



# **Legal Migration Fitness Check**

Evidence base for practical  
implementation

Member State summary

**Germany**

*Annex 2 DE*

Written by ICF Consulting Services  
Limited

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## **LEGAL NOTICE**

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## **Table of Contents**

Introduction .....	1
1 Pre-application phase .....	2
1.1 Legal transposition of the EU legal migration acquis .....	2
1.2 Practical application of the EU legal migration acquis .....	2
1.3 Differences between national statuses and the EU legal migration acquis .....	3
2 Preparation phase .....	3
2.1 Legal transposition of the EU legal migration acquis .....	3
2.2 Practical application of the EU legal migration acquis .....	4
2.3 Differences between national statuses and the EU legal migration acquis .....	5
3 Application phase .....	5
3.1 Legal transposition of the EU legal migration acquis .....	5
3.2 Practical application of the EU legal migration acquis .....	6
3.3 Differences between national statuses and the EU legal migration acquis .....	8
4 Entry and travel phase .....	8
4.1 Legal transposition of the EU legal migration acquis .....	8
4.2 Practical application of the EU legal migration acquis .....	8
4.3 Differences between national statuses and the EU legal migration acquis .....	9
5 Post-application phase .....	9
5.1 Legal transposition of the EU legal migration acquis .....	9
5.2 Practical application of the EU legal migration acquis .....	9
5.3 Differences between national statuses and the EU legal migration acquis .....	10
6 Residency phase .....	10
6.1 Legal transposition of the EU legal migration acquis .....	10
6.2 Practical application of the EU legal migration acquis .....	10
6.3 Differences between national statuses and the EU legal migration acquis .....	12
7 Intra-EU mobility phase .....	13
7.1 Legal transposition of the EU legal migration acquis .....	13
7.2 Practical application of the EU legal migration acquis .....	13
7.3 Differences between national statuses and the EU legal migration acquis .....	13
8 End of legal stay / leaving the EU phase .....	14
8.1 Legal transposition of the EU legal migration acquis .....	14
8.2 Practical application of the EU legal migration acquis .....	14
8.3 Differences between national statuses and the EU legal migration acquis .....	15
9 Main findings and conclusions – state of practical implementation of EU legal migration legislation in the Member State .....	15
Annex 1 References .....	16

## Introduction

This document provides an overview of the legal and practical implementation of EU legal migration acquis in **Germany**. The legal and practical implementation study is structured according to the eight steps – ‘phases’ of the migration process from the perspective of the migrant<sup>1</sup> for the following Directives and their respective national equivalent schemes, presented in the table below.

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Researchers Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
National parallel scheme		Niederlassungserlaubnis = Permanent settlement permit  s9 RA			Niederlassungserlaubnis (für Hochqualifizierte) = Permanent settlement permit (for highly qualified foreigners)  s19 RA	Aufenthalts erlaubnis zur Beschäftigung als Arbeitnehmer oder Arbeitnehmerin = Residence permit for the purpose of employment  s18 RA
Options implemented?			Pupil Trainee			

## Main differences between EU statuses and the respective national parallel schemes

As indicated above Germany has equivalent national statuses with the LTR, BCD and additional categories covered by the SPD.

The Niederlassungserlaubnis is designed as a national equivalent to the LTR. However, as there are some more favourable rules for highly skilled workers in the

<sup>1</sup> . See ref document (EU summary) Under each phase, the following aspects are examined : :

**Legal transposition of the EU legal migration acquis:** including whether the MS has overall complied with the transposition of the relevant EU acquis in the respective phase and whether these possible non-compliance issues affect the practical application of the Directive; **Practical application of the EU legal migration acquis:** overview of the main application issues/problems arising in the MS per each of the migration phases; **Differences between national statuses and the EU legal migration acquis:** substantial differences at the level of legislation and practical implementation between the EU legal migration Directives and their national equivalents (where these exist).

Niederlassungserlaubnis scheme, it has also parallels to the BCD and is therefore also listed as an equivalent to the BCD.

The main difference between the Niederlassungserlaubnis and the BCD is that the Niederlassungserlaubnis is unlimited. The main differences between the Niederlassungserlaubnis and the LTR are that the Niederlassungserlaubnis is open for holders of national humanitarian protection status and that the LTR has a stronger protection against expiration. In general, the **Niederlassungserlaubnis** is **more favourable** with regard to the **scope of applications**, as it can be granted to TCNs that are outside the scope of the LTR Directive.

With regard to the SPD, additionally to the main categories covered, in Germany it covers those TCNs who have a residence permit for the purpose of (general) employment.

## 1 Pre-application phase

### 1.1 Legal transposition of the EU legal migration acquis

There are no issues. Hence, the practical application is (also) not affected.

### 1.2 Practical application of the EU legal migration acquis

In Germany there is no lack of **information**, but an **oversupply**, as indicated in the tables below. There are websites, information sheets, brochures etc. from NGOs, state authorities and even private persons. In the pre-application phase the main difficulty is therefore often not to find information, but to classify it. Especially for applicants with deficient language knowledge this could raise real difficulties. The prominent websites of the federal government usually use German acronyms that are hardly known by foreigners. With help of internet search sites information can nevertheless be found rather easy. Not all information is updated regularly. Therefore, sometimes even on different information sources from different state authorities. (Especially on the lower level, e.g. embassies or local foreign authorities) the available information is not identical. Notwithstanding, the information provided by the federal ministries is profound and relatively easy accessible and central information is also provided in different languages, especially English (the central website <http://www.make-it-in-germany.com/> is also available in Spanish, French, Albanian, Arabic, Bosnian, Indonesian, Italian, Portuguese, Russian, Serbian, Turkish and Vietnamese). Hence, the major problem is an oversupply that complicates finding reliable information.

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Research ers Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
Language	National language(s)	English	French	Spanish	Arabic	Turkish
		Other				

The information is easy to find*	2	2	2	2	2	2
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\* 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4. Disagree; 5. Strongly disagree

Information can be found on the following aspects of the application procedure:

Application procedure	Conditions for admission	Entry requirements (e.g. visa etc.)	Cost of application	Applicable deadlines	Rights upon admission	Any differences between the Directives
Yes	Yes	Yes	Yes	Yes	Yes	

### Information upon request

Information is available upon request. Within Germany, besides email or telephone hotlines there are (governmental) Immigrations offices and regional advice offices in almost all administration. In third countries, information can be obtained via email or telephone hotlines (free of charge). Sometimes there is the possibility on face-to-face consultations in Embassies or Consulates as well as in academic institutions. An easily accessible graphic search tool for local contacts is provided under: <http://www.make-it-in-germany.com/en/for-qualified-professionals/visa/local-contacts/>.

### 1.3 Differences between national statuses and the EU legal migration acquis

As regards the pre-application phase there are no substantial differences between the EU law determined statuses in the BCD and LTR and the national equivalent (Niederlassungserlaubnis = permanent residence permit).

## 2 Preparation phase

### 2.1 Legal transposition of the EU legal migration acquis

Generally, the EU legal migration acquis has been legally transposed. The major issues were language requirements based on Art. 7(2) FRD. In the light of the ECJ judgment of K and A (C-153/14) and the hardship clause included by the national legislator, this is no real issue anymore. The other major issue is the transposition of the job offer requirement in Art. 5 BCD. The **minimum duration of the job offer**/contract of one year required by BCD **has not been transposed** into national legislation, as there is no requirement of a minimum duration of the job offer. The Blue Card is issued for the duration of the work contract plus 3 months.

The practical application is not affected significantly, as most work contracts for highly qualified foreigners will have the required period of validity anyways in order to give the foreigners the necessary incentives to make the move to Germany. Furthermore, other Member States are not affected as Art. 18(1) of the Directive sets out an independent minimum duration of residence prior to a move into another Member State.

## 2.2 Practical application of the EU legal migration acquis

Application forms are easily available and are provided in different languages. The information that has to be completed in the forms reflects in large parts the requirements in the Directives. The few pre-integration measures are not extensive. The recognition of diplomas is working very well in the meantime.

There are no strict rules on the necessary documentation. State authorities **are free in their consideration of evidence/documentation**. Therefore, the officially requested documentation is not mandatory and the real documentation requirements differ sometimes.

The freedom of the authorities in this regard does not lead to an (de facto) infringement.

With regard to application steps, if visa is necessary, then an application for a visa in the home country is necessary. The residence permit is issued in Germany. The residence permit now includes the respective work permit, hence application is not done in a single step.

The tables below summarise the ease of the application procedure as well as the key information/ documents required.

Ease of the application procedure:

Step	FRD	LTR	SD	RD	BCD	SPD
The information that applicants need to complete is not extensive	2	2	2	2	2	2
The application form is user-friendly	2	2	2	2	2	2

Key information/ documents required:

Type of information	FRD	LTR	SD	RD	BCD
Family ties	Yes, T, C, R				
Continuous legal residence		Yes, T, C, R			
Sufficient resources	Yes, T, C, R	Yes, T, C, R	Yes, T, C, R (students, trainees)	Yes, T, C, R	
Accommodation/Address in territory	Yes, T, C, R				Yes, T, C, R
Sickness insurance	Yes, T, C, R	Yes, T, C, R	Yes, T, C, R		Yes, T, C, R
Work contract (for RD host agreement)				Yes, T, C, R	Yes, T, C, R
Minimum salary	Secure	Secure	Secure	Secure	50.800 €

threshold	subsistence	subsistence	subsistence	subsistence	per year 39.624 € per year for natural scientists, IT workers, mathematicians, engineers and doctors
Professional qualifications				No	
(Pre-) Integration measures	Yes, T, C, R	Yes			
Pre-departure conditions			No		
Proof no threat to public	Yes	Yes	Yes	Yes	Yes
Medical examination certificate	No		No	No	No
Valid travel document			Yes, C, R	Yes, C, R	Yes, C, R
Entry visa					
Other	Yes, C	Yes, T, C, R	No	Yes, T, C, R	Yes, T, C, R

*Note: T = Translation; C = Certified, R = Requirement, i.e. without this proof the application cannot be lodged.*

## **2.3 Differences between national statuses and the EU legal migration acquis**

As regards the preparation phase there are no substantial differences between the EU law determined statuses in the BCD and LTR and the national equivalent (Niederlassungserlaubnis = permanent residence permit).

## **3 Application phase**

### **3.1 Legal transposition of the EU legal migration acquis**

Generally, the EU legal migration acquis has been legally transposed. A major issue concerns the single application procedure, especially Art. 1 and 5 SPD. TCNs (with the exception of a few visa-free countries list<sup>2</sup> need a visa to enter and reside in Germany, where they then can, as a second step, apply for a resident permit. As a consequence, Germany has in fact established a **two-step procedure**, with one step inapplicable in some cases. Hence, there are also different authorities involved.

<sup>2</sup> [http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/03\\_Visabestimmungen/StaatenlisteVisumpflicht\\_node.html](http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/03_Visabestimmungen/StaatenlisteVisumpflicht_node.html)



The **missing stipulation for written** notification as required in Art. 5(3) SPD and Art. 7(2) LTR is de facto no problem, as all notification in this context are in fact issued in writing according to the national authorities.

Since there is **no clear deadline**, a possible tension with the nine month maximum in Art. 5(4) FRD might arise *de jure*. However, the possibility of taking legal actions usually 3 month after lodging the application leads to a (*de facto*) solution in the majority of cases.

### **3.2 Practical application of the EU legal migration acquis**

The application can be lodged in the diplomatic missions and consulates. The diplomatic mission can involve national security authorities like the national intelligence service or criminal investigation services in the process in order to assess whether the TCN might be a threat to national security interests. The application form can be obtained online as a downloadable PDF file, but they have to be submitted in a print version by post or delivered in person. For those TCN who are already present in Germany, the application can be lodged in person.

The residence permit is obtained at the immigration authority of the administration area in charge. Immigration authorities are not subordinate agencies of the Federal Foreign Office. They are in fact accountable to and operate under the supervision of the respective interior ministries and senators of the Länder (federal states).

Sometimes, the Federal Employment Agency (Bundesagentur für Arbeit) is also involved, especially if work contracts have to be evaluated in proceedings regarding the EU Blue Card or the national equivalent (Niederlassungserlaubnis).

The necessary steps and authorities which need to be contacted are well explained from the outset and the necessary information on how to appeal is available respectively provided within the decision.

The applicant is informed in writing (either in person or via post). There is no specific stipulation regulating this, nevertheless, decisions are always submitted in written form. For notifying the applicant of a decision, Germany issues one administrative act/decision. In case of a rejection of the application, the reasons for rejection are provided in writing in German only.

The application process, including processing times is summarised in the tables below.

<b>Directive</b>	<b>General</b>	<b>FRD</b>	<b>LTR</b>	<b>SD</b>	<b>RD</b>	<b>BCD</b>	<b>SPD</b>
Application from third country (Q3a)	Yes / No	Add if different					
Permit received in third country	No						
Number of authorities involved in the application	1-4						
Number of authorities involved in the issuance of the residence permit	1-4						
Application	In person						

modalities						
Existence of a standard application form for all statuses	Yes					
Language of the application form (Q2 (c)(iii))	National language(s) English French (if not national) Spanish (if not national) Russian Arabic Turkish Other					
Fees charged (Q3d.(i))	Up to 1 year: 100 Euro	135 €	Up to 1 year: 100 Euro	Up to 1 year: 100 Euro	Up to 1 year: 100 Euro	NI
	More than 1 year: 110 Euro		More than 1 year: 110 Euro	More than 1 year: 110 Euro	More than 1 year: 110 Euro	
	Extension for 3 months: 65 Euro		Extension for 3 months: 65 Euro	Extension for 3 months: 65 Euro	Extension for 3 months: 65 Euro	
	Extension for more than 3 months: 80 Euro		Extension for more than 3 months: 80 Euro	Extension for more than 3 months: 80 Euro	Extension for more than 3 months: 80 Euro	
Other fees charged?	No					
Fees charged for permit issuance	Yes					
Fees charged for renewal / replacement of the permit	65 € (for a renewal for up to 3 months)					

80 € (for a renewal for more than 3 months)

The processing times are as follows:

Directive	FRD	LTR	SD	RD	BCD	SPD
Processing time /deadlines (according to law) (SQ3e(i))	NI	NI	NI	NI	NI	NI
Processing time (in practice) (SQ3e(i))	NI	NI	NI	NI	NI	NI

In Germany, the concept of 'administrative silence' exists and it is regulated by national law. It is only applicable in some special administrative proceedings. In these cases administrative silence generally leads to a positive decision after 3 months. However immigration proceedings are not included in this legal scheme. Therefore, for the purpose of this study there is no concept of administrative silence applicable.

Only if the authorities have not decided on the merits within a suitable period without sufficient reason, the applicant can bring an action (directly) before an administrative court action and thereby force a decision.

### **3.3 Differences between national statuses and the EU legal migration acquis**

As regards the application phase there are no substantial differences between the EU law determined statuses in the BCD and LTR and the national equivalent (Niederlassungserlaubnis = permanent residence permit).

## **4 Entry and travel phase**

### **4.1 Legal transposition of the EU legal migration acquis**

There are **no major issues** in the legal transposition with regard to the entry and travel phase.

### **4.2 Practical application of the EU legal migration acquis**

As the third-country national is not yet in the possession of a residence permit, the Member State issues a visa but has not put a specific timeframe for issuing the latter.

The Member State allows third country nationals who hold a valid permit and valid travel document to enter and re-enter their national territory only on the basis of the permit.

The third-country national is allowed to travel to other Schengen Member States only on the basis of the permit and valid travel document.

The Member State does not impose specific entry requirements to third-country nationals of a visa free country.

Upon arrival, third-country nationals are required to register with the local authority.

### 4.3 Differences between national statuses and the EU legal migration acquis

As regards the entry and travel phase there are no substantial differences between the EU law determined statuses in the BCD and LTR and the national equivalent (Niederlassungserlaubnis = permanent residence permit).

## 5 Post-application phase

### 5.1 Legal transposition of the EU legal migration acquis

There is a two-step procedure for the application for a residence permit. The TCN first needs to apply for a visa in his/her home country in order to enter Germany legally. After entering Germany the TCN can apply for a residence permit at the local immigration authority.

Art. 4(3) SPD explicitly states that the visa procedure which may be required for initial entry should not be affected by the single application procedure. Furthermore, the recitals 4 and 11 of the SPD indicate that this deviation may be allowed under the directive.

### 5.2 Practical application of the EU legal migration acquis

It can be noted that **the procedure for delivering the residence permit is not codified**. The Member State does not have a set timeframe to deliver the permit following the notification of the decision, nor is there any differentiation between non-EU family members of EU citizens and non-EU family members of TCNs.

The table below gives an overview of the validity of different permits.

Directive	FRD	LTR	SD	RD	BCD	SPD
Minimum validity of the first permit	12 months	unlimited	12 months	12 months	12 months	NI
Maximum validity of first permit	Not longer than the duration of the residence permit of the TCN to whom the family reunification takes place.	unlimited	24 months	NI	48 months	unlimited
Minimum validity of permit renewal (Q6b(ii))	12 months	NI	12 months	NI	Length of the employment contract	NI
Maximum validity of permit renewal (Q6b(ii))	36 months	No option for renewal since the	24 months	Depends on the contract	Regularly the Blue Card transform	NI

duration is unlimited	s into a permanent settlement permit which has an unlimited validity.
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Germany has no procedure in place that allows another person than the TCN who wishes to migrate apply for the residence permit. Therefore, there are no situations in which third persons are included in the delivery process of the residence permit. These practices are however in line with the Directives as there are no requirements concerning the procedure of the delivery set out and the option of including a third person in the application respectively the delivery process is not obligatory.

### **5.3 Differences between national statuses and the EU legal migration acquis**

Neither the national permanent settlement permit nor the permanent settlement permit for highly qualified foreigners differ to its EU equivalents with regard to the post application phase.

## **6 Residency phase**

### **6.1 Legal transposition of the EU legal migration acquis**

There is no national provision transposing Article 6 (III) Family Reunification Directive. Therefore, there is no provision prohibiting non-renewal cases on grounds of illness or disability.

The entitlement for students to be employed set out by article 17 (1) Students Directive is transposed in the German Residence Act but includes some restrictions that don't seem to be intended by the Directive. E.g. employment is only possible for up to 120 full days or 240 half days per year. Also, the entitlement to be employed does not apply for preparatory studies.

Besides these issues, there have not been any major transposition issues.

### **6.2 Practical application of the EU legal migration acquis**

#### **a. Use of the permit:**

The residence permit is issued using the format as set out in Regulation (EC) No 1030/2002 for residence permits. The permit has a constitutive value. It gives third-country nationals to right to move freely on the Member State's territory.

The Member State allows third-country nationals holding residence permits from other Member States applying the Schengen acquis (together with a valid travel document) to enter and move freely within its territory.

The permit is required as a legal document for the following other administrative procedures:

<b>Access to education</b>	<b>Access to healthcare</b>	<b>Registration with PES</b>	<b>Fixed telephone</b>	<b>Utility subscription</b>	<b>Open a bank account</b>	<b>Social security registrat</b>
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subscription		
X	X	X

**b. Renewals of the permit:**

National or EU law imposes a direct or indirect requirement to renew a valid residence document. The application for renewal has to be filed within the validity permit of the residence permit.

The renewal process follows a single procedure, involving more than one authority. Different authorities are involved as in the first application procedure.

**c. Change of status and naturalisation**

Status changes are possible for most statuses. An exception is the change of status from a residence permit on study purposes to the LTR or the Niederlassungserlaubnis. Also a status change to a residence permit for the purpose of employment (s18 RA) is not possible from the status of family reunification, LTR and the Niederlassungserlaubnis. Besides, a change of status is only necessary in few situations as the residence permit is not linked to a certain employer in most cases. Only a TCN in possession of a Blue Card or a residence permit on the purpose of employment need to apply for authorisation by the immigration authority if they want to change their employer. This requirement applies for the first two years of exercising the work and in case they have not legally resided in Germany for more than three years.

Also after 5 years the TCN is entitled to a permanent settlement permit which includes a comprehensive work permit.

The process of renewal of a residence permit is sometimes shaped by the fact that migrants are entitled to a permanent settlement permit after 5 years with some exceptions (e.g. for Blue Card holders, family members of Germans) that reduces the required time of residence for an entitlement for a permanent settlement permit further. In these cases the original residence permit will not be renewed. Instead a permanent settlement permit is issued after the expiration of the first permit.

In order to obtain citizenship, the third-country nationals needs to comply with the following conditions:

- Permanent settlement permit,
- years of regular and legal residence in Germany,
- Secure subsistence without depending on social or unemployment aid,
- Sufficient knowledge of the German language,
- Passing a citizenship test,
- No conviction of a crime,
- Recognizing the Grundgesetz (Constitution) and
- Loss or giving up of the old citizenship, s10(1) no. 4 Nationality Act. Exceptions are listed in s12 Nationality Act. Thus, a TCN is not obliged to give up his/her nationality if this would be particularly difficult. E.g. this is the case if the law of the foreign state does not include a provision on the giving up of a nationality or the state is regularly denying the giving up.

There are some exceptions of those requirements. E.g. the necessary years of residence can be reduced if the person has passed an integration course. Also, it can be refrained from the requirement of secure subsistence if the dependence on unemployment aid is the result of a compulsory redundancy.

**d. Employment rights on the basis of the permit**

In general, a work-related permit is linked to a certain employer. When changing employer, the third-country national does not need to request a change to the permit.

**e. Equal treatment**

No restrictions were identified with regard to equal treatment.

With regard to identifying labour exploitation, the Member State does have a mechanism in place to monitor the exploitation of third-country nationals. There is the Federal Anti-Discrimination Agency (FAAA) which is inter alia assigned to consult persons who have been discriminated because of their race or their ethnicity at their workplace. The FAAA also concludes regular reports that include an assessment of discrimination at the work place. In these reports the FAAA issues recommendations which aim at reducing discrimination. With regard to sanctions, the authority responsible is the trade supervisory board. The board has the competence to issue orders that oblige the employer to comply with the labour law that guarantees certain employee rights, like holiday entitlement or a reasonable limitation of working hours. In case the employer does not comply with those orders the authority may issue enforcement measures, fines or even a criminal procedure if the non-compliance results in the risk of a personal injury for the employee. The FAAA does not have the authority to issue orders but only to file a report on discrimination. In the described cases in which the FEA has to agree to the employment, the FEA has to examine whether the TCN to be employed would enjoy the same working conditions as a comparable German citizen. If this is not the case the FEA must not give its consent.

**f. Integration:**

Specific integration procedures and conditions do apply to third-country nationals once established on the territory of the Member State. There are consequences if the third-country national does not participate in these or fails the integration measure. The non-participation has to be considered by the competent authority when deciding upon the renewal of the residence permit. The successful passing of the integration course is also proof of sufficient language skills and basic knowledge of the legal system and social ordering in Germany which is a requirement for obtaining a permanent settlement permit according and for a long-term residents permit EU.

There is also the option of financial sanctions: There is the option of issuing coercive means which can inter alia be a fine. Furthermore, the TCN can be obliged to pay the cost contribution as a whole at the beginning of the course instead of the beginning of each course section.

**6.3 Differences between national statuses and the EU legal migration acquis**

The national permanent settlement permit as well as the LTR permit provide an unrestricted work permit.

The permanent settlement permit for highly qualified foreigners also provides a comprehensive work permit while the Blue Card the TCN is linked to its employer and is required to ask for an authorisation of the immigration authority if he/she wishes to change his/her employer. This requirement applies for the first two years of exercising

the work and in case they have not legally resided in Germany for more than three years.

## **7 Intra-EU mobility phase**

### **7.1 Legal transposition of the EU legal migration acquis**

The relevant may clauses regulation the intra-EU mobility phase have mostly been transposed.

The guarantee set out in Article 18 (4) BCD seems not transposed in German legislation. Therefore, there is no guarantee in German law that a TCN holding a "German" Blue Card will retrieve his/her Blue Card after it expired or has been withdrawn during the examination of the application of a Blue Card by another Member State.

Besides these issues, there have not been any major transposition issues.

### **7.2 Practical application of the EU legal migration acquis**

For short-term mobility, the Member State

- Does not require the third-country national to notify
- Does not require the third-country national to ask for authorisation.

Mobile TCN are insofar privileged as they are not required to apply for a visa, while first-time TCN has to apply for a visa in order to enter Germany legally. This is because a residence permit issued by another Schengen state functions as a permit to enter Germany, i.e. the residence permit functions as a visa.

Concerning the **documentation of a previous residency in another Member State the legal principle of free appraisal of evidence applies which shapes all the documentation-related questions**. What is required in order to prove a previous residency in another Member State therefore may vary between different immigration authorities. However, in practice a residence permit issued by another Member State will most likely be sufficient.<sup>3</sup>

The procedure of ensuring short-term mobility is not formalised. There is no comprehensive administrative system in place. However, the short-term mobility will most likely be functioning as there are no border controls in place at the German borders.

### **7.3 Differences between national statuses and the EU legal migration acquis**

The permanent settlement permit and the permanent settlement permit for highly qualified foreigners only allow to enter another Schengen/EU Member State for the standard period of 90 days. The LTR status as well as the status laid down in the BCD provide more comprehensive mobility guarantees as the LTR allows and absence of Germany territory for 6 years and the status of the BCD allows an absence of 12 months instead of 6 months that applies for the national statuses.

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<sup>3</sup> The consulted immigration authorities stipulated that a residence permit is sufficient. It can be assumed that this practice also applies for other immigration authorities.



## **8 End of legal stay / leaving the EU phase**

### **8.1 Legal transposition of the EU legal migration acquis**

Germany implemented the relevant may clauses. It transposed article 5(3) RD as well as article 9 (2) LTR. There have been no transposition issues.

### **8.2 Practical application of the EU legal migration acquis**

There are no specific procedures in place for third-country nationals who choose to leave the Member State. TCN who chose to leave Germany on a permanent basis lose their residence permit when they leave the country. However, the absence respectively the leaving of the country is hardly monitored<sup>4</sup>. Therefore, it is hard for German authorities to prove that the conditions for the loss of a residence permit are met. Article 9(2) LTR directive regulates that a TCN in possession of status of the LTR who is absent from EU territory for more than 12 consecutive months is supposed to lose his/her residence permit. In practice the German authorities have no procedure in place to monitor such absence and therefore the application of this provision cannot be guaranteed.

The Member State allows third-country nationals to export certain social security benefits.

Information on the portability of social security benefits is not easy to find and not clear. This is due to the fact that the portability is based on bilateral agreements Germany concluded with the country the TCN wishes to migrate to.

A third-country national residing in the Member State is allowed to be absent from the territory for a maximum of 180 days (FRD, SD, RD), 364 days (BCD), 365 (LTR) before s/he loses the residence permit and/or right to stay. The absence of third-country nationals is not monitored by the Member State. As immigration authorities face practical problems when trying to monitor absence of the territory as there are no border controls in force. There is no procedure for deregistration when leaving or registration when returning to the territory. The registration office might conduct a deregistration ex official if they notice an absence. A matching of data between the immigration authority and the registration office is conducted annually.

The Member State has measures or a scheme in place to allow circular migration. There are two mechanisms that simplify circular migration for certain groups of TCN:

Cross-border workers have the option applying for a cross-border card. The requirements for this card are laid down in s12 RO. The card is issued to TCNs residing in a country neighboring Germany. The card allows the TCN to enter the territory and may also allow an employment. For a card that allows the latter the Federal Employment Agency has to give its consent within the granting procedure.

S30 Employment Regulation lays down employments that TCNs can exercise without possessing a residence permit issued by Germany. The employment is allowed for 90 days within 180 days or 90 days within 12 months.

The consequences of deliberate overstay of the duration of the residence permit are that the TCN loses his/her permit of residence. This consequence is regardless of whether the overstay was deliberately or not. However, the TCN has the option of applying for an extension of the time limit in question. The decision of whether this application is decided in favor of the TCN or not is within the discretion of the authority.

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<sup>4</sup> Both consulted immigration authorities stipulated that they have neither the capacities nor the competence to monitor the absence of a TCN.

### **8.3 Differences between national statuses and the EU legal migration acquis**

## **9 Main findings and conclusions – state of practical implementation of EU legal migration legislation in the Member State**

There is an oversupply of information on the requirements and the application procedure by different state and private organisations that complicates finding reliable information (sources), especially for applicants with deficient German language skills.

In some minor topics (written notification, maximum time period for application) the legal transposition appears incomplete, but de facto there seems to be no infringement.

There are hardly any procedures in place to handle the departure of German territory. This finding applies for the temporary as well as the permanent departure. Both kind of departures are hardly monitored. Concerning the permanent departure, there is no uniform handling of the portability of social benefits in place.

The documentation requirements concerning the absence from German territory or the legal stay in another EU member state are shaped by the principle of free appraisal of evidence. Therefore, the decision what documentation are to be permitted is within the discretion of the immigration authority.

The change of status is handled quite liberal. A change is possible in most scenarios.

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