawal of the residence title,
4. upon revocation of the residence title,
5. upon expulsion of the foreigner,
- 5a. upon announcement of a deportation order pursuant to Section 58a,
6. if the foreigner leaves the federal territory for a reason which is not of a temporary nature,
7. if the foreigner leaves the federal territory and fails to re-enter it within six months or within a longer period set by the foreigners authority,
8. if a foreigner files an application for asylum after being granted a residence title pursuant to Sections 22, 23 or 25 (3) to (5);  
a visa issued for several entries or with a period of validity in excess of 90 days shall not expire in accordance with numbers 6 and 7 above.

(1a) The validity of an ICT Card issued pursuant to Section 19b shall not expire pursuant to subsection 1, nos. 6 and 7, if the foreigner makes use of the possibility envisaged in Directive 2014/66/EU to carry out part of the intra-corporate transfer in another member state of the European Union. The validity of an ICT Card issued pursuant to Section 16 or 20 shall not expire pursuant to subsection 1, nos. 6 and 7, if the foreigner makes use of the possibility envisaged in Directive (EU) 2016/801 to carry out part of the studies or research project in another member state of the European Union.

(2) The permanent settlement permit of a foreigner who has lawfully resided in the federal territory for at least 15 years and the permanent settlement permit of his cohabiting spouse shall not expire in accordance with subsection 1, nos. 6 and 7, if the aforementioned person's subsistence is secure and there is no public interest in expelling the foreigner pursuant to Section 54 (1), nos. 2 to 5 or (2), nos. 5 to 7. The permanent settlement permit of a foreigner cohabiting with a German as his spouse shall not expire pursuant to subsection 1, nos. 6 and 7 if there is no public interest in expelling the foreigner pursuant to Section 54 (1) nos. 2 to 5 or (2) nos. 5 to 7. On request, the foreigners authority at the place of the foreigner's last habitual residence shall issue a certificate confirming the continued validity of the permanent settlement permit.

(3) The residence title shall not expire pursuant to subsection 1, no. 7, if the specified period is exceeded solely because the foreigner is in compulsory military service in his native country and re-enters the federal territory within three months of discharge from said military service.

(4) A longer period shall generally be granted pursuant to subsection 1, no. 7 if the foreigner intends to leave the federal territory for reasons of a temporary nature and is in possession of a permanent settlement permit, or if the stay outside of the federal territory serves the interests of the Federal Republic of Germany. By derogation from subsection 1, nos. 6 and 7, the residence title of a foreigner shall not expire if he meets the requirements stipulated in Section 37 (1) sentence 1, no. 1, if the foreigner has been unlawfully forced into marriage by means of violence or threat of serious harm and has been prevented from returning to Germany, and he re-enters the federal territory within three months after the coercive situation has ended and at the latest within ten years of departure.

(5) The exemption from the requirement for the residence title shall not apply if the foreigner is expelled, removed or deported; Section 11 (2) to (5) shall apply accordingly.

(6) Geographic and other restrictions and conditions under this Act and other acts shall remain in force after the residence title expires or deportation is suspended until they are lifted or the foreigner meets his obligation to leave the federal territory.

(7) If a person entitled to asylum or a foreigner whom the Federal Office for Migration and Refugees has incontestably granted refugee status leaves the federal territory, the residence title shall not expire as long as he possesses a valid travel document for refugees issued by a German authority. The foreigner shall have no entitlement to the renewed issuance of a residence title on the basis of his recognition as a person entitled to asylum or by virtue of having been incontestably granted refugee status by the Federal Office for Migration and Refugees if he has left the federal territory and the competence for issuing a travel document has passed to another state.

(8) Prior to revocation of a temporary residence permit pursuant to Section 38a (1), prior to the expulsion of a foreigner who holds such a temporary residence permit and prior to issuing a deportation order against a foreigner pursuant to Section 58a, the competent authority in the proceedings pursuant to Section 91c (2) shall, through the Federal Office for Migration and Refugees, give the member state of the European Union in which the foreigner holds the legal status of a long-term resident an opportunity to submit an opinion, if deportation to an area in which this legal status cannot be acquired is under consideration. The opinion shall be considered by the competent authority if it is received from the other member state in sufficient time.

(8a) Insofar as the authorities of other Schengen states must be notified about decisions pursuant to Article 34 of Regulation (EC) No 810/2009 taken by the foreigners authorities, this shall be done via the Federal Office for Migration and Refugees. The authorities charged with policing cross-border traffic shall notify the authorities of other Schengen states immediately of their decisions pursuant to Article 34 of Regulation (EC) No 810/2009.

(9) The EU long-term residence permit shall expire only if

1. revoked on account of fraudulent misrepresentation, threats or bribery,
2. the foreigner is expelled or is served with a deportation order pursuant to Section 58a,
3. the foreigner is resident for a period of twelve consecutive months outside of the area in which the legal status of a long-term resident can be acquired; the period shall be 24 consecutive months for a foreigner who previously held an EU Blue Card and for his dependants who previously held a temporary residence permit pursuant to Sections 30, 32, 33 or 36,
4. the foreigner remains outside of the federal territory for a period of six years or
5. the foreigner acquires the legal status of a long-term resident in another member state of the European Union.

Subsections 2 to 4 shall apply accordingly to the cases specified in sentence 1, nos. 3 and 4.

(10) By way of derogation from subsection 1, no. 7, the period for the EU Blue Card and the temporary residence permits pursuant to Sections 30, 32, 33 or 36 issued to dependants of EU Blue Card holders shall be twelve months. The same shall apply to the

permanent settlement permit of a foreigner who has resided lawfully in the federal territory for at least 15 years and to the permanent settlement permit of a spouse cohabiting with the foreigner if he is 60 years of age or older.

## **Section 52 Revocation**

(1) Except in the cases covered by subsections 2 to 6, a foreigner's residence title pursuant to Section 4 (1), sentence 2, no. 1, second alternative, nos. 2, 2a, 2b, 2c, 3 and 4 can only be revoked if

1. he no longer possesses a valid passport or passport substitute,
2. he changes or loses his nationality,
3. he has not yet entered the federal territory,
4. his recognition as a person entitled to asylum or his status as a refugee or as a person entitled to subsidiary protection lapses or becomes null and void, or
5. the foreigners authority establishes, after issuing a temporary residence permit pursuant to Section 25 (3), sentence 1, that
  - a) the conditions pursuant to Section 60 (5) or (7) are not or no longer met,
  - b) the foreigner fulfils one of the grounds for exclusion pursuant to Section 25 (3), sentence 2, nos. 1 to 4, or,
  - c) in the cases covered by Section 42, sentence 1 of the Asylum Act, the assessment is revoked or becomes null and void.

In the cases covered by sentence 1, nos. 4 and 5, the residence title of the dependants living together with the foreigner as a family unit may also be revoked, if these have no independent entitlement to the residence title.

(2) A national visa, a temporary residence permit or an EU Blue Card which have been granted for the purpose of employment shall be revoked if the Federal Employment Agency revokes the approval of employment pursuant to Section 41. In the case of sentence 1, a national visa or a temporary residence permit which have not been granted for the purpose of employment must be revoked to the extent to which they permit employment.

(2a) An ICT Card issued pursuant to Section 19b, a Mobile ICT Card issued pursuant to Section 19d or a residence title allowing the subsequent immigration of dependants joining holders of an ICT Card or a Mobile ICT Card may be revoked if the foreigner

1. no longer meets the conditions for issuance, or
2. has violated the provisions of another member state of the European Union on the mobility of intra-corporate transferees in the scope of Directive 2014/66/EU.

If the ICT Card or the Mobile ICT card is revoked, the residence title granted to the dependant must be revoked at the same time, unless the dependent has an independent entitlement to a residence title.

(3) A temporary residence permit issued for study purposes pursuant to Section 16 (1), (6) or (9) may be revoked, if

1. the foreigner pursues an economic activity without the necessary permit,

2. the foreigner fails to make adequate progress with his studies, taking into account the average length of study for the course of study at the higher education institution concerned and his individual situation, or
3. the foreigner no longer meets the conditions under which he could be granted a temporary residence permit pursuant to Section 16 (1), (6) or (9).

The educational institution may be consulted to verify the requirements stipulated in sentence 1, no. 2.

(4) A temporary residence permit issued pursuant to Section 20 or Section 20b may be revoked, if

1. the research establishment with which the foreigner has concluded an admission agreement loses its recognised status, if the foreigner was involved in an action which has led to the loss of such status,
2. the foreigner no longer conducts or is no longer permitted to conduct research at the research establishment or
3. the foreigner no longer meets the conditions under which he could be granted a temporary residence permit pursuant to Section 20 or under which it would be permissible to conclude an admission agreement with him.

(4a) A temporary residence permit issued pursuant to Section 17b or 18d may be revoked if the foreigner no longer meets the conditions under which he could be granted a temporary residence permit.

(5) A temporary residence permit pursuant to Section 25 (4a), sentence 1, or (4b), sentence 1, should be revoked if

1. the foreigner was not or is no longer prepared to testify in the criminal proceedings,
2. the information provided by the foreigner referred to in Section 25 (4a), sentence 2, no. 1 or (4b), sentence 2, no.1 is considered by the public prosecutor's office or the criminal court to be in all reasonable probability false or
3. the foreigner no longer meets the conditions for issuing a residence title pursuant to Section 25 (4a) or (4b) on account of other circumstances.

A temporary residence permit pursuant to Section 25 (4a), sentence 1 should also be revoked if the foreigner has voluntarily re-established contact with the persons pursuant to Section 25 (4a), sentence 2, no. 2.

(6) A temporary residence permit pursuant to Section 38a should be revoked if the foreigner loses his legal status as a long-term resident in another member state of the European Union.

(7) (repealed)

### **Section 53 Expulsion**

(1) A foreigner whose stay endangers public safety and order, the free democratic basic order or other significant interests of the Federal Republic of Germany shall be expelled if, after weighing the interests in the foreigner's departure against the foreigner's individual interests in remaining in the federal territory, which is to be conducted taking account of all the circumstances of the particular case, there is an overriding public

interest in the foreigner leaving.

(2) When weighing the interests pursuant to subsection 1 in accordance with the circumstances of particular case, consideration shall in particular be given to the length of the foreigner's stay, his personal, economic and other ties in the federal territory and in the country of origin or in another state prepared to receive him, the consequences of expulsion for his dependants and domestic partner, as well as whether the foreigner has abided by the law.

(3) A foreigner who has been recognised as entitled to asylum, who enjoys the legal status of a foreign refugee, who possesses a travel document issued by an authority in the Federal Republic of Germany in accordance with the Agreement of 28 July 1951 on the Legal Status of Refugees (Federal Law Gazette 1953 II, p. 559), who is entitled to a right of residence in accordance with the EEC/Turkey Association Agreement or who possesses an EU long-term residence permit may be expelled only if the personal conduct of the person concerned currently represents a serious threat to public safety and order which affects a fundamental interest of society and the expulsion is essential to protect that interest.

(4) A foreigner who has filed an application for asylum may be expelled only under the condition that the asylum procedure has been concluded by incontestable decision without granting the foreigner recognition as a person entitled to asylum or without recognising his entitlement to international protection (Section 1 (1) no. 2 of the Asylum Act). The condition shall be waived if

1. there are facts justifying expulsion pursuant to subsection 3 or
2. a deportation warning issued in accordance with the provisions of the Asylum Act has become enforceable.

#### **Section 54 Interest in expulsion**

(1) There shall be a particularly serious public interest in expelling the foreigner (*Ausweisungsinteresse*) within the meaning of Section 53 (1) where the foreigner

1. has been incontestably sentenced to a prison term or a term of youth custody of at least two years for one or more intentionally committed offences or preventive detention has been ordered in connection with the most recent incontestable conviction,

1a. has been incontestably sentenced to a prison term or a term of youth custody of at least one year for one or more intentionally committed offences against life, physical integrity, sexual self-determination or property or for resisting enforcement officers if the criminal offence was committed using violence, using a threat of danger to life or limb, or with guile, or if it constitutes an offence stipulated in Section 177 of the Criminal Code; there shall be a particularly serious interest in expulsion if the foreigner has committed serial offences against property even if the perpetrator did not use violence, threats or guile,

2. threatens the free democratic basic order or the security of the Federal Republic of Germany; this shall be assumed to be the case if there is reason to believe that the foreigner is or has been a member of an organisation which supports terrorism or he supports or has supported such an organisation or he is, in accordance with Section 89a (2) of the Criminal Code, preparing or has prepared a serious violent offence endangering the state described in Section 89a (1) of the Criminal Code, unless the foreigner recognisably and credibly distances himself from the activity which endangers the state,

3. was one of the leaders of an organisation which was incontestably banned because its purposes or its activity contravenes criminal law or it is directed against the constitutional order or the concept of international understanding,
4. is involved in violent activities in the pursuit of political or religious objectives or calls publicly for the use of violence or threatens the use of violence or
5. incites others to hatred against segments of the population; this shall be assumed to be the case where he exerts a targeted and permanent influence on other persons in order to incite or increase hatred against members of certain ethnic groups or religions, or he publicly, in a meeting or by disseminating writings in a manner which is suited to disturbing public safety and law and order,
  - a) incites others to undertake arbitrary measures against segments of the population,
  - b) maliciously disparages segments of the population and thus attacks the human dignity of others or
  - c) endorses or promotes crimes against peace, against humanity, war crimes or acts of terrorism of comparable severity,

unless the foreigner recognisably and credibly distances himself from his actions.

(2) There shall be a serious interest in expelling the foreigner within the meaning of Section 53 (1) where the foreigner

1. has been incontestably sentenced to a prison term of at least one year for one or more intentionally committed offences,
  - 1a. has been incontestably sentenced to a prison term or a term of youth custody for one or more intentionally committed offences against life, physical integrity, sexual self-determination or property or for resisting enforcement officers if the criminal offence was committed using violence, using a threat of danger to life or limb, or with guile, or if it constitutes an offence stipulated in Section 177 of the Criminal Code; the interest in expulsion shall be serious if the foreigner has committed serial offences against property even if the perpetrator did not use violence, threats or guile,
2. has been incontestably sentenced to youth custody for at least one year for one or more intentionally committed offences and enforcement of the penalty has not been suspended on probation,
3. has committed or attempted to commit, as a perpetrator or participant, the offence under Section 29 (1), sentence 1, no. 1 of the Narcotics Act,
4. uses heroin, cocaine or a comparably dangerous narcotic drug and is not prepared to undergo the necessary treatment which serves his rehabilitation or he evades such treatment,
5. prevents another person from participating in life in the Federal Republic of Germany on an economic, cultural or social level by reprehensible means, in particular through the use or threat of violence,
6. forces or attempts to force another person into entering into marriage, or repeatedly commits acts which violate Section 11 (2), sentences 1 and 2 of the Civil Status Act and constitute a severe contravention of this provision; such acts shall constitute a severe contravention if they involving a person under the age of 16,
7. he, in the course of an interview to clarify reservations concerning entry or continued residence, fails to inform the German diplomatic mission abroad or the

foreigners authority of previous stays in Germany or other states, or intentionally furnishes no, false or incomplete information on key points regarding links to persons or organisations suspected of supporting terrorism or threatening the free, democratic order or security of the Federal Republic of Germany; expulsion on this basis shall be permissible only if the foreigner is expressly informed prior to the interview of the security-related purpose of the interview and the legal consequences of refusing to furnish information or of furnishing false or incomplete information,

8. in the course of an administrative procedure conducted by the authorities of a Schengen state in Germany or abroad

a) has furnished false or incomplete information in order to obtain a German residence title, a Schengen visa, an airport transit visa, a passport substitute, eligibility for exemption from the passport requirement or the suspension of deportation or

b) notwithstanding a legal obligation, has failed to cooperate in measures taken by the authorities responsible for implementing this Act or the Convention Implementing the Schengen Agreement, provided that the foreigner was informed beforehand of the legal consequences of such action or

9. has committed a breach of legal provisions, court rulings or orders which is not only isolated or minor, or has committed an offence outside of the federal territory which is to be regarded as an intentionally committed serious offence in the federal territory.

#### **Section 55 Interest in remaining**

(1) There shall be a particularly serious individual interest in remaining in the federal territory (*Bleibeinteresse*) within the meaning of Section 53 (1) where the foreigner

1. possesses a permanent settlement permit and has lawfully resided in the federal territory for at least five years,

2. possesses a temporary residence permit and was born in the federal territory or entered the federal territory as a minor and has lawfully resided in the federal territory for at least five years,

3. possesses a temporary residence permit, has lawfully resided in the federal territory for at least five years and cohabits with a foreigner as designated in nos. 1 and 2 as a spouse or in a registered partnership,

4. cohabits with a German dependant or domestic partner in a family unit or a registered partnership, exercises his rights of care and custody for a minor, unmarried German or exercises his right of access to that minor,

5. enjoys the legal status of foreigner entitled to subsidiary protection within the meaning of Section 4 (1) of the Asylum Act or

6. possesses a temporary residence permit pursuant to Section 23 (4), Sections 24, 25 (4a), sentence 3, or pursuant to Section 29 (2) or (4).

(2) There shall be a serious individual interest in remaining within the meaning of Section 53 (1) in particular where

1. the foreigner is a minor and possesses a temporary residence permit,

2. the foreigner possesses a temporary residence permit and has resided in the federal territory for at least five years,

3. the foreigner exercises his rights of care and custody for an unmarried minor residing lawfully in the federal territory or exercises his right of access to that minor,
4. the foreigner is a minor and his parents or parent holding rights of care and custody reside or resides lawfully in the federal territory,
5. consideration is to be given to the interests or the well-being of a child or
6. the foreigner possesses a temporary residence permit pursuant to Section 25 (4a), sentence 1.

(3) Residence on the basis of Section 81 (3), sentence 1, and (4), sentence 1, shall be considered lawful residence within the meaning of subsections 1 and 2 only if the application for issuance or extension of the residence title was granted.

### **Section 56**

#### **Monitoring for internal security reasons of foreigners required to leave the country**

(1) A foreigner subject to an expulsion order on the ground of an interest in expulsion pursuant to Section 54 (1) nos. 2 to 5 or a deportation order pursuant to Section 58a shall be obliged to report to the police office which is responsible for his place of residence at least once a week, unless the foreigners authority stipulates otherwise. An obligation to report to the police authorities in line with sentence 1 may be imposed if the foreigner

1. is enforceably required to leave the country and there is a public interest in expelling him as referred to in sentence 1, or
2. is enforceably required to leave the federal territory for reasons other than the interests in expulsion referred to in sentence 1, and if the order to report to the police authorities is necessary to avert a danger to public safety and order.

(2) His residence shall be restricted to the district of the foreigners authority concerned, unless the foreigners authority stipulates otherwise.

(3) He may be obliged to live in a different place of residence or in certain accommodation outside of the district of the foreigners authority concerned, if this appears expedient in order to hinder or prevent activities which have led to the expulsion order and to facilitate monitoring of compliance with provisions under the law governing organisations and associations or other statutory conditions and obligations.

(4) In order to hinder or prevent activities which have led to the expulsion order pursuant to Section 54 (1) nos. 2 to 5, to an order pursuant to subsection 1, sentence 2, no. 1 or to a deportation order pursuant to Section 58a, the foreigner may also be obliged not to contact specific persons or persons in a specific group, not to keep company with them, not to employ them, train or house them and to refrain from using certain means of communication or communication services, insofar as means of communication remain at his disposal and the restrictions are necessary in order to avert a significant risk to internal security or to the life and limb of others.

(5) The obligations pursuant to subsections 1 to 4 shall be suspended if the foreigner is in custody. An order pursuant to subsections 3 and 4 shall be immediately enforceable.

### **Section 56a**

#### **Electronic location monitoring; authorisation to issue statutory instruments**

(1) To prevent serious threats to internal security or to life and limb of others, foreigners who are subject to geographic restrictions pursuant to Section 56 (2) and (3) or to contact

bans pursuant to Section 56 (4) may be required, by a court order,

1. to carry the technical devices necessary to permanently monitor their location at all times, keep the devices ready for service, and
2. not to impair their functionality.

(2) This order shall be issued for no longer than three months. It may be extended by three-month periods at most, provided the requirements continue to be met. If the prerequisites for the order cease to exist, the measure is to be stopped immediately.

(3) The foreigners authority shall collect and store, with the help of the technical devices the foreigner carries and in an automated manner, data on

1. his location and
2. on any impairments of the data collection.

To the extent that this is technically possible, it must be ensured that no location data are collected in the foreigner's home which go beyond the fact that he is or is not present. The *Land* governments may determine by a statutory instrument that a body other than the foreigners authority shall collect and store the data referred to in sentence 1. The authorisation stipulated in sentence 3 may be transferred, by a statutory instrument, from the *Land* governments to the supreme *Land* authorities responsible for enforcing this Act.

(4) Without the consent of the person concerned, the data may only be used to the extent necessary to

1. establish violations of geographic restrictions pursuant to Section 56 (2) and (3) or of contact bans pursuant to Section 56 (4),
2. prosecute an administrative offence pursuant to Section 98 (3), no. 5a or a criminal offence pursuant to Section 95 (1), no. 6a,
3. establish violations of an enforceable court order pursuant to subsection 1 and to prosecute a criminal offence pursuant to Section 95 (2), no. 1a,
4. avert a current threat to the life, limb or liberty of a third person,
5. prosecute serious crimes against the life and limb of a third person or of crimes pursuant to Sections 89a or 129a of the Criminal Code, or
6. to maintain the functionality of the technical devices.

(5) To comply with the purpose limitation pursuant to subsection 4, data must be processed automatically and are to be protected especially against unauthorised disclosure. The data stored pursuant to subsection 3, sentence 1 must be deleted no later than two months after their collection, insofar as they are not used for the purposes stated in subsection 4. Any retrieval of data must be logged. The log data must be deleted after twelve months. If location data are collected in the home of the person concerned which go beyond the fact that he is present or not, they may not be used and must be deleted immediately after having been noticed. A written record shall be made of the fact that such data have been noticed and deleted. This record may be used exclusively for the purpose of data protection monitoring. It must be deleted when the data protection monitoring is completed.

(6) To carry out the measure stipulated in subsection 1, the competent authority within the meaning of subsection 3 must

1. receive and assess incoming system alerts concerning violations as defined in subsection 4, no. 1,
  2. transmit data concerning the location of the person concerned to the competent authorities, insofar as this is necessary to enforce measures pursuant to subsection 4, no. 1,
  3. transmit data concerning the location of the person concerned to the competent regulatory fine authority to prosecute administrative offences pursuant to Section 98 (3), no. 5a, or to the competent criminal prosecution authority to prosecute offences pursuant to Section 95 (1), no. 6a, or (2), no. 1a,
  4. transmit data concerning the location of the person concerned to the competent police authority provided this is necessary to avert a serious current threat within the meaning of subsection 4, no. 4,
  5. transmit data concerning the location of the person concerned to the competent police or criminal prosecution authorities provided this is necessary to prevent or prosecute a criminal offence referred to in subsection 4, no. 5,
  6. find out the cause of an alert; to this end, the competent body may contact and interview the person concerned, make him aware of the violation and inform him how to stop it,
  7. initiate an inspection of the technical devices kept by the person concerned as to whether they are working or have been tampered with, and the measures to address any functional impairments, in particular the exchange of technical devices or parts thereof,
  8. respond to enquiries by the person concerned regarding the handling of the technical devices.
- (7) The application for ordering a measure pursuant to subsection 1 must state
1. the target person of the measure, with name and address,
  2. type, scope and duration of the measure,
  3. information as to whether the target person of the measure is subject to a geographic restriction pursuant to Section 56 (2) and (3) or a contact ban pursuant to Section 56 (4),
  4. the facts of the case, and
  5. the reasons for the measure.
- (8) The order shall be issued in writing It shall include
1. the target person of the measure, with name and address,
  2. type, scope and duration of the measure, and
  3. the essential reasons for it.
- (9) The local court in whose district the competent authority within the meaning of subsection 3 is located shall be responsible for court orders pursuant to subsection 1. The provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction shall apply to the procedure accordingly.
- (10) Section 56 (5) sentence 1 shall apply accordingly.

## **Part 2**

### **Enforcement of the obligation to leave the federal territory**

#### **Section 57**

##### **Removal**

(1) A foreigner who is apprehended in conjunction with unlawful entry into the federal territory across a border within the meaning of Article 2 no. 2 of Regulation (EC) No 562/2006 (external border) shall be removed from the federal territory.

(2) A foreigner who is enforceably required to leave the federal territory, who will be readmitted by another member state of the European Union or Norway or Switzerland under the terms of an intergovernmental admission agreement applicable on 13 January 2009 should be removed to that state; the same shall apply if the foreigner is apprehended by the border authority in the vicinity of the border in close chronological proximity to unlawful entry into the federal territory and there are indications that another state is responsible for conducting an asylum procedure by virtue of legislation of the European Union or of an international treaty, and an admission or readmission process is initiated.

(3) Section (58) (1b), Section 59 (8), Section 60 (1) to (5) and (7) to (9) and Sections 62 and 62a shall apply accordingly.

#### **Section 58**

##### **Deportation**

(1) The foreigner shall be deported if the requirement to leave the federal territory is enforceable, no period has been allowed for departure or such a period has expired, and voluntary fulfilment of the obligation to leave is not assured or supervision of departure appears necessary on grounds of public security and order. If one of the conditions stipulated in Section 59 (1), sentence 2 becomes applicable within the period allowed for departure, the foreigner shall be deported before its expiry.

(1a) Before deporting an unaccompanied foreign minor, the authority must ensure that in the state to which he is to be returned he will be handed over to a member of his family, to a person possessing the right of care and custody or to an appropriate reception centre.

(1b) Foreigners holding an EU long-term residence permit or a corresponding legal status in another member state of the European Union and who are eligible for international protection in another member state of the European Union may only be deported to the state granting protection, except in the cases covered by Section 60 (8), sentence 1. Section 60 (2), (3), (5) and (7) shall remain unaffected.

(2) The requirement to leave the federal territory shall be enforceable if the foreigner

1. has entered the federal territory unlawfully,
2. has not yet applied for initial granting of the necessary residence title or has not yet applied for its extension or, despite an application having been submitted, the residence is not deemed to be permitted pursuant to Section 81 (3) or the residence title is not deemed to remain in force pursuant to Section 81 (4) or
3. becomes obliged to leave the federal territory by virtue of a ruling on his return reached by another member state of the European Union pursuant to Article 3 of Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the

expulsion of third country nationals (OJ L 149, 2.6.2001, p. 34), provided that the ruling concerned is recognised by the competent authority.

The obligation to leave the federal territory shall otherwise become enforceable only when the denial of the residence title or another administrative act requiring the foreigner to leave pursuant to Section 50 (1) takes effect.

(3) Supervision of deportation shall be necessary in particular if the foreigner

1. is, by virtue of a judicial order, in detention or another form of public custody,
2. has failed to leave the federal territory within the period allowed for departure,
3. has been expelled on the ground of a particularly serious interest in expulsion pursuant to Section 54 (1) in conjunction with Section 53,
4. is destitute,
5. does not possess a passport or passport substitute,
6. has furnished the foreigners authority with incorrect information with the intent to deceive or has refused to furnish information, or
7. has indicated that he will not meet his obligation to leave the federal territory.

#### **Section 58a** **Deportation order**

(1) The supreme *Land* authority may issue a deportation order for a foreigner without a prior expulsion order based on the assessment of facts, in order to avert a special danger to the security of the Federal Republic of Germany or a terrorist threat. The deportation order shall be immediately enforceable; no notice of intention to deport shall be necessary.

(2) The Federal Ministry of the Interior may assume responsibility if a special interest on the part of the Federation applies. The supreme *Land* authority must be notified accordingly. Deportation orders issued by the Federation shall be enforced by the Federal Police.

(3) A deportation order may not be enforced if the conditions pertaining to a deportation ban pursuant to Section 60 (1) to (8) apply. Section 59 (2) and (3) shall apply accordingly. Assessment in this context shall be carried out by the authority deciding on the deportation order; this authority shall not be bound by findings reached in this connection in other proceedings.

(4) Following announcement of the deportation order, the foreigner must be given an opportunity to contact a legal adviser of his choice without delay, unless he has secured the services of a lawyer beforehand; the foreigner must be informed of this entitlement, of the legal consequences of the deportation order and the available legal remedies. An application for temporary relief pursuant to the Code of Administrative Courts Procedure shall be filed within seven days of announcement of the deportation order. Deportation may not be enforced until the period in accordance with sentence 2 has expired and, if an application for temporary relief is filed in time, until the court has decided on said application.

#### **Section 59** **Deportation warning**

(1) Notice of intention to deport a foreigner shall be served specifying a reasonable period of between seven and 30 days for voluntary departure. By way of exception, a shorter period may be set or such a period may be waived altogether if, in individual cases, it is vital to safeguard overriding public interests, in particular where

1. a well-founded suspicion exists that the foreigner intends to evade deportation, or
2. the foreigner poses a serious danger to public safety or order.

Under the conditions stipulated in sentence 2, serving notice of intention to deport may also be waived if

1. the residence title pursuant to Section 51 (1), nos. 3 to 5 has expired or
2. the foreigner has already been informed in accordance with the requirements of Section 77 of his obligation to leave the federal territory.

Taking account of the particular circumstances of each case, the period allowed for departure may be extended as appropriate or a longer period may be set. Section 60a (2) shall remain unaffected. If the obligation to leave or the notice of intention to deport ceases to be enforceable, the period allowed for departure shall be interrupted and shall begin to run again when the obligation or notice becomes enforceable once more. No renewed setting of a period shall be required. When the period allowed for voluntary departure expires, the foreigner shall not be informed of the date of the deportation.

(2) The notice of intention to deport should specify the state to which the foreigner is to be deported and should inform the foreigner that he may also be deported to another state which he is permitted to enter or which is obliged to admit him.

(3) The existence of deportation bans and grounds for the temporary suspension of deportation shall not preclude issuing the notice of intention to deport. The state to which the foreigner must not be deported shall be specified in the notice of intention to deport. If the administrative court establishes the existence of a deportation ban, the validity of the notice of intention to deport shall otherwise remain unaffected.

(4) Once the notice of intention to deport is no longer subject to appeal, the foreigners authority shall, for the purpose of further decisions on deportation or the suspension of deportation, ignore any circumstances which represent an obstacle to deportation to the state specified in the notice of intention to deport and which occurred before the notice of intention to deport was no longer subject to appeal; any other circumstances cited by the foreigner which represent an obstacle to deportation, or to deportation to the specified state, may be ignored. The provisions enabling the foreigner to assert the validity of the circumstances referred to in sentence 1 through a court of law by means of a legal action or the temporary relief procedure pursuant to the Code of Administrative Procedure shall remain unaffected.

(5) It shall not be necessary to set a deadline in cases covered by Section 58 (3), no. 1; the foreigner shall be deported directly from detention or public custody. An impending deportation should be announced at least one week beforehand.

(6) The foreigner shall be issued a certificate confirming that a period for departure has been set pursuant to subsection 1.

(7) If the foreigners authority has concrete grounds to suspect that the foreigner has been the victim of a criminal offence as specified in Section 25 (4a), sentence 1 or Section 25 (4b), sentence 1, it shall, by derogation from subsection 1, sentence 1, set a period

allowed for leaving the country which will allow the foreigner sufficient time to decide whether he is prepared to testify pursuant to Section 25 (4a), sentence 2, no. 3 or Section 25 (4b), sentence 2, no. 2. A period of at least three months shall be allowed for departure. The foreigners authority may refrain from setting a period allowed for leaving the country pursuant to sentence 1 or may annul or reduce the period allowed for departure, if

1. the foreigner's stay is detrimental to public safety and order or other substantial interests of the Federal Republic of Germany or
  2. the foreigner has voluntarily re-established contact with the persons pursuant to Section 25 (4a), sentence 2, no. 2 after being duly informed pursuant to sentence 4.
- The foreigners authority or a body authorised by it shall inform the foreigner of the prevailing arrangements, programmes and measures for victims of criminal offences stated in Section 25 (4a), sentence 1.

(8) Prior to deportation, foreigners who were employed without the entitlement to pursue an economic activity required pursuant to Section 4 (3) shall be notified of their rights pursuant to Article 6 (2) and Article 13 of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

### **Section 60 Prohibition of deportation**

(1) In application of the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 II, p. 559), a foreigner may not be deported to a state in which his life or liberty is under threat on account of his race, religion, nationality, membership of a certain social group or political convictions. This shall also apply to persons who are entitled to asylum and to foreigners who have been incontestably granted refugee status or who enjoy the legal status of foreign refugees on other grounds in the federal territory or who have been granted foreign refugee status outside of the federal territory in accordance with the Convention relating to the Status of Refugees. Where the foreigner cites the ban on deportation pursuant to this subsection, the Federal Office for Migration and Refugees shall establish in an asylum procedure whether the conditions stated in sentence 1 apply and the foreigner must be granted refugee status, except in cases covered by sentence 2. The decision by the Federal Office shall only be contestable subject to the provisions of the Asylum Act.

(2) Foreigners may not be deported to a state where they face serious harm as referred to in Section 4 (1) of the Asylum Act. Subsection (1), sentences 3 and 4 shall apply accordingly.

(3) If a foreigner may not be deported to a state in which he is wanted for a criminal offence and a danger of imposition or enforcement of the death penalty exists, the provisions on extradition shall apply accordingly.

(4) If a formal request for extradition or a request for arrest combined with a notification of intent to file a request for extradition has been received from another state, deportation of the foreigner to this state prior to the decision on extradition shall be permissible only with the approval of the authority which is responsible for approving extradition pursuant to Section 74 of the Act on International Mutual Assistance in Criminal Matters.

(5) A foreigner may not be deported if deportation is inadmissible under the terms of the

Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (Federal Law Gazette 1952 II, p. 685).

(6) The general danger that a foreigner may face prosecution and punishment in another state and, in the absence of any provisions to the contrary in subsection 2 to 5, the concrete danger of lawful punishment under the legal system of another state shall not preclude deportation.

(7) A foreigner should not be deported to another state in which he faces a substantial concrete danger to his life and limb or liberty. A substantial concrete danger for health reasons shall only exist in the case of life-threatening or serious illness which would significantly worsen if the foreigner is deported. It is not necessary for medical care in the destination state to be comparable to medical care in the Federal Republic of Germany. Sufficient medical care shall generally also exist where this is guaranteed only in parts of the state of destination. Dangers pursuant to sentence 1 to which the population or the segment of the population to which the foreigner belongs are generally exposed shall receive due consideration in decisions pursuant to Section 60a (1), sentence 1.

(8) Subsection 1 shall not apply if, for serious reasons, the foreigner is to be regarded as a threat to the security of the Federal Republic of Germany or constitutes a threat to the general public because he has been incontestably sentenced to a prison term of at least three years for a crime or a particularly serious offence. The same shall apply if the foreigner meets the conditions stipulated in Section 3 (2) of the Asylum Act. Application of subsection 1 may be waived if the foreigner represents a danger to the general public because he has been incontestably sentenced to a prison term or a term of youth custody of at least one year for one or more intentionally committed offences against life, physical integrity, sexual self-determination or property or for resisting enforcement officers if the criminal offence was committed using violence, using a threat of danger to life or limb, or with guile, or if it constitutes an offence pursuant to Section 177 of the Criminal Code.

(9) In the cases covered by subsection 8, a foreigner who has filed an application for asylum may, by way of derogation from the provisions of the Asylum Act, be served notice of intention to deport and duly deported. Subsections 2 through 7 shall remain unaffected.

(10) If a foreigner to whom the conditions stipulated in subsection 1 apply is to be deported, notice of intention to deport must be served and a reasonable period must be allowed for departure. Those states to which the foreigner must not be deported shall be specified in the notice of intention to deport.

(11) (repealed)

#### **Section 60a** **Temporary suspension of deportation (*Duldung*)**

(1) For reasons of international law or on humanitarian grounds or to safeguard the political interests of the Federal Republic of Germany, the supreme *Land* authority may order the deportation of foreigners from specific states or of categories of foreigners defined by any other means to be suspended in general or with regard to deportation to specific states for a maximum of three months. Section 23 (1) shall apply to a period in excess of six months.

(2) The deportation of a foreigner shall be suspended for as long as deportation is impossible in fact or in law and no temporary residence permit is granted. The

deportation of a foreigner shall also be suspended if the public prosecutor's office or the criminal court considers his temporary presence in the federal territory to be appropriate in connection with criminal proceedings relating to a criminal offence, because it would be more difficult to investigate the facts of the case without his information. A foreigner may be granted a temporary suspension of deportation if his continued presence in the federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests. Suspension of deportation on urgent personal grounds within the meaning of sentence 3 must be granted if the foreigner begins or has begun a vocational qualification in a state-recognised or similarly regulated occupation which requires formal training in Germany, the conditions of subsection 6 are not met and no concrete measures to terminate the foreigner's residence are imminent. In the cases referred to in sentence 4, the suspension of deportation shall be granted for the duration of the vocational training specified in the training contract. Suspension of deportation pursuant to sentence 4 shall not be granted and suspension of deportation granted in accordance with sentence 4 shall expire if the foreigner has been convicted of an offence intentionally committed in the federal territory; no account shall generally be taken of fines of a total of up to 50 daily rates or of up to 90 daily rates in the case of criminal offences which can, under the Residence Act or the Asylum Act, only be committed by foreigners. If the foreigner does not undertake or discontinues the training, the training enterprise shall be obliged to notify the competent foreigners authority in writing immediately, generally within one week. The notification shall include the facts to be notified and when they arose, as well as the surnames, given names and the nationality of the foreigner. The suspension of deportation granted pursuant to sentence 4 shall expire if the foreigner no longer undertakes or discontinues the training. If the training relationship is terminated before completion or is discontinued, the foreigner shall be granted a one-time suspension of deportation for six months for the purpose of seeking another training place in order to begin vocational training in accordance with sentence 4. Suspension of deportation granted in accordance with sentence 4 shall be extended by six months for the purpose of seeking employment which is commensurate with the acquired professional qualification if, after successfully completing the vocational training for which the suspension of deportation was granted, the foreigner is not kept on in the training enterprise; the suspension of deportation granted to enable the foreigner to look for employment may not be extended for this purpose. Section 60a shall otherwise remain unaffected. Where the recording of the acknowledgement of paternity or the mother's consent to carry out a procedure pursuant to Section 85a is suspended, the deportation of the foreigner acknowledging paternity, of the foreign mother or the foreign child shall be suspended until the procedure pursuant to Section 85a has been concluded by means of an enforceable decision.

(2a) The deportation of a foreigner shall be suspended for one week where his removal or deportation has failed, custody pending deportation is not ordered and the Federal Republic of Germany is obliged to readmit the foreigner by virtue of a legal provision, in particular Article 6 (1) of Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (OJ L 321, 6.12.2003, p. 26). Suspension pursuant to sentence 1 shall not be extendible. Entry of the foreigner into the federal territory must be permitted.

(2b) For as long as a foreigner who holds a temporary residence permit pursuant to Section 25a (1) is a minor, the deportation of his parents or of one parent possessing the sole right of care and custody as well as of those minor children who live as a family unit with the parents or the parent possessing sole right of care and custody should be suspended.

(2c) It shall be assumed that the deportation is not precluded on health grounds. The

foreigner must substantiate an illness which might impede the deportation by submitting a qualified medical certificate. This medical certificate should in particular document the factual circumstances on the basis of which the professional assessment was made, the method of establishing the facts, the specialist medical assessment of the disease pattern (diagnosis), the severity of the illness and the consequences which will, based on the medical assessment, presumably result from the situation which arose on account of the illness.

(2d) The foreigner shall be obliged to submit the medical certificate referred to in subsection 2c immediately to the competent authority. If the foreigner fails to submit such a medical certificate immediately, the competent authority may not take account of the foreigner's submissions regarding his illness, unless the foreigner was prevented, through no fault of his own, from obtaining such a certificate or there is other factual evidence for the existence of a life-threatening or serious illness which would be significantly worsened by deportation. If the foreigner submits a certificate and the authority then orders a medical examination, the authority shall be entitled not to give consideration to the illness as submitted if the foreigner does not comply with the order without sufficient reason. The foreigner shall be informed of the obligations and of the legal consequences of any breach of these obligations pursuant to this subsection.

(3) Suspension of deportation shall not affect the foreigner's obligation to leave the federal territory.

(4) The foreigner must be issued a certificate confirming the suspension of deportation.

(5) The suspension of deportation shall lapse when the foreigner leaves the federal territory. The suspension shall be revoked when the circumstances preventing deportation cease to apply. The foreigner shall be deported without delay when the suspension lapses, without any renewed notice of intention to deport specifying a deadline, unless the suspension is renewed. If deportation has been suspended for more than one year, prior notice of at least one month shall be served in case of intended deportation by way of revocation; such notice shall be repeated, if the suspension has been renewed for more than one year. Sentence 4 shall not apply if the foreigner brought about the obstacle to deportation by intentionally furnishing false particulars or by his own deceit concerning his identity or nationality or if he fails to meet reasonable requirements for his cooperation in removing obstacles to deportation.

(6) A foreigner whose deportation has been suspended may not be permitted to pursue an economic activity if

1. he has entered the country to obtain benefits under the Asylum Seekers Benefits Act,
2. measures to terminate his stay cannot be carried out for reasons for which he is responsible or
3. he is a national of a safe country of origin according to Section 29a of the Asylum Act and an asylum application which he filed after 31 August 2015 has been denied.

Foreigners shall in particular be responsible for reasons in accordance with sentence 1 no. 2 if they themselves brought about the obstacle to deportation by their own deceit concerning their identity or nationality or by furnishing false particulars.

## **Section 61**

### **Geographic restrictions; residence restriction, departure facilities**

(1) The stay of a foreigner who is enforceably required to leave the federal territory shall be restricted in geographic terms to the territory of the *Land* concerned. The geographic restriction pursuant to sentence 1 may be waived if the foreigner is entitled to take up employment without screening pursuant to Section 39 (2), sentence 1, no. 1 or if it is necessary for the purposes of attending school, of participating in basic and advanced vocational training or of studying at a state or state-recognised university or a comparable educational institution. The same shall apply if this serves to preserve the family unit.

(1a) In cases covered by Section 60a (2a), residence shall be restricted to the administrative district of the most recently responsible foreigners authority. The foreigner must proceed to such location without delay after entering the federal territory. Where it is impossible to determine which foreigners authority is responsible, Section 15a shall apply accordingly.

(1b) A geographic restriction in accordance with subsections 1 and 1a shall expire if the foreigner has resided in the federal territory for three months without interruption either by virtue of holding a temporary residence or permanent settlement permit or by virtue of his deportation having been suspended or having permission to remain pending the asylum decision.

(1c) Notwithstanding subsections 1 to 1b, a geographic restriction of the stay of a foreigner who is enforceably required to leave the federal territory may be ordered if

1. the foreigner has been incontestably convicted of a criminal offence, with the exception of those offences which can only be committed by foreigners,
2. facts justify the conclusion that the foreigner has violated the provisions of the Narcotics Act or
3. concrete measures to terminate the stay are imminent against the foreigner.

An order restricting the foreigner's geographic location to the district of the foreigners authority should be imposed if he brought about the obstacle to deportation by intentionally furnishing false particulars or by his own deceit concerning his identity or nationality or if he fails to meet reasonable requirements for his cooperation in removing obstacles to deportation.

(1d) A foreigner who is enforceably required to leave the federal territory and whose subsistence is not ensured shall be obliged to take up his habitual residence at a specific place (residence restriction). If the foreigners authority does not order any other measure, this shall be the place of residence at which the foreigner was residing when the decision to temporarily suspend deportation was taken. The foreigners authority may amend the residence restriction ex officio or at the foreigner's request; account shall be taken of the household community of family members or of other humanitarian grounds of comparable importance. The foreigner may temporarily leave the place determined in the residence restriction without obtaining permission.

(1e) Further conditions and requirements may be imposed.

(2) The *Länder* may establish departure facilities for foreigners who are enforceably required to leave the federal territory. At such departure facilities, the willingness to leave the federal territory voluntarily should be promoted through support and counselling and accessibility for authorities and courts and implementation of the departure procedure should be ensured.

## **Section 62** **Custody awaiting deportation**

(1) Custody awaiting deportation shall not be permissible if the purpose of the custody can be achieved by other, less severe means which are also sufficient. The detention shall be limited to the shortest possible duration. Minors and families with minors may be taken into custody awaiting deportation only in exceptional cases and only for as long as is reasonable taking into account the well-being of the child.

(2) A foreigner shall be placed in custody by judicial order to enable the preparation of deportation, if a decision on deportation cannot be reached immediately and deportation would be much more difficult or impossible without such detention (custody to prepare deportation). The duration of custody to prepare deportation should not exceed six weeks. In case of expulsion, no new judicial order shall be required for the continuation of custody up to expiry of the ordered term of custody.

(3) A foreigner shall be placed in custody by judicial order for the purpose of safeguarding deportation (custody to secure deportation) if

1. the foreigner is enforceably required to leave the federal territory on account of his having entered the territory unlawfully,

1a. a deportation order has been issued pursuant to Section 58a but is not immediately enforceable,

2. the period allowed for departure has expired and the foreigner has changed his place of residence without notifying the foreigners authority of an address at which he can be reached,

3. he has failed to appear at the location stipulated by the foreigners authority on a date fixed for deportation, for reasons for which he is responsible,

4. he has evaded deportation by any other means or

5. there are, in the individual case, reasons based on evidence as defined in Section 2 (14) and thus a well-founded suspicion that he intends to evade deportation by absconding (risk of absconding).

By way of exception, the order for custody to secure deportation pursuant to sentence 1, no. 1 may be waived if the foreigner credibly asserts that he does not intend to evade deportation. Custody to secure deportation shall not be permissible if it is established that it will not be possible to carry out deportation within the next three months for reasons beyond the foreigner's control. By way of derogation from sentence 3, a foreigner posing a significant threat to the life and limb of others or to significant legally protected internal security interests may be taken into custody to secure deportation even if he cannot be deported within the next three months.

(4) Custody to secure deportation may be ordered for up to six months. In cases in which the foreigner hinders his deportation, it may be extended by a maximum of twelve months. It may also be extended by a maximum of twelve months where custody has been ordered on the basis of subsection 3, sentence 1, no. 1a, and where the transmission of the documents required for deportation by the third country obligated or willing to admit the foreigner is delayed. A period of custody to prepare deportation shall count towards the overall duration of custody to secure deportation.

(4a) Where deportation has failed, the order shall remain unaffected until the period allowed for deportation has expired, insofar as the conditions for the detention order remain unchanged.

(5) The authority responsible for the detention application may detain a foreigner without

a prior judicial order and place such foreigner in temporary custody where

1. there is a strong suspicion that the conditions pursuant to subsection 3, sentence 1 apply,
2. it is not possible to obtain the judicial decision on the order for custody to secure deportation beforehand and
3. there is a well-founded suspicion that the foreigner intends to evade the order for custody to secure deportation.

The foreigner shall be brought before the court without delay for a decision on the order for custody to secure deportation.

### **Section 62a** **Enforcement of custody awaiting deportation**

(1) As a general principle, custody awaiting deportation shall be enforced in specialised detention facilities. If there are no specialised detention facilities in the federal territory or if the foreigner poses a significant threat to the life and limb of others or to significant legally protected internal security interests, custody awaiting deportation may be enforced in other custodial institutions; in such cases the persons in detention awaiting deportation shall be accommodated separately from prisoners serving criminal sentences. If several members of a family are detained, they shall be accommodated separately from other detainees awaiting deportation. They shall be guaranteed adequate privacy.

(2) Detainees awaiting deportation shall be permitted to contact legal representatives, family members, the competent consular authorities and the relevant aid and support organisations.

(3) In the case of minors in detention awaiting deportation, the needs of persons their age shall be taken into account in accordance with the provisions of Article 17 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98). Particular attention must be paid to the situation of vulnerable persons.

(4) Upon application, staff of relevant aid and assistance organisations should be permitted to visit detainees awaiting deportation.

(5) Detainees awaiting deportation shall be informed of their rights and obligations and the rules applied in the facility.

### **Section 62b** **Custody to secure departure**

(1) Notwithstanding the conditions applicable to custody to secure deportation pursuant to Section 62 (3), a foreigner may be placed in custody for no more than ten days by judicial order for the purpose of ensuring that the deportation can be carried out if

1. the period allowed for departure has expired, unless the foreigner was prevented through no fault of his own from leaving or the period allowed for departure has been exceeded by an insignificant amount of time and
2. the foreigner has displayed behaviour which leads one to expect that he will make the deportation more difficult or impossible by continually violating his statutory obligation to cooperate or he has deceived the authorities regarding his identity or nationality (custody to secure departure).

The ordering of custody to secure departure shall be waived if the foreigner credibly asserts or it is obvious that he does not intend to evade deportation. Custody to secure departure shall not be permissible if it has been established that the deportation cannot be carried out within the period stipulated in the order referred to in sentence 1.

(2) Custody to secure departure shall be enforced in the transit area of an airport or in accommodation from which the foreigner's subsequent departure is possible.

(3) Section 62 (1) and (4a) and Section 62a shall apply accordingly.

## **Chapter 6 Liability and fees**

### **Section 63 Obligations of transport carriers**

(1) A transport carrier may only transport foreigners into the federal territory if they are in possession of a required passport and a required residence title.

(2) The Federal Ministry of the Interior or a body designated by it may, in agreement with the Federal Ministry of Transport and Digital Infrastructure, prohibit a transport carrier from transporting foreigners into the federal territory in contravention of subsection 1 and threaten a fine in case of violation. Any objections or legal actions shall have no suspensory effect; this shall also apply with regard to the imposition of a fine.

(3) The fine against the transport carrier shall be no less than 1,000 euros and no more than 5,000 euros for each foreigner whom he transports in contravention of an order pursuant to subsection 2. The fine may be set and enforced by the Federal Ministry of the Interior or a body designated by it.

(4) The Federal Ministry of the Interior or a body designated by it may agree arrangements for implementation of the obligation specified in subsection 1 with transport carriers.

### **Section 64 Return transport obligation on the part of transport carriers**

(1) If a foreigner is refused entry, the carrier who transported him to the border shall be required to remove him from the federal territory without delay.

(2) The obligation pursuant to subsection 1 shall apply for a period of three years with regard to foreigners who are transported into the federal territory without a required passport, passport substitute or a required residence title and who are not refused entry because they cite political persecution, persecution within the meaning of Section 3 (1) of the Asylum Act or the risk of suffering serious harm within the meaning of Section 4 (1) of the Asylum Act, or the circumstances referred to in Section 60 (2), (3), (5) or (7). The obligation shall expire if the foreigner is granted a residence title under the terms of this act.

(3) On request from the authorities charged with policing cross-border traffic, the carrier shall be required to transport the foreigner to the state which issued the travel document or from which he was transported, or to another state in which his admission is ensured.

### **Section 65 Obligations of airport operators**

The operator of a commercial airport shall be obliged to provide suitable accommodation on the airport premises for foreigners who do not possess a required passport or a required visa until the decision on admission is enforced by the border police.

### **Section 66** **Parties liable for costs; security**

(1) Costs arising in connection with the enforcement of a geographic restriction, refusal of entry, removal or deportation shall be borne by the foreigner.

(2) In addition to the foreigner, parties who have provided the foreigners authority or the diplomatic mission abroad with an undertaking that they will bear the costs of the foreigner's departure shall also be liable for the costs specified in subsection 1.

(3) In the cases covered by Section 64 (1) and (2), the transport carrier shall, in addition to the foreigner, be liable for the costs for return transportation of the foreigner and for the costs which arise from the time of the foreigner's arrival at the border crossing point to enforcement of the decision on admission. A carrier who culpably contravenes an order pursuant to Section 63 (2) shall, in addition to the foreigner, be liable for any other costs arising from refused entry in cases covered by Section 64 (1) or from deportation in cases covered by Section 64 (2).

(4) The following shall be liable for the costs of deportation or removal:

1. anyone who has employed a foreigner who was not permitted to pursue the economic activity under the provisions of this Act,
2. a contractor for whom an employer has performed services as a direct sub-contractor, if the contractor was aware or should have been aware, if he had exercised due diligence, that the employer hired a foreigner as an employee to perform the service who was not permitted to pursue the economic activity under the provisions of this Act,
3. a prime contractor or intermediate contractor without a direct contractual relationship to the employer who is aware of the employment of a foreigner who was not permitted to pursue the economic activity under the provisions of this Act,
4. anyone who commits a punishable offence pursuant to Section 96, or
5. the foreigner in question, to the extent that such costs cannot be recovered from the other liable parties.

The persons listed in sentence 1, nos. 1 to 4 shall be liable as joint and several debtors within the meaning of Section 421 of the Civil Code.

(4a) Liability pursuant to subsection 4, no. 1 shall be waived if the employer has fulfilled his obligations pursuant to Section 4 (3), sentences 4 and 5 and his notification obligation pursuant to Section 28a of Book Four of the Social Code in conjunction with Sections 6, 7 and 13 of the Data Collection and Transfer Ordinance or pursuant to Section 18 of the Posted Workers Act, unless he was aware that the foreigner's residence title or the certificate confirming permission to remain pending the asylum decision or confirming suspension of deportation was forged.

(5) The party liable for costs may be required to furnish security. The order for security to be furnished by the foreigner or the party liable for costs pursuant to subsection 4, sentences 1 and 2 may be enforced by the authority which has issued the order without a prior writ of execution and without allowing a period for payment, if recovery of the costs would otherwise be at risk. By way of security for the costs relating to the foreigner's

departure from the federal territory, return air tickets and other travel vouchers in the possession of a foreigner who is to be refused entry, removed, expelled or deported or who is permitted to enter and stay in the federal territory solely for the purpose of filing an application for asylum may be confiscated.

### **Section 67** **Scope of liability for costs**

(1) The costs relating to deportation, removal, refusal of entry and the enforcement of a geographic restriction shall include

1. transport costs and other travel costs for the foreigner within the federal territory and up to the destination outside of the federal territory,
2. the administrative costs arising in connection with preparing and enforcing the measure, including the costs of custody awaiting deportation, translation and interpreting costs and the expenditure on accommodation, food and other provisions for the foreigner, and
3. all costs arising from necessary official escorts for the foreigner, including personnel costs.

(2) The costs for which the transport carrier shall be liable pursuant to Section 66 (3), sentence 1 shall include

1. the costs specified in subsection 1, no. 1,
2. the administrative costs and expenditure on accommodation, food and other provisions for the foreigner and translation and interpreting costs which arise up to the time the decision on admission is enforced, and
3. the costs specified in subsection 1, no. 3, unless the transport carrier provides the necessary escort for the foreigner.

(3) The costs specified in subsections 1 and 2 shall be charged by the competent authority pursuant to Section 71 by means of a payment order in the amount of the costs actually incurred. The general principles for calculating public-sector personnel costs shall apply with regard to calculation of the personnel costs.

### **Section 68** **Liability for living expenses**

(1) Anyone who has provided the foreigners authority or a diplomatic mission abroad with a declaration of commitment to bear a foreigner's living expenses shall be required for a period of five years to reimburse all public funds expended to cover the foreigner's living expenses, including the provision of living space, medical care in case of illness and any required nursing care, and including any such expenditure which is based on a legal entitlement of the foreigner. Expenses which are based on the payment of contributions shall not require reimbursement. The period referred to in sentence 1 shall begin with the foreigner's entry which was enabled by the declaration of commitment. The declaration of commitment shall not expire before the period of five years from the foreigner's entry has elapsed if a residence title is granted pursuant to Part 5 of Chapter 2 or if recognition is given pursuant to Section 3 or Section 4 of the Asylum Act.

(2) The declaration of commitment pursuant to subsection 1, sentence 1 must be furnished in writing. It shall be enforceable in accordance with the Administrative Enforcement Act. The public body which has expended the public funds shall be entitled

to the reimbursement.

(3) The diplomatic mission abroad shall immediately notify the foreigners authority of a declaration of commitment pursuant to subsection 1, sentence 1.

(4) When it becomes aware of the expenditure of public funds to be reimbursed pursuant to subsection 1, the foreigners authority shall immediately notify the public body which is entitled to the reimbursement as to the declaration of commitment pursuant to subsection 1, sentence 1, and shall furnish said body with all the information necessary to assert and enforce the reimbursement claim. The recipient may only use the data for the purpose of reimbursing the public funds expended for the foreigner and refusing further benefits.

### **Section 68a**

#### **Transitional provision regarding declarations of commitment**

Section 68 (1), sentences 1 to 3, shall also apply to declarations of commitment made before 6 August 2016, though with the proviso that a period of three years shall take the place of the period of five years. If the period referred to in sentence 1 has already expired on 6 August 2016, the commitment to reimburse public funds shall end on 31 August 2016.

### **Section 69**

#### **Fees**

(1) Fees and expenses shall be charged for individually attributable public services rendered under this Act and the statutory instruments issued in enforcement of this Act. Fees may also be set orally. Sentence 1 shall not apply to individually attributable public services rendered by the Federal Employment Agency pursuant to Sections 39 to 42. Section 287 of Book Three of the Social Code shall remain unaffected. Furthermore, sentence 1 shall not apply to the notification procedure in connection with the short-term mobility of students pursuant to Section 16a, intra-corporate transferees pursuant to Section 19c and of researchers pursuant to Section 20a.

(2) The fee should cover the costs related to the individually attributable public service of all those involved in the service. The fee must include the expenses regularly related to the service. The calculation of the fees is to be based on the costs which are eligible, according to business principles, for inclusion in the accounts as indirect and overhead costs, especially personnel and material costs and imputed costs. Overhead costs shall also include the costs of legal and technical supervision. The costs arising for the *Länder* and the Federation in the context of the service in question shall form the basis for determining the fees pursuant to sentences 1 to 4.

(3) The Federal Government shall, with the approval of the Bundesrat, determine by statutory instrument the cases which are subject to a fee, the scales of fees, and exemptions and reduced fees, particularly in cases of need. Section 3 (1), nos. 1 and 4, (2) and (4) to (6), Sections 4 to 7, nos. 1 to 10, Sections 8, 9 (3), Sections 10 to 12 (1), sentence 1, and (3) as well as Sections 13 to 21 of the Act on Fees and Expenses for Federal Services of 7 August 2013 (Federal Law Gazette I, p. 3154) shall apply in the applicable version, unless this Act provides otherwise.

(4) By way of derogation from Section 4 (1) of the Act on Fees and Expenses for Federal Services, the fees to be charged by the diplomatic missions abroad may already be charged at the time of application. With regard to the fees to be charged by the diplomatic missions abroad, the Federal Foreign Office shall determine whether the fees will be charged in euros, in local currency or in a third currency. The fee may be rounded to the

next highest unit, depending on the general availability of units in the selected currency.

(5) The fees which are fixed in the statutory instrument must not exceed the following maximum rates:

1. for issuing a temporary residence permit: 140 euros,
- 1a. for issuing an EU Blue Card: 140 euros,
- 1b. for issuing an ICT Card 140 euros,
- 1c. for issuing a Mobile ICT Card 100 euros,
2. for issuing a permanent settlement permit: 200 euros,
- 2a. for issuing an EU long-term residence permit: 200 euros,
3. for extending a temporary residence permit, an EU Blue Card or an ICT Card: 100 euros,
- 3a. for extending a Mobile ICT Card 80 euros,
4. for issuing a national visa and a passport substitute and substitute identity document: 100 euros,
5. for recognising a research establishment for the purpose of concluding admission agreements pursuant to Section 20: 220 euros,
6. for other individually attributable public services: 80 euros,
7. for other individually attributable public services rendered for the benefit of minors: half the fee determined for the public service,
8. for issuing a new document pursuant to Section 78 (1) which has become necessary due to a change in the information pursuant to Section 78 (1), sentence 3, or due to the expiry of the technical period of validity for the use of the card, the loss of the document or the loss of the technical functionality of the document: 70 euros,
9. for suspending, shortening or extending time limits attached to a ban on entry and residence: 200 euros.

(6) A surcharge of no more than 25 euros may be imposed to issue a national visa and a passport substitute at the border. A surcharge of no more than 30 euros may be imposed for an individually attributable public service rendered outside of normal office hours at the request of the applicant. Surcharges may also be imposed for individually attributable public services rendered for a national whose home country imposes fees in excess of those stipulated in subsection 3 on Germans for equivalent services. Sentences 2 and 3 shall not apply to issuing or extending a Schengen visa. In setting surcharges, the maximum rates stipulated in subsection 5 may be exceeded.

(7) The statutory instrument pursuant to subsection 3 may provide for a processing fee to be charged for applications for individually attributable public services which are subject to fees. The processing fee to apply for a permanent settlement permit or an EU long-term residence permit must not exceed half the fee charged to issue the respective permit. This fee shall be offset against the fee for the individually attributable public service. The fee shall not be refunded if the application is withdrawn or if the individually attributable public service which is applied for is denied.

(8) The statutory instrument pursuant to subsection 3 may provide for fees to be charged

to file an objection; the following maximum rates shall apply to such fees:

1. to object to the denial of an application for an individually attributable public service which is subject to a fee: half the fee set for the service,

2. to object to another individually attributable public service: 55 euros.

If the objection is successful, the fee shall be deducted from the fee for the individually attributable public service to be performed and the remainder shall be refunded.

### **Section 70**

#### **Limitation of actions in respect of claims**

(1) The claims for the costs specified in Section 67 (1) and (2) shall become statute-barred six years after they become due for payment.

(2) The limitation period for claims pursuant to Sections 66 and 69 shall also be interrupted for as long as the party liable for costs is not resident in the federal territory or for as long as his residence in the federal territory cannot be ascertained because he has failed to meet a statutory registration or notification obligation.

### **Chapter 7**

#### **Procedural provisions**

#### **Part 1**

#### **Areas of competence**

### **Section 71**

#### **Competence**

(1) The foreigners authorities shall be competent for residence- and passport-related measures and rulings in accordance with this Act and in accordance with provisions relating to foreigners in other acts. The *Land* government or the body appointed by it may determine that only one or several specific foreigners authorities are competent.

(2) Outside of Germany, the diplomatic missions authorised by the Federal Foreign Office shall be responsible for matters relating to passports and visas.

(3) The authorities charged with policing cross-border traffic shall be responsible for

1. removal and refusal of entry at the border, including the transfer of third-country nationals on the basis of Regulation (EU) No 604/2013 if the foreigner is apprehended by the border authority in the vicinity of the border and in close chronological proximity to an unlawful entry into the federal territory,

1a. deportations at the border, insofar as the foreigner has been apprehended during or following unlawful entry into the federal territory across a border within the meaning of Article 2 no. 1 of Regulation (EC) No 562/2006 (internal border),

1b. deportations at the border, insofar as the foreigner has already entered the federal territory unlawfully, has subsequently proceeded to another border area or to an airport, airfield, landing site or maritime or inland port, whether approved or not as a border crossing point, where he has then been apprehended,

1c. imposition of time limits on the effects of deportations and removals which they carry out pursuant to Section 11 (2), (4) and (8),

1d. the return of foreigners from and to other states and

- 1e. applying for custody and effecting arrest where necessary to prepare and take the measures listed in nos. 1 to 1d,
2. granting a visa and issuing a passport substitute pursuant to Section 14 (2), and suspending deportation pursuant to Section 60a (2a),
3. withdrawal and revocation of a national visa, as well as decisions pursuant to Article 34 of Regulation (EC) No 810/2009
  - a) in case of refusal of entry, removal or deportation, provided that the requirements of nos. 1a or 1b are met,
  - b) at the request of the diplomatic mission abroad which has issued the visa or
  - c) at the request of the foreigners authority which has approved issuing the visa, insofar as this approval was required for said issuance,
4. departure bans and the measures pursuant to Section 66 (5) at the border,
5. verifying at the border whether transport carriers and other third parties have observed the provisions of this Act and the ordinances and orders enacted on the basis of this Act,
6. other measures and rulings under the law on foreigners which prove necessary at the border and for which the authorities possess authorisation from the Federal Ministry of the Interior or for which they are authorised by the said Ministry in the individual case concerned,
7. procuring return travel documents for foreigners by way of official assistance,
8. issuing notes and certificates for which legislation of the European Union provides confirming the date and place of entry via the external border of a member state which applies the Schengen acquis in full; this shall not preclude the competence of the foreigners authorities of other bodies designated by the *Länder*.

(4) The foreigners authorities, the authorities charged with policing cross-border traffic and the police forces of the *Länder* shall be responsible for the necessary measures pursuant to Sections 48, 48a and 49 (2) to (9). In cases covered by Section 49 (4), the authorities initiating allocation pursuant to Section 15a shall also be responsible. The diplomatic missions abroad authorised by the Federal Foreign Office shall be competent in the cases covered by Section 49 (5) no. 5.

(5) The police forces of the *Länder* shall also be responsible for removal, for enforcing the obligation to leave the federal territory pursuant to Section 12 (3), for deportation and, where necessary to prepare and safeguard these measures, for arrests and for applying for custody.

(6) The Federal Ministry of the Interior or the body appointed by it shall decide in consultation with the Federal Foreign Office on the recognition of passports and passport substitutes (Section 3 (1)); the decisions shall take the form of general orders and may be announced in the Federal Gazette.

#### **Section 71a** **Jurisdiction and notification**

(1) In the cases covered by Section 98 (2a) and (3), no. 1, the administrative authorities within the meaning of Section 36 (1), no. 1 of the Administrative Offences Act shall be the customs administration authorities. These shall cooperate with the authorities stated in

Section 2 (2) of the Act to Combat Clandestine Employment in prosecuting offences and imposing punishments.

(2) The customs administration authorities shall notify the Central Trade and Industry Register as to incontestable orders imposing administrative fines pursuant to Section 98 (2a) and (3), no. 1 which are to be entered in the register. This shall apply only to fines in excess of 200 euros.

(3) Courts of law, prosecuting authorities and penal authorities should furnish the customs administration authorities with findings from other proceedings which they consider necessary in prosecuting administrative offences pursuant to Section 98 (2a) and (3), no. 1, except where it is apparent to the body furnishing such information that the legitimate interests of the data subject or other parties involved in the proceedings in the exclusion of such information prevail. Due consideration must be accorded to how well substantiated the findings to be communicated are.

## **Section 72** **Consultation requirements**

(1) Permission to enter the federal territory (Section 11 (8)) may only be granted with the consent of the foreigners authority which is competent for the intended place of residence. The authority which has expelled, removed or deported the foreigner must generally be consulted.

(2) The foreigners authority shall decide whether deportation to a specific state is prohibited pursuant to Section 60 (5) or (7) and whether grounds for exclusion exist pursuant to Section 25 (3), sentence 3, nos. 1 to 4 only after consulting the Federal Office for Migration and Refugees.

(3) Geographic restrictions, requirements and conditions, time limits pursuant to Section 11 (2), sentence 1, orders pursuant to Section 47 and other measures against a foreigner who does not possess a required residence title may be amended or lifted by a different authority only in agreement with the authority which ordered the measures. Sentence 1 shall not apply if the foreigner's residence is restricted to the region for which the other foreigners authority is competent in accordance with the provisions of the Asylum Act.

(4) A foreigner against whom legal proceedings are instituted by a public authority or preliminary investigations are instituted under criminal law may be expelled or deported only in agreement with the competent public prosecutor's office. A foreigner who qualifies as requiring protection within the meaning of the Act to Harmonise Protection for Witnesses may be expelled or deported only in agreement with the Office for the Protection of Witnesses. The consent of the public prosecutor's office pursuant to sentence 1 shall not be required if there is only minimal interest in the prosecution. This shall be the case where public charges were preferred or preliminary investigations instituted for a criminal offence pursuant to Section 95 of this Act or pursuant to Section 9 of the Act on the General Freedom of Movement of EU Citizens and accompanying offences pursuant to the Criminal Code if the injustice done is minimal. Thus, accompanying offences whose injustice was minimal shall be criminal offences pursuant to Section 113 (1), Sections 123, 185, 223, 242, 263 (1), (2) and (4), Sections 265a, 267 (1) and (2), Section 271 (1), (2) and (4) and Sections 273, 274, 281, 303 of the Criminal Code, unless these criminal provisions are violated several times on account of various acts or an application for prosecution has been filed.

(5) Section 45 of Book Eight of the Social Code shall not apply to departure facilities and facilities which serve as temporary accommodation for foreigners who are granted a

temporary residence permit for reasons of international law or on humanitarian or political grounds or whose deportation is suspended.

(6) The competent public prosecutor's office for the criminal proceedings referred to in Section 25 (4a) or (4b) or the criminal court concerned with such proceedings shall be consulted prior to reaching a decision on issuing, extending or revoking a residence title pursuant to Section 25 (4a) or (4b) and prior to setting, annulling or reducing a period allowed for leaving the country pursuant to Section 59 (7), except in cases covered by Section 87 (5), no. 1. Where the competent public prosecutor's office is not yet known to the foreigners authority, it shall consult the police authority responsible for the place of residence prior to reaching a decision on setting, annulling or reducing a period allowed for leaving the country pursuant to Section 59 (7).

(7) The foreigners authority may also consult the Federal Employment Agency to establish whether the requirements of Sections 17a, 17b, 18, 18b, 19, 19a, 19b, 19c and 19d are met in cases where its approval is not necessary.

### **Section 72a** **Security check of visa application data**

(1) Data collected by a German diplomatic mission abroad in the course of the visa procedure on the person applying for a visa, the inviting party, persons guaranteeing that the foreigner's subsistence will be ensured by way of a declaration of commitment or by other means, or on other reference persons in Germany shall be transmitted to the Federal Office of Administration for a security check. The same shall apply to data pursuant to sentence 1 which the diplomatic mission abroad of another Schengen state responsible under Article 8 para. 2 of Regulation (EC) no. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1) has transmitted to a German diplomatic mission abroad for a decision on a visa application. Data shall not be transmitted pursuant to sentence 1 or sentence 2 where the data are transmitted pursuant to Section 73 (1) sentence 1.

(2) The data referred to in subsection 1, sentences 1 and 2, shall be checked in a special organisational unit of the Federal Office of Administration in an automated procedure against data stored in the file referred to in Section 1 (1) of the Act on Setting up a Counter-Terrorism Database (Counter-Terrorism Database) regarding persons when there is reason to believe that they

1. are members or supporters of a terrorist organisation pursuant to Section 129a of the Criminal Code with an international dimension or of a terrorist organisation pursuant to Section 129a in conjunction with Section 129b (1), sentence 1, of the Criminal Code acting in the Federal Republic of Germany or

2. are members of a group which supports such an organisation or wilfully supports such a group in the knowledge of the activities of the group which support terrorism or

3. unlawfully use violence as a means to achieve international political or religious aims or support or prepare such use of violence or intentionally incite others to use violence by means of their activities, in particular through advocating such use of violence or

4. are in contact with the persons referred to in no. 1 or no. 3 not only fleetingly or by chance and can be expected to provide further information which may help investigate or combat international terrorism insofar as there is reason to believe that they are aware

of the planning or commission of one of the criminal offences referred to in no. 1 or the use, support for or preparation of unlawful violence within the meaning of no. 3.

After the authority which stored the data on persons referred to in sentence 1 in the Counter-Terrorism Database has labelled these data, the Federal Criminal Police Office shall transfer the data to the special organisational unit at the Federal Office of Administration for the check against data referred to in subsection 1, sentences 1 and 2, and they shall be stored there. Suitable technical and organisational measures must be put in place to prevent unauthorised access to the content of the data sets.

(3) In the event of a hit, in order to ascertain the grounds for denial pursuant to Section 5 (4) or to investigate other security reservations against issuing a visa, the data referred to in subsection 1, sentences 1 and 2, shall be transmitted to the authority which stored the data on this person in the Counter-Terrorism Database. This authority shall immediately send a note to the competent German diplomatic mission abroad via the Federal Office of Administration if there are grounds to deny the visa pursuant to Section 5 (4) or there are other security reservations against issuing a visa.

(4) The data referred to in subsection 1, sentences 1 and 2, which have been stored with the special organisational unit in the Federal Office of Administration, shall be deleted immediately after carrying out the check pursuant to subsection 2, sentence 1; if the check produced a hit, only the visa file reference shall be stored. This shall be deleted as soon as the special organisational unit in the Federal Office of Administration has established that the German diplomatic mission abroad shall not be notified pursuant to subsection 3, sentence 2, otherwise it shall be deleted when the notification has been made.

(5) The authorities referred to in subsection 3, sentence 1, may store and use the data transmitted to them as far as necessary to discharge their statutory duties. Provisions regulating the transmission of data pursuant to other acts shall remain unaffected.

(6) The Federal Office of Administration shall ensure that, in the event of a hit, the time of the security check, the particulars which enable the determination of the checked data sets, the result of the check, the forwarding of the data set and the processing of the data set for the purpose of data protection monitoring shall be logged in writing. The log data shall be secured by means of suitable measures to prevent unauthorised access and shall be destroyed at the end of the calendar year which follows the year of their generation, unless they are needed for a monitoring procedure which has already been initiated.

(7) The Federal Office of Administration shall undertake state-of-the-art technical and organisational measures to ensure data protection and data security which shall, in particular, guarantee the confidentiality and integrity of the data stored in the special organisational unit and of the transmitted data.

(8) Responsibility in compliance with data protection law for the existence of the conditions under subsection 2, sentence 1, shall lie with the authority which entered the data in the Counter-Terrorism Database. Responsibility in compliance with data protection law for the security check shall lie with the Federal Office of Administration. The Federal Criminal Police Office shall be responsible in compliance with data protection law for ensuring that the transmitted data reflect the current status of the Counter-Terrorism Database.

(9) The data referred to in subsection 2, sentence 2, shall be corrected if they are corrected in the Counter-Terrorism Database. They shall be deleted if the conditions for

their storage pursuant to subsection 2, sentence 1, are no longer met or the data are deleted in the Counter-Terrorism Database. Section 11 (4) of the Act on Setting up a Counter-Terrorism Database shall apply accordingly to the examination of the continued existence of the conditions permitting storage of the data pursuant to subsection 2, sentence 2.

### **Section 73**

#### **Other consultation requirements in visa procedures, in public register and asylum procedures and in issuing residence titles**

(1) Data on the inviting party and on persons guaranteeing that the foreigner's subsistence will be ensured by way of a declaration of commitment or by other means or on other reference persons in Germany which is collected during the visa procedure by a German diplomatic mission abroad or by the diplomatic mission abroad of another Schengen state which is responsible for taking receipt of the visa application on the person applying for a visa, may be transmitted via the Federal Office of Administration to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Office in order to ascertain any grounds for denial pursuant to Section 5 (4) or in order to investigate any other security reservations. The procedure pursuant to Section 21 of the Act on the Central Register of Foreigners shall remain unaffected. In cases covered by Section 14 (2), the respective authorities charged with policing cross-border traffic may transmit the data collected in the visa application procedure to the authorities referred to in sentence 1.

(1a) Data collected to document, establish and verify a person's identity pursuant to Section 16 (1), sentence 1, of the Asylum Act and Section 49 concerning persons within the meaning of Section 2 (1a) of the Act on the Central Register of Foreigners may be transmitted via the Federal Office of Administration to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Office in order to ascertain any grounds for denying a visa pursuant to Section 3 (2), Section 4 (2) of the Asylum Act, Section 60 (8), sentence 1, and Section 5 (4) or in order to investigate any other security reservations. A check against other data sets shall also be permissible at the Federal Office of Administration for these purposes.

(2) Prior to issuing or extending a residence title, temporarily suspending deportation or permitting residence pending the asylum decision, the foreigners authorities may transmit the personal data stored at their facilities on the persons concerned via the Federal Office of Administration to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office, the Customs Criminological Office, the *Land* Office for the Protection of the Constitution, the *Land* Office of Criminal Police or the competent police authorities in order to ascertain any grounds for denial pursuant to Section 5 (4) or in order to investigate any other security reservations. The Federal Office for the Protection of the Constitution may provide technical support for the transmission of data to the *Land* Offices for the Protection of the Constitution.

(3) The security authorities and intelligence services referred to in subsections 1 and 2 shall immediately notify the Federal Office of Administration as to whether grounds for denial pursuant to Section 5 (4) or any other security reservations apply; the Federal Office for the Protection of the Constitution may provide technical support for the transmission of communications from the *Land* Offices for the Protection of the Constitution regarding enquiries from the foreigners authorities pursuant to subsection 2. The German diplomatic missions abroad and foreigners authorities shall immediately

inform the security authorities and intelligence services referred to in sentence 1 of the length of validity of the residence titles which have been issued or extended; should the authorities referred to in sentence 1 become aware of grounds for denial pursuant to Section 5 (4) or other security reservations during the period of validity of the residence title, they shall immediately notify the competent foreigners authority or the competent diplomatic mission abroad. The authorities referred to in sentence 1 may store and use the data transmitted if necessary to discharge their statutory duties. Provisions regulating the transmission of data pursuant to other acts shall remain unaffected.

(3a) The security authorities and intelligence services referred to in subsection 1a shall immediately notify the Federal Office of Administration of any grounds for denial pursuant to Section 3 (2), Section 4 (2) of the Asylum Act, Section 60 (8), sentence 1, and Section 5 (4) or of other security reservations. The Federal Office of Administration shall promptly make this information available to the authorities responsible for the asylum procedure and for decisions on residence matters. The further transmission of data between the authorities referred to in sentence 1 and the authorities responsible for the asylum procedure and for decisions on residence matters which is required as a result of the transmission pursuant to subsection 1a and sentences 1 and 2 may be effected via the Federal Office of Administration. The authorities referred to in sentence 1 may store and use the data transmitted to them as far as necessary to discharge their statutory duties. The Federal Office of Administration shall store the transmitted data for as long as necessary for the purposes of the security check. Provisions regulating the transmission of data pursuant to other acts shall remain unaffected.

(4) The Federal Ministry of the Interior shall determine via general administrative provisions in agreement with the Federal Foreign Office and with due regard to the prevailing security situation in which cases the authorisation pursuant to subsections 1 and 1a shall be used with regard to nationals of particular states and persons belonging to groups defined by any other means.

### **Section 73a** **Notification of the issuance of visas**

(1) Notifications of visas issued which are submitted by other Schengen states pursuant to Article 31 of Regulation (EC) No 810/2009 may be transmitted via the competent body to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Office to check whether the grounds stated in Section 5 (4) or any other security reservations preclude the entry into and residence in the federal territory of a visa holder. Notifications from German diplomatic missions abroad concerning visas issued without prior transmission of data pursuant to Section 73 (1) may be transmitted via the competent body to the authorities listed in sentence 1 for the purpose stated in sentence 1; data on persons other than the holder of the visa shall not be transmitted. Section 73 (3), sentences 3 and 4 shall apply accordingly.

(2) The Federal Ministry of the Interior shall determine via a general administrative provision in consultation with the Federal Foreign Office and with due regard to the prevailing security situation in which cases the authorisation pursuant to subsection 1 shall be used with regard to nationals of particular states and persons belonging to groups defined by any other means.

### **Section 73b** **Background check of persons and organisations involved in visa procedures**

(1) The Federal Foreign Office shall carry out background checks to determine any

security reservations against persons who are or are to be entrusted with discharging one or more tasks in the visa procedure, in particular recording biometric identifiers, and who are not seconded members of the Foreign Service (persons concerned). At regular intervals and as occasion demands, the Federal Foreign Office shall conduct repeat background checks of the persons referred to in sentence 1. The background check shall be carried out after the person concerned has provided written consent.

(2) To conduct the background check, the German diplomatic mission abroad shall collect the surname, given names, name at birth and other names, sex, date and place of birth, nationality, place of residence and particulars of their identity document (in particular type of document and document number) of the person concerned and shall transmit these data for a background check via the Federal Foreign Office to the federal law enforcement agencies and offices for the protection of the constitution, to the Federal Intelligence Service, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Service to ascertain any security reservations. The security authorities and intelligence services referred to in sentence 1 shall immediately notify the Federal Foreign Office of any security reservations.

(3) The security authorities and intelligence services referred to in subsection 2 may process the transmitted data for other purposes in accordance with legislation applicable to them as far as necessary to discharge their statutory duties. Provisions regulating the transmission of data pursuant to other acts shall remain unaffected.

(4) The person concerned may not begin his activity in the visa procedure before the background check has been completed and no insights have been revealed concerning his possible unreliability.

(5) If the person concerned is a legal entity, in particular an external service provider, the Federal Foreign Office shall also conduct a background check of the legal entity on the basis of the company name, designation, the legal entity's entry in the Commercial Register and full address (local branch and main office). The Federal Foreign Office shall also conduct a background check on the owner and the managing director of the legal entity in the country in which the cooperation is planned. Subsection 1, sentence 2 and 3, and subsections 2 to 4 shall apply accordingly.

### **Section 73c**

#### **Cooperation with external service providers**

In national visa application procedures under Chapter 2 Part 3 and 4, the German diplomatic missions abroad may cooperate with an external service provider in accordance with Article 43 of Regulation (EC) No 810/2009.

### **Section 74**

#### **Consulting the Federation; authority to issue instructions**

(1) A visa may be granted to safeguard political interests of the Federation subject to the proviso that extending the visa and issuing another residence title after the visa expires and lifting and amending requirements, conditions and other restrictions pertaining to the visa may only be undertaken in consultation or agreement with the Federal Ministry of the Interior or the body appointed by it.

(2) The Federal Government may issue individual instructions on implementing this Act and the statutory instruments enacted on the basis of this Act if

1. the security of the Federal Republic of Germany or any other substantial interests of the Federal Republic of Germany so require,

2. measures undertaken by one *Land* in connection with the law on foreigners harm substantial interests of another *Land*,
3. a foreigners authority intends to expel a foreigner who is exempted from the requirement for a temporary residence permit by virtue of his belonging to a consular or diplomatic mission abroad.

**Part 1a  
Transit**

**Section 74a  
Transit of foreigners**

Foreign states may return foreigners to another state from their territory via the federal territory or readmit foreigners into their territory from another state via the federal territory, subject to the permission of the competent authorities (transit operations). Transit operations shall be carried out on the basis of intergovernmental agreements and legislation of the European Union. The central authority pursuant to Article 4 (5) of Directive 2003/110/EC shall be the federal police authority specified in the statutory instrument pursuant to Section 58 (1) of the Act on the Federal Police. The foreigner in transit must tolerate the necessary measures in connection with his transit journey.

**Part 2  
Federal Office for Migration and Refugees**

**Section 75  
Duties**

Notwithstanding its duties in accordance with other acts, the Federal Office for Migration and Refugees shall have the following duties:

1. coordinating the information on residence for the purpose of pursuing an economic activity between the foreigners authorities, the Federal Employment Agency and the German diplomatic missions abroad authorised by the Federal Foreign Office to deal with matters pertaining to passports and visas;
2.
  - a) developing the basic structure and content of the integration course pursuant to Section 43 (3) and job-related language training pursuant to Section 45a,
  - b) implementing the same and
  - c) measures pursuant to Section 9 (5) of the Federal Expellees Act;
3. providing expert support for the Federal Government in the field of promoting integration and producing informational materials on integration measures offered by the Federal Government, *Land* governments and local government authorities for foreigners and ethnic German resettlers;
4. conducting scientific research on migration issues (accompanying research) with the aim of obtaining analytical conclusions for use in controlling immigration;
- 4a. conducting scientific research on integration issues;
5. cooperating with the administrative authorities of the member states of the European Union as the National Contact Point and competent authority pursuant to Article 27 of Directive 2001/55/EC, Article 25 of Directive 2003/109/EC, Article 22 (1) of

Directive 2009/50/EC, Article 26 of Directive 2014/66/EU and Article 37 of Directive (EU) 2016/801, and for communications pursuant to Section 51 (8a);

6. keeping the register pursuant to Section 91a;
7. coordinating the programmes and taking part in projects to promote voluntary returns, and paying out funds approved under those schemes;
8. carrying out the admission process pursuant to Section 23 (2) and (4) and the allocation of foreigners admitted pursuant to Section 23 and Section 22, sentence 2 to the *Länder*;
9. providing migration advisory services pursuant to Section 45, sentence 1, unless such services are provided by other bodies; it may enlist the services of private or public institutions to this end;
10. recognising research establishments in order to conclude admission agreements pursuant to Section 20; in this connection, the Federal Office for Migration and Refugees shall be supported by a consultative council on research migration;
11. coordinating the transfer of information and evaluating findings of the federal authorities, in particular of the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution, on foreigners for whom measures under the law on foreigners, asylum or nationality must be considered owing to a risk to public security;
12. imposing a time limit on a ban on entry and residence pursuant to Section 11 (2) in the case of a deportation warning issued pursuant to Sections 34, 35 of the Asylum Act, a deportation order issued pursuant to Section 34a of the Asylum Act or on the order and imposition of a time limit on a ban on entry and residence pursuant to Section 11 (7).

**Section 76  
(repealed)**

**Part 3  
Administrative procedures**

**Section 77  
Written form; exemption from formal requirements**

(1) The following administrative acts must be made in writing and (excepting no. 5) shall require the statement of reasons:

1. the administrative act
  - a) denying a passport substitute, a substitute identity document or a residence title or subjecting the same to geographic or time restrictions or to conditions and requirements, or
  - b) denying the amendment or rescission of a subsidiary provision attaching to the residence title, and
2. expulsion orders,
3. deportation orders pursuant to Section 58a (1), sentence 1,
4. deportation warnings,
5. suspensions of deportation,
6. geographic residence restrictions pursuant to Section 12 (4),

7. orders pursuant to Sections 47 and 56,
8. the withdrawal and the revocation of administrative acts in accordance with this Act and
9. decisions to order a ban on entry and residence pursuant to Section 11 (6) or (7) and to impose time limits on a ban on entry and residence pursuant to Section 11.  
An administrative act denying a residence title or invalidating a residence title shall be accompanied by an explanation, as shall decisions on applications for time limits to be applied pursuant to Section 11 (1) sentence 3. The explanation shall inform the foreigner as to the legal remedy available in order to challenge the administrative act, the body with which the corresponding appeal is to be lodged and the deadline to be observed; in other cases the deportation warning shall be included with the aforementioned explanation.

(1a) In connection with the issuance of an ICT Card or a Mobile ICT Card, the host entity or host undertaking must be notified of the following in writing:

1. the refusal to extend an ICT Card or a Mobile ICT Card,
2. the revocation or withdrawal of an ICT Card or a Mobile ICT Card,
3. the refusal to extend a residence title allowing the subsequent immigration of dependants to join holders of an ICT Card or a Mobile ICT Card, or
4. the revocation or withdrawal of a residence title allowing the subsequent immigration of dependants to join holders of an ICT Card or a Mobile ICT Card.

The notification pursuant to sentence 1, nos. 1 and 2, must include the reasons for the decision.

(2) Denial and restriction of a visa and passport substitute before the foreigner enters the federal territory shall not require any statement of grounds or information on available legal remedies; refusal at the border shall not require written form. Formal requirements for the denial of Schengen visas shall be determined by Regulation (EC) No 810/2009.

(3) Upon application, foreigners must be provided with a translation of the operative part of the administrative act denying or invalidating the residence title or by means of which a decision is taken to impose a time limit pursuant to Section 11 and of the information on available legal remedies, free of charge and in a language which the foreigner understands or which it can be reasonably assumed he understands. If another reason exists for the obligation to leave the federal territory, sentence 1 shall apply accordingly to the deportation warning and the information on available legal remedies which shall be included with this pursuant to subsection 1, sentence 3. The translation may be provided in oral or written form. The foreigner shall not be entitled to a translation if he has entered the federal territory unlawfully or has been expelled on the grounds of a criminal conviction. In the cases referred to in sentence 4, the foreigner shall be given a standard form containing explanations, which shall be made available in at least five of the most commonly spoken or understood languages. Sentences 1 to 3 shall not apply if the foreigner has not yet entered or has already left the federal territory.

## **Section 78**

### **Documents with an electronic storage and processing medium**

(1) Residence titles pursuant to Section 4 (1) sentence 2, nos. 2 to 4 shall be issued as stand-alone documents with an electronic storage and processing medium. Temporary residence permits to be issued in accordance with the Agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the

other, on the free movement of persons of 21 June 1999 (OJ L 114, 30.4.2002, p. 6) shall, on application, be issued as documents with an electronic storage and processing medium. Documents pursuant to sentences 1 and 2 shall contain the following visibly displayed items of information:

1. surname and given names,
2. doctoral degree,
3. photograph,
4. date and place of birth;
5. address,
6. start and duration of validity,
7. place of issue,
8. type of residence title or right of residence and its legal basis,
9. issuing authority,
10. serial number of the appurtenant passport or passport substitute,
11. duration of validity of the appurtenant passport or passport substitute,
12. comments,
13. signature,
14. serial number,
15. nationality,
16. sex,
17. height and eye colour,
18. card access number.

Subject to the conditions stipulated in Section 48 (2) or (4), a document pursuant to sentence 1 may be marked to indicate that it is a substitute identity document and that the personal details contained therein are based on the information furnished by the holder. The signature of the applicant as required pursuant to sentence 3, no. 13 must be submitted if he is ten years of age or older at the time of applying for the document.

(2) A document with an electronic storage and processing medium pursuant to subsection (1) shall contain a machine-readable zone. It may contain only the following visibly displayed information:

1. the abbreviations
  - a) "AR" for residence titles of the type pursuant to Section 4 (1), nos. 2 to 4,
  - b) "AS" for residence titles of the type pursuant to Section 28, sentence 2 of the Ordinance Governing Residence,
2. the abbreviation "D" for the Federal Republic of Germany,
3. the serial number of the residence title, which shall consist of the code number of the foreigners authority and a randomly assigned residence title number and which may contain both numerals and letters,

4. the date of birth,
5. the abbreviation “F” for females and “M” for males,
6. the duration of validity of the residence title or, in the case of a permanent right of residence, the technical period of validity for the use of the card,
7. the abbreviation of the nationality,
8. the surname,
9. the given name or names,
10. the check digits and
11. empty spaces.

The serial number and the check digits may not include any information about the holder or indications of such information. Each document shall be assigned a new serial number.

(3) The electronic storage and processing medium included in the document pursuant to subsection 1 shall contain the following data:

1. the data stipulated in subsection 1, sentence 3, nos. 1 to 5 and the unique municipality code used in the official list of municipalities,
2. the data of the machine-readable zone pursuant to subsection 2, sentence 2,
3. subsidiary provisions,
4. two fingerprints, the designation of the fingers used and information on the quality of the prints and
5. name at birth.

The stored data shall be secured against unauthorised modification, deletion and retrieval. Fingerprints shall be taken of persons who are six years of age and older.

(4) The electronic storage and processing medium of a document pursuant to subsection 1 may be designed as a qualified electronic signature creation device pursuant to Article 3, no. 23, of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73). Certification in accordance with Article 30 of Regulation (EU) No 910/2014 shall be carried out by the Federal Office for Information Security. The provisions of the Trusted Services Act shall remain unaffected.

(5) The electronic storage and processing medium of a document pursuant to subsection 1 may also be used for the additional function of an electronic proof of identity. In this respect, Section 2 (3) to (7), (10) and (12), Section 4 (3), Section 7 (4) and (5), Section 10 (1), (2) sentence 1, (3) to (5), (6) sentence 1, (7), (8) sentence 1, and (9), Section 11 (1) to (5) and (7), Section 12 (2) sentence 2, Sections 13, 16, 18, 18a, 19 (1), (3) to (6), Sections 19a, 20 (2) and (3), Sections 21, 21a, 21b, 27 (2) and (3), Section 32 (1) nos. 5 and 6 with the exception of Section 19 (2) stated there, nos. 6a to 8, (2) and (3) and Section 33 nos. 1, 2 and 4 of the Act on Identity Cards shall apply accordingly with the proviso that the foreigners authority takes the place of the identity card authority. In addition to the data listed in Section 18 (3) sentence 2 of the Act on Identity Cards, the subsidiary provisions stored in accordance with subsection 3 no. 3 and the abbreviation for the holder’s nationality may also be transmitted within the scope of the electronic

proof of identity function subject to the requirements of Section 18 (4) of the Act on Identity Cards. Subsection 2 sentence 3 shall apply accordingly with regard to the blocking code and to the blocking characteristics.

(6) The authorities charged with implementing this Act or entrusted with sovereign powers to check identities may collect, process and use the data contained in the machine-readable zone to discharge their statutory duties.

(7) Public bodies may collect, process and use the data stored in the electronic storage and processing medium of a document pursuant to subsection 1 with the exception of biometric data, as far as necessary to discharge their respective statutory duties. Both the address stored in the electronic storage and processing medium and the address to be displayed pursuant to subsection 1, sentence 3, no. 5 may be changed by the foreigners authorities and other authorities designated by *Land* law.

(8) In the absence of any legal provisions to the contrary, personal data may be collected from documents pursuant to subsection 1 and used with the help of technical means only by way of the electronic proof of identity pursuant to subsection 5. The same shall apply to the collection and use of personal data with the help of a document pursuant to subsection 1.

#### **Section 78a**

##### **Forms for residence titles in exceptional cases, identity card substitute and certificates**

(1) In derogation from Section 78, residence titles pursuant to Section 4 (1) sentence 2, nos. 2 to 4 may be issued according to a standard form if

1. the residence title is to be granted for the purpose of extending the duration of stay by one month or
2. issuing a residence title is necessary to avert exceptional hardship.

The standard form shall contain the following items of information:

1. surname and given names of the holder,
2. duration of validity,
3. place and date of issue,
4. type of residence title or right of residence,
5. issuing authority,
6. serial number of the appurtenant passport or passport substitute,
7. comments,
8. a photograph.

The standard form shall indicate that the document has been issued in exceptional circumstances.

(2) Forms pursuant to subsection 1 sentence 1 shall contain a machine-readable zone with the following information:

1. surname and given names,
2. date of birth;

3. sex,
4. nationality,
5. type of residence title,
6. serial number of the form,
7. issuing state,
8. duration of validity,
9. check digits,
10. empty spaces.

(3) Public bodies may store, transmit and use the data contained in the machine-readable zone pursuant to subsection 2 to discharge their statutory duties.

(4) The standard form for the substitute identity document shall contain a serial number and a machine-readable zone. In addition to the name of the issuing authority, the place and date of issue, the period or duration of validity, the given names and surname of the holder, residence status and subsidiary provisions, the standard form may also provide the following items of information on the holder's identity:

1. date and place of birth;
2. nationality,
3. sex,
4. height,
5. eye colour,
6. address,
7. photograph,
8. personal signature,
9. two fingerprints,
10. note to the effect that the personal details are based on information furnished by the foreigner.

If fingerprints are recorded pursuant to sentence 2, no. 9, they must be incorporated into the substitute identity document on the electronic storage and processing medium following encoding by means of security processes. The same shall apply where photographs are incorporated in electronic form. Subsections 2 and 3 shall apply accordingly. Section 78 (1) sentence 4 shall remain unaffected.

(5) The certificates pursuant to Section 60a (4) and Section 81 (5) shall be issued according to a standard form which contains a serial number and may be provided with a machine-readable zone. The certificate may otherwise contain only those data items specified in subsection 4 and a note to the effect that the certificate alone does not satisfy the foreigner's passport requirement. Subsections 2 and 3 shall apply accordingly.

### **Section 79 Decision on residence**

(1) A decision shall be reached on the residence of foreigners on the basis of the

circumstances which are known in the federal territory and accessible information. The foreigners authority shall decide whether the conditions specified in Section 60 (5) and (7) apply on the basis of the knowledge in its possession and the knowledge accessible in the federal territory and, where necessary in individual cases, the knowledge accessible to the authorities of the Federation outside of the federal territory.

(2) If a foreigner who is under investigation on suspicion of having committed a criminal or administrative offence applies for issuance or extension of a residence title, the decision on the residence title shall be suspended until the attendant proceedings are completed and, in the case of a court ruling, until it is no longer subject to appeal, unless it is possible to reach a decision on the residence title without considering the outcome of the proceedings.

### **Section 80 Legal capacity**

(1) A foreigner who is of age shall be capable of performing procedural actions pursuant to this Act, provided that he would not be legally incapacitated according to the Civil Code or would not require supervision and prior approval in this matter.

(2) A minor's lack of legal capacity shall not keep him from being refused entry or removed. The same shall apply to the notice of intention to deport and subsequent deportation to the country of origin, if his legal representative is not resident in the federal territory or the latter's whereabouts in the federal territory are unknown.

(3) In applying this Act, the provisions of the Civil Code shall determine whether a foreigner shall be regarded as a minor or an adult. If a foreigner is of age under the law of his home country, his legal capacity and capacity to contract shall remain unaffected.

(4) The legal representatives of a minor foreigner and any other persons attending to the foreigner in the federal territory in place of the legal representatives shall be obliged to file the necessary applications on behalf of the foreigner for issuing and extending the residence title and issuing and extending the passport, passport substitute and substitute identity document.

### **Section 81 Applying for the residence title**

(1) In the absence of any provisions to the contrary, a residence title shall be issued to a foreigner only upon application by said foreigner.

(2) A residence title which may be obtained after entering the federal territory in accordance with the statutory instrument pursuant to Section 99 (1), no. 2 shall be applied for immediately after entry or within the period stipulated in the statutory instrument. The application for a child born in the federal territory who is not to be granted a residence title ex officio shall be filed within six months of birth.

(3) If a foreigner who is legally resident in the federal territory and does not possess a residence title applies for a residence title, his residence shall be deemed to be permitted up to the time of the decision by the foreigners authority. If the application is filed too late, deportation shall be deemed to be suspended from the time of application up to the time of the decision by the foreigners authority.

(4) If a foreigner applies for an extension of his residence title or for a different residence title before his current residence title expires, the current residence title shall be deemed

to remain in force from the time its expires until the time of the decision by the foreigners authority. This shall not apply to visas pursuant to Section 6 (1). If the application to issue or extend a residence title was filed too late, the foreigners authority may order that the previous residence title remains valid in order to avoid undue hardship.

(5) The foreigner shall be issued a certificate confirming the effect of his application (provisional residence document).

(6) If the application for a temporary residence permit allowing the subsequent immigration of dependants wishing to join the holder of an ICT Card or a Mobile ICT Card is filed at the same time as the application for an ICT Card or a Mobile ICT Card, the application for the temporary residence permit allowing the subsequent immigration of dependants shall be decided upon at the same time as the application for an ICT Card or Mobile ICT Card.

## **Section 82** **Cooperation by the foreigner**

(1) The foreigner shall be obliged to put forward his interests and any circumstances in his favour which are not evident or known, specifying verifiable circumstances, and to produce forthwith the necessary evidence relating to his personal situation, other required certificates and permits and other required documents which he is able to furnish. The foreigners authority may set him a reasonable deadline for this purpose. It shall set him such a deadline when postponing the processing of an application for a residence title on account of lacking or incomplete information and shall specify the information to be furnished subsequently. Circumstances put forward and documents furnished after said deadline has expired may be ignored. Foreigners who have applied for an ICT Card pursuant to Section 19b shall be obliged to inform the competent foreigners authority of any changes that occur during the application procedure and affect the conditions for granting an ICT Card.

(2) Subsection 1 shall be applied accordingly in an objection procedure.

(3) The foreigner should be notified of his obligations pursuant to subsection 1 and of his essential rights and duties under this Act, in particular the obligations arising from Sections 44a, 48, 49 and 81 and the possibility of filing an application pursuant to Section 11 (1), sentence 3. If a time limit is set, he shall be informed of the consequences of failure to observe the set deadline.

(4) Where necessary to prepare and implement measures under this Act and in accordance with provisions relating to foreigners in other acts, an order may be issued requiring a foreigner to report personally to the competent authority and to the diplomatic missions or authorised officials of the state whose nationality he putatively possesses and requiring a medical examination to determine whether the foreigner is fit to travel. If a foreigner fails to comply with an order pursuant to sentence 1, the order may be enforced using direct force. Section 40 (1) and (2), Sections 41, 42 (1), sentences 1 and 3 of the Act on the Federal Police shall apply accordingly.

(5) On request, the foreigner for whom a document shall be issued in accordance with this Act, the Asylum Act or the provisions enacted to implement this Act shall

1. submit a current photograph in accordance with a statutory instrument enacted pursuant to Section 99 (1), nos. 13 and 13a or to cooperate in the taking of such a photograph and

2. cooperate in the taking of his fingerprints in accordance with a statutory instrument enacted pursuant to Section 99 (1), nos. 13 and 13a.

The photograph and the fingerprints may be incorporated into documents pursuant to sentence 1 and processed and used by the competent authorities to document and subsequently establish the foreigner's identity.

(6) Foreigners holding a temporary residence permit pursuant to Sections 18 or 18a or an EU Blue Card or an ICT Card must notify the competent foreigners authority should the employment for which the residence title was granted be terminated earlier than envisaged. This shall not apply if the foreigner may take up employment without permission which can only be granted with an approval pursuant to Section 39 (2). The foreigner shall be informed of his obligation pursuant to sentence 1 when the residence title is issued.

### **Section 83** **Limits on the right of appeal**

(1) The denial of a national visa and a passport substitute at the border shall not be subject to appeal. Upon being denied a national visa and a passport substitute at the border, the foreigner shall be informed of the possibility of filing an application with the competent diplomatic mission abroad.

(2) The refusal to suspend deportation shall not be contestable.

(3) The ordering of and imposition of a time limit on a ban on entry and residence by the Federal Office for Migration and Refugees shall not be contestable.

### **Section 84** **Effects of an objection and a legal action**

(1) An objection or legal action against

1. the denial of an application to issue or extend a residence title,
  - 1a. measures pursuant to Section 49,
  2. a condition imposed pursuant to Section 61 (1e) requiring the foreigner to take up residence at a departure facility,
  3. the amendment or rescission of a subsidiary provision concerning the pursuit of an economic activity,
  4. revocation of the foreigner's residence title pursuant to Section 52 (1), sentence 1, no. 4 in the cases covered by Section 75 (2), sentence 1, of the Asylum Act,
  5. revocation or withdrawal of the recognition of research establishments for the purpose of concluding admission agreements pursuant to Section 20,
  6. departure bans pursuant to Section 46 (2), sentence 1,
  7. the imposition of a time limit on a ban on entry and residence pursuant to Section 11,
  8. the ordering of a ban on entry and residence pursuant to Section 11 (6), and
  9. the determination pursuant to Section 85a (1), sentence 2,
- shall have no suspensory effect.

An action filed against the ordering of a ban on entry and residence pursuant to Section 11 (7) shall have no suspensory effect.

(2) Notwithstanding their suspensory effect, an objection or legal action shall not affect the operative effect of an expulsion or any other administrative act terminating lawful residence. For purposes pertaining to admission or the pursuit of an economic activity, the residence title shall be deemed to remain in force until expiry of the deadline for raising an objection or instituting legal action, during judicial proceedings concerning a permissible application for the institution or restoration of suspensory effect or for as long as the submitted legal remedy has a suspensory effect. The lawfulness of residence shall not be interrupted if the administrative act is revoked by an official decision or by an incontestable court ruling.

### **Section 85 Calculation of residence periods**

Interruptions of lawful residence of up to one year may be ignored.

### **Section 85a Proceedings in case of specific indications of wrongful acknowledgement of paternity**

(1) If an administrative authority recording the acknowledgement or a registry clerk informs the foreigners authority that there are specific indications that paternity has been wrongfully acknowledged within the meaning of Section 1597a (1) of the Civil Code, the foreigners authority shall examine whether such wrongful acknowledgement exists. If it is established that paternity was wrongfully acknowledged, the foreigners shall determine this through a written or electronic administrative act. If it is established that paternity was not wrongfully acknowledged, the foreigners authority shall discontinue the proceedings.

(2) As a rule, persons shall be assumed to have wrongfully acknowledged paternity if

1. the acknowledging party declares that the acknowledgement serves a specific purpose within the meaning of Section 1597a (1) of the Civil Code,
2. the mother declares that the acknowledgement serves a specific purpose within the meaning of Section 1597a (1) of the Civil Code,
3. the party acknowledging paternity has acknowledged paternity, in several instances, of children from different foreign mothers and in each case has created the legal prerequisites for the permitted entry or the permitted residence of the child or of the mother by so acknowledging paternity, also in those cases in which the child has acquired German nationality by the acknowledgement,
4. the party acknowledging paternity or the mother has been granted or promised a material benefit in return for acknowledging paternity or for approving the acknowledgement,

and it is not to be expected that the legal prerequisites for the permitted entry or the permitted residence of the child, the acknowledging party or the mother will be obtained without the acknowledgement of paternity or the mother's approval of the acknowledgement. This shall also apply if the aim is to obtain the legal prerequisites for the permitted entry or the permitted residence of the child by the child's acquisition of German nationality pursuant to Section 4 (1) or (3), sentence 1, of the Nationality Act.

(3) If the determination pursuant to subsection 1, sentence 2, is incontestable, the foreigners authority shall furnish the administrative authority recording acknowledgements or the registry clerk and the registry office with a certified copy for

their information, indicating that the determination has become incontestable. If the authority discontinues the proceedings, it shall inform the administrative authority recording acknowledgements, the parties concerned and the registry office in written or electronic form.

(4) The German diplomatic missions abroad shall be responsible for measures and determinations taken or made pursuant to subsections 1 and 3 abroad.

#### **Part 4 Data protection**

##### **Section 86 Collection of personal data**

The authorities charged with implementing this Act may collect personal data for the purpose of implementing this Act and provisions relating to foreigners contained in other acts, where this is necessary to discharge their duties under this Act and in accordance with provisions relating to foreigners in other acts. Data within the meaning of Section 3 (9) of the Federal Data Protection Act and corresponding provisions in the data protection acts of the *Länder* may be collected where this is necessary in individual cases to discharge assigned duties.

##### **Section 87 Transfer of data and information to foreigners authorities**

(1) On request, public bodies with the exception of schools and other educational and care establishments for young people shall inform the bodies specified in Section 86, sentence 1 of circumstances of which they become aware, as far as necessary for the purposes referred to in that section.

(2) Public bodies within the meaning of subsection 1 shall immediately notify the competent foreigners authority if, in discharging their duties, they become aware of

1. the stay of a foreigner who does not possess a required residence title and whose deportation has not been suspended,

2. a breach of a geographic restriction,

2a. foreigners drawing or applying for social benefits for themselves, their family members or other household members in the cases covered by Section 7 (1), sentence 2, no. 2 or sentence 4 of Book Two of the Social Code or in the cases covered by Section 23 (3), sentence 1, nos. 2, 3 or 4, sentences 3, 6 or 7 of Book Twelve of the Social Code, or

3. any other grounds for expulsion;

4. (repealed)

in the cases covered by numbers 1 and 2 and in case of any other actions punishable under this Act, the competent police authority may be notified instead of the foreigners authority, if one of the measures specified in Section 71 (5) is possible; the police authority shall immediately notify the foreigners authority. Public bodies should notify the competent foreigners authority immediately if, in discharging their duties, they become aware of special integration needs within the meaning of a statutory instrument enacted pursuant to Section 43 (4). The diplomatic missions abroad shall transmit to the competent foreigners authority personal data on a foreigner which is suitable for establishing the latter's identity or nationality, should they become aware that such data may be of current significance in enforcing the foreigner's enforceable obligation to leave

the federal territory.

(3) The Federal Government Commissioner for Migration, Refugees and Integration shall be obliged to provide notifications pursuant to subsections 1 and 2 regarding a foreigner belonging to this category of persons only if such notification does not threaten the Commissioner's ability to discharge her own duties. The *Land* governments may determine by statutory instrument that Foreigners' Commissioners of the respective *Länder* and of local government authorities are obliged to provide notifications pursuant to subsections 1 and 2 relating to a foreigner who is lawfully resident in the *Land* or local government district concerned or who resided lawfully in the *Land* or local government district up to the time an administrative act was issued terminating the lawfulness of the residence subject to sentence 1 only.

(4) The bodies responsible for instituting and implementing criminal or administrative fine proceedings shall notify the competent foreigners authority immediately that such criminal proceedings have been initiated and that the criminal or fine proceedings have been settled at the public prosecutor's office, in court or at the administrative authority competent for prosecuting the administrative offence and imposing due punishment, stating the relevant statutory provisions. Sentence 1 shall apply accordingly to initiating extradition proceedings against a foreigner. Sentence 1 shall not apply to proceedings for an administrative offence which is punishable by a fine of up to 1,000 euros, nor to proceedings for an offence within the meaning of Section 24 of the Road Traffic Act or for an offence committed negligently within the meaning of Section 24a of the Road Traffic Act. The Office for the Protection of Witnesses shall notify the competent foreigners authority immediately of the beginning and end of witness protection for a foreigner.

(5) The bodies to be consulted pursuant to Section 72 (6) must notify the foreigners authorities

1. ex officio of any circumstances justifying the revocation of a residence title issued pursuant to Section 25 (4a) or (4b) or the reduction or annulment of a period allowed for departure pursuant to Section 59 (7) and

2. ex officio of the competent body or of any transfer of competence, where involvement in criminal proceedings pursuant to Section 72 (6) has taken place or notification has been effected pursuant to no. 1.

(6) (repealed)

### **Section 88**

#### **Transmission of data and information in the case of special statutory regulations on the use of data**

(1) Personal data and other information shall not be transmitted pursuant to Section 87, if such transmission conflicts with special statutory regulations.

(2) Personal data made accessible to a public body by a doctor or by other persons referred to in Section 203 (1), nos. 1, 2, 4 to 7 and subsection 4 of the Criminal Code may be transmitted by said public body,

1. if necessary to avert serious threats to the life and limb of the foreigner or of others, or if the foreigner constitutes a risk to public health, and special protective measures to eliminate the risk are not possible or fail to be observed by the foreigner, or

2. if the data are required in order to ascertain whether the conditions specified in Section 54 (2) no. 4 apply.

(3) Personal data subject to tax secrecy under Section 30 of the German Fiscal Code may be transmitted if the foreigner has violated a provision of tax law, including customs law and monopolies law or a provision of foreign trade and payments law, or has violated import, export or transit bans or bans on the introduction of goods into customs territory, and criminal investigations have been initiated or a fine of at least 500 euros has been imposed for such violation. In cases covered by sentence 1, the authorities charged with policing cross-border traffic may also be notified if a departure ban is to be issued pursuant to Section 46 (2).

(4) Subsections 1 to 3 shall apply accordingly to transmission by the authorities charged with implementing this Act and by private bodies.

### **Section 88a** **Processing data in connection with integration measures**

(1) In conducting integration courses, the foreigners authority, the Federal Employment Agency, the institution providing basic security for job seekers, institutions providing services under the Asylum Seekers Benefits Act, the Federal Office of Administration and private and public institutions authorised to conduct integration courses shall be permitted to transmit data relating to participants to the Federal Office for Migration and Refugees, in particular data confirming entitlement to attend, permission to attend pursuant to Section 44 (4) and registration for and attendance of an integration course as far as necessary to grant permission or entitlement to attend the integration course, to verify proper participation, to verify the fulfilment of the obligation to attend pursuant to Section 44a (1) sentence 1, to certify successful participation or to invoice and conduct integration courses. The private and public institutions authorised to conduct integration courses may inform the competent foreigners authority, the Federal Employment Agency, the competent institution providing basic security for job seekers or the competent institution providing services under the Asylum Seekers Benefits Act of the failure by a foreigner obliged to participate in an integration course pursuant to Section 44a (1) sentence 1 to duly attend an integration course. On request, the Federal Office for Migration and Refugees may forward the data transmitted pursuant to sentence 1 to foreigners authorities, the Federal Employment Agency, institutions providing basic security for job seekers or institutions providing services under the Asylum Seekers Benefits Act and nationality authorities as far as necessary to grant permission or entitlement to attend an integration course, to verify the fulfilment of the obligation to attend, to extend a temporary residence permit, to grant a permanent settlement permit or an EU long-term residence permit, to supervise the integration agreement or conduct the naturalisation procedure. In other respects, the processing and use of personal data by the Federal Office for Migration and Refugees shall be permissible only to conduct and invoice integration courses and to conduct a scientific research project pursuant to Section 75 no. 4a under the conditions set out in Section 8 (7) and (8) of the Ordinance on Integration Courses.

(1a) Subsection 1 shall apply accordingly to the use of data resulting from the asylum procedure conducted at the Federal Office for Migration and Refugees as far as necessary to take a decision on whether to admit a foreigner to an integration course. This shall also apply accordingly to the use of data taken from the Central Register of Foreigners in order to ascertain the conditions under Section 44 (4), sentence 2, in the context of deciding whether to admit a foreigner to an integration course.

(2) If the Federal Office for Migration and Refugees enlists the services of private or public institutions to provide migration advisory services pursuant to Section 75, no. 9, these institutions shall be permitted to transmit to the Federal Office for Migration and Refugees aggregated data on the advisory services provided.

(3) When conducting job-related language training courses pursuant to Section 45a, the foreigners authority, the Federal Employment Agency, the institution providing basic security for job-seekers, the Federal Office of Administration and the private and public institutions conducting the courses shall be permitted to transmit to the Federal Office for Migration and Refugees data relating to course participants concerning registration, length of attendance and the manner in which the course was concluded as far as necessary to grant admission to the course, ascertain and verify fulfilment of the obligation to duly attend, and to conduct and invoice the course. On request, the Federal Office for Migration and Refugees may forward the data transferred pursuant to sentence 1 to foreigners authorities, the Federal Employment Agency, institutions providing basic security for job-seekers and nationality authorities as far as necessary to grant permission or entitlement to attend an integration course, verify fulfilment of the obligation to duly attend, grant a permanent settlement permit or an EU long-term residence permit, supervise the integration agreement or conduct the naturalisation procedure. The private and public institutions authorised to conduct the job-related language training may inform the competent foreigners authority, the Federal Employment Agency or the competent institution providing basic security for job-seekers of a foreigner's failure to duly attend.

### **Section 89**

#### **Procedures to investigate, establish and document a foreigner's identity**

(1) The Federal Criminal Police Office shall provide official assistance in assessing the data which are collected pursuant to Section 49 by the authorities entrusted with implementing this Act and which are transferred pursuant to Section 73. It may also use the identification data it has stored in the discharge of its duties. The data collected pursuant to Section 49 (3) to (5) and (8) and (9) shall be stored separately from other identification data. The data pursuant to Section 49 (7) shall be kept by the authority creating the records.

(1a) When providing official assistance pursuant to subsection 1, sentence 1, the Federal Criminal Police Office may, in order to establish the identity of the person concerned, also transmit the identification data referred to in subsection 1, sentence 1, to the public bodies of third countries which are responsible for examining the identity of persons, excepting the public bodies of the person's country of origin and those of third states where he has reason to fear persecution or serious harm. The Federal Criminal Police Office shall bear the responsibility for the lawfulness of the transmission. The Federal Criminal Police Office shall record the transmission and the reason for it. The body receiving personal data shall be notified that the data may be used only for the purpose for which they were transmitted. Furthermore, the receiving body must be informed of the date on which the data are to be deleted at the Federal Criminal Police Office. Personal data shall not be transmitted if there is reason to believe that,

1. taking into account the type of data and the way they were collected, the legitimate interests of the person concerned, above all his interest in receiving protection from persecution, override the general interest in the transmission, or
2. the transmission of the data would conflict with the person's basic rights, the Convention Relating to the Status of Refugees of 28 July 1951 or the Convention on the Protection of Human Rights and Fundamental Freedoms, particularly because the use of the transmitted data in the receiving state threatens to violate fundamental principles of the rule of law or human rights.

(2) Use of the data obtained pursuant to Section 49 (3) to (5) or (7) to (9) shall also be permissible in order to establish the foreigner's identity or attribute evidence in the course of criminal prosecution or measures undertaken by the police to avert dangers. These

data may be transmitted or furnished to the authorities responsible for these measures, to the extent and for the duration necessary.

(3) The data collected pursuant to Section 49 (1) shall be erased by all authorities immediately after completing the authenticity of the document or the identity of the holder has been checked. The data collected pursuant to Section 49 (3) to (5), (7), (8) or (9) shall be erased by all authorities storing such data if

1. the foreigner has been issued a valid passport or passport substitute and granted a residence title by the foreigners authority,
  2. ten years have elapsed since the foreigner's last departure from the federal territory, the attempted unlawful entry or the termination of an unlawful stay,
  3. three years have elapsed since refusal of entry or removal in cases covered by Section 49 (5), nos. 3 and 4, or
  4. ten years have elapsed since application for the visa in cases covered by Section 49 (5), no. 5 and since the voice recording in the case of Section 49 (7).
- Erasure of the data shall be documented.

(4) Subsection 3 shall not apply if and for as long as the data are required in connection with criminal proceedings or to avert a danger to public safety or law and order.

#### **Section 89a** **Procedural provisions for the database for found documents**

(1) At the request of the authority collecting the data concerned, the Federal Office of Administration shall check the data on a foreigner collected pursuant to Section 49 against the data contained in the database for found documents, in order to establish a foreigner's identity or nationality by reference to a found document, should doubts exist in this respect.

(2) In order to check the data in this manner, the body requesting the check shall transmit the photograph or fingerprints and other information stipulated in Section 49b, no. 1 to the Federal Office of Administration.

(3) If the transmitted data on the foreigner match the stored data on the holder of a found document, the data shall be transmitted to the requesting body in accordance with Section 49b.

(4) Where the Federal Office of Administration is unable to clearly establish a foreigner's identity, it shall transmit the information stored on similar persons in the database for found documents to the requesting body, if it is to be expected that the latter's knowledge will enable the foreigner's identity to be established by reference to one of the found documents. The requesting body must immediately erase all information which cannot be attributed to the foreigner and destroy appurtenant records.

(5) The information shall be transmitted via remote data transmission. Automated retrieval of the data shall be permitted in accordance with Section 10 (2) to (4) of the Federal Data Protection Act.

(6) The Federal Office of Administration shall check the data stored in the database for found documents against the data transmitted by

1. an authority responsible for establishing the identity or nationality of a foreigner pursuant to Section 16 (2) of the Asylum Act and

2. an authority responsible for criminal prosecution or police measures to avert dangers to establish a foreigner's identity or attribute evidence at the request of the said authorities. Subsections 2 to 5 shall apply accordingly.

(7) The data pursuant to Section 49b shall be erased ten years after the initial storage of data pertaining to the document concerned. If the purpose of storage ceases to apply before this period has elapsed, the data shall be erased immediately.

(8) The bodies concerned must take state-of-the-art measures to ensure data protection and data security which, in particular, guarantee the confidentiality and integrity of the data; when generally accessible networks are used, state-of-the-art encryption methods shall be applied.

### **Section 90** **Transmission of information by foreigners authorities**

(1) In individual cases in which there are concrete indications of

1. foreigners taking up employment or pursuing an economic activity without the necessary residence title pursuant to Section 4,

2. violations of the obligation to cooperate pursuant to Section 60 (1), sentence 1, no. 2 of Book One of the Social Code with regard to a department of the Federal Employment Agency, a statutory health insurance, long-term care insurance, accident insurance or pension insurance agency, an institution providing basic security for job seekers or a social welfare agency, or violations of the obligation to report pursuant to Section 8a of the Asylum Seekers Benefits Act,

3. the violations specified in Section 6 (3), nos. 1 to 4 of the Act to Combat Clandestine Employment,

the authorities charged with implementing this Act shall notify the authorities responsible for prosecuting and punishing the violations according to numbers 1 to 3, the institutions providing basic security for job seekers or the social welfare agencies and the competent authorities pursuant to Section 10 of the Asylum Seekers Benefits Act.

(2) In prosecuting and punishing violations of this Act, the authorities charged with implementing this Act shall cooperate in particular with the other authorities specified in Section 2 (2) of the Act to Combat Clandestine Employment.

(3) The authorities charged with implementing this Act shall notify the competent authorities under Section 10 of the Asylum Seekers Benefits Act of circumstances and measures under this Act, a knowledge of which is necessary for the purposes of benefits under the Asylum Seekers Benefits Act, the information they receive when approval for employment is issued to persons eligible for benefits under the Asylum Seekers Benefits Act and information relating to the expiry, revocation or withdrawal of issued approvals.

(4) The foreigners authorities shall immediately notify the bodies to be involved pursuant to Section 72 (6) when

1. a residence title pursuant to Section 25 (4a) or (4b) is issued or denied,

2. a period allowed for departure pursuant to Section 59 (7) is set, reduced or annulled, and

3. competence is transferred from the foreigners authority to another foreigners authority; this obligation shall apply to the foreigners authority to which competence has been transferred.

(5) Upon request, the foreigners authority shall inform the court bailiff of a person's place of residence for the purposes referred to in Section 755 of the Code of Civil Procedure.

(7) In order to carry out enforcement proceedings, the foreigners authority shall inform the executing authority at its request of the judgment debtor's place of residence. The foreigners authority may communicate the place of residence only if the executing authority is unable to obtain the information from the registration office and indicates this in its request filed with the foreigners authority.

#### **Section 90a**

##### **Notifications by the foreigners authorities to the registration authorities**

(1) The foreigners authorities shall immediately notify the competent registration authorities when they obtain information indicating that the data stored in the register on foreigners who are obliged to register with the authorities are incorrect or incomplete. They shall notify the registration authorities in particular when a foreigner who is obliged to register with the authorities

1. is resident in the federal territory and has not registered with the authorities,
2. has permanently left the federal territory.

(2) Notifications pursuant to subsection 1 should contain the following information on the foreigner who is obliged to register with the authorities:

1. surname, name at birth and given name(s),
2. date, place and country of birth,
3. nationalities,
4. most recent address in Germany and
5. date of departure from the federal territory.

#### **Section 90b**

##### **Comparing data between foreigners authorities and registration authorities**

Foreigners authorities and registration authorities which share the same geographic area of competence shall exchange the data specified in Section 90a (2) annually for the purpose of data maintenance. The receiving authority shall check the transmitted data against its own stored data; automated checking shall be permissible. The transmitted data may only be used for data checking and data maintenance, after which it shall be erased immediately; furnished data carriers shall be returned or destroyed immediately.

#### **Section 90c**

##### **Data transmission in visa procedures via the Federal Foreign Office**

(1) Data shall be transmitted in the course of visa procedures from German diplomatic missions abroad to the authorities involved in the visa procedures and then back again to the German diplomatic missions abroad by means of an automated process via a technical device for supporting the visa procedure operated by the Federal Foreign Office. The technical device shall ensure the complete, correct and punctual transmission of data pursuant to sentence 1. To this end the data pursuant to sentence 1 shall be

stored in the technical device.

(2) Personal data may be collected, processed or used in the technical device only as far as necessary for the purpose stated in subsection 1, sentences 1 and 2.

(3) The data stored pursuant to subsection 1, sentence 3 must be erased immediately when the data are no longer needed for the purpose stated in subsection 1, sentences 1 and 2, and at the latest following issuance or denial of a visa or withdrawal of the visa application.

### **Section 91 Storage and erasure of personal data**

(1) The data relating to expulsion, removal and deportation shall be erased ten years after the time limit specified in Section 11 (1), sentence 3 expires. They must be erased prior to this if they contain information which may no longer be used against the foreigner in accordance with other statutory provisions.

(2) Notifications pursuant to Section 87 (1) which are immaterial to an impending decision under the law on foreigners and which are unlikely to be of relevance to a later decision under the law on foreigners shall be destroyed immediately.

(3) Section 20 (5) of the Federal Data Protection Act and corresponding provisions in the data protection acts of the *Länder* shall not apply.

### **Section 91a Temporary protection register**

(1) The Federal Office for Migration and Refugees shall keep a register of foreigners in accordance with Section 24 (1) who have applied for a visa or a temporary residence permit and of their dependants within the meaning of Article 15 (1) of Directive 2001/55/EC for the purposes of granting residence, allocating admitted foreigners to places of residence in the federal territory, relocating admitted foreigners to other member states of the European Union, reunifying families and promoting voluntary return.

(2) The following information shall be stored in the register:

1. on the foreigner:
  - a) the personal details (with the exception of former names and the home address in Germany), the last place of residence in the country of origin, the region of origin and information furnished voluntarily on the foreigner's religion,
  - b) information on occupation and vocational training,
  - c) date of receipt of the foreigner's application for a visa or a temporary residence permit, the authority responsible for processing the application, and information regarding the decision on the application or the status of the application procedure,
  - d) details of the identity and travel document,
  - e) the Central Foreigners Register number and the visa file number,
  - f) country of destination and date of leaving the country of origin,

2. the personal details in accordance with number 1 (a), with the exception of voluntary information on the religion of the foreigner's dependants in accordance with subsection 1,

3. details of documents confirming marriage, unmarried partnership or kinship.

(3) The foreigners authorities and the diplomatic missions abroad shall be obliged to transfer the data stated in subsection 2 to the registration authority immediately when an application has been filed

1. for a temporary residence permit pursuant to Section 24 (1) or

2. for a visa to secure temporary protection in the federal territory.

(4) Sections 8 and 9 of the Act on the Central Register of Foreigners shall apply accordingly.

(5) On request, the data may be transmitted to the foreigners authorities, diplomatic missions abroad and other organisational units of the Federal Office for Migration and Refugees, including the National Contact Point established at the Federal Office for Migration and Refugees in accordance with Article 27 (1) of Directive 2001/55/EC for the purpose of discharging their duties under the law on foreigners and asylum in connection with granting residence, allocating admitted foreigners to places of residence in the federal territory, relocating admitted foreigners to other member states of the European Union, reunifying families and promoting voluntary return.

(6) The registration authority must produce records of data transmissions in accordance with subsection 5. Section 13 of the Act on the Central Register of Foreigners shall apply accordingly.

(7) Data transmission pursuant to subsections 3 and 5 shall be effected in writing, in electronic form or via automated procedures. Section 22 (2) to (4) of the Act on the Central Register of Foreigners shall apply accordingly.

(8) The data shall be erased no later than two years after the termination of temporary protection for the foreigner. Sections 34 (1) and (2) and Section 37 of the Act on the Central Register of Foreigners shall apply accordingly with regard to notification of the data subject and blocking of access to the data.

#### **Section 91b**

#### **Data transmission by the Federal Office for Migration and Refugees as the National Contact Point**

In its capacity as the National Contact Point in accordance with Article 27 (1) of Directive 2001/55/EC, the Federal Office for Migration and Refugees may transmit the data contained in the register pursuant to Section 91a to the following bodies for the purpose of relocating admitted foreigners to other member states of the European Union or reunifying families:

1. National Contact Points of other member states of the European Union,

2. bodies and institutions of the European Union,

3. other foreign, supranational or intergovernmental bodies, provided that an appropriate level of data security pursuant to Section 4b (3) of the Federal Data Protection Act is ensured at such bodies.

**Section 91c**  
**Intra-Community information to implement Directive 2003/109/EC**

(1) In its capacity as the National Contact Point pursuant to Article 25 of Directive 2003/109/EC, the Federal Office for Migration and Refugees shall notify the competent authority of another member state of the European Union in which the foreigner concerned possesses the status of a long-term resident as to the content and date of a decision on issuing or extending a temporary residence permit pursuant to Section 38a (1) or on issuing an EU long-term residence permit. The authority which has reached the decision shall transmit the necessary data to the Federal Office for Migration and Refugees without delay. The data required for notifications pursuant to sentence 1 may be transmitted to the National Contact Point by means of an automated process, using the Central Foreigners Register number.

(1a) Requests from the foreigners authorities for information as to whether a foreigner continues to have international protection status within the meaning of Section 2 (13) in another member state shall be forwarded by the Federal Office for Migration and Refugees ex officio to the competent bodies of the EU member state concerned. To do so, the competent foreigners authority shall transmit the necessary information to the Federal Office for Migration and Refugees. The Federal Office for Migration and Refugees shall forward the replies to the competent foreigners authority.

(2) In the procedure pursuant to Section 51 (8), the Federal Office for Migration and Refugees shall forward inquiries ex officio to the competent bodies of the member state of the European Union concerned, stating the intended measure and the key factual and legal grounds for the intended measure as stated by the foreigners authority. To do so, the foreigners authority shall transmit the necessary information to the Federal Office for Migration and Refugees. The Federal Office for Migration and Refugees shall forward to the competent foreigners authority the answers received from bodies of other member states of the European Union in this connection.

(3) The Federal Office for Migration and Refugees shall notify the competent authority of another member state of the European Union ex officio that a foreigner who possesses long-term resident status in said member state has been served notice of intention to deport or remove him

1. to the member state of the European Union in which the foreigner holds long-term resident status or

2. to a territory outside of the European Union

or that such a measure has been carried out, or a corresponding deportation order pursuant to Section 58a has been issued or carried out. The notification shall state the primary reason for terminating the foreigner's stay. The notification shall take place as soon as the German authority ordering the measure concerned pursuant to Section 71 informs the Federal Office for Migration and Refugees of the intended or effected measure. To this end, the authorities referred to in sentence 3 shall furnish the necessary information to the Federal Office for Migration and Refugees without delay.

(4) In the case of notifications pursuant to subsections 1 to 3, the foreigner's personal details shall be transmitted for identification purposes. Where dependants who are living with the long-term resident as a family unit on a long-term basis are also involved in cases covered by subsection 3, their personal details shall also be transmitted.

(5) The Federal Office for Migration and Refugees shall forward inquiries from bodies of other member states of the European Union in connection with the consultation pursuant

to Article 22 (3) (2) of Directive 2003/109/EC to the competent foreigners authorities. The competent foreigners authority shall furnish the Federal Office for Migration and Refugees with the following information of which it is aware:

1. personal details of the foreigner with long-term resident status concerned,
2. residence- and asylum-related decisions which have been reached for or against the said foreigner,
3. interests in favour of or opposed to the foreigner's return to the federal territory or a third country or
4. any other circumstances which it is to be assumed may be of relevance to the inquiring member state's decision on residence matters.

The competent foreigners authority shall otherwise provide notification that it is not aware of any pertinent information. The Federal Office for Migration and Refugees shall forward this information ex officio to the competent body of the inquiring member state of the European Union.

(5a) The Federal Office for Migration and Refugees shall inform the competent authorities of the other EU member state within one month of receiving the inquiry whether a foreigner continues to have international protection status in the Federal Republic of Germany.

(5b) If the long-term resident's EU residence permit issued by another member state of the European Union to a beneficiary of international protection indicates that the person concerned has been granted international protection by said state, and if the responsibility for such international protection within the meaning of Section 2 (13) has been transferred to Germany in line with the relevant legal provisions before the beneficiary of international protection was granted an EU long-term residence permit pursuant to Section 9a, the Federal Office for Migration and Refugees shall ask the competent authority of the other member state to change the indication in the long-term resident's residence permit accordingly.

(5c) If a person with long-term resident status in another EU member state is granted international protection in Germany within the meaning of Section 2 (13) before he is issued an EU long-term residence permit pursuant to Section 9a, the Federal Office for Migration and Refugees shall ask the competent authority of the other member state to indicate in the EU long-term residence permit that Germany has granted this person international protection.

(6) The Federal Office for Migration and Refugees shall notify the competent foreigners authority ex officio of the content of notifications from other member states of the European Union

1. stating that the other member state of the European Union intends to carry out or is carrying out measures to terminate the residence of a foreigner who holds an EU long-term residence permit,
2. stating that a foreigner who holds an EU long-term residence permit has acquired long-term resident status in another member state of the European Union or has been issued a residence title or had his residence title extended in another member state of the European Union.

**Section 91d**  
**Information to implement Directive (EU) 2016/801**

The Federal Office for Migration and Refugees, in its capacity as National Contact Point pursuant to Article 37 (1) of Directive (EU) 2016/801, shall receive notifications pursuant to Section 16a (1) and Section 20a (1). The Federal Office for Migration and Refugees

1. shall examine the notifications as to the completeness of the evidence to be supplied pursuant to Section 16a (1) or Section 20a (1),
2. shall forward the notification to the competent foreigners authority without delay, indicating the date of receipt of the complete notification, and
3. shall inform the host educational institution or the host research establishment of the competent foreigners authority.

The competence of the foreigners authority shall remain unaffected.

(2) The Federal Office for Migration and Refugees shall receive applications pursuant to Section 20b and shall forward them to the competent foreigners authority. It shall inform the applicant of the competent foreigners authority.

(3) On request, the Federal Office for Migration and Refugees shall furnish the competent authority of another member state of the European Union with the necessary information in order to enable the competent authorities of the other member state of the European Union to verify whether the requirements for the foreigner's mobility pursuant to Articles 28 to 31 of Directive (EU) 2016/801 are met. This information shall comprise

1. the foreigner's personal details and information on his identity and travel documents,
2. information on the foreigner's present and former residence status in Germany,
3. information on completed criminal investigations or such investigations which are known to the foreigners authority,
4. other data concerning the foreigner which are stored in the Central Register of Foreigners or which originate from the foreigner's file or the visa file and which have been requested by the other member state of the European Union.

To this end, at the request of the Federal Office for Migration and Refugees, the foreigners authorities and the diplomatic missions abroad shall transmit to the Federal Office the data required to provide the information.

(4) The diplomatic missions abroad and the foreigners authorities may address requests for information to competent bodies of other member states of the European Union through the Federal Office for Migration and Refugees, where this is necessary to verify compliance with the requirements for mobility pursuant to Sections 16a and 20a or to issue a temporary residence permit pursuant to Section 20b or a corresponding visa. To this end, they may transmit

1. the foreigner's personal details,
2. information on his identity and travel documents and on his residence title issued in another member state of the European Union, and
3. information on the subject of the application for the residence title and on where such application was filed

and, where pertinent, specify the desired information in precise terms. The Federal Office for Migration and Refugees shall forward information which it receives to the competent foreigners authorities and diplomatic missions abroad. The data transmitted in the information furnished by the competent bodies of other member states of the European

Union may be used by the foreigners authorities and diplomatic missions abroad for this purpose.

(5) The Federal Office for Migration and Refugees shall notify the competent authority of another member state of the European Union in which the foreigner concerned possesses a residence title pursuant to Directive (EU) 2016/801 as to the contents and date of a decision on

1. denying, in accordance with Section 20c (3), mobility notified pursuant to Section 16a (1) and 20a (1), and

2. granting a temporary residence permit pursuant to Section 20b.

The foreigners authority which has reached the decision shall transmit the necessary data to the Federal Office for Migration and Refugees without delay. The foreigners authorities may transmit the data from the Central Register of Foreigners required for notifications pursuant to sentence 1 to the National Contact Point by means of an automated process, using the Central Foreigners Register number.

(6) Where a residence title is revoked or withdrawn or not extended pursuant to Section 16 (1), Sections 17b, 18d or 20, or if it expires after the period pursuant to Section 7 (2), sentence 2 has been reduced, the Federal Office for Migration and Refugees shall inform the competent authorities of the other member state without delay, provided the foreigner is staying there under the scope of Directive (EU) 2016/801 and the Federal Office for Migration and Refugees is aware of this fact. The foreigners authority which has reached the decision shall transmit the necessary data to the Federal Office for Migration and Refugees without delay. The foreigners authorities may transmit the data from the Central Register of Foreigners required for notifications pursuant to sentence 1 to the National Contact Point by means of an automated process, using the Central Foreigners Register number.

### **Section 91e**

#### **Common provisions for the temporary protection register and for intra-Community data transmissions**

For the purposes of Sections 91a to 91d,

1. personal details shall be defined as names, in particular surname, name at birth, given names and former names, date of birth, place of birth, sex, nationalities and home address in Germany;

2. details of the identity and travel document shall be defined as the type, number, issuing authority, date of issue and period of validity.

### **Section 91f**

#### **Information to implement Directive 2009/50/EC within the European Union**

(1) In its capacity as the National Contact Point pursuant to Article 22 (1) of Directive 2009/50/EC, the Federal Office for Migration and Refugees shall notify the competent authority of another member state of the European Union in which the foreigner concerned possesses an EU Blue Card of the content and date of any decision taken with regard to issuing an EU Blue Card. The authority which has reached the decision shall transmit the necessary data to the National Contact Point. The foreigners authority may transfer the data from the Central Register of Foreigners required for notifications pursuant to sentence 1 to the National Contact Point by means of an automated process, using the Central Foreigners Register number.

(2) The Federal Office for Migration and Refugees shall annually transmit to the competent bodies of the European Union

1. the data to be communicated pursuant to Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, of 31.7.2007, p. 23) with regard to the issuing of EU Blue Cards, and
2. a list of occupations for which a level of pay has been determined in a statutory instrument in implementation of Article 5 (5) of Directive 2009/50/EC.

### **Section 91g** **Information to implement Directive 2014/66/EU**

(1) The Federal Office for Migration and Refugees, in its capacity as National Contact Point pursuant to Article 26 (1) of Directive (EU) 2014/66, shall receive notifications made in accordance with Section 19c. The Federal Office for Migration and Refugees

1. shall examine the notifications as to the completeness of the evidence to be supplied pursuant to Section 19c (1),
2. shall forward the notification to the competent foreigners authority without delay, indicating the date of receipt of the complete notification, and
3. shall inform the host entity in the other member state of the competent foreigners authority.

The competence of the foreigners authority shall remain unaffected.

(2) The Federal Office for Migration and Refugees shall receive applications pursuant to Section 19d and shall forward them to the competent foreigners authority. It shall inform the applicant of the competent foreigners authority.

(3) On request, the Federal Office for Migration and Refugees shall furnish the competent authority of another member state of the European Union with the necessary information in order to enable the competent authorities of the other member state of the European Union to verify whether the requirements for the foreigner's mobility pursuant to Directive 2014/66/EU are met. This information shall comprise

1. the foreigner's personal details and information on his identity and travel documents,
2. information on the foreigner's present and former residence status in Germany,
3. information on completed criminal investigations or such investigations which are known to the foreigners authority,
4. other data concerning the foreigner provided they are stored in the Central Register of Foreigners, originate from the foreigner's file or the visa file and have been requested by the other member state of the European Union.

To this end, at the request of the Federal Office for Migration and Refugees, the foreigners authorities and the diplomatic missions abroad shall transmit to the Federal Office the data required to provide the information.

(4) The diplomatic missions abroad and the foreigners authorities may address requests for information to competent bodies of other member states of the European Union through the Federal Office for Migration and Refugees, where this is necessary in order

to verify compliance with the mobility requirements pursuant to Section 19c or to issue a Mobile ICT Card. To this end, they may transmit

1. the foreigner's personal details,
2. information on his identity and travel documents and on his residence title issued in another member state of the European Union and
3. information on the subject of the application for a residence title and on where such application was filed

and, where pertinent, specify the desired information in precise terms. The Federal Office for Migration and Refugees shall forward information it receives to the competent foreigners authorities and diplomatic missions abroad. The data transmitted in the information furnished by the competent bodies of other member states of the European Union may be used by the foreigners authorities and diplomatic missions abroad for this purpose.

(5) The Federal Office for Migration and Refugees shall notify the competent authority of another member state of the European Union in which the foreigner concerned possesses an ICT Card as to the content and date of a decision on

1. denying, in line with Section 19c (4), mobility notified pursuant to Section 19c (1), and
2. issuing a Mobile ICT Card pursuant to Section 19d.

6) Where an ICT Card pursuant to Section 19b is revoked or withdrawn or not extended or if it expires after the period pursuant to Section 7 (2), sentence 2 is reduced, the Federal Office for Migration and Refugees shall immediately inform the competent authority of the other member state where the foreigner has made use of the possibility envisaged in Directive 2014/66/EU to carry out part of the intra-corporate transfer in another member state of the European Union, provided the foreigners authority is aware of this. The authority which has reached the decision shall transmit the necessary data necessary to the Federal Office for Migration and Refugees without delay. The foreigners authorities may transfer the data from the Central Register of Foreigners required for notifications pursuant to sentence 1 to the National Contact Point by means of an automated process, using the Central Foreigners Register number.

(6) The Federal Office for Migration and Refugees shall annually transmit to the competent bodies of the European Union

1. the number
  - a) of ICT Cards issued for the first time,
  - b) of Mobile-ICT Cards issued for the first time, and
  - c) of notifications pursuant to Section 19c (1),
2. the nationality of the foreigner in every individual case,
3. the period of validity or the duration of the planned stay in every individual case.

**Chapter 8**  
**Commissioner for Migration, Refugees and Integration**

**Section 92**  
**Office of the Commissioner**

(1) The Federal Government shall appoint a Commissioner for Migration, Refugees and Integration.

(2) The Commissioner's office shall be established at one of the supreme federal authorities and may be held by a Member of the German Bundestag. The Commissioner may also hold an office under the Act governing the Legal Status of Parliamentary State Secretaries, without requiring special approval (Section 5 (2), sentence 2 of the Act governing Federal Ministers, Section 7 of the Act governing the Legal Status of Parliamentary State Secretaries). In this case, discharge of the Commissioner's duties shall remain unaffected by the legal status in accordance with the Act governing the Legal Status of Parliamentary State Secretaries.

(3) The personnel and material resources required to perform the duties of the office shall be provided. The budget allocation shall be shown in a separate section of the individual plan of the supreme federal authority pursuant to subsection 2, sentence 1.

(4) Except in the case of dismissal, the office tenure shall end when a new Bundestag is convened.

### **Section 93 Duties**

The Commissioner shall have the following duties:

1. to promote the integration of migrants who are permanently resident in the federal territory and, in particular, to support the Federal Government in developing its integration policy, also with regard to aspects of employment policy and social policy, and to provide ideas for the further development of integration policy in the European context;
2. to develop the necessary conditions for the most harmonious co-existence possible between foreigners and Germans and between different groups of foreigners, to promote mutual understanding and to counteract xenophobia;
3. to counteract unequal treatment of foreigners;
4. to help ensure that the interests of the foreigners resident in the federal territory receive due consideration;
5. to provide information on the legal possibilities for naturalisation;
6. to safeguard the rights of freedom of movement of EU citizens and to submit proposals on further arrangements to safeguard such rights;
7. to encourage and support initiatives to integrate migrants who are permanently resident in the federal territory, including such initiatives at the level of the *Länder* and local authorities and among social groups;
8. to monitor immigration to the federal territory and to the European Union and the development of immigration to other states;
9. to cooperate in the areas of the duties specified in numbers 1 to 8 with the bodies of the local authorities, *Länder*, other member states of the European Union and the European Union itself which have the same or similar duties as the Commissioner;
10. to inform the public in the areas of duties specified in numbers 1 to 9.

### **Section 94 Scope of authority**

(1) The Commissioner shall be involved at the earliest possible juncture in law-making projects of the Federal Government or individual federal ministries and in other matters relating to her remit. The Commissioner may submit proposals and forward opinions to the Federal Government. The federal ministries shall support the Commissioner in discharging her duties.

(2) The Commissioner for Migration, Refugees and Integration shall submit a report to the German Bundestag at least every two years.

(3) If the Commissioner possesses adequate information indicating that federal public bodies are committing breaches within the meaning of Section 93, no. 3 or are failing to protect the rights of foreigners in any other way, she may require a statement. The Commissioner may attach her own assessment to this statement and forward the statement to the public body and the latter's superior authority. The federal bodies shall be obliged to furnish information and to answer questions. The public bodies shall transfer personal data only if the data subject himself has approached the Commissioner to request that she take action in relation to the public body on the data subject's behalf, or if the foreigner's consent is proven by any other means.

## **Chapter 9** **Provisions as to punishments for criminal offences and fines**

### **Section 95** **Penal provisions**

(1) The following persons shall be punishable with up to one year's imprisonment or a fine: anyone who

1. resides in the federal territory in contravention of Section 3 (1) in conjunction with Section 48 (2),
2. resides in the federal territory without a necessary residence title pursuant to Section 4 (1), sentence 1, if
  - a) he is enforceably required to leave the federal territory,
  - b) he has not been granted a period for departure or this has expired and
  - c) his deportation has not been suspended,
3. enters the federal territory in contravention of Section 14 (1), nos. 1 or 2,
4. contravenes an enforceable order pursuant to Section 46 (2), sentence 1 or 2 or Section 47 (1), sentence 2 or subsection 2,
5. fails to furnish an item of information or furnishes incorrect or incomplete information in contravention of Section 49 (2), where the offence is not punishable pursuant to subsection 2, no. 2,
6. fails to tolerate a measure specified in Section 49 (10) in contravention of said Section,
  - 6a. fails repeatedly to meet an obligation to report to the authorities in contravention of Section 56, repeatedly contravenes geographic restrictions or other conditions imposed on their stay, fails to meet the obligation to take up residence in a designated facility despite having been notified repeatedly as to the legal consequences or uses certain means of communication or does not abide by specific contact bans in contravention of Section 56 (4),

7. repeatedly breaches a geographic restriction pursuant to Section 61 (1) or (1c)  
or

8. belongs to an organisation or group in the federal territory which consists primarily of foreigners and whose existence, aims or activities are concealed from the authorities in order to avert the prohibition of said organisation or group

(1a) The same punishment shall be applicable to anyone who wilfully commits an act specified in Section 404 (2), no. 4 of Book Three of the Social Code or in Section 98 (3), no. 1, who requires a residence title pursuant to Section 4 (1), sentence 1 in order to reside in the federal territory and only possesses a residence title in the form of a Schengen visa pursuant to Section 6 (1), no. 1.

(2) The following persons shall be punishable with up to three years' imprisonment or a fine: anyone who

1. in contravention of Section 11 (1) or of an enforceable order pursuant to Section 11 (6), sentence 1, or (7), sentence 1,

- a) enters the federal territory or
- b) resides in said territory or

1a. contravenes an enforceable court order pursuant to Section 56a (1), thereby preventing the competent authority referred to in Section 56a (3) from constantly locating him, or

2. furnishes or uses false or incomplete information in order to procure a residence title or a suspension of deportation for themselves or for another or to prevent the expiry or subsequent restriction of a residence title or the suspension of deportation or who knowingly uses a document procured in this manner for the purpose of deceit in legal matters.

(3) An attempt to commit an offence shall be punishable in the cases covered by subsection 1, no. 3 and subsections 1a and 2, no. 1 (a).

(4) Objects related to an offence pursuant to subsection 2, no. 2 may be confiscated.

(5) Article 31 (1) of the Convention relating to the Status of Refugees shall remain unaffected.

(6) In the cases covered by subsection 1, nos. 2 and 3, an act carried out without the necessary residence title shall be deemed equivalent to an act carried out on the basis of a residence title obtained by threat, bribery or collusion or by furnishing incorrect or incomplete information.

(7) In the cases covered by subsection (2), no. 1a, the offence shall only be prosecuted upon an application made by the competent body referred to therein.

### **Section 96 Smuggling foreigners into the federal territory**

(1) The following shall be punishable with a prison sentence of three months to five years, in less serious cases with a prison sentence of up to five years or a fine: anyone who

1. incites another person to commit or assists that person in the commission of an act pursuant to Section 95 (1), no. 3 or (2), no. 1 (a) and

a) receives a pecuniary advantage or the promise of a pecuniary advantage in return or

b) acts in such a manner repeatedly or for the benefit of several foreigners or

2. incites another person to commit or assists that person in committing an act pursuant to Section 95 (1), no. 1 or no. 2, (1a) or (2), no. 1 (b) or no. 2 and receives a pecuniary advantage or the promise of a pecuniary advantage in return.

(2) In the cases covered by subsection 1, the following shall be punishable with a prison sentence of between six months and ten years: anyone who

1. acts for gain,

2. acts as a member of a gang which has come together for the purpose of committing such offences on a continuing basis,

3. carries a firearm, if the offence concerns an act pursuant to Section 95 (1), no. 3 or (2) no. 1 (a),

4. carries another type of weapon in order to use said weapon in connection with the offence, if the offence concerns an act pursuant to Section 95 (1), no. 3 or (2) no. 1 (a), or

5. subjects the smuggled persons to potentially fatal, inhumane or humiliating treatment or a risk of sustaining severe damage to their health.

(3) The attempt shall be punishable.

(4) Subsection 1, no. 1 (a), no. 2, subsection 2, nos. 1, 2 and 5 and subsection 3 shall be applicable to contraventions of statutory provisions on the entry of foreigners into the territory of the member states of the European Union or of a Schengen state and on the residence of foreigners in such territories, where

1. such contraventions correspond to the acts specified in Section 95 (1), nos. 2 or 3 or Section 2, no. 1 and

2. the offender supports a foreigner who is not a national of a member state of the European Union or of another state party to the Convention on the European Economic Area.

(5) Section 74a of the Criminal Code shall apply.

### **Section 97**

#### **Smuggling foreigners into the federal territory resulting in death; smuggling for gain and as organised gangs**

(1) Anyone causing the death of the smuggled person in the cases covered by Section 96 (1), also in conjunction with Section 96 (4), shall be punishable with a prison sentence of no less than three years.

(2) Anyone acting for gain as a member of a gang which has come together for the purpose of committing such offences on a continuing basis in the cases covered by Section 96 (1), also in conjunction with Section 96 (4), shall be punishable with a prison sentence of between one and ten years.

(3) Less serious cases pursuant to subsection 1 shall be punishable with a prison sentence of between one year and ten years, less serious cases pursuant to subsection 2 shall be punishable with a prison sentence of between six months and ten years.

(4) Section 74a of the Criminal Code shall apply.

### **Section 98** **Provisions as to fines**

(1) Anyone who negligently commits an act specified in Section 95 (1), no. 1 or 2 or (2), no. 1 (b) shall be deemed to have committed an administrative offence.

(2) Anyone shall be deemed to have committed an administrative offence who

1. fails to furnish evidence in contravention of Section 4 (5), sentence 1,
2. fails to submit to the policing of cross-border traffic in contravention of Section 13 (1), sentence 2,
  - 2a. in contravention of Section 47a, sentence 1, also in conjunction with sentence 2, or in contravention of Section 47a, sentence 3, fails to submit, on time or at all, a document referred to therein, or to allow, on time or at all, his face to be checked against the photograph,
3. in contravention of Section 48 (1) or (3), sentence 1, fails to submit, on time or at all, a document or paper or a data carrier referred to therein, or fails to surrender the same, or fails to do so in good time, or fails to leave, or leave in good time, the same with the competent authorities, or
4. acts in contravention of an enforceable order pursuant to Section 44a (1), sentence 1, no. 3, sentence 2 or 3.

(2a) Anyone shall be deemed to have committed an administrative offence who wilfully or recklessly

1. in contravention of Section 4 (3), sentence 2, commissions a foreigner on a sustained basis to perform paid work or services for gain,
2. fails to provide notification, provides incorrect notification or fails to provide notification in good time in contravention of Section 19c (1), sentences 2 or 3,
3. fails to provide notification or provides incorrect or incomplete notification or fails to provide notification in good time in contravention of Section 19d (7), or
4. in contravention of Section 60a (2), sentence 7, does not give notification, or does not do so correctly, completely, in the prescribed manner or in good time.

(2b) (repealed)

(3) Anyone shall be deemed to have committed an administrative offence who wilfully or negligently

1. pursues a self-employed activity in contravention of Section 4 (3), sentence 1,
2. contravenes an enforceable condition pursuant to Section 12 (2), sentence 2 or (4),

- 2a. in contravention of Section 12a (1), sentence 1, does not take up residence in the *Land* in which he is obliged to take up residence or does not do so for the prescribed length of time,
- 2b. contravenes an enforceable order pursuant to Section 12a (2), (3) or (4), sentence 1, or Section 61 (1c),
3. enters or leaves the federal territory outside of an approved border crossing point or outside of the stipulated traffic hours or fails to carry a passport or passport substitute in contravention of Section 13 (1),
4. contravenes an enforceable order pursuant to Section 46 (1), Section 56 (1), sentence 2 or (3) or Section 61 (1e),
5. fails to provide notification, provides incorrect notification or fails to provide notification in good time in contravention of Section 56 (1), sentence 1,
- 5a. contravenes a geographic restriction pursuant to Section 56 (2) or Section 61 (1), sentence 1,
6. fails to file one of the applications stipulated in Section 80 (4) in contravention of the said Section or
7. contravenes a statutory instrument pursuant to Section 99 (1), no. 3a, letter d, nos. 7, 10 or 13a, sentence 1, (j), insofar as such statutory instrument refers to this provision as to fines for a specific offence.

(4) An attempt to commit an administrative offence may be punishable in the cases covered by subsection 2, no. 2 and subsection 3, no. 3.

(5) The administrative offence may be punishable in the cases covered by subsection 2a, no. 1, by a fine of up to 500,000 euros, in the cases covered by subsection 2a, nos. 2, 3 and 4 by a fine of up to 30,000 euros, in the cases covered by subsection 2 no. 2 and subsection 3, no. 1 by a fine of up to 5,000 euros, in the cases covered by subsections 1 and 2, no. 1, 2a and 3 and subsection 3, no. 3 by a fine of up to 3,000 euros and in the other cases by a fine of up to 1,000 euros.

(6) Article 31 (1) of the Convention relating to the Status of Refugees shall remain unaffected.

## **Chapter 9a** **Legal consequences of unlawful employment**

### **Section 98a** **Remuneration**

- (1) An employer shall be obliged to pay the agreed remuneration to a foreigner whom he has employed who lacks the authorisation for employment required pursuant to Section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required pursuant to Section 4 (3). For the purpose of remuneration, it shall be assumed that the foreigner has been employed by the employer for three months.
- (2) The agreed remuneration shall be considered to be the usual remuneration unless the employer agreed a lower or higher remuneration with the foreigner on a permissible basis.
- (3) A contractor who has commissioned another contractor to perform work or render services shall be liable for fulfilling the obligation of the latter contractor pursuant to

subsection 1 in the same way as a surety which has waived the defence of unexhausted remedies.

(4) Subsection 3 shall apply accordingly to the prime contractor and all intermediate contractors without a direct contractual relationship to the employer unless the prime contractor or the intermediate contractor was not aware that the employer has employed foreigners who lack the authorisation for employment required pursuant to Section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required pursuant to Section 4 (3).

(5) The liability pursuant to subsections 3 and 4 shall not apply if the contractor provides evidence that he was able to assume on the basis of due diligence that the employer has not employed any foreigner who lacks the authorisation for employment required pursuant to Section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required pursuant to Section 4 (3).

(6) A foreigner who has been employed within the scope of application of this Act without the authorisation for employment required pursuant to Section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required pursuant to Section 4 (3) may institute legal proceedings for fulfilment of payment obligations pursuant to subsections 3 and 4 also before a German court for labour matters.

(7) The provisions of the Posted Workers Act shall remain unaffected.

#### **Section 98b** **Exclusion from subsidies**

(1) The competent authority may reject applications for subsidies in full or in part in line with Section 264 of the Criminal Code if the applicant or his representative authorised by statutes or law

1. has been subject to an incontestable fine of at least 2,500 euros under Section 404 (2), no.3 of Book Three of the Social Code or
2. has been sentenced to an incontestable prison term of more than three months or a fine in excess of 90 daily rates under Sections 10, 10a or 11 of the Act to Combat Clandestine Employment.

Rejections pursuant to sentence 1 may be issued within a period of up to five years after the incontestable imposition of the fine or prison sentence depending on the severity of the offence for which the fine or prison sentence was imposed.

(2) Subsection 1 shall not apply if

1. a legal entitlement to the subsidy which is applied for exists,
2. the applicant is a natural person and the employment which caused the offence pursuant to subsection 1, sentence 1, was for his private purposes or
3. the offence pursuant to subsection 1, sentence 1 consisted in the unlawful employment of an EU citizen.

#### **Section 98c** **Exclusion from the award of public contracts**

(1) Public contracting entities pursuant to Section 99 of the Act Against Restraints of Competition may exclude a candidate or tenderer from competing for a supply,

construction or service contract if the candidate or tenderer or its representative authorised by statutes or law

1. has been subject to an incontestable fine of at least 2,500 euros under Section 404 (2), no.3 of Book Three of the Social Code or

2. has been sentenced to an incontestable prison term of more than three months or a fine in excess of 90 daily rates under Sections 10, 10a or 11 of the Act to Combat Clandestine Employment.

Until there is proof of restoration of reliability, the candidate or tenderer may be excluded pursuant to sentence 1 within a period of up to five years after the incontestable imposition of the fine or prison sentence depending on the severity of the offence for which the fine or prison sentence was imposed.

(2) Subsection 1 shall not apply if the offence pursuant to subsection 1, sentence 1 consisted in the unlawful employment of an EU citizen.

(3) Section 21 (2) to (5) of the Posted Workers Act shall apply accordingly where a public contracting entity makes use of the possibility pursuant to subsection 1.

## **Chapter 10**

### **Authorisation to issue statutory instruments; transitional and final provisions**

#### **Section 99**

#### **Authorisation to issue statutory instruments**

(1) The Federal Ministry of the Interior shall be authorised, via statutory instruments with the approval of the Bundesrat,

1. to provide for exemptions to the requirements for a residence title in order to facilitate the stay of foreigners, to regulate the procedure for granting exemptions and for the continued validity and further granting of residence titles under this Act if a ground for exemption arises and to restrict exemptions for the purpose of controlling economic activity by foreigners in the federal territory,

2. to determine that the residence title may be obtained prior to entry into the federal territory from the foreigners authority or after entry,

3. to determine in which cases the approval of the foreigners authority shall be required to granting a visa, in order to ensure that other authorities concerned are consulted,

3a. to define detailed aspects of the procedure relating to the issuance of residence titles to researchers pursuant to Section 20, in particular

a) to regulate the procedure relating to the recognition of research establishments, the attendant conditions and the duration of recognition, the revocation of recognition of a research establishment and the content of and conditions pertaining to the conclusion of admission agreements pursuant to Section 20 (1), no. 1,

b) to provide for the authority which is responsible for granting recognition to publish the addresses of the recognised research establishments, referring in such publications to declarations pursuant to Section 20 (3),

c) to oblige foreigners authorities and diplomatic missions abroad to notify the authority responsible for granting recognition as to any findings on recognised

research establishments which might provide grounds for revoking the said establishments' recognition,

d) to oblige recognised research establishments to provide due notification, should the conditions pertaining to recognition or conditions pertaining to concluded admission agreements cease to apply or in the event of changes to any other significant circumstances,

e) to establish a consultative council on research migration at the Federal Office for Migration and Refugees which will support that office in connection with the recognition of research establishments and monitor and evaluate the application of Section 20,

f) to set the dates on which the processing of applications for the recognition of research establishments is to begin,

3b. to define self-employed activities for which a permit pursuant to Section 4 (3), sentence 1 is never required or is not required under certain conditions,

4. to exempt those foreigners from the passport requirement who enter the federal territory in connection with rescue operations and the provision of assistance in case of disasters,

5. to introduce or approve other official German identification papers as passport substitutes,

6. to issue general approval for official identification papers which have not been issued by German authorities to be used as passport substitutes,

7. to determine that foreigners who are exempted from the requirement for a residence title and foreigners who enter the federal territory with a visa shall inform the foreigners authority or another authority of their residence when entering the federal territory or after entering, in order to safeguard the interests of the Federal Republic of Germany,

8. to stipulate, in the interests of enabling or facilitating travel, that foreigners' existing entitlement to re-enter the federal territory can be confirmed in a passport substitute,

9. to stipulate the conditions under which an identity card substitute may be issued and for how long such an identity card substitute shall be valid,

10. to regulate the obligations concerning identification papers of foreigners residing in the federal territory with regard to the issuance and extension, loss and recovery, presentation and surrender of a passport, passport substitute and substitute identity document, the entries concerning entry into, exit from and apprehension in the federal territory and decisions by the competent authorities in such documents,

11. to stipulate details pertaining to the register pursuant to Section 91a and to the conditions and the procedure for data transmission,

12. to stipulate how foreigners who have been granted temporary protection in accordance with Section 24 (1) can be relocated to another member state of the European Union,

13. to define details regarding the requirements pertaining to photographs and fingerprints and to the design of and issuance arrangements for the forms to be used in implementation of this Act and the recording and incorporation of features in encoded form pursuant to Section 78a (4) and (5),

13a. to set out rules pertaining to travel documents for foreigners, travel documents for refugees and travel documents for stateless persons with an electronic storage and processing medium in accordance with Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by member states (OJ L 385, 29.12.2004, p. 1) and Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by member states (OJ L 142, 6.6.2009, p. 1) and to define details regarding the preparation of documents with an electronic storage and processing medium pursuant to Section 78 in accordance with Council Regulation (EC) No 1030/2002 of 13.6.2002 laying down a uniform format for temporary residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1) and Council Regulation (EC) No 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for temporary residence permits for third-country nationals (OJ L 115, 29.4.2008, p. 1) and, in this respect, to stipulate the following pertaining to travel documents and documents pursuant to Section 78:

- a) the procedure and the technical requirements for the recording and quality assurance of the photograph and of the fingerprints and protection against unauthorised access to the data stored in the electronic storage and processing medium,
- b) age limits for the collection of fingerprints and exemptions from the obligation to submit fingerprints and photographs,
- c) the order in which the fingerprints shall be stored in cases where an index finger is missing, the quality of the fingerprint is inadequate, or where the fingertip is damaged,
- d) the form and the details of the procedure relating to the transfer of all application data from the foreigners authorities to the producer of the documents and to the temporary storage of the application data at the foreigners authority and the producer's facilities,
- e) the storage of the fingerprints and the photograph at the foreigners authority until the document is handed out,
- f) the right of the holder of the document to inspect the data stored in the electronic storage medium,
- g) the requirements pertaining to the technical systems and components to be employed in order to record the photograph and fingerprints electronically, to ensure the quality thereof and to transfer the application data from the foreigners authority to the producer of the documents, as well as the procedure to check adherence to these requirements,
- h) details regarding the processing of the fingerprint data and of the digital photograph,
- i) details regarding the serial number and the machine-readable personal data page,
- j) the obligations of foreigners residing in the federal territory with regard to the issuance and extension, loss and recovery, presentation and surrender of documents pursuant to Section 78 and applications for new documents pursuant to Section 78.

The Federal Ministry of the Interior shall further be authorised, via statutory instruments with the approval of the Bundesrat, to stipulate details of the procedure to check adherence to the requirements pursuant to Section 34, no. 4 of the Identity Card Act and details pertaining to the electronic proof of identity pursuant to Section 34, nos. 5 to 7 of the Identity Card Act.

14. to determine that the
- a) registration authorities,
  - b) authorities concerned with matters of nationality and certifying authorities pursuant to Section 15 of the Federal Expellees Act,
  - c) authorities concerned with passports and identity cards,
  - d) social welfare and youth welfare offices,
  - e) judicial, police and regulatory authorities,
  - f) Federal Employment Agency,
  - g) tax offices and main customs offices,
  - h) trading standards authorities,
  - i) diplomatic missions abroad and
  - j) institutions providing basic security for job seekers

shall be required to furnish the foreigners authorities with personal data on foreigners, information on official acts and other measures relating to foreigners and other information on foreigners without prior request; the statutory instrument shall define the type and scope of data, the measures and the other items of information to be transferred; data may only be provided where necessary in order for the foreigners authorities to discharge their duties under this Act or in accordance with provisions relating to foreigners in other acts.

15. to set out rules pertaining to the electronic transfer of data for specialised purposes between the authorities charged with implementing this Act, concerning the following:

- a) the technical principles of the structure of the standard used,
- b) the data transfer procedure and
- c) the authorities participating in the electronic transfer of data relating to foreigners.

(2) The Federal Ministry of the Interior shall further be authorised to determine, via statutory instrument with the approval of the Bundesrat, that

1. every foreigners authority shall keep a file on foreigners who are or have been resident in their regions, who have filed an application with the authority or have provided the authority with notification of entry and residence and for or against whom the authority has undertaken a measure or taken a decision under the law on foreigners,
2. every diplomatic mission abroad may keep a file on visas applied for, granted, refused, recalled, annulled, revoked and rescinded as well as on visa applications withdrawn, and the diplomatic missions abroad may share with each other the data stored therein and

3. the authorities charged with implementing this Act shall keep any other file which is necessary in discharging their duties.

The data to be recorded pursuant to sentence 1, no. 1 shall cover the foreigner's personal data, including his nationality and address, information relating to the passport, measures undertaken in accordance with the law on foreigners, entry in the Central Register of Foreigners and former addresses of the foreigner, the competent foreigners authority and the furnishing of records to another foreigners authority. Information relating to the use of a document pursuant to Section 78 (1) pertaining to the electronic proof of identity including its activation and deactivation as well as its blocking and unblocking shall also be recorded. The foreigners authorities' authorisation to store further personal data shall be determined by the data protection provisions of the respective *Länder*.

(3) The Federal Ministry of the Interior shall be authorised to appoint the competent body pursuant to Section 73 (1) and Section 73a (1) without the approval of the Bundesrat, by way of a statutory instrument issued in agreement with the Federal Foreign Office.

(3a) The Federal Ministry of the Interior shall be authorised, by way of a statutory instrument issued in agreement with the Federal Foreign Office without the approval of the Bundesrat, to stipulate, in accordance with Article 3 (2) of Regulation (EC) no. 810/2009, the states whose nationals must be in possession of an airport transit visa to pass through the international transit areas of German airports.

(4) The Federal Ministry of the Interior may issue and amend statutory instruments pursuant to subsection 1, nos. 1 and 2 without the approval of the Bundesrat as far as necessary to fulfil an intergovernmental agreement or to safeguard public interests. A statutory instrument pursuant to sentence 1 shall expire no later than three months after entering into force. Its period of validity may be extended via statutory instrument with the approval of the Bundesrat.

### **Section 100** **Linguistic adaptation**

The Federal Ministry of the Interior may, via statutory instrument without the approval of the Bundesrat, replace the terms employed for persons in this Act with non-gender-specific or masculine and feminine terms, provided that this is possible without altering the content of the provisions and is linguistically correct, and may undertake the subsequently necessary linguistic adaptations. The Federal Ministry of the Interior may publish the wording of this Act in the Federal Law Gazette after issuing a statutory instrument pursuant to sentence 1.

### **Section 101** **Continued validity of previous rights of residence**

(1) A right of unlimited residence (*Aufenthaltsberechtigung*) or unlimited residence permit (*unbefristete Aufenthaltserlaubnis*) issued prior to 1 January 2005 shall remain valid as a permanent settlement permit in accordance with the purpose of residence and the circumstances forming the basis for its issuance. An unlimited residence permit (*unbefristete Aufenthaltserlaubnis*) which has been granted pursuant to Section 1 (3) of the Act on Measures in Aid of Refugees Admitted under Humanitarian Relief Programmes of 22 July 1980 (Federal Law Gazette I, p. 1057) or in corresponding application of the aforesaid Act and a subsequently issued right of unlimited residence (*Aufenthaltsberechtigung*) shall remain valid as a permanent settlement permit pursuant to Section 23 (2).

(2) The other residence authorisations shall remain valid as temporary residence permits

in accordance with the purpose of residence and the circumstances forming the basis for their issuance.

(3) A residence title to which the annotation “EC long-term residence permit” (*Daueraufenthalt-EG*) was appended prior to 28 August 2007 shall retain its validity as an EU long-term residence permit.

### **Section 102**

#### **Continued validity of other measures under the law on foreigners and consideration of prior periods**

(1) Other measures undertaken prior to 1 January 2005 in accordance with the law on foreigners, in particular time limits and geographic restrictions, conditions and requirements, prohibitions and restrictions of political activities, expulsions, notices of intention to deport and deportations, including their legal consequences, periods limiting their effects and beneficial measures, the recognition of passports and passport substitutes, exemptions from the passport requirement, rulings on costs and fees, shall remain valid. Measures and agreements in connection with furnishing security shall also remain valid, even if they relate in part or in full to periods after this Act enters into force. The same shall apply to the effects by force of law resulting from the filing of applications pursuant to Section 69 of the Foreigners Act.

(2) The period of possession of a residence title for exceptional purposes (*Aufenthaltsbefugnis*) or of a temporary suspension of deportation prior to 1 January 2005 shall count towards the qualifying period for issuing a permanent settlement permit pursuant to Section 26 (4).

### **Section 103**

#### **Application of previous law**

Sections 2a and 2b of the Act on Measures in Aid of Refugees Admitted under Humanitarian Relief Programmes in the version valid until 1 January 2005 shall continue to apply for persons who enjoy the status pursuant to articles 2 to 34 of the Convention relating to the Status of Refugees in accordance with Section 1 of the Act on Measures in Aid of Refugees Admitted under Humanitarian Relief Programmes of 22 July 1980 (Federal Law Gazette I, p. 1057). Section 52 (1), sentence 1, no. 4 shall apply accordingly in such cases.

### **Section 104**

#### **Transitional provisions**

(1) Decisions on applications filed prior to 1 January 2005 for an unlimited residence permit or a right of unlimited residence shall be taken in accordance with the law applicable until that time. Section 101 (1) shall apply accordingly.

(2) In the case of foreigners who are in possession of a temporary residence permit or a residence title for exceptional circumstances prior to 1 January 2005, for the purposes of the decision on granting a permanent settlement permit or an EU long-term residence permit it shall be sufficient with regard to their knowledge of the language if they are able to communicate verbally in the German language at a basic level. Section 9 (2), sentence 1, nos. 3 and 8 shall not apply.

(3) In the case of foreigners lawfully resident in Germany prior to 1 January 2005, Section 20 of the Foreigners Act shall apply in its most recently amended version with regard to the subsequent immigration of children born before this date, unless this Residence Act grants a more favourable legal status.

(4) (repealed)

(5) The provisions concerning the subsequent immigration of dependants, an individual interest in remaining, participation in integration courses and the consolidation of residence on the ground of Section 23 (4) shall also apply accordingly to foreigners who were granted a residence title pursuant to Section 23 (2) before the expiry of 31 July 2015 in the context of the programme for the permanent settlement of those seeking protection.

(6) Section 23 (2) in the version valid until 24 May 2007 shall continue to apply in such cases in which the order issued by the supreme *Land* authority on the basis of the version applying until 24 May 2007 provides for issuing a permanent settlement permit where special political interests of the Federal Republic of Germany prevail. Section 23 (2), sentence 5 and Section 44 (1), no. 2 shall apply accordingly to the affected foreigners and the dependants relocating their residence to the federal territory with the former.

(7) A permanent settlement permit may also be issued to spouses, domestic partners and minor, unmarried children of a foreigner who were in possession of a residence title for exceptional circumstances pursuant to Section 31 (1) of the Foreigners Act or a temporary residence permit pursuant to Section 35 (2) of the Foreigners Act prior to 1 January 2005, where the conditions of Section 26 (4) are met and they continue to meet the conditions according to which issuance of a residence title for exceptional circumstances pursuant to Section 31 of the Foreigners Act or of a temporary residence permit pursuant to Section 35 (2) of the Foreigners Act was permissible.

(8) Section 28 (2) in the version applicable up to 5 September 2013 shall continue to apply to such dependants of German nationals who already held a residence title pursuant to Section 28 (1) on 5 September 2013.

(9) Foreigners who possess a temporary residence permit pursuant to Section 25 (3), because the Federal Office or the foreigners authority has established that deportation bans exist in line with Section 60 (2), (3) or (7), sentence 2, in the version applicable before 1 December 2013, shall be deemed to be entitled to subsidiary protection as referred to in Section 4 (1) of the Asylum Act, and shall ex officio be issued a temporary residence permit pursuant to Section 25 (2), sentence 1, second alternative, unless the Federal Office has informed the foreigners authority that grounds exist for refusing the person concerned such status in line with Section 25 (3), sentence 2, (a) to (d) in the version applicable before 1 December 2013. The periods of possession of a temporary residence permit pursuant to Section 25 (3), sentence 1 in the version applicable before 1 December 2013 shall be equal to the periods of possession of a temporary residence permit pursuant to Section 25 (2), sentence 1, second alternative. Section 73b of the Asylum Act shall apply accordingly.

(10) As from 1 February 2016, Section 73b (4) shall apply to persons concerned pursuant to Section 73b (1) who pursue their activities as non-seconded employees of the Federal Foreign Office in a diplomatic mission abroad.

(11) The period referred to in Section 29 (2), sentence 2, no. 1 shall begin to run upon the entry into force of this Act for foreigners who were incontestably granted subsidiary protection pursuant to Directive 2011/95/EU or Directive 2004/38/EC between 1 January 2011 and 31 July 2015.

(12) In the case of a deportation warning pursuant to Sections 34 and 35 of the Asylum Act or a deportation order pursuant to Section 34a of the Asylum Act issued prior to 1

August 2015, responsibility for imposing a time limit on a ban on entry and residence pursuant to Section 11 (2) shall lie with the foreigners authorities.

(13) Up until 16 March 2018 the subsequent immigration of dependants shall not be granted to persons who were granted a temporary residence permit pursuant to Section 25 (2), sentence 1, second alternative, after 17 March 2016. In the case of foreigners who were granted a temporary residence permit pursuant to Section 25 (2), sentence 1, second alternative, after 17 March 2016, the period referred to in Section 29 (2), sentence 2, no. 1 shall begin to run on 16 March 2018. Sections 22, 23 shall remain unaffected.

(14) Section 12a in the version applicable until 6 August 2019 shall continue to apply to foreigners who were subject to an obligation pursuant to Section 12a (1) to (4) and (6) before 6 August 2019.

#### **Section 104a** **Regulations governing old cases**

(1) By way of derogation from Section 5 (1), no. 1 and (2), a foreigner whose deportation has been suspended should be granted a temporary residence permit where he has continuously resided in the federal territory for at least eight years on 1 July 2007, or, if he lives together with one or several minor, unmarried children as a family unit, where he has continuously resided in the federal territory for at least six years on the said date, by virtue of his deportation having been suspended, being permitted to remain pending the asylum decision or on account of a temporary residence or permanent settlement permit having been issued on humanitarian grounds and he

1. has sufficient living space at his disposal,
2. has a sufficient command of the spoken German language equivalent to level A2 of the Common European Framework of Reference for Languages,
3. furnishes proof that any children of school age actually attend school,
4. has not wilfully deceived the foreigners authority as to circumstances relevant to his situation under residence law and has not wilfully delayed or obstructed official measures to end his residence,
5. does not have any links to extremist or terrorist organisations and does not support such organisations and
6. has not been convicted of an offence wilfully committed in the federal territory; fines totalling up to 50 daily rates or up to 90 daily rates in the case of offences which, in accordance with the Residence Act or the Asylum Act, can only be committed by foreigners shall be ignored as a general principle.

Where the foreigner ensures his subsistence independently by means of an economic activity, the temporary residence permit shall be granted pursuant to Section 23 (1), sentence 1. It shall otherwise be issued pursuant to sentence 1; it shall apply as a residence title pursuant to Chapter 2, Part 5; Sections 9 and 26 (4) shall not apply. The requirement stated in sentence 1, no. 2 may be waived until 1 July 2008. The requirement stated in sentence 1, no. 2 shall be waived if the foreigner is unable to meet it on account of a physical or mental illness or disability or on grounds of old age.

(2) An adult unmarried child whose deportation has been suspended, who is the child of a foreigner whose deportation has been suspended and who has been continuously resident in the federal territory for at least eight years on 1 July 2007, or, if he lives together with one or several minor, unmarried children as a family unit, where he has

been continuously resident in the federal territory for at least six years on the said date, by virtue of his deportation having been suspended, being permitted to remain pending the asylum decision or on account of a temporary residence or permanent settlement permit having been issued on humanitarian grounds, may be granted a temporary residence permit pursuant to Section 23 (1), sentence 1 where said child was a minor at the time of entering the federal territory and where it appears, on the basis of the child's education and way of life to date, that he is capable of integrating into the way of life in the Federal Republic of Germany. The same shall apply to a foreigner who has been continuously resident in the federal territory for at least six years as an unaccompanied minor by virtue of his deportation having been suspended, being permitted to remain pending the asylum decision or on account of a temporary residence or permanent settlement permit having been issued on humanitarian grounds, where it appears, on the basis of the child's education and way of life to date, that he is capable of integrating into the way of life in the Federal Republic of Germany.

(3) If a family member living as part of a family household has committed offences pursuant to subsection 1, sentence 1, no. 6, this shall lead to denial of the temporary residence permit for other family members according to this provision. Sentence 1 shall not apply to the spouse of a foreigner who has committed offences within the meaning of subsection 1, sentence 1, no. 6 where the spouse otherwise meets the requirements of subsection 1 and it is necessary to enable the continued stay of the spouse in order to avoid special hardship. Where, in exceptional cases, children are separated from their parents, their care and welfare in Germany must be ensured.

(4) The temporary residence permit may be issued subject to the condition that the foreigner attend an integration interview or that an integration agreement be concluded. The temporary residence permit shall entitle the holder to pursue an economic activity.

(5) The temporary residence permit shall be issued with a period of validity until 31 December 2009. It shall be extended by two further years as a temporary residence permit pursuant to Section 23 (1), sentence 1 if the foreigner's subsistence was ensured up to 31 December 2009 primarily by the foreigner on his own through the pursuit of an economic activity or if the foreigner has ensured his subsistence on his own on a non-temporary basis at least since 1 April 2009. In both cases, there must be reason to believe that the foreigner's subsistence will be for the most part ensured in the future. In the case of subsection 1, sentence 4 the temporary residence permit shall be issued with an initial period of validity extending only until 1 July 2008 and shall be extended only if the foreigner furnishes proof that he meets the conditions of subsection 1, sentence 1, no. 2 by the aforesaid date at the latest. Section 81 (4) shall not apply.

(6) With regard to extension of the temporary residence permit, derogation from subsection 5 shall be possible in order to avoid cases of hardship. This provision shall apply in the case of

1. apprentices undergoing training in a recognised trade or on government-sponsored pre-vocational training measures,
2. families with children who are only temporarily reliant on supplementary social benefits,
3. single parents who are temporarily reliant on social benefits and who cannot reasonably be expected to take up employment pursuant to Section 10 (1), no. 3 of Book Two of the Social Code,

4. persons who are unable to work but whose subsistence and any necessary care is secured on a long-term basis by any other means without recourse to any public benefits, except where the benefits are based on paid contributions,
5. persons who are 65 years of age or older on 31 December 2009, if they have no family in their country of origin but do have dependants (children or grandchildren) who are permanently resident in the federal territory or German nationals and if it is thus ensured that no social benefits will be claimed for such persons.

(7) The *Länder* may order a temporary residence permit pursuant to subsections 1 and 2 to be denied to nationals of certain states on grounds of national security for the Federal Republic of Germany. In order to ensure a nationwide uniform approach, the order shall require the approval of the Federal Ministry of the Interior.

#### **Section 104b**

#### **Right of residence for integrated children of foreigners whose deportation has been suspended**

By way of derogation from Section 5 (1), no. 1, (2) and Section 10 (3), sentence 1, a minor, unmarried child may be granted a temporary residence permit in his own right pursuant to Section 23 (1), sentence 1 if the said child's parents or the parent possessing the sole right of care and custody are not granted a temporary residence permit or an extension of the same pursuant to Section 104a and are leaving the federal territory, where

1. the child has reached the age of 14 on 1 July 2007,
2. the child has been lawfully resident in Germany or resident in Germany by virtue of suspended deportation for at least six years,
3. the child has a good command of the German language,
4. on the basis of the child's education and way of life to date, he has integrated into the way of life in the Federal Republic of Germany and it is ensured that he will remain integrated in this way of life in the future and
5. care and custody of the child are ensured.

#### **Section 105 (repealed)**

#### **Section 105a**

#### **Provisions as to the administrative procedure**

No derogations by way of *Land* law shall be permissible from the provisions set out in Section 4 (2), sentence 2 and 4, (5), sentence 2, Section 15a (4), sentence 2 and 3, Section 23 (1), sentence 3, Section 23a (1), sentence 1, (2), sentence 2, Section 43 (4), Section 44a (1), sentence 2, (3), sentence 1, Section 49a (2), Section 61 (1d), Section 72 (2), Section 73 (2), (3), sentence 1 and 2, Sections 78, 78a, Section 79 (2), Section 81 (5), Section 82 (1), sentence 3, (3), Section 87 (1), (2), sentences 1 and 2, (4), sentences 1, 2 and 4, (5) and (5), Section 89 (1), sentence 2 and 3, (3) and (4), Section 89a (2), (4), sentence 2, (8), Sections 90, 90a, 90b, 91 (1) and (2), Section 91a (3), (4) and (7), Section 91c (1), sentence 2, (2), sentence 2, (3), sentence 4 and (4), sentence 2, Sections 99 and 104a (7), sentence 2, and from the provisions set out in Section 43 (4) and Section 99 pertaining to the administrative procedure.

#### **Section 105b**

#### **Transitional provision for residence titles issued according to a standard form**

Residence titles pursuant to Section 4 (1), sentence 2, nos. 2 to 4, which were issued by the end of 31 August 2011 according to a standard form in accordance with Section 78 of this Act, in the version valid until that date, shall be issued as a stand-alone document with an electronic storage and processing medium pursuant to Section 78 when a new residence title is issued or by the end of 31 August 2021 at the latest. This notwithstanding, the holders of a residence title pursuant to Section 4 (1), sentence 2, nos. 2 to 4 may apply for a stand-alone document with an electronic storage and processing medium pursuant to Section 78 if they can demonstrate a legitimate interest in the issuance of a new document.

#### **Section 105c**

#### **Transition of measures to monitor for internal security purposes foreigners subject to expulsion orders**

Measures and obligations pursuant to Section 54a (1) to (4) in the version applicable until 31 December 2015 which were introduced or which applied before 1 January 2016 shall be regarded after 1 January 2016 as measures and obligations within the meaning of Section 56 in the version applicable as from 1 January 2016.

#### **Section 106**

#### **Curtailement of fundamental rights**

(1) The fundamental rights of physical integrity (Article 2 (2), sentence 1 of the Basic Law) and freedom of the person (Article 2 (2), sentence 2 of the Basic Law) shall be curtailed under the terms of this Act.

(2) The procedure in connection with the deprivation of liberty shall be determined by Book Seven of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction. If it is necessary to make a decision on the duration of custody awaiting deportation or detention pending exit from the federal territory, the local court of first instance may assign the proceedings by virtue of an incontestable ruling to the court in whose district the foreigner is being held in custody awaiting deportation or in detention pending exit from the federal territory.

#### **Section 107**

#### **City-state clause**

The senates of the *Länder* of Berlin, Bremen and Hamburg shall be authorised to adapt the provisions of this Act regarding the competence of authorities to the special administrative structures of their *Länder*.