



## Right of residence and labour market access for EEA nationals and their family members<sup>1</sup>

### A.) Right of residence

On the basis of the Citizens' Rights Directive/Free Movement Directive<sup>2</sup> the following nationals of the EEA<sup>3</sup> are entitled to settle<sup>4</sup> in Austria:

1. **workers or self-employed persons** in Austria,
2. **inactive persons or persons enrolled in schools or universities**, if they have **sufficient resources and a comprehensive sickness insurance cover** for themselves and their family members

The following family members<sup>5</sup> of legally residing EEA nationals also have the right of residence (irrespective of the family members themselves being EEA or third country nationals)

- **the spouse or registered partner**
- a direct descendant (**children, grandchildren, great-grandchildren**) of an EEA national or his/her spouse or his/her registered partner aged 21 years or younger, or else older, if they are dependents of an EEA national or his/her spouse or his/her registered partner
- a dependent direct relative in the ascending line (**parents, grandparents, great-grandparents**) of the EEA national or his/her spouse or his/her registered partner

All nationals with the right of residence under EU law **obtain the right of long-term residence after five years of continuous lawful residence** in federal territory. Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down above, or else might lose their right of residence.

There might be serious consequences for third country nationals in the event of divorce, annulment of marriage, termination of registered partnership, the Union citizens' death or departure of Austria. Persons concerned should talk to a consulting institution. The right to permanent residence can be obtained previously to the five-year period in certain cases. 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 or certain criminal offences.

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1 Great Britain is now not a member of the EWR. Britons which want to settle down in Austria after the 31.12.2020 are considered like a third country member. Under certain circumstances close family members from people who have already a residence permit title "Art. 50 EUV could also receive this kind of title. It is necessary that the marriage has been closed before the 31.12.2020.

The same regulations as for third country members apply for Britons who immigrate in Austria after the 31.12.2020.

2 Directive 2004/38/EC, implemented in §§ 51 of the Austrian Settlement- and Residence Act (SRA)

3 All member states of the European Union, Norway, Iceland and Liechtenstein. For Swiss nationals the same regulations apply.

4 The right of residence for up to three months is not tied to any conditions.

5 The same regulations apply to family members of Austrians who have availed of the right to freedom of movement under EU law.

In case of convenience marriage, forced marriage, deceit of decent or because of serious grounds of public policy or public security there is no right of residence.

6 Under certain circumstances other relatives of third countries could receive a settlement permit ("Niederlassungsbewilligung").

## B.) Access to the labour market

The free access to the labour market is linked inseparably to the EU right of residence. **Persons residing lawfully under EU law are allowed to take up employment under the same conditions as Austrian citizens immediately after moving to Austria.** Neither a residence permit nor a working permit is required.

## C.) Documentation

EEA nationals and their family members are required to request a documentation of their right of residence under EU law **within four months of their arrival** in Austria.

EEA nationals request a **confirmation of registration** ("Anmeldebescheinigung"). Family members of EEA nationals from third countries request a **residence card** ("Aufenthaltskarte"). The existing valid registration ("Meldezettel") of these persons, issued before 1 January 2006 also serves as a confirmation of registration.

After obtaining the right of long-term residence a "**Long-term Residence Certificate**" ("Bescheinigung des Daueraufenthalts") for EEA nationals / a **permanent residence card** ("Daueraufenthaltskarte") for family members from third countries has to be issued immediately upon application.

**The right of residence exists independently of the documentation.** If the application for the confirmation of registration or the residence card is submitted late or not at all, the EEA national /family member might be charged with an administrative offence and has to expect a financial penalty.

Legally residing EEA nationals and their family members from third countries can apply for a **confirmation of exemption** (Ausnahmebestätigung § 3 Abs. 8 AuslBG) in order to prove their free access to the Austrian labour market. However, this confirmation is not necessary for taking up employment and there is no legal obligation to request it.

### Other relatives from EEA nationals:

Partners who can prove the existence of a permanent relationship, and/or persons who have actually received maintenance from the EEA citizen in the country of origin, and/or persons who have already lived with the EEA citizen in the same household in the country of origin, and/or persons which for several health reasons make personal care. If they are EEA citizens themselves, they can have the right of mandatory residence under Union law. Whether their relatives are third-country members, they can be granted a settlement permit on the basis of a viable declaration of liability by the EEA citizen.

**ATTENTION:** Since the provisions at hand have been presented in a very abridged version, we kindly ask you to obtain detailed information from competent authorities or advice centres. In spite of careful examination mistakes can happen, therefore no guarantee for details contained in this information can be assumed.

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