



Federal Ministry
of the Interior

Immigration Law and Policy



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Foreword

by the Federal Minister of the Interior, Otto Schily

For many years, the statement “Germany is not a country of immigration” summed up our country’s basic policy towards foreigners. The fact that many people come to Germany for a wide variety of reasons and often stay for long periods, even permanently, was largely ignored. Many people closed their eyes to the reality that Germany has long been a country of immigration. The opportunities brought by immigration were squandered, while obvious problems were suppressed rather than dealt with.

After the national elections in 1998, the new governing coalition of Social Democrats and Greens took on the task of making Germany more competitive in a globalized world. Competition for the brightest minds is only one aspect of this task, though a very important one.

The Federal Ministry of the Interior was responsible in particular for drafting a modern, consistent and rational strategy for dealing with immigration.

The cornerstone for this strategy was laid in 2000 with the reform of nationality law.

The Immigration Act, which largely went into effect on 1 January 2005, is an important addition to this foundation.

This publication provides an outline of migration policy and immigration law in Germany and describes the most important security aspects and Germany’s existing international relationships and obligations in this regard.

(signed)

Otto Schily

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1. Germany as a country of immigration

1.1 *Outline of migration policy*

“Germany is not a country of immigration” – this statement sums up policy on foreigners during the 1980s and 1990s. And it was wrong even then. Already in the 19th century, numerous immigrants chose to settle here, and since the mid-20th century, Germany has taken in more immigrants than any other European country. Consciously denying this reality long hindered the creation of modern and comprehensive legislation on immigration.

We already compete on a global scale for the best minds, and this competition will only become more intense in the future. In a globalized world, Germany needs a consistent strategy that makes it possible to manage immigration in line with our economic, societal and political interests and to limit it as needed. Germany depends on the international exchange of goods and services and on individual mobility. The reform of nationality law in 2000 was a decisive first step in creating a modern and comprehensive body of legislation in this area. The Immigration Act is the next important step in this direction.

The Federal Government’s new policy on immigration is oriented on the following key principles:

- managing immigration in a more targeted way that takes Germany’s economic and societal needs into account, and limiting future immigration;
- integrating legal immigrants living permanently in Germany;
- fulfilling humanitarian obligations derived from the German constitution and a number of internationally binding conventions and agreements;
- ensuring the protection of Germany and the people who live here;
- actively advocating Germany’s views within the European Union.

1.2 Immigration in historical perspective

In Germany as everywhere else, migration has a long history. The reasons for moving to another country have remained the same for centuries: the desire for a better life for oneself and one's children; flight from political, ethnic, or religious persecution; forced expulsion.

Long before recruitment of foreign labour began in 1955, Germany was the destination for numerous immigrants. In the second half of the 17th century, for example, Prussia took in large numbers of French Protestants, known as Huguenots, whose lives and livelihoods were threatened in Catholic France. Approximately 20,000 of them, or about one-third of the population of Berlin at that time, fled to Brandenburg-Prussia. And at least initially, the reception and integration of the Huguenots was not always free of conflict. But this example demonstrates how, in the medium and long term, immigration can benefit a society and become a significant factor contributing to growth. Another example is that of the Poles who settled in the Ruhr region following the Franco-Prussian War in 1870 - 71.

Flight and expulsion have long been a central aspect of global migration. Just as many Germans were forced to leave their country under the Nazi regime, and many were expelled after World War II from what is now Poland and the Czech Republic (about 12.5 million persons, according to a 1950 census of East and West Germany), many people today are forced by political persecution to leave their homes in Africa and Asia. And very few of them manage to reach Europe; by far the largest majority remains in their region of origin, where they are taken in and aided by neighbouring countries, themselves often struggling with severe poverty.

As it has in the past, Germany will continue to fulfil its international obligations towards such persons. These obligations are derived in particular from the UN convention on refugees and the right to asylum anchored in the Basic Law for the Federal Republic of Germany.

There is also a long tradition of emigration from Germany: in smaller numbers during times of prosperity, in greater numbers during times of economic depression or political instability. One example is the emigration in the 19th century of Germans from Hesse and the Palatinate to France, where they played a crucial role in expanding the canal system and the railway network. Additional examples are the thousands who left bitter poverty in Germany during the 19th century to seek new lives in Russia, South America, the United States and Canada.

With its population shrinking and ageing, Germany may find itself relying on young, educated and highly motivated immigrants in the medium and long term to help maintain the prosperity it has achieved.

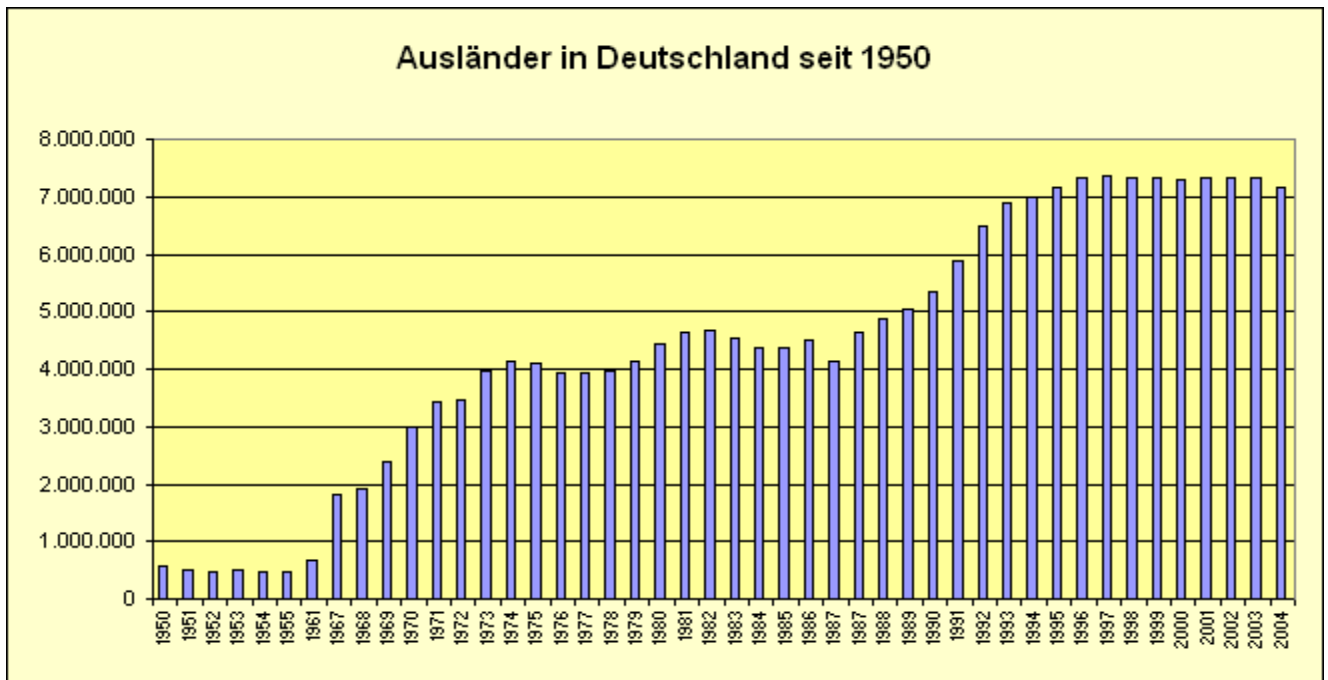
The following sections present the current data on foreigners in Germany and the development of immigration to Germany after 1950 for the major groups of immigrants.

1.3 Current data regarding foreigners in Germany

Foreigners in Germany

In 1950, there were only about 500,000 foreigners living in the Federal Republic of Germany, or about 1% of the total population.

Today, about 7.3 million foreigners live in Germany (8.9% of the total population).



Source: Federal Statistical Office

1.4 Foreigners in Germany by nationality

The number of foreigners in Germany reflects not only migration movements, but also the number of births to foreigners in Germany (second- and third-generation immigrants), deaths and naturalizations.

Of the approximately 7.3 million foreigners in Germany (as of 31 December 2003), about 2.34 million are citizens of one of the other 24 European Union member states (32% of all foreigners in Germany).

The largest groups of foreigners are made up of Turkish citizens (1.88 million, or 25.6% of all foreigners), Italians (600,000 or 8.2%), citizens of Serbia and Montenegro (570,000 or 7.7%), Greeks (350,000 or 4.8%) and Poles (330,000 or 4.5%).

About one of every five foreigners living in Germany was born here (1.5 million persons) and is thus a second- or third-generation immigrant. Thirty-five per cent of the Turkish citizens living in Germany were born here, as were 29% of the Italians, 27% of the Greeks, 20% of the citizens of Serbia and Montenegro and 5% of the Poles.

Total	7,334,765	EU citizens (pre-enlargement)	1,847,712
(as of 31.12.03)			
1. Turkey	1,877,661	Italy	601,258
2. Italy	601,258	Greece	354,630
3. Serbia and Montenegro	568,240	Austria	189,466
4. Greece	354,630	Portugal	130,623
5. Poland	326,882	Spain	125,977
6. Croatia	236,570	Netherlands	118,680
7. Austria	189,466	France	113,023
8. Russian Federation	173,480	United Kingdom	111,304
9. Bosnia- Herzegovina	167,081	Belgium	23,649
10. Portugal	130,623	Denmark	21,568
11. Ukraine	125,998	Sweden	19,404
12. Spain	125,977	Finland	15,748
13. Netherlands	118,680	Ireland	15,478
14. France	113,023	Luxembourg	6,904
15. USA	112,939	EU accession countries:	
16. United Kingdom	111,304	Poland	326,882
17. Romania	89,104	Hungary	54,714
18. Vietnam	88,208	Czech Republic	30,186
19. Iraq	83,821	Slovenia	21,795
20. Iran	81,495	Slovakia	19,567
21. Morocco	79,794	still listed as Czechoslovakians	15,006
22. PR China	76,743	Lithuania	13,985
23. Afghanistan	65,830	Latvia	9,341
24. Macedonia	61,019	Estonia	4,220
25. Kazakhstan	57,312	Cyprus	956
26. Hungary	54,714	Malta	352
27. unknown	50,514	Total	497,004
28. Thailand	48,736		
29. Lebanon	46,812	former Soviet Union (incl. Baltic states)	494,048
30. Bulgaria	44,300	Source: Central Aliens Register	

Distribution of foreigners

The number of foreigners as a proportion of the total population varies widely by region: In the area of the former German Democratic Republic (not including Berlin), foreigners account for only 1.9% of the population, whereas in the former West Germany, about one of every ten residents is a foreigner. But here too, the distribution is very uneven, ranging from 19.5% in Hamburg to 5% in the state of Schleswig-Holstein, according to the Central Aliens Register. In some larger cities, the proportion of foreigners is even higher, for example 25% in Offenbach, 24.5% in Stuttgart, 24.1% in Frankfurt and 22.8 % in Munich (as of December 2001). Overall, 25% of foreigners (as compared to 12% of Germans) live in cities with more than 500,000 residents.

In 2003, the number of foreigners as a proportion of total population by state was as follows:

As of 31 December 2003	State population as % of total population of Germany	Population	Number of foreigners	Foreigners as % of total state population
Baden-Württemberg	12.95%	10,692,556	1,243,969	11.63%
Bavaria	15.05%	12,423,386	1,172,002	9.43%
Berlin	4.11%	3,388,477	496,878	14.66%
Brandenburg	3.12%	2,574,521	52,069	2.02%
Bremen	0.80%	663,129	81,858	12.34%
Hamburg	2.10%	1,734,083	338,114	19.50%
Hesse	7.38%	6,089,428	821,271	13.49%
Mecklenburg-Western Pomerania	2.10%	1,732,226	32,002	1.85%
Lower Saxony	9.68%	7,993,415	478,053	5.98%
North-Rhine/Westphalia	21.91%	18,079,686	1,926,598	10.66%
Rhineland-Palatinate	4.92%	4,058,682	294,462	7.26%
Saarland	1.29%	1,061,376	78,502	7.40%
Saxony	5.24%	4,321,437	91,669	2.12%
Saxony-Anhalt	3.06%	2,522,941	51,587	2.04%
Schleswig-Holstein	3.42%	2,823,171	141,053	5.00%
Thuringia	2.88%	2,373,157	34,678	1.46%
All of Germany	100%	82,531,671	7,334,765	8.89%
former West Germany (excluding Berlin)	79.50%	65,618,912	6,575,882	10.02%
former East Germany (including Berlin)	20.49%	16,912,759	758,883	4.49%
former East Germany (excluding Berlin)	16.39%	13,524,282	262,005	1.94%
Note: Numbers of foreigners in the individual states may differ slightly from figures of the Federal Statistical Office Source: Federal Statistical Office **Source: Central Aliens Register				

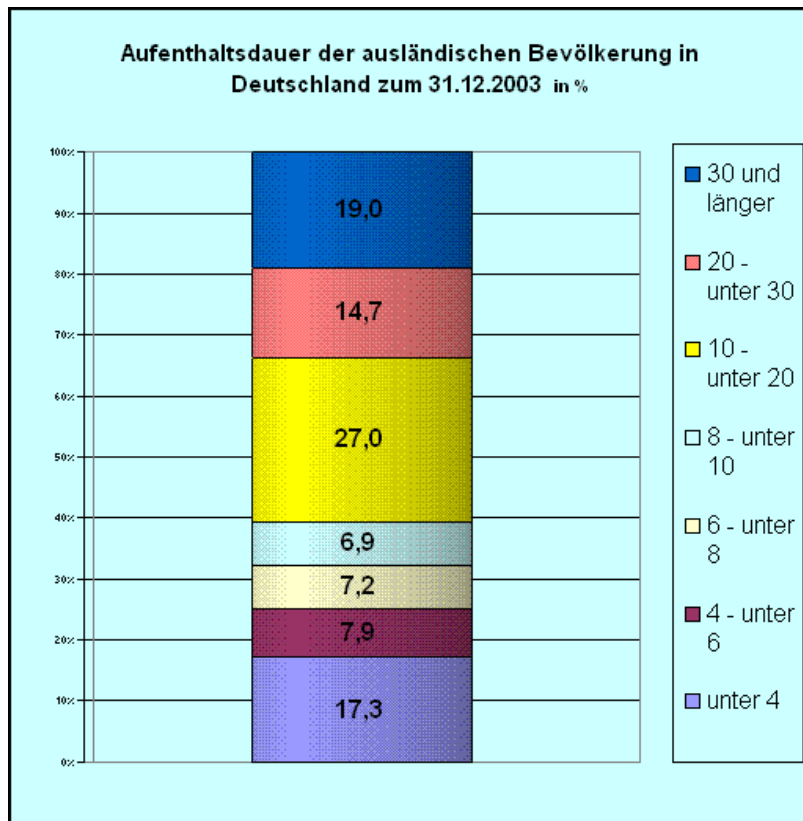
Length of residence

The table and chart show the number of foreigners by nationality and by length of residence in Germany as of 31 December 2003. Of the 7.3 million foreigners listed in the Central Aliens Register as of that date, about 61% had been living in Germany for at least 10 years, while 34% had lived here for 20 years or more. About 14% had lived in Germany for six to ten years, while about 25% had lived here less than six years. The length of residence differs greatly by nationality.

Length of residence of foreigners in Germany, as of 31 December 2003.

STAATSANGEHOERIGKEIT	gesamt	unter 4	4 - unter 6	6 - unter 8	8 - unter 10	10 - unter 20	20 - unter 30	30 und länger	Durchschnittliche Aufenthaltsdauer in Jahren
EUROPA	5 800 429	773 908	406 168	376 272	391 036	1 564 580	970 130	1 318 335	17,6
ITALIEN	601 258	42 905	28 882	30 615	30 501	127 837	130 704	209 814	22,0
GRIECHENLAND	354 630	26 399	16 788	16 614	17 859	92 341	55 412	129 217	21,6
PORTUGAL	130 623	13 055	8 840	10 974	13 340	30 160	22 527	31 727	18,2
SPANIEN	125 977	13 385	5 349	4 572	4 077	14 343	18 594	65 657	24,7
POLEN	326 882	78 293	28 803	28 764	28 337	131 911	23 213	7 561	10,5
EU 25	2 346 990	327 451	144 734	139 317	140 311	572 060	365 852	655 957	
EU-STAATEN (EU 15)	1 849 986	199 409	99 322	96 458	98 879	398 760	329 425	627 733	20,8
TUERKEI	1 877 661	134 555	107 549	127 247	125 538	526 020	470 074	386 678	19,1
SERBIEN UND MONTENEGRO	568 240	53 729	57 794	32 419	44 671	202 456	55 403	121 768	16,3
BOSNIEN UND HERZEGOWINA	167 081	11 442	5 624	6 101	21 266	79 373	15 870	27 405	15,6
KROATIEN	236 570	12 641	7 093	7 196	9 917	57 910	43 758	98 055	23,4
RUSSISCHE FOEDERATION	173 480	88 916	30 743	23 740	15 499	13 995	371	216	4,7
BULGARIEN	44 300	21 126	4 214	2 479	2 313	12 231	1 079	858	7,0
RUMAENIEN	89 104	27 199	8 982	6 559	5 901	38 012	1 679	772	8,3
UKRAINE	125 998	60 029	24 813	18 465	13 630	8 956	54	51	4,8
AFRIKA	310 943	88 433	31 133	29 239	25 101	94 013	25 918	17 106	10,5
MAROKKO	79 794	17 545	7 325	5 807	4 565	23 935	11 246	9 371	13,8
TUNESIEN	24 533	6 100	2 387	1 650	1 351	5 595	3 982	3 488	14,1
AMERIKA	228 499	66 279	21 744	17 659	15 927	56 548	24 585	25 757	12,3
ASIEN	911 995	321 646	109 674	96 863	70 783	241 173	52 863	18 993	8,6
AFGHANISTAN	65 830	15 182	8 867	9 499	10 965	18 548	2 547	222	8,5
CHINA	76 743	46 874	8 834	4 773	2 967	12 360	774	161	5,0
VIETNAM	88 208	18 913	8 067	5 178	5 952	44 756	5 058	284	10,2
AUSTRALIEN UND OZEANIEN	12 142	3 876	974	846	740	3 067	1 035	1 604	12,2
STAATENLOS	16 990	1 506	922	935	739	5 007	2 841	5 040	20,0
UNGEKLAERT / OHNE ANGABE	53 767	10 425	6 270	5 814	3 924	19 064	3 653	4 617	12,1
INSGESAMT	7 334 765	1 266 073	576 885	527 628	508 250	1 983 452	1 081 025	1 391 452	16,0
in %	100	17,3	7,9	7,2	6,9	27,0	14,7	19,0	

Quelle: StBA



Residence status

As of 31 December 2003, 6.5 million foreigners in Germany were in possession of a residence title; of these, 4.8 million held a temporary or permanent residence permit, 770,000 had the right of unlimited residence, 340,000 held a residence title for specific purposes, and 260,000 held a residence title for exceptional circumstances.

Another 130,000 foreigners were awaiting the final decision on their applications for asylum; 450,000 foreigners were subject to removal, of which 230,000 had been granted a temporary suspension of deportation. Under the Residence Act, in effect since 1 January 2005, there are only two kinds of residence permit: a temporary residence permit and a permanent settlement permit. Residence titles issued under the old law remain valid beyond 1 January 2005 in accordance with the purpose of residence and will gradually be replaced by the new residence permits. The Residence Act also continues to provide for temporary suspensions of deportation in certain cases (see Section 2).

Sex, age and birth rates

In 2003, 3.5 million foreigners (48%) were women and 3.8 million (52%) were men.

With an average age of 34.9 years, foreigners are younger than native Germans (average age 42.5) by an average of eight years.

In 2003, of the 76,200 children born to foreigners in Germany, 39,355 received foreign citizenship (6% of all births in Germany); the remaining 48% were given German citizenship on the basis of the Nationality Act, in effect since 1 January 2000. In 1999, the fertility rate of foreign women was 1.8 births, with a downward tendency, compared to about 1.3 births for German women.

Immigration and emigration

The statistics on immigration and emigration offer a general picture of migration movements in Germany: From 1991 to 2003, 14.2 million Germans and foreigners moved to Germany, while 9.6 million moved away. The high-water mark was reached in 1992, with 1.5 million persons immigrating to Germany; in 2003, this number dipped to slightly less than 800,000 for the first time. The high numbers of immigrants can be attributed mainly to increased immigration by ethnic Germans from Eastern Europe and the former Soviet Union up to the mid-1990s, to greater numbers of asylum seekers up to 1992, to refugees from war and civil unrest in the former Yugoslavia starting in 1991/92 (most of whom have since returned home), and to increased short-term labour migration from non-EU countries, especially by seasonal and contract workers.

Foreigners make up the largest proportion of persons immigrating to and emigrating from Germany: From 1999 to 2003, roughly 78% of persons moving to Germany and 82% of those moving away were foreigners. Germans immigrating to Germany are citizens returning from abroad and ethnic Germans from Eastern Europe and the former Soviet Union; although they are Germans according to the Basic Law, they often lack adequate language skills and have a difficult time becoming integrated into German society.

Following negative net immigration (the difference between the number of those immigrating and those emigrating) by foreigners in 1997 and 1998, net immigration has been positive since

1999, though it has been dropping since 2001 due to fewer asylum seekers and ethnic Germans from Eastern Europe and the former Soviet Union.

Countries of origin and destination: Immigrants today come from a much wider range of countries than during the “guest worker” era of the 1950s to early 1970s, and since the mid-1990s this range has remained fairly constant. Of the 768,975 foreigners who immigrated in 2003, 17% came from one of the other 14 EU countries, 14% from Poland (primarily seasonal and contract workers), 9% from the Russian Federation (primarily ethnic Germans), 6% from the former Yugoslavia, 6% from Turkey (primarily spouses and family members as well as asylum seekers), 4% from Kazakhstan (primarily ethnic Germans) and 44% from other countries (2004 Migration Report). Of those who emigrated in 2003, 25% moved to other EU countries, 13% to Poland, 8% to the former Yugoslavia, 6% to Turkey, 4% to the US, 3% to Romania and 41% to other countries (2004 Migration Report).

Types of immigrants

Foreign and German immigrants to Germany usually fall into one of the following categories:

- citizens of other EU countries,
- spouses and family members of third-country nationals,
- ethnic German repatriates from Eastern Europe and the former Soviet Union,
- refugees and asylum seekers,
- seasonal and contract workers and other temporary workers from non-EU countries (e.g. Green Card holders),
- foreign students, and
- Jewish immigrants.

Immigrants from other EU countries

Citizens of other European Union member states have the right to freedom of movement within the EU (for more information, see Section 11).

From 1998 to 2003, between 101,921 and 157,709 citizens of the other 14 EU countries moved to Germany each year.

But EU citizens do not play a significant role in terms of net migration: From 1998 to 2003, more EU citizens moved away from Germany than moved in – between 961 and 10,365 each year. The year 2000 was an exception, with positive net migration of 7,426 persons.

Subsequent immigration by spouses and family members of third-country nationals

Spouses, children and in certain cases other family members of third-country nationals may under certain circumstances (see Section 2) accompany these nationals when immigrating to Germany or may rejoin them in Germany at a later date.

There are no comprehensive statistics on such immigration, though the number of visas issued by German diplomatic missions abroad for the purpose of family reunification gives a general indication. Statistics kept since 1996 show annual numbers of 56,000 to 85,000 persons, with a rising tendency up to 2002. In 2003, the number fell for the first time, to 76,077 persons. About one-third of family members immigrating subsequently apply for their visas in Turkey.

The actual number of family members immigrating subsequently is probably higher, as it is possible under certain conditions to apply to the foreigners authority for a residence permit after arriving in Germany. Such cases are not counted in the statistics on subsequent immigration by family members.

Immigration by ethnic German repatriates

Ethnic German repatriates (*Spätaussiedler*) are ethnic Germans as defined in Article 116 of the Basic Law from the countries of the former Soviet Union and Warsaw Pact countries who after 31 December 1992 continued to face serious persecution and discrimination as a result of World War II.

Despite German citizenship, this group has increasingly experienced difficulties integrating comparable to those of other immigrant groups. Part of the problem is the growing number of immigrating non-ethnic German family members with inadequate command of German.

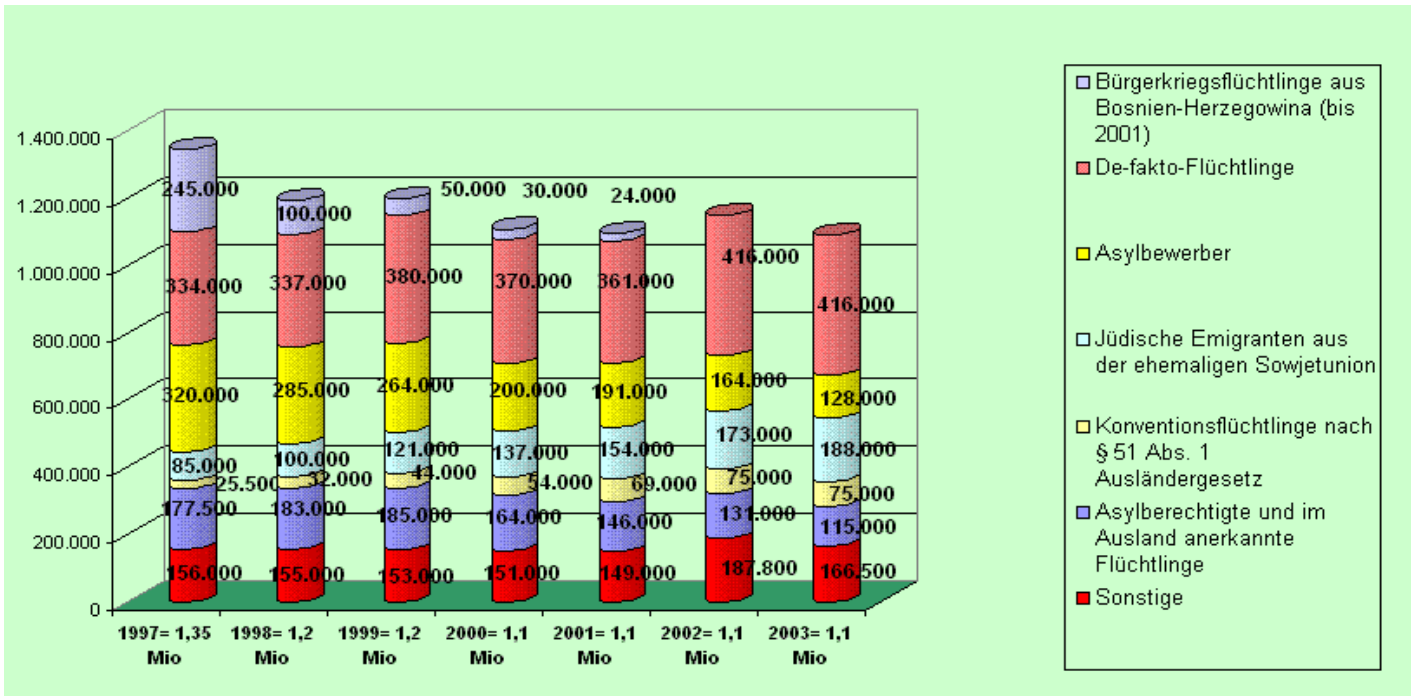
Whereas annual number of ethnic German repatriates exceeded 200,000 in 1993, 1994 and 1995, in 2003 the number was 72,885 (see Section 12).

Foreign refugees (including asylum seekers and persons admitted on humanitarian grounds)

Since the mid-1990s, the number of asylum seekers has fallen steadily. The total number of asylum seekers in 2003 was 50,563, the lowest since 1984. The top ten countries of origin for first-time applicants in 2003 were Turkey (12%), Serbia/Montenegro (10%), Iraq (8%), Russian Federation (7%), China (5%), Vietnam (4%), Iran (4%), India (3%), Afghanistan (3%) and Azerbaijan (3%).

As of 31 December 2003, roughly 1.1 million persons living in Germany were refugees in the broadest sense, including 115,000 persons entitled to asylum; their family members, estimated at 150,000; 75,000 refugees under the Geneva Convention (Convention refugees); 6,500 persons admitted in the context of humanitarian aid (quota refugees); 188,000 Jewish immigrants from the former Soviet Union; 10,000 stateless foreigners; 128,000 asylum seekers; and 380,000 de facto refugees. The total number of refugees showed no significant change from 1998.

Number of asylum seekers, persons entitled to asylum and other refugees in Germany, 1997 – 2003



Sources: Central Aliens Register, Federal Office for Migration and Refugees (BAMF), own calculations

Seasonal and contract workers and other temporary workers from non-EU countries

The ban on recruiting foreign labour of 21 November 1973 largely ended the practice of seeking foreigners to fill Germany's demand for labour, which had been carried out since 1955. The ban was partly lifted in certain areas where labour shortages continued despite high unemployment. Foreigners may be hired only if no Germans or equally entitled foreigners are available to fill the position. In contrast to the 1950s, 1960s and early 1970s, the residence of foreign workers in Germany today is subject to strict time limits in all but a few cases. In particular, contract and seasonal workers are not permitted to remain in Germany permanently. On this basis, a number of possibilities for labour migration to Germany have been created in recent years.

In 2003, approximately 44,000 persons were working in Germany under temporary contracts in accordance with bilateral government agreements. Germany has bilateral agreements with the following countries:

Poland (avg. of 20,727 workers annually)	Hungary (6,709)
Romania (4,101)	Croatia (3,761)
Bulgaria (1,651)	Slovakia (1,594)
Turkey (1,402)	Czech Republic (961)
Bosnia-Herzegovina (1,146)	Slovenia (641)
Macedonia (224)	Latvia (284)
Serbia and Montenegro (603)	

Seasonal workers from Central and Eastern Europe may be employed in agricultural and forestry occupations and in the hotel and restaurant industry for up to three months (up to four months under the new law) to fill temporary labour needs. In 2003, 318,549 foreigners (mostly Polish citizens) were legally employed in these occupations in Germany (2002: 307,182).

Aside from this group, the following types of foreign workers also deserve mention:

- participants in guest worker training programmes for young people from Central and Eastern Europe; maximum duration 18 months, 3,000 to 6,000 participants annually;
- qualified nursing staff for hospitals and nursing homes;
- certain occupations requiring special qualifications are generally exempt from the ban on recruiting foreign labour, e.g. scientists, executives and managers, foreign language teachers who are native speakers, speciality chefs, chaplains, artists, models and professional athletes and trainers;

- foreigners under 25 years of age may work as an au pair for up to one year, and students enrolled at foreign schools or universities may work during the holidays and take part in internships related to their area of study.

Prior to the latest EU enlargement, citizens of Poland and the Czech Republic were eligible for a work permit if they were not receiving social assistance benefits in their home country and worked at jobs in Germany which allowed them to return home daily or worked only two days a week. In 2003, 7,132 work permits were issued for such cross-border employment (2002: 8,964; 2001: 9,957).

In addition, since 1 August 2000, foreign IT specialists with a relevant university degree or the equivalent may work in the IT industry in Germany. By September 2004, more than 17,000 permits for such work, known as Green Cards, had been issued. Foreigners in these and other skilled occupations are eligible to establish permanent residence in Germany (see Section 2).

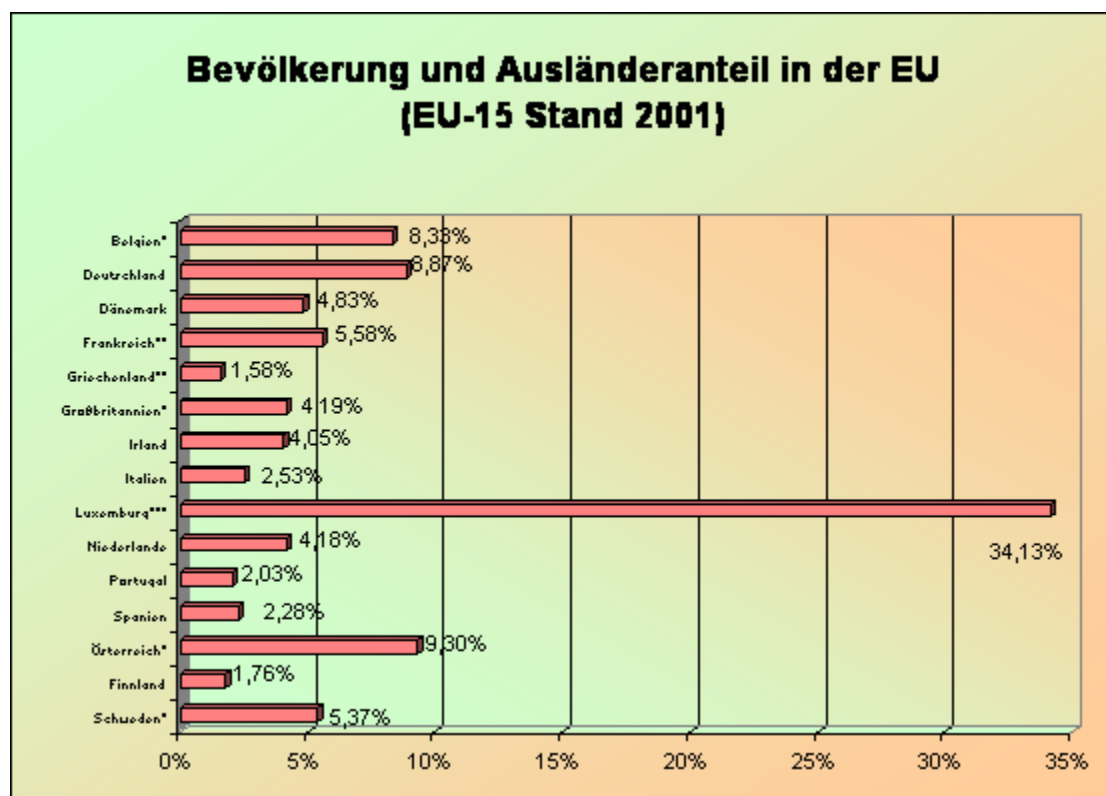
Under the Immigration Act, highly skilled workers – such as senior academics and researchers and top-level managers in business and industry – may be granted permanent residence upon arrival in Germany. Self-employed foreigners may also immigrate to Germany if their business is of economic interest and can be expected to have a positive economic impact (see Section 2).

Foreign students

In 2003, about 60,100 foreigners who had been accepted from outside the country for admission to higher education entered Germany to begin their studies (2002: 58,500; 2001: 53,200).

Germany in international comparison

International comparison of numbers and proportion of immigrants is possible only to a limited extent, as different countries use different definitions and statistical methods.



Country	Total population	No. of foreigners	% as of 1.1.2001
Belgium*	10,239,085	853,369	8.33%
Germany	82,259,540	7,296,817	8.87%
Denmark	5,349,912	258,630	4.83%
France**	58,520,688	3,263,186	5.58%
Greece**	10,511,088	165,651	1.58%
United Kingdom*	58,731,105	2,459,934	4.19%
Ireland	3,838,942	155,528	4.05%
Italy	57,844,011	1,464,589	2.53%
Luxembourg***	432,700	147,700	34.13%
Netherlands	15,987,075	667,802	4.18%
Portugal	10,262,877	208,198	2.03%
Spain	40,499,711	923,880	2.28%
Austria*	8,102,557	753,528	9.30%
Finland	5,181,115	91,074	1.76%
Sweden*	8,882,792	477,312	5.37%
Total	376,643,198	19,187,198	5.09%

As of 1 January 2001 except * 1 January 2000; ** 1 January 1999; *** 1 January 1998

Source: Eurostat, own calculations

Asylum applications in international comparison

EU countries	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	As of
Belgium ¹	14,456	11,648	12,412	11,629	21,965	35,778	42,677	24,527	18,768	16,940	5,211	Apr 04
Denmark	6,651	5,104	5,891	5,100	5,699	6,467	10,077	12,512	5,947	4,557	1,349	May 04
Germany	127,210	127,937	116,367	104,353	98,644	95,113	78,564	88,287	71,127	50,563	15,719	May 04
Finland	836	854	711	977	1,272	3,106	3,170	1,650	3,443	3,221	1,439	May 04
France ¹	25,791	20,329	17,283	21,256	22,375	30,832	38,747	47,260	51,004	61,993	26,644	May 04
Greece	1,300	1,312	1,643	4,376	2,953	1,528	3,083	5,499	5,664	8,178	2,278	May 04
UK ²	42,201	54,988	29,642	41,500	58,000	71,158	98,866	91,553	103,080	61,051	8,942	Mar 04
Ireland	362	424	1,179	3,882	4,626	7,724	10,920	10,325	11,634	7,900	2,036	May 04
Italy	1,844	1,752	681	1,712	9,513	3,268	–	14,844	7,281	–		May 04
Luxembourg	–	394	240	427	1,709	2,912	628	686	1,043	1,554		May 04
Netherlands	52,576	29,258	22,857	34,443	45,217	39,299	43,895	32,579	18,667	13,402	4,060	May 04
Austria	5,082	5,920	6,991	6,719	13,805	20,129	18,284	30,135	39,354	32,364	8,872	Apr 04
Portugal	770	450	269	297	365	307	224	234	245	107		May 04
Sweden	18,638	9,047	5,774	9,619	12,844	11,231	16,283	23,499	32,995	31,355	9,558	May 04
Spain	11,901	5,678	4,730	4,975	6,639	8,405	7,235	9,219	6,179	5,918	569	Apr 04
Estonia	–	–	–	–	23	21	3	12	9	10		Dec 03
Latvia	–	–	–	–	58	19	4	14	30	10		Dec 03
Lithuania	–	–	–	320	163	133	199	256	294	180		Dec 03
Malta	–	150	80	70	170	90	70	120	350	570		Dec 03
Poland	–	843	3211	3533	3,373	2,955	4,589	4,506	5,153	6,921	2,299	Apr 04
Slovakia	–	359	415	645	506	1,310	1,556	8,151	9,739	10,323	5,565	Mai 04
Slovenia	–	–	38	72	499	867	9,244	1,511	702	1,102	569	May 04
Czech Rep.	–	1413	2156	2098	4,082	7,285	8,787	18,087	8,481	11,394	3,150	May 04
Hungary	–	130	152	209	7,097	11,499	7,801	9,554	6,412	2,401	632	May 04
Cyprus	–	110	100	90	230	790	650	1,770	950	4,410		Dec 03
Applications in Germany as % of total	41.1%	46.0%	50.0%	40.4%	30.7%	26.3%	19.4%	20.2%	17.4%	15.0%	15.9%	
Other countries												May 04
Norway	3,379	1,460	1,778	2,273	8,543	10,160	10,843	14,782	17,480	15,959	3,292	May 04
Switzerland	16,134	17,021	18,001	23,982	41,302	46,068	17,611	20,633	26,125	20,806	7,220	May 04
Bulgaria	–	517	302	429	833	1,331	1,755	2,428	2,888	1,549	429	May 04
Romania	–	–	588	1425	1,236	1,670	1,366	2,431	1,108	1,077	311	May 04
Canada	21,710	25,912	25,287	24,329	24,937	29,868	36,143	41,694	33,442	31,857	9,956	May 04
USA	142,508	147870	122643	79803	52,081	43,677	52,414	67,141	56,270	43,589	12,900	May 04
Australia	4,215	7,677	9,770	9,710	8,156	9,205	13,065	12,366	6,016	4,256	1,345	May 04

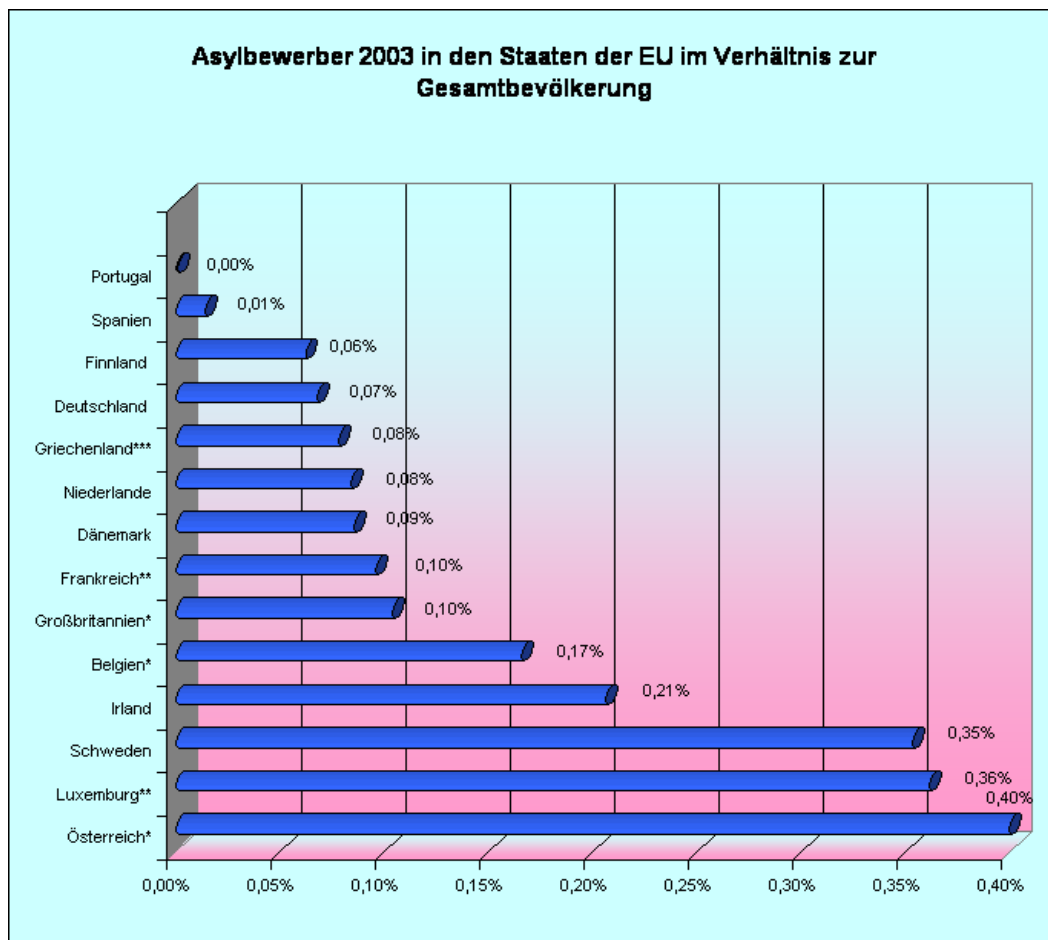
1) not counting minor children; 2) not counting family members

Sources: Federal Office for the Recognition of Foreign Refugees (to 2003) (except Canada, USA, Australia = IGC); from 2004: IGC, UNHCR

Country	Total population*	No. of asylum applications 2003	% of population	Rank
Austria*	8,102,557	32,364	0.40%	1.
Luxembourg**	429,200	1,550	0.36%	2.
Sweden	8,882,792	31,355	0.35%	3.
Ireland	3,838,942	7,900	0.21%	4.
Belgium*	10,239,085	16,940	0.17%	5.
United Kingdom*	58,773,105	61,051	0.10%	6.
France**	58,520,688	55,863	0.10%	7.
Denmark	5,349,212	4,557	0.09%	8.
Netherlands	15,987,075	13,402	0.08%	9.
Greece***	10,511,088	8,180	0.08%	10.
Germany	82,259,540	55,563	0.07%	11.
Finland	5,181,115	3,221	0.06%	12.
Spain	40,499,791	5,731	0.01%	13.
Portugal	10,262,877	110	0.00%	14.
Total	318,837,067	297,787	0.09%	

Population data as of 2001 except: * 2000; ** 1999; ***1998

Sources: EUROSTAT and Federal Statistical Office



1.5 Immigration to Germany since 1950

Immigration by foreigners

Germany's growing foreign population since 1945 has mainly come from two sources: foreign workers who entered Germany from 1955 to 1973, the so-called guest workers, and refugees, who began arriving in greater numbers from late 1980. As more members of these groups arrived in Germany, more of their family members accompanied or rejoined them later, and more children were born to them in Germany.

Foreign workers

In the 1950s, the Federal Republic of Germany's "economic miracle" led to a growing demand for unskilled and semi-skilled labour. The domestic supply of labour was insufficient to meet the demand, and the government signed recruitment agreements with Italy (1955), Spain and Greece (1960), Turkey (1961), Morocco (1963), Portugal (1964), Tunisia (1965) and Yugoslavia (1968).

From 1955 until 1961, however, the number of foreigners living in Germany rose by only about 200,000. After 1961, steady economic growth and the German Democratic Republic's decision to close its borders to the West (building the Berlin Wall), which cut off the flow of workers from East Germany, contributed to increasing labour shortages. This development was further exacerbated by the introduction of a shorter working week and a shrinking labour force. From 1960 to 1972, the number of employed Germans fell by 2.3 million, leading to increased recruitment of foreign workers.

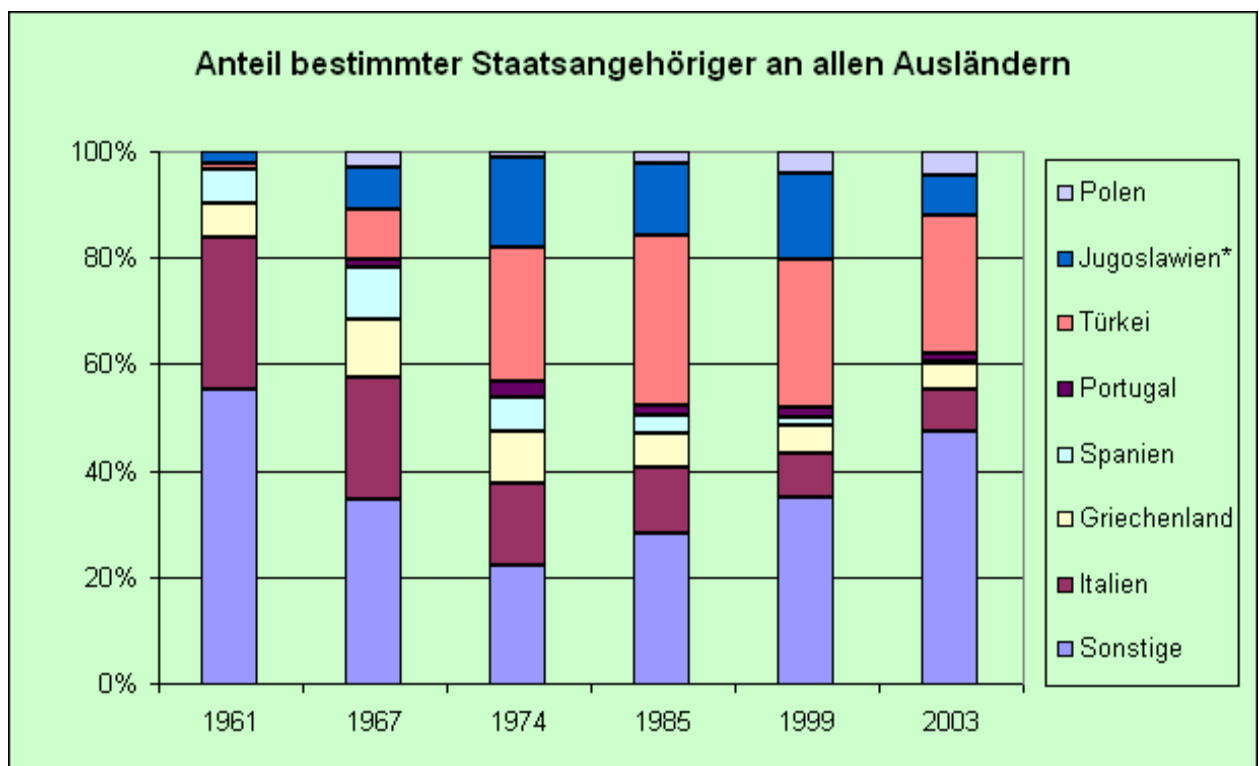
Whereas foreigners made up 1.3% of those in employment in 1960, by 1973 this figure had risen to 11.9%. During this period, the total number of persons in employment rose from 26.3 million to 27.7 million, while the percentage of Germans in the labour force fell from 47.6% to 43.7% between 1961 and 1970.

The first generation of foreign workers was made up mostly of single men between 20 and 40, although increasing numbers of women also came to Germany by themselves. Until the late 1960s, most foreign workers were Italian, Spanish or Greek. Later, workers from then-Yugoslavia and above all Turkey predominated. In 1968, Turkish citizens made up 10.7% of the foreign population in Germany, with Yugoslavians at 8.8%; by 1973, Turkish citizens accounted for 23% of foreigners living in Germany, while Yugoslavians made up 17.7%.

Most foreign workers found employment in the states of North-Rhine/Westphalia, Baden-Württemberg, Bavaria and Hesse.

The original intention was to limit the length of time foreign workers could stay in Germany: Once this allotted time had run out, the foreign workers were supposed to return to their home countries, to be replaced by new ones (“rotation principle”). But starting in the late 1960s, a growing number of foreign workers stayed in Germany permanently. This served the interests of employers, who wanted to keep their experienced workers, and of the workers themselves, who increasingly came to regard Germany as their home and who wished to take advantage of the better income opportunities and existing infrastructure for the long term.

For many foreign workers, the 1973 ban on recruiting foreign labour may have acted as an incentive to stay in Germany permanently, as it made it impossible to return to one’s home country temporarily and then come back to Germany to work. Subsequent immigration by family members also increased.



Source: Federal Statistical Office, own calculations

From 1973 to 1979 the percentage of foreigners in Germany remained stable. Although the number of foreigners moving out of Germany exceeded the number of those moving in, a rising birth rate largely made up the difference. Overall, between 1973 and 1988 the number of foreigners rose quite slowly from 4 million to 4.8 million.

But starting in 1986, the number of foreigners moving to Germany rose significantly, exceeding the number of those moving away.

Year	Total immigration	Of which foreigners	Total emigration	Of which foreigners	Total net immigration	Net immigration by foreigners
1983	354,496	273,252	487,268	424,913	-132,772	-151,661
1984	410,387	331,140	604,832	545,068	-194,445	-213,928
1985	480,872	398,219	425,313	366,708	55,559	31,511
1986	567,215	478,348	407,139	347,789	160,076	130,559
1987	591,765	472,336	398,518	333,984	193,247	138,352
1988	860,578	647,534	419,439	358,941	441,139	288,593
1989	1,133,794	766,945	539,832	438,082	593,962	328,863
1990	1,256,250	835,702	574,378	465,470	681,872	370,232
1991	1,182,927	920,491	582,240	497,476	600,687	423,015
1992	1,439,449	1,207,602	701,424	614,747	788,025	592,855
1993	1,268,004	986,872	796,859	710,240	471,145	276,632
1994	1,070,037	773,929	740,526	621,417	329,511	152,512
1995	1,082,176	788,337	674,204	561,091	407,972	227,246
1996	959,691	708,453	677,494	559,064	282,197	149,389
1997	840,633	615,298	746,969	637,066	93,664	-21,768
1998	802,456	605,500	755,358	638,955	47,098	-33,455
1999	874,023	673,873	672,048	555,638	201,975	118,235
2000	841,158	649,249	674,038	562,794	167,120	86,455
2001	879,217	685,259	606,494	496,987	272,723	188,272
2002	842,543	658,341	623,255	505,572	219,288	152,769
2003	768,975	601,759	626,330	499,063	142,645	102,696

Source: Federal Statistical Office

Within only 11 years (1986 to 1996), the number of foreigners living in Germany jumped by 2.8 million to 7.3 million. This growth was only partly due to family members rejoining those living in Germany and to the birth of roughly 1 million foreign children during the period. Most of the rise was due to increasing numbers of refugees starting around 1980 and growing stronger from 1985 onwards.

Immigration by refugees

Asylum seekers

In addition to immigration by foreign workers and their family members, Germany has taken in asylum seekers since the 1950s in accordance with its humanitarian obligations. Up to the late 1970s, however, the number of asylum seekers was relatively small at around 10,000 persons a year, most of them from Eastern Bloc countries.

The number of asylum seekers saw a temporary rise in 1979 and 1980.

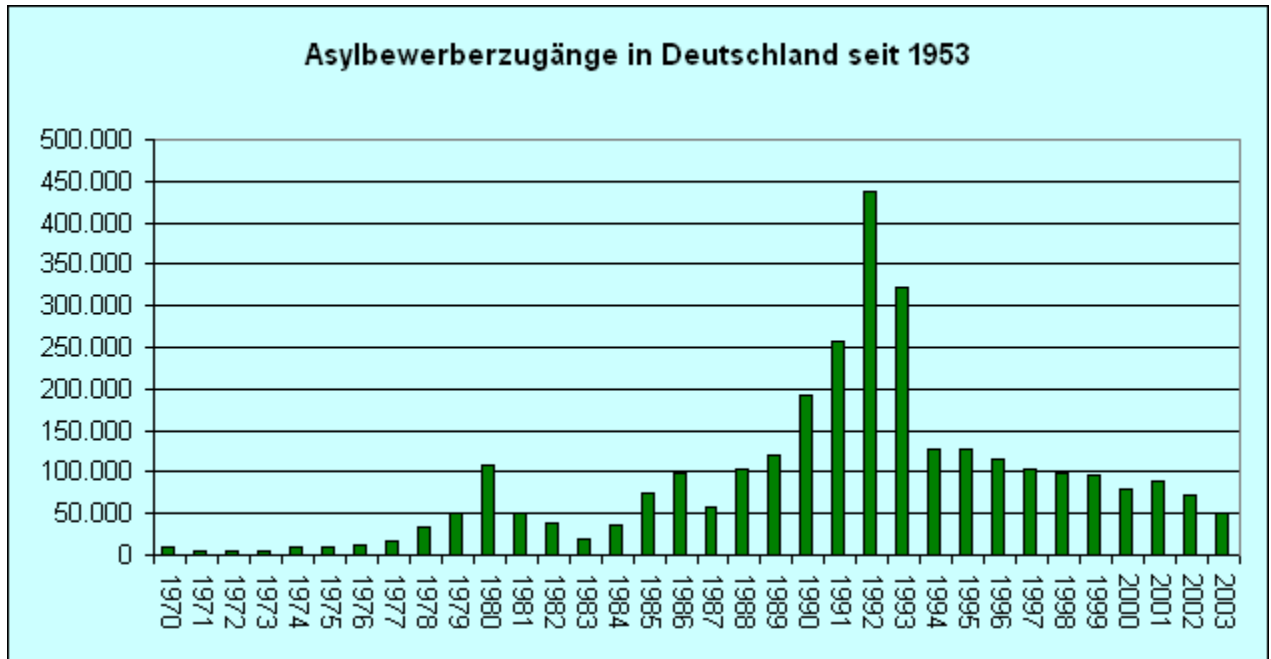
Of the 107,000 persons who applied for asylum in 1980, more than 50% were Turkish citizens.

Applicants for asylum in 1980

Total	107,818
Country of origin	
Turkey	57,913
Pakistan	6,824
Afghanistan	5,466
India	6,693
Sri Lanka	2,673
Czechoslovakia	2,385
Poland	
Source: Federal Office for Migration and Refugees (BAMF)	

In 1983, the number of asylum seekers dropped below 20,000, before steadily rising from 1984 until 1992, when it reached its highest point with nearly 440,000. In addition to Yugoslavia, Turkey, Iran, Afghanistan and Sri Lanka, which remain “classic” countries of origin for asylum seekers today, up to the late 1980s asylum applicants also came from countries such as Romania, Hungary and Poland. Since the reform of asylum law in 1993, the number of asylum seekers has

steadily shrunk; with about 50,000 applications in 2003, it was at its lowest level since 1984. The number was even lower in 2004: By 30 November, only 32,864 persons had applied for asylum.



Refugees of civil war

In 1991, war broke out in Bosnia and Herzegovina; by the time it ended, with the Dayton Accords of December 1995, Germany had granted temporary residence on humanitarian grounds to around 345,000 Bosnian refugees, more than all the other EU countries combined. More than 300,000 of these refugees have since left Germany, most of them voluntarily, with help from programmes offering return assistance. Fewer than 10,000 of these refugees are still in Germany; some were granted the right to remain, enabling them to establish permanent residence, while the rest were ordered to leave the country.

During the Kosovo crisis in 1999, Germany took in about 15,000 evacuees from Kosovo as part of an international humanitarian initiative. These persons also returned to their homeland after the conflict ended.

Foreigners in the German Democratic Republic

Starting in the mid-1960s, the German Democratic Republic (GDR) also experienced an influx of foreign workers within the framework of labour cooperation in the Council for Mutual

Economic Assistance (Comecon). As in the Federal Republic of Germany, foreign workers were usually employed in areas that Germans found less desirable. But the GDR strictly enforced the principle of rotation, so that there was no subsequent immigration of family members. Workers' residence permits in the GDR were explicitly linked to their place of work, which made it practically impossible for them to become integrated into society. According to GDR sources, foreigners made up about 1% of the labour force.

As of 31 December 1989, the foreign population of the GDR was as follows:

Members of the Soviet armed forces	380,000
Their family members	200,000
Other foreigners (total)	191,200
of which:	
Contract workers	90,600
from:	
Vietnam	59,000
Mozambique	15,100
Cuba	8,300
Angola	1,300
China	900
Poland:	
Non-commuters	3,500
Commuters	2,500

Sources: Federal Ministry of Labour and Social Affairs, Federal Agency for Civic Education

The GDR also took in a limited number of refugees. Up to the mid-1970s, for example, it admitted refugees above all from Greece, Spain and Chile. But the scale is not comparable to that of the Federal Republic: In late 1989, GDR statistics recorded a total of 334 Chilean and 482 Greek refugees.

2. New law on immigration

2.1 Purpose

The Immigration Act went into force on 1 January 2005 following a long and difficult legislative process and intense discussions in public and in the Bundestag and Bundesrat. After being revised in line with recommendations made by the Mediation Committee, the legislation was finally passed by the Bundestag on 1 July 2004 and approved by the Bundesrat on 9 July 2004.

The Immigration Act for the first time provides a legislative framework for controlling and restricting immigration as a whole. The new law also contains measures to promote the integration of legal immigrants in Germany. This marks a historical watershed. The new law allows Germany to manage immigration oriented on its economic, political and cultural interests while fulfilling its humanitarian obligations.

The Immigration Act is made up of the Residence Act (AufenthG), the Act on the General Freedom of Movement for EU Citizens (Freedom of Movement Act/EU) and amendments to additional legislation. As authorized by the Immigration Act, various ordinances have been passed governing the employment of foreigners currently living in Germany or entering the country for the first time. A new ordinance on residence consolidates regulations previously found in the Ordinance Implementing the Foreigners Act and in the ordinances dealing with fees, data and transmission of files regarding foreigners.

Citizens of EU member states are entitled to freedom of movement and therefore do not come under the Residence Act. The legal status of EU citizens is dealt with in the new Act on the General Freedom of Movement for EU Citizens (see Section 11).

2.2 Significant changes

- Instead of five types of residence permits as previously, there are now only two: the (temporary) residence permit and the (permanent) settlement permit. The right of residence is no longer oriented on residence titles but on the purpose of residence, in particular: employment, training and education, humanitarian reasons, and subsequent immigration of family members.
- Instead of having to go through two separate application processes (one for residence permits and another for work permits), foreigners now only need to submit their residence permit application to the responsible foreigners authority. The foreigners authority will then send the

application to the local government employment agency to decide whether to grant permission to work, which is then noted on the residence permit.

- The ban on recruiting foreign labour remains in effect for unskilled, semi-skilled and even skilled workers.
- Citizens of the new EU member states are permitted to work in certain jobs as long as no German or other equally entitled candidate is available to fill the position. But citizens of the new EU member states have priority over citizens of non-EU countries.
- Highly skilled workers are eligible for a permanent settlement permit upon entering Germany.
- Self-employed persons are eligible for a residence permit if exceptional economic interest or special regional needs exist, if the planned business would have a positive economic effect, and if it has secure financing. Entrepreneurs planning to invest at least €1 million and create 10 jobs typically fulfil these conditions. A residence permit may also be granted if international law provides for special privileges on the basis of reciprocity. Self-employed persons are eligible for a settlement permit after three years if their business is successful and their livelihood is assured.
- Foreign students may remain in Germany for one year following graduation to find a job commensurate with their academic degree.
- Immigration on humanitarian grounds has been restructured to bring the residence status of persons entitled to asylum more into line with that of refugees recognized under the Geneva Convention. Members of both groups are initially granted a temporary residence permit which may be made permanent if the relevant conditions continue to apply. Children of persons entitled to asylum and refugees under the Geneva Convention are entitled to immigrate until their 18th birthday in order to rejoin their parents.

Non-state persecution is recognized as a ground for granting refugee status under the Geneva Convention. Protection from gender-specific persecution is now also specifically anchored in the law, which states that a threat to life, health or liberty which is based solely on a person's sex may also constitute persecution due to membership of a particular social group.

The status of persons under subsidiary protection has been improved: If a ban on deportation has been issued, such persons are to receive a residence permit unless it is possible and reasonable for the foreigner to go to a different country, or if the foreigner has violated obligations to cooperate or has committed human-rights violations or other serious crimes.

Successive suspensions of deportation in case of obstacles are to be avoided as far as possible. The law states that affected persons are to be granted a residence permit if, through no fault of their own, they are unable to leave the country within 18 months. By contrast, the obligation to leave the country will be more strictly enforced in the case of persons who are responsible for hindering their return and have deceived the authorities with regard to their identity or destroyed their passports.

The Immigration Act allows the German states (*Länder*) to set up hardship commissions which may petition the supreme authority at state level in individual cases of special humanitarian concern. The supreme authority may then order that a residence permit be issued, even if the usual requirements for such a permit are not met. Such commissions may be called on only when a foreigner is legally required to leave the country after having exhausted all appeals and has not committed any serious crimes. If a German state decides to set up a hardship commission, the commission's procedures and composition, and further requirements or reasons for exclusion will be specified by ordinance of that state.

To speed up the asylum process, the office of the Federal Commissioner for Asylum Matters has been done away with, and the autonomy of individual decision-makers is no longer unlimited.

Better collection and transmission of data will help prevent unlawful entries. In addition to processing asylum applications, the Federal Office for Migration and Refugees (BAMF) has assumed responsibility for the Central Aliens Register and for a number of coordinating functions related to labour migration information.

- All new legal immigrants to Germany (foreigners intending to reside permanently, ethnic German repatriates and EU citizens) are to be offered a basic package of integration measures which will be nationally standardized and regulated by federal law.

- On security, the Immigration Act continues in the same policy direction set by the Counter-Terrorism Act. As a rule, leaders of banned organizations can be expelled. Persons who incite hate and violence may also be expelled if they endorse public acts such as war crimes in a way that could disrupt public security and order. Expulsion is mandatory for human smugglers who have been sentenced to serve time in prison. In order to prevent special threats to Germany's security, the Immigration Act has introduced the instrument of deportation orders. The supreme authority at state level may now order a foreigner to be deported without first having to issue an official order to leave the country. A deportation order must be based on factual evidence of potential threat. Under the previous law, it was often difficult in

practice to expel or deport foreigners, which hindered the authorities from dealing effectively with special threats; the new deportation order is intended to resolve this problem. Accompanying this instrument are new provisions on monitoring the activities of foreigners who have been ordered to leave the country. Before issuing a permanent settlement permit or deciding on an application for naturalization, the authorities are now required to check whether the person in question has a record of anti-constitutional activities.

2.3 Residence Act

General information about foreigners entering or residing in Germany¹

Only foreigners holding a recognized and valid passport or passport substitute may enter or reside in the Federal Republic of Germany. In order to enter and reside in Germany, foreigners must have either a visa, a (temporary) residence permit or a (permanent) settlement permit.

According to European Community law, citizens of certain countries require a visa for stays of up to three months within a six-month period. The conditions for issuing such visitor's visas are also regulated by European law. However, they are largely identical with Residence Act requirements for issuing other types of residence titles.

In addition to having a valid passport, persons applying for a visa, residence or settlement permit must fulfil the following requirements:

- they must have a secure income,
- they must be able to establish their identity and nationality, if they are not entitled to return to another state,
- no grounds for expulsion may apply, and
- if the person is not entitled to a residence title, his or her residence may not compromise or jeopardize the interests of the Federal Republic of Germany for any other reason.

¹ The following information does not apply to EU citizens, citizens of Switzerland or citizens of members of the European Economic Area (EU countries plus Iceland, Liechtenstein and Norway). Special rules may also apply to third-country nationals immigrating to join EU, EEA or Swiss citizens. The same is true of ethnic German repatriates as defined in the Federal Expellees Act and their children and grandchildren. Conditions for the entry and residence of EU citizens are described in Section 11. For information on ethnic German repatriates, please see Section 12. This information applies in general to persons entering for purposes of long-term stay.

A foreigner is considered to have a secure livelihood when he or she is able to support him- or herself, including adequate health insurance coverage, without recourse to public funds. This does not include child benefits, child-raising benefits and public funds based on own contributions or granted in order to enable residence in Germany. Contributions to household income by family members are taken into account when issuing or renewing residence permits allowing the subsequent immigration of dependents.

Further, a residence or settlement permit will be issued only if the foreigner has the necessary visa to enter Germany, if applicable, and has already provided the essential information in his or her visa application. These requirements may be waived if the person in question fulfils the requirements for a residence title or if, due to special circumstances in the individual case, it would be unreasonable for him or her to apply for a visa after having entered the country.

Visa procedures and entry

Three types of visas may be issued: a Schengen transit visa, a Schengen visitor's visa for stays of up to three months, or a national visa for longer stays.

Applications for visas must be submitted to a German diplomatic mission abroad. Visas for longer stays or for purposes of employment require the approval of the foreigners authority responsible for the foreigner's prospective place of residence. Foreigners authorities are state-level authorities; in most states, their tasks have been delegated to the municipal or district administrations.

The visa application information is typically transmitted to the relevant foreigners authority in electronic form. At the same time, this information is checked against the Schengen Information System watch lists and the Central Aliens Register and the results provided to the foreigners authority. The foreigners authority communicates its decision to the diplomatic mission abroad in electronic form.

Residence

The Residence Act is based on the legally defined purposes of residence (education, gainful employment, subsequent immigration of dependents, humanitarian grounds). In addition to visas, the Residence Act allows for (temporary) residence permits and (permanent) settlement permits.

Residence for purposes of education and employment

In view of Germany's current high unemployment, the Federal Government places high priority on a forward-looking education and labour market policy. At the same time, growing pressure on markets and accelerating change in the structure of employment demand the entry and international exchange of highly skilled workers. In order to foster Germany's research and higher education environment, we must offer more attractive conditions for innovative specialists and students from abroad.

Foreign students:

The Immigration Act makes it easier for foreign students to remain in Germany after successfully finishing their studies. Foreign students' residence permits may be extended for another year after graduation, allowing them a chance to find a job commensurate with their education.

Highly skilled workers:

We have to be able to deal with labour shortages through more flexible labour migration. Senior academics and top-level managers who are offered a position in Germany may be granted permission to work without having to determine whether German candidates are available if the position fulfils certain criteria defined in the law. They may be granted a settlement permit from the start if they can reasonably be expected to become integrated into life in Germany.

Self-employed persons:

Self-employed immigrants can have a significant economic impact, as most jobs in modern economies are created in small and medium-sized businesses. The new law therefore aims to make it easier for foreign entrepreneurs, especially those with innovative ideas, to immigrate. To do so, it includes provisions on self-employment. As a general rule, self-employed persons are to receive a residence permit if they invest at least €1 million and create at least 10 jobs. This is the first time that this aspect of immigration has been accorded appropriate significance by being given an independent legal footing. The provision is intended in particular to make it easier for foreign entrepreneurs with secure financing and a sound business plan to invest in Germany for the long term.

The ban on recruiting foreign labour remains in effect for unskilled and semi-skilled workers; it even applies to skilled workers except in specific, justified cases when it is in the public interest. Highly skilled workers are eligible for a permanent settlement permit upon entering Germany.

The previous procedure in which foreigners had to apply to different agencies for their work and residence permits was rightly found to be too bureaucratic; it has now been replaced with an internal approval procedure. The foreigners authority issues the work permit, if approved by the employment administration, together with the residence permit (one-stop government). Before approving the work permit application, the employment administration determines whether it will have any detrimental effects on the labour market.

Citizens of the new EU member states are permitted to work in certain jobs as long as no German or other equally entitled candidate is available to fill the position. But citizens of the new EU member states have priority over citizens of third countries who are entering Germany

Green Cards

The Immigration Act went into effect on 1 January 2005 and thus before the first Green Cards were to expire on 1 August 2005. According to the transitional provisions, residence permits granted to IT specialists remain valid until their original expiration date. If a Green Card holder intends to remain in Germany, he or she may apply to the local foreigners authority for a settlement permit before his or her current residence permit expires. The work permit, originally issued for a period of five years, then counts as unlimited permission to work. Green Card holders are thus eligible for a settlement permit once they fulfil the requirements according to Section 9 of the Residence Act, i.e. having had a residence permit for five years, and not as a result of the Immigration Act.

Family members' access to employment

Provisions governing the employment access of foreigners legally residing in Germany for purposes other than employment (subsequent immigration of family members, humanitarian grounds) have been inserted into the Residence Act next to the relevant regulations, where they are easier to find and understand.

In the case of persons immigrating to rejoin family members who are German citizens, the residence permit entitles the holder to pursue paid employment.

In the case of persons immigrating to rejoin family members who are not German citizens, the immigrating family members will be granted the same access to employment as the foreigner resident in Germany. There is no longer a mandatory waiting period.

Residence on humanitarian grounds

The Immigration Act has significantly improved measures for humanitarian protection.

Refugees under the Geneva Convention and their family members

Victims of non-state and gender-specific persecution may be granted residence titles. Gender-specific persecution is recognized as persecution due to membership of a certain social group when a person's life, freedom from bodily harm or liberty is threatened solely on account of his or her sex.

Like persons entitled to asylum, refugees under the Geneva Convention initially receive a temporary residence permit; after three years, they may be eligible for a settlement permit, if the necessary conditions still apply.

After their 18th birthday, children of persons entitled to asylum and refugees under the Geneva Convention whose status was recognized before 1 January 2005 may be granted a residence permit if

- they were not yet 18 when asylum was applied for,
- they have resided in Germany since the asylum application was finally and unappealably approved,
- they can be expected to become integrated, and
- they have not committed any deliberate criminal offences in the past three years resulting in youth detention or a prison sentence of at least six months, or a fine equivalent to 180 daily rates.

(Section 104, para. 4 of the Residence Act)

Under the previous law, children who turned 18 during the asylum approval process were not eligible for a residence title.

Subsidiary protection

If a foreigner cannot be deported due to the threat of torture, capital punishment, serious and concrete threat to his or her life, health or freedom, or on the basis of the European Convention on Human Rights, he or she should be issued a residence permit unless it is possible or

reasonable for the person to go to a different country, or if the person has violated obligations to cooperate or has committed human-rights violations or other serious crimes (Section 25, para. 3 of the Residence Act).

Temporary suspension of deportation

The new law also allows for temporary suspension of deportation as a means of fine-tuning (see Section 60 a of the Residence Act). The supreme authorities at state level may suspend deportation of foreigners from certain countries or of certain groups of foreigners for a maximum of six months. Deportation is to be suspended in cases when it is impossible in fact or in law to deport a foreigner and no residence permit is granted. Temporary suspension of deportation does not constitute any right of residence; the residence of the affected person remains unlawful, and he or she remains obligated to leave the country.

If deportation has been suspended for 18 months, persons subject to final deportation orders should be granted residence permits. This is intended to counteract the practice of issuing successive suspensions of deportation in case of obstacles to deportation. A residence permit may be issued before 18 months have elapsed; in any case, there must be obstacles preventing deportation which cannot be expected to disappear within the foreseeable future. And, as before, these obstacles must be beyond the foreigner's control. Fault on the part of the foreigner consists in supplying false information, deceiving the authorities with regard to his or her identity or nationality or failing to meet reasonable demands to eliminate the obstacles to departure (Section 25, para. 5 of the Residence Act). If the obstacles preventing deportation are the foreigner's fault, he or she will be granted only the temporary suspension of deportation.

Foreigners whose deportation has been temporarily suspended receive "lower-priority" access to employment after one year of lawful residence or suspended deportation. They will not be allowed to take up employment if they are responsible for hindering official measures to end their residence.

Hardship cases

The Residence Act now allows the supreme authority at state level to make an exception to the legal requirements for issuing and extending residence permits and grant residence permits to foreigners subject to an unappealable order to leave the country. They may do so only at the recommendation of a hardship commission. The German states (*Länder*) are solely responsible for setting up hardship commissions and determining their procedures, conditions for issuing

permits or grounds for exclusion. The provisions on hardship cases do not create any individual legal entitlements.

Issuing residence permits to foreigners from certain countries and certain groups of foreigners

The supreme authorities at state level may order that foreigners from certain countries or certain groups of foreigners be issued residence permits in accordance with international law, for humanitarian reasons or to uphold the political interests of the Federal Republic of Germany (Section 23 of the Residence Act), for example when deportation is suspended for more than six months (Section 60a para. 1 of the Residence Act). This may be applied to persons already residing in Germany as well as to those who have not yet entered the country. It may also be applied to unilateral national decisions to admit persons from regions affected by war or civil war. It may be made conditional on assuming the costs associated with admitting these persons (declaration of commitment). This measure is intended to take into account the interests of those active in the humanitarian field, such as the churches. In order to ensure nation-wide consistency, decisions on admitting groups of persons require the approval of the Federal Ministry of the Interior.

Entitlement to subsequent immigration by family members

Children of refugees under the Geneva Convention and of persons entitled to asylum may immigrate up to their 18th birthday. In all other cases of residence granted on humanitarian grounds, they may immigrate only up to their 16th birthday. However, children may immigrate after their 16th birthday if they enter the country with their parents, can speak German or appear able to become integrated into life in Germany. If a child is not entitled to immigrate to rejoin family members in Germany, special discretion may be applied to take into account the best interests of the child and the family situation.

Subsequent immigration of family members is not allowed when the family member in Germany has only a temporary residence permit for urgent humanitarian reasons, or because his or her deportation has been suspended for more than 18 months. The same applies to foreigners subject to unappealable orders to leave the country who have been granted a residence permit because their departure is impossible in fact or law and the obstacles to departure cannot be expected to disappear in the foreseeable future.

Distribution of foreigners who have entered the country illegally

The Immigration Act also introduced provisions according to which foreigners who have entered the country illegally, who do not submit an application for asylum and who cannot be deported immediately are to be allocated among the states (Section 15a of the Residence Act). This procedure is based on the provisions for distributing asylum applicants. It is intended to evenly distribute the financial burden among the states.

2.4 *Integration*

Background

Germany has always attracted immigrants and will continue to do so in the future – perhaps to an even greater extent. What is new about migration movements today is that they originate from such diverse cultures – and often have no definite destination.

This makes it all the more important to clearly define the requirements for permanent residence in Germany. The aim of integration should not be merely to organize the co-existence of people from different cultures. A society cannot endure internal separatism based on cultural divisions. Speaking the same language is a basic requirement for maintaining societal cohesion. At the same time, immigrants must have the chance to take part in all aspects of social, political and economic life, on equal terms and as their individual conditions and willingness allow, thereby gaining a realistic hope of becoming a member of German society.

The Federal Government's integration policy is based on the principle of offering more support for integration efforts while making requirements stricter. Immigrants are required to learn German, through their own efforts and with state help, and to know and respect the basic values of our society. And German society is called on to recognize and remove existing barriers in order to give immigrants equal treatment and equal access to all important areas of society, politics and the economy.

The new Residence Act allows for and manages immigration with an eye to the Federal Republic's capacity for receiving and integrating foreigners. Integration is no longer simply social work, as in the past, but also migration management. The state offers all new immigrants, foreigners permanently resident in Germany, repatriates of German origin and EU citizens basic integration measures to support their own efforts to become a part of our society.

Integration courses

The core element of federal measures is the integration course with a total of 630 hours of instruction, consisting of a language course to provide participants with sufficient German skills and an orientation course to familiarize participants with the history, culture and legal system of Germany. The Ordinance on Integration Courses specifies the provisions of the Immigration Act in order to ensure that the integration courses conform to a nation-wide standard. This reorganization is a decisive improvement over previous federal support for language courses, which was spread across three ministries and drew distinctions between foreigners and ethnic German repatriates, between six-month courses and 900 instruction hours, and between legal entitlement and discretionary participation. The €208 million from the federal budget for integration courses in 2005 is an important investment in the future of our country.

The key features of the integration courses:

- The same courses will be offered to foreigners, ethnic German repatriates and EU citizens.
- The integration course consists of a basic and intermediate language course, each totalling 300 hours of instruction, as well as an orientation course totalling 30 hours of instruction.
- In order to meet individual participants' needs, the language courses will have a modular structure made up of six course units, allowing learners to proceed at their own pace.
- The language courses are designed to provide participants with adequate proficiency, the equivalent of level B1 in the Common European Framework of Reference for Languages, which is the first level of independent language use. This will allow immigrants to deal on their own with everyday situations, to conduct conversations and express themselves in writing commensurate with their age and education.
- The orientation course is intended to give immigrants an understanding of the system of government and state administration in Germany, in particular the significance of the free and democratic order, the party system, Germany's federalist structure, the welfare system, equal rights, tolerance and religious freedom. The aim is to help immigrants find their way more easily within the new society and offer them something with which they can identify.
- Successful participants will be able to demonstrate their proficiency in the language examination leading to the Zertifikat Deutsch, a language certificate developed by the Goethe-Institut (B1 equivalent) and officially recognized internationally.

The Federal Government will evaluate the integration courses in practice and present the German Bundestag with a report on course implementation and financing by 1 July 2007.

To ensure learning success, the integration course may be accompanied by immigration-specific advising as needed. Federal support for this area will therefore continue, and the separate systems of advising for adult ethnic German repatriates and social counselling for foreigners will be consolidated into a single system of initial advising on immigration. The aim of this advising will be to initiate, guide and accompany the integration process among new immigrants, for example by helping them choose an appropriate course and providing social and pedagogical support during the course.

Nation-wide integration programme

The Federal Office for Migration and Refugees oversees most of the federal measures to support integration. The Immigration Act provides for a nation-wide programme intended to better coordinate integration measures offered at the federal, state and local levels. The churches, trade and labour unions, employers' associations, voluntary welfare organizations and other social advocacy organizations will also be involved in drafting this programme.

Integrating immigrants who have already been living in Germany for some time presents a similar challenge. The Federal Ministry of the Interior and the Federal Office for Migration and Refugees have invested significant resources in carrying out a number of other integration measures for immigrants.

Integration of female immigrants

Due to their background, religion or social status in their country of origin, many female immigrants are unable to participate in the standard integration measures. Special integration courses are offered for these women which combine various programme components specifically tailored to women, preparing them to take part in German language courses and encouraging them to get occupational training.

Projects to support the integration of foreigners and ethnic German repatriates

Targeted support for model projects, measures to strengthen democracy and tolerance, and the inclusion of local activities and networks is intended to support and encourage immigrants' efforts at integration.

In addition, the Federal Ministry of the Interior supports above all the integration of immigrants in local neighbourhoods. Following the Federal Government's positive experiences with such programmes for ethnic German repatriates, since 2003 other foreign immigrants have been included in a joint integration programme.

Initial advising on immigration

As of 2005, responsibility for the advising for adult repatriates of German origin has been transferred from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth to the Federal Ministry of the Interior/Federal Office for Migration and Refugees, where it has been incorporated with the social counselling for foreigners into a single system of initial advising on immigration. In future, the focus of advising services will be on initiating and supporting the integration process. The 2005 federal budget has earmarked €28 million for this purpose.

2.5 Federal Office for Migration and Refugees (BAMF)

Background

In accordance with the Immigration Act, the former Federal Office for the Recognition of Foreign Refugees is being reorganized into a **competence centre for migration and refugees**, serving as a central office for migration policy.

The new office continues to be responsible for processing all asylum applications: It determines whether foreigners who have submitted an application for asylum are entitled to asylum or protection under the Geneva Convention on Refugees, or whether country-specific obstacles to deportation exist.

As mandated by the Immigration Act, and as the office designated by the Federal Ministry of the Interior on the basis of this Act, the Federal Office for Migration and Refugees (BAMF) has assumed the following tasks:

- developing the structure and contents of integration courses for foreigners and ethnic German repatriates;
 - implementing these courses (through private- or public-sector course providers);
 - providing the Federal Government with expert assistance in the field of promoting integration and producing informational materials on federal, state and local integration measures for foreigners and ethnic German repatriates;
 - implementing additional support measures for ethnic German repatriates (supplemental support for youth and supplemental language, social and educational support);
 - developing a nation-wide integration programme;
 - coordinating information on residence for the purpose of employment that is provided to the foreigners authorities, the Federal Employment Agency and the German diplomatic missions abroad authorized by the Federal Foreign Ministry to issue passports and visas ;
 - working with the administrative authorities of the EU member states as the national contact point (in accordance with Directive 01/55/EC) for providing temporary protection in the event of a mass influx of displaced persons, and maintaining the national registry for such an event;
 - encouraging the voluntary return of refugees under the REAG and GARP programmes;
 - allocating persons admitted under international law, for humanitarian reasons or in the political interests of the Federal Republic of Germany (currently applies to Jewish immigrants from the former Soviet Union);
 - allocating foreigners who have entered the country illegally;
 - assisting the foreigners authorities in determining the existence of country-specific obstacles preventing deportation in cases other than asylum applications;
 - maintaining the Central Aliens Register in the Federal Office's function as registry authority.
- In performing its new tasks, the Federal Office may rely on experience gained and preliminary work done since early 2003, when it was assigned the following tasks by ordinance, as legal transfer was not required, and was assigned funds in the 2003 and 2004 budgets to do so:
- supporting central organizations and associations that aid in the integration of ethnic German repatriates, expellees and refugees;
 - encouraging the voluntary return of refugees under the REAG and GARP programmes;
 - admitting Jewish immigrants from the former Soviet Union;
 - supporting language courses for foreign workers;
 - supporting the social integration of foreigners, especially social counselling programmes.

Central Aliens Register

The Central Aliens Register is one of the public administration's most important databases. On 1 January 2005, when the Immigration Act went into effect, the Federal Office for Migration and Refugees took over responsibility for maintaining the register from the Federal Office of Administration in Cologne. The legal basis for the register, which was founded in 1953, is the Act on the Central Aliens Register, which contains comprehensive provisions on data protection, because the right to determine the use of one's personal data also applies to foreigners.

The Central Aliens Register consists of general data files and visa files and contains more than 20 million records. In 2003, about 17.6 million queries and entries were made to the files on the roughly 7.3 million foreigners living in Germany.

The general files contain data on foreigners residing in Germany for more than three months and foreigners with special relevance for Germany, for example because they are banned from entering the country. No files are kept on tourists staying in Germany for less than three months. Apart from the foreigner's name, date of birth and similar information, the files mainly contain information on residence status, such as residence permits issued and renewed, orders to leave the country, deportation and applications for political asylum. In accordance with the new Residence Act, in future the Central Aliens Register will also record the purpose of residence. The visa file contains all visa applications submitted to German diplomatic missions abroad, including applicant photos. The file also indicates whether the visa was issued or refused.

More than 6,000 government agencies with a wide variety of functions use the Central Aliens Register, including foreigners and border authorities, labour administration offices, police and judiciary authorities. Because issues related to foreigners are managed at the local level, it is essential that the information in the Central Aliens Register is available centrally. Before an authority can make the relevant decision in a particular foreigner's case, it must be aware of information that other authorities may have about the foreigner and which decisions may have been made in the past. This is also in the interest of the foreigner in question: For example, this makes it possible to find out quickly that there is no reason to reject his or her visa application. And in case of general checks, a query to the Central Aliens Register provides rapid and reliable information about the foreigner's legal residence status.

The register also serves an important statistical function: The Federal Statistical Office bases its statistics on anonymous data from the Central Aliens Register. These data also help in political

decision-making. The Central Aliens Register makes it possible to monitor migration movements in Germany, providing the necessary information to develop current integration strategies further.

Migration research

The Immigration Act provides for the first time for scientific research and analysis of migration issues (accompanying research) to help the Federal Office for Migration and Refugees (BAMF) in controlling immigration. The BAMF will determine research needs, collect and evaluate existing results, convert them into usable form and publish them. The BAMF will hire scientists in order to conduct its own research. It will also commission external scientists and research institutes to conduct research projects or compile reports.

Scientific research into migration issues (accompanying research) will provide valuable insights into the impact of immigration policy and the effectiveness of the Immigration Act, significantly extending the basis on which the Federal Government plans its migration policy.

2.6 Federal Government Commissioner for Migration, Refugees and Integration

In December 1978, the office of the Federal Government's Commissioner for the Integration of Foreign Workers and Their Dependents was established at the Federal Ministry for Labour and Social Affairs. The first commissioner was former Minister-President Heinz Kühn, followed on 1 January 1981 by former Minister of State Liselotte Funcke. From 1991 to 1998, the office was held by Cornelia Schmalz-Jacobsen, MP; since 1998 it has been held by Marieluise Beck, MP.

The Office of the Commissioner for Matters Relating to Foreigners was put on a new legal footing following an amendment to the Foreigners Act (Chapter 8, Sections 91a - 91c), which took effect on 1 November 1997.

In accordance with the Immigration Act, the office was renamed "Federal Government Commissioner for Migration, Refugees and Integration" and transferred to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The relevant provisions can be found in Sections 92 to 94 of the Residence Act. The current commissioner, Marieluise Beck, MP, also holds the office of parliamentary state secretary in the Federal Ministry for Family Affairs.

Among other things, her job is to promote the integration of foreigners living permanently in Germany, assist the Federal Government in developing its integration policy, improve conditions for peaceful co-existence among Germans and foreigners, promote mutual understanding, and oppose xenophobia and unlawful discrimination against foreigners. The commissioner also monitors trends in immigration to Germany, the EU and other countries.

The commissioner is to be involved at the earliest possible stage in the Federal Government's legislative proposals and in other matters relating to her area of responsibility. She may make proposals and express her views to the Federal Government.

If there is sufficient evidence that federal authorities have discriminated against foreigners or violated their rights, these authorities must answer to the commissioner.

2.7 The Federal Government Commissioner for Matters Relating to Repatriates and National Minorities

Starting in the 1970s, the number of ethnic German repatriates immigrating to Germany from Eastern Europe and the former Soviet Union was about 40,000 to 50,000 a year. In 1988, however, this number rose dramatically: By autumn 1988, more than 130,000 repatriates had entered Germany. The high number caused enormous difficulties for the Federal Republic of Germany, as it coincided with a large number of East Germans entering from the German Democratic Republic.

For this reason, the Federal Government decided on 28 September 1988 to create the office of Federal Government Commissioner for Matters Relating to Repatriates. This office was held by Jochen Welt, MP, from December 1998 until November 2004; since 17 November 2004 it has been held by Hans-Peter Kemper, MP.

His job is to coordinate within the Federal Government all measures related to ethnic German repatriates, provide information on all aspects related to ethnic German repatriates, provide assistance to German minorities in their countries of origin and serve as contact person for the concerns of ethnic German repatriates. The main focus of his activity is integration: ensuring that ethnic German repatriates are rapidly able to participate in social, cultural and economic life in our society.

In a decision of 20 November 2002, the commissioner's area of responsibility was extended to the national minorities: Danes, Frisians, Sorbs and German Sinti and Roma. In this way, the

Federal Government demonstrated the high priority it gives to protecting these population groups. As the central contact person at federal level, Commissioner Kemper represents the Federal Government in the relevant contact groups and develops and coordinates public information related to national minorities in Germany.

3. Immigrants' political rights

3.1 *Basic rights*

As stated in the Basic Law, every person has certain basic human rights, e.g. the right to human dignity and to life and physical integrity. The Basic Law explicitly grants other basic rights, such as the freedom of assembly and of association, only to Germans. Rights not granted by the constitution may however be guaranteed through legislation; for example, the Act on Assemblies and Processions grants foreigners the freedom of assembly, while the Act Governing Private Associations grants them the freedom of association. Foreigners are also bound by the obligations of the rule of law and of the welfare state, which are crucial to the protection of basic rights.

3.2 *Voting rights*

Article 20, para. 2 of the Basic Law gives the “people” the right to vote. According to established rulings by the Federal Constitutional Court, this refers to the *Staatsvolk*, or community of German citizens; foreigners in principle have no right to vote.

European elections are one exception: EU citizens living in Germany have the right to vote and run for office in these elections. This is based on Section 6, para. 3 and Section 6 b, para. 2 of the Act on the European Elections, which transposed into German law Article 19, para. 2 of the Treaty establishing the European Community as well as Council Directive 93/109/EC of 6 December 1993.

Another exception is EU citizens' right to vote in local elections. According to Article 28, para. 1 third sentence of the Basic Law, in county and municipal elections, “persons who possess citizenship in any member state of the European Community are also eligible to vote and to be

elected in accord with European Community law.” This rule is based on European Community law and was inserted by authority of the Act of 21 December 1992 Amending the Basic Law (Federal Law Gazette I, p. 2028). Article 19, para. 1 of the Treaty establishing the European Community and Council Directive 94/80/EC of 19 December 1994 guarantee all EU citizens residing in a Member State of which they are not nationals the right to vote and to stand as a candidate in municipal elections under the same conditions of eligibility as apply to citizens of the Member State in question.

With its 2000 reform of nationality law, the Federal Government made it much easier for foreigners born in Germany and those who have lived here for many years to become German citizens. It is therefore easier to gain the right to vote through naturalization.

3.3 Other opportunities for participation

Apart from voting, foreigners have a wide range of opportunities to become involved at the local level, for example in clubs, citizens’ initiatives, trade and labour unions, schools, etc.

In many communities, foreigners’ consultative councils have been set up to give foreigners a forum for political participation despite not having the right to vote. Such councils are mandatory in the states of Brandenburg, Hesse, North-Rhine/Westphalia, Thuringia and Saarland. Other states have left it to the individual local governments to decide. In some states, the local foreigners’ councils have formed working groups at state level, if no state foreigners’ council existed. In 1999, the Federal Foreigners’ Consultative Council was founded by 45 delegates from state-level organizations.

4. Asylum and refugees

4.1 Foundations of asylum law

“Persons persecuted on political grounds shall have the right of asylum”, according to the constitution of the Federal Republic of Germany, the 1949 Basic Law. The right of asylum has a special priority in Germany. In Germany, unlike many other countries, the right of asylum is not only anchored in the 1951 Geneva Convention on Refugees; it is also enshrined in the constitution (Article 16a of the Basic Law). Foreigners in need of protection are entitled to the

right of asylum and can therefore sue the state for it in court; because it is anchored in the Basic Law, a constitutional amendment is required to change or restrict it. From 1984 to 1992, there was an enormous increase in the number of people seeking asylum in Germany, with a record 440,000 applications submitted in 1992. To deal with these developments, in 1993 four political parties – the CDU, CSU, SPD and FDP – agreed to a comprehensive reform of asylum law, known as the compromise on asylum. Part of this compromise was to create Article 16a of the Basic Law. Along with fulfilling its obligations under international law, Germany guarantees the right of asylum as a basic right. Germany fulfils its obligations under the Geneva Convention on Refugees also by applying this convention in granting the right of residence and protection from deportation to foreigners who are victims of political persecution but do not qualify for asylum under the Basic Law, in accordance with the Residence Act (Section 60, para. 1).

The high priority given the right of asylum in Germany is above all due to the painful experience during the Nazi regime, when many Germans faced persecution at home and were dependent on protection offered by other countries. This led to a strong desire for a free and democratic Germany to assume special responsibility for those seeking protection and refuge from political persecution.

4.2 Conditions

Political persecution is not defined in the Basic Law; instead, this key concept has been defined in decisions of the Federal Constitutional Court and the administrative court drawing on the Geneva Convention's definition of the term "refugee". According to this definition, victims of political persecution are not only those who are persecuted in their home country due to their political beliefs. Rather, the right of asylum is based on the conviction that, out of respect for the inviolability of human dignity, no state has the right to harm or endanger the life, health or personal freedom of an individual for reasons of political opinion, religion or characteristics inherent to his or her unique identity.

However, not every action by the state that has a negative effect – even if directed at one of the personal characteristics just mentioned – also constitutes political persecution justifying asylum. The action must both constitute an intentional violation of individual rights and be of sufficient intensity to cut the individual off from the larger community. Such actions must also be serious enough to violate human dignity in excess of that generally faced by other residents of the same country.

A situation of general need, such as poverty, civil war, natural disaster or lack of future prospects therefore does not constitute grounds for asylum. In most cases, political persecution is the result of actions by the state or actions for which the state is ultimately responsible. According to one interpretation, only actions by the state can constitute political persecution relevant for the right of asylum. Quasi-state structures that have supplanted the state, or to which the state has surrendered the field, are considered equivalent to a state (quasi-state persecution).

Under the previous law, this more limited definition of refugees as foreigners threatened by state or quasi-state persecution also applied to the recognition of refugee status under the Geneva Convention. The new Immigration Act significantly improves the protection of refugees: Under the Residence Act, when applying the Geneva Convention, persecution by non-state actors may also lead to the recognition of refugee status, if the state or quasi-state structures or international organizations are unable or unwilling to provide protection from such persecution. Germany thus now conforms to the practices of the other European Union member states and most of the international community.

In the past, there was disagreement as to whether persons persecuted solely on the basis of gender could be considered as belonging to a social group. The new Residence Act has improved protection also with regard to such gender-specific persecution, which chiefly affects girls and women. The new law clearly states that refugee status may be granted when applying the Geneva Convention if the threat of persecution is based solely on a person's sex.

The right of asylum protects people in hopeless situations not because of their commitment to certain political ideals, such as democracy or respect for human rights, but above all because of the general obligation to respect the inviolability of human dignity, as acknowledged in the Basic Law.

4.3 Exclusion from the right of asylum

This means that victims of political persecution who represent ideals in conflict with our free and democratic order may also be entitled to the right of asylum. Entitlement to protection based on the right of asylum is not boundless, however. Past decisions by the Federal Constitutional Court have determined that there are limits to the state's obligation to provide protection, for example if an asylum seeker has been involved in terrorist activity. Although the right of asylum offers protection and refuge from persecution, it is not intended to provide a new territory for terrorist activity or those who support it. For this reason, no one who is involved in or supports such

activity in Germany or abroad is entitled to such protection. The right of asylum as written in the Basic Law is thus subject to restrictions with regard to terrorism.

Nor is an asylum seeker entitled to asylum if he or she constitutes a threat to national security or to the public good, because he or she has committed serious crimes and has been sentenced to at least three years in prison. Already in the past, such persons were prohibited from being granted asylum under the Geneva Convention. The Counter-Terrorism Act of 9 January 2002 introduced further grounds for exclusion based on those in the Geneva Convention: No one shall be granted asylum or protection from deportation if there are serious grounds to believe that he or she has committed a crime against humanity or a serious non-political crime outside Germany, or that he or she has acted in violation of the aims and principles of the United Nations.

4.4 Asylum procedures

Foreigners claiming the right of asylum must submit their claims in accordance with the procedures specified in the Asylum Procedure Act. Using the nation-wide system for initial distribution known as EASY, asylum seekers are assigned to the initial reception centres of the individual German states (*Länder*).

The Federal Office for Migration and Refugees (BAMF), which lies within the remit of the Federal Ministry of the Interior, is responsible for processing all asylum claims. Formerly known as the Federal Office for the Recognition of Foreign Refugees, the BAMF has its headquarters in Nuremberg and a branch office in each state so that claims may be processed as closely as possible to the reception centres.

The personal interview, usually conducted with the help of an interpreter, makes up the core of the asylum procedure. In the interview, the asylum applicant has a chance to present his or her reasons for fearing persecution. Due to the nature of the process, the BAMF is limited in its ability to verify the facts in the case. Although the BAMF has comprehensive information resources, drawn from a variety of sources, on the current situation in asylum seekers' countries of origin, as a rule only the asylum applicant can provide the BAMF with details about the specific nature of the threat he or she faces. Because of the conditions under which they left their home country, asylum applicants are typically unable to provide concrete evidence of persecution, and the BAMF does not require such evidence to recognize asylum claims. It is sufficient for an asylum applicant to make a plausible case for a threat of relevant persecution. However, asylum applicants are required to describe in full everything justifying their fear of

political persecution or preventing them from being deported and to present all available documentation.

Asylum seekers who entered Germany via a safe third country (such as another EU country) may not be granted asylum, because they were already safe from persecution in that country. For such persons, the BAMF issues an order that they be returned to the safe third country from which they entered Germany. Or it arranges for them to be transferred to another responsible EU country. If it is not possible to determine the safe third country through which the asylum seeker entered, the asylum process is resumed. In this case, asylum seekers may only be granted protection from deportation.

If an asylum seeker attempts to enter Germany via an airport from a safe country of origin or without presenting a valid passport or passport substitute, his or her application for asylum may be processed within the airport transit area before he or she is allowed to enter the country. This is intended to prevent foreigners whose asylum applications have no chance of being approved from entering Germany. They may be returned without delay to their country of departure or origin on the basis of that country's readmission obligations. In this case, the asylum application must be processed within 19 days, including accelerated court proceedings. If this is not possible, then the foreigner must be allowed to enter the Federal Republic of Germany to await final processing of his or her asylum application. Most asylum seekers arriving by air land at Frankfurt Airport. For this reason, the BAMF has an office at the airport which is staffed around the clock.

If the foreigner's application for asylum is approved, he or she is issued a temporary residence permit and work permit valid for three years. If the foreigner qualifies only for protection against deportation, he or she is granted the status of a refugee under the Geneva Convention and is also issued a temporary residence and work permit valid for three years. Because the right of asylum is intended to provide protection from current threats, recognition as a person entitled to asylum or as a refugee under the Geneva Convention does not constitute a lifetime status. If the grounds for recognition no longer exist – because a change of government in the country of origin has caused political persecution to cease, for example – then recognition must be revoked. But revoking asylum or refugee status does not automatically result in a loss of the right to residence, because the person in question may have become entitled to the right of residence for other reasons in the meantime. The BAMF is obligated to determine after a maximum of three years whether recognition status should be revoked. If not, and if the person in question has had a residence permit for three years, he or she may apply for a permanent settlement permit.

Rejected claims to asylum may be appealed in administrative court; no preliminary proceedings are conducted. About 80% of those whose asylum claims have been rejected make use of this possibility. Rejected asylum seekers are in principle obligated to leave the country; if they refuse to do so, they may be deported, i.e. forcibly removed, as long as there are no obstacles to deportation. Carrying out deportations is the responsibility of the foreigners authorities of the states, which must abide by all decisions of the BAMF and the administrative courts pertaining to the asylum procedure.

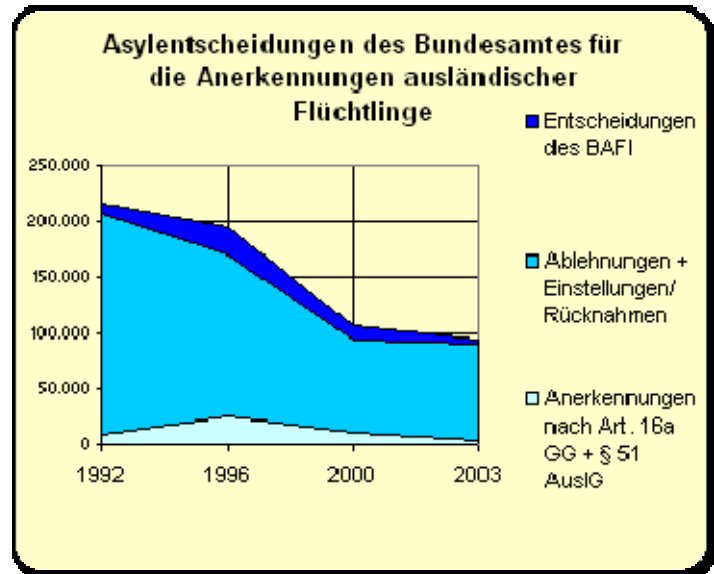
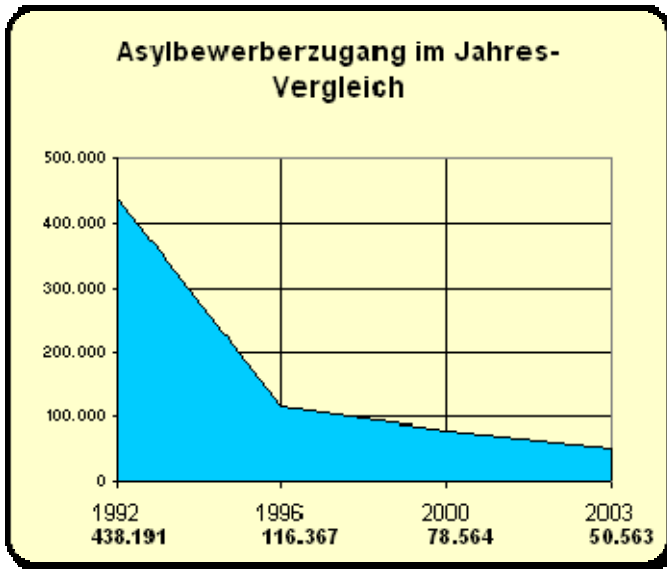
4.5 Subsidiary protection

Even if the necessary conditions for granting asylum or refugee status under the Geneva Convention are not met, humanitarian considerations may prevent a foreigner from being deported, even though he or she has no right of residence (“de facto refugee”). Considerations preventing a foreigner from being deported include the concrete threat of capital punishment, torture or other cruel or degrading treatment. In such cases, the BAMF may decide that a deportation ban applies. Temporary residence permits may be issued for as long as the grounds for the deportation ban remain valid. The same applies if the foreigner would face a significant, specific threat to his or her life, health or freedom. However, no one who has committed a serious violation of the obligation to cooperate or who poses a serious threat may be issued a residence permit; the same applies if it is possible and reasonable for the foreigner to go to another country.

4.6 Current situation in Germany

The number of first-time applications for asylum has been dropping for years. In 2003, it reached its lowest level since 1984. But many foreigners who are not victims of political persecution still try to use the asylum process as an avenue to legal residence, work or social benefits in Germany. In 2003, for example, 1.6% of applicants were granted asylum and 1.7% were protected from deportation, while 68.8% of the applications were rejected; the remaining 27.9% applications were resolved by other means, for example by returning the applicants to their country of origin or departure. In 2003, a total of 50,563 applications for asylum were submitted in Germany, representing a significant drop from the previous year, when 71,127 applications were submitted: 20,564 fewer applications, or 28.9%. The number of asylum seekers was

significantly lower in 2003, and this trend continued in 2004: By 30 November, only 32,864 persons had applied for asylum.



Asylum seekers' main countries of origin							
1992		1996		2000		2003	
All countries	438,191	All countries	116,367	All countries	78,564	All countries	50,563
Yugoslavia	122,666	Turkey	23,814	Iraq	11,601	Turkey	6,301
Romania	103,787	Yugoslavia	18,085	Yugoslavia	11,121	Serbia/Mont.	4,909
Bulgaria	31,540	Iraq	10,842	Turkey	8,968	Iraq	3,850
Turkey	28,327	Afghanistan	5,663	Afghanistan	5,380	Russian Feder.	3,383
Vietnam	12,258	Sri Lanka	4,982	Iran	4,878	China	2,387
former USSR	10,833	Iran	4,809	Russian Feder.	2,763	Vietnam	2,096
Nigeria	10,486	Armenia	3,510	Syria	2,641	Iran	2,049
Zaire	8,305	Zaire	2,971	Vietnam	2,332	India	1,736
Algeria	7,669	India	2,772	China	2,072	Afghanistan	1,473
Ghana	6,994	Pakistan	2,596	India	1,826	Azerbaijan	1,291

Having an efficient asylum process remains as important as ever. The aim is to be able to quickly and reliably recognize those who truly need protection as opposed to persons who falsely claim asylum.

There is no point in treating those making false claims as criminals; only a tiny proportion is not motivated by hardship to leave their homeland. Hunger, poverty, unemployment and a lack of future prospects force many people in many countries to flee. The attempt to find better living

conditions in another country is certainly legitimate. But the right of asylum must not be misused to get around existing immigration regulations.

5. Jewish Immigration

Since January 1991, Germany has been admitting Jewish emigrants from the former Soviet Union.

Jewish emigrants are admitted without quantitative restrictions and on a permanent basis on a scale that is manageable for the Federation and the German states (*Länder*); they are admitted on the basis of case-by-case decisions with priority being given to cases of family reunification and other cases of hardship. Their admission is essentially aimed at preserving and strengthening the viability of Jewish communities in Germany.

The Federation and the states have agreed on an orderly admission procedure which governs the admission of Jewish immigrants (General Instruction of the Foreign Office dated 25 March 1997). Orderly procedure means that entry into Germany is subject to the standard visa procedure. The applicant must apply for a long-term residence visa with the German diplomatic mission that is responsible for his/her place of residence.

Anybody who according to the public vital records, is either of Jewish nationality or has at least one Jewish parent, is eligible for admission.² Family members of the applicant (i.e. his/her spouse and children) may be included in the application. Before a visa is issued, the state where the immigrants intend to take residence must give its consent in the form of an admission notice. Applicants who have already emigrated to another country (e.g. Israel, U.S.A.), cannot be admitted to Germany in the framework of Jewish immigration to Germany.

Germany's diplomatic missions abroad (which examine whether the conditions for an admission to Germany are met), the Federal Office for Migration and Refugees (which allocates the

² Until the end of 2004, the admission of Jewish immigrants was based on the Act on Measures in Aid of Refugees Admitted under Humanitarian Relief Programmes (the so-called Quota Refugee Act). With the entry into force of the Immigration Act, admission will in future be based on instructions of the Ministers and Senators of the Interior of the *Länder* pursuant to section 23 of the Residence Act. These instructions had not yet been issued when this paper went to press.

immigrants on the basis of the Königstein Key to the 16 German states)³ and the states (which grant the admission notice) are involved in the admission procedure.

Upon their entry into Germany, Jewish immigrants are granted a settlement permit. They have unlimited access to the labour market and, to the extent that they are not able to earn their livelihood, they are entitled to benefits under the Federal Social Welfare Act. The responsibility for the implementation of the Federal Social Welfare Act and for the accommodation of Jewish emigrants lies with the states and the local authorities.

Jewish immigrants are entitled to a pension only if they have been gainfully employed in Germany and paid contributions to the statutory pension insurance. Immigrants who are already retired when they arrive in Germany cannot draw a pension. Elderly persons who are no longer gainfully employed do, however, have the possibility to apply for benefits under the Act on Need-Oriented Basic Protection in Old Age and in the Case of Reduced Earning Capacity. Jewish immigrants are entitled to unemployment benefits only if they have worked in Germany and paid contributions to the statutory unemployment insurance.

With the entry into force of the Immigration Act, a legal basis was established for a minimum set of integration measures that are offered by the state to all groups of immigrants (repatriates of German ancestry, recognized asylum applicants and other foreigners). This offer includes in particular language training and orientation courses which provide some basic information on Germany's legal system, culture and history. These courses are funded by the Federal Government.

The decision times for the admission of Jewish emigrants vary. The average processing time from the point in time when the examined application is transmitted by the diplomatic mission abroad to the states until the time when the applicant is actually admitted, is roughly one year.

Jewish immigrants from the states of the former Soviet Union who are admitted to Germany may apply for naturalization under the general provisions of German citizenship law, i. e. normally after a period of eight years.

³ The so-called Königstein Key is a funding key which serves as a basis for splitting up the burdens among the sixteen states. It is defined on an annual basis by the Federation-State Commission for Education Planning and Research Promotion and is pegged to the tax revenue and the population of each State. The name goes back to the Königstein Interstate Agreement which was concluded between the states in 1949 and which introduced this key."

As of 31 December 2004, 199,677 Jewish immigrants from the former Soviet Union including their dependents had been admitted to Germany. This figure includes 8,535 persons who had entered Germany before 10 November 1991, i.e. before or outside the orderly procedure.

The annual numbers of Jewish immigrants from the former Soviet Union were as follows:

1993	16,597
1994	8,811
1995	15,184
1996	15,959
1997	19,437
1998	17,788
1999	18,205
2000	16,538
2001	16,711
2002	19,262
2003	15,442
2004	11,208

On 1 May 2004, the Baltic States (Latvia, Lithuania, Estonia) joined the European Union. Due to this event, which marks a turning point, both legally and de facto, the procedure that used to govern Jewish immigration from these states no longer applies; ever since the accession of the Baltic States, their nationals may take residence in Germany in accordance with the right to the freedom of movement which is enshrined in European Law (cf. paragraph 11) and in accordance with the provisions of national law.

6. Termination of residence

6.1 General information

Foreigners are obliged to leave the country if they do not or no longer have the required residence permit (Section 50 para. 1 of the Residence Act). Furthermore, foreigners can be expelled on the basis of a specific order if and when certain requirements are met. If the foreigner in question fails to leave the country voluntarily, he or she will be removed by force (deportation).

However, the Residence Act provides for a number of obstacles preventing deportation, for example, if the foreigner in question would face capital punishment in his home country (Section 60 para. 3) or if deportation is inadmissible under the terms of the Convention for the Protection of Human Rights and Fundamental Freedoms (Section 60 para. 5). Both expulsion and deportation automatically lead to a ban on re-entering the country; however, this ban may be limited to a certain length of time by request, which is usually the case (Section 11 para. 1).

6.2 Expulsion

According to Section 55 para. 1 of the Residence Act, a foreigner may be expelled if his or her stay is detrimental to public safety and order or other substantial interests of the Federal Republic of Germany. Section 55 para. 2 provides examples to illustrate the basic rule: if a foreigner violates the law or provides false or incomplete information in proceedings concerning foreigners law. Foreigners may also be expelled if they or members of their family or household claim social assistance benefits.

In addition to the conditions given in Section 55 para. 1 of the Residence Act under which a foreigner *may* be expelled, the law specifies the conditions under which a foreigner *must* be expelled and those under which they *should* be expelled. For example, a foreigner should be expelled if he or she has been sentenced to at least two years in prison on charges of intentionally committing a criminal offence with no further possibility of appeal (Section 54 no. 1). A foreigner must be expelled if he or she has been sentenced to at least three years in prison for intentionally committing a criminal offence with no further possibility of appeal (Section 53 no. 1).

The Counter-Terrorism Act and the Immigration Act in particular have made the grounds for expulsion and deportation stricter; Section 9 discusses this in further detail.

The law provides for special protection against deportation for certain groups (Section 56 of the Residence Act). Members of such groups may be expelled only on serious grounds pertaining to public security and order. Special protection against deportation reduces mandatory expulsion to regular expulsion (“must be expelled” to “should be expelled”), and regular expulsion to discretionary expulsion (“should be expelled” to “may be expelled”). Foreigners who commit serious crimes lose any special protection against deportation.

For example, special protection against deportation is accorded to foreigners who have a settlement permit and have lived legally in Germany for at least five years, foreigners entitled to asylum and foreigners who live with their German spouse, life partner or other family member. Special protection against deportation is also accorded to foreigners who have a residence permit and who were either born in Germany or entered the country as a minor and who have lived here legally for at least five years (Section 56 para. 1 of the Residence Act).

In addition, Section 56, para. 2 of the Residence Act provides special protection from deportation for minors whose parents or parent with legal custody are legal residents of Germany. In the case of minors who have a residence or settlement permit, regular expulsion is reduced to discretionary expulsion.

Under European Community law, EU citizens and their family members entitled to freedom of movement may be expelled only for reasons of public order, security or health. According to established rulings by the European Court of Justice, violations of public order must constitute a real and sufficiently serious threat affecting the basic interests of society (see Section 11).

6.3 *Deportation*

Foreigners may be deported (i.e. forcibly removed from the country) only if they have been officially ordered to leave the country, have exhausted all appeals and cannot be relied on to leave the country voluntarily, or if it appears necessary for reasons of public security and order to supervise their departure (Section 58 of the Residence Act). Foreigners are not deported if a ban or temporary suspension of deportation applies, in particular if they face political persecution in the country of destination. Foreigners may avail themselves of court protection against deportation or expulsion. Before a foreigner can be deported, he or she must be notified of the

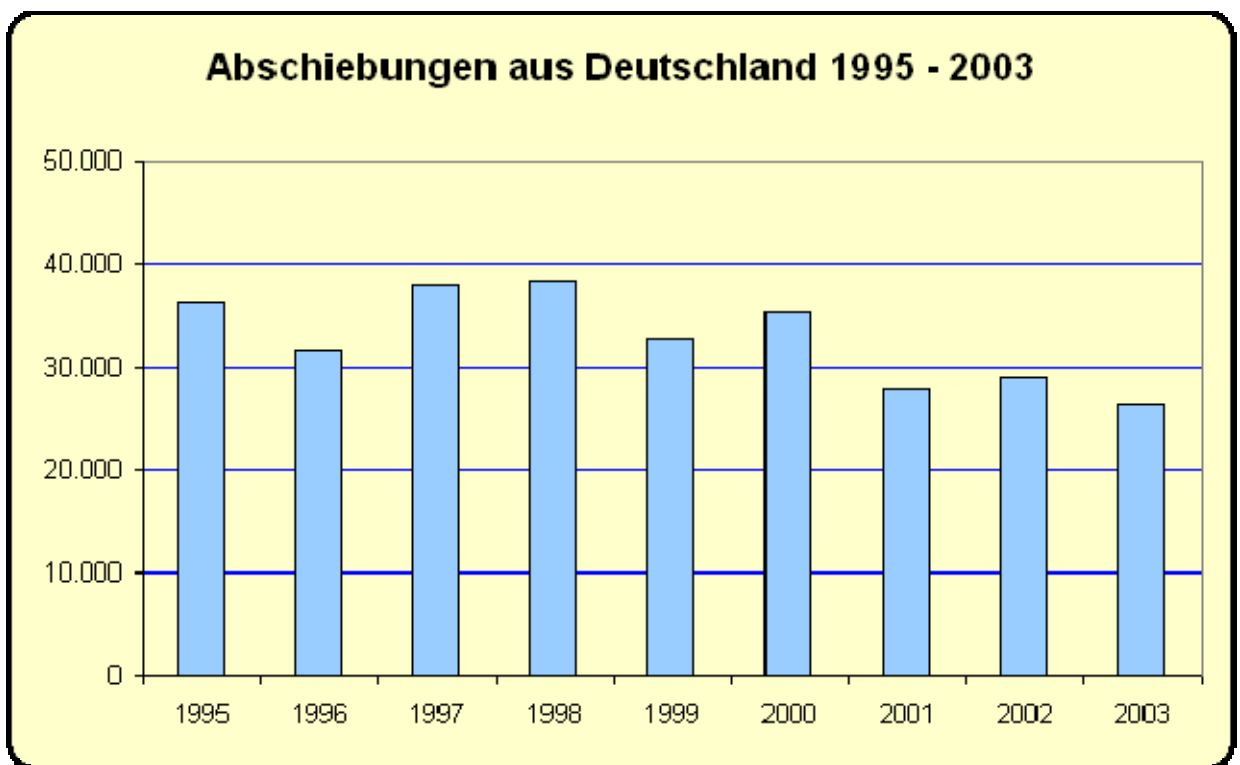
deportation, the date and the country to which he or she is to be deported (Section 59 of the Residence Act).

A foreigner may not be deported to a country in which his or her life or liberty is threatened due to his or her race, religion, nationality, membership of a particular social group or political convictions. In addition, under certain conditions the Immigration Act extends protection provided by the Geneva Convention on Refugees to non-state persecution. The Immigration Act also acknowledges that threats to life, liberty or freedom from bodily harm solely on account of a person's sex may also constitute persecution due to membership of a certain social group.

The deportation of a foreigner shall be suspended for as long as deportation is impossible in fact or in law and no residence permit is granted (Section 60a of the Residence Act). The new Immigration Act is intended to end the practice of issuing successive suspensions of deportation. For example, a new rule states that a residence permit is to be issued if deportation has been suspended for 18 months due to obstacles preventing deportation (Section 25 para. 5 of the Residence Act).

6.4 Statistics

In 2003, roughly 26,500 persons who had been ordered to leave the country were deported. The table shows the annual number of deportations since 1995.



Source: Federal Border Police

7. Criminal activity by foreigners

Criminal activity by foreigners is a controversial issue in Germany. This topic has gained wide public attention due in particular to intensive media coverage.

As such, the term “crime by foreigners” often used in this context is not neutral, but is very likely to arouse resentment and fears of being overrun while confirming existing prejudices.

Statistics on crimes committed by foreigners must be gathered and analysed more carefully in order to counter false, tendentious and discriminatory claims that non-Germans are generally more prone to criminal activity than Germans. This is the only effective way to fight prejudice. At the same time, it enables existing social problems and possible causes of crime to be identified and analysed, which helps in fighting the societal causes of crime.

The Police Crime Statistics (PKS) are among the most important sources of data on crime in Germany. This is a record of all crimes reported to the police and the number of suspects, i.e. persons suspected of having committed a criminal offence, according to the results of police investigations. The PKS is available for consultation on the homepage of the Federal Criminal Police Office (BKA) at www.bka.de.

The Police Crime Statistics of 2003 show that out of a total number of 2,355,161 suspects, 553,750 were foreigners. This represents a share of 23.5% (2002: 24.4%; 1999: 26.6%; 1998: 27.1%). Various factors make it impossible to compare the underlying number of crimes committed by foreigners and by Germans, of which the following are especially important:

- Violations of the Foreigners Act and of the Asylum Procedure Act can, as a rule, only be committed by foreigners. If the overall number of offences is considered without those against the Foreigners Act and the Asylum Procedure Act, the share of foreign suspects is reduced to 20.4% in 1999 for instance (1998: 20.8%; 1997: 21.7%; 1996: 21.8%).
- The Police Crime Statistics count all foreign suspects identified by the police. Apart from tourists, transit passengers, and employees from abroad lawfully staying in Germany, this also includes persons staying unlawfully in the country. For this reason, the actual number of foreigners on German territory is much higher than the number who are registered. A serious comparison with the number of suspects from the German residential population is therefore impossible.

- The German and non-German population differ with regard to age, gender and social structure. Compared with the German residential population, non-Germans are more likely to be younger, male, live in large cities and belong to lower-income groups. These factors are also associated with higher crime rates among comparable groups of German nationals.

These examples show how important it is to analyse such statistics by type of crime and persons involved, so as to gain an accurate picture of the scope of crime by foreigners, and how important it is to avoid making blanket statements.

However, two statements can be made with certainty:

1. The vast majority of foreigners living in Germany abide by the law.
2. The public agencies of the Federal Republic of Germany will continue to fight every form of crime with determination, regardless of who the perpetrators are.

8. Confronting extremism and Islamism at the intellectual and political level

The Federal Government has a comprehensive strategy for dealing with extremism and combating terrorism. In addition to measures aimed at prevention and deterrence, an important element of this strategy is confronting extremist ideologies at the intellectual and political level.

With regard to extremism by foreigners, Islamism is particularly significant, as it opposes the basic values of human rights, democracy and the rule of law. Confronting this type of extremism is a task for society as a whole, especially the large majority of non-extremist Muslims in Germany.

In dealing with Islamist extremism at the political level, the Federal Ministry of the Interior uses a multi-dimensional approach that includes directly confronting extremist ideology (in particular in the series of publications “Texts on Internal Security”) and indirectly strengthening support for our values while reducing that for Islamist radicalism, concentrating on the following areas:

- Integration policy
We must eradicate the causes of extremism and militancy and work to oppose the social marginalization of Muslim immigrants and segregation within parallel societies. Immigrants must truly become a part of our country, take part in our society and accept our values system. The Federal Government's integration policy contributes to this aim (see Section 5).

- Policy on religion/interfaith dialogue
We must promote the social integration of Islam within a society of religious plurality. Religion must not be misused as the starting point or ultimate goal of segregation – we must not allow it to be instrumentalized by extremist groups in opposition to the majority population and its values of freedom and democracy. In this context, the Federal Ministry of the Interior supports a number of projects such as the coordinating council of Christian–Islamic associations (a nation-wide network of volunteer initiatives to promote dialogue) and seminars and events with imams of the DITIB (Turkish-Muslim union of the institute for religion, reg'd society).

- Transfer of intercultural competence
Public employees, especially those who frequently deal with foreigners and immigrants, such as Federal Border Police officers, receive special training in intercultural competence. The Federal Agency for Civic Education also supports a pilot project for cooperation between police stations and mosque associations, for example.

- Activism and networking in civil society
One example is the Alliance for Democracy and Tolerance - Against Extremism and Violence, which strives to encourage activism particularly among Muslims in Germany, for example through participation in the contest "Take Action for Democracy and Tolerance". The Federal Agency for Civic Education organizes conferences with representatives of liberal/reformed Islam.

- Civic education
The Federal Agency for Civic Education makes a significant contribution to public information in this area with its publications (especially "Information on civic education: Islam and politics"), teaching materials, film series, seminars and events.

- Project and research funding

The Federal Ministry of the Interior supports relevant research projects, for example to improve our understanding of radicalization processes.

Particularly in an international context, the political and intellectual confrontation with Islamism and dialogue with Islam are an important element of the policy of prevention, which largely lies in the remit of other ministries. However, the Federal Ministry of the Interior takes an active part internationally in valuable cultural exchange, in promoting understanding, respect and tolerance, in strengthening the forces of reform in Muslim regions, developing broadminded civic societies and promoting democracy and the rule of law. One example is the rebuilding of the police forces in Afghanistan, in which the Federal Ministry is actively involved.

9. Counter-terrorism

9.1 *General information*

The terrorist attacks of 11 September 2001 in the U.S. revealed a previously inconceivable dimension of threat posed by international terrorism. Since then, international Islamist terrorism has developed into the greatest threat to the international community and to Germany's internal security. This threat was once again evident in the heinous attacks perpetrated in Istanbul and Madrid. The Counter-Terrorism Act and the Immigration Act, which went into effect in January 2002 and on 1 January 2005, respectively, take account of these threats by providing stricter regulations on the entry, expulsion and deportation of foreigners, on the duty to provide information, on security interrogations and measures to establish and document the identity of individuals. Responsibility for enforcing these regulations lies with the German states (*Länder*).

9.2 *The Act to Fight International Terrorism*

In order to ensure that individuals who commit or support terrorist or violent activities cannot remain in Germany, a new ground for refusing a residence permit was introduced as early as January 2002 (Section 8 para. 1 no. 5 of the Foreigners Act; since 1 January 2005: Section 5 para. 4 of the Residence Act).

The new provisions stipulate that if a foreigner "endangers the free and democratic basic order or the security of the Federal Republic of Germany, participates in acts of violence or publicly

incites violence in pursuit of political objectives or threatens the use of violence, or if facts justifiably lead to the conclusion that he belongs to or has belonged to an organization which supports terrorism or supports or has supported such an organization”, the residence permit will be refused even if the conditions for claiming one are fulfilled.

This provision applies also to individuals who give financial support to international terrorism. In addition, the Counter-Terrorism Act defines a number of new grounds that will result in regular expulsion under the Foreigners Act: Foreigners who should not have been granted a residence permit in the first place, since the prerequisites under Section 8 para. 1 no. 5 of the Foreigners Act are fulfilled, will, as a rule, be expelled. Furthermore, it is generally possible to expel foreigners who have provided false or incomplete information regarding their links with persons or organizations suspected of supporting international terrorism (Section 47 para. 2 nos. 4 and 5 of the Foreigners Act; since 1 January 2005: Section 54 nos. 5, 5a and 6 of the Residence Act).

In order to implement resolutions no. 1269 (1999) and 1373 (2001) of the United Nations Security Council (no refugee status for persons who plan or support terrorist activities), the law establishes that in cases where there are serious reasons to assume that a foreigner has committed a very serious crime, he or she shall not be granted refugee status under the Geneva Convention on Refugees (Section 51 para. 3 second sentence of the Foreigners Act; since 1 January 2005: Section 60 para. 8 of the Residence Act). Individuals to whom this provision applies are not granted a residence permit; they are subject to the limitations of the Act on Benefits for Asylum Seekers (reduced financial support) and their freedom of movement is restricted. This regulation does not, however, exclude the possibility of taking into account obstacles that might preclude deportation; this means that an individual will not be deported even if he or she is suspected of the most serious crimes if he or she faces a concrete threat of death, torture, etc. in the country of deportation.

Since the Counter-Terrorism Act became effective, measures to establish and document a person's identity (e.g. fingerprinting) may be taken also in the following cases:

- if grounds for refusing a residence permit pursuant to Section 8 para. 1 no. 5 of the Foreigners Act have been established (e.g. if there is evidence that a foreigner supports terrorist or extremist activities);

- if a citizen of a country which is problematic in terms of returns or security applies for a visa to stay more than three months (Section 41 para. 3 nos. 4 and 5 of the Foreigners Act; since 1 January 2005: Section 49 para. 3 nos. 5 and 7 of the Residence Act).

In addition, a legal basis was created to allow the personal data of visa applicants and of inviting parties submitted to German diplomatic missions abroad to be transferred to the federal security authorities for the purpose of ascertaining any grounds for refusing a residence title pursuant to Section 8 para. 1 no. 5 of the Foreigners Act. This procedure applies to nationals of countries which are problematic from a security point of view. In these cases, a visa may be issued only with the previous consent of the competent foreigners authority (Section 64 a paras. 1 and 4 of the Foreigners Act; since 1 January 2005: Section 73 paras. 1 and 4 of the Residence Act).

The foreigners authorities too may request the security authorities to ascertain any grounds for refusing a residence permit under Section 8 para. 1 no. 5 of the Foreigners Act before issuing or extending other types of residence titles (Section 64a para. 2 Foreigners Act, since 1 January 2005: Section 73 para. 2 Residence Act).

Furthermore, in future biometric features of fingers, hands or of the face may be included in documents that are issued under the law on foreigners, also if they are encrypted using security mechanisms.

9.3 *Immigration Act*

Similar regulations are also contained in the new Residence Act, which replaced the Foreigners Act when it became effective on 1 January 2005. Some important amendments to enhance Germany's protection against terrorist attacks were made in order to make the Act consistent with the Counter-Terrorism Act.

Grounds for expelling a foreigner/Deportation of terrorist suspects

The Residence Act stipulates that the leaders of any organization banned because its purpose or activities are opposed to the constitutional order or the idea of international understanding will also as a rule be expelled (Section 54 no. 7 of the Residence Act). Under the Immigration Act, persons who incite hate and violence may also be expelled if they endorse public acts such as war crimes in a way that could disrupt public security and order (Section 55 no. 8 of the

Residence Act). Finally, expulsion is mandatory for foreigners sentenced to imprisonment on charges of human smuggling (Section 53 no. 3 of the Residence Act).

Deportation order

Practice has shown that there are substantial problems when it comes to implementing the existing regulations on the expulsion and deportation of foreigners, which makes it rather difficult to take effective action in case of special threats. This problem is to be taken care of by way of deportation orders (Section 58a Residence Act).

As a rule, the foreigners authorities of the states issue expulsion orders. In order to prevent a particular threat to the national security or a terrorist threat, the supreme authority at state level may now issue a deportation order against a foreigner without issuing an expulsion order first. The deportation order is immediately enforceable. The Federal Ministry of the Interior may take over the responsibility for such a case if special federal interests are involved. Affected persons may appeal only to the Federal Administrative Court, significantly speeding up the process. Persons deported under such orders are permanently prohibited from returning to Germany (Section 11 para. 1 fourth sentence of the Residence Act).

In compliance with the rule of law, Article 58 a of the Residence Act expressly stipulates that the foreigner concerned shall be immediately afforded an opportunity to consult a legal adviser of his choice so that he may be able to apply in good time for temporary relief. The deportation shall not be enforced until the court has decided on the application for temporary relief. Foreigners considered to be particularly dangerous who cannot be immediately deported are to be taken into custody on the basis of a judicial order to ensure that they do not evade deportation (Section 62 para. 2 no. 1a of the Residence Act).

Such a deportation order must be based on factual evidence of a potential threat; mere assumptions are not sufficient. Thus, even Islamists willing to use violence may be included in a threat analysis, in order to counter the security challenges at an early stage.

The introduction of an immediately enforceable deportation order was a key issue in the mediation procedure concerning the Immigration Act. The regulations adopted meet the political demands for speedier procedures and improved possibilities to remove potentially dangerous persons from the country.

Monitoring measures

These regulations are complemented by provisions on monitoring foreigners subject to expulsion orders for reasons of internal security (Section 54 a of the Residence Act). Persons who cannot be deported due to obstacles precluding deportation (threat of torture, death penalty, etc. in the country of deportation) will be required to report at specific times to the authorities, and their freedom of movement and freedom to use certain means of communication will be restricted in order to improve security.

According to these provisions, foreigners subject to an expulsion order for constituting a terrorist threat or subject to an enforceable deportation order are required to report at least once a week to the authority responsible for their place of residence, unless the foreigners authority stipulates otherwise. They may reside only in the district for which that foreigners authority is responsible. They may be moved to a different place of residence or to certain types of accommodation outside the district of the foreigners authority concerned, if this appears expedient in order to prevent the activities which led to the expulsion order.

Vetting

Before granting a settlement permit or German citizenship to a foreigner, the competent authorities will check with the Office for the Protection of the Constitution whether there is any evidence that the applicant may have been involved in anti-constitutional activities (Section 73 para. 2 of the Residence Act). Applicants for naturalization are required to indicate any previous convictions that may have been imposed on them abroad.

Establishing identity

In addition to the provisions to establish identity that were introduced by the Counter-Terrorism Act, the law enforcement authorities have been granted easier access to these records in case of an abstract threat, e.g. in the context of checks on persons, so that they can immediately establish whether a foreigner is in Germany legally. The possibility to obtain information on a group of persons is extended even to individuals with an established residence status. Furthermore, obtaining information on a whole group of persons is admissible also in case of abstract threats. In order to operate more effectively, the security authorities can use an automated procedure to access the entire database.

10. Return and promotion of voluntary return

10.1 General remarks

Foreigners who have been ordered to leave the country must abide by this order. This is one cornerstone of a consistent policy on foreigners which seeks both to integrate foreigners lawfully residing in Germany and to restrict further immigration from countries outside the European Union. With regard to enforcing a foreigner's obligation to leave the country, German federal and state authorities give priority to voluntary returns, also by providing financial support under certain conditions. However, the tool of forcible returns cannot be dispensed with completely.

In many cases, persons obligated to leave the country refuse to do so. Also, some countries of origin fail to cooperate and are often not prepared to re-admit their nationals.

Foreigners ordered to leave the country frequently conceal their identity and origin in order to delay or prevent their removal from German territory. More than a few go underground in an attempt to escape repatriation. Others hide or destroy their identification papers or other personal documents. They then claim to be nationals of countries known to present legal or factual obstacles precluding deportation. Some deportees put up considerable physical resistance against being deported by air so that the pilot will refuse to take them on board.

Although every country is obliged under international law to readmit its own nationals, some countries of origin create considerable difficulties. Their diplomatic missions in Germany sometimes take a very long time to process applications for return travel documents, and some countries of destination require lengthy and inefficient procedures to establish a person's identity. Acquiring a surrogate passport may take several years. Persons whose identity and/or nationality is in doubt may be required to appear in person at the country of origin's diplomatic mission in Germany. However, some countries flatly refuse to receive persons calling at their diplomatic missions for such purposes and refuse to make appointments to this end, or charge high fees. Some authorities make the establishment of a person's identity conditional on his express declaration that he is a national of the state in question, or on the testimony of several compatriots, or on a declaration that he is returning voluntarily. Furthermore, the domestic authorities of some countries do not always unconditionally accept the surrogate passports issued by their competent consular bodies abroad.

European and international cooperation among the major host countries as regards repatriation play a major role today and will become increasingly significant in future. As a rule, when negotiating trade and association agreements with third countries, the EU requires the other contracting party to conclude readmission agreements with such EU Member States as so wish, apart from the existing exchange of experience and the joint conduct of individual return operations.

10.2 Promoting voluntary returns

For some 25 years Germany's federal and state governments have provided financial support for voluntary returns of foreigners obliged to leave the country. Promoting voluntary returns constitutes an effective means of migration policy that has proven itself. It offers an alternative to coercive measures for terminating a person's stay in the country, and it takes account of the priority of voluntary returns over forcible returns.

On behalf of the Federation and the competent ministries of the German states (*Länder*), the International Organization for Migration (IOM) carries out the REAG and GARP programmes (Reintegration and Emigration Programme for Asylum-Seekers in Germany; Government Assisted Repatriation Programme). These humanitarian aid programmes are designed to offer asylum seekers, persons whose asylum applications have been rejected, and refugees in particular a preferable alternative to return measures by encouraging them to return permanently to their countries of origin or go to a third country prepared to take them in. In order to receive aid, persons must agree to withdraw their application for asylum, for example.

The REAG programme uses the federal and state funds provided to pay the travel expenses of persons leaving the country voluntarily, whether by air, rail, bus or car. Voluntary returnees also receive a transport allowance.

Persons from countries of origin regarded as particularly important in migration policy terms can be granted additional start-up assistance under the GARP programme. Currently, the amount of assistance ranges between € 200 and € 500 per adult (children up to the age of 12 years receive half the amount); it is intended to support the voluntary returnees in the first months after their arrival in their home country. The maximum start-up allowance that can be granted to families equals three times the amount per person.

Every year, the Federal Ministry of the Interior and the states agree on which countries should be supported under the GARP programme, taking into account current political trends and objectives.

Assistance under the REAG and GARP programmes may be granted only to those returnees who are cannot pay the costs for their return or onward migration themselves because they are destitute.

If a returnee re-enters Germany intending to reside here permanently, he/she is obliged to repay any financial assistance received under the REAG or GARP programme.

The REAG and GARP programmes proved very effective with regard to the refugees from Bosnia-Herzegovina and from Kosovo who have left Germany and returned to their countries of origin: Of the 345,000 war refugees from Bosnia-Herzegovina originally admitted by Germany, fewer than 20,000 remained in the country after 2002. More than 200,000 persons claimed financial assistance from the REAG or GARP programmes.

After the war in Kosovo ended, more than 90,000 persons returned to Kosovo voluntarily between June 1999 and the end of 2004.

In the period from 1999 to 2003, the joint federal-state REAG and GARP programmes helped more than 147,000 persons return to their countries of origin.

Promotion of voluntary return	
Year	Number of persons
1999	approx. 49,500
2000	approx. 65,400
2001	approx. 8,700
2002	approx. 12,000
2003	approx. 11,700

Whereas joint federal-state assistance for voluntary returns focused on Bosnia-Herzegovina, Macedonia, Serbia and Montenegro (mostly Kosovo) from 1999 to 2001, starting in 2002 assistance was resumed for returns to countries all over the world. The following table shows the main target countries of assisted voluntary return in 2003:

Promotion of voluntary return in 2003 (Source: IOM)	
Main target countries	Number of persons leaving Germany
Serbia and Montenegro (including Kosovo)	5,090
Kosovo	1,854
Russia	635
Bosnia and Herzegovina	437
Bulgaria	415
Iran	385
Slovakia	375
Iraq	308
Vietnam	278
Armenia	245
Macedonia	222

Programmes for promoting returns are financed through budgetary funds of the Federal Ministry for Economic Co-operation and Development (BMZ), by supporters of charitable associations, the states, and individual municipalities. In addition, national initiatives and projects for the promotion of voluntary return can be financed through the European Refugee Fund and other financial instruments of the European Union. In order to provide returnees and actors involved in return operations with an overview of existing opportunities, the Centre for the Provision of Information on Return Support (ZIRF) was set up at the Federal Office for Migration and Refugees (BAMF). Having a central clearinghouse for information on programmes and projects for the promotion of voluntary return is designed to coordinate and control return projects, in order to avoid duplicate assistance to the same person, to identify new areas of assistance, and to enable the development of new projects.

Together with agencies responsible for return projects, the ZIRF also regularly conducts information campaigns for selected target countries, informing potential returnees about the situation in their country of origin, the possibilities to receive financial assistance, and other framework conditions.

Further details on the REAG/GARP programmes (list of countries supported under the GARP programme, eligibility, etc.) and on other return projects are available on the website of the Federal Office for Migration and Refugees at www.bamf.de.

10.3 Readmission agreements

For many years, Germany has been concluding agreements with neighbouring states on the readmission of own nationals and of foreign nationals residing in Germany. Additionally, there exist agreements on transit operations enabling the return and repatriation of war refugees from the Balkans.

In recent years, the Federal Government has concluded readmission agreements with a number of countries which regulate the technical details arising from the implementation of the countries' international obligation to readmit their own nationals and those of other countries. So far, 28 agreements have been concluded mainly with European countries, but also with some non-European states, such as Vietnam, Morocco and Algeria. These agreements regulate the instruments and procedures for establishing the nationality of the persons concerned, for issuing the necessary travel documents, and details concerning the practical conduct of return measures.

Since the end of 1998, agreements have been concluded with Estonia, Latvia, Lithuania, the Hong Kong Special Administrative Region of the People's Republic of China, Serbia and Montenegro, the Czech Republic, Macedonia and Albania. Negotiations on bilateral readmission agreements with additional states are planned, have already started or been concluded. States include Armenia, Georgia, Lebanon, Egypt and Afghanistan.

The more recent agreements comply with modern European standards and also regulate the readmission and/or transit of third-country nationals. These agreements cover third-country nationals obliged to leave the country who have been residing in Germany unlawfully, or who are obliged to return to their home country or to another country willing to admit them and who have to travel through the territory of the contracting states for that purpose.

As for the European Union, the Council has authorized the EU Commission under Article 63 (3) (b) of the Treaty establishing the European Community to negotiate community readmission agreements with the following 11 third countries/entities: Morocco, Sri Lanka, Russia, Pakistan, Hong Kong, Macao, Ukraine, Albania, Algeria, China and Turkey. So far, the Commission was able to conclude negotiations with Hong Kong, Macao, Sri Lanka and Albania.

The agreements with Hong Kong and Macao, the first readmission agreements of the Community, entered into force in March and June 2004 respectively.

10.4 Returns to Kosovo

Given its enormous dimensions, the return of refugees from Kosovo is the most significant undertaking of its kind for Germany in many years:

After the Yugoslavian armed forces withdrew and an international civil and security force was established under UN (UNMIK) and KFOR administration, state repression in Kosovo directed against Kosovo Albanians and other ethnic groups ceased. This key security aspect, among others, led to a Memorandum of Understanding which was signed on 17 November 1999 by Federal Interior Minister Otto Schily and then-UN Special Representative for Kosovo Bernard Kouchner. Further, in March 2000 a multi-lateral agreement was reached between Germany, Austria, Croatia, Slovenia, Hungary, Switzerland, Italy, Bosnia-Herzegovina and Albania in order to make it easier for civil war refugees to return voluntarily to Kosovo via overland routes.

On the basis of this agreement, Kosovo Albanians living in Germany have been returning to Kosovo since 1999. Of those who have already returned to Kosovo, 83% did so voluntarily, while 17% – roughly 18,200 persons – were forcibly returned by the end of November 2004. Although not all Kosovo Albanians who fled their country during the Kosovo crisis have returned home, the majority have done so by this point.

The stated goal of the international community is to rebuild a multi-ethnic Kosovo. This issue is closely linked to returning ethnic minorities to Kosovo, by force if needed. For this reason, among others, on 31 March 2003 Federal Minister of the Interior Schily and then-UN Special Representative for Kosovo Michael Steiner signed a Memorandum of Understanding regulating the start of forcible returns for members of ethnic minorities, based on UNMIK's assessment of the security situation for the various minorities. As a result of this assessment, Roma and Serbs are exempt from forcible returns to Kosovo for the time being.

11. Freedom of movement for EU citizens

11.1 General remarks

As EU citizens, all nationals of the Member States of the European Union have the right to move freely within the European Union and to enter and reside in any EU Member State. This right is guaranteed under Article 18 of the Treaty establishing the European Community.

In addition, the right to freedom of movement also includes the possibility to engage in economic activity, i.e. to be employed or self-employed and to provide services.

This freedom of movement was originally conceived of as an economic, market-related freedom; that is, it was primarily intended to allow EU citizens to engage in economic activity in all Member States. The right of residence was a necessary consequence of this freedom and therefore had only a subordinate function.

Due to increasing integration and, above all, to the introduction of EU citizenship in the Maastricht Treaty, effective 1 November 1993 (Article 17 of the EC Treaty), this understanding has taken on a broader significance. The right to reside in another Member State is no longer dependent on economic activity. The right of entry and residence exists independent of the economic context. This is demonstrated by the 1990/1993 directives on persons not in the labour force, which allow students, pensioners and other persons not in the labour force the right of residence under certain conditions. Now, with Article 18 of the EC Treaty, the right of every EU citizen to “move and reside freely within the territory of the Member States” is expressly set down in primary law. However, this freedom of movement is not unconditional, but is subject to the limitations and conditions laid down in the EC Treaty and by the measures adopted to implement it.

Further, analogous to national citizenship, citizenship of the Union is to be understood as a special bond between citizens and the European Union.

11.2 Legal basis

The conditions and extent of EU citizens' right to freedom of movement are founded on European law, which is reflected and implemented in national law in the form of the Act on the General Freedom of Movement for EU Citizens (Freedom of Movement Act/EU).

In European law, the conditions for the freedom of movement are set down in Article 18 (for all EU citizens), Article 39 (for workers), Article 43 (for self-employed persons) and Article 49 (on the provision of services) of the Treaty establishing the European Community, as well as in the Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which went into effect on 30 April 2004.

The requirements of European law are reflected in the national legislation mentioned above; Community law, including the rulings of the European Court of Justice, is to take precedence when interpreting such legislation.

The Freedom of Movement Act/EU already implements the major requirements of the Directive 2004/38/EC. However, some further details have to be added. This will be done by amending the Freedom of Movement Act/EU. The deadline for implementation is April 2006.

11.3 Legal status of EU citizens

The right of EU citizens to enter and reside in a Member State distinctly differs from that of third-country nationals. This reflects the progress made in Europe with regard to integration.

EU citizens do not need a visa to travel to other Member States. They do not even need a passport; an official identity card is sufficient.

Nor are they required to have a residence permit. EU citizens are to receive certification confirming their right of residence. The information needed by the foreigners office to issue such certification can also be provided to the competent registration office, so that people do not have to call at two different authorities.

According to European law, the following categories of persons have the right to move and reside freely within the Member States of the European Union:

- workers,

- established self-employed persons,
- providers of services,
- recipients of services,
- persons entitled to remain in the territory of a Member State (formerly employed persons who have the right, after having terminated their employment contract, to remain in the country where they had formerly been employed)
- pensioners, students and other persons not in the labour force,
- and their family members.

Special conditions apply to EU citizens who are not in the labour force. They have the right to freedom of movement only if they and their family members are covered by health insurance and have sufficient resources to support themselves and their family members for the entire period of their residence. These resources must be sufficient to ensure that no recourse to social assistance will be needed. The competent foreigners' authority may require proof that the EU citizen concerned fulfils the requirements pertaining to his/her entitlement to reside in the country.

11.4 Loss of the entitlement to entry and residence

Even EU citizens may lose their right to residence, but only under narrowly defined conditions. This is the case only if a EU citizen seriously endangers the public order and security of the Member State concerned. His or her behaviour must be a real and sufficiently serious threat to the public order or security, affecting the basic interests of society. Apart from that, an individual assessment of the potential threat must come to the conclusion that he or she will continue to pose a threat to public security also in future.

EU citizens may also lose their right to enter and reside in the territory of a Member State if the conditions pertaining to their entitlement to residence are no longer fulfilled.

11.5 Transitional arrangements for the acceding Central and Eastern European states

For the new Member States in Central and Eastern Europe, the Treaty and Act of Accession provide for transitional measures regarding the free movement of workers in certain service

sectors in Germany and Austria, subject to certain conditions, until complete freedom of movement has been implemented.

The most important features of these transitional provisions are as follows:

They provide for a flexible “2+3+2” model, in which the present Member States may apply measures regulating the labour market access for citizens of the new Member States in Central and Eastern Europe for an initial transition period of two years, in derogation of the directive on the freedom of movement of workers within the Community (phase 1). Following assessment based on a report by the European Commission, the present Member States may extend these measures by an additional three years (phase 2); thereafter, in case of actual or expected severe disturbances on the labour market, these measures may be extended by a further two years (phase 3).

As far as labour market access is restricted in accordance with the 2+3+2 model, Germany may restrict the cross-border provision of services using own workers in the service sectors of construction and related branches, industrial cleaning and interior decorating.

Similar transitional provisions were applied when Greece, Portugal and Spain joined the EU. The citizens of Cyprus and Malta have the right to freedom of movement without restrictions, in accordance with European law.

In accordance with European law, since 1 May 2004, the following citizens of the new Member States in Central and Eastern Europe have the right to move and reside freely in every Member State without restriction:

- established self-employed persons,
- self-employed providers of services in all service sectors,
- persons employed by providers of services in sectors *other than* construction and related branches, industrial cleaning and interior decorating,
- recipients of services,
- persons entitled to remain in the EU,
- pensioners, students and other persons not in the labour force.

This excludes the following (except for citizens of Cyprus and Malta):

- workers,

- persons employed by providers of services in construction and related branches, industrial cleaning and interior decorating.

For these persons, the following applies:

The Federal Republic of Germany will continue to enforce its national and bilateral regulations governing access to the labour market. This means that workers from the new Member States, with the exception of Cyprus and Malta, will continue to need a work permit.

If foreign workers are involved, the cross-border provision of services in the sectors listed above is permissible only in accordance with national and bilateral regulations. This means that such services must be approved within the framework of a service contract procedure carried out by the Federal Employment Agency.

For more information on work permit legislation and the service contract procedure, please contact the Federal Employment Agency.

“New” EU citizens do not need a visa to travel to other Member States, regardless of the purpose of their journey. They may acquire any necessary work permits after entering the country.

A passport is not required for entry; an official identity card is sufficient.

12. Ethnic German repatriates

12.1 Admission of ethnic German repatriates

A special group of immigrants to Germany is that of “late repatriates” (*Spätaussiedler*), or ethnic Germans from the former Soviet Union and Eastern Bloc countries. As a result of World War II, ethnic Germans in these areas faced persecution and serious discrimination for decades after the end of the war. Persons who continue to face such discrimination today, along with family members who are not ethnic Germans, are eligible to relocate to Germany under special rules. By law, they acquire German citizenship when issued a repatriates certificate. Up to 21 December 1992, it was assumed that all ethnic Germans living in certain legally defined regions had personally suffered discrimination due to their ethnicity. The same still applies to applicants from the territory of the former Soviet Union. All other applicants must demonstrate evidence of individual discrimination.

12.2 Legal framework: German status / ethnic Germans / “late repatriates”

According to Article 116 (1) of the Basic Law, a German is a person who possesses German citizenship or who was admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such a person. If the persons in question do not have German citizenship, as is usually the case, they are granted the **status of Germans** upon admission, i.e. they are recognized in the meaning of Article 116 (1) of the Basic Law as Germans without German citizenship. Since 1 January 1993, the Federal Expellees Act (BVFG) has the final say on who qualifies as a person admitted to the territory designated in Article 116 as an expellee of German ethnic origin,

According to the Act, only persons who are **ethnic Germans** as defined in the Act can be recognized as **“late repatriates”**. In defining German ethnicity, Section 6 paras. 1 and 2 of the BVFG distinguish between persons who were old enough at the start of general expulsions to have developed their own sense of belonging to the German ethnic community and persons born later. The latter are legally defined as persons born after 31 December 1923 (and before 1 January 1993) – now by far the largest proportion of persons applying to enter Germany as ethnic German repatriates. Such persons must fulfil strict conditions in order to be recognized as ethnic Germans: At least one parent had to have been a German citizen or ethnic German; since 7 September 2001, when legislation on the status of ethnic German repatriates went into effect, they must also have demonstrated an exclusive identification with the German ethnic community (typically in the form of a declaration of nationality) in their region of residence or have been identified as a German national under the laws of their country of residence. In order to confirm such identification, as part of the application procedure, in principle during a hearing, applicants must demonstrate German language skills gained from family members sufficient to conduct a simple conversation in German. These requirements may be waived if local conditions make it impossible or unreasonable for the applicant to fulfil them.

Ethnic Germans who have applied for admission to Germany, have left their country of residence and settled in Germany within six months are considered **ethnic German repatriates** if they fulfil the legal requirements as to birth date and residence in a region as defined in the Federal Expellees Act (Section 4, para. 1).

In addition, applicants for admission who are not from the former Soviet Union must present plausible evidence of discrimination based on their German ethnicity or the continued impact of earlier discrimination on or after 31 December 1992 (Section 4, para. 2 BVFG.) In the case of

applicants from the territory of the former Soviet Union, a collective fate as a consequence of war may be assumed (Section 4, para. 1 BVFG).

In principle, ethnic Germans wishing to establish residence in Germany will be allowed to enter the country only if they have received preliminary notification that they fulfil the legal requirements for recognition as an **ethnic German repatriate**. Applicants must therefore wait for an admission notice before leaving their country of residence (Section 27, para. 1 BVFG). The same applies to applicants' non-ethnic German spouses, children and grandchildren to be included in the admission notice (Section 27, para. 1, second sentence BVFG). In cases of exceptional hardship, applicants who cannot reasonably be expected to remain in their country of residence may be issued a preliminary admission notice or acceptance after the fact (Section 27, para. 2BVFG) as long as they fulfil all other legal requirements.

12.3 Non-ethnic German spouses, children and grandchildren

Non-ethnic German spouses and descendants of ethnic German repatriates receive privileged treatment compared to the family members of other foreigners, in that the term “descendants” encompasses a larger group (i.e. children and grandchildren) who may settle with the ethnic German repatriate in Germany than the “nuclear family” protected under Article 6 of the Basic Law (parents and their unmarried minor children). Further, these family members are granted upon admission the same legal status as the ethnic German repatriate, that is, the status of Germans as defined in Article 116 (1) of the Basic Law; and – like the ethnic German repatriate him- or herself – are automatically granted German citizenship when they are issued a repatriates certificate in accordance with Section 15 of the Federal Expellees Act (see “Acquiring ethnic German repatriate status”, below) (Section 7 of the Nationality Act).

Since the mid-1990s, the number of ethnic Germans arriving under these rules has shrunk steadily in proportion to that of their non-ethnic German spouses, children or other eligible family members (currently only about 20% annually). As a result, the proportion of “late repatriates” who do not speak German has grown. Their lack of German language skills has made it more difficult for members of this group to become integrated in Germany, which in turn has increased social concerns and reduced public acceptance for taking in additional ethnic Germans from Eastern Europe and the former Soviet Union.

Following recommendations of the Independent Commission on Migration to Germany, effective 1 January 2005, non-ethnic German spouses and children must demonstrate a basic

knowledge of German. This is intended to ensure that from then on, only those non-ethnic German spouses and descendants who have a better chance of becoming integrated are admitted into Germany. Ultimately, the affected persons must decide for themselves whether they wish to qualify for these advantages in terms of legal status (naturalization upon admission to Germany), thereby contributing to their rapid integration. If they are not willing to do so, they may settle in Germany under the rules governing subsequent immigration to rejoin a German national. Under these rules, married minor children and grandchildren and those who have reached the age of majority may be granted a residence permit only in cases of exceptional hardship (Sections 28 and 36 of the Residence Act); as a rule, they are excluded from subsequent immigration of family members.

12.4 Annual quota of ethnic German repatriates

Provisions added to the proposed Federal Act for the Settlement of Consequences of War (KfbG) while in mediation committee (Section 27 para. 3 BVFG) set an annual quota for admission notices sent by the Federal Office of Administration (BVA) to ethnic German repatriates based on the average number of ethnic German repatriates (and their spouses/descendants) allocated to the German states in the years 1991/92, or approximately 225,000 persons. Although this represented a considerable drop compared to previous years (peak year: 1990 with roughly 400,000 persons), there was still an urgent need for greater planning certainty in view of societal concerns, (continued) public acceptance and integration, not least in the interest of the arriving ethnic German repatriates themselves.

After the number of ethnic German repatriates fell steadily in the 1990s, to about 103,000 in **1998**, the budgetary consolidation act of 22 December 1999 (Article 6) defined that year as the new reference for determining the quota set in Section 27 para. 3 of the Federal Expellees Act. This attempt to set the quota based on actual developments was motivated by the same concerns that led to inserting a quota in the Federal Act for the Settlement of Consequences of War. These motives were reinforced by efforts to reduce budgetary expenditures and by the realization that the most ethnic German repatriates (including family members) that could be admitted without excessive strain was about 100,000 annually.

12.5 Applying for admission as an ethnic German repatriate with eligible family members

Prerequisites for acceptance

According to Section 27 para. 1 first sentence of the Federal Expellees Act, admission is granted upon application to persons residing in regions defined in the Act who, after leaving such regions, fulfil the requirements for recognition as an ethnic German repatriate (see “Legal framework”, above). Persons who played a significant role in maintaining the communist regime in such regions may not be accepted for admission, according to Section 5 of the Act.

Spouses or descendants of ethnic Germans, who themselves do not meet the criteria for German ethnicity but do have basic German skills (equivalent of level A1 in the Common European Framework of Reference for Languages) as demonstrated by an appropriate certificate or language test, may, under Section 27 para. 1 second sentence of the Federal Expellees Act, accompany their ethnic German spouse or relative to resettle in Germany, if the spouse or relative has included them in their application. Spouses are required to have been married for at least three years.

Applications processed by the Federal Office of Administration (BVA)

According to Section 28 para. 1 of the Federal Expellees Act, the Federal Office of Administration is responsible for processing applications for ethnic German repatriate status. According to Section 28 para. 2, however, applications may be accepted only upon approval by the admitting state.

Processing time

The average length between the time an application is received and the time an admission notice is sent is determined among other things by the number of applications to be processed and the number of acceptances allowed by law. For some time now, it has not been necessary to delay processing in order to avoid exceeding legal quotas for acceptances; as a result, the length of processing largely depends on the time needed for applicants to provide documentation that they fulfil all the necessary requirements, especially with regard to their own language skills or those

of accompanying family members. Communication by mail may also take a long time. Applications currently require an average of 48 months for processing.

12.6 Acquiring ethnic German repatriate status or that of an accompanying non-ethnic German spouse or descendant

Under Section 4, para. 1 of the Federal Expellees Act, persons may be recognized as ethnic German repatriates only after establishing permanent residence in Germany within six months of leaving their former region, in addition to fulfilling all other legal requirements. If all the legal requirements have been fulfilled, such persons by law acquire the **status of ethnic German repatriates**.

Nonetheless, as part of standard procedure the Federal Office of Administration carries out a process of certification under Section 15 para. 1 BVFG to determine whether all the necessary requirements for recognition as an ethnic German repatriate have been fulfilled. This certification process is not bound by the results of the initial application (except for proof of German language skills, if this was obtained as part of the application process). If the Federal Office of Administration issues a repatriates certificate, this certificate is also binding for all benefit-paying authorities (the refusal to issue a repatriates certificate is equally binding for the benefit-paying authorities). By law, persons are automatically granted German citizenship when they are issued a repatriates certificate.

Accompanying family members who are not ethnic Germans are also subject to certification (Section 15 para. 2 BVFG); if they fulfil the necessary requirements, they are issued a certificate identifying them as the spouse or descendant of an ethnic German repatriate. This certificate is binding for benefit-paying authorities. By law, persons who are issued these certificates are also automatically granted German citizenship.

12.7 Status and number of persons entering Germany without prior notice of admission

General information

Ethnic German repatriates within the meaning of Section 4 paras. 1 and 2 of the Federal Expellees Act are only those persons who have left the legally defined region “within the framework of the application process”, that is, if they have received an admission notice (also after the fact, in case of hardship as defined in Section 27 para. 2 BVFG).

Under the transitional arrangement in Section 100 para. 4 of the Federal Expellees Act, persons who have not been issued an admission notice but were granted a temporary permit prior to 1 July 1990 may be officially recognized as ethnic German repatriates as long as they fulfil the remaining requirements either of Section 1 para. 2 no. 3 or of Section 4 of the Act. Further, under the transitional arrangement in Section 100 para. 5 of the Act, persons who received an admission notice prior to 1 January 1993 may be officially recognized as ethnic German repatriates as long as they fulfil the remaining requirements either of Section 1 para. 2 no. 3 or of Section 4 of the Act.

If no application in accordance with Sections 27 and 28 of the Federal Expellees Act was made, or if the application was rejected, then the relevant provisions of foreigners law apply. This applies in particular to any non-ethnic German family members who cannot be included in the admission notice of an ethnic German applicant but who may accompany the ethnic German repatriate to Germany on the basis of foreigners law. Such persons are listed in an annex to the admission notice and included in the allocation process under Section 8 para. 2 of the Act.

Entering Germany without prior application

A small number of persons are issued admission notices after entering Germany. In almost all cases, these are persons who due to exceptional circumstances could not reasonably be expected to wait in their country of residence for their own admission notice or to be included in that of a family member. It also applies to persons born after the ethnic German repatriate left his or her region of residence, who may be issued an admission notice after the fact in hardship cases (Section 27 para. 2 BVFG) or who may be included after the fact in a family member’s admission notice.

Rejected applicants and the right to remain

In exceptional cases and to avoid hardship, ethnic German applicants who received an admission notice before entering Germany but fail to qualify for a repatriates certificate under Section 15 para. 1 of the Federal Expellees Act due to insufficient German language skills may under certain conditions be granted a residence title for exceptional circumstances based on Section 23 of the Residence Act if they overestimated their level of German language competence. This arrangement, the result of a decision by the Standing Conference of Interior Ministers of 7/8 November 2001, is relevant above all for the rare cases in which applicants were issued admission notices without a prior hearing to determine German language skills.

Measures to promote integration

Under the new Immigration Act, ethnic German repatriates will receive the same treatment as other immigrants with regard to integration courses. The same terms and conditions apply to both groups (see Section 2, “Integration”).

13. Acquiring German citizenship

13.1 Basic principles

For many immigrants who have lived in Germany for a long time, getting a German passport and being able to vote and participate fully in German society represents full integration. Such persons typically acquire German citizenship through naturalization, often culminating a longer process of integration contingent on lawful long-term residence. By law, their children acquire German citizenship at birth, in accordance with the principle of descent from a German parent. If such children acquire the citizenship of another country at birth, they are free to give it up.

13.2 Modernizing Nationality Law

As of 1 January 2000, a child born in Germany to non-German parents automatically acquires German citizenship at birth. The principle of citizenship by place of birth (*jus soli*) was introduced with the Act to Amend the Nationality Law of 15 July 1999 and is subject to the following conditions: that at least one parent had lived legally in Germany for at least eight years prior to the birth, and that at the time of the birth, that parent had a permanent residence permit. In this way, approximately 150,000 children of non-German parents had acquired German

citizenship in addition to that of their parents by the end of 2003. However, in such cases the child must choose between German citizenship and the citizenship of his/her parents before reaching the age of legal majority. If the child chooses German citizenship, he or she must give up his or her foreign citizenship, unless it is impossible or unreasonable to do so. If the child chooses the foreign citizenship, by law he/she loses his/her German citizenship. The child must make this choice before his or her 23rd birthday.

The modernization of nationality law has also made it much easier for immigrants to become naturalized German citizens: They are eligible for naturalization after having lived legally in Germany for eight years, if they have a permanent residence permit, declare their allegiance to the free and democratic order, are able to support themselves and their family members, and have not been convicted of any criminal offences.

Becoming a naturalized German citizen also requires renouncing one's previous citizenship. Exceptions to this rule are now clearly spelled out in the law. For example, refugees and victims of political persecution do not have to apply to their countries of origin in order to give up their citizenship. And citizens of other European Union member states do not need to give up their citizenship if their country does not require Germans to renounce German citizenship in order to become naturalized citizens of that country. This applies to most EU countries, including those that entered the EU on 1 May 2004; the only exceptions are Estonia, Latvia, Lithuania, Denmark, Luxembourg, Austria, Spain and the Czech Republic. The Netherlands and Slovenia allow only certain categories of persons, such as spouses and minor children, to have multiple nationalities.

13.3 Persons ineligible for naturalization

Persons without a sufficient command of the German language, however, are not eligible for naturalization. Since 1 January 2005, persons who have successfully completed an integration course are eligible for naturalization after seven years and are regarded as having demonstrated sufficient command of the German language.

A special clause prevents extremist foreigners from becoming naturalized German citizens. The Counter-Terrorism Act of 9 January 2002 and the Immigration Act of 30 July 2004 have resulted in new security requirements. For example, the naturalization authorities now regularly check with the authorities for the protection of the constitution to find out whether an applicant for naturalization has any record of anti-constitutional activities.

13.4 Number of naturalizations

Since the amended nationality law went into effect, by the end of 2003 roughly 660,000 foreigners had taken advantage of their right to become naturalized German citizens. Under the Immigration Act, the legal provisions on naturalization previously contained in the Foreigners Act have been incorporated into the Nationality Act and their terminology revised in accordance with the new Residence Act, thus largely consolidating regulations on the acquisition of German citizenship within one law.

13.5 European Convention of 6 November 1997

At the international level, Germany has demonstrated its willingness to uphold European standards in the area of nationality law by signing and ratifying the European Convention on Nationality of 6 November 1997. An Act to this effect entered into force on 19 May 2004. Germany is now one of 13 Council of Europe member states which has already implemented the 1997 Convention in national legislation. The Convention is intended to harmonize European nationality law.

14. European cooperation

14.1 Introduction

With the Amsterdam Treaty, which replaced the Maastricht Treaty and entered into effect in the spring of 1999, asylum and migration policy has been shifted away from the mostly intergovernmental cooperation in the Third Pillar and made a concern of the European Community. This reflected the political commitment to enforcing integration in this field. With regard to foreigners and asylum policy, the Council was mandated to adopt binding legal instruments in the fields of asylum and refugees policy and to agree on migration policy measures within 5 years of the Treaty entering into force. After all, the Amsterdam Treaty, unlike the Maastricht Treaty, defined long-term targets for justice and home affairs, namely to establish an area of freedom, security and justice.

At their meeting in Tampere in October 1999, which was dedicated exclusively to discussing justice and home affairs, the heads of state and government of the European Union further

specified the targets set out in the Treaty. The European Council emphasized the full and inclusive application of the Geneva Convention and declared itself in favour of the long-term development of a common European asylum system with a uniform procedure and uniform status of political refugees. Apart from that, the European Council of Tampere called for fair treatment of third country nationals and agreed to approximate their legal status to that of nationals of the Member States. The European Council also stressed the need for an active policy to control migration flows and effectively fight illegal immigration.

Since then, the European Council has regularly underlined the need to harmonize legislation on asylum and refugees within the European Union. The future common asylum and immigration policy should provide the necessary balance between the protection of refugees under the Geneva Convention, the legitimate desire of immigrants for better living conditions, and the reception capacity of the EU and its Member States. The European Council also stressed the need for more efficient controls at external borders in order to fight terrorism, human smuggling and human trafficking.

Following up on the conclusions of the Tampere Council (1999), on 5 November 2004 the Council of the European Union adopted a new multi-annual programme (valid until 2010) aimed at strengthening freedom, security and justice in the European Union (The Hague Programme). As a first step, the Hague Programme provides for an evaluation of the Tampere programme. Based on the results of such evaluation, further legislative measures are to be addressed (“second harmonization stage”). The need for further steps in regulating legal immigration, combating illegal employment and integrating third-country nationals is another emphasis, as is the need to strengthen partnerships with third countries on migration issues and to incorporate migration policy cooperation into other policy areas.

14.2 European legislation

In European Union law, a basic distinction is drawn between primary and secondary legislation.

Primary legislation includes in particular the treaties establishing the European Communities and the subsequent treaties between the Member States amending these treaties, which must be ratified by the national parliaments.

These treaties include (date of entry into force):

- the Single European Act 1987 (1 July 1987)

- the Treaty on European Union – ‘Maastricht Treaty’ 1992 (1 November 1993)
- the Treaty of Amsterdam 1997 (1 May 1999)
- the Treaty of Nice 2001 (1 February 2003)

Secondary legislation may take the following forms:

- regulations, which are directly applicable and binding in all EU Member States without the need for any national implementing legislation;
- directives, which bind Member States as to the objectives to be achieved within a certain time-limit. The individual Member States must pass national legislation or ordinances or otherwise ensure that the objectives are implemented;
- decisions, which are legally binding for those to whom they are addressed, which may be any or all Member States, enterprises or individuals, and do not require national implementing legislation;
- recommendations and opinions.

14.3 Entry, departure, border crossings

European-level regulations related to migration initially concentrated on entry, departure and border crossings, including short stays and asylum matters.

The Schengen Agreement, named after the place in Luxembourg where it was signed in 1985, made it easier to cross the borders between Germany, France and the Benelux countries.

A second international treaty, the Convention Implementing the Schengen Agreement, was signed on 19 June 1990, in which the signatories of the first Schengen Agreement agreed to abolish checks at their common borders. In order to do so, the Convention contains numerous provisions regarding law enforcement cooperation, prosecution and a common database, the Schengen Information System.

The Convention applies to all of the pre-enlargement Member States except for Ireland and the United Kingdom, which have their own regulations governing the “Common Travel Area” made up of their islands and perform border checks on travellers arriving from the other EU Member States. Norway and Iceland are also Schengen countries; although they do not belong to the EU, they had belonged to a passport union with the Scandinavian EU members Denmark, Finland

and Sweden long before the Schengen Agreement. The countries that entered the EU on 1 May 2004 are to be gradually incorporated into the Schengen area of no internal border checks.

A number of implementing regulations related to the Convention have been enacted. Of these, Council Regulation (EC) No 539/2001, informally known as the “EU Visa Regulation”, is likely to be significant for numerous visitors from all over the world. This already often-revised regulation lists the non-EU countries whose citizens require a visa to enter the Schengen countries and those whose citizens do not need a visa for short stays during which they do not pursue paid employment.

14.4 Regular migration

As the result of a policy objective set at the European Council in Seville on 21-22 June 2002, several legislative proposals at European level were rapidly enacted.

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification by third-country nationals residing lawfully in the territory of the Member States, including recognized refugees.

The directive provides for the right, under certain conditions, to subsequent entry by spouses, minor children and other family members, including unmarried or registered same-sex partners. In the case of minor children, a maximum age may be set, which may not be less than 12 years. The directive specifies the conditions for issuing, refusing or revoking residence titles for the purpose of family reunification. The Member States must implement the directive in their national legislation by 3 October 2005.

- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are legal long-term residents.

Following implementation of the directive, third-country nationals who have legally resided within an EU Member State for five years may, under certain conditions, be issued upon request a long-term resident's EC residence permit conferring long-term residence status not only in the issuing state, but also in all Member States in which the directive is valid. The status of such permit holders will be made largely comparable to that of own citizens with regard to labour market access and entitlement to certain social assistance benefits. Member States may however make access to the labour market dependent on labour market conditions; further, they may retain privileged access for EU

citizens and other persons with higher priority. The Member States must implement this directive in national legislation by 23 January 2006.

- 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. Such persons are to be given time to reflect and decide whether to cooperate. If they cooperate and sever all relations with the persons under investigation, they may be issued a residence permit, in order to guarantee their safety and counteract the often-used threat of being sent back home without protection. The Member States must implement the directive in their national legislation by 6 August 2006.
- In November 2004, policy agreement was reached regarding a proposal for a Council Directive on a specific procedure for admitting third-country nationals for purposes of scientific research. The purpose of the directive is to introduce a special procedure to allow third-country nationals to carry out research projects in the European Community for a limited period of time. The measure was proposed against the background of the projected need for additional researchers by 2010 in order to achieve the policy objective of spending 3% of gross domestic product on research and technological development to make Europe the most competitive and dynamic knowledge-based economy in the world. In terms of migration policy, a special characteristic of this area is the fact that highly skilled researchers are often highly specialized and therefore not easily replaceable in the labour market; at the same time, they are prepared to relocate world-wide, and bureaucratic hurdles may dissuade them from accepting an offer to work in the EU rather than elsewhere in the world.
- Two Council Recommendations from 2004 are intended to facilitate the admission and issue of visas for third-country nationals to carry out scientific research in the EU. Recommendations for the EU Member States include the following: ending requirements for work permits, freeing researchers from quota restrictions, issuing visas and residence permits quickly, allowing residence permits to be extended, increasing cooperation on procedures between immigration authorities and research institutes, facilitating family reunification, and abolishing waiting periods for family members such as spouses to take paid employment; like the researcher, such family members are often highly skilled and would like to be able to work after moving to the EU.

- In December 2004, the Council passed 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 (e.g. internships) or voluntary service. This directive sets the conditions for the admission and stay of students, entitling such students under certain conditions to stay in another Member State in order to encourage mobility within the EU and facilitate the pursuit of studies in more than one Member State. The directive also covers paid employment, such as part-time jobs. The Member States may adopt the regulations on pupil exchange, unremunerated training and voluntary service but are not obligated to do so. The Member States must implement the directive within two years of its official publication.

14.5 Asylum and refugees

The harmonization of law on asylum and refugees called for by the Treaty of Amsterdam was largely completed ahead of the 1 May 2004 deadline. Harmonization is intended to end the practice of “asylum shopping”: Standardizing the legal provisions on conditions for admission, asylum procedures and requirements for recognition should discourage asylum applicants from looking for the Member State which offers the best conditions and help distribute applicants more evenly among the Member States.

Specifically, the following legislation was passed:

- ~ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof: The directive contains provisions on the admission, length of residence and status of persons received by EU member states as part of a mass influx, like the one from Kosovo in 1999.
- ~ Council Decisions establishing a European refugee fund for 2000–2004 and 2005–2010. The refugee fund supports expenditures by EU member states on the reception, integration and return of refugees. For the period 2000–2004, the planned budget is €216 million; for 2005 and 2006, the planned budget is €114 million.
- ~ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers. The directive contains provisions intended to harmonize conditions for asylum seekers, including housing, food, access to employment, health care and the schooling of minors.

~ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (“Dublin II”): This regulation, which amends the Dublin Convention of 1996, establishes the criteria for determining which member state is responsible for examining an asylum application by applicants who have some connection to more than one member state. This ensures that the application for asylum receives the proper consideration, while preventing the practice of submitting applications in multiple member states.

~ The Eurodac system, established by Council Regulation (EC) No 2725/2000 of 11 December 2000, helps ensure that this regulation is applied effectively. Eurodac is a central database containing fingerprints of asylum applicants; checking the fingerprints of asylum applicants against those stored in the database enable the authorities to determine whether and in which Member State an applicant has already applied for asylum.

~ 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. The directive defines on the one hand the conditions and legal consequences (i.e. the rights and benefits to be accorded) of persons qualifying as refugees on the basis of the Geneva Convention on Refugees, and on the other hand, the conditions and legal consequences in cases in which there is no evidence of political persecution but protection is needed for other reasons, e.g. the threat of torture, the death penalty, or dangers related to armed conflict.

The Council reached agreement on the directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. The proposed directive contains facultative norms, as yet largely in need of further specification, regarding asylum procedures lodged with courts and administrative authorities, especially guarantees in favour of applicants for asylum, obligations of applicants for asylum and the definition of various concepts for accelerating the asylum procedure (including inadmissible applications, manifestly unfounded applications, applicants from safe countries of origin, entry from safe third countries, subsequent applications).

The multi-annual programme aimed at strengthening freedom, security and justice (the Hague Programme) sketches out the EU’s future work.

The following directive has been formally adopted but its entry into force is waiting on official publication:

- 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 in accordance with the 1951 Convention relating to the Status of Refugees as supplemented by the 1967 Protocol, or as persons who otherwise need international protection. The directive defines on the one hand the conditions and legal consequences (i.e. the rights and benefits to be accorded) of persons qualifying as refugees on the basis of the Geneva Convention on Refugees, and on the other hand, the conditions and legal consequences in cases in which there is no evidence of political persecution but protection is needed for other reasons, e.g. the threat of torture, the death penalty, or dangers related to armed conflict.

The Council reached agreement on

- a directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. The proposed directive contains facultative norms, as yet largely in need of further specification, regarding asylum procedures lodged with courts and administrative authorities, especially guarantees in favour of applicants for asylum, obligations of applicants for asylum and the definition of various concepts for accelerating the asylum procedure (including inadmissible applications, manifestly unfounded applications, applicants from safe countries of origin, entry from safe third countries, subsequent applications).

For the most part, these are minimum standards to define a basic level of procedural guarantees and protections in the Member States.

The EU's work for the future is sketched out in the conclusions of the European Council in Tampere and in other policy objectives in European Council conclusions. According to these objectives, common asylum procedures and a uniform status for persons granted asylum are to be introduced in the long term. Another focus of future efforts will be measures to improve the capacity for protection in asylum seekers' regions of origin and considerations on how to ensure a more orderly and controlled entry into the EU of persons who need protection.

14.6 European visa policy

Overview

The main elements of a common European visa policy are the following:

- a common list of third countries whose citizens require a visa and those whose citizens do not;
- a uniform, high-security visa format intended to prevent forgery and misuse;
- uniform criteria for submitting, evaluating and deciding on visa applications, in order to ensure uniformity in granting and issuing visas.

In this way, European visa policy makes an important contribution to combating illegal immigration and increasing security within the EU.

For the future, major projects related to European visa policy include introducing biometric features and creating a visa information system.

Biometrics

On 27 November 2003, the Justice and Home Affairs Council reached general policy agreement on two proposed regulations on the introduction of biometrics in EU visas and residence permits. Introducing biometric identifiers is an important step towards establishing a more reliable connection between the uniform visa and its holder, and thus significantly helps protect the uniform visa from fraudulent use.

The proposed regulation provides for storage of the facial image and of two fingerprints for EU residence permits. In addition, the deadline for introducing visas with integrated photographs is to be pushed up from 2007 to 2005. Germany is leading the way on photo visas: It has already started issuing them, and in the next few months, all German diplomatic missions abroad will have this capacity.

On 27 November 2003 the Justice and Home Affairs Council also requested the Commission, with the support of the technical committee, to begin developing the necessary technical specifications as soon as possible. Germany will take an active part in these efforts to ensure introduction of photo visas as quickly as possible.

The European Parliament must present its comments on the regulation before it can be formally adopted.

The Commission's proposed regulations draw on the conclusions of the European Council in Thessaloniki on 19-20 June 2003 and the European Council in Brussels on 16-17 October 2003, which called for a consistent approach to biometrics in visas, residence permits, EU passports and the visa information system.

14.7 EU visa information system (VIS)

This project goes back to Interior Minister Otto Schily's proposals to the Justice and Home Affairs Council in late 2001 on additional measures for the EU draft immigration policy, specifically measures to combat terrorism, and to the Global Action Plan to combat illegal immigration and human trafficking, which were adopted by the Justice and Home Affairs Council on 28 February 2002. The visa information system (VIS) is intended to prevent multiple visa applications in more than one member state ("visa shopping"), to improve verification, harmonize procedures and combat terrorism.

On 19 February 2004, the Council adopted conclusions regarding the following, among others: regulations on the purpose of VIS, an approach to implementing VIS, its content, establishing a database of sponsors, recording biometric data and supplementary documents, integrating the VISION network, VIS system architecture and location, VIS access, length of data retention, communications infrastructure and financing.

The Council Decision of 8 June 2004 established the Visa Information System (VIS) and defined the cooperation between the Commission and the Member States, the financing and reporting on the development phase.

Further steps currently planned:

By the end of 2006: The main part of VIS to be set up as a first step (processing of alpha-numerical data and photos; sponsor database);

By the end of 2007, if possible: Expansion of VIS in a second step (processing of additional biometric data, facial recognition and fingerprints).

Germany has given this project high political priority due to security considerations. Together with the other Member States, Germany is working for the rapid implementation of this system.

14.8 EU policy on returns

In the field of return policy, on 28 November 2002, the EU Council of ministers adopted a return action programme. The programme is made up of the following: enhanced practical cooperation among Member States, common minimum standards for return, country-specific return programmes, and intensified cooperation with third countries. Further, the Commission was given 11 mandates to begin negotiations on readmission agreements with third countries.

Germany regards readmission agreements as a crucial instrument of migration policy. It is also important to improve operational cooperation among Member States, for example during transit, in acquiring documents for the return journey and in organizing joint flights. Expert discussions on these issues are ongoing at EU level.

With regard to EU policy on returns, special priority is given to the dialogue between the EU and the countries of origin and transit. The goal must be to win the cooperation of these countries in order to remove the causes of flight as far as possible, to stop illegal transit via other countries, to prevent cross-border trafficking and smuggling of humans, and to facilitate the return of persons who have illegally entered Member States' territory. Agreements need to be reached with the transit countries concerned on fighting illegal immigration, including the temporary accommodation of apprehended persons, with financing to be provided from Community funds (e.g. the AENEAS programme). To do so, EU interests in the fields of foreign, economic and development policy must be brought to bear more heavily.

14.9 Association between Turkey and the EEC

In 1963, the European Economic Community and Turkey signed an association agreement; an additional protocol was added in 1970. The agreement and protocol did not contain any provisions directly related to residence law.

In 1980, the EEC and Turkey agreed that after one year of lawful employment, Turkish employees in the regular labour market of a Member State were entitled to permission to continue to work for the same employer. After three years, Turkish employees may work in the same occupation for a different employer – subject to the higher priority of EU citizens. And after four years of lawful employment, Turkish employees have free access to every kind of employment. Following a certain waiting period (three to five years), the same progressive access to the labour market applies to family members of a Turkish worker employed in the regular labour market of a Member State who have lawfully entered the country under the terms of family reunification. The same applies to the children of Turkish employees who have completed vocational education in the Member State in question.

EU citizens and their family members are granted the same rights in Turkey.

To sum up, this means that Member States are still free to choose whether to admit Turkish workers and their family members; after Turkish workers or their family members have resided lawfully in the Member State for a certain period and if they fulfil certain requirements, their legal entitlement to labour market access becomes progressively stronger. This entitlement applies only to the Member State to which the Turkish citizen was admitted and is not valid for the entire EU.

The European Court of Justice has long based its decisions on the assumption that these rights to labour market access are necessarily accompanied by the right of residence. A person may exercise his or her right to work in a Member State only if he or she also has the right to live there.

According to the rulings of the European Court of Justice, these rights may be withdrawn only under the same conditions required for revoking an EU citizen's right to freedom of movement. These conditions are very restrictive (see Section 11).

14.10 Europe agreements

The EU reached a specific type of association agreement with a number of central and eastern European countries in the 1990s. Known as Europe agreements, they contain a number of regulations intended to prepare the contracting countries for membership in the EU. Following the entry of ten new members into the EU on 1 May 2004, only the agreements with Bulgaria and Romania still have practical significance. These agreements allow persons from these countries to move to an EU Member State for purposes of self-employment, as long as they have a reasonable business plan, including financing, and fulfil all other legal requirements; it is not necessary to determine whether an economic need exists for their planned business. They may not take up paid employment, and they are still required to obtain a visa for their intended stay.

15. Further international cooperation

The issues that arise in connection with international migration cannot be dealt with exclusively at the national or regional level. In addition to the Federal Government's efforts at the national level, such as the new Immigration Act (Section 2), and with the help of bilateral agreements and treaties, such as readmission and cooperation agreements (Section 10), and in addition to joint efforts within the framework of the European Union (Section 14), multi-national bodies and associations including the United Nations play an increasingly important role.

For example, the countries bordering the Baltic Sea have agreed to work together more closely to combat international crime, including the involvement of organized crime in human smuggling. Another important forum is the Intergovernmental Consultations on Asylum, Refugees and Migration Policies (IGC), in which a number of EU countries take part along with the U.S., Canada, Australia, Norway and Switzerland. Other major regional advisory groups include the Budapest Process, the Commonwealth of Independent States (CIS) Conference Process, the Regional Conference on Migration (RCM; also known as the Puebla Process), the Manila Process, the intergovernmental Asia-Pacific Consultations (APC), the South American Conference on Migration (Lima Process), and the Migration Dialogue for Southern Africa (MIDSA).

The issue of international migration is also gaining attention within the United Nations. After appearing on the agenda at the 1994 UN International Conference on Population and Development in Cairo, the topic of migration has been an increased focus of the UN Commission on Population and Development in recent years. At the UN's initiative, the Global Commission on International Migration (GCIM) was founded in Geneva on 9 December 2003. Members include Sweden, Switzerland, Italy, Morocco, India, the Philippines, Mexico, Egypt and Brazil along with a number of other G-77 countries.

The commission's mandate is

- to place international migration issues on the global agenda;
- to analyse gaps in current policy approaches; and
- to present recommendations to the United Nations Secretary-General and other stakeholders.

The commission began its work on 1 January 2004 and is to present its final report by mid-2005.

The commission is made up of 19 commissioners. Its co-chairs are the former Swedish minister for development cooperation, migration and asylum policy, Jan O. Karlsson, and Dr. Mamphela Ramphele of South Africa.

The commission aims to provide the framework for formulating a coherent, comprehensive and global response to migration.

Annex 1

Definitions

Asylum: persons entitled to asylum

Foreigners are entitled to asylum if their claim to asylum has been recognized by the Federal Office for Migration and Refugees (BAMF) or by an administrative court under Article 16a of the German constitution, the Basic Law.¹

Asylum seekers

Asylum seekers are foreigners seeking protection under Article 16a of the Basic Law from political persecution, from deportation or other form of return to a country where their life or liberty is threatened as a result of race, religion, nationality, political convictions or membership of a particular social group.

Persons entering Germany from a safe third country as defined in Section 26a para. 2 of the Asylum Procedure Act are not entitled to protection under Article 16a (1) of the Basic Law.¹

De facto refugee

De facto refugees are persons who have not submitted an asylum application or whose application has been rejected, but who for humanitarian or political reasons cannot reasonably be sent back to their home countries. The term is also applied to persons who were originally allowed to remain in Germany for these reasons and are still here.¹

Expellee

According to Section 1 para. 1 of the Federal Expellees Act (BVFG), expellees are German citizens and persons of ethnic German origin who were expelled from their place of residence within legally defined areas in connection with World War II. These general expulsions ended by 1949.¹

Foreigner

A foreigner is anyone who is not German within the meaning of Article 116 (1) of the Basic Law. This definition is primarily based on possession of German citizenship.

Guest worker

The colloquial term for foreign workers recruited to work in Germany up to 1973, when such recruitment was discontinued.²

Illegal alien

The term used by the general public to refer to foreigners living in Germany without the permission or knowledge of the responsible authorities.

Immigration

German has two different words for immigration: *Einwanderung* and *Zuwanderung*. The first refers to the lawful entry and residence of foreigners intending from the outset to settle permanently in Germany, i.e. legal immigration, while the second has become the accepted term to describe all forms of migration (long- and short-term) across national borders.²

Integration

Integration is a long-term process intended to ensure that all lawful and permanent residents are included in German society. Immigrants should be able to participate fully in all areas of society, on equal terms wherever possible. Immigrants are obligated to learn the language of the country in which they live and to know, respect and uphold the German constitution, German laws and the basic values of German society. And the receiving society should provide immigrants equal access to all areas of society, if possible.

Internal refugees / internally displaced persons

Internal refugees or internally displaced persons are those fleeing conflicts or man-made disasters within their home country, i.e. without crossing international borders.

Migration

A phenomenon in which persons (migrants) move, for a variety of reasons, to another country for the medium or long term.²

Quota refugee

These are refugees from crisis regions admitted in the context of humanitarian relief. Their status is governed by the Act on Measures in Aid of Refugees Admitted under Humanitarian Relief Programmes of 22 July 1980 (Federal Law Gazette I, p. 1057). Since 1973, Germany has taken in great number of refugees, for example from Vietnam (“boat people”) and Chile. Following the decision of 9 January 1991 by the German chancellor and the minister-presidents of the German states (*Länder*), Jewish immigrants from the former Soviet Union have been admitted in accordance with applicable law.¹

Refugee

As defined in the Geneva Convention on Refugees, a refugee is a person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”¹

Also known as **Convention refugees**, they are not entitled to asylum but are protected from deportation. In Germany, recognition as a foreign refugee is granted within the asylum application process if obstacles preventing deportation are found to exist pursuant to Section 60 para. 1 of the Residence Act.^{1 2}

Refugee of war or civil war (Bosnia-Herzegovina, Kosovo)

In the broadest sense, refugees of war and civil war are persons fleeing their home country due to fear of the effects of armed conflicts (direct impact of battles, attack by warring parties, targeted expulsion and the like). Most of these persons are not refugees as defined in the Geneva Convention on Refugees, which is based on state persecution of the individual; war or civil war alone does not constitute state persecution.¹

Temporary suspension of deportation

A temporary suspension of deportation may be granted to persons who are required to leave the country but cannot leave or be deported for certain reasons (e.g. illness, country of origin's refusal to allow re-entry).

Third-country national

Used in contrast to the term "EU citizen", which includes all citizens of European Union member states. Third-country nationals are citizens of countries that do not belong to the EU or the European Economic Area.

¹ Source: *BMI Lexikon der Innenpolitik* (Federal Ministry of the Interior Dictionary of Domestic Policy).

² Source: *Jahresgutachten ZuwR 2004* (2004 Annual Report on Immigration Law).

Annex II

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