

## Policy Report 2007

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Federal Office  
for Migration  
and Refugees

**National Contact Point for Germany  
in the European Migration Network  
(EMN)**

**Policy Report 2007**

Ulrike Fehsenfeld, Heiko Hecht,  
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## Short description

The Policy Report 2007 provides an overview of the most important political debates and political and legislative developments, as well as of the implementation of EU legislation in the fields of migration and asylum in the Federal Republic of Germany. In its capacity as National Contact Point for Germany, the Federal Office for Migration and Refugees (BAMF) is responsible for drawing up an annual report within the EMN.

In addition to general political developments in the Federal Republic of Germany, which are presented in the first chapter, Chapter 2 of the Policy Report 2007 outlines the political and legislative developments and major political debates with regard to migration, integration and asylum.

The ongoing dialogue with the representatives of Moslems living in Germany should be stressed here. On 2 May 2007, the second plenary of the German Islam Conference (DIK) debated on the initial proposals of the working parties on this matter. Together with the DIK, the Federal Ministry of the Interior is pursuing the goal of improving the religious and social integration of the Moslem population in Germany.

Over and above this, the National Integration Plan (NIP) was presented and adopted at the second integration summit, which was held on 12 July 2007 with the aim in mind of facilitating the sustainable integration of immigrants. The National Integration Plan now provides a systematic approach to promote the skills and potential of migrants in a targeted manner.

Important legal developments were observed in the course of the reform of the “Act to Steer and Limit Immigration and to Regulate the Residence and Integration of Union Citizens and Foreigners” (Immigration Act) (*Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern [Zuwanderungsgesetz]*), which came into force on the 1 January 2005. With the “Act on the Transposition of Residence- and Asylum-Related Directives of the European Union” (Directive Transposition Act) (*Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union [Richtlinienumsetzungsgesetz]*), which came into force on 28 August 2007, in addition to the transposition of eleven European Union directives on residence and asylum into domestic law, knowledge from the evaluation of the Immigration Act was also taken into consideration, and account was taken of security-related aspects.

The Immigration Act placed on an equal footing the residence status of refugees recognised in accordance with the Geneva Convention on Refugees, and that of persons entitled to asylum. Both groups initially receive a limited residence title which after three years can lead to a

permanent right of residence. Furthermore, “permission for permanent residence in the EC” was introduced in 2007 in transposition of EU law. The regime applying to researchers and students was liberalised in the shape of the Directive Transposition Act. In particular, a legal basis was created for the granting of a residence permit for “researchers”. With regard to spouse reunification, documentation of simple knowledge of German is now required, and a minimum age of 18 has been introduced for spouses. The aim of this arrangement is to promote the integration chances of joining spouses and to prevent any forced marriages.

The Directive Transposition Act also introduced changes in the field of integration. Successful attendance at the integration course (support and empowerment of integration) was stipulated as a statutory target.

In the course of this reform, the Federal Government adopted on 21 November 2007 the “Reform on the implementation of integration courses for foreigners and ethnic German resettlers”, which provides for greater efficiency for the language and orientation courses, and for flexibility in adapting to the needs of the participants. The new features include language courses increased to up to 900 hours, the reduction of the class sizes and the possibility to repeat the advanced language course and the placement test once.

In order to counter the shortages of specialist staff in some sectors of industry, the priority examination was abolished for engineers of mechanical engineering and of vehicle manufacture or electrical engineering, as well as for foreign graduates of German universities, and hence it was made easier to gain access to the labour market.

Particular significance attached to the statutory regulation on existing cases for foreigners whose deportation has been suspended for many years. The statutory regulation on existing cases took account in sections 104a and 104b of the Residence Act of the needs of foreigners whose deportation has been suspended for many years in Germany, and who are integrated here, for a long-term perspective in Germany. Persons whose deportation has been suspended and who had been in Germany for at least eight years on 1 July 2007, or for six years if living in a household with one or several minor-age children, and who show efforts to become integrated, have sufficient housing space and adequate oral knowledge of German and have not deliberately deceived the immigration authorities, initially receive a right of residence that is time-limited until 31 December 2009 and equal access to the labour market so that they can earn a living through their gainful employment without claiming public social benefits.

This is discussed in detail at item 2.3 “Political and legal developments with regard to migration, integration and asylum”.

Chapter 3 “Implementation of EU legislation” also documents transposition into German law in a synoptic overview in addition to the designation of the corresponding directive.

## **1. Political developments in the Federal Republic of Germany**

### **1.1 Outline of the general structure of the political system and of the institutions in the area of migration and asylum**

The following institutions of the Federation are active in the field of migration and asylum: the Federal Ministry of the Interior, the Federal Office for Migration and Refugees, the Federal Government Commissioner for Migration, Refugees and Integration, as well as a Federal Government Commissioner for Repatriation Issues.

Within its wide range of tasks, the Federal Ministry of the Interior deals amongst other things with matters related to the Federal Government’s migration and integration policy<sup>1</sup>. This includes the right to residence and the right to freedom of movement for foreigners and Union citizens, the right to asylum, questions related to returns, as well as matters related to European harmonisation remaining unresolved in this context. At federal level, the Federal Ministry of the Interior coordinates the measures to improve integration which are promoted in the various Federal departments. Furthermore, matters related to displaced persons and ethnic German resettlers and their reception, the interests of the national minorities and language groups in Germany, the promotion of the German minorities in the states of Central Eastern and South Eastern Europe, the CIS and the Baltic states, as well as nationality law, are within the Ministry’s aegis. The Ministry also carries out service and specialist supervision of the Federal Office.

As a superior federal authority among the subordinate authorities of the Federal Ministry of the Interior, the Federal Office for Migration and Refugees is responsible for the fields of migration, integration and asylum. It decides on asylum applications and subsidiary protection of refugees. Furthermore, one of the foci of the Federal Office is to promote and coordinate the linguistic,

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<sup>1</sup> [www.bmi.bund.de](http://www.bmi.bund.de)

social and societal integration of immigrants in Germany. Furthermore, it helps as a central management agency in immigration and migration-related issues in distributing Jewish immigrants from the former Soviet Union and provides foreigners who would like to return home with information on the promotion of voluntary return. It also devotes itself to increased cooperation with its European partners in the fields of asylum and migration.

Since 2005, furthermore, its tasks have included the development of integration courses (language and orientation courses) for immigrants, the re-orientation of initial migration advice and the promotion of projects for the social and societal integration of ethnic German resettlers and foreigners living permanently in Germany. At the same time, the Federal Office is developing a national integration programme and reports to the Federal Government as a specialist in the field of integration promotion.

The activities of the Office also include providing comprehensive information and drafting topical information material, both for immigrants and for immigration authorities, integration course organisations and further agencies involved in integration. Additionally, the Federal Office has responsibility for the Central Register of Foreigners and undertakes academic research on migration-related issues in order to obtain analytical statements on the management of immigration. Over and above this, because of its responsibility both in terms of the law on foreigners and of Information Technology, it heads various national projects and hence acts as a service-provider within the immigration system.

Since November 2005, Prof. Dr. Maria Böhmer has occupied the office of the “Federal Government Commissioner for Migration, Refugees and Integration” as minister of state in the Federal Chancellery. The Commissioner for Migration, Refugees and Integration is nominated by the Federal Government and supports the latter in an independent and advisory capacity (sections 92 – 94 of the Residence Act).<sup>2</sup> She seeks amongst other things to support the integration of the foreign population living permanently in Germany, to assist the Federal Government in refining its integration policy, to refine the preconditions for as tension-free as possible co-existence between foreigners and Germans (as well as different groups of foreigners), promote mutual understanding and counter xenophobia and unjustified unequal treatment. Furthermore, she is to observe immigration to Germany and to the European Union, as well as the development of immigration to other states. The Commissioner is to be involved with the legislative projects of the Federal Government.

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<sup>2</sup> <http://www.integrationsbeauftragte.de>

Because of the large number of ethnic German resettlers in 1988, the Federal Government decided on 28 September 1988 to appoint a “Federal Government Commissioner for Repatriation Issues”.

The ethnic German Resettlers Commissioner is responsible for coordinating all measures related to ethnic German resettlers within the Federal Government, provides information on all questions concerned with ethnic German resettlers, cares for the German minorities in the origin territories and acts as a contact for problems faced by ethnic German resettlers. Integration however forms the focus of his work, with the aim in mind of involving ethnic German resettlers quickly and permanently in social, vocational and cultural life in Germany. By order of 20 November 2002, the tasks of the Commissioner were extended to cover national minorities – Danes, Frisians, Sorbs and German Sinti and Roma. The new “Federal Government Commissioner for Repatriation Issues and National Minorities” has been the Parliamentary State Secretary at the Federal Ministry Interior, Dr. Christoph Bergner since 1 February 2006.

The Federal Office of Administration (BVA) is responsible for the entry and reception procedure for ethnic German resettlers. It examines whether the statutory preconditions are met in factual terms for their immigration to Germany, and then issues a reception notice entitling them to enter the Federal Republic.

## **1.2 General political developments**

The German EU Council Presidency

The Federal Republic of Germany held the EU Council Presidency from 1 January to 30 June 2007. The operational programme of the German Presidency provided amongst other things for measures to increase security, manage migration and promote integration.

The Presidency supported the European Commission inter alia in establishing the Visa Information System (VIS), an important tool for cooperation in the fight against irregular migration and visa abuse. Over and above this, a concrete package of measures was adopted to intensify cooperation with important states of transit and origin for migrants in the Eastern and South Eastern neighbouring regions of Europe. Progress was made under the German Presidency towards expanding a joint re-admission policy. The deliberations on the draft of a repatriation directive were continued. The negotiations of the Commission on readmission agreements, including with the Western Balkan states, were completed; these agreements were signed in September 2007. As to the protection of the EU’s external borders, the German Council Presidency pushed forward the coming online of the Schengen Information System



(SIS) II and promoted the strengthening of the External Borders Agency FRONTEX. Amongst other things, expert border police teams will be available in future through FRONTEX to provide support where it is needed to each Member State which is subject to a particular burden from illegal migration.<sup>3</sup> What is more, under the German Council Presidency the stage was set from 2008 onwards to remove the border controls between the new Member States and the old bordering Member States. They were connected to the joint search system, as well as to the associated establishment of high-performance police and border protection systems.

In the framework of integration policy aspects of the operational programme, the promotion of intercultural dialogue – above all the exchange on integration policy initiatives between the Member States – formed the focus. Under the German Council Presidency, it was possible to expand the role of the National Contact Points of the Member States for questions related to integration in order to be able to intensify the existing exchange of information and experience. One focal topic was dialogue with Islam. A meeting took place in Berlin on 20 June 2007 between the Presidency and the representatives of the major Churches and religious communities in Europe.<sup>4</sup>

#### Elections in the Federal Republic of Germany

There were only elections in one Federal *Land* in 2007. The Bremen Parliament election took place in Bremen on 13 May. A new governing coalition emerged victorious from the elections in which the Greens replaced the CDU as the coalition partner of the SPD. The SPD was the strongest party, at 36.8% of the votes, but lost 5.5 percentage points, as did the CDU, which achieved 25.6% (-4.1 percentage points).<sup>5</sup> The Greens received 16.4% of the votes. The distribution of the seats in the Parliament allotted 33 seats to the SPD, 23 to the CDU, 14 to the Greens, 7 to *die Linke* and 5 seats to the FDP. The Bremen Parliament therefore formed the only *Land* Government in 2007 in which the SPD were in coalition with the Greens.

#### Reforms

The reform of the Immigration Act, which came into force on 1 January 2005, and which took place as a result of the Directive Transposition Act<sup>6</sup>, should be named as a major reform in

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<sup>3</sup> <http://www.bundesregierung.de/content/DE/Artikel/2007/06/Anlagen/2007-06-27-bilanz-praesidentschaft,property=publicationFile.pdf>

<sup>4</sup> Innenpolitik 3, *Informationen des Bundesministeriums des Innern*, July 2007.

<sup>5</sup> <http://www.bremische-buergerschaft.de/index.php?area=1&np=3,22,109,0,0,0,0,0>

<sup>6</sup> Federal Law Gazette (*BGBl.*) Part I p. 1970.

2007. The required transposition of the directives primarily relates to the Residence Act, to the Residence Ordinance, the Freedom of Movement Act/EU, as well as to the Asylum Procedure Act, and is restricted in major sections to slight changes to the existing legal provisions.

The law on residence was additionally amended in some parts over and above the requirements of the eleven EU directives. The basis for the amendments to the law on foreigners and on asylum were the results of the evaluation of the Immigration Act, as well as of security knowledge obtained from the failed suitcase bomb attacks at the end of July 2006.

Particular political significance attached to the introduction of a statutory regulation on existing cases. What is more, the amendments were carried out which the federalism reform had made necessary as to official facilities and administrative procedures.

The concrete legal reforms which entered into force with the Directive Transposition Act are set out in detail at items 2.3 and 3.1.

### **1.3 Institutional developments**

Shortly before the Second German Islam Conference (DIK) on 2 May 2007, an umbrella association was created for Moslem organisations in the Federal Republic of Germany. The “Coordination Council of Moslems” (KRM) took up its work on 11 April 2007. The Council includes the Central Council of Moslems (ZMD), the Islamic Council, the Turkish-Islamic Union Institute for Religion (DITIB) and the Association of Islamic Cultural Centres (VIKZ). The “Milli Görüs” Islamic community, which is under observation by the constitutional protection authorities, is not directly involved in the new Coordination Council, but is a member of the Islamic Council. The first spokesperson of the Coordination Council of Moslems was the Chairman of the Central Council of Moslems in Germany, Ayyub Axel Köhler.

The Council is regarded by the state as a contact and negotiating partner when it comes to integration and policy on Islam. The umbrella association of the four large Moslem organisations in Germany is to promote dialogue between Moslem associations and the Federal Government.<sup>7</sup>

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<sup>7</sup> [http://www.bpb.de/themen/SAKLRT,0,0,Muslime\\_in\\_Deutschland.html](http://www.bpb.de/themen/SAKLRT,0,0,Muslime_in_Deutschland.html)

## **2. Political and legislative developments in the area of migration and asylum**

### **2.1 Outline of the general structure of the legal system in the area of migration and asylum**

The general structure of the legal system in the field of migration and asylum was presented in detail in the “Policy Report 2006” and is to be summarised and added to here.

The foundation<sup>8</sup> for the law on foreigners applicable in Germany, including the law on asylum and refugees, can be found both in international law<sup>9</sup> and in European community law, as well as in German constitutional and statutory law.

Community law regulations, which have been transposed since 1 January 2005 in the Freedom of Movement Act/EU, have applied to Union citizens and their family members for a long time. Particularly in recent years, Community law has gained considerable influence.

Entry and subsequent short-term residence of third-state nationals is in line with the rules of the Schengen Implementation Agreement, the provisions of the Residence Act<sup>10</sup> being material for longer-term residence.

The Residence Act is the most important statute for the fields of entry, residence and employment of third-state nationals. It serves to manage and limit the immigration of foreigners to the Federal Republic of Germany. It facilitates and shapes immigration, taking account of ability to receive and integrate, as well as of the economic and labour market interests of Germany.

The Residence Act also provides a minimum statutory framework of state services to promote integration, and language and orientation courses in particular.<sup>11</sup> New immigrants who are permanently in Germany have a right to attend an integration course.<sup>12</sup> The “Ordinance on the Implementation of Integration Courses for Foreigners and Ethnic German Resettlers”

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<sup>8</sup> cf. introduction by *Renner, Deutsches Ausländerrecht*, 20th ed., 2005. Beck-Texte.

<sup>9</sup> The “Geneva Convention on Refugees” and the European Convention on Human Rights.

<sup>10</sup> Act to Steer and Limit Immigration and to Regulate the Residence and Integration of Union Citizens and Foreigners of 30 July 2004 (Federal Law Gazette Part I p. 1950) / Federal Law Gazette Part I p. 1970

<sup>11</sup> sections 43 et seqq. of the Residence Act.

<sup>12</sup> section 44 subsection 1 of the Residence Act.

(*Integrationskursverordnung - IntV*)<sup>13</sup> was issued on the basis of section 43 subsection 4 of the Residence Act, and regulates the details of the integration courses. The provisions on the integration courses were reformed in 2007. Details on this at item 2.3.8.

Persons persecuted on political grounds have a right to recognition as persons entitled to asylum in accordance with Art. 16 a para. 1 of the Basic Law (*Grundgesetz – GG*). The examination as to whether an asylum-seeker is persecuted on political grounds in his/her home country takes place in the framework of asylum procedure on the basis of the Asylum Procedure Act<sup>14</sup>. Foreigners who do not have a right to asylum because for instance they entered via a safe third state (Art. 16 a para. 2 of the Basic Law) can be granted protection as refugees if they are at risk of political persecution in accordance with section 60 subsection 1 of the Residence Act. Furthermore, it is to be examined whether there is a right to subsidiary protection in accordance with section 60 subsection 2, 3, 5 or 7 of the Residence Act. The provisions on granting residence titles to persons entitled to asylum or those relating to subsidiary protection are governed by the Residence Act.

## **2.2 Important political debates with regard to migration, integration and asylum**

### Dialogue with Moslems

The second plenary of the “German Islam Conference” (DIK) took place in Berlin on 2 May 2007. It was attended by a total of 15 representatives of the German State and five Moslem associations<sup>15</sup>, as well as ten independent Moslem personalities. Together with the Conference, the Federal Ministry of the Interior is pursuing the goal of improving the religious and social

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<sup>13</sup> Ordinance on the Implementation of Integration Courses for Foreigners and Ethnic German Resettlers (*Verordnung über die Durchführung von Integrationskursen für Ausländer und Spätaussiedler [Integrationskursverordnung – IntV]*) of 13 December 2004 (Federal Law Gazette Part p. 3370), amended by the First Ordinance Amending the Integration Course Ordinance (*Erste Verordnung zur Änderung der Integrationskursverordnung*) of 5 December 2007 (Federal Law Gazette Part No. 61 p. 2787).

<sup>14</sup> Asylum Procedure Act in the version of the promulgation of 27 July 1993 (Federal Law Gazette Part p. 1361), most recently amended by Article 3 of the Act of 19 August 2007 (Federal Law Gazette Part p. 1970).

<sup>15</sup> Moslem associations participating in the DIK are: the “Alevi community in Germany”, the “Islamic Council for the Federal Republic of Germany” (IR), the “Turkish-Islamic Union Institute for Religion” (DITIB), the “Association of Islamic Cultural Centres” (VIKZ) and the “Central Council of Moslems in Germany” (ZMD).

policy integration of the Moslem population in Germany. The dialogue is set to last for several years, and is to avert Islamist tendencies and promote the recognition of Moslems in German society.<sup>16</sup> Approx. 3.4 million Moslems live in the Federal Republic of Germany.

The first Islam Conference took place on 27 September 2006. At that time, four working parties were formed.

On 2 May 2007, the plenary of the DIK had debated the first proposals of the four working parties. Agreements were reached for the further procedure within the groups. It was agreed that empirical data on Moslems in Germany would be collected and evaluated. Furthermore, a “positive list” is to be drafted in order to lend concrete form to constitutionally-relevant preconditions for the introduction of Islamic religious instruction. Over and above this, a “clearing agency” was to be established to examine cooperation between security authorities and Islamic organisations.<sup>17</sup>

#### Second Integration Summit

The Second Integration Summit of the Federal Republic of Germany took place on 12 July 2007. An ongoing dialogue process had been initiated with the First Integration Summit in the summer of 2006. At that time, agreement had been reached to establish six working parties and to submit a “National Integration Plan” by the summer of 2007. At the Second Integration Summit, a National Integration Plan was presented, which was drafted together by the Federation, the *Länder*, local government and migrants, under the chairmanship of the Integration Commissioner Dr. Maria Böhmer.

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<sup>16</sup> [www.integration-in-deutschland.de](http://www.integration-in-deutschland.de)

<sup>17</sup> Innenpolitik 3, *Informationen des Bundesministeriums des Innern*, July 2007, p. 14.

### National Integration Plan

The roughly 90 participants adopted the “National Integration Plan”, which encompasses more than 400 measures. In this way, the representatives of the Federation, *Länder*, local government, the business community, migrants’ associations and non-governmental stakeholders entered into undertakings in order to facilitate the sustainable integration of immigrants. The six *working parties* covered the following ten topics:

1. *improving integration courses*
2. *early childhood education: promoting the German language from the very start*
3. *ensuring good education and vocational training, improving labour market opportunities*
4. *improving the circumstances of women and girls; achieving gender equality*
5. *supporting integration in the communities*
6. *strengthening integration through civil commitment and equal participation*
7. *living cultural diversity – strengthening intercultural skills*
8. *integration through sports – using potential, increasing services, expanding networks*
9. *media – using diversity*
10. *science – being open-minded*

The National Integration Plan now provides a systematic approach targeting the promotion of immigrants’ skills and potential. The stock-take and goals formulated by the working parties constitute an important basis for the submission of the National Integration Plan, which derives from this a large number of recommendations for action on the part of the various stakeholders, including the following:

- Shortcomings in migrants’ integration, such as lacking knowledge of German and weaknesses in education and training, should be tackled. For instance, the Federation has announced that it will be increasing the number of lessons in the integration courses from 600 to 900 and providing special measures tailored to young people and women. Over and above this, the Federation intends to provide an annual amount of roughly Euro 750 million for integration-promoting measures which amongst other things should benefit education, language, training and gainful employment, as well as civil commitment and sport.<sup>18</sup>

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<sup>18</sup> *Newsletter Migration und Bevölkerung* September 2007.

- The Federal *Länder* have agreed to coordinate *Land*-specific integration measures. Furthermore, they wish for instance to make additional funds available to so-called “flashpoint schools” and child-care facilities with a large share of immigrants.<sup>19</sup>
- At the level of local government, migrants are to be encouraged to engage in civil commitment and networks are to be formed within district management which by means of social and cultural measures are to strengthen identification with the residential environment. One focus is a commitment against xenophobia.<sup>20</sup>
- The Federation, the *Länder* and local government have undertaken to increase the share of employees with a migration background and to train the intercultural skills of staff members.<sup>21</sup>
- Economic associations agreed to provide better opportunities in training to young people with a migration background. The “Active for Training Places” initiative is intended to persuade entrepreneurs of foreign origin make available another 10,000 training places by 2010.<sup>22</sup>
- The migrants’ associations have also entered into undertakings, including with regard to the goal of offering increased mother tongue instruction. The Turkish Community in Germany would like to motivate Turkish parents with an education campaign to do more towards the education of their children.
- The public-law television companies stated that in future they intend to report more on the everyday lives of immigrant families and in this context that they intend to make Islam the subject of debate. Over and above this, more staff with a migration background are to be trained and appointed.
- Integration-promoting measures are also planned in the field of sports. The German Football Association intends to establish a network of local and regional integration projects and promote the “Stay on the Ball – Football against Racism and Discrimination” model project in cooperation with the Federal Government

The fundamental principle of the agreed measures is “support and empowerment”. This means that immigrants and their families bear responsibility themselves for participating and committing their skills and potential, whilst at the same time integration services provide support from the

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<sup>19</sup> National Integration Plan, Chapter 2.

<sup>20</sup> Ebd., Chapter 3.

<sup>21</sup> *Newsletter Migration und Bevölkerung* September 2007.

<sup>22</sup> Ebd.

receiving society. The progress made in the implementation of the National Integration Plan is to be examined in autumn 2008.

## **2.3 Political and legal developments with regard to migration, integration and asylum**

Legal developments can be observed in the course of the reform of the Immigration Act. Eleven EU directives were transposed in domestic law with the Directive Transposition Act. Three of the directives in the field of asylum bring forward European harmonisation of the law on asylum, whilst the other eight directives encompass measures in the area of foreigners and freedom of movement in terms of immigration policy and protection against and in countering illegal immigration.

### **2.3.1 Protection of refugees and asylum**

Amendments to the law on asylum took place on the basis of the implementation of the Qualification Directive<sup>23</sup>, as well as of the Procedures Directive<sup>24</sup>. Core elements of the Qualification Directive had already been incorporated into national law in 2005 with the Immigration Act, so that only a small number of clarifying amendments to the Residence Act and to the Asylum Procedure Act had to be carried out in 2007. The provisions contained in the directives largely corresponded to German law, and were being applied in practice.

One particular amendment which was contained in the Immigration Act was that a residence permit with a term of validity of three years is set out for persons entitled to asylum and refugees under the Geneva Convention. Persons who may not be deported are to be given a residence permit for at least one year.<sup>25</sup> When it comes to deportation bans, an addition was made with regard to the offence of inhuman or degrading treatment or punishment.

The examination as to whether the preconditions for revocation or withdrawal of the decisions which had become non-appealable before 1 January 2005 must take place by 31 December 2008 at the latest.

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<sup>23</sup> Council Directive 2004/83/EC of 29 April 2004.

<sup>24</sup> Council Directive 2005/85/EC of 1 December 2005.

<sup>25</sup> section 26 of the Residence Act.



### **2.3.2 Unaccompanied minors**

The Directive Transposition Act made an explicit provision on unaccompanied minors in the shape of section 104 a subsection 2 of the Residence Act. A foreigner who as an unaccompanied minor has been in Germany for at least six years without interruption, whose deportation has been suspended, has permission to reside or who holds a residence permit for humanitarian reasons, may receive a residence permit in accordance with section 23 subsection 1 sentence 1. This is contingent on it appearing to be guaranteed that he/she can integrate into life in the Federal Republic of Germany because of his/her previous training and circumstances.

In accordance with the new version of section 36 subsection 1 of the Residence Act, furthermore, in future the parents of unaccompanied minors with refugee capacity must be issued a residence permit for family reunification if no parent with the right of custody is in Germany. This provision transposes Art. 10(3)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

### **2.3.3 Migration control and monitoring**

Draft Act to Challenge “Pretend Paternity”

On 13 December 2007, the Federal Parliament adopted the draft Bill to Challenge “Pretend Paternity”, i.e. paternities where there is neither a social-family relationship nor biological paternity. Foreigners are to be prevented from gaining residence in Germany by means of abusive paternity recognitions. The draft Bill supplements the regulations to challenge paternity in the Civil Code (*Bürgerliches Gesetzbuch*) to include a right for public agencies to challenge such paternities.

### **2.3.4 Economic migration**

Access to the labour market for foreign specialists

The Federal Government decided at its retreat on 23/24 August 2007 to facilitate the immigration of engineers from the ten new Central and Eastern European EU States from 1 November 2007 onwards. The so-called individual priority examination, and proof that no qualified worker from Germany or from the old EU Member States is available for a vacancy, is therefore waived with

electrical engineering and mechanical engineering. To date, transitional provisions still applied which largely barred access by Eastern European workers to the German labour market.

Also, it is to be made easier for foreign graduates of German universities, regardless of their discipline, to work in Germany by waiving the priority examination in their case too. They should be allowed to work in Germany for three years to then contribute to development in their home countries. These provisions are to solve current bottlenecks on the German labour market, and the need for specialists is to be covered in the short term. It is nonetheless the goal to meet this need through skill-building for domestic specialists and foreigners already living in Germany.<sup>26</sup>

#### Self-employment

The immigration of self-employed persons from abroad is made easier by the Directive Transposition Act since it is no longer the case that Euro 1 million must be invested and ten jobs created. Half the investment and jobs is now sufficient.

What is more, a legal basis is to be created to grant residence permits to freelancers.

### 2.3.5 Family reunification

A major share of immigration to Germany takes place to achieve family reunification. Family reunification accounted for 28.5% of the immigration of third-state nationals to Germany in 2006.<sup>27</sup> The so-called “Family Reunification Directive”<sup>28</sup> led to amendments to German law. Pretend marriages or pretend kinship, as well as abusive recognition of paternity, are explicitly regarded as grounds for exclusion of family reunification in accordance with the new provision.<sup>29</sup> The possibility of refusing family reunification for persons who rely on social assistance payments for the maintenance of other German family members was also newly introduced.<sup>30</sup>

As to the duration of the residence permit for family reunification, the new provision provides that this is fundamentally orientated towards the right of residence of the main refugee; moreover, the first grant of the residence permit to restore the family community must take place for at least one year.<sup>31</sup>

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<sup>26</sup> [http://www.bmas.de/coremedia/generator/19492/2007\\_09\\_12\\_zuwanderung\\_gestalten.html](http://www.bmas.de/coremedia/generator/19492/2007_09_12_zuwanderung_gestalten.html)

<sup>27</sup> Federal Office: *Familiennachzug nach Deutschland*, Working Paper 10, 2007.

<sup>28</sup> Council Directive 2003/86/EC of 22 September 2003.

<sup>29</sup> section 27 subsection 1a of the Residence Act.

<sup>30</sup> section 27 subsection 3 of the Residence Act.

<sup>31</sup> section 27 subsection 4 of the Residence Act.

The existence of forced marriage was newly introduced as grounds for exclusion for spouse reunification. The minimum age of spouse reunification was increased in order to counter forced marriages, which means that both partners must now have reached the age of 18.<sup>32</sup> What is more, the new provisions should promote the integration of joining spouses. The minimum age of 18 increases the probability that schooling can be completed in the home country prior to moving to Germany.

Furthermore, the precondition of proof of simple knowledge of German was introduced for family reunification.<sup>33</sup>

Exceptions to the rule can apply:

Spouses of highly-qualified persons, researchers, those starting up in business and persons from other EU Member States with a permanent right of residence are exempted from the minimum age and from the language requirement. It is possible to waive the minimum age requirement on a discretionary basis in special hardship cases.

The exception from the language certificate also applies to the spouses of persons entitled to asylum, to foreigners who may enter Germany for long-term residence without requiring a visa, and for the event that the spouse coming to Germany or the spouse already in the country has the nationality of an EU Member State, and both are lawfully resident in the EU. If it is evident that the joining spouse has little need of integration, proof of language knowledge is not required. The same applies if proof cannot be provided for health reasons.

### **2.3.6 Other legal migration**

For the purpose of studies

Section 16 of the Residence Act regulates residence for the purpose of studies, for a language course or to attend school, and was expanded with the Directive Transposition Act. Hence, the so-called Students Directive<sup>34</sup> was transposed. The precondition for admission to study is also met if the foreigner attends measures in preparation of studies.<sup>35</sup>

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<sup>32</sup> section 27 subsection 2 of the Residence Act.

<sup>33</sup> Ebd.

<sup>34</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

<sup>35</sup> section 16 subsection 1 sentence 3 of the Residence Act.

The scope of the employment possibilities prescribed by law was expanded, amongst other aspects.<sup>36</sup> Foreign students and foreign graduates of German universities have the possibility to engage in employment on 90 full or 180 half days during their residence to prepare studies. Graduates may also exercise gainful employment ancillary to studies at the university or other academic facility with no restriction with regard to time.

For the purpose of research

A legal basis was created for granting a residence permit for the purpose of research.<sup>37</sup> Their “credit worthiness” as inviting parties in the visa procedure is examined in a recognition procedure for research facilities which is to be implemented by the Federal Office. Recognition by the Federal Office enables the research facilities to conclude hosting agreements with researchers from third states for time-limited research projects, by means of which a simplified visa procedure and the grant of a residence permit for research purposes is made possible. An advisory council for research migration was formed at the Federal Office. The Directive Transposition Act enshrines the so-called Researcher Directive<sup>38</sup> in German law.

Persons entitled to permanent residence

A new residence title, permission for permanent residence in the EC, is introduced.<sup>39</sup> This is a separate unlimited residence title in addition to the settlement permit, which permits mobility. This regulates the legal status of third-state nationals with a long-term residence entitlement and transposes the “Long-term residence directive”<sup>40</sup>.

Furthermore, a regulation has been created on the legal status in Germany of third-state nationals with a long-term residence entitlement in other Member States or “cases of so-called remigration to Germany”.<sup>41</sup> Necessary notification obligations are determined for implementation<sup>42</sup>, for which the Federal Office acts as the national contact point<sup>43</sup>.

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<sup>36</sup> section 16 subsection 3 sentence 2 of the Residence Act, Gainful employment of students, subsection 4 sentence 2, Gainful employment of graduates.

<sup>37</sup> section 20 of the Residence Act.

<sup>38</sup> Council Directive 2005/71/EC of 12 December 2005.

<sup>39</sup> sections 9a-9c of the Residence Act.

<sup>40</sup> Council Directive 2003/109/EC of 25 November 2003.

<sup>41</sup> section 38a of the Residence Act.

<sup>42</sup> section 91c of the Residence Act.

<sup>43</sup> section 75 No. 5 subsection 1 of the Residence Act.

### 2.3.7 Citizenship and naturalisation

The Directive Transposition Act carried out amendments to the Nationality Act (*Staatsangehörigkeitsgesetz – StAG*). The major amendments relate to the acquisition of nationality, the preconditions for naturalisation, provisions on multiple nationality, as well as amendments to procedural law.

#### Acquisition of nationality and preconditions for naturalisation

A right to naturalisation arises in principle only after eight years of domestic residence. This is shortened to seven years if the foreigner proves successful attendance at an integration course by a certificate being provided by the Federal Office. It may be shortened to six years if a special integration achievement occurs, in particular if linguistic knowledge is proven which exceeds the linguistic level required for naturalisation.

The preconditions for naturalisation were determined as to the linguistic requirements and modified as to knowledge of the legal and social order of the Federal Republic of Germany, and the requirements were determined nationally for the first time. The required knowledge of civics is as a rule documented by a successful naturalisation test. The documentation can however also be provided by other means, for instance by means of a leaving certificate from a secondary general school (*Hauptschule*). Naturalisation courses are offered to prepare for the naturalisation test; participation is however not obligatory. The examination and documentation modalities of the naturalisation test, as well as the basic structure and the learning contents, are regulated by means of a legal ordinance.

Documentation of knowledge of German has now become a precondition for the acquisition of German nationality. Competence level B 1 of the Common European Framework of Reference for Languages was determined as the linguistic level required. Equally, a naturalisation applicant must acknowledge the free, democratic basic order. The person's livelihood must in principle be earned without falling back on social or unemployment assistance, unless the person concerned is not responsible for this. In addition, more stringent prerequisites have been introduced as to obedience to the law.

Knowledge of the legal and social order, as well as of circumstances in Germany, are also to be required. These are to be documented by a naturalisation test.

#### Regulations on multiple nationality

Naturalisation is in principle only possible if the naturalisation applicant renounces or loses his/her previous nationality. The amended Nationality Act provides that in principle all EU and

Swiss citizens may be naturalised without having to renounce their previous nationality. The previously necessary requirement of mutuality has ceased to apply.<sup>44</sup> Conversely, Germans also no longer lose German nationality if they acquire the nationality of an EU State or of Switzerland. Naturalisation combined with acceptance of multiple nationality was and is otherwise only possible in those states of origin which refuse to release from the previous nationality, or if the previous nationality can only be renounced under particularly difficult conditions. The requirement under the old law to lodge a release application with the competent authority of the state of origin has ceased to apply in such cases.<sup>45</sup>

#### Amendments to procedural law

An amendment to procedural law is constituted by the introduction of a formal oath of allegiance<sup>46</sup> which is to place naturalisation in a ceremonial framework. Additionally, far-ranging data transmission regulations, as well as a register of decisions, was created at the Federal Office of Administration, in which decisions on nationality law are recorded.<sup>47</sup>

### 2.3.8 Integration

Amendments in Chapter 3 of the Residence Act, promotion of integration, were carried out with the Directive Transposition Act. In the course of the evaluation of the Immigration Act, in particular a need for action was shown in the implementation of integration courses.

The principle of “support and empowerment”<sup>48</sup> was introduced by the new regulations in order to establish that foreigners with a perspective for a right to remain are also expected to do something towards their own integration, in addition to receiving state integration promotion. Their own efforts in the integration process include in particular: the acquisition of an adequate knowledge of German, respect for the state’s monopoly of power, binding recognition of the value system contained in the Basic Law, confession of freedom of faith, religion, opinion and the press, as well as equal rights of men and women.<sup>49</sup>

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<sup>44</sup> section 12 subsection 2 of the Nationality Act.

<sup>45</sup> section 12 subsection 1 sentence 2 of the Nationality Act.

<sup>46</sup> section 16 of the Nationality Act.

<sup>47</sup> section 31, 32, 33, 34 of the Nationality Act.

<sup>48</sup> section 43 subsection 1 of the Residence Act.

<sup>49</sup> BMI: *Hinweise zum Richtlinienumsetzungsgesetz*, 2007.

Successful participation in the integration course was determined as a statutory goal.<sup>50</sup> Hence, participation in the examination is to be regarded as a general goal for participation in the course.

At the same time, the group of individuals admitted to the integration courses has been expanded to cover Jewish immigrants and Germans in need of integration.

Foreigners who prevent other persons in their efforts towards integration or who act in a disintegrating manner may be expelled. Non-adherence to the obligation to attend an integration course is sanctioned as an administrative offence.

#### Concept for a national integration course

The “Concept for a national integration course” appeared on 15 May 2007. The Federal Office drafted the concept for a national integration course, which is being continually refined, in close cooperation with experts from academia and practical circles. It serves as a starting point for organisations and teachers to develop the form and content of the courses, for implementation, as well as for quality assurance of integration courses.

#### Reform of the Integration Course Ordinance

On 21 November 2007, the Federal Government adopted a new version of the “Ordinance on the Implementation of Integration Courses for Foreigners and Ethnic German Resettlers”<sup>51</sup> which provides for greater efficiency for the language and orientation courses, as well as for flexibility in adjustment to the needs of participants. Hence, the Ordinance is to be adjusted to the reformed right of residence<sup>52</sup> and the proposals of the Second Integration Summit implemented in order to improve the chances for successful conclusion of the course. The new features include language courses increased to 900 hours, the reduction of the class sizes, and the possibility to repeat the advanced language course and the placement test once.

### **2.3.9 Illegal migration**

The Federal Ministry of the Interior submitted a report in February 2007 which goes back to the examination mandate for the field of “illegality” provided for in the Coalition Agreement. The

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<sup>50</sup> section 43 subsection 2 of the Residence Act.

<sup>51</sup> The ordinance lends concrete form to provisions contained in the Immigration Act on the integration courses and their national standard implementation.

<sup>52</sup> section 43 subsection 4 of the Residence Act.

contents of the report include the existing database on illegal migration, the current legal situation in Germany and in other states, as well as conceivable options for action.<sup>53</sup>

### **2.3.10 Return migration**

A humanitarian aid programme promotes voluntary returns and remigration of asylum-seekers: REAG (travel subsidies)/GARP (initial aid). It helps to properly prepare and implement the return journey, as well as to manage migration movements. Persons leaving who do not have sufficient means can apply to have their travel expenses and preparation costs paid by the programme. GARP initial aid, which is between Euro 200 and 250, depending on country of origin and age, was increased by the Federation from 1 July 2007 to include additional GARP initial aid. It is granted in a uniform amount of Euro 100 for adults and young people, as well as for children under the age of 12, and does not contain a maximum family amount.<sup>54</sup>

### **2.3.11 Other**

Regulation on existing cases

Particular political significance attached to the statutory regulation on existing cases for foreigners whose deportation has been suspended for many years.<sup>55</sup> It borrows heavily from the regulation on the right to remain that was adopted on 17 November 2006 by the conference of Ministers of the Interior. The conference had agreed at that time on a regulation in accordance with which a residence permit was to be issued to those concerned who were already in employment and who met further preconditions such as being law-abiding and not having deliberately deceived the immigration authorities, and could show a certain prior residence period. The goal of the regulation on existing cases is to do justice to the need of foreigners for a long-term perspective in Germany whose deportation has been suspended for many years and who are integrated here. The regulation on existing cases led to a situation in which further

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<sup>53</sup> Federal Ministry of the Interior: *Illegal aufhältige Migranten in Deutschland: Datenlage, Rechtslage, Handlungsoptionen*. Report by the Federal Ministry of the Interior on the mandate to examine "illegality" from the Coalition Agreement of 11 November 2005, chapter VIII 1.2, February 2007.

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[http://www.bamf.de/cln\\_011/nn\\_443754/DE/Migration/Rueckkehrfoerderung/REAGGARP/foerderprogramme-reag-garpg-inhalt.html](http://www.bamf.de/cln_011/nn_443754/DE/Migration/Rueckkehrfoerderung/REAGGARP/foerderprogramme-reag-garpg-inhalt.html)

<sup>55</sup> sections 104a and 104b of the Residence Act.



statutory amendments were carried out as an accompanying measure, in particular that those whose deportation has been suspended are to receive equal access to the labour market after four years of residence.<sup>56</sup> In accordance with the regulation on existing cases, this is conditional amongst other things on the foreigner having spent eight or six years in Germany (the latter applying if one or several minor children live in the household) on the key date of 1 July 2007 without interruption with a residence permit or on suspension of deportation. Further major preconditions are sufficient oral knowledge of German, as well as a clean criminal record. The right of residence is initially time-limited until 31 December 2009.<sup>57</sup> The residence permit is only extended if the foreigner can demonstrate that he/she has ensured his/her livelihood not only temporarily and was largely in gainful employment.<sup>58</sup>

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<sup>56</sup> section 10 sentence 3 of the Employment Procedure Code (*Beschäftigungsverfahrensordnung*).

<sup>57</sup> section 104a subsection 5 of the Residence Act.

<sup>58</sup> section 104a subsection 5 sentence 1 of the Residence Act.

### 3. Transposition of EU legislation

#### 3.1 Summary of developments

The overview below provides information on the domestic transposition of eleven EU directives in the field of the law on asylum and on residence:

Designation of the legal act	Transposition into German law
<p><b>Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence</b> (<i>OJ EU L 328 of 5 December 2002, p. 17</i>), came into force on 5 December 2002.</p>	<p>The directive was already transposed into German law with the Immigration Act, which came into force on 1 January 2005. In concurrence with the provisions of the directive, sections 95-97 of the Residence Act contain the corresponding criminal provisions to impose sanctions on unauthorised entry and on facilitation thereof. Attempted smuggling of foreigners is punishable in accordance with section 96 subsection 3 of the Residence Act.</p>
<p><b>Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification</b> (<i>OJ EU L 251 of 3 October 2003, p. 12</i>), came into force on 3 October 2003.</p>	<p>The directive aims to harmonise the preconditions under the law on residence for the issuance, refusal or withdrawal of a residence title for the purpose of family reunification to join third-state nationals who are lawfully resident in the sovereign territory of the Member States of the European Union. The Immigration Act had already largely considered the requirements of the directive, so that only slight changes were needed for transposition.</p> <p>The minimum duration for the possession of a residence title where there is a right to spouse reunification to join foreigners has been reduced from five years to two (section 30 subsection 1 No. 3 (d) of the Residence Act). Section 36 subsection 1 of the Residence Act transposes the right to reunification provided for in the directive for the parents with parental custody of a minor unaccompanied refugee.</p> <p>The establishment of the age of reunification of spouses at 21 years, which is possible in accordance with the Family Reunification Directive, was not completely exhausted by the German legislature, but only set at 18.</p> <p>The establishment of a minimum age in the Residence Act for spouse reunification was intended in particular to provide better protection for young foreigners against forced marriage (cf. 2.3.5).</p> <p>The obligation of the joining spouse to comply with integration</p>

	measures also determined in the directive forms the basis for the required proof of knowledge of rudimentary German.
<p><b>“Transit Directive”</b>  <b>Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air</b></p>	<p>The so-called Transit Directive provides for cooperation between the Member States in return, and pursues the goal of terminating the residence of third-state nationals who are obliged to leave. It hence serves the purpose of European harmonisation of legal provisions to combat assistance to illegal immigration. Removal by air is becoming increasingly significant in these cases.</p> <p>For transposition, the Residence Act was supplemented with section 74a to include a separate section on “Transit of third-state nationals”.</p>
<p><b>Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents</b>  <i>(OJ EU L 016 of 23 January 2004, p. 44),</i>  came into force on 23 January 2004.</p>	<p>The directive aims to create a long-term Community right of EU residence after five years’ lawful residence in a Member State of the European Union.</p> <p>The provisions of the directive made it necessary to amend the Residence Act, amongst other things by creating a new residence title (“permission for permanent residence in the EC”), as well as creating provisions for the mobility of long-term residents who have obtained this legal status in other Member States, by introducing a new criterion. Additionally, provisions were created relating to the intra-Community exchange of data on the award of a long-term residence right and on the implementation of intra-Community returns, including the “consultation procedure” provided for this, section 91 c of the Residence Act.</p> <p>The legal status of third-state nationals entitled on the basis of long-term residence in Germany is regulated in sections 9a to 9c of the Residence Act, whilst section 38a of the Residence Act contains a provision on the right of residence in Germany of third-state nationals entitled to long-term residence in other Member States.</p>
<p><b>“Freedom of Movement Directive”</b>  <b>European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC,</b></p>	<p>The right of residence for Union citizens has been re-regulated at national level in the context of the Immigration Act. This overall revision had already anticipated the implementation of the directive in two major points:</p> <p>For instance, the abolition of the EU residence permit for Union citizens envisioned in the directive was already provided for in the Immigration Act; equally, at national level since the coming into force of the Freedom of Movement Act/EU (<i>Freizügigkeitsgesetz/EU</i>) (came into force on 1 January 2005, promulgated as Art. 2 of the Immigration Act)</p>

<p><b>73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC</b> (<i>OJ EU L 158 of 30 April 2004, p. 77</i>), came into force on 30 April 2004.</p>	<p>a long-term residence right was already in place – even if only for a restricted group of individuals. Some items were not determined until the Directive Transposition Act.</p> <p>The provisions on the long-term right of residence are summarised in section 4a of the Freedom of Movement Act/EU (transposition of Art. 16 et seqq. of Directive 2004/38/EC). Here, one finds the provisions on acquisition of a long-term right of residence after five years' lawful residence, particularities for those in gainful employment and particularities for family members after the death of the person in gainful employment/person entitled to long-term residence/deceased person entitled to long-term residence.</p> <p>The group of family members not in gainful employment is expanded (transposition of Art. 2 No. 2 (c) of Directive 2004/38/EC). Offspring under 21 to whom no maintenance is granted, as well as the parents of the spouse to whom maintenance is granted, are now included. Only for students in accordance with section 4 sentence 2 does a restricted definition of family member apply (only nuclear family).</p> <p>The re-worded subsections 3 to 5 of section 3 of the Freedom of Movement Act/EU transpose the requirements of Art. 12 and 13 of Directive 2004/38/EC, in accordance with which the derived right of residence of a family member may be retained after the death or departure, divorce or dissolution of the marriage of the main refugee.</p>
<p><b>“Victim Protection Directive”</b> <b>Council directive 2004/81/EC of 29 April 2004 on residence permits issued to third-country nationals who are victims of trafficking or who have been the subject of an action to facilitate illegal immigration or who co-operate with the competent authorities.</b> (<i>OJ EU L 261 of 6 August 2004, p. 19</i>), came into force on 6 August 2004.</p>	<p>The directive aims to grant residence titles for third-state nationals who have been the victims of trafficking or who have been the subject of an action to facilitate illegal immigration and who are co-operating with the competent authorities.</p> <p>In accordance with section 25 subsection 4a, a foreign person who has been a victim of trafficking may be granted a temporary residence permit, even if they have been enforceably declared obliged to leave the country.</p> <p>This is conditional on the victim having declared their willingness to testify in the criminal proceedings as a witness in respect of the criminal offence.</p> <p>What is more, section 50 subsection 2a of the Residence Act determines that a deadline for leaving applies to victims of human trafficking, which is set such that the victim can make a decision on his/her willingness to testify. The exit deadline is at least one month.</p>
<p><b>“Students Directive”</b> <b>Council Directive 2004/114/EC of 13</b></p>	<p>The preconditions for entry and the residence of students, as well as for taking up gainful employment, are to be harmonised by the so-called</p>

<p><b>December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service</b> (OJ EU L 375 of 23 December 2004, p. 12), came into force on 12 January 2005.</p>	<p>Students Directive. Some adjustments to the provisions to admit students were made in section 16 of the Residence Act. Corresponding mobility rules were created and the provisions on the revocation of residence titles were adjusted. The previous section 16 subsection 1 of the Residence Act was expanded to this end and subdivided into two paragraphs. Furthermore, the scope of the employment possibilities provided by law were expanded in section 16 subsections 3 and 4.</p>
<p><b>“Researcher Directive” Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research</b> (OJ EU L 289 of 3 November 2005, p. 15), came into force on 23 November 2005.</p>	<p>Section 20 of the Residence Act created the legal basis for granting a residence permit for the purposes of research; it creates regulations on the admission of researchers from third states, as well as on their mobility. In a recognition procedure for research facilities to be implemented by the Federal Office, their “credit worthiness” as inviting parties in the visa procedure is examined. Recognition by the Federal Office facilitates the research facilities to conclude hosting agreements with researchers from third states for time-limited research projects, a simplified visa procedure and the grant of a residence permit for research purposes being facilitated. An advisory council for research migration is being formed at the Federal Office.</p>

The three directives in the asylum area constitute the central elements of the harmonisation of the law on asylum in the European Union. Harmonisation, which led to the requirement of amendments to the Asylum Procedure Act and the Residence Act, encompasses all major aspects in the field of asylum: the substantive law preconditions of granting protection, the concomitant status rights, the shape of the asylum procedure and asylum-seekers’ living conditions. In detail:

<p><b>Designation of the legal act</b></p>	<p><b>Transposition into German law</b></p>
<p><b>Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers</b> (OJ EU L 031 of 6 February 2004, p. 18),</p>	<p>The reception conditions for asylum-seekers laid down in the directive are already largely met in accordance with the law as it stands. The need for adjustment was hence small. Section 63 subsection 1 of the Asylum Procedure Act now provides that</p>

<p>came into force on 6 February 2003.</p>	<p>foreigners are to be provided with a certificate of permission to reside containing personal information and a photograph within three days after lodging an asylum application if they do not have a residence title.</p> <p>Translations of the reasoning for the decision and notification of appeals into a language that he/she understands are to be found in section 31 subsection 1 sentence 3 of the Asylum Procedure Act.</p>
<p><b>“Qualification Directive”</b>  <b>Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted</b>  <i>(OJ EU L 304 of 30 September 2004, p. 12)</i>,  came into force on 20 October 2004.</p>	<p>Core elements of the so-called Qualification Directive had already been transposed into German law with the Immigration Act. The Directive Transposition Act still provided for individual amendments in the Asylum Procedure Act and in the Residence Act.</p> <p>As to the duration of residence, amendments took place in section 26 of the Residence Act. There is now provision for a residence permit with a validity of three years for persons entitled to asylum and refugees under the Geneva Convention, and a residence permit with a minimum validity of one year is now provided for persons for whom a deportation ban was ascertained in accordance with section 60 subsection 2, 3, 5 or 7 of the Residence Act.</p> <p>Section 60 subsection 2 of the Residence Act transposes Article 15 (b) of the Qualification Directive into German law. Accordingly, protection against deportation is to be granted if a specific danger of torture or inhuman or degrading treatment or punishment exists in the destination state in the individual case. Inhuman or degrading treatment and punishment were previously regulated in section 60 subsection 5 of the Residence Act, and hence restricted to state agents, whilst protection is now also provided against measures by non-state agents.</p> <p>Section 60 subsection 3 transposes the subsidiary protection provision of Article 15 (a) of the Qualification Directive into German law. The threat of imposition or enforcement of the death penalty is precedent to granting protection.</p> <p>The granting of protection in cases of arbitrary force in connection with armed conflicts in accordance with Art. 15 (c) of the Qualification Directive transposes section 60 subsection 7 sentence 2 of the Residence Act into German law.</p> <p>In accordance with section 25 subsection 3 sentence 2 (a) to (d) of the Residence Act, a residence permit may not be granted if serious reasons justify the presumption that the foreigner has committed human rights violations or other serious criminal offences, or if he/she poses a danger to the public or to the security of the country.</p>
<p><b>“Procedures Directive”</b></p>	<p>The content of the Procedures Directive largely already concurred with</p>

<p><b>Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status</b> (OJ EU L 326 of 13 December 2005, p. 13)</p>	<p>the existing German law; there was no need for fundamental amendments to the legal system.</p> <p>Section 24 subsection 1 of the Asylum Procedure Act <i>inter alia</i> imposes new obligations on the Federal Office in that after the lodging of an asylum application the foreigner must be informed of the course taken by the procedure and of his/her rights and duties in the proceedings, in particular also with regard to deadlines and the consequences of missing them.</p> <p>On the so-called follow-up procedure, section 28 subsection 2 of the Asylum Procedure Act contains a supplement to the effect that in the event of the foreigner lodging another asylum application after withdrawal or unappealable rejection of an asylum application and basing this on circumstances which he/she has brought about him/herself after withdrawal or unappealable rejection of his/her previous application, that foreigner cannot as a rule be awarded refugee status in follow-up proceedings.</p> <p>Furthermore, the provision on safe countries of origin was adjusted in section 29a of the Asylum Procedure Act, which covers the Member States of the EU, and in accordance with Annex II of the Asylum Procedure Act includes Ghana and Senegal.</p>
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### 3.2 Political and societal debates and experience with implementation

An evaluation of the implementation of the asylum and residence directives by the Federal Government has not yet taken place. It hence remains to be seen whether there are any shortcomings in practice or in implementation. The following statements can be made from the point of view of the authors of the report:

A uniform procedure is expedient to recognise refugee status and subsidiary protection. It is necessary to distinguish as to status, i.e. with regard to rights and benefits, between refugees within the meaning of the Geneva Convention on Refugees and beneficiaries of subsidiary protection. The distinction between protection criteria of refugees and those enjoying subsidiary protection would not be relevant if equal protection were prevalent among the legal consequences.

When it comes to the criteria for the recognition of refugee status and of subsidiary protection status (also on condition of the evaluation of the transposition of the directives), it would be necessary to give concrete form and clarification since it contains uncertain legal definitions and fails to provide clear definitions. For instance, Art. 15 c) of the Qualification Directive needs greater detailing since its wording is subject to dispute as to the interpretation.

As to the hosting conditions of asylum applicants, the provisions to guarantee the material reception conditions should in principle be adjusted within the meaning of lending concrete form in order to avoid possible pull factors.

It is to welcome a stronger unification of the regulations on asylum procedure. One should endeavour here in particular to create a uniform list of safe states of origin.

## **Annex**

### **A 1.1 Methodology**

The information relevant for this report was selected using general criteria. Above all, a development was considered significant as soon as it contained legal amendments. This policy analysis report focuses in particular on reforms of the law on asylum and the law on foreigners, which took place with the Directive Transposition Act. Furthermore, the migration and integration policy debates were portrayed as well, - inasmuch as proceeding in an institutionalised framework or referring to – fundamental issues on migration management, such as “the Second Integration Summit”.

The report is based primarily on the reformed statutes as sources for the field of asylum and right of residence. Furthermore, operational programmes, political guidelines and concepts were used as sources to outline the political developments and debates from 2007. In individual cases, information was sourced from the press or documentation agencies on migration and integration topics.

The relevant information was compiled in the Federal Office, using documents and Internet sites of the Federal Ministry of the Interior, of the Federal Parliament, of the Commissioner for Migration and Integration, of the Federal Police, as well as of other relevant institutions.



## A 1.2 Definitions

<b>Term</b>	<b>Definition</b>
Naturalisation test	The naturalisation test serves to document the knowledge of the legal and social system and living conditions in Germany required for naturalisation.
Persons whose deportation has been suspended	Persons whose deportation has been suspended are persons who do not have a residence title, but who cannot be deported for factual or legal reasons – e.g. because the nationality of the foreigner has not been clarified or because no documents are issued for other reasons.
Ethnic German resettlers	Ethnic German resettlers are ethnic Germans from the successor states of the former Soviet Union or from the other former Eastern Bloc states who have given rise to their residence in Germany by means of a special reception procedure.
Priority examination	The individual priority examination ascertains whether a priority applicant is available for a specific job. Priority status is enjoyed by Germans, EU citizens, EEA members, members of associated states and foreign workers who have equal legal status to German workers as to taking up work.