

Family Reunification in Germany: Small Scale Study IV in the Framework of the European Migration Network

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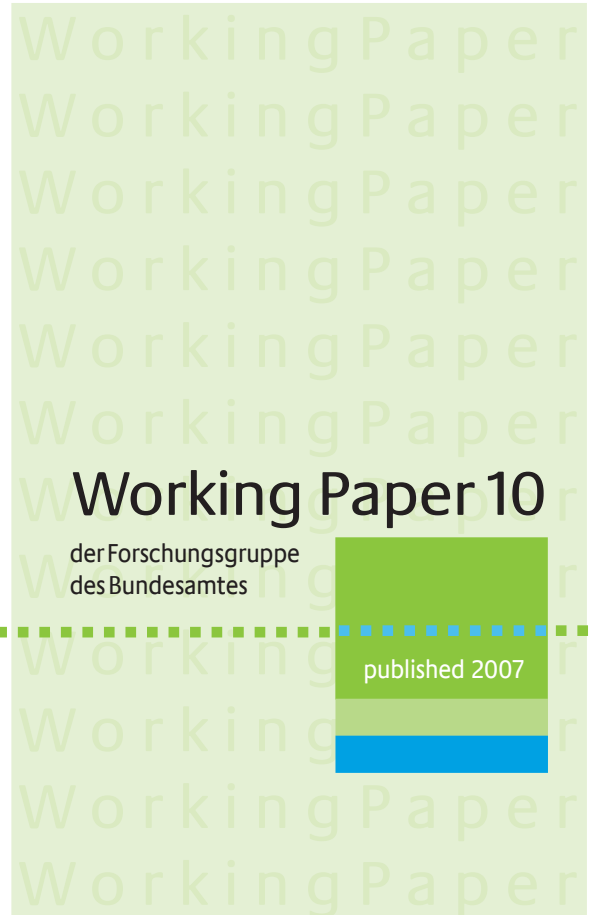
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Federal Office
for Migration
and Refugees

Family Reunification in Germany

Small Scale Study IV in the Framework of the
European Migration Network



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Family Reunification in Germany

Small Scale Study IV in the Framework of the
European Migration Network

Deutscher Nationaler Kontaktpunkt



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List of abbreviations

ABH	Ausländerbehörde (foreigners authority)
AufenthG	Aufenthaltsgesetz (Residence Act)
AuslG 1990	Aliens Law in the version of 1990
AZR	Ausländerzentralregister (Central Aliens Register)
BAMF	Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees)
BMI	Bundesministerium des Innern (Federal Ministry of the Interior)
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EMN	European Migration Network
et al.	et alii
et seq.	et sequens
etc.	et cetera
EU	European Union
EU-RLUmsG	Richtlinienumsetzungsgesetz (Act on the Implementation of EU Directives on residence and asylum issues)
FreizügG/EU	Gesetz über die allgemeine Freizügigkeit von Unionsbürgern (Act on the Freedom of Movement of EC Nationals, Free Movement Act/EU)
GG	Grundgesetz (Basic Law)
n.F.	neue Fassung (new version)
NGO	Non Governmental Organization
no.	number
O.J.	Official Journal
OLG	Oberlandesgericht (German Higher Regional Court)
p.	page
Sec.	section
US	United States of America
VAH AufenthG	Preliminary rules on the application of the AufenthG by the Federal Ministry of the Interior
VAH FreizügG/EU	Preliminary rules on the application of the Free Movement Act/EU by the Federal Ministry of the Interior



Abstract

Family reunification migration currently accounts for a large share of immigration. This small scale study in the framework of the European Migration Network (EMN) is to provide an insight into the treatment of this type of migration in Germany during the past five years. It will deal with legislative and policy approaches and include an analysis of the available data on the phenomenon.

The analysis of the current, legal situation focuses on the implementation of the Directive on the right to family reunification (Directive 2003/86/EC). The admission criteria for different groups of migrants are discussed along the definitions of this Directive. Afterwards, the study explains the German practice concerning the individual articles of the Directive and the treatment of groups to whom the Directive does not apply (persons enjoying temporary or subsidiary protection, Union citizens and Germans). The study is based on the legal situation created by the Residence Act, which entered into force on 1 January 2005. Overall, the new Residence Act, which anticipated adjustments necessary under the Directive, and the amendments resulting from the Directive Implementation Act, which was adopted on 6 July 2007, did not lead to significant overall changes in the legal situation.

The sections on the political debate focus on the main points of discussion during the preparation of the Directive Implementation Act (2005 - 2007). These discussions were conducted under the question of how to best steer migration and ensure integration and focused on the age limit for family members and knowledge of the language. During the whole process the political debate took place on a national level and only marginally touched upon the necessary implementation of the Directive.

The analysis of the available data from the visa statistics of the Federal Foreign Office and the Central Aliens Register shows that family reunification migration has steadily declined since 2002. In 2000 already, the number of reunifications with German spouses exceeded that of reunifications with third country nationals in absolute terms. By now (2006), reunification with German spouses accounts for almost half of total family reunification migration. The largest group are foreign wives who join their German husbands. As a result, the share of reunification with foreign spouses has declined to about one-third of total family reunification migration. This development is partially due to higher naturalisation figures and reunification of dependents with (late) ethnic German resettlers. A breakdown of family reunification migration by nationality shows that Turkish immigrants are by far the largest group, followed by immigrants from the Russian Federation, Serbia and Montenegro and Thailand.

The period for which the new Residence Act has been in force (since 1 January 2005) is relatively short, so it is too soon to say whether its goal – better integration of foreigners thanks to age limits and an obligation to participate in integration courses – has been achieved.

1. Introduction: Family Reunification in Germany

1.1 Aims and scope of the study

In many European countries family reunification accounts for a large share of immigration. The question of how this group of migrants can be integrated into a country's society has triggered a number of policy initiatives, which have in turn had an impact on migrants' rights of entry.

This small scale study in the framework of the European Migration Network (EMN) is to provide, above all, an insight into the legislative and policy approaches of the individual Member States between 2002 and 2006. A second aim of the study is to highlight any gaps in the research on this issue. The study will be based on the transposition of the Directive on the right to family reunification (Directive 2003/86/EC).¹ As it is the EMN's task to contribute to data analysis, the development of the size and composition of family reunification migration will be analysed as well. The result should allow conclusions on how the size and composition of family reunification migration relates to that of overall migration and how national and EU policies on this issue have affected migration.

By the end of 2006, the Directive 2003/86/EC had not been fully implemented in Germany. However, the Immigration Act, which entered into force on 1 January 2005, already anticipated a number of provisions set out in the Directive (Maaßen 2006: 163). During the work on this small scale EMN study a draft for the law on the implementation of EU Directives on residence and asylum issues (Directive Implementation Law, EU-RLUmsG) was submitted to the Bundestag (the first chamber of the German parliament) in March 2007. Since the bill was adopted on 6 July 2007 and entered into force on 28 August 2007², its content is included in this study (even though the original cut-off date is 31 December 2006) so that the results presented here are not already out of date at the time of publication.

Together with the findings of the other EMN Member States³ which participate in the study, the conclusions of this endeavour will be summarised in a Synthesis Report. The Synthesis Report will compare the individual results, discuss similarities and differences and analyse them in a European framework. This will allow readers to draw conclusions on how and to what extent the Directive has been implemented. In addition, the results are to be compared with those of recent, complementary studies in order to better understand the phenomenon of family reunification migration.

1 Official Journal of the European Union, L 251, 3 October 2003, p. 12

2 Federal Law Gazette I Nr 42, p. 1970.

3 Other participants besides Germany are Austria, Estonia, Greece, Latvia, the Netherlands, Romania, Sweden and the UK.

1.2 Definitions

In order to ensure comparability between the Country Study reports, the definitions of the Family Reunification Directive will be used:

▶ **Nuclear family (Directive 2003/86/EC, recital no. 9):**

Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

▶ **Third country national (Directive 2003/86/EC, Article 2(a)):**

“Third country national” means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty.

▶ **Refugee (Directive 2003/86/EC, Article 2(b))**

“Refugee” means any third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967.

▶ **Sponsor (Directive 2003/86/EC, Article 2(c)):**

“Sponsor” means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her.

▶ **Family reunification (Directive 2003/86/EC, Article 2(d)):**

“Family reunification” means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident’s entry.

▶ **Residence permit (Directive 2003/86/EC, Article 2(e)):**

“Residence permit” means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third country nationals.

▶ **Unaccompanied minor (Directive 2003/86/EC, Article 2(f)):**

“Unaccompanied minor” means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

▶ **Dependent (source: ad hoc query amongst EMN Members in January 2007):**

A dependent is any person who is granted entry and residence by a Member State to stay with the sponsor and who has explicitly filed an application for reasons of family reunification.

The terms „family reunification“ and „subsequent immigration“ are used largely synonymously in Germany, and this is what will be done in this study, too.

1.3 Sources and materials used for the study

This study was prepared on the basis of available research papers and a number of data sources. However, there is not much material on family reunification migration in Germany.⁴ Since the study is to cover the transposition of the Family Reunification Directive and give an overview of the available data, one of the main sources was the Federal Government's Migration Report, which was prepared by the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) and which includes a comprehensive chapter on the legal foundations and data on family reunification (BMI/BAMF 2005: 34-38). In addition, relevant legal texts and commentaries and the latest research papers were used. To obtain the data for this study, special data retrievals and analyses of the visa statistics of the Federal Foreign Office and the Central Aliens Register (Ausländerzentralregister, AZR) were conducted. The visa statistics were provided by the Federal Foreign Office. The AZR data were retrieved in an internal procedure, as the BAMF keeps the register. Moreover, the study itself was intensively discussed with experts of the BAMF, of the Federal Ministry of the Interior (Bundesministerium des Innern, BMI) and an expert of the Institute for Migration Research and Intercultural Studies (IMIS), a partner organisation within the national EMN network.⁵

2. Family Reunification Policy in Germany



The Directive 2003/86/EC on the right to family reunification for third country nationals is what this study is based upon. This chapter will therefore describe the legal situation during the reference period, i.e. the years 2002 - 2006. In doing so, we will focus on the legal situation established after the new Residence Act (Aufenthaltsgesetz, AufenthG) entered into force on 1 January 2005. Earlier regulations under the Aliens Law of 1990 will be mentioned only insofar as it is necessary to understand significant changes in the legal situation. Moreover, the study will deal with the new regulations introduced into the Residence Act (AufenthG n.F.) by the Directive Implementation Act (EU-RLUmG), which entered into force on 28 August 2007. Beyond that, we will also take a look at reunification regulations which are based not on Directive 2003/86/EC, but on the right of free movement for Union citizens, the provisions for refugees or other provisions. Chapter 2.2 will deal with the development of the family reunification policy and the public debate during the reference period.

2.1 Overview of family reunification law with a view to the implementation of the Family Reunification Directive

a) Practice followed for optional („may“) clauses

- ▶ For every article of the Directive where there is an option and which is not dealt with in the following sections a description of the implementation is to be given.

4 Between the studies of Scheer (1994) and Walter (2007), there has been no comprehensive study of this subject.

5 Anne Walter, assistant lecturer at the chair for public law, University of Osnabrück.

All „may“ clauses will be dealt with in the following sections.

b) Conditions for granting entry and residence

► The member states shall authorise the entry and residence to the sponsor's spouse (Article 4.1a) and to the minor children of the sponsor and/or his/her spouse (Articles 4.1b-d).

- a) the sponsor's spouse;
- b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;
- c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;
- d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

Since 1 January 2005, the entry and residence of the spouses and children of foreigners who live in Germany has been regulated in sections 27-36 of the Residence Act. Family reunification is granted to protect marriage and the family in accordance with Article 6 of the Basic Law (section 27 sub-section 1 AufenthG). This provision applies to foreigners who are neither European Union citizens themselves nor dependents of European Union citizens. The Residence Act also includes provisions on the immigration of third country nationals who want to join a German in Germany.

In principle, the Residence Act only grants reunification rights to the nuclear family, with exceptions for cases of hardship. That means that, basically, the minor children and the spouses of German and foreign nationals who live in Germany have a right to enter the country. Depending on the legal situation of the sponsor who lives in Germany, the rights of entry and residence and the scope of discretionary regulations differ considerably. There is a fundamental distinction between privileged reunification rules for German nationals and for foreigners.

► Children aged between 12 and the legal age of majority (Article 4.1 last paragraph)?

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married. By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

If the child relocates the central focus of its life together with its parents or with the parent possessing the sole right of care and custody to the Federal territory and if both parents or the parent possessing the sole right of care and custody hold a residence permit or settlement

permit, minor unmarried children shall be granted a residence permit up to the age of 18. This is also the case if the parents hold a residence permit because they are entitled to asylum or because they have been recognised as refugees (section 32 sub-section 1 AufenthG).

A general age limit of 16 applies to all other cases (section 32 sub-section 3 AufenthG). Children below this age shall be granted a residence permit if both parents or the parent possessing the sole right of care and custody possess a residence permit or settlement permit.

The optional clause of an integration condition for children over 12 was not exploited to its full extent. It was implemented for children who are older than 16, but younger than 18. Children in this age bracket will be granted a residence permit if they have a command of the German language⁶ or if their education and way of life to date suggest that they will be able to integrate into the way of life which prevails in Germany (section 32 sub-section 2 AufenthG). This provision is complemented by a discretionary regulation to prevent special hardship on an individual basis; this requires that the child's wellbeing and the family situation are taken into consideration (section 32 sub-section 4 AufenthG).

► **First-degree relatives in the direct ascending line and adult unmarried children, as referred to in Article 4.2 a and b?**

(2) The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

- a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;
- b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

Other dependents may be granted a residence permit if necessary to avoid particular hardship (section 36 AufenthG). The residence permit should serve to establish or ensure a stable and long-term family (care and custody), which, in addition to the care and custody of children, may include maintenance payments or other material support (no. 36.1.1.1 VAH AufenthG). This covers dependents in the direct ascending and descending line such as grandparents or grandchildren and dependents from a collateral line such as uncles, aunts, cousins or brothers and sisters. The provision may also cover adult married, divorced or widowed children (no. 32.4.2 VAH AufenthG). The definition of „family“ under German law is broader than that of the Directive (Walter 2007: 286).

According to the rules on the application of the Residence Act (no. 36.1.1.3 VAH AufenthG) the following cases in particular are covered these provisions:

- parents joining their minor or adult children,
- adult children joining their parents or
- minor children joining close adult relatives who possess the sole right of care and custody in the sense of a protected parent-child relationship exists.

6 Command of the language is determined according to the definition of level C1 of the Common European Reference Framework for Languages (no. 32.2.2 of the Preliminary rules on the application of the AufenthG and the Free Movement Act/EU (Freizüg/EU) of the Federal Ministry of the Interior adopted on 22 December 2004 (VAH AufenthG)).

However, these persons must not have any comparable family relationships abroad. For example, minor other dependents may only join family members in an ascending line (e.g., grandchildren their grandparents) if they are orphans or if their parents are demonstrably unable to care for them. The hardship provision set out in section 36 AufenthG also says that living in a family household has to be both appropriate and necessary to prevent particular hardship.

► **The unmarried partner, as referred to in Article 4.3?**

(3) The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

In order to ensure that a (same-sex) partnership within the meaning of the Life Partnership Act (LPartG) can be established and maintained in the Federal Territory the provisions for the immigration of a spouse (sections 28 - 31 AufenthG) are applied accordingly (section 27 sub-section 2 AufenthG in conjunction with section 30 sub-section 1 nos. 1, 3 and 4 AufenthG). A long-term non-marital (homosexual or heterosexual) relationship does not entitle applicants to a right of reunification (no. 27.1.6 VAH AufenthG).

► **The minor child of a further spouse and the sponsor, as referred to in Article 4.4., second paragraph?**

(4) In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.

By way of derogation from paragraph 1 (c), Member States may limit the family reunification of minor children of a further spouse and the sponsor.

In principle, section 32 sub-section 1 AufenthG only grants minor unmarried legitimate or illegitimate children a residence permit if both parents or the parent possessing the sole right of care and custody hold a settlement permit or a residence permit. In order to prevent special hardship, a child from an existing and lawful polygamous marriage may be granted a residence permit in individual cases. However, special hardship occurs only if the parent who lives abroad is demonstrably unable to care for the child (section 32 sub-section 4 AufenthG, no. 32.4.3.4 VAH AufenthG).

► **Spouses with a set minimum age, as referred to in Article 4.5?**

(5) In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

In contrast to the former provision under the Aliens Law of 1990, the Residence Act 2005 no longer requires the sponsor to be at least 18 years old, i.e. to have reached the legal age of majority.⁷ At the same time the Act does not give a legal minimum age for the immigrating spouse.

However, the EU-RLUmsG sets a minimum age for subsequent immigration. The spouse of a third country national shall be granted a residence permit if both spouses are at least 18 years old (section 30 sub-section 1 sentence 1 no. 1 AufenthG n.F.)⁸ According to section 30 sub-section 1 sentence 2 AufenthG n.F. this provision does not apply if

- ▶ the sponsor holds a residence permit under sections 19 - 21 AufenthG (highly qualified foreigner, researcher, self-employed foreigner) and the marriage existed already when the sponsor relocated the focus of his/her life to Germany;
- ▶ the sponsor held a residence permit under section 20 AufenthG n.F. (researcher) immediately before he/she was granted a settlement permit or a permanent residence permit/EU;
- ▶ the sponsor holds a residence permit under section 38a AufenthG n.F. (long-term residence permit of another Member State of the European Union) and marital cohabitation already existed in the EU Member State for which the sponsor holds the long-term residence permit.

The minimum age for spouses was set expressly to act as a protection against forced marriages (Maaßen 2006: 163; Hillgruber 2006: 307-315; Deutscher Bundestag 2007a: 173).

▶ **Children above the age of 15, as referred to in Article 4.6?**

(6) By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification.

Germany did not exploit the optional clause set out in Article 4.6 of the Family Reunification Directive.⁹

▶ **Refugees whose family relationship predates their entry, as referred to in Article 9.2?**

(2) Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.

According to section 30 sub-section 1 no. 2 AufenthG, the spouse of a foreigner who possesses a residence permit pursuant to section 25 sub-section 1 (entitled to asylum) or sub-section 2 (Convention refugee) shall be granted a residence permit. This also applies to the minor, unmarried children of these foreigners (section 32 sub-section 1 no. 1 AufenthG). As a result, this group of persons, once they are recognised as entitled to asylum or as refugees, enjoys a more favourable legal position than other third country nationals: they are almost unconditionally entitled to a residence permit. The previous period of residence of the sponsor, the date of the

⁷ At the same time other provisions were deleted which applied to spouses joining third country nationals of the so-called first and second generation. Section 18 sub-section 1 no. 4 of the Aliens Law (AuslG) of 1990 required the sponsor to fulfil certain economic conditions, to have resided lawfully for eight years in the Federal territory and to be an adult. If a child had already been born from the marriage or if the spouse was pregnant, only five (instead of eight) years of legal residence of the sponsor in Germany were required under section 18 sub-section 3 sentence 2 AuslG 1990.

⁸ This age limit also applies if the immigrant joins a German national.

⁹ This optional clause was introduced on Austria's behalf (Walter 2007: 147).

marriage or the presence of both parents in the Federal territory are unimportant (see Storr et al. 2005: 198).

This legal position was changed by the EU-RLUmsG: under section 30 sub-section 1 sentence 1 no. 1 in conjunction with sentence 3 no. 1 AufenthG n.F., spouses who want to join sponsors belonging to this group of foreigners will also be subject to the newly introduced age limit of 18 for both spouses and the spouse will have to be able to at least communicate verbally in German at a basic level. If the marriage already existed before the sponsor entered Germany, the language requirement set out in section 30 sub-section 1 sentence 1 no. 1 AufenthG n.F. will not be applicable (section 30 sub-section 1 sentence 3 no. 1 AufenthG n.F.). Thus, Germany exploited the optional clause of Art. 9.2 of the Family Reunification Directive (Deutscher Bundestag 2007a: 175).

► **Family members of a refugee who depend on him/her, as referred to in Article 10.2?**

(2) The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

The Residence Act does not include any explicit provisions for other family members beyond those mentioned in Art. 4 of the Directive 2003/86/EC. Since persons entitled to asylum and Convention refugees are in nearly the same legal position as Germans with regard to family reunification rights (Hailbronner 2006: sec. 29 margin no. 11), the discretionary regulations set out in section 36 AufenthG apply.

► **The legal guardian or any other family member of an unaccompanied minor, as referred to in Article 10.3b?**

(3) If the refugee is an unaccompanied minor, the Member States:

[...]

b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

So far, the Residence Act allowed the entry of a legal guardian or other family member, including the parents, only in individual cases and to prevent particular hardship within the meaning of section 36 AufenthG. Legal guardianship, however, does not improve the applicant's chances of being granted entry (no. 36.1.1.2 VAH AufenthG).

The EU-RLUmsG has changed this insofar as the parents shall be granted a residence permit if no other parent who possesses the right of care and custody is living in Germany (section 36 sub-section 1 AufenthG n.F.). There is still no special provision for legal guardians.

► **Are exceptions made in admission criteria for family members when their sponsor belongs to a certain category (e.g. highly qualified or self employed migrants etc.)? In which way do these admission criteria differ from 'general' admission criteria?**

In principle, the general preconditions for granting a residence permit set out in section 5 AufenthG and the general principles for family reunification set out in section 27 AufenthG have to be fulfilled. Section 29 sub-section 1 AufenthG also defines specific preconditions for family reunification with foreigners, namely that the sponsor has to hold a residence permit and that sufficient living space must be available. This precondition is supplemented by further preconditions that have to be met by spouses joining their husbands or wives (section 30 AufenthG), children joining their parents (section 32 AufenthG) and other family members joining the sponsors (section 36 AufenthG).

Pursuant to section 29 sub-section 2 AufenthG the requirements of a secure livelihood (section 5 sub-section 1 no. 1 AufenthG) and sufficient living space (section 29 sub-section 1 no. 2 AufenthG) may be waived in a discretionary decision if the family is joining a sponsor who is entitled to asylum or who is a refugee as set out in section 60 sub-section 1 AufenthG (see chapter 2.1 d below for the provisions that apply in cases of subsidiary or temporary protection).

Family reunification with highly qualified or self employed migrants is subject to the general regulations. However, two requirements introduced by the EU-RLUmsG – the minimum age of both spouses (18 years) and the condition that the spouse must have a basic knowledge of German – do not apply. The same is true if the foreigner holds a residence permit pursuant to section 20 AufenthG n.F. as a researcher or held a residence permit before receiving a settlement permit or a permanent residence permit (EC) or if the foreigner holds a permanent residence permit under section 38a AufenthG n.F. (section 30 sub-section 1 sentence 2 nos. 1 – 3 AufenthG n.F.).

- ▶ Does family reunification policy distinguish between the case where the family relationship arose before the sponsor was residing lawfully in the Member State and the case where it arose after his or her lawful residence? If so, in what way are these two cases treated differently?

If the sponsor has held the residence permit for less than five years, the marriage must have existed at the time when the sponsor was granted the residence permit for the spouse to have a right to enter Germany. Moreover, the (remaining) duration of the sponsor's stay must be expected to be at least one year (section 30 sub-section 1 no. 4 AufenthG). If the marriage took place after the sponsor was granted a residence permit and/or if the duration of the sponsor's stay is expected to be shorter than one year, the spouse may be allowed to enter Germany under discretionary regulations (section 30 sub-section 2 AufenthG).

The EU-RLUmsG has reduced the waiting period of five years in line with the Directive. Under the new provisions, the sponsor has to have held a residence permit for at least two years (section 30 sub-section 1 sentence 1 no. 3 d AufenthG n.F.). However, under section 30 sub-section 2 AufenthG n.F. this criterion may be waived if a residence permit has been granted.

The admission requirements of basic knowledge of German and of a minimum age for the spouse, which were added by the EU-RLUmsG, do not apply if the marriage already existed before the sponsor was granted a residence permit as a highly qualified person, researcher or self employed immigrant (section 30 sub-section 1 sentence 2 no. 1 AufenthG n.F.). Pursuant to section 38a AufenthG n.F., this is also true for spouses joining their sponsors who hold a permanent residence permit issued by another EU Member State if the marriage already existed in the Member State which issued the permanent residence permit (section 30 sub-section 1 sentence 2 no. 3 AufenthG n.F.). The requirement of a basic knowledge of German may be waived if the sponsor is entitled to asylum or if he/she is a refugee and the marriage existed already before he or she shifted the central focus of his or her life to the Federal Republic of Germany (section 30 sub-section 1 sentence 3 no.1 AufenthG n.F.).

c) Policy/practice with regard to specific articles of the Family Reunification Directive

Article 5:

► Does the dependent or the sponsor submit the application for family reunification and where should it be submitted (country of origin or your Member State?)

(1) Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

[...]

(3) The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides.

By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory.

After an application has been filed by the family member and after approval by the local foreigners authorities, the local German embassy usually grants a visa for the purpose of family reunification before the dependent enters Germany. This way of procedure applies to all foreigners other than EU citizens or citizens of the other member states of the European Economic Area, Switzerland, the US, Australia, Israel, Japan, Canada and New Zealand.¹⁰

► Who are the main actors involved, for example, in the examination of the application (and, if relevant, the visa) and for issuing of the residence permit (and, if relevant, the visa)? Who issues the working permit? Are civic society organisations involved (e.g. NGOs)?

The application for family reunification has to be filed with the German embassy in the country of origin, which will pass it on to the local foreigners authority. Once the foreigners authority approves the application, the applicant will receive a visa for the purpose of family reunification. After having entered Germany, the dependent has to apply for a residence permit at the local foreigners authority before his/her visa runs out.

A residence permit entitles its holder to pursue an economic occupation if the foreigner

¹⁰ Citizens of these countries do not need a visa to enter Germany and may apply for the necessary residence permit after they have come to Germany.

who is being joined by his or her family members is entitled to pursue an economic activity or if marital cohabitation has lawfully existed in the Federal territory for at least two years (section 29 sub-section 5 AufenthG). In the spirit of „one-stop government“ there is no separate working permit. The right to pursue an economic activity is derived from the residence permit.

► **How does the Member State assess the family tie (e.g. verification of documents, DNA sampling, specific checks and inspections when there is reason to suspect a fraud or partnership of convenience)?**

(2) The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, Articles 7 and 8, as well as certified copies of family member(s)' travel documents.

If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary.

When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

In principle, the family relationship between the sponsor and the dependent has to be proved by public documents, ideally certificates of birth, marriage or death. The authorities have discretion on how the necessary evidence can be produced. If documents are written in a foreign language, the authorities may require a certified translation by a qualified translator. In principle, the responsible German embassy may require the legalisation of foreign public documents (no. 27.0.4 VAH AufenthG).

Usually, the birth and marriage certificates have to be provided. Depending on the country of origin, the furnished documents and certificates may be examined for accurateness and credibility (e.g. mutual authorisations, divorce decrees for former marriages, custody orders, contracts, joint expenditure etc). Often the partners are interviewed separately to make sure that the marriage is not a fake marriage. In doing so, the foreigners authority has to respect the spouses' privacy (Hailbronner 2006: sec. 27 margin no. 48).

The sponsor may be asked to declare his/her commitment to guarantee the family member's livelihood, health insurance coverage and accommodation.

If the dependent wants to enter Germany in order to marry the sponsor, several documents such as a passport or other identification, evidence of the parentage and other documents depending on the laws of his/her country of origin have to be provided to the registrar's office. These documents will be examined by the registrar. If there are reasons to suspect that a fake marriage is intended, the registrar may interview the fiancés (section 5 sub-section 2 sentence 1 Civil Status Law). If the registrar concludes that a fake marriage is intended, he or she may refuse to marry the applicants. Usually a certificate of no impediment to the marriage has to be provided as well. This obligation can be waived by a decision of the relevant Higher Regional Court (Oberlandesgericht, OLG) if no international certificate of no impediment can be

provided (section 1309 of the German Civil Code (BGB)). In order to examine the legality of the certificate of no impediment the OLG will usually involve the foreigners authority, which will compare the data in order to review the suspicion that a fake marriage is intended.¹¹ If the OLG concludes that the marriage is fake, it may refuse to waive the requirement of a certificate of no impediment.¹² If there are reasons for suspicion, the foreigners authorities may investigate after the marriage whether a fake marriage has occurred. If this is the case, the residence permit becomes void because no family household was established, which is why there is no protection pursuant to Article 6 sub-section 1 GG. The offence is not the fake marriage as such, but, pursuant to section 95 sub-section 2 AufenthG, the application of a residence permit which is based on this fake marriage (Sinn/Kreienbrink/Loeffelholz 2006: 37-39; Göbel-Zimmermann 2006: 84-86). These specific checks are in line with the provisions of the Family Reunification Directive (Art. 16(4) Directive 2003/86/EC).

The EU-RLUmsG explicitly states cases in which no family reunification is granted. These cases will be included in the Residence Act. Family reunification will not be granted when it is certain that the marriage or the family relationship was entered into with the purpose of enabling the new dependents to enter and reside in Germany (section 27 sub-section 1a no. 1 AufenthG n.F.). Moreover, a spouse may not be granted a residence permit if there are factual clues that justify the suspicion that one of the spouses was compelled to marry (section 27 sub-section 1a no. 2 AufenthG n.F.). This provision is to reduce the risk of forced marriages.

► **Are polygamous marriages recognised and, if so, under what conditions?**

In the event of a polygamous marriage, where the sponsor already had a spouse living with him in the Federal territory, other spouses have not been allowed to enter Germany (no. 27.1.6 VAH AufenthG).¹³ This prohibition, which is compliant with the Directive (Art. 4.4 of the Directive 2003/86/EC), has been explicitly included in the EU-RLUmsG (section 30 sub-section 4 AufenthG n.F.).

► **Under which circumstances is the family tie defined as being disrupted? What action does the Member State take if a family relationship has been disrupted? Is there tension regarding the definition of disruption of the family tie between the guidelines of the European Court of Justice and national legislation?**

If no family tie can be proved during the examination of the application for family reunification, the application is refused (for the case that the family relationship is disrupted after family reunification, see below, Article 15).

► **Under which circumstances/conditions are dependents allowed to enter a Member State at the same time as the sponsor?**

According to section 29 sub-section 1 no. 1 AufenthG the sponsor has to hold a settlement or residence permit as a precondition for family reunification. Section 6 sub-section 4 sentence

11 The OLGs may proceed in different ways. What is described above is the regular procedure in Bavaria as explained by the registrar's office of Nuremberg.

12 See the judgement by the Court of Appeal for Berlin, 27 March 2001 (ref. no. I VA 36/99), in: Neue Juristische Wochenschrift-Rechtsprechungsreport (NJW-RR) 2001, p. 1373 et seq.

13 The exception is a residence permit granted pursuant to section 29 sub-section 2 AufenthG to a political refugee who has been recognised as a contingent refugee under section 51 AuslG 1990 and who is legally married to two women under the law of his home country, with one of the women possessing a residence permit and the other has been granted exceptional leave to remain for a prolonged period of time and participates in the normal family life (Storr et al. 2005: sec. 29 margin no. 14).

2 AufenthG specifies that this requirement is also met if the sponsor holds a national visa if there is a chance that the sponsor will be granted a residence or settlement permit if he/she applies for them. The precondition set out in section 29 sub-section 1 no. 1 AufenthG is fulfilled if the sponsor receives the residence permit at the same time as the dependent. This means that the sponsor does not have to reside in Germany beforehand, provided that the applicants, who still reside abroad, intend to establish a family household in the Federal territory. This is usually documented by both applying for a residence permit (no. 29.1.2.2 VAH AufenthG).

A minor child of a foreigner up to the age of 18 shall be granted a residence permit if both parents or the parent who is sole possessor of the right of care and custody hold a settlement or residence permit and the child relocates the central focus of its life together with its parents or the parent possessing the sole right of care and custody to the Federal territory (section 32 sub-section 1 no. 2 AufenthG).

Article 7:

► Does the Member State require the sponsor to have adequate accommodation, health insurance and resources (Article 7.1 a-c)?

(1) When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

- a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;
- b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;
- c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

Section 29 sub-section 1 no. 2 AufenthG requires that sufficient living space must be available if family reunification with a foreigner is to be granted. Moreover, subsequent immigration to join foreigners is only allowed if the livelihood is secure (section 5 sub-section 1 no. 1 AufenthG). This is the case if the foreigner can earn his or her living, including adequate health insurance coverage, without recourse to public funds (section 2 sub-section 3 AufenthG). If these requirements are not met, the immigration application may be refused. In this respect it is unimportant whether any benefits under Book II (basic benefits for jobseekers) or Book XII (social security) of the Social Code is being touched or has been applied for; the issue is only whether there is an entitlement to such benefits (section 27 sub-section 3 AufenthG; no. 27.3.1 VAH AufenthG). If, however, the family member who is planning to move to Germany is willing and able to support persons who already live in Germany and have so far relied on public funds to finance their livelihood after having entered Germany, a residence title is to be granted, provided that the other preconditions are met (nos. 27.3.5 and 6 VAH AufenthG).

If a refugee is joined by his or her family, the requirement of a safe livelihood may be waived (section 29 sub-section 2 AufenthG).

► Does the Member State require integration measures in the case of family reunification? For the dependent? For the sponsor? What kind of integration measures does the Member State require?

(2) Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.

A foreigner who is granted a residence permit for the purpose of family reunification and who plans to permanently reside in the Federal territory is entitled to attend an integration course (section 44 sub-section 1 no. 1b AufenthG). Exemptions are made for children, juveniles or young adults who take up or continue their school education in the Federal Republic of Germany (section 44 sub-section 3 sentence 1 no. 1 AufenthG), when the need for integration is discernibly minimal or when the third country national already possesses an adequate knowledge of the German language (section 44 sub-section 3 sentence 1 nos. 2 and 3 AufenthG). The entitlement becomes an obligation if the foreigner is unable to communicate verbally in the German language at a basic level (section 44a sub-section 1 no. 1 AufenthG). In particular, the necessary language skills are assumed to be lacking if the foreigner cannot communicate without the help of others in a personal interview at the foreigners authority (nos. 44a 1.1.2 and 9.2.10.4 VAH AufenthG).

The integration course comprises a language course (basic and advanced level) and an orientation course to impart a knowledge of the legal system, culture and history in Germany (section 43 sub-section 3 AufenthG). The integration course consists of 630 lessons, with 600 lessons foreseen for the language course and 30 lessons for the orientation course, which takes place after the language course.

Under the EU-RLUmsG, a residence permit will only be granted to the spouse of a third country national if the spouse fulfils the additional condition that he or she can at least communicate verbally in German at a basic level (section 30 sub-section 1 no. 2 AufenthG n.F.). The Federal Government currently sets the threshold at a vocabulary of 200 – 300 words (Bundesregierung 2007). This provision is to prevent forced marriages and promote integration in the Federal Territory. One of the reasons given for the law (Deutscher Bundestag 2007a: 173) was that the in-laws of victims of forced marriages might use the lacking knowledge of German of their new family members to prevent them from leading independent social lives. It was impossible to counteract this danger by obliging immigrants to participate in integration courses after they entered Germany. Moreover, the potential victim might remain subject to the constraints of the in-laws during the period until the course started and he or she learned German. In addition, the obligation to participate in an integration course did not automatically result in a successful participation, whereas an obligation to prove a basic knowledge of German before entering the country ensured that the person in question did indeed know some German. Such a regulation would have a preventive effect. The intended protection of the freedom to marry

and shape one's life and, indirectly, to determine one's sexual life and to remain uninjured, justified the intervention into marital relationships and the obligation to participate in courses in the home country. Moreover, this intervention was appropriate as well (see also Maaßen 2006: 164; Hillgruber 2006: 315-317).

The new regulation is unimportant for refugees and persons who are entitled to asylum if the marriage already existed before the central focus of life was shifted to the Federal Republic of Germany (section 30 sub-section 1 sentence 3 no. 1 AufenthG n.F.). Neither does it apply to spouses of foreigners who may, on the grounds of their nationality, enter into the Federal Territory without a visa for a period that exceeds a short stay and who may stay legally in Germany (section 30 sub-section 1 sentence 3 no. 4 AufenthG n.F.).¹⁴ The Federal Government has pointed out that this privilege does not violate the principle of non-discrimination on the grounds of nationality and is justified because immigration of nationals of these countries is in the particular interests of Germany (Deutscher Bundestag 2007b: 6).

Article 8:

► **Does the Member State require the sponsor to have stayed lawfully in its territory for a certain period before having his/her family members join him/her?**

Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.

There is no minimum period for which the sponsor has to have stayed lawfully in Germany if he wants his/her spouse to join him/her, provided that the sponsor holds a residence permit, the marriage existed at the time when he/she entered the country and the (future) time of residence in Germany is expected to be at least one year. A discretionary decision may allow family reunification if the marriage did not exist at the time of the sponsor's entering Germany or if the expected remaining stay in Germany will be less than one year or if neither of these preconditions is met (section 30 sub-section 2 AufenthG). If the marriage did not exist, the preconditions for the sponsor set out in section 30 sub-section 1 nos. 1 and 3 AufenthG (possession of a settlement permit or of a residence permit for five years) spell out a minimum waiting period of five years.

The EU-RLUmsG has reduced this period to two years in line with the opening clause of the Directive (section 30 sub-section 1 sentence 1 no. 3 d) AufenthG n.F.). The new law will thus comply with the European Court's decision on the Family Reunification Directive dated 27 June 2006¹⁵, according to which „duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application“ (Walter 2007: 306).

14 This is regulated by section 41 of the Ordinance Governing Residence (Aufenthaltsverordnung (AufenthV)) and applies to citizens of Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand and the United States of America as well as nationals of Andorra, Honduras, Monaco and San Marino, provided that citizens from these four countries do not intend to pursue an economic activity which requires a special permit.

15 Judgment of the Court dated 27 June 2006, Case C-540/03 (European Parliament v. Council of the European Union), Action for annulment of several regulations of the Family Reunification Directive.

Article 9:▶ **Did the Member State confine the application of Chapter V of the Directive to refugees whose family relationships predate their entry?**

(2) Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.

The AufenthG of 2005 does not include such a restriction. The EU-RLUmsG gives the option that, in case the sponsor is a person entitled to asylum or a recognised refugee, his or her spouse will not have to prove that he or she has a basic knowledge of German before joining him or her in Germany if the family relationship already existed before the sponsor's entry to Germany (section 30 sub-section 1 sentence 3 no. 1 AufenthG n.F.).

Article 12:▶ **What choices did the Member State make regarding the options it had in this article?**

(1) By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.

(2) By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

In the case of persons entitled to asylum and recognised Convention refugees the authorities may, (only) at their discretion, not insist on evidence that the foreigner has sufficient living space and means to secure his/her livelihood (section 29 sub-section 2 AufenthG).

The EU-RLUmsG has amended this provision in line with Art. 12.1 sub-paragraph 3 of the Directive insofar as the waiver of the requirements of sufficient livelihood and living space will be obligatory provided that the application for family reunification is not submitted within three months after the entitlement to asylum or the refugee status are granted and it is impossible to reunify the family in a third country with which the sponsor or his/her family members have special links. The period shall be regarded as respected if – in derogation of the usual procedure – the application is filed by the sponsor already living in Germany (section 29 sub-section 2 sentence 3 AufenthG n.F.). If the three-month period has lapsed, the privileged treatment will lapse, too, and a refugee is only entitled to family reunification under the usual preconditions.

Article 13:▶ **What is the duration of the first residence permit granted to the dependent?**

(2) The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.

(3) The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

The duration of the residence permit granted to a spouse must not exceed the duration of the residence permit held by the foreigner living in the Federal territory. If possible, the residence permit held by the foreigner living in the Federal territory. If possible, the residence permit will be granted for one year and then renewed for two years in each instance until the pre-conditions for granting a settlement permit are fulfilled (no. 30.0.10 VAH AufenthG).

The duration of residence permits granted to children must not exceed the date of expiry of the residence permits of both parents or, if the child joins only one parent, the date of expiry of the residence permit of this parent. If one parent holds a settlement permit, the child shall receive a residence permit that is valid until his/her 16th birthday. After that date, section 35 sub-section 1 sentence 1 AufenthG is applied for the procedure of granting a settlement permit (no. 32.0.1.1 VAH AufenthG).

The EU-RLUmsG has set the duration of residence permits of dependents in such a way that they do not exceed the duration of the residence permit of the sponsor. In case of dependents of researchers and mobile holders of permanent residence permits, the duration of the residence permits has to be equivalent to that of the residence permits granted to the sponsors. In all other cases, the first residence permit to be granted has to have a duration of at least one year (section 27 sub-section 4 AufenthG n.F.).

Article 14:

► **What choices towards the access of a dependent to employment and self-employed activity has the Member State made?**

(1) The sponsor's family members shall be entitled, in the same way as the sponsor, to:

[...]

b) access to employment and self-employed activity;

[...]

(2) Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity.

(3) Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) applies.

Labour-market access for dependents depends on the extent to which the foreigner who is joined by his/her family is entitled to pursue an economic occupation. Dependents of foreigners with equal (unlimited) access to the labour market will be granted equal access as well, whereas dependents of sponsors with limited access will be granted limited access. Apart from that, they will be granted access to the labour market if marital cohabitation has existed lawfully in the Federal territory for at least two years (section 29 sub-section 5 AufenthG). The

option to examine the labour market for 12 months, which was pushed through by the German negotiators, among others, during the negotiations about the Directive, has not been exploited (Walter 2007: 289).

- ▶ **In line with article 14: Do dependents receive specific rights with regard to (social) benefits or consolidation of residence? If so, do they have to reside in the Member State for a certain amount of time before they can apply for these benefits? Are there any other conditions?**

There are no specific rights concerning access to (social) benefits.

Article 15:

- ▶ **When does the Member State entitle a dependent (upon application) to an autonomous residence permit (independently from the sponsor)?**

(1) Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

(2) The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 4(2) applies.

(3) In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

(4) The conditions relating to the granting and duration of the autonomous residence permit are established by national law.

The Residence Act does not limit the possibility of a consolidated, autonomous entitlement to a residence permit to the case that the family relationship breaks down. Instead, it grants an autonomous right to a settlement permit in case of existing family relationships. Once an accessory settlement permit has been granted to the spouse, a permanent, autonomous right of residence arises, which is independent of family reunification. A settlement permit (section 9 AufenthG), which depends on the fulfilment of comprehensive preconditions, is to be granted to cohabiting spouses if at least one spouse has paid the required contributions to the statutory pension systems and holds a working permit (section 9 sub-section 3 sentence 1 AufenthG).¹⁶

If marital cohabitation ends (divorce/permanent separation)¹⁷ before the spouse has received a settlement permit, the AufenthG entitles him/her to an autonomous residence permit, which is independent of the marriage and allows him/her to pursue an economic occupation, provided that marital cohabitation existed lawfully in the Federal territory for at least two years (section 31 sub-section 1 no. 1 AufenthG). If the sponsor died while marital cohabitation existed

¹⁶ This applies accordingly to registered partners, section 27 sub-section 2 AufenthG.

¹⁷ This condition is not met if the spouses are temporarily separated (no. 31.0.2 VAH AufenthG).

in the Federal territory, the spouse will also be granted an autonomous residence permit which allows him/her to pursue an economic occupation pursuant to section 31 sub-section 1 no. 2. This regulation applies accordingly to registered partners (section 27 sub-section 2 AufenthG). An autonomous right of residence can only be granted if the sponsor, at the time at which marital cohabitation ended, held a right of residence which is basically eligible for consolidation. This protection is extended on the grounds of the assumption that „trusting on the perspective of a continued residence in the Federal Republic of Germany, an integration into society has taken place [in the past two years] so that a return to the country of origin would result in significant burdens“ (no. 31.1.4 VAH AufenthG). In order to prevent particular hardship, e.g. in case of a violent marriage, the condition that the marriage has to have existed lawfully in the Federal territory for at least two years can be waived (section 31 sub-section 2 AufenthG).¹⁸

The duration of the autonomous residence permit is first limited to one year. It may subsequently be extended for limited periods of time until the preconditions for a settlement permit are met (section 31 sub-section 4 sentence 2 AufenthG). A settlement permit can be granted to the spouse under easier conditions (pursuant to section 31 sub-section 3 AufenthG) if the sponsor can pay for his or her livelihood from his or her own means and holds a settlement permit. For adult dependents, the rules for granting spouses an autonomous residence permit are applied accordingly pursuant to section 36 sentence 2 in conjunction with section 31 AufenthG.

Once a child reaches the legal age of majority, his or her residence or settlement permit becomes an independent right of residence in its own right, which is not related to the purpose of family reunification (section 34 sub-section 2 AufenthG). Moreover, children who hold a residence permit for the purpose of family reunification will be granted an autonomous, unlimited right of residence (settlement permit) if they have held a residence permit for five years at the date of their 16th birthday. This also applies to adult foreigners who entered Germany as children, have held a residence permit for five years, possess an adequate knowledge of German and have a secure livelihood or are undergoing vocational training (section 35 sub-section 1 AufenthG) or if they had a right to return (section 37 AufenthG).

If the family relationship breaks down before the children receive an independent right of residence, they may be granted a residence permit if a parent possessing the right of care and custody holds a residence permit or settlement permit and the child lives in a family household with him or her or if the right to return is applied accordingly (section 34 sub-section 1 in conjunction with section 37 AufenthG). The right to return is an independent right. It entitles third country nationals who lived in the Federal Republic of Germany as minors and can return within a maximum of five years since leaving the country to a residence title and to the right of pursuing an economic occupation. Originally, this right was not created to protect marriage and the family. While section 37 AufenthG erects significant hurdles (8 years of residence and 6 years of schooling, a secure livelihood by own or third-party means and filing of the application during the period between 15 and 21 years of age), the provisions concerning a secure livelihood are covered by the Directive (Art. 7.1 b and c). Moreover, the periods mentioned above may be waived in order to prevent particular hardship (section 37 sub-section 2 AufenthG).

18 Renner (2004: 792, 796) points out that the law is guilty of a contradiction if, even in cases of hardship, no residence permit is granted if an extension of the sponsor's residence permit is excluded (section 31 sub-section 2 sentence 1 AufenthG). He argues that, since a violent marriage regularly means that criminal offences are committed, this rule leads to the result that the protected spouse usually has to leave the country nevertheless. However, the VAH AufenthG (no. 31.2.5.1) states quite clearly that cases of violence are a reason to regard a continuation of the marriage as unacceptable and result in the hardship clause being applied. In a decision dated 17 January 2007 (ref. no.: 7 TG 2908/06) the Higher Administrative Court of Hesse (Hessischer Verwaltungsgerichtshof) also supported the stance of the VAH AufenthG, quoting the legislator's goal of granting the spouse a right of residence that is independent from that of the sponsor, who has committed an offence which justifies and causes him or her to be expelled.

There is no hardship clause, which ensures an autonomous right of residence for these persons, in a comparable way to the emergency clause of the Directive (Art. 15.3 sentence 2 of the Directive 2003/86/EC), which is applied not only to spouses, but also to first-degree relatives in an ascending or descending line (i.e., parents or children) (Walter 2007: 293).

Article 16:

► **When does the Member State reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a dependent's residence permit?**

(1) Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

a) where the conditions laid down by this Directive are not or are no longer satisfied.

When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, as referred to in Article 7(1)(c), the Member State shall take into account the contributions of the family members to the household income;

b) where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship;

c) where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

(2) Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

b) the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.

(3) The Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence under Article 15.

A residence permit for the purpose of family reunification can be refused if the sponsor has to rely on social security benefits (section 27 sub-section 3 AufenthG). Otherwise, the general conditions apply (granting (section 5), renewal (section 8) and revocation (section 52 AufenthG)). Section 5 sub-section 1 nos. 2 and 3 in conjunction with sections 53 – 58a AufenthG also cover the preconditions for the rejection or withdrawal of the right to family reunification as set out in Art. 6 of the Directive 2003/86/EC (rejection of an application for entry and residence or withdrawal of a residence permit on grounds of public policy, public security or public health).

The EU-RLUmsG has amended the AufenthG in such a way that family members may not enter the Federal Republic of Germany when it is clear that the marriage or the family relationship was exclusively established in order to enable the family member to join his/her family in

the Federal Republic or if there is actual evidence to suggest that one of the spouses was forced to marry (section 27 sub-section 1a AufenthG n.F.).

Article 17:

► **Are there national regulations for the case described in this article?**

Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.

Beyond the general principles on taking account of these aspects when terminating the residence of a foreign national, there are no special regulations in Chapter 2 Part 6 (residence for family reasons) of the AufenthG. However, there are provisions on special protection from expulsion which take into account family relationships (section 56 sub-sections 1 – 3 AufenthG). This special protection extends to spouses and registered life partners of foreigners who hold a residence permit and have lawfully resided in Germany for at least five years, provided that the couple cohabit and the spouse or life partner has lawfully resided in Germany for at least five years, too. (The special protection from expulsion also applies to foreigners who cohabit with a German spouse or registered life partner as a family.) As a result of this protection, the spouse of a registered life partner can usually be expelled only on particularly serious grounds (section 56 sub-section 1 sentence 2 AufenthG). Special protection also extends to adolescents who have grown up in the Federal territory and possess a settlement permit and to minors who possess a residence permit or settlement permit. In these cases a discretionary decision is taken even if the preconditions for a regular or mandatory expulsion are in place. If the parents or the parent possessing the sole right of care and custody are lawfully residing in the Federal Territory, an expulsion of the minor is only possible if the conditions for a mandatory expulsion are in place. Nevertheless a discretionary decision shall be reached (section 56 sub-section 2 AufenthG). The discretionary decision has to take into account the affected person's protection. Finally, family members of a foreigner who enjoys temporary protection may only be expelled if they represent a serious risk to the security of the Federal Republic of Germany or to the general public (section 56 sub-section 3 second alternative AufenthG).

Article 18:

► **Are there examples of successful legal challenges when an application for family reunification is rejected or a residence permit is either not renewed or withdrawn or removal ordered?**

The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure and the competence according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

The foreigner has access to the general means of recourse, i.e. objection and action against a public authority, which can be used to obtain a residence permit (Hailbronner 2006: sec. 27 margin no. 76).

d) Application to certain groups

Article 3 of the Directive stipulates that it does not apply to certain groups of people. However, according to our definition of 'dependent', these should be considered in this study as well.

► **Are there regulations regarding family reunification for the people indicated in Article 3.2 a, b and c? If so, what is the main difference with the provisions laid down in the Directive?**

(2) This Directive shall not apply where the sponsor is:

- a) applying for recognition of refugee status whose application has not yet given rise to a final decision;
- b) authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;
- c) authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

In principle, German law requires that the sponsor have a secure residence status in the form of a settlement or residence permit pursuant to section 29 sub-section 1 AufenthG. This implies that the general regulations on family reunification do not apply to asylum seekers and persons enjoying subsidiary or temporary protection.

Family reunification is not granted if the foreigner holds his/her residence permit on urgent humanitarian or personal grounds or due to substantial public interests (section 25 sub-section 4 AufenthG) or if a residence permit was granted pursuant to section 25 sub-section 5 AufenthG (departure impossible in fact or in law despite a final deportation order).

If the sponsor enjoys temporary or subsidiary protection pursuant to section 25 sub-section 3 AufenthG, family reunification may be possible to a limited extent under specific circumstances.

Temporary protection in the event of a mass influx of displaced persons is granted under section 24 AufenthG, which implements the Directive 2001/55/EC. Based on a resolution by the Council of the European Union, foreigners are granted a residence permit for the duration of one year, which can be renewed pursuant to Articles 4 and 6 of the Directive. The third country national who is granted temporary protection has to take up his/her accommodation and ordinary residence at the place to which he/she is allocated (section 24 sub-section 5 AufenthG).

Under these circumstances and pursuant to section 24 sub-section 4 AufenthG, a residence permit shall be granted to the spouse and minor, unmarried children of the sponsor or minor unmarried children of the sponsor's spouse if the sponsor has been granted temporary protection provided that

- ▶ the family household in the country of origin has been broken up as a result of the flight (this breakup need not necessarily have occurred in the country of origin, but may also have occurred due to violent circumstances or the family's decisions during the flight) (no. 29.4.4 VAH AufenthG) and if
- ▶ the dependent is admitted from another Member State of the European Union or is located outside of the European Union and is in need of protection (no. 29.4.5 VAH AufenthG).

To prevent particular hardship residence permits may be granted to other family members as well (section 29 sub-section 4 sentence 2 AufenthG in conjunction with section 36 AufenthG). This entitlement exists even if applicants cannot prove that their livelihood is secure and if they have to rely on social security benefits (no. 29.4.2 VAH AufenthG).

Subsidiary protection applies if an obstacle to deportation exists as defined in section 60 sub-sections 2, 3, 5 and 7 AufenthG. Where these regulations apply, the foreigner is to be granted a residence permit, except if he/she has repeatedly and grossly breached duties to cooperate, if there are serious grounds to warrant the assumption that he/she has committed offences of considerable severity or if he/she represents a risk to the general public or to the security of the Federal Republic of Germany (section 25 sub-section 3 AufenthG).

Pursuant to section 29 sub-section 3 sentence 1 AufenthG, spouses and minor children of a foreigner who holds a residence permit according to section 22, section 23 sub-section 1 or section 25 sub-section 3 AufenthG may only be granted a residence permit and enter the country in individual cases for reasons of international law, on humanitarian grounds or in order to safeguard the political interests of the Federal Republic of Germany (Walter 2007: 299 et seq.) However, there is no obligation to grant a residence permit under these circumstances (Hailbronner section 29, margin no. 16), even though urgent humanitarian grounds within the meaning of the provision are to be assumed if it is impossible to reunify the family in a third country on compelling personal grounds.

- ▶ Describe the main differences in family reunification in cases where the sponsor is an EU citizen.

Article 3.3 Directive 2003/86/EC:

This Directive shall not apply to members of the family of a Union citizen.

In line with the EU right of free movement and residence, German law gives Union citizens the same rights as German citizens. As a result, the residence legislation for Union citizens and their families is different from that for third country nationals. EU citizens enjoy a preferential treatment in terms of family reunification, which is characterised by systematic and uniform regulations for all groups of Union citizens, a broad definition of „family“, legal entitlements, minimal preconditions and the waiver of integration criteria (Walter 2007: 275).

Union citizens are free to move as employees, providers and recipients of services and as established self-employed persons under the Free Movement Act/EU (FreizügG/EU). As this

group of persons is entitled to free movement within the EU, so are their families. This entitlement is independent of the family members' nationality and the time of the family reunification (section 2 sub-section 2 no. 7 in conjunction with sections 3 and 4 FreizügG/EU). Pursuant to section 2 sub-section 2 no. 5 FreizügG/EU, the right to free movement also allows EU citizens and their families to remain in Germany after they have terminated their employment or self-employed economic activity.

The definition of „family“ is broad (section 3 sub-section 2 Freizüg/EU). It covers spouses and relatives under 21 as well as relatives in the ascending and descending line of both spouses for whom the latter provide maintenance. In this respect, the regulations for reunification of third country nationals with citizens of other EU countries are more liberal than those for reunification with Germans (where the age limit is set at 18).

In the case of reunification with non-gainfully employed Union citizens and students the definition of „dependents“ is somewhat more restrictive (section 4 FreizügG/EU). Non-gainfully employed EU citizens and their dependents who cohabit with the non-gainfully employed person may enter and reside in Germany pursuant to section 2 sub-section 1 FreizügG/EU if they have health insurance coverage and adequate means of subsistence (section 4 sentence 1 FreizügG/EU). Dependents within the meaning of section 4 sentence 2 FreizügG/EU are the spouse and minor children as well as other relatives of the EU citizen in the ascending and descending line for whom maintenance is provided. In addition, other relatives of the spouse in the ascending line may enter Germany, provided that maintenance is provided for them (Walter 2007: 266 et seq.). Only in the case of students does the Directive limit the right of reunification to the spouse, the life partner and dependent children. This regulation is reflected by the German law (section 4 sentence 3 FreizügG/EU). Other relatives are only admitted under discretionary regulations to prevent particular hardship (section 11 sub-section 1 sentence 1 FreizügG/EU in conjunction with section 36 AufenthG).

The FreizügG/EU is also the first Act to provide for reunification with the life partners of EU citizens, insofar as these life partners are not entitled to freedom of movement themselves. This group of persons is to be treated on an equal footing with a life partner of a German citizen (section 3 sub-section 6 FreizügG/EU in conjunction with section 27 sub-sections 2 and 3, section 9 sub-section 3, sections 28 – 31 and section 51 sub-section 2 AufenthG). Life partners of non-gainfully employed EU citizens and of students are entitled to reunification under the same economic preconditions as other family relatives, but are not entitled to reunification with their own relatives (as are spouses) (section 4 FreizügG/EU). It is a precondition that the dependents of the sponsor cohabit with him/her (section 3 sub-section 1 sentence 1 and section 4 sub-section 1 sentence 1 FreizügG/EU). According to the European Court of Justice, this does not mean that the dependents have to live regularly with the sponsor, but only that the sponsor's home has to fulfil normal conditions for their living with him/her (see no. 3.1 VAH FreizügG/EU). The Directive Implementation Act transfers Art. 7.1 d of the Directive on the freedom of movement 2004/38/EC by replacing the cohabitation condition with the condition that the dependents „accompany or join“ the sponsor (section 3 FreizügG/EU n.F.).

Apart from the requirements to provide maintenance set out above, EU citizens and their families are not subject to integration requirements and are not obliged to participate in an integration course. They may participate in an integration course if there are free places.

Section 2 sub-section 5 FreizügG/EU regulates the consolidation of the right of residence for EU citizens and their nuclear families, i.e. their spouses or life partners and their dependent children (however, this excludes other relatives). When they have lived continuously and lawfully in the Federal territory for five years, they are entitled to enter into and stay in Germany irrespective of whether the other requirements for freedom of movement are fulfilled. This only applies to children below 16 if a parent or legal guardian is lawfully resident in the Federal territory. This permanent right of residence is independent and unlimited for the members of the nuclear family. After five years of lawful residence, the sponsor and all his or her dependents can only lose their right to entry into and residence in Germany on particularly serious grounds (section 6 sub-section 3 FreizügG/EU).

The EU-RLUmsG combines the provisions of the Directive on the freedom of movement on permanent rights of residence for Union citizens and all their family members in section 4a FreizügG/EU n.F. The protection against expulsion is aligned with the Directive on the freedom of movement 2004/38/EC (section 6 FreizügG/EU n.F.). Union citizens as well as their spouses and registered life partners enjoy unlimited access to the labour market. This equal footing concerning access to the domestic labour market is based on the principle of non-discrimination on the grounds of nationality and on the free movement of labour (section 2 sub-section 1 FreizügG/EU, no. 2.1 VAH FreizügG/EU). Particular transition provisions apply to the family members of citizens of the new Member States (section 13 FreizügG/EU).

The EU-RLUmsG has established the uniform application of the broad definition of „family“, i.e. its extension to non-gainfully employed EU citizens. The more restrictive definition of „family“ will continue to apply for students (section 4 FreizügG/EU n.F.). Pursuant to this amendment, non-dependent children below the age of 21 of the spouses of the EU citizens and the parents of the spouses are entitled to enter Germany. Dependents will be granted more extensive rights to stay in Germany in case of death, divorce or separation (section 3 sub-sections 3-5 FreizügG/EU n.F.).

Special case: reunification with German citizens

While reunification with EU citizens is regulated by the right of free movement and EU law, reunification with Germans is subject to the Residence Act. That is due to the fact that in a purely national set-up the German citizen does not take advantage of his or her right to freedom of movement, but wants to have third country nationals join him/her in his/her home country. This situation does not come under EU law, as there is no link to European issues. As a result, German nationals are in a worse legal position than EU citizens in terms of family reunification. This unequal treatment („reverse discrimination“) can only be amended by German legislators for now (Walter 2007: 311).

Compared to third country nationals, however, Germans enjoy more extensive rights of family reunification and have to fulfil less restrictive conditions. This privilege is due to the fact that German citizens are entitled to marrying and establishing a family with a non-German partner in their home country. The privilege extends mainly to the nuclear family, but not to other members of mixed families. Foreign spouses (section 28 sub-section 1 AufenthG) and life partners (according to section 27 sub-section 2 in conjunction with section 28 sub-section AufenthG) of a German citizen are to be granted a residence permit because the German spouse has an absolute right of residence in Germany and would be prevented from marital cohabitation if his/her foreign partner was not allowed to enter the country. Under the same reasoning, a residence permit is to be granted to the minor unmarried child of a German which has not obtained German citizenship by birth (the exception after the amendment of the Nationality Act in 2000) and to the parent of a minor unmarried German for the purpose of care and custody, provided that the German's ordinary residence is in the Federal territory. A residence permit can also be granted to the parent of a minor unmarried German who is not entitled to custody of this child if the family household already exists in the Federal territory. Compared to the FreizügG/EU, the definition of „family“ is more restricted, seeing that EU citizens can be joined by their children below 21 and by other dependents. In case of a German sponsor, other family members may only enter the country if this is necessary to prevent particular hardship under section 36 AufenthG. However, marital cohabitation or a family household is sufficient as a general precondition for family reunification with a German (section 28 sub-section 1 AufenthG). There are no other requirements on German sponsors, such as providing sufficient living space or a secure livelihood including adequate health insurance cover. Pursuant to section 28 sub-section 2 AufenthG, foreigners are as a rule entitled to a settlement permit if they have possessed a residence permit for three years, the family household with the German continues to exist in the Federal territory, there are no grounds for expulsion and they are able to communicate verbally in German at a basic level. If no settlement permit is granted, the residence permit will be renewed for as long as the family household continued to exist. The residence permit entitles the holder to pursue an economic activity (section 28 sub-section 5 AufenthG).

In the future, the spouse of a German will be granted a residence permit under the same conditions as the spouse of a third country national: both spouses will have to be at least 18 years old, and the joining spouse has to be able to communicate in German at a basic level (section 28 sub-section 1 sentence 5 AufenthG n.F. in conjunction with section 30 sub-section 1 nos. 1 and 2 AufenthG n.F.). The cases in which no reunification is granted – fake and forced marriages – will also apply to reunification with German spouses, and the provision on adoptions only entered into for the purpose of entering Germany is to be a signal independent of whether the adoption abroad can be legally recognised (section 27 sub-section 1a AufenthG n.F.). Again, this provision is to promote integration and prevent forced marriages (Deutscher Bundestag 2007a: 172 et seq.). Reliance on social security benefits remains a reason to refuse reunification with German sponsors in order to limit immigration that will weigh on the social security systems (section 27 sub-section 3 AufenthG n.F.).

To summarise: the right of reunification depends on the purpose of the dependent's entry and on the status of the sponsor (EU citizen, German or third country national).

2.2 Development of family reunification policy between 2002 and 2006

► Has Germany already fully implemented the Directive 2003/86/EC? If so, what was the date?

The Directive was implemented in its entirety with the entry into force of the EU-RLUMsG on 28 August 2007. However, the current family reunification provisions in the Immigration Act which came into force in 2005 were already based largely on the Directive, so only minor amendments were necessary (Deutscher Bundestag 2007a: 152).

► Debates on family reunification policy between 2002 and 2006

The formulation of the family reunification directive until 2003 partly coincided with the formulation of the new Immigration Act passed in 2004. In anticipation of adaptations due to the directive changes in family reunification law have been discussed in this process. Against the background of enhancing integration opportunities the debate was mainly dominated by the introduction of an age limit for minor children who wanted to enter Germany (Hailbronner 2006: section 32, margin no. 1). Positions ranged from reducing the age limit down to 10 years to increasing it up to 18 years. In the end the agreement foresaw maintaining the existing age limit of 16 years and introducing additional integration criteria for children up to 18 years (e.g. proficiency of the German language).

► Main discussion points and obstacles for the implementation of the Directive

In 2006 the discussions about a reform of the AufenthG by the Directive Implementation Law for EU Directives on residence and asylum issues (EU-RLUMsG) focused on the question of whether an age limit should be introduced for reunification with spouses. Against the background of a widespread debate about „honour killings“ and forced marriages in Germany (Göbel-Zimmermann/Born 2007), a hike in the minimum age of spouses was discussed in order to protect young foreigners from forced marriages. A first draft foresaw a hike in the minimum age to 21 and a requirement to prove a basic knowledge of German (Federal Ministry of the Interior 2006: 114; Maaßen 2006: 163). However, no majority for a hike in the minimum age limit emerged in the discussion, so in the end a uniform limit of 18 for both spouses was adopted (see above). The requirement to prove a basic knowledge of German as preparatory integration condition, similarly seen as a measure for preventing forced marriages, remained. However, it was not a non-contended issue. On the one hand the discussion centred around the question, if the requirement was compatible with the ECHR and the German Basic Law. On the other hand there was also a discussion about the question whether the requirement of a knowledge of German was an adequate measure to promote integration and whether it did not go beyond the wording of the Directive.

► Revisions of national legislation in order to implement the Directive

Overall, the new AufenthG has not led to particularly large revisions of the German family reunification legislation. Some more generous regulations became possible (e.g. concerning

the preconditions for reunification or the broader definition of „family“). The area of application was extended to include highly qualified migrants and Convention refugees. What is new is the criterion of „joint entry“ proposed by the Independent Commission on Migration in 2001, which overrides knowledge of the language and age limits. Beyond that, knowledge of the language has become a considerably more important precondition for entry. New regulations such as granting the dependents better access to the labour market and granting access to integration courses are due to the AufenthG's new focus on integration (Walter 2007: 308). However, it was unlikely that the implementation of the Directive would lead to major amendments of the current legislation because Germany successfully pushed through a number of provisions in the negotiations which were in line with German law (Hauschild 2003: 273; Walter 2006: 94-98).

► **Are there plans to change the Family Reunification Directive in the near future?**

While the Family Reunification Directive is being discussed, for example in relation to the ECHR (Franz 2006), there is no debate about its reform in Germany.¹⁹

2.3 Conclusions regarding family reunification policy and its development

Since 2001 family reunification policy in Germany has developed partially in parallel to the European legislative procedure. As a result, part of the European regulations set out in the Family Reunification Directive was anticipated in German law. As new regulations were discussed simultaneously at the German and the European level, Germany exercised significant influence over the negotiations about the Directive in Brussels in order to keep subsequent amendments as small as possible (Hauschild 2003: 273; Walter 2006: 94-98; 2007: 314 et seq.; Groenendijk 2006: 194). The amendments of the regulations on family reunification set out in the new AufenthG have therefore been minor in comparison to the AuslG 1990, which was valid until then (Maaßen 2006: 163).

The family reunification discussion during the legislative procedures for the Directive Implementation Act (2005-2007) centred on the overall issue of integration. In fact, the debate focused on the necessary knowledge of German and an age limit for spouses. Introducing a minimum age for spouses was discussed with a focus on preventing forced marriages and protecting the spouses. In this context the question of a knowledge of German was confronted again, too. Now, the focus was not on how a sufficient amount of German might be learned in Germany, like during the legislative procedures for the Immigration Act, but on the question whether spouses should prove that they already know some German before even entering the country. The aim was to prevent the in-laws from consciously or indirectly keeping the spouses from participating in social life in Germany. Requiring immigrants to participate in integration courses after having entered Germany was not regarded as sufficient to prevent that victims of forced marriages might be kept from having their own social lives. After all, they might remain subject to any constraints from their in-laws for a prolonged period of time until the course started and they acquired some knowledge of German (Deutscher Bundestag 2007a: 172 et seq.).

¹⁹ For an exception see Schöllhorn (2006: 240-255).

In addition to the integration-oriented issues, there is an aspect of regulatory policy, too. The Basic Law grants particular protection of marriage and the family and guarantees the right of marital and family cohabitation. However, the reasons for the law state clearly that this is not equivalent to a comprehensive and unconditional right to have the nuclear family live in the Federal territory. Rather, the legislators and the executive have to define who may enter the Federal Territory under what conditions (Deutscher Bundestag 2007a: 173).

Overall, the political debate took place on a national level and only marginally touched upon the necessary implementation of the Directive, even though the Directive provided a background for the new regulations and defined the scope for the new provisions.

3. Size and Composition of Family Reunification in Germany



The statements on the size and composition of family reunification in Germany are based on the visa statistics of the Foreign Office, which go back to 1996. These statistics show all cases in which a German embassy approved a spouse's or dependent's application for joining the sponsor in Germany.

In addition, data from the Central Aliens Register (AZR), which has registered all residence permits granted by the purpose of the application since 1 January 2005, were used.

3.1 Size of family reunification

For each year of the reference period (2002 – 2006), there shall be given the total number of

- ▶ applications for family reunification

The total number of visa applications is not released in the visa statistics of the Foreign Office.

- ▶ decisions made

See below (chapter 3.2).

- ▶ rejected applications when family reunification was explicitly applied for

Rejected visa applications and the reasons for the rejection are not broken down by the purpose of the intended voyage. Moreover, the number of rejected visa applications by embassies is not released for foreign policy reasons (Deutscher Bundestag 2007c: 1 et seq.).

- ▶ issued residence permits when family reunification was explicitly applied for (i.e. number of permits for dependents)

- ▶ issued residence permits when family reunification was not explicitly applied for (if relevant)

The AZR only registers the total number of residence permits granted. There is no note of whether an application for family reunification was filed.

- ▶ all immigrants granted entry and residence, i.e. including dependents

According to the AZR, 379,902 foreigners moved to Germany in 2005, of which 221,129 were third-country nationals. In 2006 the total number was 361,562, of which 197,513 were third-country nationals.

3.2 Composition of family reunification migration

Breakdown for each year of the reference period (2002 – 2006) in the following categories:

Dependents

- ▶ Nationality
- ▶ Gender
- ▶ Application as spouse (or, if possible, „partner“), child or parent
- ▶ Spouses (or, if possible, „partners“) by age groups
- ▶ Dependents aged
 - ▶ under 12
 - ▶ between 12 - majority
 - ▶ between majority - 21
 - ▶ between 21 - 65
 - ▶ over 65

For 2005 and 2006, the AZR data give insights into the nationality and the age breakdown of the immigrants (see below). For the years before, however, only the visa statistics are available, which do not give the age of the immigrants. Moreover, the visa statistics do not register the nationality of the applicant, but the place where the application was filed (for example, in the case of Turkey the embassy in Ankara and the consulates-general in Istanbul and Izmir).²⁰

- ▶ **Entry as a family together with the sponsor or entry after the sponsor**

The AZR only registers the total number of residence permits granted. It is not possible to determine whether several persons entered the country together at the same time.

- ▶ **Application filed in Germany or abroad**

The visa statistics of the Federal Foreign Office only give the number of permits granted due to an application made abroad, but not of those granted due to an application made in Germany.²¹ The AZR only registers the number of residence permits granted for family reasons, but not the place where the application was filed.

²⁰ Due to these differences the two data series are only comparable to a limited extent.

²¹ The latter case may occur, for example, if persons enter Germany for another purpose and then marry later on.

Sponsors

- ▶ Nationality (also grouped according to Germans, EU citizens and third country nationals)
- ▶ Gender
- ▶ Age
- ▶ Number of dependents per sponsor
- ▶ If the sponsor is a third country national: type of residence permit

Information on the sponsors can only be derived indirectly from the AZR. This information is based on the specification of the legal grounds on which the residence permit was granted, i.e. reunification with Germans pursuant to section 28 AufenthG or with third country nationals pursuant to sections 30, 32 AufenthG (see below). However, additional breakdowns (e.g. for age) are impossible.

Below, the development of spouse and family reunification is shown on the basis of the visa statistics of the Federal Foreign Office. After that, family reunification figures for 2005 and 2006 are given on the basis of the AZR.

a) Family reunification migration according to the visa statistics

Table 1:

Visa granted for the purpose of family reunification in Germany, 1996 – 2006

Entry of...	wives joining their third country national husbands	In %	husbands joining their third country national wives	In %	wives joining their German husbands	In %	husbands joining their German wives	In %	children below 18	In %	Total
1996	19,253	34.4	9,479	17.0	8,603	15.4	6,958	12.5	11,593	20.7	55,886
1997	20,266	32.8	8,770	14.2	9,905	16.0	7,931	12.8	14,868	24.1	61,740
1998	19,275	30.6	7,990	12.7	13,098	20.8	8,038	12.8	14,591	23.2	62,992
1999	20,036	28.3	7,711	10.9	16,246	23.0	9,865	13.9	16,892	23.9	70,750
2000	19,893	26.2	7,686	10.1	18,863	24.9	11,747	15.5	17,699	23.3	75,888
2001	21,491	25.9	7,780	9.4	20,766	25.1	13,041	15.7	19,760	23.9	82,838
2002	21,609	25.3	8,164	9.6	20,325	23.8	13,923	16.3	21,284	25.0	85,305
2003	18,412	24.2	6,535	8.6	20,539	26.9	12,683	16.7	17,908	23.5	76,077
2004	14,692	22.3	5,439	8.2	20,455	31.0	10,966	16.6	14,383	21.8	65,935
2005	13,085	24.6	4,068	7.6	14,969	28.1	8,811	16.6	12,280	23.1	53,213
2006	13,176	26.2	3,712	7.4	14,075	28.0	8,622	17.1	10,715	21.3	50,300

Source: Federal Foreign Office

In 2006, 50,300 visa were granted for the purpose of family reunification (2005: 53,213). The number of visa granted for the purpose of family reunification thus fell by 41% compared to the peak of 85,305 in 2002 (see Table 1).

Since 2000, the number of reunifications with German spouses has exceeded that of reunifications with third country nationals in absolute terms. Overall, the share of spouses who

joined their German husbands or wives in total family reunification rose from 27.9% in 1996 to 45.1% in 2006. During the same period the share of spouses who joined their foreign husbands or wives in total subsequent immigration declined from about 50% to roughly one-third. This development is partially due to higher naturalisation figures and reunification of dependents with (late) ethnic German resettlers.

Since 2003, wives who joined their German husbands have been the largest group of subsequent immigrants, with a share of 28.0% in 2006. Wives who joined a third country national husband accounted for 26.2%. The share of children in total family reunification migration remained roughly constant between 1996 and 2006, hovering between 20% and 25%.

Table 2:
Visa granted for the purpose of family reunification in Germany by countries of origin, 2002 - 2006

Country of origin	2002	2003	2004	2005	2006
Turkey	25,068	21,908	17,543	15,162	11,980
Serbia and Montenegro	2,250	2,035	4,905	2,116	5,379
Russian Federation	5,523	5,329	5,462	4,558	4,333
Thailand	3,138	3,667	3,850	3,249	2,809
Morocco	3,794	2,200	1,957	1,810	1,704
India	1,617	1,673	1,851	1,412	1,448
Bosnia & Herzegovina	2,080	1,841	1,918	1,678	1,438
Ukraine	1,444	1,766	1,924	1,545	1,267
Kazakhstan	2,015	1,190	2,037	1,775	1,250
Vietnam	1,058	1,315	1,266	1,142	1,156
China	629	961	873	926	1,124
Macedonia	4,768	2,365	1,229	1,156	1,087
Tunisia	1,114	1,017	1,068	969	919
Pakistan	941	1,540	1,282	927	735
Iran	1,454	1,203	1,059	958	695
Brazil	792	751	701	688	680
Egypt	581	530	609	454	661
Romania	1,343	1,227	1,275	866	626
Lebanon	761	670	859	744	611
Philippines	794	748	541	556	609
Other	24,141	22,141	13,726	10,522	9,789
Total	85,305	76,077	65,935	53,213	50,300

Source: Federal Foreign Office

Since family reunification migration was first registered as a separate type of migration in 1996, Turkey has been the main country of origin. However, the number of visa granted by German diplomatic representations in Turkey for the purpose of family reunification has fallen steadily, from 25,068 in 2002 to 11,980 in 2006 (see Table 2). Other important countries of origin are the Russian Federation, Serbia and Montenegro and Thailand.

Tables 3 through 7 below give an overview over family reunification migration in 2002 – 2006 broken down by countries of origin and type of family reunification.

Table 3:
Visa granted for the purpose of family reunification in Germany by countries of origin, 2002

Entry of.../countries of origin	wives joining their third country national husbands	husbands joining their third country national wives	wives joining their German husbands	husbands joining their German wives	children below 18	Total
Turkey	8,335	4,849	1,999	4,247	5,638	25,068
Russian Federation	374	139	2,846	1,341	823	5,523
Macedonia	2,074	390	206	827	1,271	4,768
Morocco	816	285	1,063	1,117	513	3,794
Thailand	52	7	2,171	12	896	3,138
Poland	599	115	918	245	1,192	3,069
Federal Republic of Yugoslavia	717	354	268	407	504	2,250
Bosnia & Herzegovina	641	402	271	349	417	2,080
Kazakhstan	74	63	1,005	667	206	2,015
India	701	33	236	120	527	1,617
Iran	532	192	231	91	408	1,454
Ukraine	134	38	378	118	776	1,444
Romania	143	38	714	154	294	1,343
Tunisia	110	18	174	688	124	1,114
Albania	336	87	87	312	254	1,076
Vietnam	256	118	168	35	481	1,058
Pakistan	280	25	259	100	277	941
Philippines	28	2	594	16	154	794
Czech Republic	154	17	204	24	243	642
China	234	91	97	55	152	629
Other	5,019	901	6,436	2,998	6,134	21,488
Total	21,609	8,164	20,325	13,923	21,284	85,305

Source: Federal Foreign Office

Table 4:
Visa granted for the purpose of family reunification in Germany by countries of origin, 2003

Entry of.../countries of origin	wives joining their third country national husbands	husbands joining their third country national wives	wives joining their German husbands	husbands joining their German wives	children below 18	Total
Turkey	7,075	3,539	2,928	4,230	4,136	21,908
Russian Federation	329	92	2,724	1,094	1,090	5,329
Thailand	31	25	2,023	939	649	3,667
Poland	529	107	881	245	1,154	2,916
Macedonia	996	268	107	410	584	2,365
Morocco	442	132	747	661	218	2,200
Serbia and Montenegro	710	332	247	329	417	2,035
Bosnia & Herzegovina	587	350	258	224	422	1,841
Czech Republic	198	59	1,199	69	278	1,803
Ukraine	182	58	493	171	862	1,766
India	713	64	299	145	452	1,673
Pakistan	421	39	437	198	445	1,540
Vietnam	292	142	374	56	451	1,315
Romania	188	46	546	112	335	1,227
Iran	422	62	342	76	301	1,203
Kazakhstan	260	299	186	89	356	1,190
Tunisia	103	33	225	594	62	1,017
China	322	86	187	22	344	961
Syria	327	17	162	51	206	763
Philippines	28	6	538	16	160	748
Other	4,257	779	5,636	2,952	4,986	18,610
Total	18,412	6,535	20,539	12,683	17,908	76,077

Source: Federal Foreign Office

Table 5:
Visa granted for the purpose of family reunification in Germany by countries of origin, 2004

Entry of.../countries of origin	wives joining their third country national husbands	husbands joining their third country national wives	wives joining their German husbands	husbands joining their German wives	children below 18	Total
Russian Federation	300	61	2,767	1,081	1,253	5,462
Serbia and Montenegro	707	462	2,904	368	464	4,905
Thailand	48	10	2,825	20	947	3,850
Kazakhstan	292	299	600	348	498	2,037
Morocco	395	99	701	613	149	1,957
Ukraine	186	61	721	167	789	1,924
Bosnia & Herzegovina	643	375	244	279	377	1,918
India	935	23	221	85	587	1,851
Pakistan	344	39	384	180	335	1,282
Romania	217	52	474	88	444	1,275
Vietnam	299	190	337	65	375	1,266
Macedonia	477	193	98	239	222	1,229
Tunisia	104	26	242	638	58	1,068
Iran	365	50	344	67	233	1,059
Croatia	333	187	65	51	284	920
Poland	152	45	307	81	300	885
China	280	52	214	20	307	873
Lebanon	130	34	316	312	67	859
Brazil	133	12	233	20	303	701
Other	2,611	550	4,241	2,018	3,651	13,071
Total	14,692	5,439	20,455	10,966	14,383	65,935

Source: Federal Foreign Office

Table 6:
Visa granted for the purpose of family reunification in Germany by countries of origin, 2005

Entry of.../countries of origin	wives joining their third country national husbands	husbands joining their third country national wives	wives joining their German husbands	husbands joining their German wives	children below 18	Total
Russian Federation	244	35	2,314	855	1,110	4,558
Thailand	23	9	2,437	5	775	3,249
Serbia and Montenegro	812	322	184	248	550	2,116
Morocco	365	73	669	530	173	1,810
Kazakhstan	144	130	624	468	409	1,775
Bosnia & Herzegovina	641	317	202	192	326	1,678
Ukraine	167	44	602	151	581	1,545
India	745	21	184	67	395	1,412
Macedonia	556	154	80	162	204	1,156
Vietnam	240	154	349	42	357	1,142
Tunisia	123	23	240	536	47	969
Iran	316	37	323	72	210	958
Pakistan	284	39	233	135	236	927
China	299	75	245	12	295	926
Romania	193	39	311	79	244	866
Lebanon	121	27	233	316	47	744
Brazil	163	18	186	19	302	688
Croatia	216	119	26	32	181	574
Philippines	15	6	413	18	104	556
Other	2,232	426	3,161	1,688	2,895	10,402
Total	13,085	4,068	14,969	8,811	12,280	53,213

Source: Federal Foreign Office

Table 7:
Visa granted for the purpose of family reunification in Germany by countries of origin, 2006

Entry of.../countries of origin	wives joining their third country national husbands	husbands joining their third country national wives	wives joining their German husbands	husbands joining their German wives	children below 18	Total
Serbia and Montenegro	2,648	572	492	664	1,003	5,379
Russian Federation	269	50	2,194	891	929	4,333
Thailand	31	7	2,146	12	613	2,809
Morocco	265	78	700	549	112	1,704
India	769	27	143	68	441	1,448
Bosnia & Herzegovina	580	285	158	160	255	1,438
Ukraine	141	46	478	136	466	1,267
Kazakhstan	30	22	504	436	258	1,250
Vietnam	295	145	286	47	383	1,156
China	384	83	299	25	333	1,124
Macedonia	464	174	97	138	214	1,087
Tunisia	112	32	254	486	35	919
Pakistan	219	32	182	111	191	735
Iran	179	22	290	57	147	695
Brazil	160	16	174	25	305	680
Egypt	155	19	87	262	138	661
Romania	127	54	229	55	161	626
Lebanon	103	26	187	257	38	611
Philippines	29	4	471	22	83	609
Other	2,093	489	2,922	1,447	2,838	9,789
Total	13,176	3,712	14,075	8,622	10,715	50,300

Source: Federal Foreign Office

With respect to spouses coming from Turkey, there were more wives who joined their foreign husbands than husbands who joined their German wives. In contrast, in the cases of the Russian Federation and Thailand, the number of wives who join their German husbands clearly outweighs that of any other family members who come to Germany.

In case of the Russian Federation family reunification applications are often filed by dependents who want to join ethnic German resettlers. Between 2002 and 2006, between two-thirds and three-quarters of family reunification migration from the Russian Federation were due to joining German spouses. In Thailand the lion's share of visa was granted to wives who wanted to join their German husbands. Children make up a disproportionate share of family reunification migration from Brazil and Ukraine.

b) Family reunification migration according to the AZR

Table 8:
Family reunification migration in 2005 and 2006, by nationalities

Nationality	2005		2006	
	total	of which women	total	of which women
Turkey	13,320	7,409	10,195	5,564
Serbia and Montenegro	6,374	4,124	5,106	3,235
Russian Federation	7,071	4,440	4,771	3,170
United States	2,009	1,124	2,178	1,227
Thailand	2,488	2,214	1,970	1,659
Ukraine	2,368	1,754	1,706	1,247
India	1,473	1,093	1,627	1,210
Romania	2,470	1,944	1,560	1,187
Japan	1,494	1,151	1,397	1,062
Morocco	1,585	961	1,347	768
Bosnia & Herzegovina	1,567	918	1,241	709
Kazakhstan	2,796	1,413	1,224	675
China	1,121	907	1,122	889
Brazil	1,312	1,056	1,101	840
Vietnam	1,149	822	1,031	710
Macedonia	961	584	869	538
Tunisia	727	280	812	346
Croatia	1,240	760	777	485
Korea	676	471	682	488
Pakistan	712	461	659	409
Other	16,802	11,421	14,927	9,808
Total	69,715	45,307	56,302	36,226

Source: Federal Office for Migration and Refugees, AZR

In 2006, 56,302 foreign nationals moved to Germany for family reasons, down from 69,715 in 2005. About two-thirds of the total number of residence permits granted for family reasons were issued to women. The AZR figures are above the number of visa granted according to the visa statistics of the Federal Foreign Office. One reason for this discrepancy is the fact that residence permits for family reasons may be granted to persons who originally entered Germany for a different purpose, another is that the AZR also registers the subsequent immigration of other dependents.

Overall, however, the AZR data confirm the composition of family migration by countries of origin. Again, Turkish nationals are the largest group, followed at a considerable distance by citizens of Serbia and Montenegro and of the Russian Federation. However, the AZR figures also show relatively large groups of US and Japanese citizens who are granted residence permits for family reasons, even though these nationalities hardly show up in the visa statistics at all. That is due to the fact that citizens of these countries may apply for a residence permit after they have entered Germany.

Table 9:
Family reunification migration in 2005 and 2006, by age groups

Age groups	2005		2006	
	total	of which women	total	of which women
below 12	8,374	4,121	8,272	3,974
12 – below 18	4,516	2,288	3,547	1,917
18 – below 21	3,186	2,702	3,522	2,933
21 – below 65	53,275	35,976	40,672	27,232
above 65	362	218	288	169
Total	69,715	45,307	56,302	36,226

Source: Federal Office for Migration and Refugees, AZR

About three-quarters of all residence permits granted for family reasons were issued to third country nationals aged between 21 and 65. About one-seventh was granted to foreign children aged below 12. Overall, just below one-fifth of dependents was below the age of majority. Less than 1% of residence permits was granted to persons aged above 65.

Table 10:
Family reunification migration in 2005, by selected nationalities

Entry of.../Country of origin	wives joining their German husbands	husbands joining their German wives	wives joining their foreign husbands	husbands joining their foreign wives	children	other dependents	Total family reunification migration
Turkey	1,902	3,120	4,092	1,443	2,222	541	13,320
Serbia and Montenegro	609	888	2,672	573	1,380	252	6,374
Russian Federation	3,549	2,035	254	42	1,048	143	7,071
Kazakhstan	1,193	1,163	16	6	358	60	2,796
Thailand	1,826	51	22	9	539	41	2,488
Romania	1,466	273	221	62	362	86	2,470
Ukraine	1,286	303	192	47	466	74	2,368
United States	314	403	425	52	755	60	2,009
All nationalities	22,519	13,385	14,143	3,522	13,277	2,869	69,715

Source: Federal Office for Migration and Refugees, AZR

Table 11:
Family reunification migration in 2006, by selected nationalities

Entry of.../Country of origin	wives joining their German husbands	husbands joining their German wives	wives joining their foreign husbands	husbands joining their foreign wives	children	other dependents	Total family reunification migration
Turkey	1,575	2,558	3,202	1,154	1,537	169	10,195
Serbia and Montenegro	541	722	2,243	531	984	85	5,106
Russian Federation	2,391	1,074	286	47	879	94	4,771
United States	261	405	512	64	875	61	2,178
Thailand	1,345	61	23	7	501	33	1,970
Ukraine	866	213	154	54	384	35	1,706
India	160	116	823	28	477	23	1,627
Morocco	520	480	195	50	77	25	1,347
All nationalities	17,005	10,363	12,692	3,099	11,738	1,405	56,302

Source: Federal Office for Migration and Refugees, AZR

About two-thirds of total family reunification migration are due to spouses joining their wives or husbands. Children joining their parents make up about one-fifth. The share of other dependents is below 5%, with most of it stemming from a foreign parent having care and custody of a German minor unmarried child.

Table 12:
Immigration of spouses by age groups in 2005

Spouses joining ...	Total	of which women		Turkey	of which women	
		absolute figures	In %		absolute figures	In %
Germans (section 28 sub-section 1 sentence 1 no.1 AufenthG)	35,904	22,518	62.7	5,022	1,902	37.9
below 18	115	79	68.7	25	22	88.0
18 – below 21	1,471	1,247	84.8	534	418	78.3
21 – below 65	34,103	21,087	61.8	4,455	1,460	32.8
above 65	214	105	49.1	8	2	25.0
foreigners (section 30 AufenthG)	17,665	14,143	80.1	5,535	4,092	73.9
below 18	101	53	52.5	27	20	74.1
18 – below 21	1,199	1,142	95.2	747	700	93.7
21 – below 65	16,287	12,891	79.1	4,730	3,346	70.7
above 65	78	57	73.1	31	26	83.9
Total	53,569	36,661	68.4	10,557	5,994	56.8
below 18	216	132	61.1	52	42	80.8
18 – below 21	2,670	2,389	89.5	1,281	1,118	87.3
21 – below 65	50,390	33,978	67.4	9,185	4,806	52.3
above 65	292	162	55.5	39	28	71.8

Source: Federal Office for Migration and Refugees, AZR

Table 13:
Immigration of spouses by age groups in 2006

Spouses joining ...	Total	of which women		Turkey	of which women	
		absolute figures	In %		absolute figures	In %
Germans (section 28 sub-section 1 sentence 1 no.1 AufenthG)	27,368	17,005	62.1	4,133	1,575	38.1
below 18	132	123	93.2	54	52	96.3
18 – below 21	1,817	1,470	80.9	595	446	75.0
21 – below 65	25,228	15,311	60.7	3,479	1,074	30.9
above 65	190	100	52.6	5	3	60.0
foreigners (section 30 AufenthG)	15,791	12,692	80.4	4,356	3,202	73.5
below 18	191	161	84.3	94	93	98.9
18 – below 21	1,433	1,326	92.5	802	725	90.0
21 – below 65	14,104	11,161	79.1	3,440	2,367	68.8
above 65	63	44	69.8	20	17	85.0
Total	43,159	29,697	68.8	8,489	4,777	56.3
below 18	323	284	87.9	148	145	98.0
18 – below 21	3,250	2,796	86.0	1,397	1,171	83.8
21 – below 65	39,332	26,472	67.3	6,919	3,441	49.7
above 65	253	144	56.9	25	20	80.0

Source: Federal Office for Migration and Refugees, AZR

In 2006, about two-thirds of spouses joining their spouses were wives joining their husbands. The respective percentage for Turkish nationals was 56.3%. A breakdown by age groups shows that women have a disproportionately high share in the age group below 21. In fact, 87.9% of spouses in the age group below 18 were women, and 86.0% in the age group 18 – 21. The percentages for Turkish nationals were 98.0% and 83.8%.

Moreover, a breakdown of spouses joining their spouses by the nationality of the sponsor shows that more women join husbands with a third-country nationality than husbands with German nationality (80.4% vs. 62.1%). In the case of Turkish nationals joining foreigners the share of women was 73.5%, but in the case of Turkish nationals joining Germans it was only 38.1%.

Overall, 323 spouses who came to Germany were below 18, and 253 were above 65 years of age. This means that less than 1% of spouses belonged to each of these age groups. 39,332 spouses were aged between 21 and 65. This means that more than 90% of third-country nationals who joined their spouses in Germany belonged to this age group.

3.3 Conclusions regarding the size and composition of family reunification migration and their development

Overall the data show that family reunification migration has declined steadily since 2002. Since 2000, the number of reunifications with German spouses has exceeded that of reunifications with third country nationals in absolute terms. Overall, the share of spouses who joined German husbands or wives in total family reunification migration rose from about one-quarter in 1996 to almost half in 2006. The largest group are foreign wives who join their German husbands. During the same period the share of spouses who joined their foreign husbands or wives in total subsequent immigration declined from about 50% to roughly one-third. This development is partially due to higher naturalisation figures and reunification of dependents with (late) ethnic German resettlers.

Since family reunification migration was first registered as a separate type of migration in 1996, Turkey has been the main country of origin. Other important countries of origin (in terms of numbers) are the Russian Federation, Serbia and Montenegro and Thailand. In the case of Turkey wives joining their husbands with a third-country nationality predominated. In contrast, in the cases of the Russian Federation and Thailand, the number of wives who join their German husbands clearly outweighs that of any other family members who come to Germany. In case of the Russian Federation family reunification applications are often filed by dependents who want to join ethnic German resettlers. In Thailand the lion's share of visa was granted to wives who wanted to join their German husbands.

4. Conclusions and Outlook

Family reunification is highly regulated in Germany. During the negotiations about the European Family Reunification Directive Germany based its position on the draft Immigration Act (2001 – 2004) and was largely successful in pushing through its content. As a result, the complete implementation of the Directive in Germany in 2007 caused only marginal amendments to the Residence Act.

Family reunification migration to Germany has declined since 2002; according to the number of granted visa it fell by 41% between 2002 and 2006. This decline occurred relatively steadily and was not influenced by the entry into force of the Residence Act on 1 January 2005. The numbers did not drop more strongly until 2006. A comparison between the residence permits granted for family reunification reasons, as registered in the AZR, and the total number of third-country nationals who entered the country showed that family reunification migration accounted for 31.5% of total immigration in 2005, but only 28.5% in 2006. However, this figure does not include family reunification with EU citizens, which is regulated by the EU principle of the freedom of movement and is not registered separately.

The period for which the new Residence Act has been in force (since 1 January 2005) is too short to say whether its goal – better integration of foreigners thanks to age limits and an obligation to participate in integration courses – has been achieved. However, it should be borne in mind that this is only one of several measures to improve integration. In particular, the statistical data about family reunification migration are lacking in quality. It is not possible to make any statements about the potential overall numbers, as the number of relevant visa applications and rejections is not registered separately. In addition, there is no information on the number of applications made abroad and in Germany itself or on the sponsors. Finally, reunification with Union citizens is not registered in the statistics at all. The empirical data on potential abuse of the family reunification regulations (fake marriages) are lacking as well.

Article 19 of the Directive calls upon the Commission to „periodically, and for the first time not later than 3 October 2007, [...] report to the European Parliament and the Council on the application of this Directive in the Member States and [to] propose such amendments as may appear necessary.“ The proposals for amendments shall be made particularly in relation to Articles 3, 4, 7, 8 and 13. Currently, there is no discussion about such amendments in Germany.

References

- Bundesministerium des Innern** (Federal Ministry of the Interior) (2006): Bericht zur Evaluierung des Gesetzes zur Steuerung und Begrenzung der Zuwanderung und der Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz), Berlin: BMI.
- Bundesministerium des Innern/Bundesamt für Migration und Flüchtlinge** (Federal Ministry of the Interior/Federal Office for Migration and Refugees) (2005): Migrationsbericht 2005 des Bundesamtes für Migration und Flüchtlinge im Auftrag der Bundesregierung, Nürnberg.
- Bundesregierung** (Federal Government) (2007): Pressekonferenz zum Integrationsgipfel (Mitschrift) am Donnerstag, dem 12. Juli 2007 im Bundeskanzleramt (Transcript of the press conference on the integration summit, Thursday, 12 July 2007, Federal Chancellery), Online: <http://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2007/07/2007-07-12-pk-integrationsgipfel.html>.
- Deutscher Bundestag** (2003): Beschlussempfehlung und Bericht des Innenausschusses, Bundestags-Drucksache 15/955, Berlin.
- Deutscher Bundestag** (2007a): Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union, Bundestags-Drucksache 16/5065, Berlin.
- Deutscher Bundestag** (2007b): Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Sevim Dagdelen, Ulla Jelpke, Karin Binder, weiterer Abgeordneter und der Fraktion DIE LINKE - Drucksache 16/5201 „Geplante Regelungen zum Familiennachzug“, Bundestags-Drucksache 16/5498, Berlin.
- Deutscher Bundestag** (2007c): Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Sevim Dagdelen, Jan Korte und der Fraktion DIE LINKE - Drucksache 16/5355 „Probleme bei der Erteilung von Einreise- und Besuchserlaubnissen (Visa)“, Bundestags-Drucksache 16/5546, Berlin.
- Franz, Mariella** (2006): Familienzusammenführung in der Einwanderungspolitik der Europäischen Union. Rechtsfragen aus dem Europa- und Völkerrecht, in: IMIS-Beiträge 30, 45-68.

- Göbel-Zimmermann, Ralph** (2006): „Scheinehen“, Scheinlebenspartnerschaften“ und „Scheinväter“ im Spannungsfeld von Verfassungs-, Zivil- und Migrationsrecht, in: Zeitschrift für Ausländerrecht und Ausländerpolitik 26/3, 81-91.
- Göbel-Zimmermann, Ralph/Born, Manuela** (2007): Zwangsverheiratung – Integratives Gesamtkonzept zum Schutz Betroffener, in: Zeitschrift für Ausländerrecht und Ausländerpolitik 27/2, 54-60.
- Groenendijk, Kees** (2006): Familienzusammenführung als Recht nach Gemeinschaftsrecht, in: Zeitschrift für Ausländerrecht und Ausländerpolitik 26/5-6, 191-198.
- Hailbronner, Kay** (2006): Ausländerrecht Kommentar, 50. Aktualisierung Dezember 2006, Heidelberg: Müller.
- Hauschild, Christoph** (2003): Neues europäisches Einwanderungsrecht: Das Recht auf Familienzusammenführung, in: Zeitschrift für Ausländerrecht und Ausländerpolitik 23/8, 266-273.
- Hillgruber, Christian** (2006): Mindestalter und sprachliche Integrationsvorleistung. Verfassungsgemäße Voraussetzungen des Ehegattennachzugs?, in: Zeitschrift für Ausländerrecht und Ausländerpolitik 26/9, 304-317.
- Maaßen, Hans-Georg** (2006): Zum Stand der Umsetzung von elf aufenthalts- und asylrechtlichen Richtlinien der Europäischen Union, in: Zeitschrift für Ausländerrecht und Ausländerpolitik 26/5-6, 161-171.
- Renner, Günter** (2004): Ehe und Familie im Zeichen neuer Zuwanderungsregeln, in: Neue Zeitschrift für Verwaltungsrecht 23, 792-801.
- Scheer, Ralph** (1994): Der Ehegatten- und Familiennachzug von Ausländern. Eine Untersuchung zur Rechtslage nach Völkerrecht, nach Europarecht und nach ausgewählten nationalen Rechtsordnungen, Frankfurt/Berlin: Lang.
- Schöllhorn, Hermann** (2006): Die Familienzusammenführung mit Drittstaatsangehörigen im Recht der Europäischen Union, (Studien zum Völker- und Europarecht 29), Hamburg: Kovac.
- Sinn, Annette/Kreienbrink, Axel/Loeffelholz, Hans Dietrich von** (2006): Illegal aufhältige Drittstaatsangehörige in Deutschland: Staatliche Ansätze, Profil und soziale Situation. Forschungsstudie 2005 im Rahmen des Europäischen Migrationsnetzwerks, (Forschungsberichte des Bundesamtes für Migration und Flüchtlinge, Bd. 2), Nürnberg: BAMF.



Storr, Christian/et al. (2005): Kommentar zum Zuwanderungsgesetz – Aufenthaltsgesetz und Freizügigkeitsgesetz/EU, Stuttgart: Boorberg.

Walter, Anne (2006): Familienzusammenführung und Europäisierung. Entwicklung und Auswirkungen der Richtlinie 2003/86/EG, in: Anne Walter/Margarete Menz/Sabina De Carlo (Hg.): Grenzen der Gesellschaft. Migration und sozialstruktureller Wandel in der Zuwanderungsregion Europa, Göttingen: V&R unipress, 83-114.

Walter, Anne (2007): Familienzusammenführung in Europa: Völkerrecht, Gemeinschaftsrecht, nationales Recht, Diss. Jur., Fachbereich Rechtswissenschaften, Universität Osnabrück.



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