



Additional information for academics and research scientists

(Section 18d of the Law on Residence, employment and integration of foreign citizens in Germany)

In what cases does Section 18d of the Residence Act apply?

Directive (EU) 2016/801 (REST-RL) replaced Directive 2005/71/EC, which previously defined the right of entry for researchers. REST-RL has ¹been introduced into German legislation since 01.08.2017. From that moment, **Section 18d of the Law on Stay for researchers according to Section 38 f Part 2 No. 2 of the Stay Rule became a priority** over the current national regulation. "Academics" are citizens of third countries,

1. who have a **doctorate degree** or a corresponding completed higher education that provides **access to doctoral programs** and
2. **selected by a research institution** and admitted to the territory of an EU Member State
3. to **carry out research activities** for which such a degree is usually required

What should be understood by a research institution?

A research institution is **any public or private research institution** (§18d Residence Law according to §38 a Part 1 regulation 1 of the Residence Rule), which, regardless of its legal norm, is **located** in accordance with the national law of this EU Member State on its territory. This applies to **recognized and other research institutions**. Information on the recognition of research institutions by the Federal Office for Migration and Refugees is available on its website:

<https://www.bamf.de/DE/Themen/Forschung/AnerkennungForschungseinrichtungen/anererkennungforschungseinrichtungen-node.html>

Research institutions, according to the Directive, may also **be companies** engaged in research. **For state-owned and state-recognized higher education institutions, as well as research institutions funded primarily by the state, recognition of a Federal agency is not required, these institutions are recognized research institutions** (§38 a part 4a of the rules of residence).

Research is any systematically conducted creative and legally permitted activity, the purpose of which is to expand the level of knowledge, including knowledge about a person, culture and society, or to use such knowledge to find new application opportunities (§38 a part 1 of regulation 2 of the rules of residence).

Is section 18d of the Residence Act applicable only if it is necessary to establish an employment relationship?

¹ REST-RL - *Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on conditions for entry and stay of third-country nationals for research or educational purposes, for practical training, participation in volunteer service, student exchange programs or educational projects and for Au-pair activities.*

§18d of the Residence Act applies to **all long-term stays (more than 90 days) of researchers or research scientists**, respectively. This applies not only to cases where it is intended to establish an employment relationship, but also to fellows and researchers who independently finance their stay. The residence permit gives the right to conduct research activities at the research institution specified in the employment agreement and conduct activities in the field of teaching (§18d part 5 of the Residence Act). Consent from the Federal Labor Agency is not required, even if an employment relationship has been established (§18d part 1, regulation 1 of the Residence Act).

In accordance with national legislation, academics are allowed to engage in **teaching activities in addition** to their research activities (§18d part 5, regulation 1 of the Residence Act). If the prerequisites for obtaining an EU Blue Card are fulfilled at the same time (§18b Part 2 of the Residence Act), the academic has the right to choose.

What is meant by an employment agreement as a researcher or a corresponding contract?

Academics and research scientists (as well as researchers, invited scientists) whose purpose of entry is (primarily) research activities must be provided with **an employment agreement as a researcher or an appropriate employment contract**, which must contain the following information:

1. the obligation of a foreign citizen to make efforts to complete a research project,
2. the obligation of a research institution to accept a foreign citizen to conduct a research project,
3. information on the essential content of the legal relations that must be established between a research institution and a foreign citizen when issuing him a residence permit on the basis of section 18d of the Residence Act, in particular, information regarding the scope of activities of a foreign citizen and wages,
4. the provision that the employment agreement as a researcher or the corresponding employment contract becomes invalid if a foreign citizen has not been issued a residence permit on the basis of section 18d of the Residence Act,
5. about the beginning and expected completion of the research project, as well as
6. information about the intended stay for the purpose of research in one or more Member States of the European Union in the field of application of Directive (EU) 2016/801, if this intention already exists at the time of submission of documents for the purpose of obtaining a national visa.

According to Section 38f part 2 of the rules of stay, the agreement on employment as a researcher or the corresponding employment contract is legally valid only if

1. it will be established that the research project will be carried out, and mainly that the decision to conduct it was finally made by the competent authorities in the research institution after studying its purpose, duration and funding,
2. a foreign citizen who is supposed to conduct a research project is suitable and has the authority to do so, has, as a rule, a completed higher education that gives him access to doctoral programs, and

3. the livelihood of a foreign citizen is provided.

A sample agreement on employment as a researcher is posted on the website of the Federal Office for Migration and Refugees:

<https://www.bamf.de/SharedDocs/Anlagen/DE/Forschung/Forschungseinrichtungen/08muster-aufnahmevereinbarung-deutsch-englisch.html>

In what cases is it necessary to submit a commitment to accept expenses?

Research institutions whose activities are primarily funded from non-public funds must **undertake in writing to cover the costs** that state bodies bear within six months from the date of termination of the employment agreement as a researcher on

- a) the means of subsistence of a foreign citizen during an unauthorized stay in a member State of the European Union and
- b) expulsion of a foreign citizen

Except if there is a special public interest in the research project (§18d Part 1 Regulation 1 No. 2 together with §18d Part 2 regulation 2 of the Residence Act). The obligation to assume expenses may also be directly transferred to the Federal Office for Migration and Refugees (§18d part 3 of the Residence Act).

Does Section 18d of the Residence Act also apply to graduate students?

A residence permit in accordance with Section 18d of the Residence Act cannot be issued if the research activity is part of full-time **postgraduate study followed by dissertation defense** (Section 19f part 3 of regulation 2 of the Residence Act). This applies only to graduate students enrolled in a **German higher education institution** and whose main activity is the completion of a full-time study program, which will give the opportunity to obtain a doctorate degree. In this case, section 16d of the Law on stay (stay for the purpose of study) applies. For postgraduate students who are enrolled exclusively in a **foreign higher education institution** and whose purpose of travel is research, Section 18d of the Residence Act applies. Postgraduate students who are enrolled in a **German higher education institution** are subject to section 18d of the Residence Act, unless the research **is conducted solely** for the purpose of preparing a dissertation. This is the case when the dissertation work is performed **within the framework of an employment contract**. If an employment contract has been concluded between a postgraduate student and a German higher education institution or research institution for the implementation of a doctoral project, section 18d of the Residence Act takes precedence over section 16d of the Residence Act (stay for the purpose of study). If it has not yet been established before entry whether admission to full-time postgraduate studies will take place with the subsequent defense of a dissertation without an employment contract, graduate students who plan to enter a higher educational institution can obtain an applicant's visa in accordance with Section 17, part 2 of the Law on residence. In this case, when issuing an internal document, the Office for Foreigners at the place of residence in Germany decides whether the prerequisites for obtaining a residence permit are fulfilled according to §18d (research) or §16d (training) of the Residence Law.

In what cases is the participation of the Office for Foreigners necessary before issuing a visa?

The consent of the Office for Foreigners at the place of future stay in Germany for the issuance of a visa is not required for academics and research scientists who have concluded an employment agreement as a researcher with a **recognized** research institution (§34 part 1 of regulation 4 of the rules of stay). For **unrecognized** research institutions, the consent of the Office for Foreigners Affairs is considered issued if the office does not challenge it within three weeks and two working days (§31 part 1 of regulation 5 of the rules of stay)