

**Information on
the Statutory Frameworks applicable to the
Pursuit of Gainful Employment
by Foreign Students, Academics and
Scientists**

Please note:

This English version is a translation of the German original (*Informationen zu den rechtlichen Rahmenbedingungen für die Ausübung einer Erwerbstätigkeit von ausländischen Studierenden und Wissenschaftlern*) and is intended for information purposes only. In all cases of doubt or dispute, the German original shall prevail.

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1 Introduction

The options for taking up gainful employment are governed by the "Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners" – in short: Immigration Act – which came into force on 1 January 2005. The Immigration Act consists of various single acts, of which the Residence Act (for non-EU citizens) and the Freedom of Movement Act/ EU (for EU citizens) are most relevant on questions of employment. Statutory instruments govern the more specific details in many of the Act's areas of applicability. However, other laws, provisions and regulations may also be of relevance to the information presented here.

This information sheet reflects the status as of October 2007. Since the Immigration Act first came into force, a number of amendments have been made to the laws addressed here. Essentially, these are:

- Bulgaria and Romania joined the European Union on 1 January 2007. As with the "old new" accession countries, e.g. Poland, the Czech Republic and Hungary, which joined the EU on 1 May 2004, certain transitional arrangements apply. While full freedom of movement is already granted, identity checks will continue to be made at the borders. In addition, Germany has also made use of the option provided by the Accession Treaty to continue to restrict the freedom of movement for workers as well as for cross-border services in specific sectors (building and construction, interior decorating, certain cleaning jobs) for a transitional period of two years. After that, a decision will be made as to whether the transitional regulations are continued for a further three or five years.
- A more extensive change came with the required implementation of 11 residence- and asylum-related EU directives, which also affected the Residence Act and the Freedom of Movement Act/EU (Act on the Implementation of Residence- and Asylum-Related Directives of the European Union of 19 August 2007). The amendments in the field of the Residence Act are the most extensive in this respect and have the greatest influence on the opportunity to take up gainful employment.

The implementation of these directives further harmonises the entry and residence conditions for third-country nationals and the asylum regulations within the EU, makes illegal immigration more difficult, and brings together the existing European legal instruments relating to the freedom of movement. The following changes are of particular significance for the entry and residence of foreign students, academics and scientists:

- Temporary or casual work during the study preparation phase is now only permitted during the vacations in the first year and, as from the second year, is permitted on the same basis as for other students.
- Foreign graduates of a German university who remain in Germany to look for a job may now work to the same extent as students during this phase.
- The revocation options on residence permits for educational purposes (studying) have now been extended: such a residence permit can also be revoked if unauthorised gainful employment is taken up.
- Researchers holding a residence permit for research purposes can now work in Germany if a duly recognised research institution employs the researcher.
- At the Special Cabinet Meeting held in Meseburg in August 2007, the Federal Government agreed on a number of further relaxations for certain groups wishing to take up gainful employment. This applies, on the one hand, to mechanical engineers, automotive engineers and electrical engineers from Eastern Europe and, on the other, to foreign graduates of German universities in all subject areas. In the future, both groups are to be issued with an EU Work Permit or given approval for a residence permit for the purpose of gainful employment without the need for a priority check. The relevant provisions are to come into force on 1 November 2007.

2 Possible Forms of Gainful Employment

In general, foreigners wishing to pursue gainful employment in Germany require a residence title that allows them to take up gainful employment.

Citizens of the European Union, of the European Economic Area (EEA) and Switzerland have a special status in this respect (as per community law): as workers they enjoy freedom of movement and have the same access rights to the labour market as Germans. They do not require the approval of the Federal Employment Agency to take up gainful employment.

Members of the "old new" accession countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, excluding Cyprus and Malta) will not enjoy full freedom of movement for workers, due to the provisions of the respective accession treaties, until the end of April 2011 at the latest (but possibly only until the end of April 2009). They are only allowed to work with the approval of the Federal Employment Agency (Section 284 (1), Book Three of the Social Code). A job may only be filled by a national of one of these countries after a priority check has been carried out. Only if no German applicant, no EU citizen and no EEA national with the same rights as Germans is available for the position may the job be filled by a citizen of one of the accession countries. In this respect, as nationals of an accession country they have priority over workers from third countries. Essentially, the same is true of Bulgarian and Romanian nationals, although the waiting periods are different in their case, since both countries joined the EU at a later stage. Initially, the freedom of movement for workers will be restricted until 1 January 2009, after which the necessity of this measure will be reviewed. A second review will possibly then be carried out to become effective on 1 January 2012. The restriction can be continued until 31 December 2013 at the latest.

The priority checks for mechanical engineers, automotive engineers and electrical engineers from these ten Eastern European accession countries will be abolished on 1 November 2007 (and is not required of workers from Malta and Cyprus anyway).

However, since the nationals of all the "new" accession countries already, in terms of residence legislation, have the same status as other EU citizens, they no longer require a residence permit. This also means that they are not allowed to work with a residence permit for the purpose of gainful employment. Rather, they require a work permit to be able to do this (Section 284 (1), Books Two and Three of the Social Code). With the exception of these specific cases, the work permit no longer exists as a separate administrative act.

Third-country nationals wishing to work in Germany require a residence permit that allows the holder to take up gainful employment. This is also issued by the foreigners authority (*Ausländerbehörde*), although, in many cases, the job needs to be approved by the Federal Employment Agency. This takes place internally within the authorities (one-stop government), which means the foreigners authority is the only office to which the applicant needs to go.

The Immigration Act has linked up the residence and employment provisions even more closely than in the past. This is why we recommend that, if in doubt, the information on residence permit provisions is also consulted (*cf. DAAD – Information on the Statutory Frameworks applicable to Entry and Residence by Foreign Students, Academics and Scientists*).

In general, the admission of workers from third countries into the German labour market is subject to

- the requirements of the German economy,
- consideration of the situation in the labour market,
- the need to combat unemployment.

A concrete job offer must be presented when applying for a residence permit. The residence permit may only be issued

- if the Federal Employment Agency approves the job, or
- if a statutory instrument (employment regulations and employment procedure regulations) or an intergovernmental agreement stipulates that jobs may be taken up without the approval of the Federal Employment Agency.

Besides the jobs that do not require approval, statutory instruments also determine under what conditions the Federal Employment Agency may approve a job. This is the case for certain jobs and professions (*cf., for example, 2.7*), as well as for the nationals of certain countries. For example, the Federal Employment Agency may approve the employment of nationals of Andorra, Australia, Canada, Israel, Monaco, New Zealand, San Marino, and the United States.

The following sections relate exclusively to foreigners who are not citizens of the European Union and are not nationals of countries belonging to the European Economic Area. In general, all “new” EU citizens are limited to the same employment opportunities as are open to third-country nationals (even though they do not need a residence permit, but rather a work permit).

2.1 Student applicants

Individuals resident in Germany for the purpose of applying for a study place in Germany are not permitted to take up gainful employment.

2.2 Students attending pre-study preparatory courses (Studienkollegs) and language courses

Participants attending pre-study language courses and preparatory courses (*Studienkollegs*) are prohibited from taking up gainful employment outside the vacations during the first year of their stay. During the vacations, jobs as defined in 2.3.1.1 and 2.3.1.2 may be permitted. Responsibility for the decision lies with the foreigners authority. Exceptions may apply for Turkish nationals on the basis of the Association Agreement.

In the second year of their stay to prepare for their studies, gainful employment may be taken up to the same extent as is allowed for other students (*cf. 2.1*).

2.3 Students at universities in Germany

Foreigners holding a residence permit for studying in Germany are allowed to take up a certain amount of work without needing the approval of the Federal Employment Agency for this job. The work permit is already included in the legal provisions of the residence permit. Approval from the employment authorities is needed for any gainful employment that extends

beyond this scope. Violations of the provisions on the pursuit of gainful employment by students can be punished in various forms, extending all the way to the revocation of the residence permit.

2.3.1 Approval-free jobs

Approval is not required for jobs which fall under one of the following categories.

2.3.1.1 Secondary/part-time jobs on 90 full days/180 half days

Foreign students registered at universities in Germany can take up jobs without requiring approval if this work does not, in total, exceed 90 full days or 180 half days in a calendar year. A half day is understood to mean that the daily working hours do not exceed four or five hours. The regular working hours of the other employees at the place of work are decisive for this question. If these regularly work eight hours, a half day is calculated as four hours of work per day; if the employees regularly work ten hours, a half day is calculated as five hours.

Even if the work is not pursued over a longer period of time, but rather done in one go (e.g. in the semester vacations), the working hours are only calculated for those full or half working days on which the student actually worked. So weekends are no longer (as before) included when calculating the accumulated working hours.

In each case, employees and employers must check and count the working hours that have been completed in the calendar year without approval, so that the 90 full days/180 half days are not exceeded. Working hours must be suitably documented.

The collateral clause to the residence permit reads as follows in such cases: "Jobs up to 90 full days or 180 half days per year as well as secondary/part-time student jobs are permitted." This clause is included in the residence permit.

As soon as foreign students have exhausted their contingent of 90 approval-free full days or 180 half days, they require the approval of the employment authority and the foreigners authority (*cf.* 2.3.2).

2.3.1.2 Working as research or student assistants

Besides the 90 approval-free full days/180 half days, jobs as research or student assistants can also be performed without requiring approval and without any time limits. Student secondary/part-time jobs include work limited to academic activities in which the subject matter relates to the student's studies and the work is done only in university-related organisations (such as tutors working in halls of residence run by the student services organisation).

Despite the approval-free status, the foreigners authority must still be consulted in the process, since it is responsible for deciding in each case whether and to what extent the work is "academic assistance" as defined by this regulation. The university should be consulted when it is difficult to differentiate between approval-free jobs involving academic assistance and jobs that do require approval.

2.3.1.3 Internships and work placements

Foreign students registered at a German university in Germany and wishing to complete an internship must observe the following:

Required internships that are prescribed as part of the programme or studies or that are necessary for achieving the educational goal do not require approval. These internships even remain approval-free when students are paid for this work, since the work constitutes part of the studies and is covered by the relevant purpose of residence. According to the implementing regulations of the Federal Employment Agency, such work includes students producing their Diplom theses in companies. The 90 approval-free working days/respectively 180 half days generally available to students remain unaffected by the required internships or by the work done on producing the Diplom thesis, which means that these days can be used additionally to and independently of the internship.

Voluntary or elective internships that are not a firm component of the curriculum and that consequently do not represent an educational section that counts towards the studies are regarded as gainful employment requiring approval subject to the provisions on the employment of foreigners. Even internships completed without payment are subject to this approval requirement.

The first three months of a voluntary internship may consequently also be covered by the approval-free 90 full-day respectively 180 half-day ruling, as long as these days have not already been used for other jobs. The approval of the foreigners authority and of the Federal Employment Agency must be obtained for any further time spent working (*cf.* 2.3.2).

2.3.2 Jobs requiring approval

Jobs done by foreign students registered at a university in Germany that extend beyond the options provided for in 2.3.1 generally require approval and must also be permitted by the foreigners authority. In special cases, approval-free jobs must also be permitted by the foreigners authority (*cf.* 2.3.1.2) before the job/work can be taken up.

Longer-term gainful employment extending beyond the 90 full days/180 half days can only be allowed as part-time jobs for students. Furthermore, this gainful employment must not change the purpose of residence with its restriction to educational purposes, i.e. studying, and must neither substantially impede nor delay the achievement of this purpose. The foreigners authority is responsible for permitting this job and may, at its discretion, impose conditions. These are considered when the foreigner is in danger of not being able to cover his/her living expenses (subsistence) due to circumstances for which the foreigner and his/her relatives are not to blame and when the studies have been pursued purposefully to date. In the course of reaching this decision, particular difficulties must be considered which foreigners can face when they commence and carry out a course of studies. In this respect, the university must confirm whether the student can be expected to successfully complete the studies.

If the foreigners authority allows a longer-term job to be taken, then, generally, the Federal Employment Agency must approve the job, if the job is not approval-free under Sections 2 to 16 Employment Regulation.

Whether approval is granted depends on the requirements of the German economy, on consideration of the labour market situation and on the need to combat unemployment. In

addition, it is necessary to check whether the employment of German workers or of foreigners who have the same legal status as Germans in respect of taking up employment are not available (priority check) for the job. The Federal Employment Agency is also bound by the requirement to carry out this priority check in general for all foreigners, and even for foreign students. This means that approval may only be given for a concrete job/position if no suitable German or other applicant with equal legal status from an EU or EEA country is available.

2.4 Students at universities abroad

Students at a university abroad can only take up an approval-free job in Germany under very narrowly-defined conditions. This is possible within the scope of a vacation/holiday job or an internship. Beyond this, foreign students can only take up a job with the approval of the employment agency.

2.4.1 Vacation/holiday jobs

A residence title for students and pupils from foreign universities and colleges does not need to be approved by the Federal Employment Agency if the vacation/holiday job does not exceed 3 months within a 12 month period and the Federal Employment Agency has itself placed the student in the job.

2.4.2 Internships and work placements

Internships lasting up to 12 months are also approval-free if they are carried out within the scope of an international exchange programme organised by associations and public institutions or student organisations in agreement with the Federal Employment Agency.

Nor is the approval of the Federal Employment Agency required for an internship carried out within the scope of a programme financially supported by the European Union.

2.5 Foreign graduates of German universities

Foreign graduates of German universities can have their residence permit extended by up to one year for the purpose of looking for a job that is appropriate to their degree. If they find a suitable job in this period, the existing residence permit can be changed into a residence permit for the purpose of gainful employment. Such a change of purpose was practically impossible under the old Law on Foreigners and is still, even after the new Immigration Act came into force, subject to restrictions when the original purpose of residence was educational, i.e. studying.

If the stay was financed with a scholarship or grant paid from German public funds or with a scholarship or grant awarded by a recognised funding organisation in Germany or with a scholarship or grant paid from public funds in the country of origin, and if the recipient has not pledged to return to the home country after graduating, a report will be obtained before a further residence title is issued to the graduate. This report is produced by the Federal Ministry for Economic Cooperation and Development (BMZ), the respective state education and science ministry, or by the relevant German diplomatic mission abroad, and should

consider development policy issues which may conflict with the extension of the stay in Germany.

2.5.1 Forms of employment while looking for a job

Proof of sufficient resources to cover the cost of living (subsistence) must be provided to qualify for a residence permit extension for the purpose of looking for a job, which in the case of most foreign graduates means that they – as already during their studies – are dependent on some earnings from their own gainful employment. In the course of implementing 11 residence- and asylum-related EU directives, the previously restrictive regulations on employment opportunities for this group were relaxed. Now, foreign graduates of German universities have the same employment opportunities open to them as during their studies (*cf.* 2.3). This means that the 90 full-day / 180 half-day ruling also applies here as does the provision on the approval-free nature of student temporary/part-time jobs.

If a job is taken that merely serves to cover the foreigners' living expenses (subsistence) while looking for a job appropriate to their qualifications, the purpose of residence will not be changed.

2.5.2 Requirements that the job must meet

First of all, the graduate must hold a concrete job offer. Furthermore, the statutory provisions must allow the job to be filled by foreigners. These provisions on residence for the purpose of engaging in gainful employment are defined in Sections 18 to 21 Residence Act. This means that a residence title for the pursuit of gainful employment can be issued if either a) the Federal Employment Agency approves or b) a statutory instrument or intergovernmental agreement stipulates that the job is permissible without this approval.

The Federal Employment Agency can issue a residence permit to foreign university graduates for the purpose of employment if the job is appropriate to the university degree. Concrete guidelines on the appropriateness of a job do not exist. In general, it may be said, however, that the job must be one that requires an academic degree.

Approval can be given if the employment of foreigners has no negative impact on the labour market – in particular in respect of the employment structure, the regions and the branches of business and industry. In addition, it is necessary to check whether the employment of German workers and of foreigners who have the same legal status as Germans in respect of taking up employment are not available (priority check) for the position in question. This means that approval may only be given for a concrete job/position if no suitable German or equal status applicant from an EU or EEA country is available. Although university graduates who are nationals of a "new" EU Member State have priority over third-country nationals, they still have fewer rights than other EU citizens. As decided by the Special Cabinet Meeting in Meseburg, the priority checks on the foreign graduates of German universities will be abolished as from 1 November 2007.

According to the statutory instrument, approval is not required for the jobs specified in Sections 2 to 16 Employment Regulation. Jobs in teaching and science or research and development are emphasised as particularly relevant (*cf.* 2.6).

2.6 (Visiting) academics, scientists and researchers

Academics, scientists and researchers who would like to come to Germany have three Residence Act alternatives to choose from, each of them with its own advantages.

2.6.1 (Visiting) academics and scientists at universities and research institutions

The approval of the Federal Employment Agency is not required for the issue of a residence permit for gainful employment as defined by Section 18 Residence Act for

- university and research institution staff (academics, scientists or researchers) working in the field of research and teaching, or at research and development institutions, or as language teachers at universities,
- visiting academics and scientists working at a university or a public or largely public-funded research institution or at a research institution run as a public enterprise under private law, and
- engineers and technicians working as technical staff on the research team of a visiting academic or scientist.

Foreign academics and scientists who do not have an employment contract with a university or research institution can receive a residence permit for the pursuit of gainful employment if a "public interest in their employment exists" on account of their particular specialist knowledge, and the Federal Employment Agency approves their employment (*cf.* 2.7).

2.6.2 Researchers

The implementation of 11 residence- and asylum-related EU directives opened up an additional opportunity: the Residence Permit for Research Purposes as specified in Section 20 Residence Act. A foreign researcher must be issued with a Residence Permit for Research Purposes if the researcher has concluded an effective admissions agreement with a duly recognised research institution for the purpose of carrying out a research project. The research institution must commit itself in writing to cover the costs that arise for public bodies for up to six months after the end of the admissions agreement. This requirement should be waived where the activities of the research establishment are financed primarily from public funds. An exception may be made where a particular public interest exists in the research project.

The institutions covered by the term "research institution" are defined in the newly-introduced Section 38 a Residence Regulation as public and private institutions that conduct research in Germany. Besides the Max Planck Institutes, branches of the Fraunhofer Society, and others, this also includes university institutes. The favourable provisions of the implemented "researcher directive" **do not apply** for persons whose research activity is part of a doctoral programme since these persons are counted as students, **or** for persons whose employer, a research institution in another EU country, has seconded or posted them to a German research institution.

The permission to take up employment covered by the residence permit for research purposes applies to research projects as such as well as to teaching activities. A labour market check is not carried out, no consultation of the Federal Employment Agency is required.

Within certain bounds, the residence permit for research purposes facilitates EU-wide mobility. So researchers who have been admitted under the provisions of the "researcher directive" in another EU member state can be issued with a residence permit for carrying out part of their research project in Germany. The approval of the Federal Employment Agency is not required by these third-country researchers from other EU countries for research work done as gainful employment during stays in Germany lasting up to a maximum of three months.

2.6.3 Highly-qualified academics and scientists

Highly-qualified workers (academics and scientists) can be given a settlement permit immediately and without the approval of the Federal Employment Agency if the integration prognosis is positive. The settlement permit is permanent and automatically entitles the holder to take up and pursue gainful employment.

Highly-qualified workers include

- academics and scientists with specialist subject knowledge and expertise (chaired professors and institute directors),
- teaching staff and academic/research staff in key positions (heads of research and scientific project groups).

2.7 Other academics

Foreign academics who are not graduates of a German university and who do not wish to work in science and research in Germany (*cf.* 2.6) only have a limited range of legal opportunities available to them for receiving a residence permit for the purpose of gainful employment. The chances are slightly better for those who have graduated and who would like to gain further professional qualifications.

2.7.1 Continuing training

Professionals and aspiring professionals who would like to complete an internship or an industrial continuing training programme in Germany can be issued with a residence permit without the approval of the Federal Employment Agency if they receive a grant paid from German public funds, from funds of the European Union or from international, intergovernmental organisations for their internship. A professional is defined as someone who has graduated from a university.

In all other cases, the work associated with the continuing training requires approval. Such approval can be given, however, if a programme is taken that is comparable to those for which public funding is provided and if the working conditions and the level of the scholarship or grant correspond with comparable offers financed from German public funds. Under certain conditions (i.e. where the scholarship holder additionally receives continuing training without any detrimental effect for applicants from the domestic labour market, it is in the employer's interest to employ a foreign applicant). In such a case, the priority check may also be waived.

2.7.2 Pursuit of gainful employment

As in the case of the foreign graduates of German universities, a concrete job offer must also be held here. However, since this group does not have the privilege, in contrast to foreign graduates of German universities, of being able to search for a job while based in Germany, they have to search for a job from a base abroad. In addition, the job must be eligible for foreigners under the statutory provisions. These provisions on residence for the purpose of

gainful employment are governed by Sections 18 to 21 Residence Act. According to this, a residence title for the pursuit of gainful employment can be issued if either a) the Federal Employment Agency has approved or b) a statutory instrument or intergovernmental agreement stipulates that the employment is permissible without the approval.

The Federal Employment Agency can approve the issue of a residence permit for the purpose of gainful employment for certain activities and occupations defined in the Employment Regulation. This includes the employment of

- specialists with academic or comparable qualifications that focus on the field of information and communication technology, and
- specialists with academic or comparable qualifications when a public – especially regional, economic or labour market policy – interest lies in their employment on account of their specialist knowledge and expertise.

Approval can be given if the employment of foreigners has no negative impact on the labour market – in particular in respect of the employment structure, the regions and the various branches of business and industry. In addition, it is necessary to check whether the employment of German workers and foreigners of equal legal status in respect of taking up employment are not available (priority check) for the position in question. This means that approval may only be given for a concrete job/position if no suitable German or equal status applicant from an EU or EEA country is available. Although university graduates who are nationals of a "new" EU Member State have priority over third-country nationals, they still have fewer rights than other EU citizens, unless they are engineers. No priority check is required for engineers (*cf.* 2).

2.7.3 Highly-qualified workers

Highly-qualified workers can be given a settlement permit immediately and without the approval of the Federal Employment Agency if the integration prognosis is positive. The settlement permit is permanent and automatically entitles the holder to take up and pursue gainful employment.

Besides staff working in academia, science and research, highly-qualified workers include specialists and professionals with particular career or professional experience and expertise whose gross income is at least twice as high as the income limit for the assessment of contributions to the statutory health insurance scheme. At the moment this amounts to 85,500 euros per year.

2.8 Spouses of academics, scientists and students

The spouses of foreigners are allowed to work when the foreigner to whom the spouse subsequently immigrated is entitled to take up gainful employment or when the state of marital cohabitation has lawfully existed in Germany for at least two years and if an extension of the residence permit of the foreigner to whom the spouse is immigrating is not ruled out for some reason or another.

The time at which the subsequently immigrating foreigner receives the residence title is decisive for determining whether this foreigner is entitled to pursue gainful employment. If the decisive foreigner already holds a residence permit at this time which allows that foreigner to pursue gainful employment, the subsequently immigrating foreigner may also work; if both

receive a residence title with a specific entitlement at the same time, this is deemed as sufficient to meet the requirement.

The entitlement to take up independent employment can also be granted if the foreigner to whom the spouse is subsequently immigrating is not entitled to engage in independent employment, but can take up gainful employment.

If the employment market admission of the foreigner who is being joined by his/her spouse does not require the approval of the Federal Employment Agency, the immigrating spouse is also allowed to take up employment, without requiring the approval of the Federal Employment Agency. For the spouses of most (visiting) academics and scientists (*cf. 2.6*), this means that they can take up gainful employment without the approval of the Federal Employment Agency. However, if the decisive foreigner requires the approval of the Federal Employment Agency for taking up gainful employment, then this also applies to the joining foreigner. If the decisive foreigner is working independently (self-employed), which means that the pursuit of gainful employment was not specifically entered into the residence title, the approval requirement for the spouse will be based on whether approval would also be required if the decisive foreigner were to take up a job.

If the approval of the Federal Employment Agency is required, the check on whether the pursuit of a job by the joining spouse (subsequent immigration) can be approved involves a separate process based on the general approval provisions (*cf. 2.7*).

Spouses of students require the approval of the Federal Employment Agency before taking up gainful employment, if the job is not approval-free in accordance with Sections 2 to 16 Employment Regulation. The special employment options for students (*cf. 2.3*) are bound to their student status and are not transferable.

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This information sheet only aims to provide an overview and so makes no claim to completeness. Although it has been compiled with the greatest possible care, no liability can be accepted for the correctness of the content.

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