

## 2006 Policy Analysis Report on Migration and Asylum

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Bundesamt  
für Migration  
und Flüchtlinge

**German National Contact Point  
of the European Migration Network**

# **2006 Policy Analysis Report on Migration and Asylum**

**Heiko Hecht, Benjamin Abo Kadir  
Wilhelm Schulte, Manfred Kohlmeier**



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## Introduction

In its capacity as Germany's National Contact Point of the European Migration Network, the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge – BAMF) prepared the present report to inform the European Commission on the most important political debates and legal developments in the areas of immigration and asylum in the Federal Republic of Germany in the year 2006. On the one hand, these reports of the National Contact Points of the Member States allow the European Commission to compare and analyse the developments in the corresponding Member States, on the other hand, they are meant as a contribution to the correlating political debates on European level. The report's structure corresponds with the specifications agreed upon within the European Migration Network in order to obtain a coherent overview of the situation in the areas of migration and asylum in the Member States. In line with the principle of transparency governing the activities of the European Migration Network, however, the national policy reports are made available also to the general public.<sup>1</sup> A synthesis report will summarize the major developments in the Member States from a comparable perspective.

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<sup>1</sup> <http://www.european-migration-network.org> and <http://www.emn-germany.de>

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

### **1.1 Brief description of the general structure of the political system and of the institutions in the context of migration and asylum**

The German Federal Ministry of the Interior is in charge of a comprehensive area of responsibilities and handles, inter alia, issues relating to the migration and integration policy of the Federal Government.<sup>2</sup> These include the legislation governing the right of residence and the freedom of movement of foreigners and EU nationals, the Asylum Law, the integration of immigrants residing in Germany on the long term, return issues as well as issues of European harmonisation in this context. Moreover, the area of responsibilities of the Federal Ministry of the Interior comprises issues such as affairs relating to displaced persons and ethnic German repatriates (Spätaussiedler) and their reception, affairs relating to national minorities and linguistic groups in Germany, the assistance to German minorities living in the states of Central-Eastern and South-Eastern Europe, the GIS and the Baltic states as well as the Nationality Law. Moreover, the Ministry supervises the administrative and technical operations of the Federal Office for Migration and Refugees (BAMF).

As superior federal authority within the scope of the Federal Ministry of the Interior, the Federal Office for Migration and Refugees is in charge of the areas of migration, integration and asylum. It decides on asylum applications and subsidiary protection of refugees. Other major activities of the Federal Office comprise the fostering and coordination of the linguistic and social integration of immigrants in Germany. In addition, the Federal Office in its capacity as central control body, renders assistance in the distribution of Jewish immigrants from the former Soviet Union and provides information on the voluntary return assistance offered to foreigners who wish to return to their native countries. Another area handled by the Federal Office is the strengthening of the cooperation with its European partners in the areas of asylum and migration. With the entering into force of the Immigration Act on 1 January 2005, the Office was assigned new areas of responsibility. These include the development and implementation of integration courses (language and orientation courses) for immigrants, the re-orientation of the initial counselling of migrants and the fostering of projects to support the social integration of ethnic German repatriates (Aussiedler) and foreigners living in Germany on a long-term basis. At the same time the Federal Office for Migration and Refugees develops a nation-wide integration programme and supports the Federal Government in activities to promote integration. Further activities of the Office comprise the

provision of information and preparation of expert information materials both for immigrants and for foreigners' authorities, institutions running integration courses and other bodies actively involved in the area of integration. Moreover, the Federal Office is responsible for the Central Aliens' Register and undertakes scientific research on migration issues in order to gather and provide analytical findings to control immigration.

In December 1978, the "Office of the Federal Government's Commissioner for the promotion of the integration of foreign workers and their family members" was established under the control of the Federal Ministry of Labour and Social Affairs" The Commissioner's tasks comprised the observation of the situation of the foreign population and the preparation of proposals to handle and overcome related problems. With the entering into force of the Residence Act on 1 January 2005, the Office was renamed into "Federal Government's Commissioner for Migration, Refugees and Integration" and assigned to the area of responsibility of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. Since November 2005, Prof. Dr. Maria Böhmer has been in office as the Federal Government's Commissioner for Migration, Refugees and Integration as Minister of State within the Federal Chancellery. The Commissioner for Migration, Refugees and Integration is appointed by the Federal Government and supports the latter independently and in advisory function (Sections 92 – 94 Residence Act - AufenthG)<sup>3</sup>. The Commissioner's task is, inter alia, to promote the integration of foreigners living in Germany on a long-term basis, to support the Federal Government in the further development of its integration policy, to further develop the requirements that need to be fulfilled for a as peaceful as possible co-existence of foreign and German nationals and of different groups of foreigners, to promote the mutual understanding, and to fight against xenophobia and unjustified discrimination. Moreover, her tasks comprise the observation of the immigration to Germany and to the European Union as well as the development of the immigration to other states. The Commissioner must be consulted in new legislative projects of the Federal Government.

Due to the high number of ethnic German repatriates in 1988, the Federal Government decided on 28 September 1988 to establish the office of a "Federal Government's Commissioner for Matters Relating to Repatriates". The Commissioner for Matters Relating to Repatriates is in charge of coordinating all subject-related measures taken by the Federal Government, informs about all questions in the area of repatriates, provides assistance to German minorities in the countries of origin and serves as contact person for problems of ethnic German repatriates. The focus of activities, however, is on integration issues with the aim of enabling ethnic German repatriates to participate in the social, occupational and cultural life in Germany as fast and as sustainable as possible. By decision of 20 November 2002 the scope of activities of the Commissioner was

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<sup>2</sup> <http://www.bmi.bund.de>

<sup>3</sup> <http://www.integrationsbeauftragte.de/>

extended to cover also national minorities, i.e. Danes, Frisians, Sorbs as well as German Sinti and Roma. Since 1 February 2006, Dr. Christoph Bergner, the Parliamentary State Secretary of the Federal Ministry of the Interior, holds the office of the "Federal Government's Commissioner for Matters Relating to Repatriates and National Minorities".

## 1.2 General political developments

In 2006, a total of five regional elections to federal state parliaments were held in the Federal Republic of Germany. In the federal states of Baden-Württemberg, Rhineland-Palatinate and Saxony-Anhalt elections were held on 26 March 2006, in Berlin and Mecklenburg-Vorpommern on 17 September 2006. With 44.2 per cent of the votes in Baden-Württemberg, the Cristian Democratic Union (CDU) only just failed to achieve the absolute majority. Therefore, the acting prime minister of the local government, Günther Oettinger, continues to govern together with the Liberals FDP party (10.7 per cent).<sup>4</sup>

In Rhineland-Palatinate, the prime minister of the state government, Kurt Beck, managed to win the absolute majority by obtaining 45.6 per cent of the votes, which allows him to continue his government without coalition partner.<sup>5</sup>

In Saxony-Anhalt, the CDU again won the elections as the strongest political party with a total of 36.2 per cent of the votes. Since the former governing coalition could no longer be continued due to the bad result of the FDP, a coalition formed by CDU and the Social Democrats (SPD) and with Wolfgang Böhmer (CDU) as prime minister has governed this federal state since April 2006.<sup>6</sup>

The elections to the regional parliaments of Berlin and Mecklenburg-Vorpommern were won each by the SPD. In Berlin, the coalition formed by SPD and Left Party is being continued with Klaus Wowereit as Governing Mayor. Since the former coalition in Mecklenburg-Vorpommern formed by SPD and PDS achieved only an extremely narrow majority of 36 out of 71 seats, it was decided to form a Grand Coalition under the leadership of the prime minister of the state government, Harald Ringstorff.

The federalism reform adopted in June and July 2006 by both houses of the federal parliament (Bundestag and Bundesrat) with the required two-thirds majority constitutes the most comprehensive amendment of the German Basic Law (Grundgesetz) in the history of the Federal Republic of Germany since 1949. Above all, it regulates the legislative relation between the federal and the state government authorities and entered into force on 1 September 2006.<sup>7</sup> Following one year of consultations held by the "Joint Commission of Bundestag and Bundesrat on the

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<sup>4</sup> <http://www.landtagswahl-baden-wuerttemberg.de/>

<sup>5</sup> <http://www.wahlen.rlp.de/ltw/wahlen2006/index.html>

<sup>6</sup> <http://www.stala.sachsen-anhalt.de/wahlen/lt06/index.html>

modernisation of the German federal system“, the debate on the reform was temporarily interrupted in December 2004 due to differences in educational policy details, but newly taken up in March 2005. An agreement, however, could not be reached due to the early elections to the Federal parliament (Bundestag) so that another discussion of the issue could not be taken up anew before March 2006, as Union parties and SPD agreed it in their coalition agreement. The reform comprises the amendment of 25 articles of the Basic Law by which legislative processes are to be accelerated and be made more transparent. The reform is to reduce the number of bills requiring upper house (Bundesrat) approval from currently 60 per cent to somewhere between 35 and 40 per cent. The amendments mainly affect the areas of education, the Civil Service Law, interior policy, environment, finances and Europe.

### **1.3 Major political debates and developments related to migration, integration and asylum**

The discussions held in some federal states about the naturalisation criteria in the context of the contents of naturalisation tests were paid great attention throughout Germany. As a result of this debate on the naturalisation tests, the conference of the interior ministers of federal and local state governments (IMK) held in Garmisch-Partenkirchen on 5 May 2006 agreed to employ in principle the following naturalisation standards throughout Germany in future:

- Regular lawful permanent residence of eight years.
- Command of the German language, as defined by language level B 1 of the Common European Framework of References for Languages, which is to be proved by passing a written and oral language test.
- Higher requirements as regards legal loyalty: In future, already a conviction to pay a fine of 90 daily rates will exclude a person from being naturalised
- All persons willing to become naturalised are offered integration courses in all federal states, which are based on the same standards and contents throughout Germany to provide the participants with a civil basic knowledge and to make them familiar with the principles and values of the German Basic Law. The required knowledge to be acquired comprises in particular the subject areas of “democracy”, “solution of conflicts in a democratic society”, “constitutional state”, “social state”, “responsibility of every individual for the common weal”, “participation in political processes”, “equal rights of men and women”, “basic rights” and “state symbols”.
- Declaration of loyalty and commitment to the free democratic basis order.
- The naturalisation ceremony is to take place in a solemn setting and to be documented

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<sup>7</sup> <http://www.bgblportal.de/BGBL/bgbl1f/bgbl106s2034.pdf>



by taking an oath or making a solemn civic declaration.<sup>8</sup>

A resolution from 7 July 2006 adopted by the upper house of the German Parliament<sup>9</sup> requested the Federal Government to charge the Federal Office for Migration and Refugees with the preparation of a concept for naturalisation courses, of a naturalisation guide and of the standards to be employed for the provision of proofs, which are based on the contents of the integration/orientation courses.

On 14 July 2006, Federal Chancellor Dr. Angela Merkel opened for the first time in the history of the Federal Republic of Germany an Integration Summit, which was held in the Federal Chancellery. The Summit was attended by 86 participants from the federal and state governments, municipal associations, the economy, the areas of culture and sports, religious communities, migrants' organisations, social welfare associations, migrants as well as selected individuals related to the subject of integration.<sup>10</sup> The meeting was organised by the integration commissioner of the Federal Government, the Minister of State, Maria Böhmer. The call for holding such summit became aloud especially after the media had informed about the violent situation at the Berlin Rütli school.<sup>11</sup> The Integration Summit is meant to mark the beginning of an ongoing process of dialogue with the migrants in Germany.

The declaration of the Federal Government titled "Gutes Zusammenleben – klare Regeln" (Living with one another in harmony on the basis of clear rules) of 12 July 2006 provides answers to the question of which subjects of main emphasis have been identified and hence point the way for the further work of the National Integration Plan.<sup>12</sup> It comprises, inter alia, the following statements:

- The Federal Government considers the integration of immigrants as one of the big political and social challenges and as a political key task to be addressed,
- the families need to be strengthened in their function as drive force behind integration,
- the demographic change and the growing worldwide competition for the best brains needs to be addressed and immigration needs to be used in a targeted manner to support the economic and social interests of the country,
- integration deficits among the second and the third generation need to be identified and linked to the need of taking measures to counter the formation of a "lost generation",

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<sup>8</sup> [http://www.bundesrat.de/cln\\_050/DE/gremien-konf/fachministerkonf/imk/Sitzungen/06-05-05/06-05-05-2-Beschluesse.templateId=raw.property=publicationFile.pdf/06-05-05-2-Beschluesse.pdf](http://www.bundesrat.de/cln_050/DE/gremien-konf/fachministerkonf/imk/Sitzungen/06-05-05/06-05-05-2-Beschluesse.templateId=raw.property=publicationFile.pdf/06-05-05-2-Beschluesse.pdf)

<sup>9</sup> Drucksache 460/06.

<sup>10</sup> <http://www.bundesregierung.de/Content/DE/Artikel/2006/07/2006-07-14-pressekonferenz-integrationsgipfel.html>

<sup>11</sup> Newsletter 'Migration und Bevölkerung' (migration and population), 6th edition, August 2006.

<sup>12</sup> <http://www.bundesregierung.de/Content/DE/Artikel/2006/07/2006-07-12-integrationsgipfel-papier.html>

- integration needs to be defined as identification, participation and responsibility, whose success depends on common efforts to be taken by the state, society and the migrants and which needs to be realised on the basis of the values, the cultural identity and the free democratic basis order of the Federal Republic of Germany,
- the Residence Act (Aufenthaltsgesetz) is acknowledged as a means for undertaking the first important step towards the systematic promotion of the integration of migrants living lawfully and on a permanent basis in Germany; it underscores the responsibility of the Federal Government regarding the provision of language support measures for immigrants and their familiarisation with the law, culture, history and the political structure of Germany, and
- defines the coordination and bundling of integration measures on all levels of state and society as a goal to be achieved.

As a result of the Integration Summit, working groups on the following subject areas were formed:

- Working group 1: “Improvement of integration courses”,
- Working group 2: “Early language training courses”,
- Working group 3: “Education, vocational training and labour market”,
- Working group 4: “Situation of women and girls, equal rights”,
- Working group 5: “Local integration activities”,
- Working group 6: “Integration and civil society”

On the basis of the outcomes of the work of the groups, Prof. Dr. Maria Böhmer, the Integration Commissioner in charge of the overall coordination, will prepare a draft version of the National Integration Plan.<sup>13</sup> It is to contain clear goals, concrete measures and a voluntary commitment of all levels involved from the federal, state and regional governments as well as of members of the civil society to serve as a basis for a sustainable integration policy and to offer criteria for the evaluation and implementation of measures. The Federal Chancellor will present the National Integration Plan to the public in summer 2007.

By announcing the German Islam Conference in spring 2006, Federal Interior Minister Dr. Wolfgang Schäuble has started to implement the mission of intensifying the inter-religious and inter-cultural dialogue with the Muslim population as it has been agreed in the coalition agreement. The German Islam Conference is to be understood as a process on the longer term and wants to provide for an institutionalised dialogue between the state and the people living in Germany who have a Muslim background. By commonly reached agreements, a better integration of the Muslim population is to be achieved. This includes the objective to make visible to the general public the diversity of Islamic life existing in Germany. On 27 September 2006, Federal Interior Minister Dr.

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<sup>13</sup> <http://www.bundesregierung.de/Content/DE/StatischeSeiten/Breg/IB/2006-10-27-ib-nationaler-integrationsplan.html>

Wolfgang Schäuble opened the first Islam Conference in Berlin.<sup>14</sup> Fifteen representatives of the federal, state and regional level, one representative each of the Alevite Community in Germany, the Turkish-Islamic Union (DITIB), the Islamic Council, the Central Council of Muslims in Germany and the Association of Islamic Cultural Centres (VIKZ) as well as ten personalities with a Muslim background were invited to participate in the opening ceremony.

The conference was held at a time when Islam was in the focus of attention of politics and society in Germany due to a number of events. Inter alia, the controversies on the Muhammad cartoons, the failed suitcase bomb attacks and the temporary suspension of a Mozart opera in Berlin triggered off again a debate on the relation to Islam against the backdrop of the free democratic basis order. On the one hand, the conference addresses the need to improve the integration and the social participation of the Muslims. On the other hand, it raises also the question, whether the majority of the society recognises that Islam and the Muslims meanwhile have become an integral part of the German society. Last not least, aspects of internal security play a certain role in this debate.<sup>15</sup>

As an outcome of the talks held, it is planned to achieve a broad consensus on the adherence to social and religious policy principles. In doing so, the preservation and the observance of the free democratic basis order is to the fore. In the course of the Islam Conference it will be discussed how religious customs and traditions of Islam can be brought in line with the German constitutional order and how Islam as a religion without church can meet the organisational requirements of the German religious constitutional law. The relation between “state and religion” and “state and citizens” is on focus of the German Islam Conference. Representatives of the government, of the Muslim population and scientific experts will meet in three working groups and one discussion group to analyse important issues concerning the co-existence and to prepare recommendations on actions to be taken. The German Islam Conference deals with the following general subject areas:

- Working group 1: “German social system and agreed values”,
- Working group 2: “Religious issues in the context of the German constitutional concept”,
- Working group 3: “Economy and media as mediators”,
- Discussion group: “Security and Islamism”.

## 1.4 Institutional developments

A large number of authorities in Germany are involved in combating illegal migration and the crime related to it. Previously, there had been no national central body to coordinate the authorities involved on a permanent basis. To tackle this lack, the Common Analysis and Strategy Centre on

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<sup>14</sup>[http://www.bmi.bund.de/cln\\_028/nn\\_1018358/Internet/Content/Nachrichten/Pressemitteilungen/2006/Einzelseiten/Islamkonferenz\\_Kurzinfo%2Ctemplated%3DrenderPrint.html](http://www.bmi.bund.de/cln_028/nn_1018358/Internet/Content/Nachrichten/Pressemitteilungen/2006/Einzelseiten/Islamkonferenz_Kurzinfo%2Ctemplated%3DrenderPrint.html)

<sup>15</sup> Newsletter ‚Migration und Bevölkerung‘ (Newsletter ‘migration and population’), 8th edition, October 2006.

illegal Migration (Gemeinsames Analyse- und Strategiezentrum illegale Migration – GASIM) started its work in Berlin in June 2006.<sup>16</sup> The GASIM bundles the expert competences of the Federal Office of Criminal Investigation (BKA), the Federal Police, the Federal Office for Migration and Refugees (BAMF), the Financial Control Department for Illicit Work, the Federal Intelligence Service (BND), the Federal Office for the Protection of the Constitution (BfV) and of the Federal Foreign Office (AA). On the basis of the existing legal framework conditions, thus a permanent, cross-authority information and cooperation centre has been established whose activities do not require a change of the corresponding responsibilities and competences of the authorities involved. This is to allow an improvement of the information basis with regard to facts worth to be evaluated, to set priorities and to ongoing investigations. International relations and interdependences are to be identified and clarified in a better way. This leads to a consequent and networked utilisation of all constitutional possibilities to combat illegal migration. Moreover, the GASIM is to serve as a kind of early warning system for the authorities involved and on political level.

On 10 April 2006, a Council for Repatriates' Affairs has been established at the Federal Ministry of the Interior.<sup>17</sup> Repatriates are ethnic Germans from countries of the former Soviet Union and other states of the former Eastern block who settle in Germany. This body, which incorporates representatives of 16 federal states, of associations of displaced persons, the churches, the municipal umbrella associations, the social welfare associations and the leading associations of employers and employees, is to provide expert advice to the Federal Government on issues relating to the reception and integration of ethnic German repatriates. Against the backdrop that about 4.5 million ethnic German repatriates have been integrated successfully into the German society since 1950, the Council considers the information of the general public about the integration achievements of the repatriates as one of its most important tasks. The problems among young male repatriates to be observed only in individual cases would have to be classified in appropriate way and should be considered temporary phenomena that are due to the repatriation. Contrary to the wide-spread opinion, ethnic German repatriates would not constitute a special problem group but would in their majority rather integrate well into the German society. The members of the Council asked the Federal Government to pay appropriate attention to ethnic German repatriates who, due to their fate as a consequence of war, still constitute a special group of immigrants. In the interest of integration, especially the unification of the core families of ethnic German repatriates would be desirable.

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<sup>16</sup>[http://www.bmi.bund.de/nn\\_662928/Internet/Content/Nachrichten/Pressemitteilungen/2006/07/Gemeinsames\\_Analyse\\_20und\\_Strategiezentrum\\_20illegale\\_Migration\\_GASIM.html](http://www.bmi.bund.de/nn_662928/Internet/Content/Nachrichten/Pressemitteilungen/2006/07/Gemeinsames_Analyse_20und_Strategiezentrum_20illegale_Migration_GASIM.html)

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## 2. Legislative developments in the area of migration and asylum

### 2.1 Brief description of the general structure of the legal system

#### 2.1.1 Legal background

The Foreigners' Law applicable in Germany – including the asylum and refugee laws - is based<sup>18</sup> on both international law and in the European community law, but also on the German constitutional and the statute law. In the area of international law, the most important conventions include the Convention Relating to the Status of Refugees (the so-called Geneva Refugee Convention), the Convention Relating to the Legal Status of Stateless Persons and the European Convention on Human Rights and Fundamental Freedoms. Citizens of the European Union and their family members have long been subject to Community provisions, which had been combined until the end of 2004 in the Residence Act/EEC and the Ordinance on the Freedom of Movement, and which are now contained in the Freedom of Movement Act/EU since 1 January 2005. Especially over the past years, Community law has considerably gained importance. As a direct result of Community law, EU citizens and citizens from EEA states (Iceland, Liechtenstein and Norway) enjoy freedom of movement in Germany. Swiss nationals enjoy generally the same rights due to the Treaty on the Free Movement of Persons concluded between the EU and Switzerland. Transitional provisions apply to workers from the new Member States (except Malta and Cyprus) which joined the EU on 1 May 2004. Some third-country nationals enjoy privileges in the area of entry and residence permits. Among these are e.g. Turkish workers and their family members whose legal status is defined in Resolution 1/80 of the EEC/Turkey Association Council and persons from Central and Eastern European states according the Europe Agreements (e.g. with Romania and Bulgaria). Community law also directly regulates the relation to states outside the European Union, whose citizens are required to apply for visa (EC Visa Regulation 539/2001 of 15 March 2001). Besides the provisions of the Convention implementing the Schengen Agreement govern entry and short-term residence. Only longer-term residence is exclusively governed by German provisions that have been amended in the new Immigration Act<sup>19</sup>.

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<sup>17</sup> [http://www.bmi.bund.de/nr\\_662928/Internet/Content/Nachrichten/Pressemitteilungen/2006/04/Beirat\\_fuer\\_Spaetaus\\_siedlerfragen\\_konstituiert.html](http://www.bmi.bund.de/nr_662928/Internet/Content/Nachrichten/Pressemitteilungen/2006/04/Beirat_fuer_Spaetaus_siedlerfragen_konstituiert.html)

<sup>18</sup> cf. introduction by *Renner*, Deutsches Ausländerrecht (German Foreigners' Law), 20th edition, 2005. Beck-Texte.

<sup>19</sup> Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern) of 30 July 2004 (BGBl. I p. 1950).

### **2.1.2 Governing legislation in the area of migration**

The most important law regulating the entry, residence and employment is the “Law Governing the Residence, Gainful Employment and the Integration of Foreign Nationals in the Federal Republic of Germany” (Residence Act – AufenthG) of 30 July 2004. The Residence Act serves to control and limit the immigration of foreign nationals to the Federal Republic of Germany. It allows and regulates immigration taking into consideration the reception and integration capacities as well as the economic and labour-market specific interests of Germany.

The Residence Act distinguishes two types of residence titles: the (limited) resident permit and the (unlimited) settlement permit (Sections 7 – 9 Residence Act – AufenthG). The Residence Law is oriented towards the purposes of the residence. These comprise particularly:

- Gainful employment,
- university studies and vocational training,
- family reunification,
- humanitarian or political reasons or reasons relating to international law

Also a visa is to be considered a residence title. Its function – depending on the reason for its application stated in the course of the visa procedure – corresponds to one of the types of residence permits mentioned above. The primary difference is that the visa is issued by a German diplomatic representation abroad. For the citizens of the most countries it is compulsory to obtain a visa. Therefore, the residence title must in principle be obtained from the German diplomatic representation abroad before entering the country.

Foreign nationals who enter the country for the purpose of taking up gainful employment must contact the foreigners’ authority in charge. The foreigners’ authority contacts the employment administration (Federal Employment Agency) to obtain its consent to the work permit and grants it together with the residence permit in a single procedure.

Highly-qualified workers are usually granted a permanent residence title and are entitled to obtain a settlement permit immediately upon entering the country (Section 19 of the Residence Act). It is issued for an indefinite period of time and not restricted to a certain territory, and it entitles the holder to take up gainful employment without any further approval procedure by the Federal Employment Agency. Family members entering the country at the same time or joining the person at a later point in time are entitled to take up gainful employment as well. Self-employed persons are normally granted a residence permit if there is an overriding economic interest or a regional need, if the activity is expected to have a positive effect on the economy and if its financing is guaranteed. Generally these prerequisites are fulfilled, if at least 10 jobs are created and a minimum of 1 million euros is invested (Section 21, Residence Act).

In normal cases, a settlement permit can in principal be granted only after having resided in the country for a certain period of time (Section 9, sub-section 2, Residence Act).

After having successfully finished their studies, foreign students have the right to stay in Germany for one year in order to seek a job that corresponds to their qualification (Section 16, Residence Act).

The Ordinance on Residence, the Ordinance on Employment<sup>20</sup> and the Ordinance on Lawful Employment of Foreigners already living in Germany<sup>21</sup> are also important legal instruments relevant for the area of immigration. The Ordinance on Residence, inter alia, regulates the exemption from the passport obligation, the admission of substitute passport documents, details of the visa procedure, the solicitation of a residence title after entering the country, the fees charged for official acts, the passport-related obligations of foreigners as well as the maintenance of data files and registers and the exchange of data between different authorities.

The Ordinance on Employment and the Ordinance on Lawful Employment of Foreigners already living in Germany regulate the admission of foreigners entering the country for the first time to take up employment and the admission of foreigners already residing in Germany.

The foreigners' authorities are the competent bodies for measures and decisions relating to residence and passport provisions pursuant to the Residence Act and the provisions of other acts relating to the Foreigners' Law. The foreigners' authorities are authorities of the federal states; in most of the federal states, the corresponding tasks have been transferred to the municipal or regional administrations. The Federal Police supports within their field of activity the foreigners' authorities when implementing forced measures based on the Residence Act, e.g. when implementing orders to leave the country (deportation orders).

### **2.1.3 Governing legislation in the area of integration**

The Residence Act also regulates by law the minimum framework for official offers to promote integration (language courses, orientation courses) (Sections 43 ff. Residence Act). New immigrants residing in Germany on a permanent basis are entitled to participate in integration courses (Section 44, sub-section 1, Residence Act). In case of an insufficient command of German, new immigrants are obliged to participate (Section 44a, sub-section 1, Residence Act). If the foreigner does not comply with his or her duty, the foreigners' authority informs the foreign national about the consequences resulting from his or her non-compliance (Section 44a, sub-section 3, Residence Act). Non-participation in integration courses is to be taken into consideration in the renewals of residence permits (Section 8, sub-section 3, Residence Act), which in consequence can result in a refusal to renew the residence permit. Moreover, social welfare benefits paid to persons who do not comply with their obligation to attend the courses may be cut during the time of non-attendance (Section 44a, sub-section 3, Residence Act). The participation in

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<sup>20</sup> Ordinance on the admission of foreigners entering Germany for the first time to take up gainful employment of 22 November 2004.

<sup>21</sup> Ordinance on the application procedure and the admission of foreigners residing in Germany to take up gainful employment of 22 November 2004.

an integration course is, as a principle, a requirement for being granted a settlement permit (Section 9, sub-section 2, sentence 2, Residence Act). Moreover, the successful completion of an integration course can reduce from eight to seven years the minimum time of residence in Germany required for being naturalised (Section 10, sub-section 3, Nationality Act – StAG). In case of certain types of unemployment or in case of a special need for integration, foreigners can be obliged by the foreigners' authority to attend a course as long as course capacities are available (Section 44a, Residence Act).

The “Ordinance on the Implementation of Integration Courses for Foreigners and Repatriates” (Ordinance on Integration Courses – Integrationsverordnung, IntV) of 13 December 2004 was issued on the basis of Section 43, sub-section 4 of the Residence Act and regulates the details concerning integration courses, particularly their duration and contents as well as the administrative procedure including the settlement of integration course fees. According to Section 10 of the Ordinance on Integration Courses, an integration course comprises 630 lessons, consisting of a language course to allow the acquisition of a sufficient command of the language (600 lessons) as well as an orientation course (30 lessons) to provide knowledge about the German legal system, its history and culture.

As an overall task, integration covers all areas of governmental acting on federal, state and municipal level. On federal level, the Federal Ministry of the Interior coordinates the measures aimed at improving integration, which are co-financed by different federal ministries. The Federal Ministry of Labour and Social Affairs, for instance, offers various projects to support occupational training and the creation of vocational training opportunities and courses to improve integration opportunities. In the area of integration promotion, the Federal Office for Migration and Refugees plays a central role by handling the tasks, which can be outlined in brief as follows:

- Conception of integration courses as well as the approval of teachers and their qualification, approval of institutions running courses, preparation of tests, exams and teaching materials,
- implementation of concrete local integration activities through its 23 regional offices located throughout Germany
- Support and realignment of the institutions offering initial migration counselling,
- Expert support to the Federal Government in the area of integration promotion and the preparation of information material on integration offers on federal, state and regional level available to foreigners and repatriates,
- development of a Germany-wide integration programme,
- support of community-orientated projects and measures aimed at integrating foreigners and repatriates into the society, allocation of support funds provided by the European



Union (European Refugee Fund – ERF) to promote the reception, integration, and the voluntary return of refugees, displaced persons and asylum seekers.<sup>22</sup>

#### **2.1.4 Governing legislation in the areas of asylum and refugee protection**

According to Article 16 a, sub-section 1, of the German Basic Law (Grundgesetz – GG), persons suffering political persecution have the right to be recognised as entitled to asylum. The examination whether or not an asylum applicant is suffering from political persecution in his or her home country is done in the course of the asylum procedure on the basis of the Asylum Procedure Act (AsylVfG). Foreigners who are not entitled to asylum, for example because they have entered Germany from a safe third-country (Article 16a, sub-section 2, Basic Law) can be granted protection against deportation according to Sections 60 ff. Residence Act, if they are threatened by political persecution.

If an applicant is recognised as being entitled to asylum or if he or she is found to fulfil the requirements pursuant to Section 60, sub-section 1, Residence Act, he or she is granted a residence permit limited to a maximum of three years (Section 25, sub-sections 1 and 2, Residence Act). Within the Federal territory, he or she enjoys the legal status pursuant to the Geneva Convention as well as privileges as regards labour, occupational and social rights. After three years, he or she has the right to be granted an unlimited settlement permit, if the Federal Office certifies that there are no reasons for revoking or withdrawing the positive decision. Prior to this, it will be examined if the situation in the country of origin has changed (Section 26, sub-section 3, Residence Act). Persons entitled to asylum and persons being protected under the Geneva Refugee Convention are granted unlimited access to the labour market (Section 25, sub-section 2, Residence Act).

If the application for asylum or for the determination of the fulfilment of the requirements pursuant to Section 60, sub-section 1 of the Residence Act are rejected as unfounded or manifestly unfounded, it is examined if, due to the situation in the home country, the requirements pursuant Section 60, sub-sections 2 to 7, Residence Act, are fulfilled which do not allow deportations for humanitarian reasons (subsidiary protection). This is the case if the foreigner is threatened in his or her home country by the death penalty, torture or other inhuman or humiliating treatments or if other threats to his or her life exist.

In such cases, a limited residence title can be granted on a regular basis as long as the reason for the ban on deportation exists.<sup>23</sup>

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<sup>22</sup> [http://www.bamf.de/clin\\_042/nn\\_566312/DE/Integration/integration-node.html\\_nnn=true](http://www.bamf.de/clin_042/nn_566312/DE/Integration/integration-node.html_nnn=true)

<sup>23</sup> [http://www.bamf.de/clin\\_042/nn\\_564936/DE/Asyl/Asylverfahren/Verfahrensablauf/verfahrensablauf-03-anhoerung-und-entscheidung.html](http://www.bamf.de/clin_042/nn_564936/DE/Asyl/Asylverfahren/Verfahrensablauf/verfahrensablauf-03-anhoerung-und-entscheidung.html)

The Federal Office for Migration and Refugees decides on asylum applications and determines whether the requirements pursuant to Section 60, sub-section 1 of the Residence Act are fulfilled (Section 5 of the Asylum Procedure Act – AsylVfG). It also decides, if – following the application for asylum – the requirements for being granted subsidiary protection are fulfilled (Section 24, sub-section 2, Asylum Procedure Act). The foreigners authority decide about applications that refer solely to being granted subsidiary protection. The foreigners' authorities of the federal states are also in charge of regulating the residence during and after completion of the asylum procedure. Negative decisions of the Federal Office may be appealed before the administrative courts, preliminary proceedings (protest procedure prior to suing a public authority) does not take place (Sections 74 ff. Asylum Procedure Act).

## **2.2 Legal developments related to migration, integration and asylum**

In 2006, there were no substantial changes in the legislation as for instance introduced by the entry into force of the Immigration Act on 1 January 2005 (cf. Policy Report 2005).

However, it should be noted the political agreement reached by the standing conference of the interior ministers and senators (IMK) on 17 November 2006 regarding the right to remain of long-term tolerated persons, according to which foreign nationals obliged to leave the country, who can de facto be considered as integrated in Germany in economic and social terms, can be granted a right to remain of a maximum of two years on the basis of Section 23, sub-section 1, Residence Act as of the date of taking the decision<sup>24</sup>. Accordingly, the right to remain can be granted only to foreign nationals who have been living in Germany for a minimum of eight years. Families with children who go to school or kindergarten can be granted the right to remain after a time of residence of six years already. Another prerequisite to be fulfilled is a fixed employment that allows the person or the family to earn their livings without having to depend on supplemental social welfare benefits. Persons who cannot fulfil these prerequisites may obtain a toleration certificate limited until 30 September 2007 to find permanent employment. The decision of the conference of the interior ministers also comprises a number of criteria that exclude the granting of the right to remain. Accordingly, no right to remain can be granted to persons who have intentionally deceived the foreigners' authority in charge on circumstances relevant in terms of Residence Law, who maintain relations to extremist or terrorist circles or who have committed a serious criminal offence. This regulation is to be given a statutory foundation in the course of 2007.

A report of the Federal Ministry of the Interior on the evaluation of the Immigration Act<sup>25</sup> published in July 2006, came, as far as this is possible after only one and a half year of being in force, to the

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<sup>24</sup> [http://www.stmi.bayern.de/imperia/md/content/stmi/ministerium/imk/pressemitteilungen/pm\\_21\\_anlage\\_bleiberecht.pdf](http://www.stmi.bayern.de/imperia/md/content/stmi/ministerium/imk/pressemitteilungen/pm_21_anlage_bleiberecht.pdf)  
<sup>25</sup> [http://www.bmi.bund.de/cln\\_012/nn\\_161630/Internet/Content/Themen/Auslaender\\_Fluechtlinge\\_Asyl\\_Zuwanderung/DatenundFakten/Evaluierungsbericht.html](http://www.bmi.bund.de/cln_012/nn_161630/Internet/Content/Themen/Auslaender_Fluechtlinge_Asyl_Zuwanderung/DatenundFakten/Evaluierungsbericht.html)

conclusion that the new provisions have proved successful in principle. The objectives pursued by the Act would have been achieved, even though there would be the need of improving one or another detail. According to the report, the new provisions on labour migration and on the new procedure according to which the foreigners' authorities and the employment agencies cooperate within the framework of an internal administrative procedure when applying the Residence Act to decide on a person's taking up of an employment and the fact that only the foreigners' authorities finally make a decision in one single administrative act (the so-called 'one-stop-government') have proved successful. In the area of refugee protection, the extension of Section 60, sub-section 1, Residence Act to cases of non-governmental persecution and the clarification of cases of gender-specific persecution would have proved successful, too. The expected rapid increase in the number of asylum applicants as a result of the extension would not have happened, according to the report.

The evaluation report also stresses that the inclusion of the provisions on integration into the Residence Act has been an important step into the right direction. The final appraisal of the integration courses, however, would be left to the verdict given in the investigation commissioned to the company Rambøll-Management. This investigation, which has been presented meanwhile,<sup>26</sup> acknowledges that the gaps and deficits in the language support to immigrants, which had been observed in the past, meanwhile have been closed and remedied. However, the investigation also revealed weak points: only 40 per cent of the course participants sat for the voluntary final exam. The provisions of the Residence Act on the termination of residences would in principle be sufficient. It is recommended to further conclude readmission agreements with countries of origin and promote voluntary returns also in future.

For the area of internal security and the fight against terrorism, the relevant provisions contained in the Immigration Act, particularly in the area of forced terminations of residences, have proved successful. There would be the need, however, to improve cross-authority co-operation. In this context the report refers to the Common Analysis and Strategy Centre on Illegal Migration (GASIM) in Berlin that has been extended meanwhile.

The evaluation report concludes that the reduction of the number of residence titles from five (residence title for exceptional circumstances, residence title for specific purposes, limited and unlimited residence title, right of unlimited residence) to three (limited residence permit, unlimited settlement permit, visa) could be considered an improvement of the statutory situation. The Freedom of Movement Act/EU, which entered into force as article 2 of the Immigration Act on 1 January 2005 and which regulates the residence of Union citizens and their family members, would have proved successful, too.

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<sup>26</sup>[http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Themen/Zuwanderung/DatenundFakten/Evaluation\\_Integrationskurse\\_de.templateId=raw.property=publicationFile.pdf/Evaluation\\_Integrationskurse\\_de.pdf](http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Themen/Zuwanderung/DatenundFakten/Evaluation_Integrationskurse_de.templateId=raw.property=publicationFile.pdf/Evaluation_Integrationskurse_de.pdf)

### 3. Implementation of EU legislation

The Federal Republic of Germany is obliged to implement and transpose into national law eleven directives in the area of the foreigners' and asylum law, which were adopted by the European Union in the period between November 2002 and December 2005. Eight directives in the areas of the foreigners' law and the law governing the freedom of movement comprise immigration policy measures and, moreover, also address the harmonisation of provisions regarding the protection and the fight against illegal immigration. The preparatory works on a bill to implement the directives of the European Union in the areas of foreigners' and asylum law had begun by the end of 2004 and a first draft bill was presented by March 2005 already. Yet, a legislative initiative subsequently prepared in spring 2005 by the Federal Government lead by the former Federal Chancellor Schröder could not be introduced within the legislative period of the German Bundestag and be adopted due to the announcement of new elections, the dissolution of the German Bundestag und the subsequent elections to the German Bundestag held on 18 September 2005<sup>27</sup>. The political parties of CDU/CSU and SPD forming the Federal Government have agreed in their coalition agreement of 11 November 2005 that the Law on the Implementation of the Directives should be introduced immediately into the parliamentary legislative procedure. Following the formation of the new government, the works on the draft bill were taken up again<sup>28</sup>, however they have not been completed in 2006.

The following table gives an overview of the status of the – already effected or foreseen – national implementation of Community law in the area of migration law:

Legislation	Transposition deadline	Progress of the transposition procedure
<p><b>Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence.</b>  <i>(EU Official Journal no. L 328 of 05 Dec. 2002, p. 17)</i>, entry into force on 5 December 2002</p>	<p>5 December 2004</p>	<p>The Directive has already been transposed into German law in the Immigration Act, which entered into force on 1 January 2005. In accordance with the provisions of the Directive, sec. 95-97 of the Residence Act contains the corresponding criminal provisions on the penalties for unauthorised entry and facilitation of such entry. Attempted facilitation is not yet a criminal act, but that is to be</p>

<sup>27</sup> German Bundestag, Drucksache (printed matter) 16/80 of 23 November 2005.

<sup>28</sup> Maaßen, Zeitschrift für Ausländerrecht und Ausländerpolitik (Magazine on foreigners' law and foreigners' policy - ZAR), 5-6/2006.

		<p>introduced into the second Act Amending the Residence Act, which is currently in preparation, and other laws.</p> <p>The Commission initiated infringement proceedings (2005/0049) for failure to transpose the Directive in sufficient time in a formal notice of complaint sent on 4 February 2005. In response to the statement with reasons sent by the EC Commission on 5 July 2005, Germany asked in a message dated 13 September 2005 for the infringement proceedings to be suspended for the time being due to the planned re-election of the German Bundestag on 18 September 2005 and promised to provide a detailed schedule for the Second Amending Act. At the same time, formal notice was given of partial transposition of the Directive.</p>
<p><b>Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification</b> (EU Official Journal no. L 251 of 03 Oct. 2003, p. 12), entry into force on 3 October 2003.</p>	3 October 2005	<p>Many of the provisions on family reunification in the Immigration Act are already based on the Directive. Only a few marginal additions to the Residence Act are necessary, such as a specification of the length of validity of residence permits for family members, which is currently provided by administrative practice. The pending change in the Residence Act is intended primarily to provide better protection against forced marriage for young aliens by specifying a minimum age for subsequent immigration of spouses. Including a reason for the exclusion of subsequent immigration by family members in the case of fictitious marriages it is intended to prevent the misuse of a right of residence, particularly for illegal purposes such as forced prostitution. Other planned changes to applicable law include allowing subsequent immigration of unmarried minor children of the spouse of the alien who has custody and pays for the support of the children, as well as the mandatory waiver of documentation promising living support for family members joining refugees under the Geneva Refugee Convention under certain conditions.</p>
<p><b>Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents</b> (EU Official Journal no. L 016 of 23 Jan. 2002, p. 44), entry into force on 23 January 2003.</p>	23 January 2006	<p>The provisions of the Directive require a change in the Residence Act, among other things by creating a "settlement permit – long-term residence for EC nationals" and creating provisions on the mobility of people from other Member States who are entitled to long-term residence by introducing a new element for granting of such status. Provisions on the intra-community exchange of data about the granting of long-term residence and on implementation of intra-community repatriation measures are also required.</p>

<p><b>Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities</b> <i>(EU Official Journal no. L 261 of 06 Aug. 2004, p. 19),</i> entry into force on 6 August 2004.</p>	<p>6 August 2006</p>	<p>The Directive is to be transposed by the Act Amending the Residence Act, which is in preparation, and other laws. This includes creation of a residence permit for temporary residence for the duration of participation in criminal proceedings with a release from general requirements for granting of such a permit. The Residence Act must also contain a reflection period of at least four weeks before leaving the country so the person can consider cooperating with the competent authorities.</p>
<p><b>Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service</b> <i>(EU Official Journal no. L 375 of 23 Dec. 2004, p. 12),</i> entry into force on 12 January 2005.</p>	<p>12 January 2007</p>	<p>Some adjustments to the provisions on the admission of students, creation of the corresponding rules on mobility in the Residence Act, and an adaptation of provisions on the cancellation of residence permits will be contained in the pending amendment to the Residence Act.</p>
<p><b>Council Directive 2005/71/EC of 12 November 2005 on a specific procedure for admitting third-country nationals for purposes of scientific research</b> <i>(EU Official Journal no. L 289 of 03 Nov. 2005, p. 15),</i> entry into force on 23. November 2005.</p>	<p>12 October 2007</p>	<p>Transposition of the Directive primarily requires creation of a separate element for granting of a residence permit for “researchers” and the transposition of mobility provisions into the Residence Act, as well as inclusion of the admission procedure in the Residence Ordinance.</p>
<p><b>European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC,</b></p>	<p>29 April 2006</p>	<p>Laws on residence for EU citizens have been changed and it is now governed at the national level by the Immigration Act. This overall revision anticipated the transposition of the Directive in two important areas. For example, the abolition of the residence permit for EU citizens which is specified by the Directive is already provided for; there has also been a right of permanent residence at the national level since entry into force of the Freedom of Movement Act for EU Nationals (promulgated as Article 2 of the Immigration Act) on 1 January 2005 – although only for a limited group of people. Other adjustments to the Freedom of Movement Act for EU Nationals relate to the definition of family</p>

<p><b>90/365/EEC and 93/96/EEC</b>  <i>(EU Official Journal no. L 158 of 30 April 2004, p. 77),</i>  entry into force on 30. April 2004.</p>		<p>members, expansion of the right of permanent residence, the creation of provisions on its continuation during long-term absence from German territory, and the continuation of the right of residence for family members after the person concerned dies or moves away (EU citizens) while simultaneously avoiding “chains” of subsequent immigration by family members.</p>
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The three Directives on asylum whose implementation is pending represent the central elements of the harmonization of asylum law in the European Union. The harmonization that will require changes in the Asylum Procedure Act and the Residence Act involves all main aspects related to asylum: the substantial prerequisites for providing protection, the related status rights, structuring of the asylum procedure, and the living conditions of the asylum seekers. Here are the details:

<b>Legislation</b>	<b>Transposition deadline</b>	<b>Progress of the transposition procedure</b>
<p><b>Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States</b>  <i>(EU Official Journal no. L 031 of 06 Feb. 2004, p. 18),</i>  entry into force on 6 February 2003.</p>	<p>6 February 2005</p>	<p>Most of the conditions for accepting asylum seekers which are specified in the Directive have already been fulfilled under applicable law. The Asylum Procedure Act needs to be changed only in two rather marginal areas. They relate to the obligation to inform asylum seekers about their rights and obligations under the asylum procedure within a specified time limit and to issue them the preliminary residence permit (<i>Aufenthaltsgestattung</i>) within a specific time limit.</p> <p>The Commission initiated infringement proceedings (2005/0049) for failure to transpose the Directive in sufficient time in a formal notice of complaint sent on 4 February 2005. In response to the statement with reasons sent by the EC Commission on 5 July 2005, Germany asked in a message dated 13 September 2005 for the infringement proceedings to be suspended for the time being due to the planned re-election of the German Bundestag on 18 September 2005 and promised to provide a detailed schedule for the Second Amending Act. At the same time, formal notice was given of partial transposition of the Directive.</p>

<p><b>Council directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted</b></p> <p><i>(EU Official Journal no. L 304 of 30 Sep. 2004, p. 12),</i> entry into force on 20 October 2004.</p>	<p>10 October 2006</p>	<p>The core elements of the so-called Qualification Directive have already been included in German law in the Immigration Act. They include taking into account non-state and gender-specific persecution within the framework of recognizing refugees and the use of exclusion clauses in the case of liability to punishment within the framework of the provision of subsidiary protection. However, complete transposition of the Directive still requires a series of specific amendments to the Asylum Procedure Act and the Residence Act. Among other things, standards must be set for the requirements for recognition of refugee status and the provision of subsidiary protection. These include the concept of internal protection and rules for interpreting grounds for persecution. However, because the majority of the provisions in the Directive correspond to the German legal situation, which is based on case law, enshrining them in laws tends to be declaratory. Adjustments are necessary in the area of subsidiary protection to the extent the German provisions are covered by the scope of the Directive.</p>
<p><b>Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status</b></p> <p><i>(EU Official Journal no. L 326 of 13 Dec. 2005, p. 13)</i></p>	<p>30 November 2007</p>	<p>The content of the Directive on procedures substantially corresponds to the existing German legal situation; no fundamental changes in the legal system are required. Specific changes to provisions in the Asylum Procedure Act include specifying the inclusion of additional requirements for providing information to asylum seekers, minor procedural adjustments (such as in the follow-up procedure), and a change in the provision on safe countries of origin (inclusion of an EC list of safe countries which has not yet been prepared).</p>