



German Immigration Reform

THE SKILLED IMMIGRATION ACT – FACHKRÄFTEEINWANDERUNGSGESETZ (FEG)

This overview summarises the key changes which will come with the Skilled Immigration Act - Fachkräfteeinwanderungsgesetz (FEG). The reform will enter into force on March 1, 2020. We hope that our summary provides useful information for your immigration strategy planning.

The FEG restructures the German labour migration system with a focus on three main topics: Stricter employer compliance, new government processes and new work permit categories.

The FEG is a part of a larger immigration strategy which had been laid down in the so-called *Migration Master Plan* presented by the German Federal Ministry of the Interior in June 2018 and has been further refined in regard to legal changes in the October 2018 strategy paper *Eckpunkte zur Fachkräfteeinwanderung aus Drittstaaten* (Cornerstones of skilled migration from third countries). For further reference, please consult our 2018 policy papers on those two strategy documents.

EXECUTIVE SUMMARY

- ▶ **New immigration categories** will open further opportunities for employers to hire foreigners into other than highly skilled positions. At the same time, the extended role of the Federal Employment Agency (FEA) will lead to **additional reporting and compliance obligations** for employers. Audits and fines will become more likely and businesses need to adapt accordingly.
- ▶ The **new fast track process** and the **Central Immigration Offices** might lead to a reduction in processing times but at the same time will **increase the number of authorities** involved and touch points which may also decrease foreseeability of processes and of decisions. The significance of the immigration process reform will depend on the details of its implementation by the German states and immigration authorities.
- ▶ At a larger scale, the new supposedly employer-friendly immigration process options and the extended government audit tools are a step towards an overall more mature and sophisticated **immigration compliance system** which also imposes obligations on the employer, not only on the individual and makes sure that already existing legal compliance requirements can be policed more effectively.
- ▶ The changes in the administrative processes that will come with the FEG are likely to cause **delays** in the overall German work visa and permit processing system in the months after 1 March. Employers are advised to take this into account when planning assignments and new hires in 2020.

Fragomen monitors the implementation of the FEG closely and will inform you about any updates. Should you have any questions, please do not hesitate to contact us.

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THE MAIN CHANGES COMING WITH THE FEG

1. Stricter Compliance – Employers in the spotlight

A. Extended employer review in FEA work permit approval processes

The review options of the Federal Employment Agency (FEA) in all work permit approval applications will be extended. Whilst the labour market test will be largely abolished, the FEA will be given authority to review not only a specific position and its employment conditions, but also the employer's overall compliance in tax, social security, labour law compliance as well as its solvency and the healthiness of its business activity. If irregularities are identified, the FEA will have the authority to deny an application.

B. Extended FEA audit competencies

The FEA will also be given additional **audit competencies** over employers. The FEA will be allowed to inquire about the salary, working time and any other working conditions with any employer who employs or has employed foreign nationals, not only, as currently, in those cases where the FEA had previously given its approval to a work permit. The extended audit option will for example also apply to employers with employees who hold EU Blue Cards which in many instances do not require the approval of the FEA. Furthermore the audit option also extends to foreign nationals who by the time of the inquiry had left the company. Employers must answer FEA audit requests within one month. Employers can be fined up to EUR 30.000 if they do not respond to FEA requests in time or respond with incorrect information.

C. New employer notification obligation

Also, there will be a new **notification requirement** for employers towards immigration authorities in case a work permit holder's employment/assignment is terminated earlier than initially applied for. The deadline for the notification is four weeks, calculated from the point in time the employer receives knowledge from the termination of the employment. Employers can be fined up to EUR 30.000 if they do not notify or notify with incorrect information.

D. Employee notification obligation specified

The employee's notification requirement in case of early termination of employment has been specified to a deadline of two weeks since receiving knowledge of the termination. Not or not timely giving the notification can be fined with up to EUR 1.000.

2. Modified Immigration Process

A. Central Immigration Offices

The 16 German states are advised to set up at least one Central Immigration Office (*Zentrale Ausländerbehörde, ZAB*) each for skilled migration application processing. These new authorities would be in charge of processing initial work visa applications. However, it is already foreseeable that not all 16 German states will follow the FEG and may not create those Central Immigration Offices for skilled migration applications. In particular the economically strong southern states are currently showing hesitance to implement the ZAB structures.

B. Fast Track Process (FTP)

A new **Fast Track Process**, administered by either the regular or the Central Immigration Offices, shall help to quickly obtain internal approvals from the Federal Employment Agency (FEA) and the degree recognition authorities and send a consolidated approval to the consulates and embassies which are then supposed to schedule a visa appointment within three weeks of the approval. The additional government fees for the FTP is EUR 411 per case. The FTP must be kicked off by the future employer in Germany on behalf of the foreign national employee. The immigration office is supposed to serve as a one stop shop for giving guidance and advice and for coordinating all subsequent authorities. Once the FTP is initiated, the authorities must follow specified deadlines: FEA-Approval: One week; degree recognition authorities: two months; consulates/ embassies: visa appointment within three weeks, processing visa generally within three weeks.

3. New work permit categories

A. Extended vocational training work permit

Extended access to the German labour market will be granted to **migrants with vocational training** background. All professions can be accessed, the restriction to shortage occupations will be dropped. No labour market test will be applied. From age 45 on, applicants must earn an annual salary of at least 55 % of the annual pension payment threshold (=2020: EUR 45.540).

B. Professional experience based IT work permit

Migrants without formal education but with extensive professional experience in the IT and communication industry of at least 3 years (gained within the last 7 years) can be granted a visa, if they meet a minimum annual salary requirement of at least 60% of the annual pension payment threshold (=2020: EUR 49.680) and must have sufficient skills of the German language on B 1 level. The language requirement can be waived in individual cases, however, this will be a discretionary decision.

C. Permanent Residence for Skilled Workers after 4 Years

Skilled workers will be eligible for permanent residence after only four years of working in Germany, one year less than under the current law. Quicker access to permanent residence after 21 or 33 months for EU Blue Card holders remains untouched. In other immigration categories such as dependent's permits, the five year residence period is upheld. Foreign nationals who completed an apprenticeship/vocational training in Germany can now obtain a permanent residence permit after 2 years, a right which was previously restricted to foreign graduates of German universities.

D. Vocational Training Search Permit

This visa category will allow foreign nationals under the age of 26 with B2 language skill to search for a vocational training position in Germany for up to six months. They must be graduates of German schools abroad or with a school degree certificate that qualifies for university and must be able to sustain their livelihood in Germany without labour market access.




E. Job Search permit for skilled workers with vocational training







Job search for up to six months will also be allowed for foreigners with a recognized vocational training degree given they can prove sufficient language skills which are in accordance with the job they are searching for and can prove means to sustain their livelihood in Germany. They are not granted labour market access but can do work shadowing for up to 10 hours per week.





F. Work permit for foreign nationals with partially recognized degrees

Foreigners with a partially recognized degree and, generally, A 2 language skills can obtain a work permit for up to two years in their professional field if their future employer commits to enabling the employee to closing the gap of qualifications in order to obtain a full degree recognition.

FRAGOMEN HELPFULNESS INDEX

The Change	Helpfulness	Our thoughts
New immigration compliance elements		
1.a. Extended FEA employer review options in the work permit approval process. In all applications brought forward to the FEA, the employer's tax, social security and labour law compliance can be taken into account in the approval decision, as well as the employers solvency and the extent and quality of the employer's economic activity.		This rule will increase documentation, reporting and transparency obligations for employers in all applications. With increased discretionary grounds to deny applications, the legal certainty of the outcome of applications may be a consequence. At the same time, the new requirement is a step towards a more mature immigration compliance system which also imposes obligations on the employer, not only on the individual.
1.b. Extended FEA audit options. FEA can inquire about working conditions of foreign nationals with any employer with foreign national staff, not only for those cases where it had to give approval to a work permit.		The wording of the new rule in the law is wide and could be used as a legal basis for an extensive audit program of the FEA. This will require adequate staffing levels, though. The new rule is currently lacking legal clarity and should be specified further in government decrees in order to ensure it is used in a transparent and foreseeable manner. The new requirement is also a step towards a more mature immigration compliance system which also puts obligations on the employer, not only on the individual.
1. c. Additional employer obligation: Notification of early termination of employment. Fines of up to EUR 30.000 can be imposed if disregarded.		Additional obligation for employers to notify the respective immigration office about early terminations of work permit holders will increase compliance risks and may increase administrative costs. At the same time, the new requirement is a step towards a more mature immigration compliance system which also imposes obligations on the employer, not only on the individual.

The Change	Helpfulness	Our thoughts
1.d. Employee obligation: Notification of early termination of employment/vocational training/ studies within 2 weeks. Fines of up to EUR 1.000 can be imposed if disregarded.		The new deadline and the fine can be considered as additional burdens for the foreign national, however it also creates more legal certainty.
Changes to the immigration process		
2. a. The 16 German states shall set up at least one Central Immigration Office (ZAB) each for faster and more professional work visa processing.		It remains to be seen how many states will opt for this option in the first place. A ZAB may be helpful to bundle resources and competencies. However, it will add an additional authority to the immigration process as local immigration offices will still have to take over a case once an immigrant has moved into Germany.
2. b. Introduction of a new fast track immigration process (FTP). For an additional government fee of EUR 411, employers can kickstart an application process for their employees in which shorter processing times are stipulated and one immigration office is coordinating the entire immigration process with the different authorities involved (e.g. FEA, German Embassy/Consulate).		Whilst the FTP may be a useful tool for some employers and in some situations, there is a risk that in many cases of highly skilled migration the FTP will add time to the process rather than reduce it. That could e.g. be the case in an EU Blue Card case where the university degree is already deemed comparable to a German degree. Therefore the FTP may in such cases only reduce the overall processing times when the waiting times at the responsible German Consulate/Embassy are 6 weeks or more. Furthermore there are still many uncertainties concerning the exact details of the process in the different German states which make it difficult to predict how useful the FTP will be in practice.
New Work Permit Categories		
3. a. Visa category for migrants with educational training background extended: All professions can be accessed, the restriction to shortage occupations will be dropped. No labour market test will be applied.		The extension of labour market access to all vocational training professions is to be welcomed, however, the strict adherence to the degree comparability and recognition process will remain a bottle neck that many migrants will not be able to overcome.
3. b. Newly created visa category for migrants with relevant professional experience of at least 3 years, but no formal education in IT-jobs, if minimum salary requirement is met and applicants have sufficient skills of the German language (B1).		Whereas it is positive that a new visa category for migrations with relevant professional experience was created, the reform will likely not have great impact due to the German language skill requirement. The language requirement can be waived, but there is little legal certainty how the waiver will be applied.
3. c. Permanent Residence Permit for skilled workers already obtainable after 4 years.		The reduction from 5 to 4 years enables faster solidification of the resident status.

The Change	Helpfulness	Our thoughts
3. c. Foreign nationals who completed an apprenticeship/vocational training in Germany can now obtain a permanent residence permit after 2 years.		Privileged treatment which used to be limited to applicants with German academic education has now been extended to applicants with German vocational training. This extension finally eliminates the old differentiation in this regard.
3. d. New visa category for search for vocational training.		A category with very high eligibility requirements: high school degree, language skills at B2 level, high threshold to prove sufficient means of living. Vocational training search can also be performed as a business traveller.
3. e. New visa category for job searchers with a vocational training background.		An additional option for foreign nationals to find work in Germany, however, language requirements will exclude many; job search can also be performed as a business traveller.
3. f. Work permit with degree recognition process		A category which may help to attract immigrants whose degrees do not yet meet the high standards of the formal degree recognition process. Employer obligation to help fill gaps in qualification may be difficult to implement for many employers.

OVERVIEW OF PERMITS SORTED BY LEVEL OF QUALIFICATION OF A FOREIGN NATIONAL

OVERVIEW OF LEGAL BASES¹

Category of qualification	Current legal framework – Residence Act	New legal framework – Residence Act (from 1 March 2020)
Unqualified/	§ 17: Vocational training	§ 17: Search for vocational training
Partially qualified/	§ 18: Special professional groups (e.g. Au pair, specialty cooks)	§ 16a: Vocational training
	§ 18: Best Friends; Western Balkans provision	§ 19c: Special professional groups (e.g. Au pair, specialty cooks)
Highschool only		§ 19c: Best Friends; Western Balkans provision
Vocational qualification	§ 17a: Recognition of foreign professional qualifications § 18: Skilled workers in selected shortage occupations	§ 16d: Recognition of foreign professional qualifications § 20: Skilled workers seeking employment § 18a Skilled workers with vocational qualification in all professions
Academic qualification	§ 18c: Qualified skilled workers seeking employment § 18: Skilled workers with academic education § 19a: EU Blue Card § 19: Permanent residence permit for highly qualified foreigners	§ 20: Skilled workers seeking employment § 18b Skilled workers with academic education, including EU Blue Card § 18c: Permanent residence permit for highly qualified foreigners
Professional experience without formal qualification	§ 18: Best Friends; Western Balkans provision	§ 19c: Best Friends; Western Balkans provision § 19c: IT Specialist with at least 3 years professional experience

¹ This overview does not include assignment permits

FEG - NEXT STEPS AND IMPACT FOR YOUR ORGANISATION

With a bit more than two months to go until the new rules take effect, the governments on federal and state levels are planning the implementation of the FEG. Most importantly, the following issues are being addressed:

- ▶ Set up of Central Immigration Offices (ZAB). It is already foreseeable that not all German states will create ZAB in the first place, or will find specific approaches which may differ heavily from each other.
- ▶ Set up of the Fast Track Process (FTP) in the ZAB and the regular immigration offices. The exact design of the employer involvement in the FTP and the process flow needs yet to be determined. The German states could again differ in their implementations of the FTP.
- ▶ Adaptions in the FEA regarding extended disclosure and audit options.

With the government still implementing new structures, it is time for employers to start planning and adapting now. Key considerations:

- ▶ Adapt your recruitment strategy to the new immigration categories: Vocational training positions and candidates with experience only for IT jobs.
- ▶ Review costs and benefits of the Fast Track Process (FTP) for your organisation and eventually add the FTP to your menu of immigration categories to enhance the system robustness of your immigration program.
- ▶ Set up internal reporting structures for the new government notification requirement in case of early termination of employment/early ending of assignment.
- ▶ Be ready for the new employer disclosure requirements in FEA-approval applications: tax, social security, employment law compliance confirmations, insolvency disclosure as well as for increased probability of immigration audits.
- ▶ Expect delays in processing times and higher error rates in the Central Immigration Offices (ZAB) due to potential delays in the ramp up of the new authorities.
- ▶ Calculate with and communicate delays in the overall immigration process in the months after 1 March 2020 due to the structural changes that come with the FEG.
- ▶ Be prepared for the possible differences in setup, process flow and document requirements between the German states in the exact implementation of the FTP and in the setup of the Central Immigration Offices (ZAB).
- ▶ Adapt permit extension process with new 4 year Permanent Residence-timeline in mind.