

**QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION
OF THE DIRECTIVE :**

TEMPORARY PROTECTION OF 20 JULY 2001

IN

GERMANY

By

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and

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FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: *legislative* refers to a norm adopted in principle by the Parliament; *regulation* refers to a norm complementing the law and adopted in principle by the executive power; *circular or instructions* refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

¹¹ This report has been elaborated and drafted by the aforementioned member of the German research group and Prof. Dr. Kay Hailbronner. Please contact the indicated researcher who has worked on this report in case of any requests during the study."

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Aufenthaltsgesetz (Residence Act), adopted as part of the Zuwanderungsgesetz (Immigration Act)
DATE: 30 July, 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January, 2005
PROVISIONS CONCERNED : Sec. 24 Residence Act (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl. I 2004, 1950
LEGAL NATURE (please tick the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 2

This table is about: <input type="checkbox"/> a text already adopted <input checked="" type="checkbox"/> a text which is still a project to be adopted
TITLE: Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union (Act on Transposition of EU-Directives on Issues of Residence and Asylum, amending the Residence Act) ¹²
DATE: not applicable
NUMBER:
DATE OF ENTRY INTO FORCE: not applicable
PROVISIONS CONCERNED : Sec. 24 para. 2 and para. 3 cl. 1 Residence Act (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl. I 2004, 1950
LEGAL NATURE (please tick the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 3

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Aufenthaltsgesetz (Residence Act), adopted as part of the Zuwanderungsgesetz (Immigration Act)

¹² This answer refers to the Federal Government's draft (Parliamentary Documents 16/5065 which is currently underway and might be changed during the parliamentary deliberations. The draft is available in the internet on <http://dip.bundestag.de/btd/16/050/1605065.pdf>

DATE: 30 July, 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January, 2005
PROVISIONS CONCERNED : Sec. 2 para. 6 Residence Act (for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl. I 2004, 1950
LEGAL NATURE (please tick the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Q.1.B.

Please list the others norms of transposition according to their hierarchical position in your legal system_(first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

TITLE: Aufenthaltsgesetz (Residence Act), adopted as part of the Zuwanderungsgesetz (Immigration Act)
DATE: 30 July, 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January, 2005
PROVISIONS CONCERNED : Sec. 91 a Residence Act (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl I 2004, 1950
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 2

TITLE: Aufenthaltsgesetz (Residence Act), adopted as part of the Zuwanderungsgesetz (Immigration Act)
DATE: 30 July, 2004
NUMBER:

DATE OF ENTRY INTO FORCE: 1 January, 2004
PROVISIONS CONCERNED : Sec. 91 b Residence Act (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBI I 2004, 1950
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 3

TITLE: Aufenthaltsgesetz (Residence Act), adopted as part of the Zuwanderungsgesetz (Immigration Act)
DATE: 30 July, 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January, 2004
PROVISIONS CONCERNED : Sec. 29 para. 4 Residence Act (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBI I 2004, 1950
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 4

TITLE: Aufenthaltsgesetz (Residence Act), adopted as part of the Zuwanderungsgesetz (Immigration Act)
DATE: 30 July, 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January, 2004
PROVISIONS CONCERNED : Sec. 5 para. 3 Residence Act (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBI I 2004, 1950
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 5

TITLE: Aufenthaltsgesetz (Residence Act), adopted as part of the Zuwanderungsgesetz (Immigration Act)
DATE: 30 July, 2004
NUMBER:

DATE OF ENTRY INTO FORCE: 1 January, 2004
PROVISIONS CONCERNED : Sec. 56 para. 3 Residence Act (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBI I 2004, 1950
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 6

TITLE: Auslaenderzentralregister-Gesetz (AZR Act)
DATE: 30 July, 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January, 2005
PROVISIONS CONCERNED : Section 2, para. 2 No. 2 AZR Act (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBI I 2004, 1950
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 7

TITLE: Social Code no. 8 (SGB VIII)
DATE: 8 September, 2005
NUMBER:
DATE OF ENTRY INTO FORCE: 1 October, 2005
PROVISIONS CONCERNED : Section 42, para. 1 No. 3 SGB VIII (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBI I 2005, 2729, 2732
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 8

TITLE: Asylbewerberleistungsgesetz (Asylum Seekers Benefits Act)
DATE: 14 March, 2005
NUMBER:
DATE OF ENTRY INTO FORCE: 15 March, 2005

PROVISIONS CONCERNED : sec. 1 para. 1 no. 3 AsylbLG (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl. I 2005, 721, 726
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 9

TITLE: Asylbewerberleistungsgesetz (Asylum Seekers Benefits Act)
DATE: 14 March, 2005
NUMBER:
DATE OF ENTRY INTO FORCE: 15 March, 2005
PROVISIONS CONCERNED : sec. 6 para. 2 AsylbLG (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl. I 2005, 721, 727
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 10

TITLE: Asylverfahrensgesetz (Asylum Procedures Act)
DATE: 30 July, 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January, 2005
PROVISIONS CONCERNED : sec. 32 a Asylum Procedures Act (AsylVfG) (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl. I 2004, 1950
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 11

TITLE: Aufenthaltsverordnung (Residence Regulation)
DATE: 25 November, 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January, 2005
PROVISIONS CONCERNED : particularly Sec. 2 - 14 Residence Regulation

(AufenthV) (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl I 2004, 2945
LEGAL NATURE (indicate by ticking the correct box): <input type="checkbox"/> LEGISLATIVE <input checked="" type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 12

TITLE: Aufenthaltsverordnung (Residence Regulation)
DATE: 25 November, 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January, 2005
PROVISIONS CONCERNED : Sec. 42 and 43 Residence Regulation (AufenthV) (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl I 2004, 2945
LEGAL NATURE (indicate by ticking the correct box): <input type="checkbox"/> LEGISLATIVE <input checked="" type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 13

TITLE: Vorläufige Anwendungshinweise (Preliminary Instructions)
DATE: 22 December, 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January, 2005
PROVISIONS CONCERNED : No. 24.0.1 and 24.0.2 (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: none
LEGAL NATURE (indicate by ticking the correct box): <input type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input checked="" type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Q.2. This question needs to be answered only for **FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN**

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

LEGISLATIVE RULES
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: YES
COMPETENCES OF THE COMPONENTS: NO
EXPLANATIONS IF NECESSARY: cf. Art. 74 No. 4 Federal Constitution

REGULATIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: YES
COMPETENCES OF THE COMPONENTS: YES
EXPLANATIONS IF NECESSARY: Pursuant to Sec. 24 para. 4 cl. 2 Residence Act the Laender (states) are competent to stipulate regulations with respect to the distribution of temporarily protected persons within the respective Land

CIRCULAR OR INSTRUCTIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: YES
COMPETENCES OF THE COMPONENTS: YES
EXPLANATIONS IF NECESSARY: Components are responsible for the organisation of the administration and thus for implementing federal laws. Consequently, they may adopt administrative instructions. However, Art. 84 (2) of the Federal Constitution gives an additional and superior competence to the federal government to adopt general administrative instructions for the implementation of federal laws. These general administrative instructions must not be adopted without the consent of the Bundesrat (Legislative Representation of the Laender on the federal level).

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

COMPETENCE CONCERNED:	Granting temporary protection
CENTRAL MINISTRY OF:	Federal Ministry of the Interior (Bundesinnenministerium)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Federal Office for Migration and Refugees (Bundesamt fuer Migration und Fluechtlinge)
OTHER LEVEL OF ADMINISTRATION:	Ministries of the Interior of the Lander (Landesinnenministerien) and Aliens Administration (Auslaenderbehoerden der Laender)

IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	
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Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

YES NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

YES NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

MISSING TEXTS
<i>INDICATE HERE THE MISSING TEXTS</i>

SECOND PART

Duration and implementation of temporary protection

Q.5. According to article 5(1) in the Directive the existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council. According to article 5(3) the Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions in the Directive.

Do the national norms of transposition in your Member State mandate the Council to decide about the existence of a mass influx of displaced person, with the effect of introducing temporary protection for the displaced persons to which it refers in your Member State?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation (if the answer is “no”, how is a Council decision transposed ad hoc into national law?)

Q.6. According to article 6 in the Directive, temporary protection shall come to an end when the maximum duration has been reached or at any time by Council Decision on a proposal from the Commission. *See article 6 (1-2).*

Do the national norms of transposition mandate the Council to decide when temporary protection in your Member State shall come to an end?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (if the answer is ‘no’, how is a Council decision transposed ad hoc into national law?)

Q.7. According to article 7, a Member States may extend temporary protection, as provided for in the Directive, to additional categories of displaced persons over and above those to whom a Council decision applies, where they are displaced for the same reasons and from the same country or region of origin. *See optional provision in article 7 (1-2).*

Do the national norms of transposition allow your Member State to extend temporary protection to additional categories of displaced persons?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If the answer is "yes", if any, what are the criteria for extending protection to additional categories of displaced persons)?

There is no explicit provision of the Residence Act providing for an extension of temporary protection. However, the Residence Act provides for a temporary humanitarian residence permit to other categories of persons on humanitarian grounds.

Obligations of the Member States towards persons enjoying temporary protection

Q.8. Questions regarding obligations of the Member States towards persons enjoying temporary protection. *See article 8(1-3):*

Q.8.A. Does your Member State provide persons enjoying temporary protection with a residence permit? *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (if the answer is 'no', what are the practical Consequences for the individual?)

Q.8.B. Answer this question if the answer on Q.8.A is 'yes': **Is the residence permit valid for the entire period of temporary protection?** *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (if the answer is 'no', what are the practical Consequences for the individual?)

Q.8.C. Will documents or other equivalent evidence for the residence permit be issued? *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

According to Sec. 24 para 1 Residence Act a refugee receives an "Aufenthaltserlaubnis" which will be proven by the corresponding document

Q.8.D. Will your Member State provide persons enjoying temporary protection with a document, in a language likely to be understood by them, in which the provisions relating to temporary protection, and which are relevant to them, is clearly set out? See mandatory provision in article 9.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

According to Sec. 24 para 7 Residence Act the refugee will be instructed about rights and obligations related to the temporary protection in writing and in a language he/she understands

Q.8.E. Will the personal data of the persons enjoying temporary protection (name, nationality, date and place of birth, marital status, and family relationship) be registered? See mandatory provision in article 10.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

According to Sec. 91 a Residence Act and Sec. 2 para 2 no. 2 AZR Act personal data of aliens enjoying temporary protection are registered in the "Auslaenderzentralregister" (central aliens register)

Q.8.F. Will your Member State provide facilities for obtaining the necessary visas, including transit visas, to persons which will be admitted to the territory for the purposes of temporary protection? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

According to the general provision of Sec. 6 Residence Act visa or transit visa can be issued to any foreigner who is subject to visa requirements for entry into the Federal territory. Therefore, also persons receiving temporary protection can apply for visa or transit visa. Additionally, sec. 14 para. 2 Residence Act provides for exceptional visa issued at the border station without prior application (see also Regulation 415/2003/EC).

Q.8.G. According to the national law of your Member State: Will the visas referred to in Q.8.F, be free of charge? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (if the answer is “no”, please indicate the amount charged and indicate amounts charged for other types of visas)

According to sec. 46 Residence Regulation (AufenthV) the charge for issuing visa ranges between 25 and 35 Euro. However, pertaining to sec. 52 para. 7 Residence Regulation the charge can be reduced or even lifted entirely in cases of cultural interests, foreign policy, development or comparable important public interest reasons.

Q.9. According to national law of transposition, is your Member State responsible to take back a person enjoying temporary protection on its territory if that person seeks to enter onto or remains on the territory of another Member State without authorisation during the period of temporary protection? *See mandatory provision in article 11.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Even though there is no specific provision of this content a person enjoying temporary protection obtains a valid residence permit allowing to stay on German territory in the designated area during the period of temporary protection. The residence permit implies an obligation to take a person back who has entered or remained on the territory of another Member State.

Q.10. Has your Member State concluded bilateral agreements with other Member States regulating the responsibility for persons enjoying temporary protection under the Directive? *See optional provision in article 11, final sentence.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If the answer is “yes”, please specify with which country)

Q.11. Questions regarding work and other activities during temporary protection: *See mandatory provision in article 12.*

Q.11.A. Are the persons enjoying temporary protection allowed to engage in:

Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Employed activities? Yes No

- Self-employed activities?** **Yes** **No**
- Educational opportunities for adults?** **Yes** **No**
- Vocational training?** **Yes** **No**
- Practical workplace experience?** **Yes** **No**

Explanation:

- (1) According to sec. 24 para. 6 cl. 2 and sec. 4 para. 2 Residence Act employed activities are permitted according to the general provisions for the admission of foreigners to the labor market under sec. 4(2) Residence Act. The labor permission must be admitted in the residence permit if Federal Agency for Employment (Bundesagentur für Arbeit) granted a labor permit or the specific employment is excepted by the Employment Regulation (BeschV) from the consent of the Bundesagentur.
- (2) According to sec. 24 para 6 cl. 1 Residence Act self-employed activities are permitted.
- (3) Educational opportunities, participation in vocational training and practical workplace experience are permitted under the same conditions as employed activities (see 1).

Q.11.B. According to optional provision in article 12, Member States may, for reasons of labour market policies, give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefits.

Do the national norms of transposition in your Member State give priority, or allow giving priority, to:

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- EU citizens?** **Yes** **No**
- Citizens of the European Economic Area?** **Yes** **No**
- Legally resident third-country nationals who receives unemployment benefits?** **Yes** **No**

Explanation:

According to sec. 39(2) Residence Act a labor permit is only granted if German nationals or foreigner who are equally entitled to admission or other foreigners enjoying privileged access to the labor market are not available.

Question to be answered only if persons enjoying temporary protection are allowed to work:

Q.11.C. According to article 12, final sentence, the general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply if persons enjoying temporary protection are allowed to work.

If persons enjoying temporary protection are allowed to work: Will your country's general laws be applicable regarding:

Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Remuneration? Yes No

Access to social security systems relating to employed or self-employed activities and other conditions of employment? Yes No

Explanation:

There are no exceptions adopted by national legislation; the provisions on labor conditions and social security apply to all employed persons irrespective of nationality or type of residence permit

Q.12. Questions regarding the Member States obligation towards the temporary protected regarding accommodation, subsidies, medical care etc. *See article 13(1-4).*

Q.12.A. Is your Member State obliged under national law to provide the persons enjoying temporary protection with suitable accommodation or means in order to obtain housing? *See mandatory provision in article 13(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation :

According to sec. 1 para. 1 no. 3 and sec. 3 Asylum Seekers Benefits Act (Asylb1G) also persons enjoying temporary protection receive the same benefits and treatment as asylum seekers. This means that these persons obtain benefits in kind with respect to housing in public or private accommodations.

Q.12.B. Will your Member State, according to national law, be obliged to provide the persons enjoying temporary protection with economic assistance such as social welfare and means of subsistence? *See mandatory provision in article 13(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

As described above persons enjoying temporary protection receive benefits in kind according to sec. 1 para. 1 no. 3 and sec. 3 Asylum Seekers Benefits Act.

Q.12.C. Do the persons enjoying temporary protection have access to emergency medical care and essential treatment of illness? *See mandatory provision in article 13 (2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If the answer is “yes”, please provide details whether persons enjoying temporary protection have access to *general medical care* or if it is restricted to *emergency care and essential treatment of illness*?)

Persons enjoying temporary protection receive medical treatment in cases of acute illness and pain according to sec. 1 para. 1 no. 3 and sec. 4 Asylum Seeker Benefit Act. Additionally they receive all necessary aid pursuant to sec. 6 para. 2 Asylum Seeker Benefit Act.

Q.12.D. Will your Member State, according to national law, be obligated to provide for necessary medical or other assistance to persons enjoying temporary protection who have special needs such as unaccompanied minors, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence? See mandatory provision in article 13(4).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If the answer is “yes”, please provide details about the assistance given to different groups of persons with special needs, for example psychological help for persons who have undergone torture).

According to sec. 6 para 2 Asylum Seekers Benefits Act persons enjoying temporary protection who have special needs or have undergone torture rape or other serious forms of psychological, physical or sexual violence receive specific benefits.

Q.13. Questions regarding access to education. See article 14 (1-2):

Q.13.A. Do persons who are under 18 years of age and enjoying temporary protection have access to the education system under the same conditions as nationals of your Member State? See mandatory provision in article 14(1).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Minors under 18 years who have a legal residence in Germany are generally obliged by the laws of the states (Laender) to attend school for a minimum period of 8 years. Accordingly, the respective person is bound to follow this obligation if he/she does not fulfill this requirement.

Q.13.B. If the answer on Q.13.A is ‘yes’: **Is access to education confined to the state education system or does it cover all kinds of educational institutions?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Access to educational institutions outside the state education system may be covered by diverse state, municipal or local rules, generally speaking, access to private education systems is not granted on a general level.

Q.13.C. **Do adults enjoying temporary protection have access to the general education system?** *See optional provision in article 14(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Access of adults to general education systems may be covered by diverse state, municipal or local rules depending on the type of education. No general answer can be given.

Q.14. Questions regarding right to family reunification. *See article 15:*

Q.14.A. **Do the national norms of transposition in your Member State allow separated family members, which enjoy temporary protection in different Member States, to reunite?** *See mandatory provision in article 15(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

According to sec. 29 para. 4 no. 2 Residence Act family reunification to spouses and minor children is granted if the family member have been admitted by another EU Member State.

Q.14.B. **Do the national norms of transposition in your Member State allow family members who are not yet in a Member State to reunite with a person enjoying temporary protection in your Member State?** *See mandatory provision in article 15(3).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

According to sec. 29 para. 4 no. 2 Residence Act family reunification can also be provided when family members are outside the European Union and in need of protection.

Q.14.C. For the application of the rules regarding family reunification: Whom does your Member State consider a “family member”? See article 15(1)(a)(b).

(Please indicate by ticking the correct box/boxes and **EXPLAIN YOUR ANSWER**)

- The spouse of the person enjoying temporary protection.**
- The unmarried partner in a stable relationship to the person enjoying temporary protection.**
- The minor unmarried children of the person enjoying temporary protection or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted.**
- Other close relatives who lived as part of the family unit with the person enjoying temporary protection at the time of the events leading to the mass influx, and who were wholly or mainly dependent on him/her at the time.**

Explanation:

The rules on family reunification apply also to unmarried registered partners of the same sex pursuant to sec. 27 para. 2 and sec. 29 Residence Act. Other close relatives enjoy family reunification according to sec. 29 para. 4 cl. 2 and sec. 36 Residence Act only to avoid an exceptional hardship (außergewöhnliche Härte). Therefore, close relatives may only be admitted if the conditions qualify as exceptional hardship.

Q.14.D. What means of proof is needed in your Member State to verify family membership, is for example documentary evidence needed?

Generally, the German authorities will demand documents and/or passports and the like to proof the family membership. In extraordinary cases also other documentary evidence may be introduced.

Q.14.E. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the provisions on family reunification in the national norms of transposition? See mandatory provision in article 15(4).

The "best interest of the child" can be considered as a requirement for the application of sec. 29 and sec. 32 para. 4 Residence Act. By applying this standard all aspects of a child's living conditions can be taken into account. Additionally, it is assumed that in the application of the provisions of the Residence Act and the Asylum Seekers Benefits Act the best interest of the child is taken into consideration as a general public interest obligatory due to the Federal Republic of Germany's ratification of the UN Convention on Children.

Q.14.F. According to article 15(5), Member States shall decide in which Member State the reunification shall take place. Please indicate which authority possesses the competency to take such decisions?

Name and function of the Authority: The provision of sec. 29 para. 4 Residence Act does not provide for naming a competent authority. Although the directive 2001/55/EC intended to leave the decision where the reunification shall take place to the Member States, German law provides otherwise and leaves the decision to the aliens (cf. Hailbronner, AuslR, sec. 29, no. 27). For persons being transferred from another Member State to Germany sec. 24 para. 1 Residence Act safeguards the existence of a consent since a person can only be granted temporary protection if he/she has declared his/her consent to stay in Germany. According to sec. 42 Residence Regulation (AufenthV) a transferral of a person enjoying temporary protection in Germany to another Member State is only possible upon application of that respective person. By this requirement it is ensured that transfer to another Member State requires consent.

Q.14.G. If there is a formal procedure foreseen for such decisions, please describe it briefly:

There is no such formal procedure, see Q.14.F.

Q.14.H. Are reunited family members in your Member State granted residence permits under temporary protection?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

According to sec. 29 para. 4 cl. 3 Residence Act family members who have been received on German territory pursuant to the aforementioned provisions fall under sec. 24 Residence Act equally as the persons already enjoying temporary protection.

Q.14.I. Are documents or other equivalent evidence issued for persons who comes to your Member State and receives temporary protection under the provisions regarding family reunification?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Since they are treated equally to the persons already enjoying temporary protection (sec. 29 para. 4 cl. 3 Residence Act) they also receive residence permits (Aufenthaltserlaubnis).

Q.14.J. Do the national norms of transposition in your Member State comply with the provision in article 15(8) stating that a Member State shall at the request of another Member State, provide information on a person receiving temporary protection which is needed to process a matter of family reunification? See mandatory provision in article 15(8).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

According to sec. 91a para. 5 Residence Act the stored data can be transferred upon request from other EU Member States for the purpose of family reunification.

Q.15. Questions regarding unaccompanied minors: *See article 16:*

Q.15.A. Explain how the representation of unaccompanied minors enjoying temporary protection in your Member State is arranged according to national law. See mandatory provision in article 16(1).

As soon as an unaccompanied minor younger than eighteen comes to a border post, the police or the aliens authority is obliged to refer him/her to the guardianship court, which will instantly appoint a guardian. After that the minor will be taken into custody of Child and Youth Welfare facilities (cf. "Inobhutnahme" pursuant to sec. 42 para. 1 cl. 1 no. 3 Social Code no. 8 [SGB VIII]). If a guardian has not yet appointed, the competent authorities of the Child and Welfare administration will apply at the guardianship court for the appointment of a guardian and the minor will be placed in appropriate accommodations, which can be a Child and Welfare facility or an adequate person (cf. sec. 42 para. 1 cl. 2 Social Code no. 8 [SGB VIII]).

Q.15.B. Does your Member State provide for unaccompanied minors to be placed with: See mandatory provision in article 16(2).

(Please indicate by ticking the correct box/boxes and **EXPLAIN YOUR ANSWER**)

- Adult relatives ?**
- A foster-family ?**
- In reception centres with special provisions for minors, or in other accomodation suitable for minors ?**
- With the person who looked after the child when fleeing ?**

Explanation:

Unaccompanied minors are usually accommodated in Child and Youth Welfare facilities (Einrichtungen der Kinder- und Jugendhilfe, Social Code no. 8 [SGB VIII]), although the practice may vary from state to state. If there are "adequate" adult relatives of the minor in Germany or other persons the authorities can also decide that the minor is placed with them (cf. sec. 42 para. 1 cl. 2 Social Code no. 8).

Q.15.C. Do the national norms of transposition in your Member State meet the requirement that the views of the child shall be taken into account when arranging placement for the minor? See mandatory provision in article 16(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- Yes** **No**

Explanation:

The guardianship court, the aliens authorities and the Child and Youth Welfare administration will consider all relevant aspects with respect of the placement of the minor. According to sec. 48 para. 2 Social Code no. 8 the views of the child are taken into account appropriately. However, in general the persons enjoying temporary protection cannot demand by law that their views pertaining to the placement are taken into account. According to sec. 24 para. 5 Residence Act aliens have no right to be placed in a specific area. The same will apply to unaccompanied minors when there are no compelling reasons to deviate from this rule.

Access to the asylum procedure in the context of temporary protection

Q.16. Questions regarding access to the asylum procedure. *See article 3 and 17-19:*

According to mandatory provision in article 3(1) temporary protection shall not prejudice recognition of refugee status under the Geneva Convention.

Q.16.A. Does temporary protection in any way prejudice recognition of refugee status under the Geneva Convention in your Member State?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

There is no provision prohibiting or hindering persons who enjoy temporary protection from applying for asylum. Sec. 71 para. 2 and sec. 75 no. 5 and 6 Residence Act assign the competent authorities which are the German representations in foreign countries (i.e. embassies or consulates) and the Federal Agency for Migration and Refugees (Bundesamt für Migration und Flüchtlinge) as national contact point. According to sec. 32a para. 1 Asylum Procedures Act (AsylVfG) the asylum procedure is suspended if a person enjoys temporary protection under sec. 24 Residence Act.

Q.16.B. Does your Member State allow persons enjoying temporary protection to apply for asylum at any time during the period of temporary protection? See mandatory provision in article 17(1).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

There is no provision prescribing a specific period of temporary protection within which the application for asylum is possible.

Q.16.C. Does your Member State allow persons enjoying temporary protection to stay in the Member State during the examination of their asylum claim, even though the period of temporary protection has ended? See mandatory provision in article 17(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

According to sec. 55 Asylum Procedures Act (AsylVfG) a person applying for asylum is allowed to stay in the territory without acquiring a formal residence permit (Aufenthaltsgestattung).

Q.16.D. What criteria are provided by the norms of transposition in your Member State to determine the responsibility amongst Member States for examining an asylum application submitted by a person enjoying temporary protection in another Member State? See mandatory provision in article 18.

The general Dublin rules apply. There are no specific provisions in the Residence Act for persons enjoying temporary protection who apply for asylum.

Q.16.E. Has your Member State decided that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration? See optional provision in article 19.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: If the answer is “yes”, please provide details concerning differences between the reception conditions for asylum seekers and persons enjoying temporary protection in your Member State which might lead to withdrawal or reduction of rights for a temporary protected who lodges an application for asylum.

There is no provision prohibiting or hindering persons who enjoy temporary protection from applying for asylum

Q.16.F. If refugee status or, where applicable, other kind of protection is not granted to a person who is eligible for or already enjoys temporary protection is that person allowed to enjoy or continue to enjoy temporary protection in your Member State? See mandatory provision in article 19(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

According to sec. 24 para. 1 Residence Act the person enjoying temporary protection obtains a residence permit for as long as the Council has decided. This permit is valid even if other protection statuses are not granted or revoked.

Return and measures after temporary protection has ended

Q.17. Questions regarding the voluntary return of persons enjoying temporary protection:

Q.17.A. According to mandatory provision in article 21(1) the Member States *shall* ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity. How is that reflected in the national norms of transposition in your Member State?

After the residence permit granted in connection with the temporary protection expired the alien is obliged to leave Germany immediately (cf. sec. 50 Residence Act). In expulsion proceedings the respect for human dignity is a constitutional requirement according to the jurisprudence of the Constitutional Court (Art. 1 para. 1 Basic Law (GG)). Therefore, all government action has to be carried out with respect to human dignity.

Q.17.B. Please explain how your Member State ensures that a decision of persons enjoying temporary protection, or whose temporary protection has ended, to return voluntarily is taken in full knowledge of the facts. *See mandatory provision in article 21(1).*

Although there is no specific provision guaranteeing that the person enjoying temporary protection who decides to return voluntarily does so in full knowledge of the facts, it follows from the constitutional principle of the German constitution (Basic Law) in particular the respect to human dignity (Article 1 para. 1 Basic Law), that government authorities must provide for the necessary and relevant information about the respective country of return.

Q.17.C. Is it possible for the temporary protected in your Member State to make exploratory visits to the home country? *See optional provision in article 21(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

According to sec. 51 para. 1 no. 6 and 7 Residence Act the residence permit expires if the alien leaves the country for a non temporary reason or after leaving the country he/she stays for a period of time longer than 6 months. Therefore, exploratory visits - especially with the consent of the aliens authorities - are generally permitted.

Q.17.D. Please explain if and how your Member State has transposed article 21(2) stating that Member States shall, for such time as the temporary protection has not ended and on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return?

According to sec. 5 para. 3 Residence Act persons enjoying temporary protection are eligible for residence permits without fulfilling the legal requirements of sec. 5 para. 1 and para. 2 Residence Act.

Q.17.E. Is it possible, under the national norms of transposition in your Member State, for persons enjoying temporary protection to continue receive their benefits as temporary protected after the period of temporary protection has ended, if they benefit from a voluntary return programme? See optional provision in article 21.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If the answer is “yes”, for how long is that possible).

According to sec. 11 para. 1 Asylum Seekers Benefits Act benefits are restricted to special programmes. In appropriate cases the authorities are supposed to include persons who have been enjoying temporary protection into those programmes.

Q.18. Questions concerning enforced return of persons who have enjoyed temporary protection. *See articles 22:*

Q.18.A. Explain if and how the laws of your Member State comply with the mandatory provision in article 22(1), obliging Member States to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission shall be conducted with due respect for human dignity.

Since the protection of human dignity is the most important constitutional value provided for in Art. 1 para. 1 Basic Law (GG) all government activities in the field of aliens law have to be carried out with respect to human dignity. In all expulsion proceedings the respect for human dignity is guaranteed by the provisions of sec. 60 (prohibition of expulsion) and sec. 60a (temporary suspension of expulsion - toleration) Residence Act considering possible threats to life, health and liberty.

Q.18.B. Explain if and how the laws of your Member State comply with the mandatory provision in article 22(2) obliging Member States to consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.

As stated above, sec. 60 Residence Act prohibits expulsions if life, health or liberty of an alien are threatened to be infringed because of his race, religion, nationality or membership to a social group by government or non-government agents. Additionally, sec. 60 a Residence Act provides for a temporary suspension of the expulsion (toleration) for international law or humanitarian reasons or with respect of the political interest of the Federal Republic of Germany.

Q.18.C. In the national law of your Member State, are there any other grounds (except for the one referred to in Q.18.B) for allowing persons who have enjoyed temporary protection to stay in your Member State?

Yes, if he/she fulfills the requirements to apply for a residence permit according to the general provisions of the Residence Act including residence for humanitarian reasons (sec. 25 Residence Act).

Q.19. Questions concerning forcible return of persons who have enjoyed temporary protection. *See article 23:*

Q.19.A. Does the national law and practice of your Member State comply with the mandatory provision in article 23, providing that persons who have enjoyed temporary protection and who cannot, in view of their state of health reasonably be expected to travel, are not expelled as long as that situation continues? The provision exemplifies with persons who would suffer serious negative effects if their treatment was interrupted.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

According to sec. 60 a Residence Act in cases of a serious state of health a temporary suspension of the expulsion (toleration) can be granted. The same applies to negative effects if medical treatment is interrupted.

Q.19.B. Does your Member State allow families whose children attend school in a Member State, to benefit from residence conditions allowing the children concerned to complete the current school period before return? See optional provision in article 23.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Although there is no explicit provision on taking into account the current school period the aliens authorities can consider this fact while setting a deadline for leaving voluntarily the Federal Republic of Germany or taking measures to enforce the obligation to leave the Federal Republic.

Solidarity

Q.20. Please describe how your Member State ensures that persons eligible for temporary protection defined in a Council Decision under article 5 and who have not arrived in the Community have expressed their will to be received on their territory? See mandatory provision in article 25(2).

According to sec. 24 para. 1 Residence Act a person can only be granted temporary protection if he/she has declared his/her consent to stay in Germany. Therefore, without consent no protection can be granted.

Q.21. Questions concerning the transferral between Member States of persons enjoying temporary protection. See article 26:

Q.21.A. According to mandatory provision in article 26(1) the Member States shall cooperate with each other with regard to transferral of the residence of persons enjoying temporary protection from one Member State to another, subject to the *consent* of the persons concerned to such transferral.

Does the national law of your Member State comply with article 26(1) regarding the *consent* of the person who are about to be transferred?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

For persons being transferred from another Member State to Germany sec. 24 para. 1 Residence Act safeguards the existence of a consent since a person can only be granted temporary protection if he/she has declared his/her consent to stay in Germany. According to sec. 42 Residence Regulation (AufenthV) a transferral of a person enjoying temporary protection in Germany to another Member State is only possible upon application of that respective person. By this requirement it is ensured that transfer to another Member State requires consent.

Q.21.B. Do the national norms of transposition in your Member State comply with article 26(2) stating that a Member State shall communicate requests for transfers to the other Member States and notify the Commission and UNHCR?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

According to sec. 91b Residence Act the Federal Office for Migration and Refugees is empowered to transfer stored data to nominated contact authorities of other Member States, to organs and authorities of the European Union and to foreign or international agencies guaranteeing data protection required by German law (cf. the UNHCR). Additionally, sec. 42 cl. 2 and cl. 3 Residence Regulation contemplate that the Federal Office has to transfer the information in case of an application for transferral to other Member States, the Commission and the UNHCR.

Q.21.C. According to the national norms of transposition, is your Member State obliged to, at the request of another Member State, provide information as set out in Annex II of the Directive, on a person enjoying temporary protection, which is needed to process a matter of transferral? (See mandatory provision in article 26(3)).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Cf. sec. 91a para. 2 and sec. 91 b Residence Act

Q.21.D. According to the national law in your Member State, will the residence permit of a person who is transferred, from your Member State to another Member State, expire? See mandatory provision in article 26(4)

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Cf. sec. 51 para. 1 no. 2, no. 6 or no. 7 Residence Act

Q.21.E. When a person, who has been enjoying temporary protection in your Member State is transferred to another Member State, will the obligations relating to temporary protection in your Member State come to an end upon the transferral? *See mandatory provision in article 26(4)*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

With the transferral all rights and obligations cease to exist.

Q.21.F. If a person, who previously has enjoyed temporary protection in another Member State, is transferred to your Member State, will your Member State grant temporary protection to that person? *See mandatory provision in article 26(4), last sentence.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Cf. sec. 24 para. 1 Residence Act

Q.21.G. Will the ‘model pass’ set out in annex I of the Directive be used in a foreseen transferral procedure?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Cf. sec. 43 para. 2, sec. 4 para. 1 no. 7 and sec. 58 no. 9 (sample D9) Residence Regulation (AufenthV).

Q.22. What authority in your Member State is appointed as national contact point according to the mandatory provision in article 27?

The name and function of the authority is: Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge), cf. sec. 75 no. 5 Residence Act

Q.23. Questions regarding exclusion from temporary protection:

Q.23.A. Are there any criteria for exclusion from temporary protection in your Member State? *See optional provision in article 28.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If yes, specify the criteria).

Cf. sec. 24 para. 2 refers to sec. 60 para. 8 Residence Act and sec. 3 para. 2 Asylum Procedure Act which repeat the exclusion reasons of Art. 17 para. 1 of the Qualification Directive. However, pursuant to sec. 56 para. 3 Residence Act there are no additional rules on expulsion applicable.

Q.23.B. If the answer to A. is “yes”, please indicate whether they in any way exceed the exhaustive list of criteria in article 28(1)(a) and (b).

Yes **No**

Explanation:

The exclusion reasons of sec. 60 para. 8 Residence Act and sec. 3 para. 2 Asylum Procedure Act do not exceed the list of criteria laid down in art. 28 (1)(a) and (b).

Q.23.C. Do the national norms of transposition in your Member State meet the terms in article 28(2) stating that the grounds for exclusion shall be based solely on the personal conduct of the person concerned?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

The exclusion grounds to which sec. 24 para. 2 Residence Act refers cover a wide range of exclusion reasons all of which require personal conduct (including membership in a terrorist organization).

Q.23.D. Do the national norms of transposition in your Member State meet the terms of article 28(2) stating that exclusion decisions or measures shall be based on the principle of proportionality?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Under sec. 60 para. 8 Residence Act only severe reasons constitute a serious threat to public security and public policy, and only the conviction for an extremely serious crime or misdemeanor with a sentence of at least 3 years in prison are sufficient to meet its requirements. The principle of proportionality is considered in constitutional law as requirement for infringements of individual rights.

Q.24. Questions concerning the right to legal challenge:

Q.24.A. Do the laws of your Member State allow a person to mount a legal challenge if he/she has been: *See mandatory provision in article 29.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

excluded from the benefit of temporary protection **Yes** **No**

denied family reunification **Yes** **No**

Explanation:

According to art. 19 para. 4 Basic Law (GG) there is a constitutional right to defend against every infringement of individual rights. In the cases above, remedies can be sought before the social courts or the administrative courts to obtain benefits or to realise the right for family reunification.

Q.24.B. If the answer on any of the questions in Q.24.A is “yes”, please describe the applicable legal procedures for challenging the decision, in your Member State.

First, the person can apply to the authority which has declined his/her application for administrative review. If the first authority maintains its decision, the case is automatically transferred to the superior authority for decision. If the alien is turned down again the decision can be challenged in an administrative court (Verwaltungsgericht) with the chance of appeal to the states highest administrative court (VGH/OVG) or even to the Federal Administrative Court in Leipzig (Bundesverwaltungsgericht). In some cases, especially when the trial is about expulsion or residence permits the claim has no suspensive effect, therefore additional remedial measures must be taken, e.g. by means of preliminary legal protection (einstweiliger Rechtsschutz).

Q.25. Questions regarding penalties applicable to infringements of the national provisions.

Q.25.A. Are there penalties applicable to infringements of the national provisions in your Member State? *See mandatory provision in article 30.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If yes, specify the penalties).

Cf. sec. 95 para. 1 Residence Act provides for a sentence up to 1 year or a fine, whereas sec. 95 para. 2 provides for a sentence up to 3 years or a fine. For aliens purporting to belong to a group in need of temporary protection sec. 95 para. 2 no. 2 Residence Act is applicable if false or incomplete informationen have been given in order to obtain a residence permit.

Q.25.B. Explain if the penalties, according to your opinion, comply with the Directive concerning them being effective, proportionate and dissuasive?

See mandatory provision in article 30.

All penalties provided for in the Residence Act are effective, proportionate and dissuasive since they open a wide range of sentences and leave the courts thereby the opportunity to find an appropriate sentence for the individual case. Its dissuasive effect comes from the maximum penalties which can reach 1 or 3 years the most depending on what has been committed.

Final questions

Q.26. Can you refer us to any study, report or research by any source on the practice of granting temporary protection in the event of a mass influx in your Member State?

Thomas Groß, Zuwanderung aus humanitären Gründen, in: Zeitschrift für Ausländerrecht (Journal on Aliens Law) 2005, 61-66;

Monika Lüke, Humanitäre Bleiberechte außerhalb des Flüchtlingsschutzes im Rahmen des Aufenthaltsgesetzes, in: Zeitschrift für Ausländerrecht (Journal on Aliens Law) 2004, 397-402

Q.27. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate

no, not to my knowledge

Q.28. Are there any problems of legislation or practice in your Member State which relate to temporary protection and have not been covered in preceding questions?

According to the statement of the UNHCR some provisions of the Directive have not been transposed adequately, some have not been transposed at all. The UNHCR objects that the transposition of article 8 of the Directive lacks provisions assisting with the application for visa and a limitation of the formal requirements and costs. Any kind of facilitation can be provided for at the German embassies or consulates if persons apply who are in need of temporary protection. Additionally, the UNHCR complains that the German rules of transposition do not provide for rules on the readmission of persons enjoying temporary protection from other Member States. In fact, persons enjoying temporary protection under sec. 24 Residence Act have a residence permit allowing them to enter the country without further formalities. In this context, it has to be taken into account that the temporary protection status does not convey the right of free movement in the EU.

Beside this, the UNHCR questions the adequacy of the rules on the admission to the national educational system, since the educational assistance is not granted to persons enjoying temporary protection (cf. sec. 8 para. 2 BaföG). Finally the UNHCR considers the rules on family reunification partly inadequate. However, the example of article 15(1)b(2) of the Directive is not convincing since the German rule is very similar to the directive's provision. The same applies to sec. 36 Residence Act providing for other family members to enjoy the opportunity of family reunification to avoid exceptional hardship which can be very well be seen as also including the "best interest of the child" provided for in article 15(4) of the Directive. Eventually, it is assumed that in the application of the provisions of the Residence Act and the Asylum Seekers Benefits Act the best interest of the child is taken into consideration as a general public interest obligatory due to the Federal Republic of Germany's ratification of the UN Convention on Children.

THIRD PART

IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: **Did the transposition of the Directive make the rules related to the protection of third country nationals in cases of a mass influx become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below**

OBJECTIVE <i>To enhance the protection of displaced persons in cases of a mass influx</i>		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
<p>Explain the situation <u>before</u> transposition</p> <p>Before the directive the Gemarn law provided for sec. 32a Aliens Act which required a war or civil war situation. Furthermore, Sec. 32a Aliens Act contained only national rules for an international problem. The aliens act did not have any European framework for coping with a mass influx.</p>	<p>Explain the situation <u>after</u> transposition</p> <p>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</p> <p>none</p>	<p><input type="checkbox"/> <i>Less favourable than previous national rules</i></p> <p><input type="checkbox"/> <i>Status quo</i></p> <p><input checked="" type="checkbox"/> <i>More favourable than previous national rules</i></p>	<p><input type="checkbox"/> <i>Less favourable than the Directive</i></p> <p><input checked="" type="checkbox"/> <i>In line with the directive</i></p> <p><input type="checkbox"/> <i>More favourable than the directive</i></p>

Q. 30. **From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below**

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

OBJECTIVE (to be indicated by the national rapporteur)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation before transposition	<p>Explain the situation after transposition</p> <p>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</p>	<p><input type="checkbox"/> <i>Less favourable than previous national rules</i></p> <p><input type="checkbox"/> <i>Status quo</i></p> <p><input type="checkbox"/> <i>More favourable than previous national rules</i></p>	<p><input type="checkbox"/> <i>Less favourable than the Directive</i></p> <p><input type="checkbox"/> <i>In line with the directive</i></p> <p><input type="checkbox"/> <i>More favourable than the directive</i></p>

Q.31.A. Question regarding the method of transposition: **Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.**

YES NO

Q.31.B. **If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).**

YES NO

Q.31.C. **If yes, give some of examples:**

Q.31.D. **If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.**

No provision has been copied

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

DECISION OF SUPREME COURTS	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>
DECISION OF APPEAL COURTS	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>
DECISION(S) IN FIRST RESORT	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

There are no problems with the translation of the directive.

There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

OBJECTIVE OF THE PRACTICE	EXPLANATION
The framework of the directive was transposed by only few provisions into German law. Most of the general rules either existed already or were created for additional purposes (e.g. rules on subsidiary protection).	One may surmise that some of the directive's provisions were drafted with view to the German administrative and/or constitutional order as can be proved by the several references to human dignity in the process of terminating the stay which is one of the key constitutional values of the German Basic Law.

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.

Since the framework of the directive 2001/55/EC has not yet been used, most of the possible problems in practice remain invisible. Only after the use of the framework and the following review by national and European courts the strength and practicability of the directive will be proven or its shortcomings will be seen. This is also the most common reaction from the practitioners asked for their assessment of the directive's provisions.