

Directive 2004/38/EC on the right of citizens of the Union and their family members  
to move and reside freely within the territory of the Member-States

<b>Name of legal analyst:</b>	<b>Ludwig Krämer, Lukas Rass-Masson</b>	<b>Date Table completed: October 2008</b>
<b>Contact details:</b>	<a href="mailto:kramer.ludwig@skynet.be">kramer.ludwig@skynet.be</a> , <a href="mailto:lukasrassmasson@gmx.de">lukasrassmasson@gmx.de</a>	
	<b>GERMANY</b>	

### Short introduction on transposition context

Measures transposing Directive 2004/38 are mainly adopted at the federal level, as exclusive legislative competence of the Federation, or as concurrent legislative competence, with the participation of the Länder in the legislative and implementation process.

Transposition is the result of the adoption of two federal laws. A first partial transposition was obtained through the adoption of the FreizügG/EU as per article 2 of Gesetz vom 30.7.2004 I 1950 (Zuwanderungsgesetz), which entered into force on 1<sup>st</sup> of January 2005. Second part of transposition is the result of the Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union of 19 August 2007, which entered into force on 28 August 2007.

These two acts enacted or amended the three following acts, which are particularly important for purposes of transposition of Directive 2004/38/EC:

- The main transposing act is the "Gesetz über die allgemeine Freizügigkeit von Unionsbürgern" (Freizügigkeitsgesetz/EU - FreizügG/EU), - Act on the General Freedom of movement for EU Citizens - <sup>1</sup>.
- The two other important transposing instruments are the „Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet“ (Aufenthaltsgesetz – AufenthG), - Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory - <sup>2</sup>, and the „Aufenthaltsverordnung“ (AufenthV), - Ordinance Governing Residence - <sup>3</sup>.

### Main transposing legislation:

- Gesetz über die allgemeine Freizügigkeit von Unionsbürgern (Freizügigkeitsgesetz/EU - FreizügG/EU; "Freizügigkeitsgesetz/EU vom 30. Juli 2004 (BGBl. I S. 1950, 1986), zuletzt geändert durch Artikel 7 des Gesetzes vom 26. Februar 2008 (BGBl. I S. 215)»; Act on the General Freedom of movement for EU Citizens.
- Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG); «Aufenthaltsgesetz in der Fassung der Bekanntmachung vom 25. Februar 2008 (BGBl. I S. 162), zuletzt geändert durch Artikel 2 Abs. 3 des Gesetzes vom 13. März 2008 (BGBl. I S. 313)»; Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory.
- Aufenthaltsverordnung (AufenthV); "Aufenthaltsverordnung vom 25. November 2004 (BGBl. I S. 2945), zuletzt geändert durch Artikel 1 der Verordnung vom 8. Mai 2008 (BGBl. I S. 806)»; Ordinance Governing Residence.

### Other relevant legislation:

- Grundgesetz für die Bundesrepublik Deutschland (GG); "Grundgesetz für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch das Gesetz vom 28. August 2006 (BGBl. I S. 2034)"; Basic Law for the Federal Republic of Germany.

<sup>1</sup> Gesetz über die allgemeine Freizügigkeit von Unionsbürgern (Freizügigkeitsgesetz/EU - FreizügG/EU; "Freizügigkeitsgesetz/EU vom 30. Juli 2004 (BGBl. I S. 1950, 1986), zuletzt geändert durch Artikel 2 des Gesetzes vom 19. August 2007 (BGBl. I S. 1970)"; Act on the General Freedom of movement for EU Citizens.

<sup>2</sup> Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG); "Aufenthaltsgesetz vom 30. Juli 2004 (BGBl. I S. 1950), zuletzt geändert durch Artikel 1 des Gesetzes vom 19. August 2007 (BGBl. I S. 1970)"; Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory.

<sup>3</sup> Aufenthaltsverordnung (AufenthV); "Aufenthaltsverordnung vom 25. November 2004 (BGBl. I S. 2945), zuletzt geändert durch Artikel 7 Abs. 4 des Gesetzes vom 19. August 2007 (BGBl. I S. 1970)"; Ordinance Governing Residence.

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- Bundesgesetz über individuelle Förderung der Ausbildung (Bundesausbildungsförderungsgesetz - BAföG); "Bundesausbildungsförderungsgesetz in der Fassung der Bekanntmachung vom 6. Juni 1983 (BGBl. I S. 645, 1680), zuletzt geändert durch Artikel 1, 15, 16 u. 18 Nr. 1 des Gesetzes vom 23. Dezember 2007 (BGBl. I S. 3254)"; Federal Training Assistance Act.
- Verordnung über die Zulassung von neu einreisenden Ausländern zur Ausübung einer Beschäftigung (Beschäftigungsverordnung - BeschV); "Beschäftigungsverordnung vom 22. November 2004 (BGBl. I S. 2937), zuletzt geändert durch Artikel 1 der Verordnung vom 28. Juni 2007 (BGBl. I S. 1224)"; Employment Ordinance.
- Verordnung über das Verfahren und die Zulassung von im Inland lebenden Ausländern zur Ausübung einer Beschäftigung (Beschäftigungsverfahrensordnung - BeschVerfV); "Beschäftigungsverfahrensordnung vom 22. November 2004 (BGBl. I S. 2934), geändert durch Artikel 7 Abs. 5 des Gesetzes vom 19. August 2007 (BGBl. I S. 1970)"; Employment Procedure Ordinance.
- Bürgerliches Gesetzbuch (BGB); "Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), zuletzt geändert durch Artikel 1 des Gesetzes vom 13. März 2008 (BGBl. I S. 313)"; German Civil Code.
- Einführungsgesetz zum Bürgerlichen Gesetzbuche (EGBGB); "Einführungsgesetz zum Bürgerlichen Gesetzbuche in der Fassung der Bekanntmachung vom 21. September 1994 (BGBl. I S. 2494; 1997 I S. 1061), zuletzt geändert durch Artikel 3 Abs. 6 des Gesetzes vom 21. Dezember 2007 (BGBl. I S. 3189)"; Introductory Act to the German Civil Code.
- Gesetz zur Verhütung und Bekämpfung von Infektionskrankheiten beim Menschen (Infektionsschutzgesetz - IfSG); "Infektionsschutzgesetz vom 20. Juli 2000 (BGBl. I S. 1045), zuletzt geändert durch Artikel 2 des Gesetzes vom 13. Dezember 2007 (BGBl. I S. 2904)"; Law on Prevention of Infections.
- Gesetz zu den Internationalen Gesundheitsvorschriften (2005) (IGV) vom 23. Mai 2005; "Gesetz zu den Internationalen Gesundheitsvorschriften (2005) (IGV) vom 23. Mai 2005 vom 20. Juli 2007 (BGBl. 2007 II S. 930)"; Law on International Health Regulations 2005.
- Gesetz über die Eingetragene Lebenspartnerschaft (Lebenspartnerschaftsgesetz - LPartG); "Lebenspartnerschaftsgesetz vom 16. Februar 2001 (BGBl. I S. 266), zuletzt geändert durch Artikel 2 des Gesetzes vom 21. Dezember 2007 (BGBl. I S. 3189)"; Act on the Registered Life Partnership.
- Melderechtsrahmengesetz (MRRG); "Melderechtsrahmengesetz in der Fassung der Bekanntmachung vom 19. April 2002 (BGBl. I S. 1342), zuletzt geändert durch Artikel 26b des Gesetzes vom 20. Dezember 2007 (BGBl. I S. 3150)"; Registration Framework Law; + Landesrecht (cf. Art. 5.5)
- Gesetz über Ordnungswidrigkeiten (OWiG); "Gesetz über Ordnungswidrigkeiten in der Fassung der Bekanntmachung vom 19. Februar 1987 (BGBl. I S. 602), zuletzt geändert durch Artikel 2 des Gesetzes vom 7. August 2007 (BGBl. I S. 1786)"; Administrative Offences Act.
- Passgesetz (PassG); "Paßgesetz vom 19. April 1986 (BGBl. I S. 537), zuletzt geändert durch Artikel 1 des Gesetzes vom 20. Juli 2007 (BGBl. I S. 1566, 2317)"; Passport Law.
- Verordnung zur Durchführung des Passgesetzes (Passverordnung - PassV); "Passverordnung vom 19. Oktober 2007 (BGBl. I S. 2386)"; Ordinance on Implementation of Passport Law.
- Gesetz über Personalausweise (PersAuswG); "Gesetz über Personalausweise in der Fassung der Bekanntmachung vom 21. April 1986 (BGBl. I S. 548), zuletzt geändert durch Artikel 2 des Gesetzes vom 20. Juli 2007 (BGBl. I S. 1566)"; Act on Identity Cards.
- Sozialgesetzbuch (SGB) Zweites Buch (II); "Zweites Buch Sozialgesetzbuch - Grundsicherung für Arbeitsuchende - (Artikel 1 des Gesetzes vom 24. Dezember 2003, BGBl. I S. 2954), zuletzt geändert durch Artikel 2 des Gesetzes vom 10. Oktober 2007 (BGBl. I S. 2329)"; Social Code, Second Book.
- Sozialgesetzbuch (SGB) Drittes Buch (III); "Drittes Buch Sozialgesetzbuch - Arbeitsförderung - (Artikel 1 des Gesetzes vom 24. März 1997, BGBl. I S. 594), zuletzt geändert durch § 22 Abs. 4 des Gesetzes vom 12. Dezember 2007 (BGBl. I S. 2861)"; Social Code, Third Book.
- Sozialgesetzbuch (SGB) Fünftes Buch (V); "Fünftes Buch Sozialgesetzbuch - Gesetzliche Krankenversicherung - (Artikel 1 des Gesetzes vom 20. Dezember 1988, BGBl. I S. 2477), zuletzt geändert durch § 22 Abs. 7 des Gesetzes vom 12. Dezember 2007 (BGBl. I S. 2861)"; Social Code, Fifth Book.
- Sozialgesetzbuch (SGB) Achtes Buch (VIII); "Achtes Buch Sozialgesetzbuch - Kinder und Jugendhilfe - (Artikel 1 des Gesetzes vom 26. Juni 1990, BGBl. I S. 1163) in der Fassung der Bekanntmachung vom 14. Dezember 2006 (BGBl. I S. 3134), geändert durch Artikel 2 Abs. 23 des Gesetzes vom 19. Februar 2007 (BGBl. I S. 122)"; Social Code, Eighth book.

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- Sozialgesetzbuch (SGB) Zwölftes Buch (XII); "Zwölftes Buch Sozialgesetzbuch - Sozialhilfe - (Artikel 1 des Gesetzes vom 27. Dezember 2003, BGBl. I S. 3022), zuletzt geändert durch Artikel 5 des Gesetzes vom 23. Dezember 2007 (BGBl. I S. 3254)"; Social Code, Twelfth Book.
- Verwaltungsgerichtordnung (VwGO); "Verwaltungsgerichtsordnung in der Fassung der Bekanntmachung vom 19. März 1991 (BGBl. I S. 686), zuletzt geändert durch Artikel 13 des Gesetzes vom 12. Dezember 2007 (BGBl. I S. 2840)"; Administrative Courts Ordinance.
- Verwaltungsverfahrensgesetz (VwVfG); "Verwaltungsverfahrensgesetz in der Fassung der Bekanntmachung vom 23. Januar 2003 (BGBl. I S. 102), geändert durch Artikel 4 Abs. 8 des Gesetzes vom 5. Mai 2004 (BGBl. I S. 718)"; Law on Administrative Proceedings.

Other abbreviations:

- Art: article
- Cf: confer
- Abs.: Absatz (subparagraph)
- Nr.: number
- ECJ: European Court of Justice
- TEC: Treaty establishing the European Community
- BMI: Bundesministerium des Innern (Federal Ministry of Interior)

**Analysed legislation in conformity? (click as appropriate)**

**YES**  
or/and Stricter

  

**NO**  
Incomplete or/and Incorrect



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Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
<b>Chapter I. GENERAL PROVISIONS</b>						
Art. 2.1	<b>Definitions</b>  For the purposes of this Directive: 1) "Union citizen" means any person having the nationality of a Member State;	§ 1 FreizügG/EU	Dieses Gesetz regelt die Einreise und den Aufenthalt von Staatsangehörigen anderer Mitgliedstaaten der Europäischen Union (Unionsbürger) und ihrer Familienangehörigen.	This Act regulates entry into and residence in the Federal territory by nationals of other member states of the European Union (Union citizens) and their family members.	Y	Effective transposition
Art. 2.2 (a)	2) "Family member" means: (a) the spouse;	§ 3 Abs. 2 Nr. 1 FreizügG/EU	Familienangehörige sind 1. der Ehegatte [...]	Family members are 1. the spouse [...]	Y	Literal transposition
Art. 2.2 (b)	(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;	§ 3 (6) FreizügG/EU +  § 27 (2) AufenthG +  § 11 (1) LPartG +  Artikel 17b EGBGB	§ 3 (6) FreizügG/EU Auf die Einreise und den Aufenthalt des nicht freizügigkeitsberechtigten Lebenspartners einer nach § 2 Abs. 2 Nr. 1 bis 4 zur Einreise und zum Aufenthalt berechtigten Person sind die für den Lebenspartner eines Deutschen geltenden Vorschriften des Aufenthaltsgesetzes anzuwenden.  § 27 (2) AufenthG Für die Herstellung und Wahrung einer lebenspartnerschaftlichen Gemeinschaft im Bundesgebiet finden die Absätze 1a und 3, § 9 Abs. 3, § 9c Satz 2, die §§ 28 bis 31 sowie 51 Abs. 2 entsprechende Anwendung.  § 11 (1) LPartG Ein Lebenspartner gilt als Familienangehöriger des anderen Lebenspartners, soweit nicht etwas anderes bestimmt ist.  Art 17b EGBGB (1) Die Begründung, die	(6) The provisions of the Residence Act pertaining to the partner in life of a German shall apply to the entry and residence of the partner of a person who is entitled to enter and reside in the Federal territory in accordance with § 2 (2), nos. 1 to 4, if said partner is not himself or herself entitled to freedom of movement.  (2) Sub-sections 1a and 3, Section 9 (3), Section 9c, sentence 2, Sections 28 to 31 and Section 51 (2) shall apply mutatis mutandis to enable the establishment and maintenance of a registered partnership in the Federal territory.  § 11 (1) LPartG A partner is considered as a family member of the other partner, as far as is not disposed something else.  Art 17b EGBGB (1) 1 The reason, the general effects	N, Ambiguous	Ambiguous transposition  Germany does normally treat registered partnerships as equivalent to marriage. However § 11 (1) LPartG allows exceptions to this principle. FreizügG/EU is such an exception, because definition of family members clearly does not include registered partners. However § 27 (2) AufenthG contains a large assimilation of partnerships to marriage for the purpose of subsequent immigration of family members. § 3 (6) FreizügG/EU however gives Union citizens the same rights as those conferred to Germans in this context (For more details about facilitation, see transposition of Article 3(2)(b) below).  § 3 (6) FreizügG/EU gives partners of Union citizens only the same rights as those conferred to Germans in this context, but not those conferred to spouses of Union citizens. There could be a possible infringement if the Member State

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			<p>allgemeinen und die güterrechtlichen Wirkungen sowie die Auflösung einer eingetragenen Lebenspartnerschaft unterliegen den Sachvorschriften des Registerführenden Staates.</p>	<p>and the effects of the property regime as well as the dissolution of a registered life partnership is subject to the regulations of the state holding the register.</p>		<p>considering registered partnerships as equivalent to marriage for the purpose of its national legislation (in particular its immigration legislation, but not including free movement of Union citizens) would have the obligation to consider the same way registered partnerships as equivalent to marriage for the specific “Union immigration” legislation and the transposing national rules.</p> <p>The term “Lebenspartner” is meant to be the one defined by § 1 (1) 1 LPartG (cf. BMI Anwendungshinweise, 22.12.2004), or, according to German rules of Private International Law, any equivalent foreign partnership that is officially recognised.</p>
Art. 2.2 (c)	(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);	<p>§ 3 Abs. 2 Nr. 1 +</p> <p>2 FreizügG/EU +</p> <p>§ 1589 BGB</p>	<p>1. [...] die Verwandten in absteigender Linie der in § 2 Abs. 2 Nr. 1 bis 5 und 7 genannten Personen oder ihrer Ehegatten, die noch nicht 21 Jahre alt sind,</p> <p>2. die Verwandten [...] in absteigender Linie der in § 2 Abs. 2 Nr. 1 bis 5 und 7 genannten Personen oder ihrer Ehegatten, denen diese Personen oder ihre Ehegatten Unterhalt gewähren.</p> <p>§ 1589 Verwandtschaft (1) 1 Personen, deren eine von der anderen abstammt, sind in gerader Linie verwandt.</p>	<p>1. [...] relatives in the descending line of the persons specified in § 2 (2) nos. 1 to 5 and no. 7, who are under 21 years of age,</p> <p>2. relatives in the [...] descending line of the persons specified in § 2 (2) nos. 1 to 5 and no. 7 or of the latter's spouse, for whom these persons or their spouses provide maintenance.</p> <p>§ 1589 Relatives (1) 1 Persons, whose one is descending from the other, are relatives in direct line.</p>	Y	<p>Effective transposition</p> <p>For the dependants of the partner, there is no transposition, because Germany does not treat partnerships as equivalent to marriage (cf. <i>supra</i> art. 2.2 (b)).</p> <p>The term of “relatives” is meant to be the one used by the BGB, and especially § 1589 BGB, and refers to direct relatives.</p> <p>The reference to dependants is correctly transposed, as German legislation includes direct descendants for whom the Union citizen “provides maintenance”, in reference to the definition of dependants, conforming to ECJ cases <i>Lebon</i> (C 316/85) and <i>Jia</i> (C 1/05).</p>

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Art. 2.2 (d)	(d) the family member direct relatives in the ascending line and those of the spouse or partner as defined in point (b);	§ 3 Abs. 2 Nr. 2 FreizügG/EU	2. die Verwandten in aufsteigender [...] Linie der in § 2 Abs. 2 Nr. 1 bis 5 und 7 genannten Personen oder ihrer Ehegatten, denen diese Personen oder ihre Ehegatten Unterhalt gewähren.	2. relatives in the ascending [...] line of the persons specified in § 2 (2) nos. 1 to 5 and no. 7 or of the latter's spouse, for whom these persons or their spouses provide maintenance.	Y	Effective transposition  For the dependants of the partner, there is no transposition, because Germany does not treat partnerships as equivalent to marriage (cf. <i>supra</i> art. 2.2 (b)).  The term of "relatives" is meant to be the one used by the BGB, and especially § 1589 BGB, and refers to direct relatives.  The reference to dependants is correctly transposed, as German legislation includes direct descendants for whom the Union citizen "provides maintenance", in reference to the definition of dependants, conforming to ECJ cases <i>Lebon</i> (C 316/85) and <i>Jia</i> (C 1/05).
Art. 2.3	3) "Host Member State" means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.	§ 1 FreizügG/EU	Dieses Gesetz regelt die Einreise und den Aufenthalt von Staatsangehörigen anderer Mitgliedstaaten der Europäischen Union (Unionsbürger) und ihrer Familienangehörigen.	This Act regulates entry and residence by nationals of other Member States of the European Union (Union citizens) and their family members.	Y	Effective transposition  Germany does not clearly define the term of "Host Member State". However, FreizügG/EU regulates entry into and residence in Germany of Union citizens and their family members. The territorial scope is a consequence of the absence of any precision or limitation, what means that the legislation applies to whole territory of the Federal Republic of Germany. As far as "Host Member State" is meant by the directive to be Germany for German legislation, this could constitute an effective transposition.
Art. 3.1	<b>Beneficiaries</b>  This Directive shall apply to all Union	§ 2 Abs. 1 FreizügG/EU	Freizügigkeitsberechtigte Unionsbürger und ihre Familienangehörigen haben das	Union citizens entitled to freedom of movement and their family members shall have the	Y	Effective transposition

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	citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.		Recht auf Einreise und Aufenthalt nach Maßgabe dieses Gesetzes.	right to enter and reside in the Federal territory pursuant to this Act.		
Art. 3.2 (a)	Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons: (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;	§ 36 (2) AufenthG	§ 36 Nachzug der Eltern und sonstiger Familienangehöriger  (2) 1 Sonstigen Familienangehörigen eines Ausländers kann zum Familiennachzug eine Aufenthaltserlaubnis erteilt werden, wenn es zur Vermeidung einer außergewöhnlichen Härte erforderlich ist. 2 Auf volljährige Familienangehörige sind § 30 Abs. 3 und § 31, auf minderjährige Familienangehörige ist § 34 entsprechend anzuwenden.	§ 36 Subsequent immigration of parents and other family members  (2) Other family members of a foreigner may be granted a residence permit for the purpose of subsequent immigration to join the foreigner, if necessary in order to avoid particular hardship. § 30 (3) and § 31 shall apply mutatis mutandis to adult family members and § 34 shall apply mutatis mutandis to minor family members.	N, Incomplete	Incomplete transposition  36 (2) gives German authorities the possibility and the obligation to grant a residence permit in some specific cases. This decision is a discretionary decision (Ermessensentscheidung). The authorities should consider European law in order to correctly take those decisions. However it will have to be checked if on behalf of this § 36 entry and residence are really facilitated or not, and if § 36 so is a sufficient transposition of art 3.3(a). The conditions laid down in this rule are however very strict (“particular hardship”, which could cover serious health grounds strictly requiring the personal care of the family member) and first interpretation guidance of federal Ministry does not contain any specific facility for Union-citizens. The facts that § 36 (2) AufenthG is extremely restrictive, and that there is no specific facilitation for Union citizens family members lead to a non transposition of art. 3.2. § 36 (2) AufenthG especially does not seriously grant a facilitation of entry or residence for dependants or members of the household of the Union citizen.
Art. 3.2 (b)	(b) the partner with whom the Union citizen has a durable relationship, duly attested.	§ 3 Abs. 6 FreizügG/EU	Auf die Einreise und den Aufenthalt des nicht freizügigkeitsberechtigten	The provisions of the Residence Act pertaining to the partner in life of a German shall apply to	N, Incomplete	Incomplete transposition  There is no specific or general rule

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			<p>Lebenspartners einer nach § 2 Abs. 2 Nr. 1 bis 4 zur Einreise und zum Aufenthalt berechtigten Person sind die für den Lebenspartner eines Deutschen geltenden Vorschriften des Aufenthaltsgesetzes anzuwenden.</p>	<p>the entry and residence of the partner of a person who is entitled to enter and reside in the Federal territory in accordance with § 2 (2), nos. 1 to 4, if said partner is not himself or herself entitled to freedom of movement.</p>		<p>who applies to durable relationships (other than registered partnerships), in order to facilitate entry and residence.</p> <p>For registered partnerships, as far as this article is meant to apply (because Germany does not consider them as equivalent to marriage) the situation is as follows:</p> <p>§ 3 (6) does not cover all categories of Union citizens. The following categories are not covered: partners of non economically active Union citizens (§ 2 (2) 5. FreizügG/EU) and partners of citizens who have acquired the right of permanent residence (§ 2 (2) 5. FreizügG/EU; (unless in this last case they still meet one of the conditions laid down in § 2 (2), nos. 1 to 4, in which case those partners are still covered by § 3(6) FreizügG/EU). This might be an unjustified discrimination. However, for partners of non economically active Union citizens, § 4 provides a right of residence as long as they have sufficient resources and sufficient sickness insurance, without no distinction between third country nationals and family members who are nationals of a Member State. This is how Germany facilitates entry and residence of those partners.</p> <p>All other categories of Union citizens (workers, job seekers, persons on vocational training self-employed persons, service providers and Union citizens as the recipients of services) are assimilated to Germans. This way Germany facilitates entry and</p>



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						<p>residence of those citizens' partners (including third country nationals). This disposition however only applies to registered partnerships, because the term "Lebenspartner" is meant to be the one defined by § 1 (1) 1 LPartG (cf BMI Anwendungshinweise, 22.12.2004), or any equivalent foreign partnership that is officially recognised.</p> <p>As a consequence, other types of durable relationships (registered partnerships not officially recognised, unregistered partnerships and so on) are not covered by the German legislation and there is no facilitation. The general rules on immigration will apply. Therefore, the German transposition is incomplete.</p>
	<p>The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.</p>	<p>§§ 37 (1) ,  39 (1) VwVfG</p>	<p>37 (1) Ein Verwaltungsakt muss inhaltlich hinreichend bestimmt sein.</p> <p>39 (1) 1 Ein schriftlicher oder elektronischer sowie ein schriftlich oder elektronisch bestätigter Verwaltungsakt ist mit einer Begründung zu versehen. 2 In der Begründung sind die wesentlichen tatsächlichen und rechtlichen Gründe mitzuteilen, die die Behörde zu ihrer Entscheidung bewegen haben. 3 Die Begründung von Ermessensentscheidungen soll auch die Gesichtspunkte erkennen lassen, von denen die Behörde bei der Ausübung ihres Ermessens ausgegangen ist.</p>	<p>(1) An administrative act must be sufficiently clearly defined in content.</p> <p>(1) A written or electronic administrative act, as well as an administrative act confirmed in writing or electronically, shall be accompanied by a statement of grounds. This statement of grounds must contain the chief material and legal grounds that led the authority to take its decision. The grounds given in connection with discretionary decisions should also contain the points of view which the authority considered while exercising its powers of discretion.</p>	<p>N, Incomplete</p>	<p>Incomplete transposition</p> <p>Application of general administrative rules (especially §§ 37 and 39 VwVfG) gives the authorities the obligation to examine if conditions laid down in any legislation are fulfilled, and to justify any deny of right. These obligations concern only written or electronic administrative acts. As however pursuant to § 37 (2) VwVfG a verbal administrative act must be confirmed in writing or electronically when there is justified interest that this should be done and the person affected requests this immediately, this conformity issue seems minor. The examination of "particular hardship" leads to an examination of personal</p>

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		§ 36 (2) AufenthG	(2) 1 Sonstigen Familienangehörigen eines Ausländers kann zum Familiennachzug eine Aufenthaltserlaubnis erteilt werden, wenn es zur Vermeidung einer außergewöhnlichen Härte erforderlich ist. 2 Auf volljährige Familienangehörige sind § 30 Abs. 3 und § 31, auf minderjährige Familienangehörige ist § 34 entsprechend anzuwenden.	(2) Other family members of a foreigner may be granted a residence permit for the purpose of subsequent immigration to join the foreigner, if necessary in order to avoid particular hardship. § 30 (3) and § 31 shall apply mutatis mutandis to adult family members and § 34 shall apply mutatis mutandis to minor family members.		circumstances. German authorities therefore would have to examine personal circumstances and justify any denial of entry or residence. As the decision is a discretionary decision, administration has to undertake an examination of the personal circumstances. However application of general administrative rules does not oblige the administration to undertake an “extensive” examination of the personal circumstances. Use of discretionary power is indeed possible even without an “extensive” examination of the circumstances. A quick examination might be sufficient. As the Directive insists on the necessity of an “extensive” examination, it would be necessary in the German context to foresee explicitly a legal obligation for administration to proceed to such an “extensive” examination. On this point the Directive is not completely transposed. Furthermore German legislation does not cover all cases under Article 3(2), especially for partners with whom the Union citizen has a durable relationship, duly attested, but that is not officially recognised.
<b>Chapter II. RIGHT OF EXIT AND ENTRY</b>						
Art. 4.1	<b>Right of Exit</b>  Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid	No specific transposition measure; § 8 FreizügG/EU	§ 8 Ausweispflicht (1) Unionsbürger und ihre Familienangehörigen sind verpflichtet, 1. bei der Einreise in das oder der Ausreise aus dem Bundesgebiet einen Pass oder anerkannten	§ 8 Obligation to carry identification papers Union citizens and their family members are obliged, 1. when entering or leaving the Federal territory a)	N, Incomplete	Incomplete transposition  The only restriction on the right of exit is the obligation to hold a passport or passport substitute. For Union citizens and their family members this is consequence of § 8 FreizügG/EU, for Germans

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	passport shall have the right to leave the territory of a Member State to travel to another Member State.	Article 2 GG.	Passersatz a) mit sich zu führen und b) einem zuständigen Beamten auf Verlangen zur Prüfung auszuhändigen, Art 2 (1) Jeder hat das Recht auf die freie Entfaltung seiner Persönlichkeit, soweit er nicht die Rechte anderer verletzt und nicht gegen die verfassungsmäßige Ordnung oder das Sittengesetz verstößt.	to carry a passport or a recognised passport substitute on their person and, b) on request, to hand over such identification papers to a competent official for inspection, Article 2 (1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.		consequence of § 1 PassG, in combination with Article 2 GG (free development of personality) and missing restrictions in other legislation. This situation could be considered as a correct transposition of the directive, especially by using an <i>a contrario</i> argument. However there is no legislation providing explicitly a right of exit. Therefore article 4.1 is not correctly transposed.
Art. 4.2	No exit visa or equivalent formality may be imposed on the persons to whom paragraph 1 applies.	None			N, Incomplete	Incomplete transposition  No exit visa or equivalent formality is imposed by German legislation. However there is no disposition prohibiting the possibility of such formalities. This situation could be considered as a correct transposition of the directive, especially by using an <i>a contrario</i> argument. The situation is the same for family members having the nationality of a Member State and third country nationals.
Art. 4.3	Member States shall, acting in accordance with their laws, issue to their own nationals, and renew, an identity card or passport stating their nationality.	PassG, PersAuswG, especially § 1 PersAuswG and	§ 1 PersAuswG (1) Deutsche im Sinne des Artikels 116 Abs. 1 des Grundgesetzes, die das 16. Lebensjahr vollendet haben und nach den Vorschriften der Landesmeldegesetze der allgemeinen Meldepflicht unterliegen, sind verpflichtet, einen Personalausweis zu besitzen und ihn auf Verlangen einer zur Prüfung der Personalien	§ 1 (1) Germans in the meaning of the article 116 (1) of the Basic Law, who have completed the 16 <sup>th</sup> year of life and who, according to the regulations of the regional registration acts, are subject to the general obligation to register, are obliged, to possess an identity card and to submit it upon the requests of an authority	Y	Effective transposition  German authorities issue identity card or passport to Germans, because on the one hand Germans residing in Germany have the obligation to demand an identity card, and on the other hand a passport is issued on demand to any German. Those identity cards or passports clearly mention the German nationality of the concerned persons.

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		§§ 4, 6 PassG.	<p>ermächtigten Behörde vorzulegen; dies gilt nicht für Personen, die einen gültigen Paß besitzen und sich durch diesen ausweisen können.</p> <p>(2) 2Der Ausweis enthält neben dem Lichtbild des Ausweisinhabers und seiner Unterschrift ausschließlich folgende Angaben über seine Person: [...]</p> <p>9. Staatsangehörigkeit.</p> <p>§ 6 PassG (1) 1Der Pass wird auf Antrag ausgestellt.</p> <p>§ 4 PassG (1) 2Der Paß enthält neben dem Lichtbild des Paßinhabers und seiner Unterschrift ausschließlich folgende Angaben über seine Person: [...]</p> <p>10. Staatsangehörigkeit.</p>	<p>authorised to verify personal identity and details; this does not concern persons, who possess a valid passport and who can proof their identify with it.</p> <p>(2) The identity card contains, besides the photo and the signature of the holder of the identity card, exclusively the following information about his person: [...]</p> <p>9. Nationality</p> <p>§ 6 PassG (1) The passport shall be issued on application.</p> <p>§ 4 (1) The passport contains, besides the photo and the signature of the holder of the passport, exclusively the following information about his person: [...]</p> <p>9. Nationality</p>		Renewal of validity of passports or identity cards is not possible (§ 5 (4) PassG and § 2 (1) PersAuswG), what means that the concerned persons have to apply for a new passport or identity card when the old one expires.
Art.4.4	The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where the law of a Member State does not provide for identity cards to be issued, the period of validity of any passport on being issued or renewed shall be not less than five years.	PassG, PassV (especially Anlage 1a), PersAuswG § 1 PersAuswG	§ 1 PersAuswG (1) 1Deutsche im Sinne des Artikels 116 Abs. 1 des Grundgesetzes, die das 16. Lebensjahr vollendet haben und nach den Vorschriften der Landesmeldegesetze der allgemeinen Meldepflicht unterliegen, sind verpflichtet, einen Personalausweis zu besitzen und ihn auf Verlangen einer zur Prüfung der Personalien ermächtigten Behörde vorzulegen; dies gilt nicht für Personen, die	§ 1 (1) 1 Germans in the meaning of the article 116 (1) of the Basic Law, who have completed the 16 <sup>th</sup> year of life and who, according to the regulations of the regional registration acts, are subject to the general obligation to register, are obliged, to possess an identity card and to submit it upon the requests of an authority authorised to verify personal identity and details; this does	Y	Effective transposition  There is no explicit disposition providing that the passport shall be valid at least for all Member States. However, PassG does not contain any restriction of the spatial validity of passports, what means that validity should be for all countries. The Anlage 1a of PassV precise that the passports contain under the line “countries for which this passport is valid” the mention: “Für alle Länder / For all countries / Pour tous pays”.

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		<p>§ 1 PassG</p> <p>§ 5 PassG</p> <p>§ 1 PassV</p>	<p>einen gültigen Paß besitzen und sich durch diesen ausweisen können.</p> <p>§ 1 PassG (1) 1 Deutsche im Sinne des Artikels 116 Abs. 1 des Grundgesetzes, die aus dem Geltungsbereich dieses Gesetzes aus- oder in ihn einreisen, sind verpflichtet, einen gültigen Pass mitzuführen und sich damit über ihre Person auszuweisen.</p> <p>§ 5 PassG (1) 1 Der Reisepass, der Dienstpass und der Diplomatenpass sind zehn Jahre gültig. 2 Bei Personen, die das 24. Lebensjahr noch nicht vollendet haben, sowie im Fall des § 1 Abs. 3 sind sie sechs Jahre gültig.</p> <p>§ 1 PassV Der Reisepass der Bundesrepublik Deutschland ist nach dem in der Anlage 1 oder Anlage 1a abgedruckten Muster auszustellen.</p>	<p>not concern persons, who possess a valid passport and who can proof their identify with it.</p> <p>§ 1 PassG (1) 1 Germans in the meaning of the article 116 (1) of the Basic Law, who enter or leave the territory under the territorial scope of this act, are obliged, to carry a valid passport and to identify themselves with it.</p> <p>§ 5 PassG (1) 1 Passport, official passport and diplomatic passport are valid ten years. 2 For persons having not achieved the 24<sup>th</sup> year of life, and in case pursuant to § 1 (3), they are valid six years.</p> <p>§ 1 PassV The passport of the Federal Republic of Germany has to be issued pursuant to the model printed in Annex 1 or Annex 1a.</p>		<p>Concerning second part of article 4.4, Germany issues an identity card to Germans residing in Germany. Furthermore passports are valid ten years, or in some specific cases six years (§ 5 PassG).</p>
Art. 5.1	<p><b>Right on Entry</b></p> <p>1. Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport.</p>	<p>§ 2 (1), FreizügG/EU +</p> <p>(5) FreizügG/EU</p>	<p>(1) Freizügigkeitsberechtigte Unionsbürger und ihre Familienangehörigen haben das Recht auf Einreise und Aufenthalt nach Maßgabe dieses Gesetzes.</p> <p>(5) 1 Für einen Aufenthalt von Unionsbürgern von bis zu drei Monaten ist der Besitz eines gültigen Personalausweises oder Reisepasses ausreichend. 2 Familienangehörige, die nicht</p>	<p>(1) Union citizens entitled to freedom of movement shall have the right to enter and reside in the Federal territory pursuant to this Act.</p> <p>(5) 1 The possession of a valid identity card or passport shall be sufficient for a residence by Union citizens of up to three months.</p>	Y	<p>Effective transposition</p> <p>The only document Union citizens have to carry on them when they enter Germany is a valid identity card or a passport. Those are indeed sufficient to reside for up to three months. And § 2 (4) clearly excludes other formalities that may be imposed for the entry.</p> <p>Concerning family members who are</p>

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			Unionsbürger sind, haben das gleiche Recht, wenn sie im Besitz eines anerkannten oder sonst zugelassenen Passes oder Passersatzes sind und sie den Unionsbürger begleiten oder ihm nachziehen.	2 Family members who are not Union citizens shall have the same right where they are in possession of a recognised or otherwise approved passport or passport substitute and where they accompany or join the Union citizen.		not Union citizens, for a residence up to three month, only a passport is required. However there is a supplementary entry requirement, in accordance with article 5.2 of the directive (see below).
	No entry visa or equivalent formality may be imposed on Union citizens.	§ 2 Abs. 4 Satz 1 FreizügG/EU	Unionsbürger bedürfen für die Einreise keines Visums und für den Aufenthalt keines Aufenthaltstitels.	Union citizens do not require a visa in order to enter the Federal territory or a residence title in order to residence in the Federal territory.	Y	Effective transposition
Art. 5.2	2. Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law. For the purposes of this Directive, possession of the valid residence card referred to in Article 10 shall exempt such family members from the visa requirement.	§ 2 Abs. 4 Sätze 2 +  3 FreizügG/EU (+ §§ 4,6 AufenthG)	2 Familienangehörige, die nicht Unionsbürger sind, bedürfen für die Einreise eines Visums nach den Bestimmungen für Ausländer, für die das Aufenthaltsgesetz gilt.  3 Der Besitz einer gültigen Aufenthaltskarte eines anderen Mitgliedstaates der Europäischen Union nach Artikel 5 Abs. 2 der Richtlinie 2004/38/EG [...] entbindet von der Visumpflicht.	2 Family members who are not Union citizens shall require a visa in order to enter the Federal territory according to the provisions for foreigners for whom the Residence Act applies.  3 Holders of a valid residence card of another Member State of the European Union pursuant to Article 5 (2) of directive 2004/38/EC [...] shall be exempted from the visa obligation.	Y	Effective transposition  National provisions about visa requirements seem to be in accordance with Regulation 539/2001. § 4 AufenthG requires a visa or other residence title as long as it is not contrary to law of Union or a statutory instrument. For the second part, sentence 3 clearly refers to article 5.2 of the directive, and by this way is in accordance with it.



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			Staatsangehörigen begleiten oder zu ihm „nachreisen“ und einen Aufenthaltstitel der unter 2 a) genannten Staaten vorweisen oder die Aufenthaltskarte nach Artikel 10 der RL 2004/38/EG vorzeigen;....“	present a residence document of an under 2a specified state or the residence card pursuant to article 10 of the directive 2004/38/EG.“		provided for in Article 10 of the Directive. By using an <i>a contrario</i> argument, Regulation 562/2006 is a sufficient transposition measure, as the Schengen rules are directly applicable.
Art. 5.4	4. Where a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence.	none			NT	Gap in transposition  There is no rule that gives this possibility. Germany does refer to the fact that the Federal police already gives this possibility. However the opportunity is a right given to Union citizens and their family members by the Directive which is not sufficiently ensured by this practice.
Art.5.5	5. The Member State may require the person concerned to report his/ her presence within its territory within a reasonable and non-discriminatory period of time. Failure to comply with this requirement may make the person concerned liable to proportionate and non-discriminatory sanctions.	§§ 11, 16 MRRG + Länderrecht	§11 Allgemeine Meldepflicht  Wer eine Wohnung bezieht, hat sich bei der Meldebehörde anzumelden. § 16 Besondere Meldepflicht in Beherbergungsstätten, Krankenhäusern, Heimen und ähnlichen Einrichtungen (1) Soweit für die Unterkunft in Beherbergungsstätten eine Ausnahme von der Pflicht zur Anmeldung bei der Meldebehörde zugelassen ist, haben die beherbergten Personen Meldevordrucke handschriftlich auszufüllen und zu unterschreiben; beherbergte Ausländer haben sich dabei gegenüber dem Leiter der	§ 11 General obligation to register A person moving in an apartment has to register at the Registration authority. § 16 Special obligation to register in hotels, hospitals, nursing homes and similar facilities (1) As far as an exception to the obligation to register is authorised for accommodation in hotels, the accommodated persons have to fill and sign in handwritten form the pre-printed registration formulas; accommodated foreigners have to identify themselves to the director of the hotel or his representative by the	N, Incorrect	Incorrect transposition  §11 MRRG is completed for the moment by Länderrecht. As a result of the federal system's reform, a National law should initially be passed in spring 2008, and apply in 2009 (cf. Antwort auf die kleine Anfrage, Ds. 16/7383). The period to register is generally from one to two weeks, with exception of Rheinland-Pfalz, where it has to be immediate. The sanction is generally a fine of 500€ 1000€ in NRW, and 2500€ in Sachsen-Anhalt. Bayern, Hamburg and Hessen do not fix a maximum amount, what means in application of § 17 OWiG that the maximum fine is 1000€ In every case the sanction is the same for Germans as for



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			<p>Beherbergungsstätte oder seinem Beauftragten durch die Vorlage eines gültigen Identitätsdokuments auszuweisen.</p> <p>(2) 1Soweit das Landesrecht für die Unterkunft in Krankenhäusern, Pflegeheimen oder ähnlichen Einrichtungen Ausnahmen von der Pflicht zur Anmeldung bei der Meldebehörde zulässt, haben die in einer solchen Einrichtung aufgenommenen Personen dem Leiter der Einrichtung oder seinem Beauftragten die durch das Landesrecht bestimmten Angaben über ihre Identität zu machen.</p>	<p>presentation of a valid identity document.</p> <p>(2) As far as an exception to the obligation to register is authorised by regional law for accommodation in hospitals, nursing rooms or similar facilities, the concerned persons have to give to the director of the facility or his representative the by regional law précised information about their identity.</p>		<p>foreigners. If the offence is due to negligence, and not committed intentionally, the fine is maximum the half of the fixed amount. All these register requirements and sanctions are non-discriminatory. However, sanctions do seem disproportionate. The only clear infringement is due to the situation in Rheinland-Pfalz since the registration is immediate, which means that registration must be done "without culpable delay". However as a new national legislation is in preparation, it will be important to check if the new legislation is in accordance with the directive.</p>
		Concerning delay for registration and sanctions: Baden-Württemberg:	§ 15 MG, BW: 1 Wo; § 36: 500€	§ 15 MG, BW: 1 Week; § 36: 500€		
		Bayern:	§ 13 MeldeG, BY: 1 Wo § 35: „mit Geldbuße ...“	§ 13 MeldeG, BY: 1 Week § 35: „mit Geldbuße ...“		
		Berlin:	§ 11 MeldeG, BE: 2 Wo; § 30: 500€	§ 11 MeldeG, BE: 2 Weeks; § 30: 500€		
		Brandenburg:	§ 12 BbgMeldeG, BB: 2 Wo; § 34: 500€	§ 12 BbgMeldeG, BB: 2 Week; § 34: 500€		
		Bremen:	§ 13 MG, HB: 2 Wo; § 35: 500 €	§ 13 MG, HB: 2 Weeks; § 35: 500 €		
		Hamburg:	§ 12 HmbMG, HH: 1 Wo; § 36: „Geldbuße“	§ 12 HmbMG, HH: 1 Week; § 36: „Geldbuße“		
		Hessen:	§ 13 HMG, HE: 1 Wo; § 38: „Geldbuße“	§: 13 HMG, HE: 1 Week; § 38: „Geldbuße“		
		Mecklenburg-Vorpommern:	§ 13 LMG, MV: 1 Wo; § 37: 500 €	§ 13 LMG, MV: 1 Week; § 37: 500 €		
		Niedersachsen:	§ 9 NMG, NI: 1Wo; §§ 37,38: 500€	§ 9 NMG, NI: 1Week; §§ 37,38 500€		
		Nordrhein-Westfalen:	§ 13 MG NRW : 1 Wo.; § 37: 1000€	§ 13 MG NRW : 1 Week.; § 37: 1000€		
			§ 13 MG, RP: unverzüglich; §	§ 13 MG, RP: immediately; §		

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		Rheinland-Pfalz:  Saarland:  Sachsen:  Sachsen-Anhalt:  Schleswig-Holstein:  Thüringen:	36: 500€ § 13 MG, SL: 1 Wo; § 39: 500€  § 10 SächsMG, SN: 2 Wo; § 35: 500€ § 9 MG LSA, ST: 1 Wo; § 37: 2500€ § 11 LMG, SH: 2 Wo; § 31: 500€  § 13 ThürMeldeG94, TH: 1 Wo; § 34: 500€	36: 500€ § 13 MG, SL: 1 Week; § 39: 500€  § 10 SächsMG, SN: 2 Weeks; § 35: 500€ § 9 MG LSA, ST: 1 Week; § 37: 2500€ § 11 LMG, SH: 2 Weeks; § 31: 500€  § 13 ThürMeldeG94, TH: 1 Week; § 34: 500€		
<b>Chapter III. RIGHT OF RESIDENCE</b>						
Art. 6.1	<b>Right of residence up to three months</b>  1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.	§ 2 Abs. 5 Satz 1 FreizügG/EU	1 Für einen Aufenthalt von Unionsbürgern von bis zu drei Monaten ist der Besitz eines gültigen Personalausweises oder Reisepasses ausreichend.	For a residence by Union citizens of up to three months the possession of a valid identity card or passport shall be sufficient.	Y	Effective transposition  Concerning jobseekers, § 2 (2) no. 1 FreizügG/EU provides the right of residence for more than three months to jobseekers, as well as to workers or persons on vocational training. This means that EU citizens who can justify that they are jobseekers have the right of residence for more than three months in Germany.
Art. 6.2	2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.	§ 2 Abs. 5 Satz 2 FreizügG/EU	2 Familienangehörige, die nicht Unionsbürger sind, haben das gleiche Recht, wenn sie im Besitz eines anerkannten oder sonst zugelassenen Passes oder Passersatzes sind und sie den Unionsbürger begleiten oder ihm nachziehen.	Family members who are not Union citizens shall have the same right where they are in possession of a recognised or otherwise approved passport or passport substitute and where they accompany or join the Union citizen.	Y	Effective transposition
Art.7.1 (a)	<b>Right of residence for more than three months</b>  All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they: (a) are workers or self-employed persons in the host Member State; or	§ 2 Abs. 2 Nr. 1,2,3 FreizügG/EU	Gemeinschaftsrechtlich freizügigkeitsberechtigt sind: 1. Unionsbürger, die sich als Arbeitnehmer, zur Arbeitssuche oder zur Berufsausbildung aufhalten wollen, 2. Unionsbürger, wenn sie zur Ausübung einer selbständigen Erwerbstätigkeit berechtigt sind (niedergelassene selbständige	The following persons are entitled to freedom of movement under Community law: 1. Union citizens who wish to reside in the Federal territory as employees or for the purposes of seeking employment or carrying out vocational training, 2. Union citizens who are	Y	Effective transposition  Germany also specifically refers to service providers,  The condition of the being entitled to pursue an activity is only the logical limitation of the right of residence in case where the provided service would be illegal or immoral

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			<p>Erwerbstätige), 3. Unionsbürger, die, ohne sich niederzulassen, als selbständige Erwerbstätige Dienstleistungen im Sinne des Artikels 50 des Vertrages zur Gründung der Europäischen Gemeinschaft erbringen wollen (Erbringer von Dienstleistungen), wenn sie zur Erbringung der Dienstleistung berechtigt sind</p>	<p>entitled to pursue an independent economic activity (established self-employed persons), 3. Union citizens who, without taking up residence in the Federal territory, wish to render services as self-employed persons pursuant to Article 50 of the Treaty establishing the European Community (service providers), provided that they are entitled to provide the services concerned,</p>		<p>(“sittenwidrig”).</p> <p>For the rest, German legislation does not contain a precise definition of workers or self-employed persons, in order to refer to Community definition of those terms (cf BMI Anwendungshinweise, 22.12.2004, p.392).</p> <p>Germany also specifically refers to jobseekers who are entitled to reside in Germany with the only condition to hold a valid ID or passport, and this right is not limited by the German legislation to 6 months. Union citizens on vocational training are also treated as workers for the purpose of the right of entry and residence.</p>
Art.7.1 (b)	(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or	§ 2Abs. 2 Nr. 5, § 4 FreizügG/EU	5. nicht erwerbstätige Unionsbürger unter den Voraussetzungen des § 4, (1 Nicht erwerbstätige Unionsbürger, ihre Familienangehörigen und ihre Lebenspartner, die den Unionsbürger begleiten oder ihm nachziehen, haben das Recht nach § 2 Abs. 1, wenn sie über ausreichenden Krankenversicherungsschutz und ausreichende Existenzmittel verfügen.)	5. non economically active Union citizens, subject to the requirements of § 4, (1 Non economically active Union citizens, their family members and partners who accompany or join the Union citizen shall possess the right pursuant to § 2) if they have sufficient sickness insurance cover and sufficient resources.)	Y	<p>Effective transposition</p> <p>The condition of having sufficient resources is literally transposed, but without the explicit precision that they do not become a burden on the social assistance system. This condition is however implicitly set in this formulation, as the concerned persons must have sufficient sickness insurance cover and sufficient resources,</p> <p>The comprehensive sickness insurance cover is transposed by the condition of a “sufficient” sickness insurance cover. This condition is fulfilled if the insurance covers in the extend of public health insurance the following services:</p> <ul style="list-style-type: none"> <li>• medical and dental treatment,</li> </ul>

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						<ul style="list-style-type: none"> <li>• supply of medicaments,</li> <li>• hospital treatment,</li> <li>• medical achievements for rehabilitation and</li> <li>• achievements with pregnancy and birth (cf. BMI Anwendungshinweise, 22.12.2004, p.361).</li> </ul> <p>This condition can be considered as equivalent to the “comprehensive insurance cover” as in the Directive.</p>
Art.7.1 (c)	(c) - are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; <u>and</u>	§ 2 Abs. 2 Nr. 5, § 4 FreizügG/EU	5. nicht erwerbstätige Unionsbürger unter den Voraussetzungen des § 4, (§5a 1 [...] 2 Ein nicht erwerbstätiger Unionsbürger im Sinne des § 2 Abs. 2 Nr. 5, der eine Bescheinigung vorlegt, dass er im Bundesgebiet eine Hochschule oder andere Ausbildungseinrichtung besucht, muss die Voraussetzungen nach Satz 1 Nr. 3 (Nachweis über ausreichenden Krankenversicherungsschutz und ausreichende Existenzmittel) nur glaubhaft machen.)	5. non economically active Union citizens, subject to the requirements of § 4, (§ 5a 1 [...] 2 A non economically active Union citizen within the meaning of § 2 (2), no. 5, who furnishes written confirmation that he or she is attending a college of higher education or another educational establishment in the Federal territory shall be required solely to provide substantiation of fulfilment of the conditions pursuant to sentence 1, no. 3(sufficient sickness insurance cover and sufficient resources).)	Y	<p>Effective transposition</p> <p>§ 2 Abs. 2 Nr. 5 is clearly including students, as shows especially § 5a (1) 2 (A non economically active Union citizen within the meaning of Abs. 2 Nr. 5, who furnishes written confirmation that he or she is attending a college of higher education or another educational establishment in the Federal territory shall be required solely to provide substantiation of fulfilment of the conditions pursuant to sentence 1, Nr. 3)</p> <p>The formulation is not fixed, especially the term of “another educational establishment” is very large and can include every kind of organized educational training, including vocational training. This gives the possibility to adopt the communitarian definition of this term.</p> <p>The German provision is broad enough to cover public and private establishments accredited or</p>

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	- have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or	§ 2 Abs. 2 Nr. 5,  § 5a (1) Satz 2 FreizügG/EU	5. nicht erwerbstätige Unionsbürger unter den Voraussetzungen des § 4 (1 Nicht erwerbstätige Unionsbürger, ihre Familienangehörigen und ihre Lebenspartner, die den Unionsbürger begleiten oder ihm nachziehen, haben das Recht nach § 2 Abs. 1, wenn sie über ausreichenden Krankenversicherungsschutz und ausreichende Existenzmittel verfügen.),  (§5a 1 [...] 2 Ein nicht erwerbstätiger Unionsbürger im Sinne des § 2 Abs. 2 Nr. 5, der eine Bescheinigung vorlegt, dass er im Bundesgebiet eine Hochschule oder andere Ausbildungseinrichtung besucht, muss die Voraussetzungen nach Satz 1 Nr. 3 (Nachweis über ausreichenden Krankenversicherungsschutz und ausreichende Existenzmittel) nur glaubhaft machen.)	5. non economically active Union citizens, subject to the requirements of § 4 (1 Non economically active Union citizens, their family members and partners who accompany or join the Union citizen shall possess the right pursuant to § 2) if they have sufficient sickness insurance cover and sufficient resources.)  (§ 5a 1 [...] 2 A non economically active Union citizen within the meaning of § 2 (2), no. 5, who furnishes written confirmation that he or she is attending a college of higher education or another educational establishment in the Federal territory shall be required solely to provide substantiation of fulfilment of the conditions pursuant to sentence 1, no. 3(sufficient sickness insurance cover and sufficient resources).)	Y	recognised in Germany. Effective transposition  Students do not have to bring the proof of the fulfilment of the condition of sufficient resources and sickness insurance. They are only required to accredit (provide substantiation) the fact they are fulfilling those conditions. A declaration would generally be sufficient even if there is no further definition of how the fulfilment of the conditions can be accredited. For the fulfilment of the condition of sufficient resources, a declaration is considered sufficient by the administrative practice (cf BMI Anwendungshinweise, 22.12.2004, p.365).
Art.7.1 (d)	(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).	§ 2 (2) 6., § 3 (1), §4 FreizügG/EU	§2 (2) 6. Familienangehörige unter den Voraussetzungen der §§ 3 und 4,  §3 (1) 1 Familienangehörige der in § 2 Abs. 2 Nr. 1 bis 5 genannten Unionsbürger haben das Recht nach § 2 Abs. 1, wenn sie den Unionsbürger begleiten oder ihm nachziehen.	§2 (2) 6. Family members, subject to the requirements of §§ 3 and 4,  1 Family members of the Union citizens specified in § 2 (2), nos. 1 to 5 shall possess the entitlement pursuant to § 2 (1) if they accompany or join the Union citizen.	Y	Effective transposition  Family members of Union citizens have the right of entry and residence if they accompany or join the Union citizen. These provisions apply regardless of nationality.  So family members of all categories (1-5) have the right provided they are joining and accompany the EU

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			<p>2 Für Familienangehörige der in § 2 Abs. 2 Nr. 5 genannten Unionsbürger gilt dies nach Maßgabe des § 4.</p> <p>§ 4 Nicht erwerbstätige Freizügigkeitsberechtigte 1 Nicht erwerbstätige Unionsbürger, ihre Familienangehörigen und ihre Lebenspartner, die den Unionsbürger begleiten oder ihm nachziehen, haben das Recht nach § 2 Abs. 1, wenn sie über ausreichenden Krankenversicherungsschutz und ausreichende Existenzmittel verfügen. 2 Hält sich der Unionsbürger als Student im Bundesgebiet auf, haben dieses Recht nur sein Ehegatte, Lebenspartner und seine Kinder, denen Unterhalt gewährt wird.</p>	<p>2 For family members of the Union citizens specified in § 2 (2), no. 5 this entitlement shall apply subject to the conditions stipulated in § 4.</p> <p>§ 4 Non economically active persons entitled to freedom of movement 1 Non economically active Union citizens, their family members and partners who accompany or join the Union citizen shall possess the right pursuant to § 2 (1) if they have sufficient sickness insurance cover and sufficient resources. 2 If the Union citizen is resident in the Federal territory as a student, this right shall extend only to his or her spouse, partner in life and children for whom maintenance is provided.</p>		<p>citizen with the primary right of entry and residence, and for workers, self-employed persons, providers of services, job seekers and vocational trainers, there are no conditions regarding resources.</p> <p>For students and other non economically active persons (other than job seekers and trainee), the right is only granted provided the requirements under § 4 are met, <i>i.e.</i> sufficient sickness insurance cover and sufficient resources. The person who has to proof these sufficient resources and sickness insurance cover is the Union citizen, who has to proof that he fulfils these conditions for himself/herself and his/her family members. However the family members do not have to bring such proof in order to have their right of entry and residence.</p>
Art. 7.2	2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).	<p>§ 3 (1) FreizügG/EU +</p> <p>§ 3 (2) FreizügG/EU</p>	<p>(1) 1 Familienangehörige der in § 2 Abs. 2 Nr. 1 bis 5 genannten Unionsbürger haben das Recht nach § 2 Abs. 1, wenn sie den Unionsbürger begleiten oder ihm nachziehen.</p> <p>2 Für Familienangehörige der in § 2 Abs. 2 Nr. 5 genannten Unionsbürger gilt dies nach Maßgabe des § 4.</p> <p>(2) Familienangehörige sind 1. der Ehegatte und die Verwandten in absteigender Linie der in § 2 Abs. 2 Nr. 1 bis 5 und 7 genannten Personen oder ihrer Ehegatten, die noch nicht 21 Jahre</p>	<p>(1) 1 Family members of the Union citizens specified in § 2 (2), nos. 1 to 5 shall possess the entitlement pursuant to § 2 (1) if they accompany or join the Union citizen.</p> <p>2 For family members of the Union citizens specified in § 2 (2), no. 5 this entitlement shall apply subject to the conditions stipulated in § 4.</p> <p>(2) Family members are 1. the spouse and relatives in the descending line of the persons stated in § 2 (2), nos. 1 to 5 and 7 or of their spouses who are under 21 years of age,</p>	Y	<p>Effective transposition.</p> <p>FreizügG/EU does not make any difference between the nationalities of family members on this point. It so does apply to family members who are not nationals of a Member State.</p> <p>Registered partners are only covered if the Union citizen is entering or residing as a non economically active Union citizen (see § 2 Abs. 2 Nr. 5, non economically active Union citizens, subject to the requirements of § 4 (1) Non economically active Union citizens, their family members and partners in life who accompany</p>

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		§ 3 (6) FreizügG/EU	<p>alt sind, 2. die Verwandten in aufsteigender und in absteigender Linie der in § 2 Abs. 2 Nr. 1 bis 5 und 7 genannten Personen oder ihrer Ehegatten, denen diese Personen oder ihre Ehegatten Unterhalt gewähren. (6) Auf die Einreise und den Aufenthalt des nicht freizügigkeitsberechtigten Lebenspartners einer nach § 2 Abs. 2 Nr. 1 bis 4 zur Einreise und zum Aufenthalt berechtigten Person sind die für den Lebenspartner eines Deutschen geltenden Vorschriften des Aufenthaltsgesetzes anzuwenden.</p>	<p>2. relatives in the ascending and descending line of the persons specified in § 2 (2), nos. 1 to 5 and 7 or of the latter's spouses, for whom these persons or their spouses provide maintenance.  (6) The provisions of the Residence Act pertaining to the partner in life of a German shall apply to the entry and residence of the partner of a person who is entitled to enter and reside in the Federal territory in accordance with § 2 (2), nos. 1 to 4, if said partner is not himself or herself entitled to freedom of movement.</p>		<p>or join the Union citizen shall possess the right pursuant to § 2) if they have sufficient sickness insurance cover and sufficient resources.)  Otherwise, registered partners have a facilitated right of entry and residence pursuant to § 3(6) FreizügG/EU (For more details see Art. 3(2)(b)).</p>
Art. 7.3 (a)	3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances: (a) he/she is temporarily unable to work as the result of an illness or accident;	§ 2 (3) 1 1. FreizügG/EU	<p>1 Das Recht nach Absatz 1 bleibt für Arbeitnehmer und selbständig Erwerbstätige unberührt bei  1. vorübergehender Erwerbsminderung infolge Krankheit oder Unfall,</p>	<p>1 The right pursuant to sub-§ 1 shall remain unaffected for employees and self-employed persons in the event of  1. a temporary reduction in earning capacity as the result of an illness or accident,</p>	N, Incorrect	<p>Incorrect transposition  The legislation concerns “reduction of earning capacity”. This applies certainly to the case of a person “temporarily unable to work”, but even to the case of a person who, without being totally unable to work, has a lost of income due to an illness or an accident, or who is unable to have a full-time economic activity. On this point transposition is correct.  However, the German act refers to the “retention of the right of residence”, whereas the Directive clearly speaks not of the right of residence but of the status of worker. Transposition appears for this reason being incorrect. All specific protections linked to the status of worker are however effectively</p>

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						guaranteed by German legislation, and especially the protection from expulsion, as expulsion is possible only if the right of entry or residence is lost.
Art. 7.3 (b)	(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with the relevant employment office;	§2 (3) 1 2. FreizügG/EU	1 Das Recht nach Absatz 1 bleibt für Arbeitnehmer und selbständig Erwerbstätige unberührt bei  2. unfreiwilliger durch die zuständige Agentur für Arbeit bestätigter Arbeitslosigkeit oder Einstellung einer selbständigen Tätigkeit infolge von Umständen, auf die der Selbständige keinen Einfluss hatte, nach mehr als einem Jahr Tätigkeit,	1 The right pursuant to sub-§ 1 shall remain unaffected for employees and self-employed persons in the event of  2. involuntary unemployment confirmed by the competent Federal Employment Agency or the cessation of a self-employed activity due to circumstances over which the self-employed person had no influence, after more than one year of activity,	Y	Effective transposition.  FreizügG/EU does not make any difference between employees and self-employed persons. German version uses the term “Beschäftigung”, who clearly applies to both workers and self-employed persons. This is also confirmed by the specific reference to cessation of self-employment for circumstances over which the self-employed person does not have influence which is equivalent to “involuntary unemployment” applied to self-employed people.  Registration as job-seeker is replaced by the confirmation of the Federal Employment Agency
Art. 7.3 (c)	(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;	§2 (3) 1 2. + §2 (3) 2 FreizügG/EU	§2 (3) 2 Bei unfreiwilliger durch die zuständige Agentur für Arbeit bestätigter Arbeitslosigkeit nach weniger als einem Jahr Beschäftigung bleibt das Recht aus Absatz 1 während der Dauer von sechs Monaten unberührt.	§2 (3) 2 In the case of involuntary unemployment confirmed by the Federal Employment Agency after a period of employment of less than one year, the right pursuant to sub§ 1 shall remain unaffected for a period of six months.	Y	Effective transposition  Sentence 2 has a general formulation and applies to all situations where the person is involuntary unemployed after an employment of less than a year. This person has the right of residence for the period of six month, which is the minimum settled by the directive. The structure of the German act is thus broader in its formulation: § 2 (3) 1 2. FreizügG/EU refers to involuntary unemployment after one year of activity; § 2 (3) 2 FreizügG/EU refers to involuntary unemployment



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						<p>after less than one year of activity. Thus it complies with the Dir objective.</p> <p>The term of “involuntary employment” is not clearly defined, in order to adapt it to the Community concept.</p> <p>The unemployment has to be confirmed by the Federal Employment Agency in order to be “duly recorded”.</p>
Art.7.3 (d)	(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.	§2 (3) 1 3. FreizügG/EU	1 Das Recht nach Absatz 1 bleibt für Arbeitnehmer und selbständig Erwerbstätige unberührt bei 3. Aufnahme einer Berufsausbildung, wenn zwischen der Ausbildung und der früheren Erwerbstätigkeit ein Zusammenhang besteht; der Zusammenhang ist nicht erforderlich, wenn der Unionsbürger seinen Arbeitsplatz unfreiwillig verloren hat.	1 The right pursuant to sub-§ 1 shall remain unaffected for employees and self-employed persons in the event of 3. the person concerned taking up vocational training, where the training is related to the previous employment; such a relation is not necessary where the Union citizen has lost his or her job involuntarily.	Y	Effective transposition
Art. 7.4	4. By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and family member children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall apply to his/her family member direct relatives in the ascending lines and those of his/her spouse or registered partner.	§ 4 Satz 2 FreizügG/EU,  § 36 AufenthG	2 Hält sich der Unionsbürger als Student im Bundesgebiet auf, haben dieses Recht nur sein Ehegatte, Lebenspartner und seine Kinder, denen Unterhalt gewährt wird.  § 36 Nachzug der Eltern und sonstiger Familienangehöriger  (2) 1 Sonstigen Familienangehörigen eines Ausländers kann zum Familiennachzug eine Aufenthaltserlaubnis erteilt werden, wenn es zur Vermeidung	2 If the Union citizen is resident in the Federal territory as a student, this right shall extend only to his or her spouse, partner and children for whom maintenance is provided.  § 36 Subsequent immigration of parents and other family members  (2) Other family members of a foreigner may be granted a residence permit for the purpose of subsequent immigration to join the foreigner, if necessary in order to avoid particular	N, Incorrect	<p>Incorrect transposition</p> <p>Effective transposition for the first part limiting the scope of family members of students.</p> <p>For second part, the only transposition could come from § 36 AufenthG, with same critics as those under art. 3.2 (a) (see above).</p>

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			einer außergewöhnlichen Härte erforderlich ist. 2 Auf volljährige Familienangehörige sind § 30 Abs. 3 und § 31, auf minderjährige Familienangehörige ist § 34 entsprechend anzuwenden.	hardship. § 30 (3) and § 31 shall apply mutatis mutandis to adult family members and § 34 shall apply mutatis mutandis to minor family members.		
Art. 8.1	<p><b>Administrative formalities for Union citizens</b></p> <p>1. Without prejudice to Article 5(5), for periods of residence longer than three months, the host Member State may require Union citizens to register with the relevant authorities.</p>	§ 5 (3) FreizügG/EU, MRRG, Landesrecht	<p>1 Die zuständige Ausländerbehörde kann verlangen, dass die Voraussetzungen des Rechts nach § 2 Abs. 1 drei Monate nach der Einreise glaubhaft gemacht werden.</p> <p>2 Für die Glaubhaftmachung erforderliche Angaben und Nachweise können von der zuständigen Meldebehörde bei der meldebehördlichen Anmeldung entgegengenommen werden.</p>	<p>1 The competent foreigners authority may require fulfilment of the requirements pertaining to the entitlement pursuant to § 2 (1) to be substantiated within three months of the foreigner concerned entering the Federal territory.</p> <p>2 The competent registration office may take receipt of the information and documents required for substantiation at the time of registration with the said office.</p>	Y	<p>Effective transposition</p> <p>A first registration is necessary in accordance with article 5.5. This registration is the only strictly necessary registration. For a residence longer than three months, the competent authority can just ask the Union citizen to accredit that he fulfils the residence requirements. This does not mean that there is a need for a second registration. Furthermore the information and documents required for substantiation can be produced during the first registration. This means that the EU citizen has to register within up to two weeks, under the same conditions as German nationals. This first registration is limited to the reporting of the EU citizen's presence (see Article 5(5) for more details). There is no obligation to produce specific documents attesting the right of residence if the period of residence is longer than three months at this moment. Identity and nationality of the EU citizen are however known by the competent authority after this first registration. If the EU citizens resides more than three months, the competent foreigners' authority may request the EU citizen to produce the</p>

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						documents attesting his/her right of residence within three months after his/her arrival in Germany. Thus, there is no second registration, but instead verification whether the EU citizen fulfils the requirements of his/her right of residence. If requested, the deadline for the response to this verification, which is meant to be (quasi-)systematic, is three months after arrival in Germany. This verification can be avoided by the EU citizen if he/she produces the necessary documents with his/her first registration. Otherwise he/she will have to produce those documents upon request of the competent authority within the three months deadline after his/her arrival.
Art. 8.2	2. The deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be issued immediately, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions.	§ 5 (1) + (3) FreizügG/EU	(3) Die zuständige Ausländerbehörde kann verlangen, dass die Voraussetzungen des Rechts nach § 2 Abs. 1 drei Monate nach der Einreise glaubhaft gemacht werden.  (1) Freizügigkeitsberechtigten Unionsbürgern und ihren Familienangehörigen mit Staatsangehörigkeit eines Mitgliedstaates der Europäischen Union wird von Amts wegen unverzüglich eine Bescheinigung über das Aufenthaltsrecht ausgestellt.	(3) The competent foreigners authority may require fulfilment of the requirements pertaining to the entitlement pursuant to § 2 (1) to be substantiated within three months of the foreigner concerned entering the Federal territory.  (1) Union citizens entitled to freedom of movement and their family members who are nationals of a Member State of the European Union shall be issued a certificate confirming the right of residence ex officio forthwith by the competent authority.	Y (Not for job seekers)	Effective transposition  The deadline is respected by the period of three months in which requirements must be substantiated. Deadline for registration under Article 5(5) of the Directive is indeed one or two weeks, as for nationals. Another registration is not necessary, in order to avoid too much administrative procedures for Union citizens.  Particular requirements for Union citizens (i.e., proof of meeting the condition) that do not exist for Germans can be produced during a period of three months. On the first registration, only the same documents as for Germans are required (especially proof of the

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						<p>residence).</p> <p>A registration certificate is issued immediately pursuant to § 5(1) FreizügG/EU.</p> <p>As there is no particular registration for Union citizens and their family members, there are no specific sanctions for non-respect of such an obligation. However general sanctions of non-respect of registration obligation apply as under Art. 5.5 of the Directive.</p> <p>As far as EU law provides an exception for jobseekers who consequently do not have to register necessarily during the first three months of residence, Germany does not correctly transpose this point, as there is no exception in German law for registration of jobseekers.</p>
Art. 8.3	3. For the registration certificate to be issued, Member States may only require that — Union citizens to whom point (a) of Article 7(1) applies present a valid identity card or passport, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons,	§ 5a (1) 1 1. + 2. FreizügG/EU	1) 1 Die zuständige Behörde darf für die Ausstellung der Bescheinigung nach § 5 Abs. 1 von einem Unionsbürger den gültigen Personalausweis oder Reisepass und im Fall des 1. § 2 Abs. 2 Nr. 1, wenn er nicht Arbeitssuchender ist, eine Einstellungsbestätigung oder eine Beschäftigungsbescheinigung des Arbeitgebers, 2. § 2 Abs. 2 Nr. 2 einen Nachweis über seine selbständige Tätigkeit [verlangen]	(1) For the purpose of issuance of the certificate pursuant to § 5 (1), the competent authority may require an Union citizen to furnish their valid identity card or passport and, in the case of 1. § 2 (2), no. 1, where the Union citizen is not a job-seeker, a confirmation of engagement from the employer or a certificate of employment, 2. § 2 (2), no. 2, proof of the independent economic activity,	Y	<p>Effective transposition</p> <p>Certificate pursuant to § 5(1) is the registration certificate. The required documents are exactly those provided by the directive.</p>
	— Union citizens to whom point (b) of Article 7(1) applies present a valid identity card or passport and provide	§ 5a (1) 1 3. FreizügG/EU	1) 1 Die zuständige Behörde darf für die Ausstellung der Bescheinigung nach § 5 Abs. 1	(1) For the purpose of issuance of the certificate pursuant to § 5 (1), the competent authority	Y	<p>Effective transposition</p> <p>The conditions laid down in art. 7(1)</p>

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	proof that they satisfy the conditions laid down therein,		von einem Unionsbürger den gültigen Personalausweis oder Reisepass und im Fall des § 2 Abs. 2 Nr. 5 einen Nachweis über ausreichenden Krankenversicherungsschutz und ausreichende Existenzmittel verlangen.	may require an Union citizen to furnish their valid identity card or passport and, in the case of § 2 (2), no. 5, proof of sufficient sickness insurance cover and sufficient resources.		(b) are the existence of sufficient sickness insurance cover and sufficient resources. Proof of those conditions can be required and are required, in accordance with the directive. There are no indications in the administrative guidelines precisising which specific documents are necessary to prove those conditions.
	— Union citizens to whom point (c) of Article 7(1) applies present a valid identity card or passport, provide proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover and the declaration or equivalent means referred to in point (c) of Article 7(1). Member States may not require this declaration to refer to any specific amount of resources.	§ 5a (1) 2 FreizügG/EU	2 Ein nicht erwerbstätiger Unionsbürger im Sinne des § 2 Abs. 2 Nr. 5, der eine Bescheinigung vorlegt, dass er im Bundesgebiet eine Hochschule oder andere Ausbildungseinrichtung besucht, muss die Voraussetzungen nach Satz 1 Nr. 3 nur glaubhaft machen.	A non economically active Union citizen within the meaning of § 2 (2), no. 5, who furnishes written confirmation that he or she is attending a college of higher education or another educational establishment in the Federal territory shall be required solely to provide substantiation of fulfilment of the conditions pursuant to sentence 1, no. 3.	N, Incomplete	Incomplete transposition  Students do not have to bring the proof of the fulfilment of the condition of sufficient resources and sickness insurance. They are only required to accredit the fact they are fulfilling those conditions. A declaration would generally be sufficient even if there is no further definition of how the fulfilment of the conditions can be accredited. For the fulfilment of the condition of sufficient resources a declaration is considered sufficient by the administrative practice, and has not to refer to a specific amount of resources (cf BMI Anwendungshinweise, 22.12.2004, p.365). There is however no clear prohibition of the requiring for the declaration to refer to any specific amount of resources. This article is only partially transposed.
Art. 8.4	4. Member States may not lay down a fixed amount which they regard as 'sufficient resources', but they must take into account the personal situation of the person concerned. In all cases this amount shall not be higher than the threshold below which nationals of the	None			NT	Gap in transposition  There is no disposition providing that an authority should not lay down a fixed amount which it regards as sufficient resources.

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	<p>host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State.</p>					<p>However, there is no longer any specific amount of resources that is considered as sufficient by law. This was the case with § 8 (3) 1 Freizügigkeitsverordnung/EG, but this article has been abolished. Administrative practice clearly gives the obligation of an examination of personal situation. It also precise that this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance. This amount is depending in Germany on regional factors, and so is different from one Land to another (cf BMI Anwendungshinweise, 22.12.2004, p.362).</p> <p>Furthermore, the fact that there is no precise definition of “sufficient resources” means that Germany refers on this point to Community interpretation. However as there is no clear disposition, there is no sufficient transposition.</p>

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Art. 8.5	5. For the registration certificate to be issued to family members of Union citizens, who are themselves Union citizens, Member States may require the following documents to be presented:  (a) a valid identity card or passport;	§ 5a (2), § 5 (1) FreizügG/EU	Die zuständige Behörde darf von Familienangehörigen für die Ausstellung der Bescheinigung nach § 5 Abs. 1 (Freizügigkeitsberechtigten Unionsbürgern und ihren Familienangehörigen mit Staatsangehörigkeit eines Mitgliedstaates der Europäischen Union wird von Amts wegen unverzüglich eine Bescheinigung über das Aufenthaltsrecht ausgestellt.) oder für die Ausstellung der Aufenthaltskarte einen anerkannten oder sonst zugelassenen gültigen Pass oder Passersatz und zusätzlich [...] verlangen.	(2) For the purpose of issuance of the certificate pursuant to § 5 (1) (Union citizens entitled to freedom of movement and their family members who are nationals of a Member State of the European Union shall be issued a certificate confirming the right of residence ex officio forthwith by the competent authority.) or issuance of the residence card, the competent authority may require family members to furnish a recognised or otherwise approved passport or passport substitute and	Y	Effective transposition  A valid identity card is considered as a passport substitute (§ 3 AufenthV).
	(b) a document attesting to the existence of a family relationship or of a registered partnership;	§ 5a (2) 1. FreizügG/EU +  § 5a (2) 3. FreizügG/EU	1. einen Nachweis über das Bestehen der familiären Beziehung, bei Verwandten in absteigender und aufsteigender Linie einen urkundlichen Nachweis über Voraussetzungen des § 3 Abs. 2  3. einen Nachweis über die Lebenspartnerschaft im Fall des § 3 Abs. 6 oder des § 4 Satz 1	1. proof of the family relationship, in the case of relatives in the descending and ascending line documentary evidence confirming compliance with the conditions pursuant to § 3 (2),  3. proof of existence of the partnership in the case of § 3 (6) or § 4, sentence 1.	Y	Effective transposition
	(c) where appropriate, the registration certificate of the Union citizen whom they are accompanying or joining;	§ 5a (2) 2. FreizügG/EU	2. eine Bescheinigung nach § 5 Abs. 1 des Unionsbürgers, den die Familienangehörigen begleiten oder dem sie nachziehen	2. a certificate pursuant to § 5 (1) of the Union citizen whom the family members are accompanying or joining,	Y	Literal transposition
	(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;	§ 5a (2) 1. FreizügG/EU	1. einen Nachweis über das Bestehen der familiären Beziehung, bei Verwandten in absteigender und aufsteigender Linie einen urkundlichen Nachweis über	1. proof of the family relationship, in the case of relatives in the descending and ascending line documentary evidence confirming compliance with the conditions	Y	Effective transposition

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	(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;	§ 82 AufenthG	Voraussetzungen des § 3 Abs. 2 § 82 Mitwirkung des Ausländers (1) Der Ausländer ist verpflichtet, seine Belange und für ihn günstige Umstände, soweit sie nicht offenkundig oder bekannt sind, unter Angabe nachprüfbarer Umstände unverzüglich geltend zu machen und die erforderlichen Nachweise über seine persönlichen Verhältnisse, sonstige erforderliche Bescheinigungen und Erlaubnisse sowie sonstige erforderliche Nachweise, die er erbringen kann, unverzüglich beizubringen. 2Die Ausländerbehörde kann ihm dafür eine angemessene Frist setzen. 3Sie setzt ihm eine solche Frist, wenn sie die Bearbeitung eines Antrags auf Erteilung eines Aufenthaltstitels wegen fehlender oder unvollständiger Angaben aussetzt, und benennt dabei die nachzuholenden Angaben. 4Nach Ablauf der Frist geltend gemachte Umstände und beigebrachte Nachweise können unberücksichtigt bleiben.	pursuant to § 3 (2), § 82 Cooperation by the foreigner (1) The foreigner is obliged to put forward his or her interests and any circumstances in his or her favour which are not evident or known, specifying verifiable circumstances, and to produce forthwith the necessary evidence relating to his or her personal situation, other required certificates and permits and other required documents which he or she is able to furnish. The foreigners authority may set him or her a reasonable deadline for this purpose. It shall set him or her such a deadline when postponing the processing of an application for issuance of a residence title on account of lacking or incomplete information and shall specify the information which subsequently requires to be furnished. Circumstances put forward and documents furnished after expiry of said deadline may be ignored.	N, Incomplete	Incomplete transposition  No transposition measures on this point; cf <i>supra</i> art. 3.2 (a). Under the residence act, the competent authorities may ask for all necessary documents, without any limitation of the type of documents authorities may ask for. This means that they can ask for more documents, and that transposition is not correct on this point.
	(f) in cases falling under Article 3(2) (b), proof of the existence of a durable relationship with the Union citizen.	§ 5a (2) 3. FreizügG/EU	3. einen Nachweis über die Lebenspartnerschaft im Fall des § 3 Abs. 6 oder des § 4 Satz 1	3. proof of existence of the partnership in the case of § 3 (6) or § 4, sentence 1.	N, Incomplete	Incomplete transposition  Effective transposition, if art. 3.2 (b) would be transposed by §3 (6) and §4 1. In this case German legislation is conform. If this is not the case, so it logically will not be. Cf <i>supra</i> art 3.2 (b). For durable relationships which are not registered partnerships recognised by German law, this



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						provision does not apply. Therefore transposition is not fully in accord on this point.
Art. 9.1	<p><b>Administrative formalities for family members who are not nationals of a Member State.</b></p> <p>1. Member States shall issue a residence card to family members of a Union citizen who are not nationals of a Member State, where the planned period of residence is for more than three months.</p>	§ 5 (2), § 2 (5) FreizügG/EU	<p>1 Freizügigkeitsberechtigten Familienangehörigen, die nicht Unionsbürger sind, wird von Amts wegen innerhalb von sechs Monaten, nachdem sie die erforderlichen Angaben gemacht haben, eine Aufenthaltskarte für Familienangehörige von Unionsbürgern ausgestellt, die fünf Jahre gültig sein soll. 2 Eine Bescheinigung darüber, dass die erforderlichen Angaben gemacht worden sind, erhält der Familienangehörige unverzüglich. 2 Familienangehörige, die nicht Unionsbürger sind, haben das gleiche Recht [Aufenthalt von bis zu drei Monaten], wenn sie im Besitz eines anerkannten oder sonst zugelassenen Passes oder Passersatzes sind und sie den Unionsbürger begleiten oder ihm nachziehen.</p>	<p>1 Family members entitled to freedom of movement who are not Union citizens shall be issued with a Residence card of a family member of a Union citizen that shall be valid five years ex officio within six months of said family members furnishing the necessary information. 2 The family member shall immediately receive a certificate that the necessary information has been furnished. 2 Family members who are not EU citizens shall have the same right [residence of up to three month] where they are in possession of a recognised or otherwise approved passport or passport substitute and where they accompany or join the EU citizen.</p>	Y	<p>Effective transposition</p> <p>Germany delivers a residence card for family members of a Union citizen who are not national of a Member State.</p> <p>For a residence of less than three month, a residence card is not required – but they will have to register under 5.5 (See above under Article 6).</p>
Art. 9.2	<p>2. The deadline for submitting the residence card application may not be less than three months from the date of arrival.</p>	§ 5 (3) FreizügG/EU	<p>1 Die zuständige Ausländerbehörde kann verlangen, dass die Voraussetzungen des Rechts nach § 2 Abs. 1 drei Monate nach der Einreise glaubhaft gemacht werden.</p> <p>2 Für die Glaubhaftmachung erforderliche Angaben und Nachweise können von der zuständigen Meldebehörde bei der meldebehördlichen Anmeldung entgegengenommen werden.</p>	<p>1 The competent foreigners authority may require fulfilment of the requirements pertaining to the entitlement pursuant to § 2 (1) to be substantiated within three months of the foreigner concerned entering the Federal territory. 2 The competent registration office may take receipt of the information and documents required for substantiation at the time of registration with the said office.</p>	Y	<p>Effective transposition</p> <p>The deadline is respected by the period of three months in which requirements must be substantiated (See above under Article 6).</p>

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Art. 9.3	3. Failure to comply with the requirement to apply for a residence card may make the person concerned liable to proportionate and non-discriminatory sanctions.				Y	Effective transposition  As there is no particular registration for Union citizens and their family members, there are no specific sanctions for non-respect of such an obligation. However general sanctions of non-respect of register obligation apply as under art. 5.5 (cf. <i>supra</i> art. 5.5).
Art.10.1	<b>Issue of residence cards</b>  1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called 'Residence card of a family member of a Union citizen' no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.	§ 5 (2) FreizügG/EU	1 Freizügigkeitsberechtigten Familienangehörigen, die nicht Unionsbürger sind, wird von Amts wegen innerhalb von sechs Monaten, nachdem sie die erforderlichen Angaben gemacht haben, eine Aufenthaltskarte für Familienangehörige von Unionsbürgern ausgestellt, die fünf Jahre gültig sein soll. 2 Eine Bescheinigung darüber, dass die erforderlichen Angaben gemacht worden sind, erhält der Familienangehörige unverzüglich.	1 Family members entitled to freedom of movement who are not Union citizens shall be issued with a Residence card of a family member of a Union citizen that shall be valid five years ex officio within six months of said family members furnishing the necessary information. 2 The family member shall immediately receive a certificate that the necessary information has been furnished.	Y	Effective transposition  The transposition is correct, as the terms "submit the application" in the Directive mean that the applicant should have furnished all necessary documents to the authorities so that they are enabled to consider the application.
Art.10.2 (a)	2. For the residence card to be issued, Member States shall require presentation of the following documents: (a) a valid passport;	§ 5a (2) FreizügG/EU	Die zuständige Behörde darf von Familienangehörigen für die Ausstellung der Bescheinigung nach § 5 Abs. 1 oder für die Ausstellung der Aufenthaltskarte einen anerkannten oder sonst zugelassenen gültigen Pass oder Passersatz und zusätzlich [...] verlangen.	(2) For the purpose of issuance of the certificate pursuant to § 5 (1) or issuance of the residence card, the competent authority may require family members to furnish a recognised or otherwise approved valid passport or passport substitute and	Y	Effective transposition  German transposition is more favourable, because family members can furnish instead of the passport a recognised or approved passport substitute (as listed in §§ 2 ff AufenthV).
Art.10.2 (b)	(b) a document attesting to the existence of a family relationship or of a registered partnership;	§ 5a (2) 1. FreizügG/EU +	1. einen Nachweis über das Bestehen der familiären Beziehung, bei Verwandten in absteigender und aufsteigender Linie einen urkundlichen Nachweis über Voraussetzungen des § 3 Abs. 2,	1. proof of the family relationship, in the case of relatives in the descending and ascending line documentary evidence confirming compliance with the conditions pursuant to § 3 (2),	Y	Effective transposition

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		§ 5a (2) 3. FreizügG/EU	3. einen Nachweis über die Lebenspartnerschaft im Fall des § 3 Abs. 6 oder des § 4 Satz 1	3. proof of existence of the partnership in the case of § 3 (6) or § 4, sentence 1.		
Art.10.2 (c)	(c) the registration certificate or, in the absence of a registration system, any other proof of residence in the host Member State of the Union citizen whom they are accompanying or joining;	§ 5a (2) 2. FreizügG/EU	2. eine Bescheinigung nach § 5 Abs. 1 des Unionsbürgers, den die Familienangehörigen begleiten oder dem sie nachziehen,	2. a certificate pursuant to § 5 (1) of the Union citizen whom the family members are accompanying or joining,	Y	Literal transposition
Art.10.2 (d)	(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;	§ 5a (2) 1. FreizügG/EU	1. einen Nachweis über das Bestehen der familiären Beziehung, bei Verwandten in absteigender und aufsteigender Linie einen urkundlichen Nachweis über Voraussetzungen des § 3 Abs. 2,	1. proof of the family relationship, in the case of relatives in the descending and ascending line documentary evidence confirming compliance with the conditions pursuant to § 3 (2),	Y	Effective transposition
Art.10.2 (e)	(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;	§ 82 (1) AufenthG	(1) Der Ausländer ist verpflichtet, seine Belange und für ihn günstige Umstände, soweit sie nicht offenkundig oder bekannt sind, unter Angabe nachprüfbarer Umstände unverzüglich geltend zu machen und die erforderlichen Nachweise über seine persönlichen Verhältnisse, sonstige erforderliche Bescheinigungen und Erlaubnisse sowie sonstige erforderliche Nachweise, die er erbringen kann, unverzüglich beizubringen. 2Die Ausländerbehörde kann ihm dafür eine angemessene Frist setzen. 3Sie setzt ihm eine solche Frist, wenn sie die Bearbeitung eines Antrags auf Erteilung eines Aufenthaltstitels wegen fehlender oder unvollständiger Angaben aussetzt, und benennt dabei die nachzuholenden Angaben. 4Nach Ablauf der Frist geltend gemachte Umstände und beigebrachte	(1) The foreigner is obliged to put forward his or her interests and any circumstances in his or her favour which are not evident or known, specifying verifiable circumstances, and to produce forthwith the necessary evidence relating to his or her personal situation, other required certificates and permits and other required documents which he or she is able to furnish. The foreigners authority may set him or her a reasonable deadline for this purpose. It shall set him or her such a deadline when postponing the processing of an application for issuance of a residence title on account of lacking or incomplete information and shall specify the information which subsequently requires to be furnished. Circumstances put forward and documents	N, Incorrect	Incorrect transposition  There are no specific transposition measures on this point in the FreizügG, because art. 3(2)(a) was not directly transposed (cf <i>supra</i> art. 3(2) (a)). The German transposition measure for Article 3(2)(a) is § 36(2) AufenthG. As a consequence, AufenthG also applies to Article 10(2)(e), and especially § 82 (1) AufenthG which provides a general obligation for the foreigner to produce all required documents and evidences which are necessary in order to correctly treat his/her demands. Thus, the foreigner has to prove his/her family links and the circumstances justifying that his residence is necessary to avoid a particular hardship. § 82 (1) AufenthG is comprehensive enough to include the documents required under Article 10(2)(e). Under the residence act, the competent

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			Nachweise können unberücksichtigt bleiben.	furnished after expiry of said deadline may be ignored.		authorities may ask for all necessary documents, without any limitation of the type of documents authorities may ask for. This means that they can ask for more documents, and that transposition is not correct on this point.
Art.10.2 (f)	(f) in cases falling under Article 3(2) (b), proof of the existence of a durable relationship with the Union citizen.	§ 5a (2) 3. FreizügG/EU	3. einen Nachweis über die Lebenspartnerschaft im Fall des § 3 Abs. 6 oder des § 4 Satz 1	3. proof of existence of the partnership in the case of § 3 (6) or § 4, sentence 1.	N, Incorrect	Incorrect transposition  Effective transposition, if art. 3.2 (b) is transposed by §3 (6) and §4 1. In this case German legislation is conform. If this is not the case, so it logically will not be. Cf <i>supra</i> art 3.2 (b). For durable relationships which are not registered partnerships recognised by German law, this provision does not apply. Therefore transposition is not fully in accord on this point.
Art.11.1	<b>Validity of the residence card</b>  1. The residence card provided for by Article 10(1) shall be valid for five years from the date of issue or for the envisaged period of residence of the Union citizen, if this period is less than five years.	§ 5 (2) FreizügG/EU	1 Freizügigkeitsberechtigten Familienangehörigen, die nicht Unionsbürger sind, wird von Amts wegen innerhalb von sechs Monaten, nachdem sie die erforderlichen Angaben gemacht haben, eine Aufenthaltskarte für Familienangehörige von Unionsbürgern ausgestellt, die fünf Jahre gültig sein soll.	1 Family members entitled to freedom of movement who are not Union citizens shall be issued with a Residence card of a family member of a Union citizen that shall be valid five years ex officio within six months of said family members furnishing the necessary information.	Y	Effective transposition  The general validity of the residence card is five years. However there are exceptions due to the fact that the validity shall (“soll”) be five years. This means that in justified cases, the validity period can be different. This is specially the case if the envisaged period of residence of the Union citizen is less than five years (cf Begründung, Ds. 15/420, p. 104), and administrative guidelines takes this specific situation into account (BMI Anwendungshinweise, 22.12.2004, p.365).
Art.11.2	2. The validity of the residence card shall not be affected by temporary absences not exceeding six months a year, or by absences of a longer duration	§ 5 (5) + § 4a (6) FreizügG/EU	§ 5 (5) 1 Sind die Voraussetzungen des Rechts nach § 2 Abs. 1 innerhalb von fünf Jahren nach Begründung des	(5) 1 Should the requirements pertaining to the entitlement pursuant to § 2 (1) cease to be met within five years of the	Y	Effective transposition  All exceptions are correctly transposed. Concerning temporary

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	for compulsory military service or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.		<p>ständigen Aufenthalts im Bundesgebiet entfallen, kann der Verlust des Rechts nach § 2 Abs. 1 festgestellt und die Bescheinigung über das gemeinschaftsrechtliche Aufenthaltsrecht eingezogen und die Aufenthaltskarte widerrufen werden.</p> <p>2 § 4a Abs. 6 gilt entsprechend. (Der ständige Aufenthalt wird nicht berührt durch</p> <ol style="list-style-type: none"> <li>1. Abwesenheiten bis zu insgesamt sechs Monaten im Jahr oder</li> <li>2. Abwesenheit zur Ableistung des Wehrdienstes oder eines Ersatzdienstes sowie</li> <li>3. eine einmalige Abwesenheit von bis zu zwölf aufeinander folgenden Monaten aus wichtigem Grund, insbesondere auf Grund einer Schwangerschaft und Entbindung, schweren Krankheit, eines Studiums, einer Berufsausbildung oder einer beruflichen Entsendung.)</li> </ol>	<p>person concerned establishing permanent residence in the Federal territory, the loss of the entitlement pursuant to § 2 (1) may be declared, the certificate confirming the right of residence under Community law withdrawn and the residence card revoked.</p> <p>2 § 4a (6) shall apply mutatis mutandis.</p> <p>(The period of continuous residence shall not be affected by</p> <ol style="list-style-type: none"> <li>1. absences not exceeding six months a year or</li> <li>2. absence for the purposes of military service or community service or</li> <li>3. a single instance of absence of up to twelve consecutive months for compelling reasons, in particular due to pregnancy and childbirth, serious illness, a course of study, vocational training or a posting in another country.)</li> </ol>		<p>absence not exceeding six months a year, Germany provides that continuous residence, and hereby the right of residence and the validity of the residence card (since these are linked under the German provision), are not affected by an absence not exceeding six month a year. This absence does not necessarily have to be temporary.</p> <p>Concerning absence due to military service, Germany provides that validity of residence card is not affected by an absence, without limitation of duration, for the purpose of military service or alternative community service.</p> <p>Concerning absence of a maximum of 12 consecutive months for important reasons, Germany provides this exception and the list of examples laid down in the directives. Those examples are literally or very closely transposed by use of synonyms (“Niederkunft” = “Entbindung” = childbirth). In case of posting in another country, there is no distinction between Member States or third countries, so that this exception applies in both cases.</p>
Art.12.1	<p><b>Retention of the right of residence by family members in the event of death or departure of the Union citizen</b></p> <p>1. Without prejudice to the second subparagraph, the Union citizen's death or departure from the host Member State shall not affect the right of residence of his/her family members who are nationals of a Member State.</p>	§ 2 (2) FreizügG/EU	<p>(2) Gemeinschaftsrechtlich freizügigkeitsberechtigt sind:</p> <ol style="list-style-type: none"> <li>1. Unionsbürger, die sich als Arbeitnehmer, zur Arbeitssuche oder zur Berufsausbildung aufhalten wollen,</li> <li>2. Unionsbürger, wenn sie zur</li> </ol>	<p>The following persons are entitled to freedom of movement under Community law:</p> <ol style="list-style-type: none"> <li>1. Union citizens who wish to reside in the Federal territory as employees or for the purposes of seeking employment or carrying out vocational training,</li> </ol>	Y	<p>Effective transposition</p> <p>As family members have to fulfil the conditions laid down in article 7(1), transposed by § 2(2) FreizügG/EU, in order to retain their right of residence before acquiring the right of permanent residence, Germany has logically transposed Article 12.1</p>

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	Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).		<p>Ausübung einer selbständigen Erwerbstätigkeit berechtigt sind (niedergelassene selbständige Erwerbstätige),</p> <p>3. Unionsbürger, die, ohne sich niederzulassen, als selbständige Erwerbstätige Dienstleistungen im Sinne des Artikels 50 des Vertrages zur Gründung der Europäischen Gemeinschaft erbringen wollen (Erbringer von Dienstleistungen), wenn sie zur Erbringung der Dienstleistung berechtigt sind,</p> <p>4. Unionsbürger als Empfänger von Dienstleistungen,</p> <p>5. nicht erwerbstätige Unionsbürger unter den Voraussetzungen des § 4,</p> <p>6. Familienangehörige unter den Voraussetzungen der §§ 3 und 4,</p>	<p>2. Union citizens who are entitled to pursue an independent economic activity (established self-employed persons),</p> <p>3. Union citizens who, without taking up residence in the Federal territory, wish to render services as self-employed persons pursuant to Article 50 of the Treaty establishing the European Community (service providers), provided that they are entitled to provide the services concerned,</p> <p>4. EU citizens as the recipients of services,</p> <p>5. non economically active Union citizens, subject to the requirements of § 4, if they have sufficient sickness insurance cover and sufficient resources.)</p> <p>6. family members, subject to the requirements of Sections 3 and 4,</p>		with this § 2 (2).
Art.12.2	2. Without prejudice to the second subparagraph, the Union citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death.	§ 3 (3) FreizügG/EU	(3) IFamilienangehörige, die nicht Unionsbürger sind, behalten beim Tod des Unionsbürgers ein Aufenthaltsrecht, wenn sie die Voraussetzungen des § 2 Abs. 2 Nr. 1 bis 3 oder Nr. 5 erfüllen und sich vor dem Tod des Unionsbürgers mindestens ein Jahr als seine Familienangehörigen im Bundesgebiet aufgehalten haben.	(3) IFamily members who are not EU citizens shall retain the right of residence upon the death of the EU citizen if they fulfil the conditions pursuant to § 2 (2), nos. 1 to 3 or no. 5 and have been residing in the Federal territory as family members of the EU citizen for at least one year before the death of the Union citizen.	Y	Effective transposition  § 3 (3) provides the retention of the right of residence in case of death of the Union citizen if the family member have been residing as family member for at least one year (and fulfils the conditions laid down for Union citizens, cf. <i>infra</i> ).
	Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject	§ 3 (3) FreizügG/EU	(3) IFamilienangehörige, die nicht Unionsbürger sind, behalten beim Tod des Unionsbürgers ein	(3) IFamily members who are not EU citizens shall retain the right of residence upon the	Y	Effective transposition  The conditions the family member

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	to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. 'Sufficient resources' shall be as defined in Article 8(4).		Aufenthaltsrecht, wenn sie die Voraussetzungen des § 2 Abs. 2 Nr. 1 bis 3 oder Nr. 5 erfüllen und sich vor dem Tod des Unionsbürgers mindestens ein Jahr als seine Familienangehörigen im Bundesgebiet aufgehalten haben.	death of the EU citizen if they fulfil the conditions pursuant to § 2 (2), nos. 1 to 3 or no. 5 and have been residing in the Federal territory as family members of the EU citizen for at least one year before the death of the Union citizen.		has to meet are exactly those provided for Union citizens. Those conditions are laid down in § 2 (2) nos. 1 to 3 and no. 5. Germany can provide that those conditions have to be fulfilled, and does so. If the family member does not fulfil those conditions, but is a family member of another Union citizen residing in Germany, he can derive his right of residence from this Union citizen's right of residence in application of § 2 (2) 6. This could be a possible minor transposition issue, because in this case the German law will be establishing that the right of residence is a derived right whereas the Directive states that "such family members shall retain the right on a personal basis" even in this particular case. There is no definition of "sufficient resources", explanation under art. 8(4) apply mutatis mutandis.
	Such family members shall retain their right of residence exclusively on a personal basis.	§ 3 (3) 2 FreizügG/EU	§ 3 Abs. 1 und 2 sowie die §§ 6 und 7 sind für Personen nach Satz 1 nicht anzuwenden; insoweit ist das Aufenthaltsgesetz anzuwenden.	§ 3 (1) and (2) and §§ 6 and 7 shall not apply to persons pursuant to sentence 1; the Residence Act shall thus be applicable to such persons.	Y	Effective transposition  § 3 (1) and (2) (concerning right of residence of family members) does not apply to such family members, what means that those family members can't be accompanied or joined by other family members pursuant to FreizügG/EU, but only pursuant to AufenthG (general immigration rules). This means that such family members retain their right of residence exclusively on a personal basis.
Art.12.3	3. The Union citizen's departure from the host Member State or his/her death shall not entail loss of the right of residence of	§ 3 (4) FreizügG/EU	(4) Die Kinder eines freizügigkeitsberechtigten Unionsbürgers und der Elternteil,	(4) The children of an Union citizen who is entitled to freedom of movement and the	Y	Effective transposition  § 3 (4) is conform to art 12.3. The

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	his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies.		der die elterliche Sorge für die Kinder tatsächlich ausübt, behalten auch nach dem Tod oder Wegzug des Unionsbürgers, von dem sie ihr Aufenthaltsrecht ableiten, bis zum Abschluss einer Ausbildung ihr Aufenthaltsrecht, wenn sich die Kinder im Bundesgebiet aufhalten und eine Ausbildungseinrichtung besuchen.	parent who actually exercises parental custody of the children shall retain their right of residence following the death of the Union citizen or his departure from the Federal territory until the completion of their education, if the children are resident in the Federal territory and attend an educational establishment.		only difference is that the directives uses the term “enrolled” (“eingeschrieben”) at an educational establishment, whereas the German legislation uses the term “attend” (“besuchen”) an educational establishment, what means that the children not only has to be enrolled, but actually must attend the educational establishment. Practically there is no real difference, because the proof that he or she is attending an educational establishment is provided by a certificate of enrolment issued by the educational establishment (cf BMI Anwendungshinweise, 22.12.2004, p. 365). German formulation however gives the possibility to avoid fraud. For all this reasons, the transposition seems correct.
Art.13.1	<p><b>Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership</b></p> <p>1. Without prejudice to the second subparagraph, divorce, annulment of the Union citizen's marriage or termination of his/her registered partnership, as referred to in point 2(b) of Article 2 shall not affect the right of residence of his/her family members who are nationals of a Member State. Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).</p>	§ 2 (2) FreizügG/EU	(2) Gemeinschaftsrechtlich freizügigkeitsberechtigt sind: 1. Unionsbürger, die sich als Arbeitnehmer, zur Arbeitssuche oder zur Berufsausbildung aufhalten wollen, 2. Unionsbürger, wenn sie zur Ausübung einer selbständigen Erwerbstätigkeit berechtigt sind (niedergelassene selbständige Erwerbstätige), 3. Unionsbürger, die, ohne sich niederzulassen, als selbständige Erwerbstätige Dienstleistungen im Sinne des Artikels 50 des Vertrages zur Gründung der Europäischen Gemeinschaft	The following persons are entitled to freedom of movement under Community law: 1. Union citizens who wish to reside in the Federal territory as employees or for the purposes of seeking employment or carrying out vocational training, 2. Union citizens who are entitled to pursue an independent economic activity (established self-employed persons), 3. Union citizens who, without taking up residence in the Federal territory, wish to render services as self-employed persons pursuant to	Y	Effective transposition  As family members have to fulfil the conditions laid down in article 7(1), transposed by § 2(2) FreizügG/EU, Germany has logically transposed article 12.1 with this § 2 (2).



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			erbringen wollen (Erbringer von Dienstleistungen), wenn sie zur Erbringung der Dienstleistung berechtigt sind, 4. Unionsbürger als Empfänger von Dienstleistungen, 5. nicht erwerbstätige Unionsbürger unter den Voraussetzungen des § 4, 6. Familienangehörige unter den Voraussetzungen der §§ 3 und 4,	Article 50 of the Treaty establishing the European Community (service providers), provided that they are entitled to provide the services concerned, 4. EU citizens as the recipients of services, 5. non economically active Union citizens, subject to the requirements of § 4, if they have sufficient sickness insurance cover and sufficient resources.) 6. family members, subject to the requirements of Sections 3 and 4,		
Art.13.2 (a)	2. Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of the registered partnership referred to in point 2(b) of Article 2 shall not entail loss of the right of residence of a Union citizen's family members who are not nationals of a Member State where: (a) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership referred to in point 2(b) of Article 2, the marriage or registered partnership has lasted at least three years, including one year in the host Member State; or	§ 3 (5) 1 1. FreizügG/EU	(5) 1 Ehegatten, die nicht Unionsbürger sind, behalten bei Scheidung oder Aufhebung der Ehe ein Aufenthaltsrecht, wenn sie die für Unionsbürger geltenden Voraussetzungen des § 2 Abs. 2 Nr. 1 bis 3 oder Nr. 5 erfüllen und wenn 1. die Ehe bis zur Einleitung des gerichtlichen Scheidungs- oder Aufhebungsverfahrens mindestens drei Jahre bestanden hat, davon mindestens ein Jahr im Bundesgebiet,	(5) 1 Spouses who are not Union citizens shall retain their right of residence following divorce or the annulment of their marriage if they meet the conditions applicable to Union citizens pursuant to § 2 (2), nos. 1 to 3 or no. 5 and if 1. the marriage existed for at least three years prior to the institution of divorce or annulment proceedings, including at least one year in the Federal territory,	N, Incorrect	Incorrect transposition  For the condition of meeting the conditions applicable to Union citizens, see <i>infra</i> , under second subparagraph. Both delays are exactly transposed.  However German transposition is incomplete, as it only refers to spouses, whereas the Directives refers to “family members”. Thus, German legislation is more restrictive than the Directive.
Art.13.2 (b)	(b) by agreement between the spouses or the partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has custody of the Union citizen's children; or	§ 3 (5) 1 2. FreizügG/EU	2. ihnen durch Vereinbarung der Ehegatten oder durch gerichtliche Entscheidung die elterliche Sorge für die Kinder des Unionsbürgers übertragen wurde,	2. they have been allocated parental custody of the Union citizen's children by virtue of an agreement between the spouses or by a court order,	N, Incorrect	Incorrect transposition  German transposition is incomplete, as it only refers to spouses, whereas the Directives refers to “family members”. Thus, German legislation is more restrictive than the Directive. For the rest, the article is correctly transposed.

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Art.13.2 (c)	(c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting; or	§ 3 (5) 1 3. FreizügG/EU	3. es zur Vermeidung einer besonderen Härte erforderlich ist, insbesondere weil dem Ehegatten wegen der Beeinträchtigung seiner schutzwürdigen Belange ein Festhalten an der Ehe nicht zugemutet werden konnte, oder	3. such retention is necessary in order to avoid special hardship, in particular because the spouse cannot be expected to continue the marriage due to the infringement of his or her legitimate interests	N, Incorrect	Incorrect transposition  German formulation gives the possibility of retention of the right of residence in specific circumstances. Furthermore the general formulation of §3 (5) 1 3. is certainly including the example provided in the directive. German legislation does however apply exclusively to the spouse, and not to all family members. This is a case of incorrect transposition.
Art.13.2 (d)	d) by agreement between the spouses or partners referred to in point 2 (b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the host Member State, and for as long as is required.	§ 3 (5) 1 4. FreizügG/EU	4. ihnen durch Vereinbarung der Ehegatten oder durch gerichtliche Entscheidung das Recht zum persönlichen Umgang mit dem minderjährigen Kind nur im Bundesgebiet eingeräumt wurde.	4. they have been granted the right of access to the minor child in the Federal territory only, by virtue of an agreement between the spouses or by a court ruling.	Y	Effective transposition  If the right to access the minor child is granted under the condition that this access must only be in the Federal territory, so the spouse who is not Union citizen retains his right of residence. The limitation can be a result of a court order (as in the directive) or of an agreement between the spouses. There is no explicit transposition of the condition of “for as long as required”, but this condition is implicitly transposed, as the right of access to the minor child in the Federal territory only is a limitation of personal freedom that can be imposed only “as long as is required”.
	Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of	§ 3 (5) 1 FreizügG/EU	(5) 1 Ehegatten, die nicht Unionsbürger sind, behalten bei Scheidung oder Aufhebung der Ehe ein Aufenthaltsrecht, wenn sie die für Unionsbürger geltenden Voraussetzungen des § 2 Abs. 2 Nr. 1 bis 3 oder Nr. 5 erfüllen und wenn [...]	(5) 1 Spouses who are not Union citizens shall retain their right of residence following divorce or the annulment of their marriage if they meet the conditions applicable to Union citizens pursuant to § 2 (2), nos. 1 to 3 or no. 5 and if [...]	Y	Effective transposition  The conditions the family member has to meet are exactly those provided for Union citizens. Those conditions are laid down in § 2 (2) nos. 1 to 3 and no. 5. Germany can provide that those conditions have to be fulfilled, and does so. If the

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	the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. 'Sufficient resources' shall be as defined in Article 8(4).					family member does not fulfil those conditions, but is a family member of another Union citizen residing in Germany, he can derive his right of residence from this Union citizen's right of residence in application of § 2 (2) 6. There is no definition of "sufficient resources", explanation under art. 8(4) applies mutatis mutandis.
	Such family members shall retain their right of residence exclusively on personal basis.	§ 3 (5) 2 FreizügG/EU	§ 3 Abs. 1 und 2 sowie die §§ 6 und 7 sind für Personen nach Satz 1 nicht anzuwenden; insoweit ist das Aufenthaltsgesetz anzuwenden.	§ 3 (1) and (2) and §§ 6 and 7 shall not apply to persons pursuant to sentence 1; the Residence Act shall thus be applicable to such persons.	Y	Effective transposition  § 3 (1) and (2) does not apply to such family member, what means that those family members can't be accompanied or joined by other family members pursuant to FreizügG/EU, but only pursuant to AufenthG. This means that such family members retain their right of residence exclusively on a personal basis.
Art.14.1	<b>Retention of the right of residence</b>  Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.	§ 2 (5) FreizügG/EU	(5) 1Für einen Aufenthalt von Unionsbürgern von bis zu drei Monaten ist der Besitz eines gültigen Personalausweises oder Reisepasses ausreichend.  2Familienangehörige, die nicht Unionsbürger sind, haben das gleiche Recht, wenn sie im Besitz eines anerkannten oder sonst zugelassenen Passes oder Passersatzes sind und sie den Unionsbürger begleiten oder ihm nachziehen.	(5) 1The possession of a valid identity card or passport shall be sufficient for a residence by Union citizens of up to three months.  2Family members who are not Union citizens shall have the same right where they are in possession of a recognised or otherwise approved passport or passport substitute and where they accompany or join the Union citizen.	Y	Effective transposition  The only condition for a residence of up to three months is the possession of a valid identity card or passport. There is no other limitation of this right of residence, with exception of those provided under chapter VI of the Directive. This means that this right cannot be restricted by the use of the German social assistance system. Furthermore the access to the social assistance system is restricted in a way that makes it very improbable that Union citizen or their family members become an unreasonable burden during a stay of up to three months (cf <i>infra</i> , art. 24.2).

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Art.14.2	2. Union citizens and their family Members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.	§ 5 (5), § 2 (1) + (2) FreizügG/EU	(5) 1 Sind die Voraussetzungen des Rechts nach § 2 Abs. 1 innerhalb von fünf Jahren nach Begründung des ständigen Aufenthalts im Bundesgebiet entfallen, kann der Verlust des Rechts nach § 2 Abs. 1 festgestellt und die Bescheinigung über das gemeinschaftsrechtliche Aufenthaltsrecht eingezogen und die Aufenthaltskarte widerrufen werden. 2 § 4a Abs. 6 gilt entsprechend.	(5) 1 Should the requirements pertaining to the entitlement pursuant to § 2 (1) cease to be met within five years of the person concerned establishing permanent residence in the Federal territory, the loss of the entitlement pursuant to § 2 (1) may be declared, the certificate confirming the right of residence under Community law withdrawn and the residence card revoked. 2 § 4a (6) shall apply mutatis mutandis.	Y	Effective transposition  The loss of the right of residence pursuant to § 2 (1), that contains the right of residence provided for in articles 7, 12 and 13, can only be declared, apart from exceptions pursuant to chapter VI, when the requirements of this right are no longer met. This is conforming to the directive. As long as Union citizens and their family members meet the conditions set out in § 2 (1), the loss of the right of residence cannot be declared, and the right of residence is necessarily maintained. The definition of permanent residence has to be done pursuant to § 4a (6), what means that the exceptions provided in this article cannot interrupt the duration of the permanent residence. Even if the conditions are not met, the withdrawal is not automatic as the loss of right “may be declared”.
	In specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall not be carried out systematically.	§ 5 (4) FreizügG/EU	(4) Der Fortbestand der Ausstellungsvoraussetzungen kann aus besonderem Anlass überprüft werden.	(4) Should special circumstances so require, verification that the conditions pertaining to issuance of the certificate are still fulfilled may be carried out.	N, Incomplete	Incomplete transposition  The definition of “special circumstances” is more comprehensive than “specific cases where there is a reasonable doubt”. German legislation does not entirely transpose the directive. Furthermore the administrative guideline indicates that those circumstances are especially when an unemployed Union citizen or his family members have recourse to the social assistance system (cf BMI Anwendungshinweise, 22.12.2004, p. 367). In such a situation it might

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						<p>seem appropriate to consider that there is a reasonable doubt as to whether the condition of sufficient resources is fulfilled. Another circumstance could be the extension of a limited residence card for family members (cf. Begr. Ds. 15/420, p. 104). In this case there might be a reasonable doubt as to whether the conditions, that was limited in time, are still fulfilled. There is however no clear indication that this verifications can only be carried out in specific cases, where is a reasonable doubt, and that they shall not be carried out systematically. Even if there is apparently no such systematic verification, German legislation does potentially allow such practice, and cannot be considered as in accordance with the directive.</p>
Art.14.3	3. An expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State.	§ 5 (5) FreizügG/EU	(5) 1 Sind die Voraussetzungen des Rechts nach § 2 Abs. 1 innerhalb von fünf Jahren nach Begründung des ständigen Aufenthalts im Bundesgebiet entfallen, kann der Verlust des Rechts nach § 2 Abs. 1 festgestellt und die Bescheinigung über das gemeinschaftsrechtliche Aufenthaltsrecht eingezogen und die Aufenthaltskarte widerrufen werden.	(5) Should the requirements pertaining to the entitlement pursuant to § 2 (1) cease to be met within five years of the person concerned establishing permanent residence in the Federal territory, the loss of the entitlement pursuant to § 2 (1) may be declared, the certificate confirming the right of residence under Community law withdrawn and the residence card revoked.	N, Incomplete	<p>Incomplete transposition</p> <p>German legislation does not attach any direct effect to the Union citizen's recourse to the social assistance system, but does not clearly indicate that the recourse to the social system must not systematically lead to an expulsion measure. Such recourse is never a direct ground of expulsion. However, concerning the right of unemployed Union citizens and their family members, the right of residence is limited by § 4 (need of sufficient resources and health insurance). Recourse to the social assistance system can have consequences for those persons. As explained <i>supra</i></p>

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						<p>under art. 14.2, recourse to the social assistance system can justify a control by administration in order to check if the conditions of the right of residence are still fulfilled. If this is not the case, the loss of the right of residence can be declared by application of § 5 (5). This declaration would not be an automatic consequence of the recourse to the social assistance system, but would be a consequence of the non-fulfilment of the conditions of § 4 (sufficient resources and health insurance). Furthermore decision under § 5 (5) is a discretionary decision, what means that the authorities would have to check in every case if the loss of the right of residence is justified, and that the authorities are not obliged to declare the loss of the right of residence. Even if it is not certain that recourse to social assistance does automatically lead to an expulsion measure, German legislation does not provide an explicit prohibition of this situation. The Directive is expressly providing a protection for EU citizens from this eventuality and therefore the transposition and implementation carried out by Germany does not grant the same level of protection as the Directive.</p>
Art.14.4 (a)	4. By way of derogation from paragraphs 1 and 2 and without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens or their family members if:	§ 7 (1) 1 + § 2 (2) 1. + 2. FreizügG/EU	§ 7 (1) 1 Unionsbürger sind ausreisepflichtig, wenn die Ausländerbehörde festgestellt hat, dass das Recht auf Einreise und Aufenthalt nicht besteht.	§ 7 (1) Union citizens shall be required to leave the Federal territory, if the foreigners authority has established that no entitlement to entry and residence exists.	Y	<p>Effective transposition</p> <p>For persons concerned by § 2 (2) 1. (workers, job-seekers, and persons on vocational training) and 2. (self-employed), the right of residence is</p>

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	(a) the Union citizens are workers or self-employed persons, or		<p>§ 2 (1) Gemeinschaftsrechtlich freizügigkeitsberechtigt sind:</p> <p>1. Unionsbürger, die sich als Arbeitnehmer, zur Arbeitssuche oder zur Berufsausbildung aufhalten wollen,</p> <p>2. Unionsbürger, wenn sie zur Ausübung einer selbständigen Erwerbstätigkeit berechtigt sind (niedergelassene selbständige Erwerbstätige),</p>	<p>§ 2 (1) The following persons are entitled to freedom of movement under Community law:</p> <p>1. Union citizens who wish to reside in the Federal territory as employees or for the purposes of seeking employment or carrying out vocational training,</p> <p>2. Union citizens who are entitled to pursue an independent economic activity (established self-employed persons),</p>		<p>only limited by measures concerning chapter VI, as expulsion measures are not possible under any other legal disposition.</p> <p>§ 7 (1) can never apply to those categories of persons (as long as they are workers, self-employed etc), since they met the conditions laid down by § 2 (2) 1. and 2. and therefore they cannot be expelled. This means that there is no explicit prohibition of expulsion measure for those persons, because it is impossible to consider that they have lost their right of residence. Implicitly an expulsion measure is strictly impossible.</p>
Art.14.4 (b)	(b) the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.	§ 7 (1) 1 + § 2 (2) 1. FreizügG/EU	<p>§ 7 (1) 1 Unionsbürger sind ausreisepflichtig, wenn die Ausländerbehörde festgestellt hat, dass das Recht auf Einreise und Aufenthalt nicht besteht.</p> <p>§ 2 (1) Gemeinschaftsrechtlich freizügigkeitsberechtigt sind:</p> <p>1. Unionsbürger, die sich als Arbeitnehmer, zur Arbeitssuche oder zur Berufsausbildung aufhalten wollen,</p> <p>2. Unionsbürger, wenn sie zur Ausübung einer selbständigen Erwerbstätigkeit berechtigt sind (niedergelassene selbständige Erwerbstätige),</p>	<p>§ 7 (1) Union citizens shall be required to leave the Federal territory, if the foreigners authority has established that no entitlement to entry and residence exists.</p> <p>§ 2 (1) The following persons are entitled to freedom of movement under Community law:</p> <p>1. Union citizens who wish to reside in the Federal territory as employees or for the purposes of seeking employment or carrying out vocational training,</p> <p>2. Union citizens who are entitled to pursue an independent economic activity (established self-employed persons),</p>	Y	<p>Effective transposition</p> <p>For persons concerned by § 2 (2) 1. (workers, job-seekers, and persons on vocational training) the right of residence is only limited by measures concerning chapter VI. This means that § 7 (1) can never apply to those categories of persons, and they can not be expelled as long as they meet the conditions laid down by § 2 (2) 1.</p> <p>German legislation does not precise for how long persons are considered to be job-seekers. This means that German legislation refers to Community definition of this term. Thus, the statute of job-seekers is retained at least as long as provided for by the Directive. German legislation could even be more favourable, as it does not limit the period during which persons can be</p>

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						considered as job-seekers.
Art.15.1	<b>Procedural safeguards</b>  The procedures provided for by Articles 30 and 31 shall apply by analogy to all decisions restricting free movement of Union citizens and their family members on grounds other than public policy, public security or public health.	§§ 5 (5), 6 (1), 7 FreizügG/EU			Y	Effective transposition  The procedure restricting free movement of Union citizens and their family members is generally the same for § 5 (5) (transposing art. 14) and § 6 (1) (transposing chapter VI). § 7 about the requirement to leave the Federal territory applies to both sections. For more explanations, cf <i>infra</i> art. 30 and 31.
Art.15.2	2. Expiry of the identity card or passport on the basis of which the person concerned entered the host Member State and was issued with a registration certificate or residence card shall not constitute a ground for expulsion from the host Member State.	§ 6 (7) FreizügG/EU	Wird der Pass, Personalausweis oder sonstige Passersatz ungültig, so kann dies die Aufenthaltsbeendigung nicht begründen.	Should a passport, identification card or other passport substitute become invalid, this cannot constitute grounds for termination of the holder's residence.	Y	Effective transposition  German legislation provides that in case where a passport, ID, or passport substitute become invalid, what especially covers the situation where it expires, this situation cannot constitute a ground for termination of the holder's residence, and cannot constitute a ground for expulsion.
Art.15.3	3. The host Member State may not impose a ban on entry in the context of an expulsion decision to which paragraph 1 applies.	§ 7 (2) FreizügG/EU	(2) 1 Unionsbürger und ihre Familienangehörigen, die ihr Freizügigkeitsrecht nach § 6 Abs. 1 verloren haben, dürfen nicht erneut in das Bundesgebiet einreisen und sich darin aufhalten.	(2) 1 Union citizens and their family members who have lost their entitlement to freedom of movement pursuant to § 6 (1) shall not be permitted to re-enter and residence in the Federal territory.	Y	Effective transposition  The ban entry only applies when persons lost the right of residence based on § 6 (1) (transposing chapter VI). <i>A contrario</i> , loss of the right of residence based on § 5 (5) (fact that the conditions of the right of residence are no longer fulfilled) can not justify a ban on entry, but only the obligation to quit the Federal territory, based on § 7 (1) FreizügG/EU.
<b>Chapter IV. RIGHT OF PERMANENT RESIDENCE</b>						
<b>§ I. Eligibility</b>						
Art.16.1	<b>General rule for Union citizens and their family members</b> 1. Union citizens who have resided	§ 4a (1) FreizügG/EU	Unionsbürger, ihre Familienangehörigen und Lebenspartner, die sich seit fünf	Union citizens, their family members and partners who have resided legally and continuously	Y	Effective transposition  There is however a doubt whether



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	legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.		Jahren ständig rechtmäßig im Bundesgebiet aufgehalten haben, haben unabhängig vom weiteren Vorliegen der Voraussetzungen des § 2 Abs. 2 das Recht auf Einreise und Aufenthalt (Daueraufenthaltsrecht).	in the Federal territory for five years shall be entitled to enter into and stay in the Federal territory, irrespective of whether the other requirements stipulated in § 2 (2) are fulfilled (right of permanent residence).		Article 2(2)(b) is correctly transposed in Germany, as German Immigration legislation does not treat registered partnerships as equivalent to marriage, and as a consequence excludes registered partners from the general regime applying to spouses. Therefore whenever the Directive grants a right for Family members, thus including the family members of the partner, German legislation only refers to the family members of the EU citizen and his/her spouse. The correctness of this approach depends on the analysis of transposition of Article 2(2)(b) ( <i>cf. supra</i> ).
Art.16.2	2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years.	§ 4a (1) FreizügG/EU	(1) Unionsbürger, ihre Familienangehörigen und Lebenspartner, die sich seit fünf Jahren ständig rechtmäßig im Bundesgebiet aufgehalten haben, haben unabhängig vom weiteren Vorliegen der Voraussetzungen des § 2 Abs. 2 das Recht auf Einreise und Aufenthalt (Daueraufenthaltsrecht).	(1) Union citizens, their family members and partners who have resided legally and continuously in the Federal territory for five years shall be entitled to enter into and stay in the Federal territory, irrespective of whether the other requirements stipulated in § 2 (2) are fulfilled (right of permanent residence).	Y	Effective transposition  § 4a (1) does not distinguish between family members who are nationals of a Member State and those who are not. It applies to both of them.
Art.16.3	3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.	§ 4a (6) FreizügG/EU	(6) Der ständige Aufenthalt wird nicht berührt durch 1. Abwesenheiten bis zu insgesamt sechs Monaten im Jahr oder 2. Abwesenheit zur Ableistung des Wehrdienstes oder eines Ersatzdienstes sowie 3. eine einmalige Abwesenheit von bis zu zwölf aufeinander folgenden Monaten aus wichtigem Grund, insbesondere auf Grund einer Schwangerschaft und	(6) The period of continuous residence shall not be affected by 1. absences not exceeding six months a year or 2. absence for the purposes of military service or community service or 3. a single instance of absence of up to twelve consecutive months for compelling reasons, in particular due to pregnancy and childbirth, serious illness, a	Y	Effective transposition  All exceptions are correctly transposed. Concerning temporary absence not exceeding six months a year, Germany provides that continuous residence, and hereby the right of residence and the validity of the residence card, are not affected by an absence not exceeding six month a year. This absence does not necessarily have to be temporary.  Concerning absence due to military service, Germany provides that

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			Entbindung, schweren Krankheit, eines Studiums, einer Berufsausbildung oder einer beruflichen Entsendung.	course of study, vocational training or on account of deployment to another country in connection with work.		validity of residence card is not affected by an absence, without limitation of duration, for the purpose of military service or alternative community service.  Concerning absence of a maximum of 12 consecutive months for important reasons, Germany provides this exception and the list of examples laid down in the directives. Those examples are literally or very closely transposed by use of synonyms (“Niederkunft” = “Entbindung” = childbirth). In case of posting in another country, there is no distinction between Member States or third countries, so that this exception applies in both cases.
Art.16.4	4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.	§ 4a (7) FreizügG/EU	(7) Eine Abwesenheit aus einem seiner Natur nach nicht nur vorübergehenden Grund von mehr als zwei aufeinander folgenden Jahren führt zum Verlust des Daueraufenthaltsrechts.	(7) Absence for a reason which is per se not of a temporary nature for more than two consecutive years shall result in loss of the right of permanent residence.	Y, More favourable	Effective transposition  German legislation is more favourable, because an absence from the Federal territory for a period exceeding two consecutive years is a cause of the loss of the right of permanent residence only if the absence is per se not of a temporary nature.
Art.17.1 (a)	<b>Exemptions for persons no longer working in the host Member State and their family members</b>  1. By way of derogation from Article 16, the right of permanent residence in the host Member State shall be enjoyed before completion of a continuous period of five years of residence by: (a) workers or self-employed persons who, at the time they stop working, have reached the age laid down by the law of	§ 4a (2) 1 1. FreizügG/EU	(2) 1 Abweichend von Absatz 1 haben Unionsbürger nach § 2 Abs. 2 Nr. 1 bis 3 vor Ablauf von fünf Jahren das Daueraufenthaltsrecht, wenn sie 1. sich mindestens drei Jahre ständig im Bundesgebiet aufgehalten und mindestens während der letzten zwölf Monate im Bundesgebiet eine Erwerbstätigkeit ausgeübt haben und	2) 1 By way of derogation from sub-§ 1, Union citizens pursuant to § 2 (2), nos. 1 to 3 shall possess the right of permanent residence prior to the period of five years elapsing, if 1. they have been resident in the Federal territory for a continuous period of at least three years and have pursued an economic activity in the Federal territory during the last twelve	Y	Effective transposition  Both delays are exactly transposed (three years of continuous residence and at least the preceding twelve month of employment in the German territory). The right of permanent residence is guaranteed in the two cases provided by the directive. First when the concerned person reaches the age of 65 years, what is less than the age

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	that Member State for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in that Member State for at least the preceding twelve months and have resided there continuously for more than three years.		a) zum Zeitpunkt des Ausscheidens aus dem Erwerbsleben das 65. Lebensjahr erreicht haben oder b) ihre Beschäftigung im Rahmen einer Vorruhestandsregelung beenden oder	months at least and a) are 65 years of age or over at the time of retiring from gainful employment or b) end their employment under an early retirement scheme or		laid down by the German law for entitlement to an old age pension (67 years, § 35 SGB VI). Secondly when the person ends its employment under an early retirement scheme.
	If the law of the host Member State does not grant the right to an old age pension to certain categories of self-employed persons, the age condition shall be deemed to have been met once the person concerned has reached the age of 60;	§ 7 SGB VI	(1) Personen, die nicht versicherungspflichtig sind, können sich für Zeiten von der Vollendung des 16. Lebensjahres an freiwillig versichern. 2Dies gilt auch für Deutsche, die ihren gewöhnlichen Aufenthalt im Ausland haben. (2) Personen, die versicherungsfrei oder von der Versicherung befreit sind, können sich nur dann freiwillig versichern, wenn sie die allgemeine Wartezeit erfüllt haben. 2Dies gilt nicht für Personen, die wegen Geringfügigkeit einer Beschäftigung oder selbständigen Tätigkeit versicherungsfrei sind.	(1) Persons who are not subject to compulsory insurance can voluntarily take insurance for periods after the completion of the 16 <sup>th</sup> year of life. This also concerns Germans having their habitual residence in foreign countries. (2) Persons who are exempted from insurance can only voluntarily take insurance if they have achieved the general waiting period. This does not concern Persons who are exempted due to slightness of employment or self-employment.	Y	Effective transposition  There is no need of transposition of this sub-paragraph, as Germany does grant the right to an old age pension to all categories of self employed persons. Some categories must take out old age pension insurance (cf § 2 SGB VI). The other categories have the right pursuant to § 7 SGB VI to take voluntary an old age pension insurance.
Art.17.1 (b)	(b) workers or self-employed persons who have resided continuously in the host Member State for more than two years and stop working there as a result of permanent incapacity to work. If such incapacity is the result of an accident at work or an occupational disease entitling the person concerned to a benefit payable in full or in part by an institution in the host Member State, no condition shall be imposed as to length of residence;	§ 4a (2) 1 2. a) + b) FreizügG/EU	2. ihre Erwerbstätigkeit infolge einer vollen Erwerbsminderung aufgeben, a) die durch einen Arbeitsunfall oder eine Berufskrankheit eingetreten ist und einen Anspruch auf eine Rente gegenüber einem Leistungsträger im Bundesgebiet begründet oder b) nachdem sie sich zuvor mindestens zwei Jahre ständig im	2. they give up their gainful employment due to a total occupational disability a) which has resulted from an accident at work or an occupational disease and which gives rise to an entitlement to a pension from a body providing pension benefits in the Federal territory, or b) after having been continuously resident in the Federal territory	Y	Effective transposition  § 4a (2) 1 2. b) provides a right of permanent residence for people stopping their employment (what seems equivalent to “giving up their gainful employment”) due to a total occupational disease after having been resident in German territory for at least two years. § 4a (2) 1 2. a) provides a right of permanent residence for people stopping their employment due to a total occupational disease which has

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			Bundesgebiet aufgehalten haben oder	for a period of two years at least or,		resulted from an accident at work or an occupational disease and which entitles the concerned person to a pension from an institution, <i>i.e.</i> a benefit payable in full or in part by this institution.
Art.17.1 (c)	(c) workers or self-employed persons who, after three years of continuous employment and residence in the host Member State, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in the host Member State, to which they return, as a rule, each day or at least once a week.	§ 4a (2) 1 3. FreizügG/EU	3. drei Jahre ständig im Bundesgebiet erwerbstätig waren und anschließend in einem anderen Mitgliedstaat der Europäischen Union erwerbstätig sind, ihren Wohnsitz im Bundesgebiet beibehalten und mindestens einmal in der Woche dorthin zurückkehren;	3. after having been continuously employed in the Federal territory for three years, they subsequently take up employment in another Member State of the European Union, retain their place of residence in the Federal territory and return to said residence at least once a week;	Y	Effective transposition
	For the purposes of entitlement to the rights referred to in points (a) and (b), periods of employment spent in the Member State in which the person concerned is working shall be regarded as having been spent in the host Member State.	§ 4a (2) 1 3. FreizügG/EU	für den Erwerb des Rechts nach den Nummern 1 und 2 gelten die Zeiten der Erwerbstätigkeit in einem anderen Mitgliedstaat der Europäischen Union als Zeiten der Erwerbstätigkeit im Bundesgebiet.	for the purposes of acquisition of the right pursuant to numbers 1 and 2, times of employment in another Member State of the European Union shall be deemed to constitute times of employment in the Federal territory.	Y	Effective transposition
	Periods of involuntary unemployment duly recorded by the relevant employment office, periods not worked for reasons not of the person's own making and absences from work or cessation of work due to illness or accident shall be regarded as periods of employment.	None			NT	Gap in transposition  There is no exact definition of "times of employment". Normally this term should be interpreted in order to refer to Community definition of this term (cf BMI Anwendungshinweise, 22.12.2004, p.392). However it will be necessary to control official practice and interpretation on this point. As far as there is no explicit transposition measure, this transposition is not complete.(See also the transposition of Article 7(3)).
Art.17.2	2. The conditions as to length of residence and employment laid down in	§ 4a (2) 2. FreizügG/EU	2 Soweit der Ehegatte des Unionsbürgers Deutscher nach	2 Where the spouse of the Union citizen is a German	Y	Effective transposition

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	point (a) of paragraph 1 and the condition as to length of residence laid down in point (b) of paragraph 1 shall not apply if the worker's or the self-employed person's spouse or partner as referred to in point 2(b) of Article 2 is a national of the host Member State or has lost the nationality of that Member State by marriage to that worker or self-employed person.		Artikel 116 des Grundgesetzes ist oder diese Rechtsstellung durch Eheschließung mit dem Unionsbürger bis zum 31. März 1953 verloren hat, entfallen in Satz 1 Nr. 1 und 2 die Voraussetzungen der Aufenthaltsdauer und der Dauer der Erwerbstätigkeit.	within the meaning of Article 116 of the Basic Law or lost this legal status as a result of entering into marriage to the Union citizen up to 31 March 1953, the conditions pertaining to the duration of residence and the duration of employment in sentence 1, nos. 1 and 2 shall not apply.		If the spouse is German, the condition as to length of residence does not apply. If the spouse lost the German nationality by marriage to the Union citizen, what only was automatically the case until the 31 March 1953, the condition as to length of residence does not apply.
Art.17.3	3. Irrespective of nationality, the family members of a worker or a self-employed person who are residing with him in the territory of the host Member State shall have the right of permanent residence in that Member State, if the worker or self-employed person has acquired himself the right of permanent residence in that Member State on the basis of paragraph 1.	§ 4a (4) FreizügG/EU	(4) Die Familienangehörigen eines Unionsbürgers, der das Daueraufenthaltsrecht nach Absatz 2 erworben hat oder vor seinem Tod erworben hatte, haben ebenfalls das Daueraufenthaltsrecht, wenn sie bereits bei Entstehen seines Daueraufenthaltsrechts bei dem Unionsbürger ihren ständigen Aufenthalt hatten.	(4) The family members of an Union citizen who acquired the right of permanent residence pursuant to sub-§ 2 or prior to his or her death shall also possess the right of permanent residence if they were already continuously resident with the Union citizen upon the latter acquiring the right of permanent residence.	Y	Effective transposition  § 4a (4) refers to § 4a (2), that is transposing art. 17.3. § 4a (4) applies to all family members irrespective of their nationality. They have the right of permanent residence if they were continuously residing with the Union citizen when this Union citizen acquired the right of permanent residence pursuant to § 4a (2).
Art.17.4 (a)	4. If, however, the worker or self-employed person dies while still working but before acquiring permanent residence status in the host Member State on the basis of paragraph 1, his family members who are residing with him in the host Member State shall acquire the right of permanent residence there, on condition that: (a) the worker or self-employed person had, at the time of death, resided continuously on the territory of that Member State for two years; or	§ 4a (3) 1. FreizügG/EU	(3) Familienangehörige eines verstorbenen Unionsbürgers nach § 2 Abs. 2 Nr. 1 bis 3, die im Zeitpunkt seines Todes bei ihm ihren ständigen Aufenthalt hatten, haben das Daueraufenthaltsrecht, wenn 1. der Unionsbürger sich im Zeitpunkt seines Todes seit mindestens zwei Jahren im Bundesgebiet ständig aufgehalten hat,	(3) Family members of a deceased Union citizen pursuant to § 2 (2), nos. 1 to 3 who were continuously resident with the deceased at the time of the latter's death shall possess the right of permanent residence if 1. the Union citizen had been continuously resident in the Federal territory for a period of at least two years at the time of his or her death,	Y	Effective transposition
Art.17.4 (b)	(b) the death resulted from an accident at work or an occupational disease; or	§ 4a (3) 2. FreizügG/EU	2. der Unionsbürger infolge eines Arbeitsunfalls oder einer Berufskrankheit gestorben ist oder	2. the Union citizen died as a result of an accident at work or an occupational disease or	Y	Effective transposition
Art.17.4 (c)	(c) the surviving spouse lost the nationality of that Member State following marriage to the worker or self-	§ 4a (3) 3. FreizügG/EU	3. der überlebende Ehegatte des Unionsbürgers Deutscher nach	3. the surviving spouse of the Union citizen is a German	Y	Effective transposition  <i>Cf supra</i> art 17.2.

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	employed person.		Artikel 116 des Grundgesetzes ist oder diese Rechtsstellung durch Eheschließung mit dem Unionsbürger vor dem 31. März 1953 verloren hat.	within the meaning of Article 116 of the Basic Law or lost this legal status as a result of entering into marriage with the Union citizen prior to 31 March 1953.		
Art.18	<b>Acquisition of the right of permanent residence by certain family members who are not nationals of a Member State.</b>  Without prejudice to Article 17, the family members of a Union citizen to whom Articles 12(2) and 13(2) apply, who satisfy the conditions laid down therein, shall acquire the right of permanent residence after residing legally for a period of five consecutive years in the host Member State.	§ 4a (5) FreizügG/EU	(5) Familienangehörige nach § 3 Abs. 3 bis 5 erwerben das Daueraufenthaltsrecht, wenn sie sich fünf Jahre ständig rechtmäßig im Bundesgebiet aufhalten.	(5) Family members pursuant to § 3 (3) to (5) shall acquire the right of permanent residence if they have resided lawfully and continuously in the Federal territory for a period of five years.	Y	Effective transposition  § 4a (5) provides a right of permanent residence for family members who are not national of a Member State and who resided in Germany in application of § 3 (3) to (5), transposing art. 12 and 13, if they have resided in Germany five years legally and continuously.
<b>Chapter IV. RIGHT OF PERMANENT RESIDENCE</b>						
<b>§ I. Administrative formalities</b>						
Art.19.1	<b>Document certifying permanent residence for Union citizens</b>  1. Upon application Member States shall issue Union citizens entitled to permanent residence, after having verified duration of residence, with a document certifying permanent residence.	§ 5 (6) FreizügG/EU	1 Auf Antrag wird Unionsbürgern unverzüglich ihr Daueraufenthalt bescheinigt.	1 Union citizens shall be provided with a certificate confirming their right of permanent residence forthwith, upon due application.	Y	Effective transposition  There is no precision about the verification of duration, but this verification is necessary to assess whether the Union citizen has a right of permanent residence that may be confirmed. Implicitly this verification has to be carried out in practice.
Art.19.2	2. The document certifying permanent residence shall be issued as soon as possible.	§ 5 (6) FreizügG/EU	1 Auf Antrag wird Unionsbürgern unverzüglich ihr Daueraufenthalt bescheinigt.	1 Union citizens shall be provided with a certificate confirming their right of permanent residence forthwith, upon due application.	Y	Effective transposition  Certificate is issued forthwith, what clearly means that it is issued as soon as possible. More favourable transposition.
Art.20.1	<b>Permanent residence card for family members who are not nationals of a Member State</b>	§ 5 (6) FreizügG/EU	2 Ihren daueraufenthaltsberechtigten Familienangehörigen, die nicht	2 A permanent residence card shall be issued to their family members who are entitled to	Y	Effective transposition  The permanent residence card has to

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	1. Member States shall issue family members who are not nationals of a Member State entitled to permanent residence with a permanent residence card within six months of the submission of the application. The permanent residence card shall be renewable automatically every 10 years.		Unionsbürger sind, wird innerhalb von sechs Monaten nach Antragstellung eine Daueraufenthaltskarte ausgestellt.	permanent residence but who are not Union citizens within six months of a corresponding application being filed.		be issued within six month of the submission of the application. This permanent residence card has no limitation of validity, what means that is does not to have been renewed. The formulation of German legislation differs on this point from the one used for transposition of Article 10(1), as § 5 (6) FreizügG states that the deadline is “within six months of application being filled”, whereas § 5 (2) transposing Article 10(1) uses the expression “within six months of said family members furnishing the necessary information”.
Art.20.2	2. The application for a permanent residence card shall be submitted before the residence card expires. Failure to comply with the requirement to apply for a permanent residence card may render the person concerned liable to proportionate and non-discriminatory sanctions.	None			Y, More favourable	More favourable transposition  German legislation is more favourable, because it does apparently not provide an obligation to submit an application for a permanent residence card, nor links such a failure to any sanction.
Art.20.3	3. Interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card.	§ 4a (7) FreizügG/EU	(7) Eine Abwesenheit aus einem seiner Natur nach nicht nur vorübergehenden Grund von mehr als zwei aufeinander folgenden Jahren führt zum Verlust des Daueraufenthaltsrechts.	(7) Absence for a reason which is per se not of a temporary nature for more than two consecutive years shall result in loss of the right of permanent residence.	Y	Effective transposition  German legislation is more favourable, because an absence from the Federal territory for a period exceeding two consecutives years is a cause of the loss of the right of permanent residence only if the absence is per se not of a temporary nature.
Art. 21	<b>Continuity of residence</b>  For the purposes of this Directive, continuity of residence may be attested by any means of proof in use in the host Member State.  Continuity of residence is broken by any	§ 26 (1) and (2) VwVfG	(1) 1Die Behörde bedient sich der Beweismittel, die sie nach pflichtgemäßem Ermessen zur Ermittlung des Sachverhalts für erforderlich hält. 2Sie kann insbesondere	(1) The authority shall utilise such evidence as, after due consideration, it deems necessary in order to ascertain the facts of the case. In particular it may: 1. gather information of all	N, Incomplete	Incomplete transposition  There are no specific measures about the means of proof that may be used to attest the continuity of residence. General rules, and specially § 26 VwVfG, apply. In practice, under

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	expulsion decision duly enforced against the person concerned.		<p>1. Auskünfte jeder Art einholen, 2. Beteiligte anhören, Zeugen und Sachverständige vernehmen oder die schriftliche oder elektronische Äußerung von Beteiligten, Sachverständigen und Zeugen einholen, 3. Urkunden und Akten beiziehen, 4. den Augenschein einnehmen. (2) 1Die Beteiligten sollen bei der Ermittlung des Sachverhalts mitwirken. 2Sie sollen insbesondere ihnen bekannte Tatsachen und Beweismittel angeben. 3Eine weitergehende Pflicht, bei der Ermittlung des Sachverhalts mitzuwirken, insbesondere eine Pflicht zum persönlichen Erscheinen oder zur Aussage, besteht nur, soweit sie durch Rechtsvorschrift besonders vorgesehen ist.</p>	<p>kinds, 2. hear the evidence of participants, witnesses and experts or gather statements in writing or electronically from participants, experts and witnesses, 3. obtain documents and records, 4. visit and inspect the locality involved. (2) The participants shall assist in ascertaining the facts of the case. In particular they shall state such facts and evidence as are known to them. A more extensive duty to assist in ascertaining the facts, and in particular the duty to appear personally or make a statement, shall exist only where the law specifically requires this.</p>		<p>correct application of this provision, continuity of residence may be attested by any means of proof in use in Germany. German provisions however only give administration the right to ask for every mean of proof, whereas the Directive provides a right to the EU-citizen to prove its residence by any means of proof. Such a right does not exist in German legislation. It therefore seems necessary to clearly indicate that continuity of residence may be attested by any means of proof in use in Germany, in order to avoid an abusive administrative practice or conflicts with potentially different federal or regional legislation or regulation. On this point, transposition is incomplete.</p> <p>There is no specific definition of “continuity of residence”, and apparently no specific rule applying to Union citizens and their family members in order to break continuity of residence by any expulsion duly enforced. However it seems reasonable to consider that the official interpretation sees it this way. In every case, there is no evident infringement.</p> <p>However, there is no clear transposition of Article 21, guaranteeing that continuity of residence may be attested by any means of proof in use in Germany. This transposition would be necessary to guarantee the rights and protection provided by the Directive.</p>



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						For this reason, transposition is incomplete.
<b>Chapter V. PROVISIONS COMMON TO THE RIGHT OF RESIDENCE AND THE RIGHT OF PERMANENT RESIDENCE</b>						
Art. 22	<b>Territorial scope</b>  The right of residence and the right of permanent residence shall cover the whole territory of the host Member State.	§ 1 FreizügG/EU	Dieses Gesetz regelt die Einreise und den Aufenthalt von Staatsangehörigen anderer Mitgliedstaaten der Europäischen Union (Unionsbürger) und ihrer Familienangehörigen.	This Act regulates entry and residence by nationals of other Member States of the European Union (Union citizens) and their family members.	Y	Effective transposition  FreizügG/EU regulates entry into and residence in Germany of Union citizens and their family members. The territorial scope is a consequence of the absence of any precision or limitation, what means that the legislation applies to whole territory of the Federal Republic of Germany. Any territorial restriction for Union citizens and their family members would be illegal.
	Member States may impose territorial restrictions on the right of residence and the right of permanent residence only where the same restrictions apply to their own nationals.	None			Y	Effective transposition  There is apparently no territorial restriction imposed on the right of residence of Union citizens and their family members.
Art.23	<b>Related rights</b>  Irrespective of nationality, the family members of a Union citizen who have the right of residence or the right of permanent residence in a Member State shall be entitled to take up employment or self-employment there.	Art. 39 TEC, § 284 SGB III, § 39 (6) AufenthG, §§ 38, 41 BeschV	§ 284 SGB III (1) IStaatsangehörige der Staaten, die nach dem Vertrag vom 16. April 2003 über den Beitritt der Tschechischen Republik, der Republik Estland, der Republik Zypern, der Republik Lettland, der Republik Litauen, der Republik Ungarn, der Republik Malta, der Republik Polen, der Republik Slowenien und der Slowakischen Republik zur Europäischen Union (BGBl. 2003 II S. 1408) der Europäischen Union beigetreten sind, und deren freizügigkeitsberechtigte Familienangehörige dürfen eine Beschäftigung nur mit Genehmigung der Bundesagentur	§ 284 SGB III Nationals of those states which have acceded to the European Union in accordance with the treaty of 16 April 2003 on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Republic of Slovakia to the European Union (Federal Law Gazette 2003 II, p. 1408) and their family members who are entitled to the right of free movement may only take up	Y	Effective transposition  Germany respects the right resulting from art. 39 TEC. Specific measures concern only the situation of the new Member States, and the restrictions are linked to the necessity that those restrictions must have been foreseen by the transitional accords.

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			<p>für Arbeit ausüben und von Arbeitgebern nur beschäftigt werden, wenn sie eine solche Genehmigung besitzen, soweit nach Maßgabe des EU-Beitrittsvertrages abweichende Regelungen als Übergangsregelungen der Arbeitnehmerfreizügigkeit Anwendung finden. 2Dies gilt für die Staatsangehörigen der Staaten entsprechend, die nach dem Vertrag vom 25. April 2005 über den Beitritt der Republik Bulgarien und Rumäniens zur Europäischen Union (BGBl. 2006 II S. 1146) der Europäischen Union beigetreten sind.</p>	<p>employment if they have an authorisation of the Federal Employment Agency, or may only get employed if they have such an authorisation, as far as transitional rules concerning free movement of workers apply pursuant to the Treaty of Accession. This applies mutatis mutandis to nationals of the States which have acceded to the European Union in accordance with the treaty of 25 April 2005 on the accession of the Republic of Bulgaria and Romania to the European Union (Federal Law Gazette 2006 II, p. 1146).</p>		
			<p>§ 39 (6) AufenthG 1Staatsangehörigen derjenigen Staaten, die nach dem Vertrag vom 16. April 2003 über den Beitritt der Tschechischen Republik, der Republik Estland, der Republik Zypern, der Republik Lettland, der Republik Litauen, der Republik Ungarn, der Republik Malta, der Republik Polen, der Republik Slowenien und der Slowakischen Republik zur Europäischen Union (BGBl. 2003 II S. 1408) oder nach dem Vertrag vom 25. April 2005 über den Beitritt der Republik Bulgarien und Rumäniens zur Europäischen Union (BGBl. 2006 II S. 1146) der Europäischen Union beigetreten sind, kann von der Bundesagentur für Arbeit eine Beschäftigung, die eine</p>	<p>§ 39 (6) AufenthG The Federal Employment Agency may permit nationals of those states which have acceded to the European Union in accordance with the treaty of 16 April 2003 on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Republic of Slovakia to the European Union (Federal Law Gazette 2003 II, p. 1408) or in accordance with the treaty of 25 April 2005 on the accession of the Republic of Bulgaria and Romania to the</p>		

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			<p>qualifizierte Berufsausbildung voraussetzt, unter den Voraussetzungen des Absatzes 2 erlaubt werden, soweit nach Maßgabe dieser Verträge von den Rechtsvorschriften der Europäischen Gemeinschaft abweichende Regelungen Anwendung finden. 2Ihnen ist Vorrang gegenüber zum Zweck der Beschäftigung einreisenden Staatsangehörigen aus Drittstaaten zu gewähren.</p> <p>§ 38 BeschV 1Besteht eine zwischenstaatliche Vereinbarung, die die Ausübung einer Beschäftigung regelt, bestimmt sich die Erteilung der Zustimmung gemäß § 39 des Aufenthaltsgesetzes nach dieser Vereinbarung. 2Im Übrigen finden die §§ 39 bis 41 Anwendung. § 41 BeschV (1) Keiner Zustimmung bedarf die Erteilung eines Aufenthaltstitels zur Ausübung einer Beschäftigung, soweit dies in zwischenstaatlichen Verträgen bestimmt ist. (2) Die Zustimmung zu einem Aufenthaltstitel kann erteilt werden, wenn eine zwischenstaatliche Vereinbarung dies bestimmt (§ 18 Abs. 3 und 4 und § 39 Abs. 1 Satz 2 des Aufenthaltsgesetzes). (3) Für zwischenstaatliche Vereinbarungen, in denen bestimmt ist, dass jemand für eine Beschäftigung keiner</p>	<p>European Union (Federal Law Gazette 2006 II, p. 1146) to take up employment which requires a vocational qualification subject to the conditions stipulated in subsection , insofar as provisions which diverge from the statutory provisions of the European community apply under the said treaties. Such nationals are to be granted priority over nationals of third countries who enter the Federal territory for the purpose of employment.</p> <p>§ 38 BeschV 1 If an international accord exists, which regulates the practice of employment, the issuance of the approval pursuant to § 39 AufenthG is determined according to this agreement. 2 For the rest §§ 39 to 41 apply. § 41 (1) No approval is required for the issuance of a residence title that permits pursuit of an economic activity, as far as intergovernmental treaties dispose so. (2) The approval for a residence title that permits pursuit of an economic activity can be given if an intergovernmental accord disposes so (§ 18 (3) and (4) and § 39 (1) 2 AufenthG). (3) For intergovernmental accords, that dispose that someone does not need a permission to or a work permit,</p>		

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			Arbeitsgenehmigung oder Arbeitserlaubnis bedarf, gilt Absatz 1, bei Vereinbarungen, in denen bestimmt ist, dass eine Arbeitsgenehmigung oder Arbeitserlaubnis erteilt werden kann, gilt Absatz 2 entsprechend.	subparagraph 1 applies, for accords, that dispose that a permission to work or a work permit can be issued subparagraph 2 applies.		
Art.24.1	<b>Equal treatment</b>  1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.	None			NT	No specific transposition.  However Germany could be in accordance with the directive if there is no violation of the right of equal treatment in practice. Furthermore equal treatment could be obtained under application of art. 12 TEC, which is directly applicable, to which German courts can refer and that must be respected by legislative and executive authorities. However as there is no specific transposition, Germany has not correctly transposed the directive on this point. See the Conformity study for more details.
Art.24.2	2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.	§ 7 SGB II, § 63 SGB III, §§ 5,186 SGB V, § 6 SGB VIII, § 23 SGB XII, § 8 BAföG	Siehe Anhang Sozialleistungen für Ausländer in Deutschland	Cf. Annex Social assistance for foreigners in Germany	N, Incomplete	Incomplete transposition  § 7 SGB II restricts the right of social assistance in case of unemployment during the first three months of residence of the foreigner who is neither worker nor self-employed, nor service provider, and their family members. For job seekers and their family members, this restriction applies without any limitation in time, <i>i.e.</i> that job seekers have no right to assistance in case of unemployment even after a period of three months.  § 63 SGB III gives a right of support

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						<p>of vocational training to: Union citizens and other foreigners having a right of permanent residence; Family members of Union citizens even if they have not yet acquired a right of permanent residence; Union citizens having been employed in Germany and starting a vocational training linked to this employment.</p> <p>§ 5 SGB V provides an exemption to the obligation to take a public health insurance for Union citizens and their family members residing in application of § 4 FreizügG/EU/ EU for whom the existence of sufficient resources and health insurance is a condition of the right of residence. <i>Contrario</i> all other categories of Union citizens have to take such insurance, the same rules and exceptions as for Germans apply.</p> <p>§ 6 SGB VIII provides the right to have youth assistance for all foreigners legally residing in Germany.</p> <p>§ 23 SGB XII provides the right to have social assistance to foreigners residing legally in Germany without restriction, unless the foreigner entered Germany with the purpose of getting social assistance or as a job-seeker, which is further in line with Article 35 (abuse of rights).</p> <p>§ 8 BAföG gives a right of support studies or educational training to: Union citizens and other foreigners having a right of permanent</p>

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						<p>residence; Family members of Union citizens even if they have not yet acquired a right of permanent residence (this provision is including all categories of Union citizens that have a personal right of entry and residence, as it refers to § 3(1) FreizügG/EU which refers to § 2(2)1. to 5. FreizügG/EU, providing a right of freedom of movement to workers, job seekers, self employed persons, service providers, recipients of services and non economically active Union citizens); Union citizens having been employed in Germany and starting an educational training linked to this employment. This is the only point where appears a conformity issue. The Directive provides a right of support studies to workers, self-employed persons, and persons who retain such status. These persons are not directly covered by BAFöG. However, these persons benefit from the principle of non-discrimination conforming to Article 12 TEC, which is directly applicable in Germany. This means that they should be treated equally to Germans, which have a right of support studies pursuant to § 8 (1) 1. BAFöG. In practice those persons should be able to obtain the maintenance aid for studies or vocational training. However, as this possibility is not clearly indicated in German law, the transposition on this point is not complete.</p>
Art.25.1	<b>General provisions concerning residence documents</b>	None			NT	<p>Gap in transposition</p> <p>There is no direct transposition</p>

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	1. Possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.					measure. There is apparently no evident legislation making of the possession of one of the mentioned documents a precondition for the exercise of a right or the completion of an administrative formality. However, in order to avoid any abusive administrative practice, it could be necessary to have an explicit legislative text imposing the respect of the present article.
Art.25.2	2. All documents mentioned in paragraph 1 shall be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.	§2 (6) FreizügG/EU, § 47 (3) AufenthV	(6) Für die Ausstellung der Bescheinigung über das Aufenthaltsrecht und des Visums werden keine Gebühren erhoben. (3) Für die Ausstellung einer Aufenthaltskarte (§ 5 Abs. 2 des Freizügigkeitsgesetzes/EU), die Bescheinigung des Daueraufenthalts (§ 5 Abs. 6 Satz 1 des Freizügigkeitsgesetzes/EU), die Ausstellung der Daueraufenthaltskarte (§ 5 Abs. 6 Satz 2 des Freizügigkeitsgesetzes/EU) sind, wenn es sich nicht um die erstmalige Ausstellung an Personen handelt, die das 21. Lebensjahr noch nicht vollendet haben, Gebühren in Höhe von 8 Euro zu erheben.	(6) No charges shall be imposed for issuance of the certificate confirming the right of residence and the visa. § 47 (3) For issuance of a residence card (§ 5 (2) FreizügG/EU), the certificate confirming the right of permanent residence (§ 5 (6) 1 FreizügG/EU), issuance of a permanent residence card (§ 5 (6) 2 FreizügG/EU), if it's not the first issuance for persons having not completed the 21 <sup>st</sup> year of life, the charged fees shall be 8 €	Y	Effective transposition  Certificates confirming the right of residence and visas are issued free of charges. For the following other documents a fee of eight Euros is charged: residence card for third country's nationals' family members, certificate of permanent residence, permanent residence card, unless this document is issued for the first time for a person of less than 21 years. This fee is equivalent to the one charged for Germans for the issuing of similar documents (§ 15 (1) 1 h) PassV = 8€.
Art.26	<b>Checks</b>  Member States may carry out checks on compliance with any requirement deriving from their national legislation for non-nationals always to carry their registration certificate or residence card, provided that the same requirement applies to their own nationals as regards	§ 8 FreizügG/EU	§ 8 (1) Unionsbürger und ihre Familienangehörigen sind verpflichtet, 1. bei der Einreise in das oder der Ausreise aus dem Bundesgebiet einen Pass oder anerkannten Passersatz a) mit sich zu führen und b) einem zuständigen Beamten	§ 8 (1) Union citizens and their family members are obliged, 1. when entering or leaving the Federal territory a) to carry a passport or a recognised passport substitute on their person and, b) on request, to hand over such identification papers to a	Y	Effective transposition  Union citizens and their family members are obliged to carry a passport or passport substitute and to deliver it for inspection when they enter or leave the German territory. This is equivalent to § 1 PassG which applies to German nationals.

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	<p>their identity card. In the event of failure to comply with this requirement, Member States may impose the same sanctions as those imposed on their own nationals for failure to carry their identity card.</p>		<p>auf Verlangen zur Prüfung auszuhändigen, 2. für die Dauer des Aufenthalts im Bundesgebiet den erforderlichen Pass oder Passersatz zu besitzen, 3. den Pass oder Passersatz sowie die Bescheinigung über das gemeinschaftsrechtliche Aufenthaltsrecht, die Aufenthaltskarte, die Bescheinigung des Daueraufenthalts und die Daueraufenthaltskarte den mit der Ausführung dieses Gesetzes betrauten Behörden vorzulegen, auszuhändigen und vorübergehend zu überlassen, soweit dies zur Durchführung oder Sicherung von Maßnahmen nach diesem Gesetz erforderlich ist. (2) 1 Die mit dem Vollzug dieses Gesetzes betrauten Behörden dürfen unter den Voraussetzungen des Absatzes 1 Nr. 3 die auf dem elektronischen Speichermedium eines Dokumentes nach Absatz 1 gespeicherten biometrischen und sonstigen Daten auslesen, die benötigten biometrischen Daten beim Inhaber des Dokumentes erheben und die biometrischen Daten miteinander vergleichen. 2 Biometrische Daten nach Satz 1 sind nur die Fingerabdrücke, das Lichtbild und die Irisbilder. 3 Die Polizeivollzugsbehörden, die Zollverwaltung und die</p>	<p>competent official for inspection, 2. to hold the necessary passport or passport substitute for the duration of their residence in the Federal territory, 3. to present the passport or passport substitute and the certificate confirming the right of residence under Community law, the residence card, the certificate confirming the right of permanent residence and the permanent residence card to the authorities charged with implementing this Act and to hand over the aforesaid papers and leave them with the said authorities for a temporary period, should this be necessary in order to enforce or safeguard measures under this Act. (2) 1 The authorities entrusted with the execution of this law may under the conditions of paragraph 1 No. 3 read the biometric and other data stored on the electronic storage medium of a document pursuant to paragraph 1, raise the necessary biometric data of the owner of the document and compare the biometric data with each other. 2 Biometric data pursuant to sentence 1 are only the fingerprints, the photo and the iris pictures. 3 The police enforcement authorities, the customs</p>		<p>Furthermore they are obliged to hold these documents for the duration of their residence and to present them for control measures or to hand them over to the competent authority if an expulsion order is ruled against them. This is equivalent to § 1 PersAuswG and §§ 7,8 PassG applicable to German nationals</p> <p>Sanctions are identical to those for Germans when they do not fulfil the obligations concerning pass or identity card duties (fine of up to 2500 € § 25 PassG; fine of up to 1000 € § 5 PersAuswG with § 17 OWiG)</p>



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		§ 10 FreizügG/EU	<p>Meldebehörden sind befugt, Maßnahmen nach Satz 1 zu treffen, soweit sie die Echtheit des Dokumentes oder die Identität des Inhabers überprüfen dürfen.</p> <p>4 Die nach den Sätzen 1 und 3 erhobenen Daten sind unverzüglich nach Beendigung der Prüfung der Echtheit des Dokumentes oder der Identität des Inhabers zu löschen.</p> <p>§ 10 Bußgeldvorschriften (1) Ordnungswidrig handelt, wer entgegen § 8 Abs. 1 Nr. 1 Buchstabe b einen Pass oder Passersatz nicht oder nicht rechtzeitig aushändigt.</p> <p>(2) Ordnungswidrig handelt, wer vorsätzlich oder leichtfertig entgegen § 8 Abs. 1 Nr. 2 einen Pass oder Passersatz nicht besitzt.</p> <p>(3) Ordnungswidrig handelt, wer vorsätzlich oder fahrlässig entgegen § 8 Abs. 1 Nr. 1 Buchstabe a einen Pass oder Passersatz nicht mit sich führt.</p> <p>(4) Die Ordnungswidrigkeit kann in den Fällen der Absätze 1 und 3 mit einer Geldbuße bis zu</p>	<p>authority and the registration authorities are authorised to take measures pursuant to sentence 1 as far as they are allowed to examine the authenticity of the document or the identity of the owner.</p> <p>4 Data raised in accordance with sentences 1 and 3 are to be deleted immediately after completion of the examination of the authenticity of the document or the identity of the owner.</p> <p>§ 10 Provisions as to fines (1) Anyone who does not hand over a passport or passport substitute or fails to do so in good time in contravention of § 8 (1), letter b shall be deemed to have committed an administrative offence.</p> <p>(2) Anyone who, with intent or through negligence, is not in possession of a passport or passport substitute in contravention of § 8 (2) shall be deemed to have committed an administrative offence.</p> <p>(3) Anyone who, with intent or through negligence, does not carry a passport or passport substitute on their person in contravention of § 8 (1), letter a shall be deemed to have committed an administrative offence.</p> <p>(4) The administrative offence shall be punishable with a fine of up to two thousand five</p>		

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			zweitausendfünfhundert Euro, in den übrigen Fällen mit einer Geldbuße bis zu tausend Euro geahndet werden.	hundred Euros in the cases covered by sub-§§ 1 and 3, and with a fine of up to one thousand Euros in the other cases.		
<b>Chapter VI. RESTRICTIONS ON THE RIGHT OF ENTRY AND THE RIGHT OF RESIDENCE ON GROUNDS OF PUBLIC POLICY, PUBLIC SECURITY OR PUBLIC HEALTH</b>						
Art.27.1	<b>General principles</b>  1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.	§ 6 (1) + (6) FreizügG/EU	(1) 1 Der Verlust des Rechts nach § 2 Abs. 1 kann unbeschadet des § 5 Abs. 5 nur aus Gründen der öffentlichen Ordnung, Sicherheit oder Gesundheit (Artikel 39 Abs. 3, Artikel 46 Abs. 1 des Vertrages über die Europäische Gemeinschaft) festgestellt und die Bescheinigung über das gemeinschaftsrechtliche Aufenthaltsrecht oder über den Daueraufenthalt eingezogen und die Aufenthaltskarte oder Daueraufenthaltskarte widerrufen werden.  (6) Die Entscheidungen oder Maßnahmen, die den Verlust des Aufenthaltsrechts oder des Daueraufenthaltsrechts betreffen, dürfen nicht zu wirtschaftlichen Zwecken getroffen werden.	(1) Without prejudice to § 5 (5), loss of the entitlement pursuant to § 2 (1) can only be declared, the certificate confirming the right of residence under Community law or confirming the right of permanent residence withdrawn and the residence card or permanent residence card revoked on grounds of public policy, public security or public health (Article 39 (3), Article 46 (1) of the Treaty on the European Community).  (6) Decisions or measures concerning the loss of the right of residence or of the right of permanent residence must not be undertaken for economic ends.	Y	Effective transposition  Germany does restrict the freedom of movement and residence of Union citizens and their family members on grounds of public policy, public security or public health. Those measures cannot be undertaken for economic purposes.  Germany further refers to the EC Treaty for the definition of those terms.
Art.27.2	2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned.  Previous criminal convictions shall not in themselves constitute grounds for taking such measures.	§ 6 (2) FreizügG/EU	(2) 1 Die Tatsache einer strafrechtlichen Verurteilung genügt für sich allein nicht, um die in Absatz 1 genannten Entscheidungen oder Maßnahmen zu begründen. 2 Es dürfen nur im Bundeszentralregister noch nicht getilgte strafrechtliche Verurteilungen und diese nur insoweit berücksichtigt werden, als die ihnen zu Grunde liegenden Umstände ein persönliches Verhalten erkennen lassen, das eine gegenwärtige Gefährdung der	(2) 1 A criminal conviction alone shall not constitute sufficient grounds for the decisions or measures specified in sub-§ 1. 2 Only criminal convictions which have yet to be deleted from the Federal Central Criminal Register may be taken into consideration, and these only insofar as the circumstances pertaining to the said convictions indicate personal behaviour which constitutes a current threat to	Y	Effective transposition  Measures taken under § 6 (1) are discretionary decision. The competent authority will have to check in every particular case if the conditions of a loss of the right of residence or entry are fulfilled. The FreizügG/EU contains some interpretation guidelines in order to take such a decision. A criminal conviction alone is not a sufficient ground. It will be however necessary to control how the administration

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			öffentlichen Ordnung darstellt.	public order.		<p>uses this discretionary authority. The principle of proportionality is a general principle of German law, and has especially to be respected for the correct use of discretionary power.</p> <p>The obligation to base the measures only on the personal conduct of the individual concerned is expressly transposed only in relation to criminal convictions, where such precision was necessary to avoid abusive administrative practice. However, implicitly this obligation is general as a result of the fact that measures taken under § 6 (1) FreizügG/EU are discretionary decisions.</p>
	The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.	§ 6 (2) FreizügG/EU	3 Es muss eine tatsächliche und hinreichend schwere Gefährdung vorliegen, die ein Grundinteresse der Gesellschaft berührt.	3 A real and sufficiently serious danger must apply which affects a fundamental interest of society.	N, Incomplete	<p>Incomplete transposition</p> <p>Effective transposition only for the first sentence.</p> <p>The personal conduct of the individual must represent a real and sufficiently serious danger. It is not précised that this danger must be present. The fact that justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted could be guaranteed by the fact that § 6 (1) is a discretionary decision and that it has always to be taken in consideration of the particular circumstances of the case. It will be however necessary to control how the administration uses this discretionary authority.</p>

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						Furthermore, there is no transposition of the second sentence. Even if there is apparently no direct infringement of this disposition in German legislation, it would be necessary to transpose this point in order to avoid any abusive administrative practice and ensure that EU citizens know their rights in case of appeal since this can be used as a ground to contest a decision.
Art.27.3	3. In order to ascertain whether the person concerned represents a danger for public policy or public security, when issuing the registration certificate or, in the absence of a registration system, not later than three months from the date of arrival of the person concerned on its territory or from the date of reporting his/her presence within the territory, as provided for in Article 5(5), or when issuing the residence card, the host Member State may, should it consider this essential, request the Member State of origin and, if need be, other Member States to provide information concerning any previous police record the person concerned may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.	None			NT	Gap in transposition  There is apparently no transposition measure for this Article in German legislation.
Art.27.4	4. The Member State which issued the passport or identity card shall allow the holder of the document who has been expelled on grounds of public policy, public security, or public health from another Member State to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.	Art. 3 (2) of the protocol no. 4 of the ECHR from 16.9.1963, art. 25 GG.	Art 3 (2) Niemandem darf das Recht entzogen werden, in das Hoheitsgebiet des Staates einzureisen, dessen Staatsangehöriger er ist. Art 25 Die allgemeinen Regeln des Völkerrechtes sind Bestandteil des Bundesrechtes. Sie gehen den	Art 3 (2) No one shall be deprived of the right to enter the territory of the state of which he is a national.  Art 25 The general rules of international law shall be an integral part of federal law. They shall take precedence over	Y	Effective transposition  Germany has signed and ratified the protocol no. 4 of the ECHR, which has become a part of the national legal system. This article has to be respected by all German authorities.  A conformity issue could only appear if the nationality of the holder

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			Gesetzen vor und erzeugen Rechte und Pflichten unmittelbar für die Bewohner des Bundesgebietes.	the laws and directly create rights and duties for the inhabitants of the federal territory.		is in dispute, as Germany has not taken any measure treating directly with this problem.
Art.28	<b>Protection against expulsion</b>  1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.	§ 6 (3) FreizügG/EU	(3) Bei der Entscheidung nach Absatz 1 sind insbesondere die Dauer des Aufenthalts des Betroffenen in Deutschland, sein Alter, sein Gesundheitszustand, seine familiäre und wirtschaftliche Lage, seine soziale und kulturelle Integration in Deutschland und das Ausmaß seiner Bindungen zum Herkunftsstaat zu berücksichtigen.	(3) For the purposes of the decision pursuant to sub-§ 1, consideration shall be accorded especially to how long the individual concerned has resided in Germany, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.	Y	Almost Literal transposition
	2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.	§ 6 (4) FreizügG/EU	(4) Eine Feststellung nach Absatz 1 darf nach Erwerb des Daueraufenthaltsrechts nur aus schwerwiegenden Gründen getroffen werden.	(4) Following acquisition of the right of permanent residence, a loss of entitlement pursuant to sub-§ 1 may be declared on serious grounds only.	Y	Effective transposition  § 6 (4) refers to § 6 (1), concerning expulsion on the ground of public policy, public security or public health. An expulsion measure on ground of public health can only be taken during the first three months of residence, and so is totally irrelevant for persons having acquired a right of permanent residence. § 6 (4) so necessarily refers to grounds of public policy and public security, which have to be serious in order to justify an expulsion measure. This part is correctly transposed in German legislation.
	3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they: (a) have resided in the host Member State for the previous 10 years; or	§ 6 (5) FreizügG/EU	(5) 1 Eine Feststellung nach Absatz 1 darf bei Unionsbürgern und ihren Familienangehörigen, die ihren Aufenthalt in den letzten zehn Jahren im Bundesgebiet hatten, und bei Minderjährigen nur aus zwingenden Gründen der öffentlichen Sicherheit getroffen	(5) In the case of Union citizens and their family members who have been resident in the Federal territory in the past ten years and in the case of minors, a loss of entitlement pursuant to sub-§ 1 may be declared on imperative grounds of public	Y	Effective transposition

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			werden.	safety only.		
	(b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.	§ 6 (5) 1 + 2 FreizügG/EU	1 Eine Feststellung nach Absatz 1 darf bei Unionsbürgern und ihren Familienangehörigen, die ihren Aufenthalt in den letzten zehn Jahren im Bundesgebiet hatten, und bei Minderjährigen nur aus zwingenden Gründen der öffentlichen Sicherheit getroffen werden. 2 Für Minderjährige gilt dies nicht, wenn der Verlust des Aufenthaltsrechts zum Wohl des Kindes notwendig ist.	1 In the case of Union citizens and their family members who have been resident in the Federal territory in the past ten years and in the case of minors, a loss of entitlement pursuant to sub-§ 1 may be declared on imperative grounds of public safety only. 2 This shall not apply to minors where loss of the right of residence is necessary for the best interests of the child.	Y	Effective transposition  The principle for minors is provided by § 6 (5) 1, the exception by § 6 (5) 2, in accordance with the directive.
Art. 29.1	<b>Public health</b>  1. The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.	§ 6 (1) + (6) FreizügG/EU, IfSG, IGVG 2005, IHR 2005	(1) 1 Der Verlust des Rechts nach § 2 Abs. 1 kann unbeschadet des § 5 Abs. 5 nur aus Gründen der öffentlichen Ordnung, Sicherheit oder Gesundheit (Artikel 39 Abs. 3, Artikel 46 Abs. 1 des Vertrages über die Europäische Gemeinschaft) festgestellt und die Bescheinigung über das gemeinschaftsrechtliche Aufenthaltsrecht oder über den Daueraufenthalt eingezogen und die Aufenthaltskarte oder Daueraufenthaltskarte widerrufen werden.	(1) Without prejudice to § 5 (5), loss of the entitlement pursuant to § 2 (1) can only be declared, the certificate confirming the right of residence under Community law or confirming the right of permanent residence withdrawn and the residence card or permanent residence card revoked on grounds of public policy, public security or public health (Article 39 (3), Article 46 (1) of the Treaty on the European Community).	N, Incomplete	Incomplete transposition  German legislation has transposed the Directive on the point of limitation of right or residence on grounds of public health very concisely. In practice, such restrictions are very rare. Concerning the transposition, German legislation does not precisely define the term "public health". <u>FreizügG/EU</u> does not precisely define the term of public health. It so should refer to Community definition of this term. (cf. cf BMI Anwendungshinweise, 22.12.2004, p.392) Furthermore, IfSG provides the main measures Germany has taken in order to prevent epidemic and contagious diseases. This Act applies to Germans and Aliens, but does not allow expulsion measures for foreigners. Germany has also signed the International Health Regulations 2005 of the World Health Organisation from 23 may 2005, ratified by the IGVG 2005, but has

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						not yet taken the necessary implementation measures concerning the control of travellers . In order to determine if Germany has correctly transposed this Article, it will be necessary to control the precise application of this exception, and especially to control the correct definition of diseases justifying restrictions. If the diseases justifying expulsion measures are only the diseases defined by the World Health Organisation and/or by German legislation applying to Germans, mainly the IfSG, the transposition would be correct, However there is no clear legal transposition of article 29.1.
Art.29.2	2. Diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory.	§ 6 (1) 3 FreizügG/EU	3 Die Feststellung aus Gründen der öffentlichen Gesundheit kann nur erfolgen, wenn die Krankheit innerhalb der ersten drei Monate nach Einreise auftritt.	3 Loss of the entitlement on grounds of public health can only be declared if the illness concerned arises within the first three months after entering the Federal territory.	Y	Effective transposition  After a three months period from the date of arrival, loss of the right of entry or residence cannot be declared on the grounds of public health.
Art.29.3	3. Where there are serious indications that it is necessary, Member States may, within three months of the date of arrival, require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in paragraph 1. Such medical examinations may not be required as a matter of routine.				N, Incomplete	Incomplete transposition  Apparently there are no transposing measures relating to this article. Germany has not used the possibility of Article 29(3) to require a medical examination. On this point German legislation seems more favourable than the Directive. For the moment the specific medical requirements Germany can ask from Union citizens and their family members are identical to those applying to Germans. As Article 29(3) is a guarantee for the citizen in case where Germany requires a medical examination, transposition might

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						seem necessary, especially about the obligation to undertake those examinations free of charges, and not as a matter of routine.
Art.30.1	<p><b>Notification of decisions</b></p> <p>1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.</p>	<p>§ 6 (8) FreizügG/EU</p> <p>§ 23 (1) VwVfG</p> <p>§ 39 (1) VwVfG</p>	<p>(8) 1 Vor der Feststellung nach Absatz 1 soll der Betroffene angehört werden. 2 Die Feststellung bedarf der Schriftform.</p> <p>(1) Die Amtssprache ist deutsch.</p> <p>(1) 1Ein schriftlicher oder elektronischer sowie ein schriftlich oder elektronisch bestätigter Verwaltungsakt ist mit einer Begründung zu versehen. 2In der Begründung sind die wesentlichen tatsächlichen und rechtlichen Gründe mitzuteilen, die die Behörde zu ihrer Entscheidung bewogen haben. 3Die Begründung von Ermessensentscheidungen soll auch die Gesichtspunkte erkennen lassen, von denen die Behörde bei der Ausübung ihres Ermessens ausgegangen ist.</p>	<p>(8) 1 Prior to the decision pursuant to sub-§ 1, the person concerned should be heard. 2 The decision must be issued in writing.</p> <p>(1) The official language shall be German.</p> <p>(1) A written or electronic administrative act, as well as an administrative act confirmed in writing or electronically, shall be accompanied by a statement of grounds. This statement of grounds must contain the chief material and legal grounds led the authority to take its decision. The grounds given in connection with discretionary decisions should also contain the points of view which the authority considered while exercising its powers of discretion.</p>	N, Incomplete	<p>Incomplete transposition</p> <p>Effective transposition concerning the written form, but no transposition concerning the last part.</p> <p>Any decision taken under § (6) 1 transposing art. 27.1 must be notified in writing. This notification has not to be translated in the foreigner's language, as the principle is the use of German as language of administrative procedure (§ 23 (1) VwVfG). However the fact that the concerned person has to be heard before the taking of the decision, and the obligation to justify this decision in application of § 39 (1) VwVfG may give sufficient guaranties that the person is able to comprehend the content of the decision and its implications for him. There is however no explicit transposition on this point, and German legislation does not clearly guarantee that persons must be informed in such a way that they are able to comprehend the content of the decision.</p>
Art.30.2	<p>2. The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.</p>	§ 39 (1) VwVfG	<p>39 (1) 1 Ein schriftlicher oder elektronischer sowie ein schriftlich oder elektronisch bestätigter Verwaltungsakt ist mit einer Begründung zu versehen. 2 In der Begründung sind die wesentlichen tatsächlichen und rechtlichen Gründe mitzuteilen, die die Behörde zu ihrer</p>	<p>39 (1) A written or electronic administrative act, as well as an administrative act confirmed in writing or electronically, shall be accompanied by a statement of grounds. This statement of grounds must contain the chief material and legal grounds led the authority to take its decision.</p>	No, Incomplete	<p>Incomplete transposition</p> <p>Application of general administrative rules gives the authorities the obligation to examine if conditions laid down in any legislation are fulfilled, and to fully justify any deny or restriction of right. The necessity to justify the decision in writing is</p>



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			Entscheidung bewogen haben. 3 Die Begründung von Ermessensentscheidungen soll auch die Gesichtspunkte erkennen lassen, von denen die Behörde bei der Ausübung ihres Ermessens ausgegangen ist.	The grounds given in connection with discretionary decisions should also contain the points of view which the authority considered while exercising its powers of discretion.		not restricted by a possible exception, such as “substantial public interests”. This limitation only exists for the hearing of the concerned person (cf § 28 (3) VwVfG). German legislation appears being more favourable on this point. However, the directive obliges to inform “in full”, whereas German legislation provides an information on “main grounds”. On this point, there is no total conformity.
Art.30.3	3. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State. Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification.	1 <sup>st</sup> sentence: § 58 VwGO + § 7 (1) 3; 2 <sup>nd</sup> sentence: § 7 (1) 4 FreizügG/EU	§ 58 (1) Die Frist für ein Rechtsmittel oder einen anderen Rechtsbehelf beginnt nur zu laufen, wenn der Beteiligte über den Rechtsbehelf, die Verwaltungsbehörde oder das Gericht, bei denen der Rechtsbehelf anzubringen ist, den Sitz und die einzuhaltende Frist schriftlich oder elektronisch belehrt worden ist.  § (7) 3 In dem Bescheid soll die Abschiebung angedroht und eine Ausreisefrist gesetzt werden.  4 Außer in dringenden Fällen muss die Frist mindestens einen Monat betragen.	§ 58 (1) The delay for an appeal or other remedy only starts to run when the concerned person has been informed in written or electronically about the remedy, the competent authority or the court where to apply for the remedy, its address, and the time limit for appeal.  3 A notification announcing removal from the territory shall be served, setting a deadline for departure.  4 Except in urgent cases, a minimum deadline period of one month shall apply.	Y	Effective transposition  In application of the general rules, the notification of the decision must clearly indicate the possibility to lodge an appeal, the competent authority or court, and the time limit for the appeal. The notification shall also announce the threat of an expulsion measure, and fix a deadline for the voluntary departure. This deadline shall be at minimum one month, except in urgent cases, conforming to the directive. German legislation does not precise that urgency has to be “duly substantiated”. This condition appears being implicitly transposed, as urgency must necessary be substantiated.
Art.31.1	<b>Procedural safeguards</b>  1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the	Art. 19 (4) 1 GG; §§ 40 (1), 42 VwGO,	Artikel 19 (4) 1Wird jemand durch die öffentliche Gewalt in seinen Rechten verletzt, so steht ihm der Rechtsweg offen. 2Soweit eine andere Zuständigkeit nicht begründet ist, ist der ordentliche Rechtsweg gegeben.	Art 19 (4) Should any person’s rights be violated by public authority, he may have recourse to the courts. If no other jurisdiction has been established, recourse shall be to the ordinary courts.	Y	Effective transposition  General administrative rules give the possibility to appeal against any administrative decision, including a decision taken against a Union citizen or his family members on the grounds of public policy, public

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	grounds of public policy, public security or public health.		<p>§ 40 (1) 1Der Verwaltungsrechtsweg ist in allen öffentlich-rechtlichen Streitigkeiten nichtverfassungsrechtlicher Art gegeben, soweit die Streitigkeiten nicht durch Bundesgesetz einem anderen Gericht ausdrücklich zugewiesen sind. 2Öffentlich-rechtliche Streitigkeiten auf dem Gebiet des Landesrechts können einem anderen Gericht auch durch Landesgesetz zugewiesen werden.</p> <p>§ 42 (1) Durch Klage kann die Aufhebung eines Verwaltungsakts (Anfechtungsklage) sowie die Verurteilung zum Erlaß eines abgelehnten oder unterlassenen Verwaltungsakts (Verpflichtungsklage) begehrt werden. (2) Soweit gesetzlich nichts anderes bestimmt ist, ist die Klage nur zulässig, wenn der Kläger geltend macht, durch den Verwaltungsakt oder seine Ablehnung oder Unterlassung in seinen Rechten verletzt zu sein</p>	<p>§ 40 (1) The Administrative Court procedure is guaranteed in all public-law disputes that are not of constitutional nature, as far as Federal law does not give explicitly competence to another court. 2 Public-law disputes in area of regional law can be submitted to another court by regional law.</p> <p>§ 42 (1) By claim can be requested the annulment of an administrative act (redress claim) as well as the condemnation to take a refused or omitted administrative act (commitment claim). (2) As far as not provided differently by law, the claim is only receivable if the plaintiff asserts having been attempted in its rights by the administrative act or its refusal or omission.</p>		security or public health. There is indeed no such restriction.
Art.31.2	2. Where the application for appeal against or judicial review of the expulsion decision is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory may not take place until such time as the decision on the interim order has been taken, except: — where the expulsion decision is based on a previous judicial decision; or	§ 7 (1) 5 FreizügG/EU, § 80 VwGO	<p>5 Wird ein Antrag nach § 80 Abs. 5 der Verwaltungsgerichtsordnung gestellt, darf die Abschiebung nicht erfolgen, bevor über den Antrag entschieden wurde.</p> <p>§ 80 (1) 1Widerspruch und Anfechtungsklage haben aufschiebende Wirkung. (2) 1Die aufschiebende Wirkung</p>	<p>5 If an application is filed pursuant to § 80 (5) of the Code of Administrative Court Procedure, removal from the territory must not take place prior to a decision being reached on the application. § 80 (1) Appeal and redress procedure claim have suspensive effect. (2) Suspensiveness does not</p>	Y	<p>Effective transposition</p> <p>A requirement to leave the Federal country is in principle enforceable once the concerned administrative decision is taken. The condition that the concerned administrative decision has to be final, <i>i.e.</i> that the time limit for the appeal has expired, or a definitive court judgement has confirmed this decision, has been</p>

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	<p>— where the persons concerned have had previous access to judicial review; or</p> <p>— where the expulsion decision is based on imperative grounds of public security under Article 28(3).</p>		<p>entfällt nur [...]</p> <p>4. in den Fällen, in denen die sofortige Vollziehung im öffentlichen Interesse oder im überwiegenden Interesse eines Beteiligten von der Behörde, die den Verwaltungsakt erlassen oder über den Widerspruch zu entscheiden hat, besonders angeordnet wird.</p> <p>(5) 1Auf Antrag kann das Gericht der Hauptsache die aufschiebende Wirkung in den Fällen des Absatzes 2 Nr. 1 bis 3 ganz oder teilweise anordnen, im Falle des Absatzes 2 Nr. 4 ganz oder teilweise wiederherstellen. 2Der Antrag ist schon vor Erhebung der Anfechtungsklage zulässig. 3Ist der Verwaltungsakt im Zeitpunkt der Entscheidung schon vollzogen, so kann das Gericht die Aufhebung der Vollziehung anordnen. 4Die Wiederherstellung der aufschiebenden Wirkung kann von der Leistung einer Sicherheit oder von anderen Auflagen abhängig gemacht werden. 5Sie kann auch befristet werden.</p>	<p>apply [...]</p> <p>4. in the cases where the immediate enforcement is ordered by the competent authority on the ground of public interest or of predominant interest of a person concerned by the procedure.</p> <p>5 On request the competent court can totally or partly order the suspensive effect in the cases of the paragraph 2 No. 1 to 3, totally or partly re-establish it in case of the paragraph 2 No. 4. 2 The request is already receivable before the filling of the redress claim. 3 If the administrative act is enforced at the time the decision is taken, the court can order the annulment of the enforcement. 4 The re-establishment of the suspensive effect can be linked to the production of guarantees. 5 It can also be limited in time.</p>		<p>abolished by the Richtlinienumsetzungsgesetz from 2007. So even if in principle an application for appeal or judicial review has suspensive effect (§80 (1) VwGO), this is not the case if an interim order to enforcement of that decision was taken by the competent authority in some specific cases, as especially the case where this interim enforcement is based on public interest (§80 (2) 4. VwGO), or if a legal rule provides an exception. However such an interim order can be contested (§ 80 (5) VwGO), whether the interim enforcement is a consequence of an administrative decision or of a legal rule (such as particularly § 84 AufenthG). If an application is filled in order to contest such an interim enforcement, the removal from Federal territory cannot take place until the decision about this interim order is taken (§ 7 (1) 4 FreizügG/EU). There is no limitation of this suspension of the interim enforcement order.</p>
Art.31.3	<p>3. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.</p>	§§ 68, 114 VwGO, § 24 VwVfG	<p>§ 68 VwGO (1) 1Vor Erhebung der Anfechtungsklage sind Rechtmäßigkeit und Zweckmäßigkeit des Verwaltungsakts in einem Vorverfahren nachzuprüfen. § 114 1Soweit die Verwaltungsbehörde ermächtigt ist, nach ihrem</p>	<p>§ 68 VwGO (1) Before application for the judicial review, legality and expediency of the administrative act have to be verified in a preliminary procedure. § 114 1 As far as the administrative authority is authorized to act</p>	N, Incomplete	<p>Incomplete transposition</p> <p>German legislation does not clearly precise that the redress procedure has to ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28 of the directive. There is especially no examination of the circumstances and the</p>

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			<p>Ermessen zu handeln, prüft das Gericht auch, ob der Verwaltungsakt oder die Ablehnung oder Unterlassung des Verwaltungsakts rechtswidrig ist, weil die gesetzlichen Grenzen des Ermessens überschritten sind oder von dem Ermessen in einer dem Zweck der Ermächtigung nicht entsprechenden Weise Gebrauch gemacht ist.</p> <p>§ 24 VwVfG</p> <p>(1) Die Behörde ermittelt den Sachverhalt von Amts wegen.</p> <p>2 Sie bestimmt Art und Umfang der Ermittlungen; an das Vorbringen und an die Beweisanträge der Beteiligten ist sie nicht gebunden.</p> <p>(2) Die Behörde hat alle für den Einzelfall bedeutsamen, auch die für die Beteiligten günstigen Umstände zu berücksichtigen.</p> <p>(3) Die Behörde darf die Entgegennahme von Erklärungen oder Anträgen, die in ihren Zuständigkeitsbereich fallen, nicht deshalb verweigern, weil sie die Erklärung oder den Antrag in der Sache für unzulässig oder unbegründet hält.</p>	<p>after its discretion the court examines also whether the administrative act or the refusal or omission of the administrative act are illegal, because the legal borders of the discretion are exceeded or discretion is not used in an appropriate way conforming to the purposes of the authorisation.</p> <p>§ 24 VwVfG</p> <p>(1) The authority shall determine the facts of the case ex officio. It shall determine the type and scope of investigation and shall not be bound by the participants' submissions and motions to admit evidence.</p> <p>(2) The authority shall take account of all circumstances of importance in an individual case, including those favourable to the participants.</p> <p>(3) The authority shall not refuse to accept statements or applications falling within its sphere of competence on the ground that it considers the statement or application inadmissible or unjustified.</p>		<p>proportionality during the judicial redress procedure.</p> <p>For the rest, a redress procedure is compulsory in application of § 68 (1) VwGO. This procedure must reconsider the legality and the convenience of the decision. The decision must be reconsidered entirely, what means that all grounds of this decision must be reconsidered. As the absence of the disproportionate character of the decision is one of its legality conditions, it should also be reconsidered. Furthermore the competent authority has the obligation to investigate ex officio the facts and circumstances on which the decision is based (§ 24 (1)VwVfG), even if it is favourable to the concerned person (§ 24 (2) VwVfG).</p>
Art.31.4	4. Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/ her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.	No specific transposition measure, § 19 (4) GG	(4) Wird jemand durch die öffentliche Gewalt in seinen Rechten verletzt, so steht ihm der Rechtsweg offen.	(4) Should any person's rights be violated by public authority, he may have recourse to the courts	N, Incomplete	<p>Incomplete transposition</p> <p>As an expulsion measure can be enforced before the decision retiring right of residence is final (cf. <i>supra</i> art. 31.2), it is necessary to give the possibility to the concerned individual to submit its defence in person. Germany does not explicitly do so. Transposition could however</p>

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						result from general rules, especially the right of effective recourse to the courts, as the prevention of submitting defence in person attempts to this right. In order to take an interim enforcement, the administration has however already to ensure that this right is respected (see explanations under Article 31.2). Therefore explicit transposition of Article 31.4 seems necessary.
Art.32.1	<b>Duration of exclusion orders</b>  1. Persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order which has been validly adopted in accordance with Community law, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion.	§ 7 (2) 4 FreizügG/EU	4 Ein nach angemessener Frist oder nach drei Jahren gestellter Antrag auf Aufhebung ist innerhalb von sechs Monaten zu bescheiden.	4 An application for the ban to be lifted which is filed after a reasonable period or after three years shall be decided upon within six months.	Y	Effective transposition  If an application for the ban of entry, who can only be based on § 6 (1) (grounds of public policy or public security), to be lifted is filed, this application shall be decided if the application is filed after a reasonable period of times, or after three years. In order to evaluate whether a reasonable period has expired before the extinction of a period of three years, it is necessary to take into account the specific circumstances of the case.
	The Member State concerned shall reach a decision on this application within six months of its submission.	§ 7 (2) 4 FreizügG/EU	4 Ein nach angemessener Frist oder nach drei Jahren gestellter Antrag auf Aufhebung ist innerhalb von sechs Monaten zu bescheiden.	4 An application for the ban to be lifted which is filed after a reasonable period or after three years shall be decided upon within six months.	Y	Effective transposition  The decision must be taken within six month.
Art.32.2	2. The persons referred to in paragraph 1 shall have no right of entry to the territory of the Member State concerned while their application is being considered.	§ 7 (2) 1 FreizügG/EU	1 Unionsbürger und ihre Familienangehörigen, die ihr Freizügigkeitsrecht nach § 6 Abs. 1 verloren haben, dürfen nicht erneut in das Bundesgebiet einreisen und sich darin aufhalten.	1 Union citizens and their family members who have lost their entitlement to freedom of movement pursuant to § 6 (1) shall not be permitted to re-enter and residence in the Federal territory.	Y	Effective transposition  Ban on entry is a legal consequence of the loss of the right of residence based on § 6. This ban is not affected by an application for the ban to be lifted, unless of course this application is successful. During the procedure the ban is maintained. There is no legislation disposing the

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Art.33.1	<p><b>Expulsion as a penalty or legal consequence</b></p> <p>1. Expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29.</p>	None			Y	<p>contrary.</p> <p>Effective transposition</p> <p>There is neither any direct violation of this article in German legislation, nor a direct transposition providing that an expulsion order may not be issued as a penalty of a custodial penalty.</p> <p>StGB does not contain any expulsion measure as additional penalty (cf §§ 44,45 StGB).</p> <p>Expulsion as a legal consequence of a penalty, as in §§ 53-55 AufenthG, does not apply to Union citizens and their family members to whom FreizügG/EU applies.</p> <p>§ 6 (5) 3 links the expulsion of a ten years resident to a sentence to a prison term or a term of youth custody of at least five years or the fact that preventive detention has been ordered in connection with the most recent unappealable conviction, to the necessity that the security of the Federal Republic of Germany is affected or the person concerned poses a terrorist threat.</p> <p>This means that there is theoretically never an automatic expulsion of a Union citizen or his family members as a penalty or legal consequence of a custodial penalty. However such a practice is not clearly prohibited, what might be a ground of non transposition of the Directive.</p>

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Art.33.2	2. If an expulsion order, as provided for in paragraph 1, is enforced more than two years after it was issued, the Member State shall check that the individual concerned is currently and genuinely a threat to public policy or public security and shall assess whether there has been any material change in the circumstances since the expulsion order was issued.	None			Y	No transposition of § 1, no need of transposition of § 2.
Art.34	<b>Publicity</b> Member States shall disseminate information concerning the rights and obligations of Union citizens and their family members on the subjects covered by this Directive, particularly by means of awareness-raising campaigns conducted through national and local media and other means of communication.					The experts did not find any information about German publicity measures.
Art.35	<b>Abuse of rights</b> Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measure shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31.	None	§ 27 (1a) AufenthG Ein Familiennachzug wird nicht zugelassen, wenn 1. feststeht, dass die Ehe oder das Verwandtschaftsverhältnis ausschließlich zu dem Zweck geschlossen oder begründet wurde, dem Nachziehenden die Einreise in das und den Aufenthalt im Bundesgebiet zu ermöglichen, oder 2. tatsächliche Anhaltspunkte die Annahme begründen, dass einer der Ehegatten zur Eingehung der Ehe genötigt wurde.	§ 27 (1a) AufenthG The subsequent immigration of dependents 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 subsequently immigrating persons 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.	Y	Effective transposition  Germany does not use directly this option for Union citizens and their family members. Especially § 27 (1a) AufenthG does not apply. However abuse of rights can always be sanctioned, especially as marriages of convenience are not valid marriages.
Art.36	<b>Sanctions</b> Member States shall lay down provisions on the sanctions applicable to	§ 9 + § 10 FreizügG/EU	§ 9 Strafvorschriften Mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe wird	§ 9 : Penal provisions Any person who enters or residences in the Federal territory in contravention of § 7	Y	Effective transposition  Sanctions are identical to those for Germans when they leave the

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	<p>breaches of national rules adopted for the implementation of this Directive and shall take the measures required for their application.</p> <p>The sanctions laid down shall be effective and proportionate. Member States shall notify the Commission of these provisions not later than 30 April 2006 and as promptly as possible in the case of any subsequent changes.</p>		<p>bestraft, wer entgegen § 7 Abs. 2 Satz 1 in das Bundesgebiet einreist oder sich darin aufhält.</p> <p>§ 10 Bußgeldvorschriften</p> <p>(1) Ordnungswidrig handelt, wer entgegen § 8 Abs. 1 Nr. 1 Buchstabe b einen Pass oder Passersatz nicht oder nicht rechtzeitig aushändigt.</p> <p>(2) Ordnungswidrig handelt, wer vorsätzlich oder leichtfertig entgegen § 8 Abs. 1 Nr. 2 einen Pass oder Passersatz nicht besitzt.</p> <p>(3) Ordnungswidrig handelt, wer vorsätzlich oder fahrlässig entgegen § 8 Abs. 1 Nr. 1 Buchstabe a einen Pass oder Passersatz nicht mit sich führt.</p> <p>(4) Die Ordnungswidrigkeit kann in den Fällen der Absätze 1 und 3 mit einer Geldbuße bis zu zweitausendfünfhundert Euro, in den übrigen Fällen mit einer Geldbuße bis zu tausend Euro geahndet werden.</p> <p>(5) Verwaltungsbehörden im Sinne des § 36 Abs. 1 Nr. 1 des Gesetzes über Ordnungswidrigkeiten sind in den Fällen der Absätze 1 und 3 die Bundespolizeiämter.</p>	<p>(2), sentence 1 shall be punishable with up to one year's imprisonment or a fine.</p> <p>§ 10 Provisions as to fines</p> <p>(1) Anyone who does not hand over a passport or passport substitute or fails to do so in good time in contravention of § 8 (1), letter b shall be deemed to have committed an administrative offence.</p> <p>(2) Anyone who, with intent or through negligence, is not in possession of a passport or passport substitute in contravention of § 8 (2) shall be deemed to have committed an administrative offence.</p> <p>(3) Anyone who, with intent or through negligence, does not carry a passport or passport substitute on their person in contravention of § 8 (1), letter a shall be deemed to have committed an administrative offence.</p> <p>(4) The administrative offence shall be punishable with a fine of up to two thousand five hundred Euros in the cases covered by sub-§§ 1 and 3, and with a fine of up to one thousand Euros in the other cases.</p> <p>(5) In the cases covered by sub-§§ 1 and 3, the administrative authorities within the meaning of § 36 (1), no. 1 of the Administrative Offences Act shall be the Federal Police</p>		<p>country while this exit has been forbidden (§ 24 PassG, penalty = 1 year's imprisonment or fine) or do not fulfil the obligations concerning pass or identity card duties (fine of up to 2500 € § 25 PassG; fine of up to 1000 € § 5 PersAuswG with § 17 OWiG)</p>



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				regional offices.		
Art.37	<b>More favourable national provisions</b>  The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.	§ 11 (1) 5 FreizügG/EU	5 Das Aufenthaltsgesetz findet auch dann Anwendung, wenn es eine günstigere Rechtsstellung vermittelt als dieses Gesetz.	5 The Residence Act shall also apply if it establishes a more favourable legal status than this Act.	Y	Effective transposition
Art.38	1. Articles 10 and 11 of Regulation (EEC) No 1612/68 shall be repealed with effect from 30 April 2006. 2. Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC shall be repealed with effect from 30 April 2006. 3. References made to the repealed provisions and Directives shall be construed as being made to this Directive.					
Art.39	No later than 30 April 2008 the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, together with any necessary proposals, notably on the opportunity to extend the period of time during which Union citizens and their family members may reside in the territory of the host Member State without any conditions. The Member States shall provide the Commission with the information needed to produce the report.					
Art.40	<b>Transposition</b>  1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this	Art. 15 (3) ZuwanderungsG, Art 10 (1) RichtlinienumsetzungsG	Art. 15 (3) Im Übrigen tritt dieses Gesetz am 1. Januar 2005 in Kraft.  Art 10 (1)	Art. 15 (3) For the rest this Act comes into force at 1 <sup>st</sup> January 2005.  Art 10 (1)	N, Incorrect	Incorrect transposition  A first partial transposition was obtained by the adoption of the FreizügG/EU as per article 2 of

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	Directive by 30 April 2006.		(1) Dieses Gesetz tritt vorbehaltlich der Absätze 2 bis 4 am Tag nach der Verkündung in Kraft.	This Act comes into force the day after its promulgation, except for the provisions determined in subparagraph 2 to 4.		Gesetz vom 30.7.2004 I 1950 (Zuwanderungsgesetz), whose entry into force was 1 <sup>st</sup> of January 2005.  Second part of transposition is the result of the Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union of 19 August 2007, whose entry into force was 28 August 2007. The directive was not transposed in time.
	When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.	Footnote under the title of the Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union and appearing on the first page of the publication in the Bundesanzeiger.	1 Dieses Gesetz dient der Umsetzung folgender Richtlinien: 5. Richtlinie 2004/38/EG des Europäischen Parlaments und des Rates vom 29. April 2004 über das Recht der Unionsbürger und ihrer Familienangehörigen, sich im Hoheitsgebiet der Mitgliedstaaten der Europäischen Union frei zu bewegen und aufzuhalten, zur Änderung der Verordnung (EWG) Nr. 1612/68 und zur Aufhebung der Richtlinien 64/221/EWG, 68/380/EWG, 72/194/EWG, 73/148/EWG, 75/34/EWG, 75/35/EWG, 90/364/EWG, 90/365/EWG und 93/96/EWG (ABl. EU Nr. L 229 S. 35),	1 This Act serves the implementation of following directives: 5. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC,	Y	Effective transposition  Clear indication of and reference to the directive. The motivation of the law is also very explicit about the intention to transpose the present directive (Begr., Ds. 15/5065, p.1)
	2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted.					

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Anhang: Sozialleistungen in Deutschland  
SGB II

**§ 7 Berechtigte**

(1) Leistungen nach diesem Buch erhalten Personen, die

1. das 15. Lebensjahr vollendet und die Altersgrenze nach § 7a noch nicht erreicht haben,
2. erwerbsfähig sind,
3. hilfebedürftig sind und
4. ihren gewöhnlichen Aufenthalt in der Bundesrepublik Deutschland haben (erwerbsfähige Hilfebedürftige). 2Ausgenommen sind

1. Ausländer, die weder in der Bundesrepublik Deutschland Arbeitnehmer oder Selbständige noch auf Grund des § 2 Abs. 3 des Freizügigkeitsgesetzes/EU freizügigkeitsberechtigt sind, und ihre Familienangehörigen für die ersten drei Monate ihres Aufenthalts,

2. Ausländer, deren Aufenthaltsrecht sich allein aus dem Zweck der Arbeitsuche ergibt, und ihre Familienangehörigen,
3. Leistungsberechtigte nach § 1 des Asylbewerberleistungsgesetzes.

3Satz 2 Nr. 1 gilt nicht für Ausländer, die sich mit einem Aufenthaltstitel nach Kapitel 2 Abschnitt 5 des Aufenthaltsgesetzes in der Bundesrepublik Deutschland aufhalten. 4Aufenthaltsrechtliche Bestimmungen bleiben unberührt.

(2) Leistungen erhalten auch Personen, die mit erwerbsfähigen Hilfebedürftigen in einer Bedarfsgemeinschaft leben. 2Dienstleistungen und Sachleistungen werden ihnen nur erbracht, wenn dadurch

1. die Hilfebedürftigkeit der Angehörigen der Bedarfsgemeinschaft beendet oder verringert,
2. Hemmnisse bei der Eingliederung der erwerbsfähigen Hilfebedürftigen beseitigt oder vermindert werden.

(3) Zur Bedarfsgemeinschaft gehören

1. die erwerbsfähigen Hilfebedürftigen,
2. die im Haushalt lebenden Eltern oder der im Haushalt lebende Elternteil eines unverheirateten erwerbsfähigen Kindes, welches das 25. Lebensjahr noch nicht vollendet hat, und der im Haushalt lebende Partner dieses Elternteils,
3. als Partner der erwerbsfähigen Hilfebedürftigen
  - a) der nicht dauernd getrennt lebende Ehegatte,
  - b) der nicht dauernd getrennt lebende Lebenspartner,
  - c) eine Person, die mit dem erwerbsfähigen Hilfebedürftigen in einem gemeinsamen Haushalt so zusammenlebt, dass nach verständiger Würdigung der wechselseitige Wille anzunehmen ist, Verantwortung füreinander zu tragen und füreinander einzustehen,

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4.  
die dem Haushalt angehörenden unverheirateten Kinder der in den Nummern 1 bis 3 genannten Personen, wenn sie das 25. Lebensjahr noch nicht vollendet haben, soweit sie die Leistungen zur Sicherung ihres Lebensunterhalts nicht aus eigenem Einkommen oder Vermögen beschaffen können.

(3a) Ein wechselseitiger Wille, Verantwortung füreinander zu tragen und füreinander einzustehen, wird vermutet, wenn Partner

1.  
länger als ein Jahr zusammenleben,
2.  
mit einem gemeinsamen Kind zusammenleben,
3.  
Kinder oder Angehörige im Haushalt versorgen oder
4.  
befugt sind, über Einkommen oder Vermögen des anderen zu verfügen.

(4) 1Leistungen nach diesem Buch erhält nicht, wer in einer stationären Einrichtung untergebracht ist, Rente wegen Alters oder Knappschaftsausgleichsleistung oder ähnliche Leistungen öffentlich-rechtlicher Art bezieht. 2Dem Aufenthalt in einer stationären Einrichtung ist der Aufenthalt in einer Einrichtung zum Vollzug richterlich angeordneter Freiheitsentziehung gleichgestellt. 3Abweichend von Satz 1 erhält Leistungen nach diesem Buch,

1.  
wer voraussichtlich für weniger als sechs Monate in einem Krankenhaus (§ 107 des Fünften Buches) untergebracht ist oder
- 2.

wer in einer stationären Einrichtung untergebracht und unter den üblichen Bedingungen des allgemeinen Arbeitsmarktes mindestens 15 Stunden wöchentlich erwerbstätig ist.

4(4a) Leistungen nach diesem Buch erhält nicht, wer sich ohne Zustimmung des persönlichen Ansprechpartners außerhalb des in der Erreichbarkeits-Anordnung vom 23. Oktober 1997 (ANBA 1997, 1685), geändert durch die Anordnung vom 16. November 2001 (ANBA 2001, 1476), definierten zeit- und ortsnahen Bereiches aufhält; die übrigen Bestimmungen dieser Anordnung gelten entsprechend.

(5) 1Auszubildende, deren Ausbildung im Rahmen des Bundesausbildungsförderungsgesetzes oder der §§ 60 bis 62 des Dritten Buches dem Grunde nach förderungsfähig ist, haben keinen Anspruch auf Leistungen zur Sicherung des Lebensunterhalts. 2In besonderen Härtefällen können Leistungen zur Sicherung des Lebensunterhalts als Darlehen geleistet werden.

(6) Absatz 5 findet keine Anwendung auf Auszubildende,

1.  
die auf Grund von § 2 Abs. 1a des Bundesausbildungsförderungsgesetzes keinen Anspruch auf Ausbildungsförderung oder auf Grund von § 64 Abs. 1 des Dritten Buches keinen Anspruch auf Berufsausbildungsbeihilfe haben oder
2.  
deren Bedarf sich nach § 12 Abs. 1 Nr. 1 des Bundesausbildungsförderungsgesetzes oder nach § 66 Abs. 1 Satz 1 des Dritten Buches bemisst oder
3.  
die eine Abendhauptschule, eine Abendrealschule oder ein Abendgymnasium besuchen, sofern sie aufgrund von § 10 Abs. 3 des Bundesausbildungsförderungsgesetzes keinen Anspruch auf Ausbildungsförderung haben.

### SGB III

#### **63 Förderungsfähiger Personenkreis (Förderung der Berufsausbildung)**

(1) Gefördert werden

1.  
Deutsche,
2.  
Unionsbürger, die ein Recht auf Daueraufenthalt im Sinne des Freizügigkeitsgesetzes/EU besitzen, sowie andere Ausländer, die eine Niederlassungserlaubnis oder eine Erlaubnis zum Daueraufenthalt-EG nach dem Aufenthaltsgesetz besitzen,
- 3.

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Ehegatten und Kinder von Unionsbürgern, die unter den Voraussetzungen des § 3 Abs. 1 und 4 des Freizügigkeitsgesetzes/EU gemeinschaftsrechtlich freizügigkeitsberechtigt sind oder denen diese Rechte als Kinder nur deshalb nicht zustehen, weil sie 21 Jahre oder älter sind und von ihren Eltern oder deren Ehegatten keinen Unterhalt erhalten,

4.

Unionsbürger, die vor dem Beginn der Ausbildung im Inland in einem Beschäftigungsverhältnis gestanden haben, dessen Gegenstand mit dem der Ausbildung in inhaltlichem Zusammenhang steht,

5.

Staatsangehörige eines anderen Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum unter den Voraussetzungen der Nummern 2 bis 4,

6.

Ausländer, die ihren gewöhnlichen Aufenthalt im Inland haben und die außerhalb des Bundesgebiets als Flüchtlinge im Sinne des Abkommens über die Rechtsstellung der Flüchtlinge vom 28. Juli 1951 (BGBl. 1953 II S. 559) anerkannt und im Gebiet der Bundesrepublik Deutschland nicht nur vorübergehend zum Aufenthalt berechtigt sind,

7.

heimatlose Ausländer im Sinne des Gesetzes über die Rechtsstellung heimatloser Ausländer im Bundesgebiet in der im Bundesgesetzblatt Teil III, Gliederungsnummer 243-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 7 des Gesetzes vom 30. Juli 2004 (BGBl. I S. 1950).

(2) Andere Ausländer werden gefördert, wenn sie ihren Wohnsitz im Inland haben und

1.

eine Aufenthaltserlaubnis nach den §§ 22, 23 Abs. 1 oder 2, den §§ 23a, 25 Abs. 1 oder 2, den §§ 28, 37, 38 Abs.1 Nr. 2, § 104a oder als Ehegatte oder Kind eines Ausländers mit Niederlassungserlaubnis eine Aufenthaltserlaubnis nach § 30 oder den §§ 32 bis 34 des Aufenthaltsgesetzes besitzen,

2.

eine Aufenthaltserlaubnis nach § 25 Abs. 3, Abs. 4 Satz 2 oder Abs. 5, § 31 des Aufenthaltsgesetzes oder als Ehegatte oder Kind eines Ausländers mit Aufenthaltserlaubnis eine Aufenthaltserlaubnis nach § 30 oder den §§ 32 bis 34 des Aufenthaltsgesetzes besitzen und sich seit mindestens vier Jahren in Deutschland ununterbrochen rechtmäßig, gestattet oder geduldet aufhalten.

(3) Im Übrigen werden Ausländer gefördert, wenn

1.

sie selbst sich vor Beginn des förderungsfähigen Teils des Ausbildungsabschnitts insgesamt fünf Jahre im Inland aufgehalten haben und rechtmäßig erwerbstätig gewesen sind oder

2.

zumindest ein Elternteil während der letzten sechs Jahre vor Beginn der Ausbildung sich insgesamt drei Jahre im Inland aufgehalten hat und rechtmäßig erwerbstätig gewesen ist, im Übrigen von dem Zeitpunkt an, in dem im weiteren Verlauf der Ausbildung diese Voraussetzungen vorgelegen haben. 2Von dem Erfordernis der Erwerbstätigkeit des Elternteils während der letzten sechs Jahre kann abgesehen werden, wenn sie aus einem von ihm nicht zu vertretenden Grunde nicht ausgeübt worden ist und er im Inland mindestens sechs Monate erwerbstätig gewesen ist. 3Ist der Auszubildende in den Haushalt eines Verwandten aufgenommen, so kann dieser zur Erfüllung dieser Voraussetzungen an die Stelle des Elternteils treten, sofern der Auszubildende sich in den letzten drei Jahren vor Beginn der Ausbildung rechtmäßig im Inland aufgehalten hat.

(4) Auszubildende, die nach Absatz 1 oder 2 als Ehegatten persönlich förderungsberechtigt sind, verlieren den Anspruch auf Ausbildungsförderung nicht dadurch, dass sie dauernd getrennt leben oder die Ehe aufgelöst worden ist, wenn sie sich weiterhin rechtmäßig in Deutschland aufhalten.

(5) Rechts- und Verwaltungsvorschriften, nach denen anderen Ausländern Ausbildungsförderung zu leisten ist, bleiben unberührt.

### **§ 284 Arbeitsgenehmigung-EU für Staatsangehörige der neuen EU-Mitgliedstaaten**

(1) 1Staatsangehörige der Staaten, die nach dem Vertrag vom 16. April 2003 über den Beitritt der Tschechischen Republik, der Republik Estland, der Republik Zypern, der Republik Lettland, der Republik Litauen, der Republik Ungarn, der Republik Malta, der Republik Polen, der Republik Slowenien und der Slowakischen Republik zur Europäischen Union (BGBl. 2003 II S. 1408) der Europäischen Union beigetreten sind, und deren freizügigkeitsberechtigte Familienangehörige dürfen eine Beschäftigung nur mit Genehmigung der Bundesagentur für Arbeit ausüben und von Arbeitgebern nur beschäftigt werden, wenn sie eine solche Genehmigung besitzen, soweit nach Maßgabe des EU-Beitrittsvertrages abweichende Regelungen als Übergangsregelungen der Arbeitnehmerfreizügigkeit Anwendung finden. 2Dies gilt für die Staatsangehörigen der Staaten entsprechend, die nach dem Vertrag vom 25. April 2005 über den Beitritt der Republik Bulgarien und Rumäniens zur Europäischen Union (BGBl. 2006 II S. 1146) der Europäischen Union beigetreten sind.

(2) 1Die Genehmigung wird befristet als Arbeitserlaubnis-EU erteilt, wenn nicht Anspruch auf eine unbefristete Erteilung als Arbeitsberechtigung-EU besteht. 2Die Genehmigung ist vor Aufnahme der Beschäftigung einzuholen.

(3) Die Arbeitserlaubnis-EU kann nach Maßgabe des § 39 Abs. 2 bis 4 und 6 des Aufenthaltsgesetzes erteilt werden.

(4) 1Ausländern nach Absatz 1, die ihren Wohnsitz oder gewöhnlichen Aufenthalt im Ausland haben und eine Beschäftigung im Bundesgebiet aufnehmen wollen, darf eine Arbeitserlaubnis-EU für eine Beschäftigung, die keine qualifizierte Berufsausbildung voraussetzt, nur erteilt werden, wenn dies durch zwischenstaatliche Vereinbarung bestimmt ist oder aufgrund einer Rechtsverordnung zulässig

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ist. 2Für die Beschäftigungen, die durch Rechtsverordnung zugelassen werden, ist Staatsangehörigen aus den Mitgliedstaaten der Europäischen Union nach Absatz 1 gegenüber Staatsangehörigen aus Drittstaaten vorrangig eine Arbeitslaubnis-EU zu erteilen, soweit dies der EU-Beitrittsvertrag vorsieht.

(5) Die Erteilung der Arbeitsberechtigung-EU bestimmt sich nach § 12a Arbeitsgenehmigungsverordnung.

(6) 1Das Aufenthaltsgesetz und die aufgrund des § 42 des Aufenthaltsgesetzes erlassenen Rechtsverordnungen zum Arbeitsmarktzugang gelten entsprechend, soweit sie für die Ausländer nach Absatz 1 günstigere Regelungen enthalten. 2Bei Anwendung der Vorschriften steht die Arbeitsgenehmigung-EU der Zustimmung zu einem Aufenthaltstitel nach § 4 Abs. 3 des Aufenthaltsgesetzes gleich.

(7) 1Ein vor dem Tag, an dem der Vertrag vom 25. April 2005 über den Beitritt der Republik Bulgarien und Rumäniens zur Europäischen Union (BGBl. 2006 II S. 1146) für die Bundesrepublik Deutschland in Kraft getreten ist, zur Ausübung der Beschäftigung eines Staatsangehörigen nach Absatz 1 Satz 2 erteilter Aufenthaltstitel zur Ausübung einer Beschäftigung gilt als Arbeitslaubnis-EU fort, wobei Beschränkungen des Aufenthaltstitels hinsichtlich der Beschäftigungsbedingungen als Beschränkungen der Arbeitslaubnis-EU bestehen bleiben. 2Ein vor diesem Zeitpunkt erteilter Aufenthaltstitel, der zur unbeschränkten Ausübung einer Beschäftigung berechtigt, gilt als Arbeitsberechtigung-EU fort.

SGB V

### § 5 Versicherungspflicht

(11) 1Ausländer, die nicht Angehörige eines Mitgliedstaates der Europäischen Union, Angehörige eines Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum oder Staatsangehörige der Schweiz sind, werden von der Versicherungspflicht nach Absatz 1 Nr. 13 erfasst, wenn sie eine Niederlassungserlaubnis oder eine Aufenthaltserlaubnis mit einer Befristung auf mehr als zwölf Monate nach dem Aufenthaltsgesetz besitzen und für die Erteilung dieser Aufenthaltstitel keine Verpflichtung zur Sicherung des Lebensunterhalts nach § 5 Abs. 1 Nr. 1 des Aufenthaltsgesetzes besteht. 2Angehörige eines anderen Mitgliedstaates der Europäischen Union, Angehörige eines anderen Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum oder Staatsangehörige der Schweiz werden von der Versicherungspflicht nach Absatz 1 Nr. 13 nicht erfasst, wenn die Voraussetzung für die Wohnortnahme in Deutschland die Existenz eines Krankenversicherungsschutzes nach § 4 des Freizügigkeitsgesetzes/EU ist. 3Bei Leistungsberechtigten nach dem Asylbewerberleistungsgesetz liegt eine Absicherung im Krankheitsfall bereits dann vor, wenn ein Anspruch auf Leistungen bei Krankheit, Schwangerschaft und Geburt nach § 4 des Asylbewerberleistungsgesetzes dem Grunde nach besteht.

### § 186 Beginn der Mitgliedschaft Versicherungspflichtiger

(11) 1Die Mitgliedschaft der nach § 5 Abs. 1 Nr. 13 Versicherungspflichtigen beginnt mit dem ersten Tag ohne anderweitigen Anspruch auf Absicherung im Krankheitsfall im Inland. 2Die Mitgliedschaft von Ausländern, die nicht Angehörige eines Mitgliedstaates der Europäischen Union, eines Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum oder Staatsangehörige der Schweiz sind, beginnt mit dem ersten Tag der Geltung der Niederlassungserlaubnis oder der Aufenthaltserlaubnis. 3Für Personen, die am 1. April 2007 keinen anderweitigen Anspruch auf Absicherung im Krankheitsfall haben, beginnt die Mitgliedschaft an diesem Tag. 4Zeigt der Versicherte aus Gründen, die er nicht zu vertreten hat, das Vorliegen der Voraussetzungen der Versicherungspflicht nach den in Satz 1 und 2 genannten Zeitpunkten an, hat die Krankenkasse in ihrer Satzung vorzusehen, dass der für die Zeit seit dem Eintritt der Versicherungspflicht nachzuzahlende Beitrag angemessen ermäßigt, gestundet oder von seiner Erhebung abgesehen werden kann.

SGB VIII

### § 6 Geltungsbereich

(1) 1Leistungen nach diesem Buch werden jungen Menschen, Müttern, Vätern und Personensorgeberechtigten von Kindern und Jugendlichen gewährt, die ihren tatsächlichen Aufenthalt im Inland haben. 2Für die Erfüllung anderer Aufgaben gilt Satz 1 entsprechend. 3Umgangsberechtigte haben unabhängig von ihrem tatsächlichen Aufenthalt Anspruch auf Beratung und Unterstützung bei der Ausübung des Umgangsrechts, wenn das Kind oder der Jugendliche seinen gewöhnlichen Aufenthalt im Inland hat.

(2) 1Ausländer können Leistungen nach diesem Buch nur beanspruchen, wenn sie rechtmäßig oder aufgrund einer ausländerrechtlichen Duldung ihren gewöhnlichen Aufenthalt im Inland haben. 2Absatz 1 Satz 2 bleibt unberührt.

(3) Deutschen können Leistungen nach diesem Buch auch gewährt werden, wenn sie ihren Aufenthalt im Ausland haben und soweit sie nicht Hilfe vom Aufenthaltsland erhalten.

(4) Regelungen des über- und zwischenstaatlichen Rechts bleiben unberührt.

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SGB XII

**§ 23 Sozialhilfe für Ausländerinnen und Ausländer**

(1) 1Ausländern, die sich im Inland tatsächlich aufhalten, ist Hilfe zum Lebensunterhalt, Hilfe bei Krankheit, Hilfe bei Schwangerschaft und Mutterschaft sowie Hilfe zur Pflege nach diesem Buch zu leisten. 2Die Vorschriften des Vierten Kapitels bleiben unberührt. 3Im Übrigen kann Sozialhilfe geleistet werden, soweit dies im Einzelfall gerechtfertigt ist. 4Die Einschränkungen nach Satz 1 gelten nicht für Ausländer, die im Besitz einer Niederlassungserlaubnis oder eines befristeten Aufenthaltstitels sind und sich voraussichtlich dauerhaft im Bundesgebiet aufhalten. 5Rechtsvorschriften, nach denen außer den in Satz 1 genannten Leistungen auch sonstige Sozialhilfe zu leisten ist oder geleistet werden soll, bleiben unberührt.

(2) Leistungsberechtigte nach § 1 des Asylbewerberleistungsgesetzes erhalten keine Leistungen der Sozialhilfe.

(3) 1Ausländer, die eingereist sind, um Sozialhilfe zu erlangen, oder deren Aufenthaltsrecht sich allein aus dem Zweck der Arbeitssuche ergibt, sowie ihre Familienangehörigen haben keinen Anspruch auf Sozialhilfe. 2Sind sie zum Zweck einer Behandlung oder Linderung einer Krankheit eingereist, soll Hilfe bei Krankheit insoweit nur zur Behebung eines akut lebensbedrohlichen Zustandes oder für eine unaufschiebbare und unabweisbar gebotene Behandlung einer schweren oder ansteckenden Erkrankung geleistet werden.

(4) Ausländer, denen Sozialhilfe geleistet wird, sind auf für sie zutreffende Rückführungs- und Weiterwanderungsprogramme hinzuweisen; in geeigneten Fällen ist auf eine Inanspruchnahme solcher Programme hinzuwirken.

(5) 1In den Teilen des Bundesgebiets, in denen sich Ausländer einer ausländerrechtlichen räumlichen Beschränkung zuwider aufhalten, darf der für den tatsächlichen Aufenthaltsort zuständige Träger der Sozialhilfe nur die nach den Umständen unabweisbar gebotene Leistung erbringen. 2Das Gleiche gilt für Ausländer, die einen räumlich nicht beschränkten Aufenthaltstitel nach den §§ 23, 23a, 24 Abs. 1 oder § 25 Abs. 3 bis 5 des Aufenthaltsgesetzes besitzen, wenn sie sich außerhalb des Landes aufhalten, in dem der Aufenthaltstitel erstmals erteilt worden ist. 3Satz 2 findet keine Anwendung, wenn der Ausländer im Bundesgebiet die Rechtsstellung eines ausländischen Flüchtlings genießt oder der Wechsel in ein anderes Land zur Wahrnehmung der Rechte zum Schutz der Ehe und Familie nach Artikel 6 des Grundgesetzes oder aus vergleichbar wichtigen Gründen gerechtfertigt ist.

BAföG

**§ 8 Staatsangehörigkeit**

(1) Ausbildungsförderung wird geleistet

1.

Deutschen im Sinne des Grundgesetzes,

2.

Unionsbürgern, die ein Recht auf Daueraufenthalt im Sinne des Freizügigkeitsgesetzes/EU besitzen sowie anderen Ausländern, die eine Niederlassungserlaubnis oder eine Erlaubnis zum Daueraufenthalt-EG nach dem Aufenthaltsgesetz besitzen,

3.

Ehegatten und Kindern von Unionsbürgern, die unter den Voraussetzungen des § 3 Abs. 1 und 4 des Freizügigkeitsgesetzes/EU gemeinschaftsrechtlich freizügigkeitsberechtigt sind oder denen diese Rechte als Kinder nur deshalb nicht zustehen, weil sie 21 Jahre oder älter sind und von ihren Eltern oder deren Ehegatten keinen Unterhalt erhalten,

4.

Unionsbürgern, die vor dem Beginn der Ausbildung im Inland in einem Beschäftigungsverhältnis gestanden haben, dessen Gegenstand mit dem der Ausbildung in inhaltlichem Zusammenhang steht,

5.

Staatsangehörigen eines anderen Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum unter den Voraussetzungen der Nummern 2 bis 4,

6.

Ausländern, die ihren gewöhnlichen Aufenthalt im Inland haben und die außerhalb des Bundesgebiets als Flüchtlinge im Sinne des Abkommens über die Rechtsstellung der Flüchtlinge vom 28. Juli 1951 (BGBl. 1953 II S. 559) anerkannt und im Gebiet der Bundesrepublik Deutschland nicht nur vorübergehend zum Aufenthalt berechtigt sind,

7.

heimatlosen Ausländern im Sinne des Gesetzes über die Rechtsstellung heimatloser Ausländer im Bundesgebiet in der im Bundesgesetzblatt Teil III, Gliederungsnummer 243-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 7 des Gesetzes vom 30. Juli 2004 (BGBl. I S. 1950).

(2) Anderen Ausländern wird Ausbildungsförderung geleistet, wenn sie ihren ständigen Wohnsitz im Inland haben und

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1. eine Aufenthaltserlaubnis nach den §§ 22, 23 Abs. 1 oder 2, den §§ 23a, 25 Abs. 1 oder 2, den §§ 28, 37, 38 Abs. 1 Nr. 2, § 104a oder als Ehegatte oder Kind eines Ausländers mit Niederlassungserlaubnis eine Aufenthaltserlaubnis nach § 30 oder den §§ 32 bis 34 des Aufenthaltsgesetzes besitzen,
  2. eine Aufenthaltserlaubnis nach § 25 Abs. 3, Abs. 4 Satz 2 oder Abs. 5, § 31 des Aufenthaltsgesetzes oder als Ehegatte oder Kind eines Ausländers mit Aufenthaltserlaubnis eine Aufenthaltserlaubnis nach § 30 oder den §§ 32 bis 34 des Aufenthaltsgesetzes besitzen und sich seit mindestens vier Jahren in Deutschland ununterbrochen rechtmäßig, gestattet oder geduldet aufhalten.
- (3) Im Übrigen wird Ausländern Ausbildungsförderung geleistet, wenn
1. sie selbst sich vor Beginn des förderungsfähigen Teils des Ausbildungsabschnitts insgesamt fünf Jahre im Inland aufgehalten haben und rechtmäßig erwerbstätig gewesen sind oder
  2. zumindest ein Elternteil während der letzten sechs Jahre vor Beginn des förderungsfähigen Teils des Ausbildungsabschnitts sich insgesamt drei Jahre im Inland aufgehalten hat und rechtmäßig erwerbstätig gewesen ist, im Übrigen von dem Zeitpunkt an, in dem im weiteren Verlauf des Ausbildungsabschnitts diese Voraussetzungen vorgelegen haben. 2Die Voraussetzungen gelten auch für einen einzigen weiteren Ausbildungsabschnitt als erfüllt, wenn der Auszubildende in dem vorhergehenden Ausbildungsabschnitt die Zugangsvoraussetzungen erworben hat und danach unverzüglich den Ausbildungsabschnitt beginnt. 3Von dem Erfordernis der Erwerbstätigkeit des Elternteils während der letzten sechs Jahre kann abgesehen werden, wenn sie aus einem von ihm nicht zu vertretenden Grunde nicht ausgeübt worden ist und er im Inland mindestens sechs Monate erwerbstätig gewesen ist.
- (4) Auszubildende, die nach Absatz 1 oder 2 als Ehegatten persönlich förderungsberechtigt sind, verlieren den Anspruch auf Ausbildungsförderung nicht dadurch, dass sie dauernd getrennt leben oder die Ehe aufgelöst worden ist, wenn sie sich weiterhin rechtmäßig in Deutschland aufhalten.
- (5) Rechts- und Verwaltungsvorschriften, nach denen anderen Ausländern Ausbildungsförderung zu leisten ist, bleiben unberührt.