

Effectiveness of Re-Entry Bans and Readmission Agreements; Study by the German National Contact Point for the European Migration Network (EMN)

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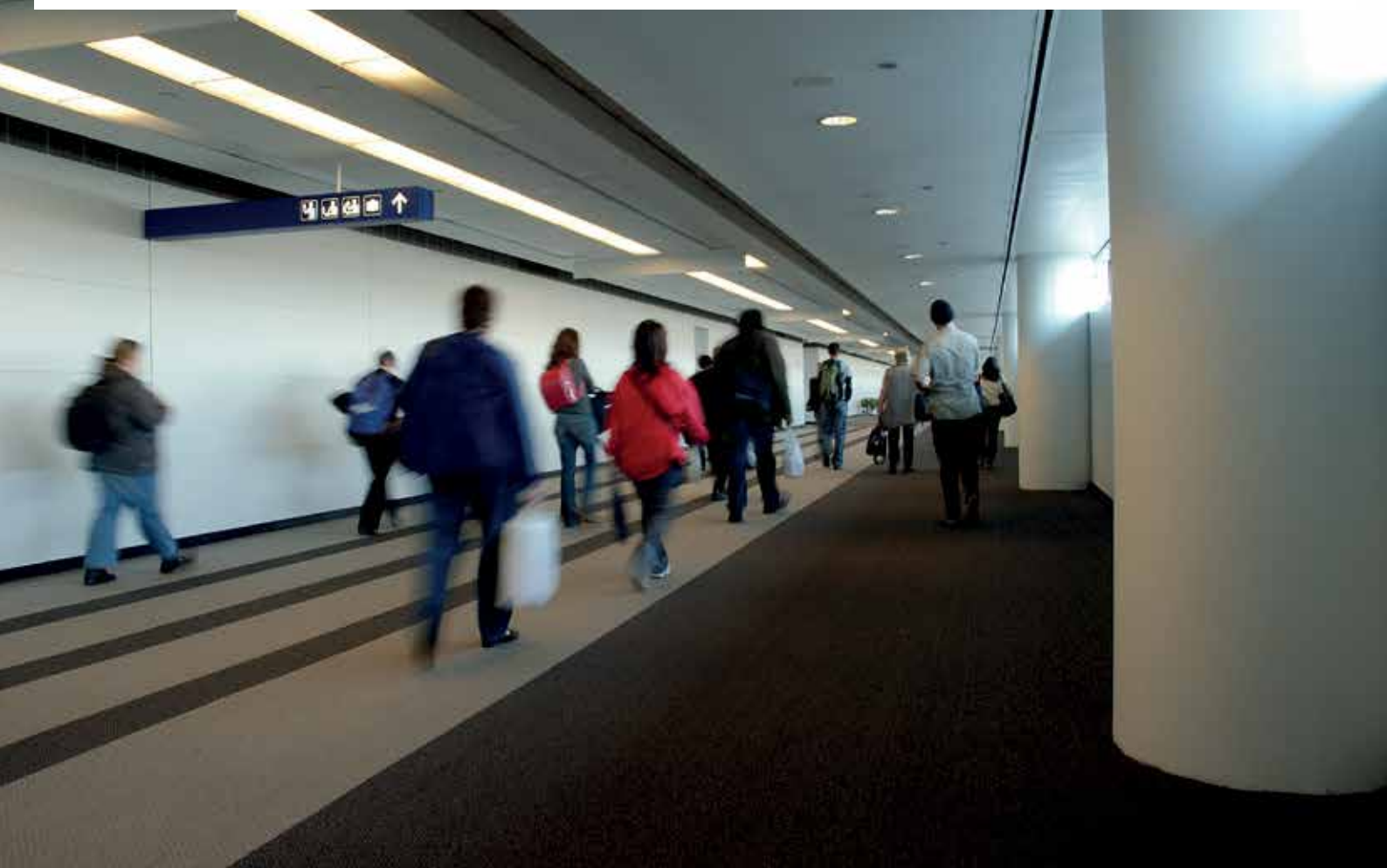


Effectiveness of Re-Entry Bans and Readmission Agreements

Study by the German National Contact Point
for the European Migration Network (EMN)

Working Paper 58

Martin Kohls



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Federal Office for Migration and Refugees 2014

Executive Summary

This focused study was drawn up as the German contribution towards a comparative European study by the German National Contact Point for the European Migration Network, which is assigned to the Federal Office for Migration and Refugees.

The study describes the legal framework and the procedure regarding (re-)entry bans for third-country nationals and gives information on numbers and characteristics of persons intercepted at the Federal borders against whom a (re-)entry was imposed. Also, the readmission agreements in force are described, including information on their scope and application.

The authorities charged with implementing foreigner law are responsible for the enforcement of the obligation to depart as well as for the re-entry bans. Readmission agreements are binding under international law. They are limited to procedural arrangements, specifying the existing duties to readmit own citizens in accordance with international law.

As a rule, the agreements concluded recently also contain the obligation, which is subject to certain conditions, to readmit and transfer persons obliged to depart who are not citizens of the contracting state in question (i.e. third-country nationals and stateless persons). Thus, these agreements comply with current EU standards. Presently, there are 13 readmission agreements in force which Germany concluded with third countries on a bilateral basis. Apart from bilateral agreements, there are also readmission agreements at EU level (EURAs). So far, EURAs with 14 third countries have entered into force.

In 2013, of a total of nearly 500,000 registered persons against whom a re-entry ban was imposed, only 413 were refused entry at the federal borders and 4,498 were removed. Also, the proportion of registered re-entries after assisted voluntary return via the REAG/GARP Programmes is rather low (2012: 2.0%).

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1 Introduction

Return policy is a proven element concerning migration policy. Its instruments include the fundamental issues concerning voluntary return, support for voluntary return, reintegration, forced return and readmission by their countries of origin of persons obliged to depart. In this context, voluntary return is given priority over forced return in principle as it is the more humane option.

In the context of return policy, the reintegration of returnees in their home countries is gaining importance. The development of economic and social roots aims at enabling them to make a new start in their home countries. At the same time, this perspective may help to reduce the incentive to (re-)enter Germany illegally for economic reasons only. However, return migration policy also includes the re-entry bans for people obliged to depart.

The present study was drawn up by the Center for Research on Migration, Integration and Asylum of the Federal Office for Migration and Refugees as the German contribution towards the comparative study of the European Migration Network ‘Good Practices in the return and reintegration of irregular migrants: Member States’ entry bans policy & use of readmission agreements between Member States and third countries’.

In due accordance with the mandate from the EMN, this study aims at providing decision-makers in the political and administrative sphere both at national and EU level with information on the links between re-entry bans and readmissions and on the current trends regarding the legal and statistical situation. The study is compiled in all EU Member States and Norway in accordance with commonly agreed guidelines in order to secure comparability of the national reports. The national reports will feed into a comparative Synthesis Report.

Presently, the Federal Ministry of the Interior has drawn up a draft law to redefine the right to stay and the termination of stay in Germany; the interministerial consultations started in April 2014. Among other things, the draft contains provisions on re-entry bans and a comprehensive revision of the regulations governing expulsion.

2 Termination of stay and re-entry

2.1 Legal framework

2.1.1 Termination of stay

The German Residence Act contains a specific chapter on the issue of termination of stay (Chapter 5, Sections 50–62a). In principle, a foreigner is obliged to leave the federal territory if he or she does not possess or no longer possesses the necessary residence title (Section 50(1) Residence Act).¹

Also, the regulations on return including corresponding agreements to facilitate this procedure apply to all persons who do not or no longer fulfil the conditions for entry and stay.

In general, voluntary return is given priority, as it is considered the more humane and affordable variant of return of third-country nationals who are obliged to leave the country (see Schneider/Kreienbrink 2010: 47). If the respective foreigner does not comply with his or her obligation to leave Germany, the obligation to leave the country may be enforced. It is the responsibility of the authorities charged with implementing foreigner law to examine the relevant circumstances, to issue administrative orders and, if applicable, to organise deportations. In general, deportations are notified in writing, preferably with the specification of a deadline for voluntary departure and the target country (Sections 58 and 59 Residence Act).

Pursuant to the EU Return Directive², Member States are obliged to issue a return decision to any third-country national staying illegally on their territory (Article 6(1)).³

¹ For a comprehensive overview of the legal framework for the termination of stay see Schneider 2012b: 56 et seq.

² The EU Return Directive (Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals) was fully implemented into national law on 26 November 2011 with the entry into force of the so-called Second Directives Implementation Act (Act to Implement European Union Residence Directives and Adapt National Law to the EU Visa Code).

³ Since the German legislation on residence has so far not included a legal instrument equivalent to the 'return decision', all cases where the obligation to depart is constituted by an administrative act are considered to fall under the concept of the 'return decision' within the meaning of the directive; in cases where the obligation to depart is required by law, the administrative act of a written notice of deportation (which is presently incorporated in the Residence Act as a 'should' stipulation) assumes the function of the return decision (for details, see Basse et al. 2011: 364ff). In exceptional cases, the supreme Land authority or the Federal Ministry of the Interior may issue a deportation order if it is necessary to avert a special danger to the security of the Federal Republic of Germany or a terrorist threat (Section 58 a Residence Act).

Expulsion

Pursuant to the German Residence Act, expulsion is an administrative act which terminates the legality of stay and/or causes a residence title to expire (Section 51(1) no. 5 Residence Act), thus leading to the obligation to depart.⁴

Deportation

Deportation is a measure included in the administrative compulsion instruments terminating the illegal stay of a foreigner. When the requirement to leave the country is enforceable, the intention to deport is noticed and voluntary fulfilment of the obligation to leave is not assured, the person(s) in question may be deported from the federal territory (Section 58 Residence Act).⁵

2.1.2 (Re-)Entry

Pursuant to national law, foreigners may only (re-) enter or stay in the federal territory if they are in possession of a recognised and valid passport or passport substitute.⁶ Additionally, they require a residence title, unless the law of the European Union or a statutory instrument provide otherwise or a right of residence exists as a result of the EEC-Turkey Association Agreement.

A residence title may be issued in one of the following forms: a visa (Section 6 Residence Act), a residence permit (Section 7), an EU Blue Card (Section 19(a), a settlement permit (Section 9) or a EU long-term residence permit (Section 9(a)). If a foreigner (re-)enters the federal territory without the required residence title, or if an entry ban was imposed against him or her pursuant to Section 11(1) Residence Act, his or her entry is unlawful (Section 14(1)). If a foreigner does not fulfil the above-named entry conditions in the first place, also his or her stay in the federal territory is unlawful.⁷ Likewise, the stay of a foreigner is also unlawful if the required conditions for stay are no longer fulfilled (Section 50).⁸ In these cases, the person concerned is obliged to depart.

4 In principle, there are three categories of expulsion giving the foreigners authorities different options to act in their exercise of discretion (Sections 53-55 Residence Act):

- A foreigner must be expelled if he or she has committed serious crimes, especially if he or she has been non-appealably sentenced to a prison term or a term of youth custody of at least three years or if he or she has received a non-appealable custodial sentence without eligibility for parole for smuggling in foreigners (Section 53 Residence Act).

- Additionally, there is a number of offences generally punishable by expulsion, e.g. if the prison term is of at least two years, if the foreigner in question cultivates, produces, imports or sells narcotics, if he or she belongs to an organisation which supports terrorism or participates in acts of violence in pursuit of political objectives or if he or she belonged to the leadership of an organisation found to be unconstitutional and which is subject to a ban (Section 54 Residence Act).

- Finally, a foreigner may be expelled at the discretion of the authorities if his or her stay is detrimental to public safety and law and order or other substantial interests of the Federal Republic of Germany. Likewise, expulsion is possible in principle if the foreigner claims social assistance benefits for himself/herself, his or her dependants or other persons belonging to his or her household. Since the EU-Directives Implementation Act entered into force, introducing the possibility of expulsion for certain actions that are especially counterproductive to integration, expulsion is now also possible in cases such as coercing or attempting to coerce another person into marriage (Section 55 Residence Act).

5 A foreigner is enforceably required to leave the country if he or she has entered Germany without a permit or if his or her visa has expired and he or she has not applied for a residence title in the meantime.

6 The passport obligation does not apply to foreigners who are exempt from this requirement by virtue of a statutory instrument (Section 3(1) Residence Act). Also, the Federal Ministry of the Interior may permit exemptions from the passport obligation in justified individual cases (Section 3(2) Residence Act).

7 Unlawful entry and/or stay are punishable with a prison term or a fine (Section 95 Residence Act). It is also a criminal offence to incite or aid another person to enter and/or stay unlawfully in Germany and to receive a pecuniary advantage or the promise of a pecuniary advantage in return or to act in such a manner repeatedly or for the benefit of several foreigners (Section 96 Residence Act; smuggling in of foreigners). If the smuggling in of foreigners is carried out for gain as a member of an organised gang or if it causes the death of the smuggled person, this constitutes a severe criminal offence (Section 97 Residence Act), punishable with a minimum prison term of one year and/or a term of no less than three years (cf. BAMF/BMI 2014: 176.).

8 Moreover, the residence title may expire for lapse of time, occurrence of an invalidating condition, cancellation or revocation, expulsion or when the foreigner leaves the federal territory for a reason which is not of a temporary nature (Section 51(1) Residence Act).

Refusal of entry

Foreigners wishing to enter Germany unlawfully because they do not fulfil the general conditions for entry are refused entry at the border (Sections 14 and 15 Residence Act).

Removal

A foreigner who is intercepted in conjunction with unlawful entry should be removed (Section 57 Residence Act). While the refusal of entry is designed to prevent stay in Germany in the first place, the instrument of removal is applied after entry has already been accomplished.⁹

2.2 Re-entry ban

Pursuant to Section 11(1) sentence 1 of the Residence Act, a foreigner who has been

- expelled (Sections 53 et seq. Residence Act),
- removed (Section 57) or
- deported (Section 58)

is not permitted to re-enter and to stay in the federal territory.¹⁰ The foreigner should be notified of the possibility of filing an application for the setting of such a time limit (Section 82(3) Residence Act). As long as the entry ban is in effect, the responsible foreigners authority may grant the person in question temporary entrance into the federal territory for a short period by way of exception if the requirements of Section 11(2) Residence Act are met.

Since the Return Directive was implemented, a time limit to the entry ban must be set (Article 11 Directive 2008/115/EC). To meet this requirement, the Federal Government is planning to amend Section 11(1) sentence 3 of the Residence Act accordingly. In any case, recent decisions by the German highest courts have

⁹ Cf. Renner et al. 2013, Residence Act Section 57, margin number 3. The responsibility for dealing with these actions occurring 'near the border' lies with the border police authorities, i.e. in general with the Federal Police, but, where applicable, also with the Customs Administration and/or the police authorities of the federal Länder.

¹⁰ Exemptions are provided for under Sections 25(4a),(4b),(5) and Section 23(a) Residence Act.

obliged the federal Länder to always set a time limit of their own motion.¹¹

Begin of entry ban

The ban on entry and residence begins by law at the time of expulsion, deportation or removal. Regardless of whether an application was made, the period of an entry ban begins with the departure (Section 11(1) sentence 6 Residence Act). The ban is also in effect as ban on residence or ban on issuing a residence title if the foreigner concerned does not leave Germany.

Pursuant to Section 82(1) Residence Act, a foreigner who is obliged to leave the federal territory must provide proof of his or her voluntary departure at a certain point in time. In the absence of such a proof (e.g. transport ticket or notice to a diplomatic representation), he or she will be registered both in INPOL (electronic police information system) and SIS (Schengen Information System) for deportation or removal.

Duration of time limit

Pursuant to Article 11(2) of the Return Directive, the length of an entry ban should not in principle exceed five years. However, the time limit may be extended in

¹¹ Cf. Deutscher Bundestag 2014a: 5. With regard to the implementation of the European Court of Justice judgment in the case *Filev and Osmani*, the Federal Government is also planning to establish a joint procedure with the federal Länder and the Federal Police. As the adjustment of existing unlimited entry bans will be dealt with on the national level, the procedure is presently being developed jointly with the Länder. In the absence of contact data, it is not planned to contact and inform the persons concerned of the fact that unlimited entry bans will, ex officio, be limited in time or else would not be valid any longer. Background: In its judgment in case C-297/12 (*Filev and Osmani*) of 19 September 2013, the ECJ decided on the interpretation of Article 11(2) of the Return Directive 2008/115/EC. The judgment was given following a request for a preliminary ruling on criminal proceedings brought against a national of the Former Yugoslav Republic of Macedonia and against a national of Serbia, who had entered Germany more than five years after their expulsion in breach of entry bans of unlimited duration which were coupled with the expulsion orders made against them.

case the person concerned represents a serious threat to public policy, public security or national security.¹²

The decision on the duration of the entry ban is taken on a case-by-case basis. The nature and seriousness of the offence respectively the reason of expulsion must be weighed against the duration of legal stay, familiar relationships and social ties acquired in the course of a secure residence status by school attendance, vocational training etc.

When setting a time limit to the effects of deportation or removal (Section 11(1) sentence 3 Residence Act), above principles are applicable accordingly, giving due consideration to the various reasons for imposing an entry ban. When deciding on the time limit, the extent to which the person concerned has paid for the costs of the compulsive measure can be taken in consideration. Also, proof of conduct or similar documents can be requested from the state of present residence. An opinion of the local German representation on the correctness of the provided documents can be requested via the German Foreign Office.

If, in case of a time limit that has become unappealable, a reduction of the duration is requested, the former decision on the duration can only be revised if resumption of the proceedings would fall under the scope of Section 51 of the Administrative Procedure Act. This provision stipulates that the competent foreigners authority must decide on the annulment or the amendment of a non-appealable administrative act when the material or legal situation basic to the administrative act has subsequently changed to favour the person affected or when new evidence is produced with a more favourable decision for the person affected, or when there are grounds for resumption of proceedings under section 580 of the Code of Civil Procedure (action for retrial of the case).

¹² After the introduction of the Return Directive, the notes on setting the time limit given in the General Administrative Provisions to the Residence Act (exclusion of setting a time limit, point 11.1.3.1) cannot be applied any longer (Higher Administrative Court of Lower Saxony, judgment of 14.02.2013, 8 LC 129/12).

2.3 Refusal of entry

In general, a third-country national planning to (re-) enter the federal territory needs to apply for a visa. The examination by the responsible German representation abroad as to whether the applicant fulfils the conditions for (re-)entry includes several aspects (cf. Parusel/Schneider 2012: 38), among them:

- whether the applicant is a person for whom an alert has been issued in the Schengen Information System SIS for the purpose of refusing entry;
- whether the applicant may be a threat to public policy, internal security or public health or to the international relations of any of the Member States, and in particular, whether an alert has been issued in the Member States' national databases (e.g. the German Central Register of Foreign Nationals) for refusing entry.

In case entry is refused, the reasons are stated in a Standard Form.¹³ Under Community law pursuant to Article 13(2) sentence 3 of the Schengen Borders Code (SBC), this decision takes effect immediately (see also the General Administrative Provisions to the Residence Act, point 13.3.2.2.1).

¹³ Cf. Annex V Part B of the Schengen Borders Code (SBC). In case of entry refusal, the competent border official fills in the respective form, the third-country national signs it and receives a copy. If the person in question refuses to sign the form, the border official notes this in the section "comments". Additionally, the responsible border official affixes an entry stamp into the foreigner's passport which he then crosses out in black waterproof ink. Then, the official enters at the right side of the entry stamp, again in black waterproof ink, the respective letter(s) listed in the standard form giving the ground for entry refusal. The border official immediately informs the central authorities about this decision and records the refusal of entry, stating the personal data and the nationality of the third-country citizen, the document authorising the foreigner to cross the border as well as the date of and the reason for the entry refusal.

Schengen Information System (SIS)

Since 1995, the EU Member States have been operating a common search system, the Schengen Information System (SIS, now SIS II).¹⁴ The database is available to all Schengen states in the form of a national information system (NSIS). The German NSIS is located at the premises of the Federal Criminal Police Office (BKA), which regularly transmits the data subset on entry refusals to the Federal Office of Administration (BVA). This subset is made available to authorities performing tasks concerning the residence legislation.

Presently, the SIS contains some 47 million items of data, among them around 1.2 million datasets for the purposes of tracing persons. Access to the system for entering and searching information is

granted to the customs, police, judicial and administrative authorities of the Member States. One of the reasons for making an entry into the system is the refusal of entry to persons who are not entitled to enter or stay in the Schengen area.

The authorities of the countries accessing the SIS II must check the quality of the data they are entering into the system. In addition, strict data protection requirements are applicable for the Schengen area. Any person has the right to make a request to access any data related to them and entered in the SIS II, and to examine whether the data are correct and whether the storage was lawful. If this is not the case, correction or deletion of the data can be requested.

2.4 Statistics

The following sections give an overview of the development and the extent and structure of the return decisions issued and of the persons established to be subject to a (re-)entry ban at the borders of the federal territory.

2.4.1 Termination of stay

In 2013, a total of 25,300 such requests were issued to third-country nationals (Table 1), 16.6% of them to citizens from the Russian Federation, followed by persons from Serbia (16.2%) and Macedonia (6.7%). The increase in these requests since 2009 (+73.3%) is mainly due to a rise in persons from Western Balkan countries (for the years 2009 to 2012). In 2013, also the number of people from the Russian Federation increased drastically (+625%). By contrast, the number of requests to leave the territory issued to Turkish nationals has significantly decreased since 2009.

¹⁴ In recent years, SIS has been technically improved and equipped with new features and search categories. The second generation of the System, SIS II, went into operation on 09.04.2013. Its components are a Central Unit located in Strasbourg and the interfaces to the national servers of the 28 Member States for entering and retrieving data by police end users across Europe.

Table 1: Return decisions issued to third-country nationals by citizenship (Top-10, 2009-2013, in descending order for 2013)

	2009	2010	2011	2012	2013
Russian Federation	510	585	635	580	4,205
Serbia	1,260	2,410	2,885	4,615	4,103
Macedonia	240	1,320	865	1,705	1,691
Kosovo	610	1,035	945	1,180	1,274
Bosnia and Herzegovina	325	335	390	940	1,268
Turkey	1,535	1,410	1,175	1,000	979
Iraq	840	745	770	565	665
India	535	830	820	675	650
Georgia	275	505	220	355	601
Vietnam	1,250	1,090	755	600	599
Other	7,215	8,925	8,090	7,785	9,265
Total	14,595	19,190	17,550	20,000	25,300

Source: 2009-2012: Eurostat (rounded figures); 2013: Deutscher Bundestag (2014c: 31).

It is also possible to establish how many people have complied with a request to depart. These data show that in 2012, a total of 8,568 persons departed (forced or voluntary), of them 1,485 Serbian, 485 Kosovo and 430 Macedonian citizens.¹⁵ In 2013, a total of 9,627 third-country nationals left Germany following a return decision (+12.4% compared to the previous year), among them 2,011 people from Serbia, 1,744 from Russia and 878 from Macedonia.¹⁶

2.4.2 Unlawful (re-)entries

Unlawful entries at border

Foreigners who are apprehended for unlawful entry by the Federal Police or other authorities responsible for cross-border traffic¹⁷ are recorded in the statistics of the Federal Police.

In 2013, a total of 32,533 persons were recorded who had entered Germany illegally (Table 2). In the time period 2002 to 2010, the figure had been under 20,000 registrations annually, which is a decline compared

to the 1990ies. However, the total number for 2013 (32,533 persons) marks an increase above 30,000 for the first time since 2001. By contrast, removals following illegal entry have continuously declined (2009: 9,782 cases; 2013: 4,498 cases).

Table 2: Illegal entries at German borders and removals, 2009 - 2013

	2009	2010	2011	2012	2013
Illegal entries	19,416	17,831	21,156	25,670	32,533
Removals ¹	9,782	8,416	5,281	4,417	4,498

Source: Federal Police.

1) Removals are always a consequence of illegal stay; they are implemented within the first six months after entry (Section 57(1) Residence Act). Removals take place to the respective neighbouring country or to the country of origin by direct air route.

Detection of unlawful (re-)entries pursuant to the Police Crime Statistics

The offences of unlawful entry (Section 95(1) no. 3 Residence Act) and re-entry following expulsion/deportation (Section 95(2) no. 1a Residence Act) are recorded in the Police Crime Statistics.¹⁸

15 Forced or voluntary departures, irrespective of the year the return decision was issued, cf. Deutscher Bundestag 2013: 34.

16 Cf. Deutscher Bundestag 2014c: 31.

17 Waterway police Hamburg, police of Bavaria and the Federal Customs Administration.

18 Statistic keys in the Police Crime Statistics: 725110 and 725120. Note: A direct comparison between the Police Crime Statistics (exit data) and the data of the Federal Police (entry data) is not possible due to the different criteria of recording.

In the time period 2009-2012, the number of unlawful entries initially showed a slight decline, but then decreased again in 2012 to the levels of 2009 again. By contrast, illegal entries after expulsion or deportation have continuously increased in the same period (by 63.2%, see Table 3).

Table 3: Detection of illegal entries and re-entries in the Police Crime Statistics

	2009	2010	2011	2012	2013
Unlawful entries (Section 95(1) no. 3 Residence Act)	23,288	19,376	21,288	23,105	/
Unlawful reentries after expulsion/ deportation (Section 95(2) no. 1a Residence Act)	1,841	2,554	2,714	3,005	/

Source: Federal Criminal Office (Police Crime Statistics); figures for 2013 are not yet available.

Refusal of entry at the borders

The data on refusal of entry at the borders recorded by the Federal Police and transmitted to Eurostat can be broken down by nationality, type of border and reason for entry refusal.

Since Germany has no more external EU land borders, entry refusal¹⁹ is basically possible only at international airports (2013: 3,828 cases) and seaports (2013: 22 cases) and has accordingly decreased in quantitative terms (Table 4). While there had been far more than 50,000 entry refusals in 2001, the number for 2011

¹⁹ Refusal of entry is regulated in Section 15 of the Residence Act: A foreigner wishing to enter the federal territory unlawfully is refused entry at the border. Also, a foreigner who does not fulfil the entry conditions pursuant to Article 5 of Regulation (EC) No 562/2006 (Schengen Borders Code) is automatically refused entry.

came down to 3,365. Since then, a slight increase can be observed again (2013: 3,850 cases).²⁰

Table 4: Entry refusals at the external borders, 2009-2013

	2009	2010	2011	2012	2013
Persons refused entry	2,980	3,550	3,365	3,820	3,850

Sources: 2009-2012: Eurostat (rounded figures); 2013: Deutscher Bundestag 2014c: 31.

The majority of persons who were refused entry at the German borders in 2013 were citizens from the Russian Federation (491 cases, 12.8%), Turkey (372 cases, 9.7%) and China (245 cases, 6.4%, see Table 5).

²⁰ However, conclusions on the factual development of the situation by means of a statistical comparison with the previous years is no longer possible since 2008, as the legal and factual conditions at the new internal borders have changed fundamentally (in particular regarding the borders to Poland, the Czech Republic and Switzerland): With the abolition of systematic border controls within the Schengen area, illegally travelling persons are generally only intercepted after having entered the country. Before the abolition of border controls, these people had been rejected at the border prior to (illegal) entry (cf. BAMF/BMI 2014: 178).

Table 5: Entry refusals at external borders by nationality (Top-10, 2009-2013, in descending order for 2013)

	2009	2010	2011	2012	2013
Russian Federation	265	275	440	545	491
Turkey	420	445	280	370	372
China (including Hong Kong)	260	335	235	300	245
Albania	35	30	95	150	171
Serbia	100	245	240	170	160
Ukraine	75	165	120	135	152
Macedonia	35	120	115	135	110
Kosovo	45	60	50	85	92
Libya	10	20	10	75	89
India	90	100	80	130	86
Other	1,645	1,755	1,700	1,725	1,882
Total	2,980	3,550	3,365	3,820	3,850

Source: 2009-2012: Eurostat (rounded figures); 2013: Deutscher Bundestag 2014c: 15-18.

Annex V of the Schengen Borders Code contains a detailed list of reasons for entry refusal, with 'H' defining a 'person for whom alert has been issued for the purposes of refusing entry'. Table 6 shows the reason for entry refusals at the external borders of the Federal Republic of Germany.

In 2013, a total of 1,588 persons were refused entry because they were not in possession of a valid visa or residence title. 413 were rejected due to an alert for entry refusal. Since 2010 (620 alert cases), the number of entry refusals for this reason has been declining (2013: 413).

In 2013, a total of 443 unaccompanied minors under the age of 16 were recorded at the external borders (2012: 403 cases), of whom 42.4% were Afghan citizens (2012: 68.8%). 394 of them (2012: 348) were transferred to the competent youth welfare offices, 29 of them were removed (2012: 42 cases), and 4 were refused entry (2012: 1 case).²¹

²¹ Cf. Deutscher Bundestag 2013: 21; 2014c: 21.

Table 6: Total number of persons refused entry by reason of refusal, 2009-2013

	2009	2010	2011	2012	2013
No valid visa or residence title	1,425	1,450	1,561	1,620	1,588
False/counterfeited/forged travel documents	145	160	140	100	61
False/counterfeit/forged visa or residence title	60	90	66	70	77
No valid travel documents	85	70	87	55	93
Purpose and conditions of stay not allowed	740	635	450	555	537
Stay for 3 months during the past 6 months	20	60	97	95	90
No sufficient means of subsistence	40	85	173	160	210
Expulsion notice issued (alert for entry refusal)	320	620	520	445	413
Considered to be a threat to public order	145	375	284	725	781
Total	2,980	3,550	3,352	3,820	3,850

Source: 2009, 2010, 2012: Eurostat (rounded figures); 2011: Deutscher Bundestag 2012: 20f; 2013: Deutscher Bundestag 2014c: 15-18.

Re-entry bans in the Central Register of Foreign Nationals²²

The Central Register of Foreign Nationals contains all measures leading to a re-entry ban pursuant to Section 11 Residence Act (expulsion, deportation, removal). In the time period 2009-2013, a decrease in entry bans can be observed (Table 7); While in 2009, a total of 20,059 entry bans had been imposed, the number declined to 14,514 in 2012 and has only risen slightly since (2013: 16,100).

In 2013, most entry bans were examined for Serbian nationals (15.4%), followed by citizens from the Russian Federation (14.7%) and Kosovo (6.5%). While Turkish nationals constituted the largest group in 2009 (2,065 entry bans), their number has been steadily declining since (2013: 825 entry bans).

In 2013, the vast majority of entry bans was of unlimited duration (75.1%, see Table 8). Russian nationals were affected more than average by unlimited entry bans (86.1%).

With regard to the length of entry bans, nationals from the Western Balkan countries (Serbia, Macedonia, Bosnia and Herzegovina) show disproportionately short durations (up to 2 years). By contrast, Turkish citizens tend to be subject to longer durations (5 years and more).

Table 7: Re-entry bans pursuant to Section 11 Residence Act by nationality (Top-10, 2009-2013, in descending order for 2013)

	2009	2010	2011	2012	2013
Serbia	792	906	1,416	1,902	2,472
Russian Federation	1,033	904	659	504	2,373
Kosovo	925	1,089	813	773	1,047
Macedonia	368	536	730	718	946
Turkey	2,065	1,797	1,349	972	825
Albania	398	361	366	502	531
Bosnia-Herzegovina	318	275	296	358	436
Georgia	503	569	436	477	434
Morocco	444	429	440	422	422
Algeria	473	464	526	415	401
Other	12,740	11,021	8,667	7,471	6,213
Total	20,059	18,351	15,698	14,514	16,100

Source: Central Register of Foreign Nationals, last update: 28.02.2014.

22 With regard to possible existing unlimited entry bans for Croatian nationals, the Federal Office for Migration and Refugees in its capacity as the registry authority of the Central Register of Foreign Nationals, sent an information notice to the competent ministries and senate administrations of the federal Länder in June 2013 regarding Croatia's accession to the EU. The Länder were requested to instruct the competent foreigners authorities to examine all entry bans imposed after 1 January 2005 in connection with expulsion and/or deportation and removal and, if appropriate, to either delete the entry ban or to set a time limit to 30 June 2013. Measures not leading to an entry ban were automatically deleted from the Central Register of Foreign Nationals. Cf. Deutscher Bundestag 2014a: 9.

Table 8: Re-entry bans pursuant to Section 11 Residence Act by nationality and duration (Top-10, 2013, in descending order)

	Unlimited duration	0 – less than 2 years	2 – less than 5 years	5+ years	Total
Serbia	1,667	243	413	149	2,472
Russian Federation	2,042	57	220	54	2,373
Kosovo	765	61	131	90	1,047
Macedonia	627	87	155	77	946
Turkey	567	46	113	99	825
Albania	366	27	91	47	531
Bosnia and Herzegovina	299	41	68	28	436
Georgia	357	10	43	24	434
Morocco	324	12	50	36	422
Algeria	313	18	37	33	401
Other	4,666	399	784	364	6,213
Total	11,993	1,001	2,105	1,001	16,100
Percentages	Unlimited duration	0 – less than 2 years	2 – less than 5 years	5+ years	Total
Serbia	67.4%	9.8%	16.7%	6.0%	100.0%
Russian Federation	86.1%	2.4%	9.3%	2.3%	100.0%
Kosovo	73.1%	5.8%	12.5%	8.6%	100.0%
Macedonia	66.3%	9.2%	16.4%	8.1%	100.0%
Turkey	68.7%	5.6%	13.7%	12.0%	100.0%
Albania	68.9%	5.1%	17.1%	8.9%	100.0%
Bosnia and Herzegovina	68.6%	9.4%	15.6%	6.4%	100.0%
Georgia	82.3%	2.3%	9.9%	5.5%	100.0%
Morocco	76.8%	2.8%	11.8%	8.5%	100.0%
Algeria	78.1%	4.5%	9.2%	8.2%	100.0%
Other	75.1%	6.4%	12.6%	5.9%	100.0%
Total	74.5%	6.2%	13.1%	6.2%	100.0%

Source: Central Register of Foreign Nationals, last update: 28.02.2014.

As of 31 October 2013, the Central Register of Foreign Nationals contained 495,248 foreigners not living in Germany against whom an unlimited entry ban was imposed; of these, 118,212 entry bans (23.9%) had been begun before 1990; between 1990 and 1999, a total of 153,302 (31.0%) had been begun, and 223,734 bans (45.2%) began after 2000.²³ The largest proportion of this group accounts for Turkish nationals (86,028 unlimited entry bans, i.e. 17.4%), followed by people from the former Yugoslavia (64,108 bans, 13.0%), Ukraine

(21,752 bans, 4.4%) and Vietnam (15,958 entry bans, 3.2%).²⁴

Overall, in view of a total of nearly 500,000 registered persons against whom an entry is in force, the number violations detected at the borders is comparatively small (2013: 413 entry refusals and 4,498 removals).

²³ These data must be deleted at the latest three months after the foreigner concerned has reached the age of 90 (Section 18(2) of the Regulation Implementing Act on the Central Register of Foreign Nationals. For the setting of a time limit to re-entry bans see Chapter 2.2.

²⁴ Cf. Deutscher Bundestag 2014a: 7 et seq.

3 Readmission agreements

Return policy is a proven element in migration policy.²⁵ Among others, it includes support for voluntary return, forced return and readmission by the country of origin of persons required to leave Germany.

Readmission means the transfer by the requesting State and admission by the requested State of persons (own nationals of the requested State, third-country nationals or stateless persons) who have been found illegally entering to, being present or residing in the requesting State, in accordance with the provision of a Readmission agreement.²⁶

Transit means transfer of a foreigner within the frame of a return measure of another State via the territory of the Federal Republic of Germany (General Administrative Provisions to the Residence Act, 74a.0.1).

3.1 Background

All European Directives and Council Decisions on return have been implemented into German legislation; most recently, the Return Directive was transposed into national law (Schneider/Kreienbrink 2010: 44 et seq.).²⁷

3.1.1 Readmission agreements with third countries

Long before the EU started to conclude joint readmission agreements with third countries, Germany had entered such bilateral agreements with other (third) countries. The earliest agreements were concluded in 1954 and 1955 with Denmark, Sweden and Norway. After the political change in Eastern Europe and the Balkan states, Germany also concluded readmission agreements with numerous other countries. The most recent bilateral agreement with a third country, Kosovo, entered into force in 2010. Presently, there are 13 bilateral readmission agreements with third countries in force (Table 9).²⁸

25 Cf. BMI (2011: 172).

26 Cf. Readmission Agreement between the European Community and the Russian Federation, Article 1 (Definitions), see also Lehnguth et al. 1998: 59.

27 In order to address the migratory challenges in the area of return also at community level, the European Union has provided a financial support instrument to the Member States, the European Return Fund. From 2008 until 2013, both international projects with the participation of several Member States as well as national return projects are co-financed. Cf. <http://www.bamf.de/DE/DasBAMF/EUFonds/ERF/erf-node.html> (accessed on 1 April 2014).

28 A list of all readmission agreements is available at the site of the Federal Ministry of the Interior: http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/RueckkehrFluechtlinge.pdf?__blob=publicationFile (last update: May 2014, accessed on 9 May 2014).

Table 9: Bilateral Readmission agreements with third countries

Country	Unterzeichnung	Inkrafttreten
Albania	18.11.2002	01.08.2003
Algeria	14.02.1997	12.05.2006 (applied since 01.11.1999)
Armenia	16.11.2006	20.04.2008
Bosnia-Herzegovina	20.11.1996	14.01.1997
Georgia	06.09.2007	01.01.2008
Kazakhstan	10.12.2009	not yet entered into force
Kosovo	14.04.2010	01.09.2010
Morocco	22.04.1998	01.06.1998
Macedonia	24.06.2002	01.05.2004
Serbia	16.09.2002	01.04.2003
South Korea	10.12.2004	22.03.2005
Syria	14.07.2008	03.01.2009
Vietnam	21.07.1995	21.09.1995

Source: BMI.

Besides, Germany has concluded a number of transit agreements (both for forced and voluntary return). These arrangements make it possible for foreigners to return or be returned via the contracting Member State without the need of a transit visa.²⁹

3.1.2 EU Readmission Agreements (EURAs)

Apart from bilateral Readmission agreements, there are also agreements at EU level (EURAs) obliging the contracting states to take back their own citizens and, under certain conditions, also third-country nationals and stateless persons. These agreements also contain procedural and technical criteria for readmission. EURAs prevail over bilateral agreements. The latter continue to apply, if they do not contradict EURAs and fill regulatory gaps.

So far, the European Council has requested the Commission to take up negotiations on readmission agreements with a total of 20 third countries; agreements with 14 of these states have already entered into force (Table 10). While negotiations with Cape Verde, Azerbaijan and Turkey have come to a conclusion, those with Morocco, Armenia and China are still ongoing. The negotiations with Algeria have not started yet.

²⁹ The BMI website contains also a list of these agreements.

Table 10: EU Readmission agreements with third countries

Country	Date of signature	Date of entry into force
Albania	14.04.2005	01.05.2006
Armenia	19.04.2013	01.01.2014
Bosnia-Herzegovina	18.09.2007	01.01.2008
Georgia	22.11.2010	01.03.2011
Hong Kong	27.11.2002	01.03.2004
Macao (Special Administrative Region of the People's Republic of China, since 01.06.2004)	13.10.2003	01.06.2004
Macedonia	18.09.2007	01.01.2008
Moldova	10.10.2007	01.01.2008
Montenegro	18.09.2007	01.01.2008
Pakistan	26.10.2009	01.12.2010
Russian Federation	25.06.2006	01.06.2007
Serbia	18.09.2007	01.01.2008
Sri Lanka	04.06.2004	01.05.2005
Ukraine	18.06.2007	01.01.2008

Source: BMI.

3.2 Responsibilities

The foreigners authorities of the federal Länder are competent for residence- and passport-related measures and rulings in accordance with the Residence Act and also for measures and rulings in accordance with provisions relating to foreigners which are contained in other acts (Section 71(1) sentence 1 Residence Act). This includes the establishment and enforcement of the obligation to leave the country, i.e. also return measures to foreigners subject to an enforceable order to leave the country.³⁰

The (enforced) execution of the obligation to depart falls mainly within the competence of the federal Länder. Also, the Federal Police is responsible for returning foreigners subject to an enforceable order to

leave the country pursuant to Section 71(3) no. 1 Residence Act.³¹

3.2.1 Voluntary Return

With regard to persons obliged to leave the federal territory, voluntary return is given priority. Under certain circumstances, voluntary return can be supported by financial means.³²

³⁰ Cf. Deutscher Bundestag 2014b: 2.

³¹ Often, return and readmission measures encounter practical implementation problems, cf. BMI 2011: 177. People obliged to depart prevent or delay their departure, e.g. by hiding or destroying their identity documents, by absconding or by strongly opposing concrete deportation measures. Additionally, some countries of origin are not extremely cooperative when it comes to taking back their own nationals. Apart from delayed processing of requests for the issuance of substitute passport documents by their foreign representations in Germany, lengthy and often inefficient procedures to clarify an identity are required in the country of origin. In order to improve the level of efficiency, a closer cooperation with these countries of origin is sought both at the federal and Land level.

³² Cf. BMI 2011: 172. The majority of persons obliged to leave Germany are third-country nationals who initially had lodged an asylum application. Either the application was rejected by final decision or the recognition as person entitled to asylum was withdrawn or revoked. Also, a considerable portion of this group has lately been refugees who were admitted to Germany only under temporary protection measures (e.g. refugees from Kosovo).

The implementation of voluntary return is in principle coordinated between the federal and Land authorities, with the Federal Ministry of the Interior and the interior ministries of the individual federal Länder making the basic policy decisions. Since 1979, the federal and Land governments have been supporting voluntary return (or, if applicable, onward migration) of persons obliged to depart via the two programmes REAG and GARP³³ by providing travel (cost) support and by granting start-up aid for reintegration. Since the launch of these programmes, more than 550,000 people from all over the world have received financial and organisational support when going back to their home country or to another third country which is willing to admit them.³⁴ The programmes are implemented by IOM on behalf of the Federal Government and the Länder governments.³⁵ In November 2013, IOM presented its first report on the implementation of REAG/GARP (IOM Deutschland 2013). Pursuant to Section 75(7) Residence Act, the Federal Office for Migration and Refugees (BAMF) is also responsible for coordinating the relevant programmes and for paying out funds approved under those schemes.³⁶

33 REAG = Reintegration and Emigration Programme for Asylum-Seekers in Germany"; GARP = „Government Assisted Repatriation Programme“.

34 Cf. BMI/BAMF 2014: 107. Whereas the REAG programme covers the costs of voluntary departure by plane, train, bus or car and provides a one-time travel support, GARP addresses persons from countries of origin which are of particular importance to Germany from the viewpoint of migration politics. This group is granted additional start-up funding. Presently, the amount ranges from 300 to 750 Euro per adult (children up to 12 years of age receive half of the amount) and is designed to support reintegration in the country of origin. The maximum amount of support for families was deleted in 2009. No start-up aid is granted to citizens from Macedonia, Montenegro, Serbia and Bosnia-Herzegovina who have entered Germany after the visa requirement for Germany was lifted (19.12.2009 for Macedonia, Montenegro and Serbia; 15.12.2010 for Bosnia-Herzegovina). The determination of the target countries for support under the GARP programme is made annually by the Federal and Land interior ministries, taking into account the current political developments and focusing on a limited number of countries (IOM 2013: 7-11).

35 Cf. BGBl II, 2014, p. 161.

36 With the revision of Section 75(7) Residence Act, which entered into force with the Act to improve the rights of internationally protected persons and of foreign workers on 6 September 2013, the BAMF has acquired the legal competence not only to disburse the funds, but also to coordinate the programmes and to participate in projects to support voluntary return.

The Information Centre for Voluntary Return (ZIRF) established within the BAMF provides information on return assistance, on specific countries and on counselling services.³⁷ The Centre enables the members of the target groups to collect relevant information aiding in the process of reintegration in the country of origin prior to voluntary departure, thus complementing the offer of the REAG/GARP Programme.³⁸

3.2.2 Forced return

The legal framework for expulsion and forcible removal from the country (deportation and removal) has already been depicted in detail (Chapter 2.1).

If a foreigner obliged to depart is to be returned, the competent authority must first examine whether there are any obstacles to deportation. If the person in question has completed the procedure for recognition as a refugee, the competent foreigners authority only examines the so-called ‘domestic grounds for non-enforcement’, whereas the identification of obstacles to deportation regarding the destination country is in the competence of the Federal Office for Migration and Refugees. If the person concerned has not applied for asylum, the foreigners authority can make a decision

37 Besides, there are several projects supporting the reintegration of returners into their country of origin (see BMI/BAMF 2014: 108) as well as many measures funded by the Länder to support voluntary/assisted return (see Schneider/Kreienbrink 2010: 51).

38 <http://zirf.bamf.de> (accessed on 1 April 2014).

on deportation only after consulting the Federal Office (Section 72(2) Residence Act).³⁹

3.3 Statistics

3.3.1 Data situation

In Germany, those who comply with an existing obligation to leave the country or who decide on their own to return or to continue migration (despite being in possession of a valid residence title) are not separately recorded in official statistics (Schneider/Kreienbrink 2010: 26).

Neither is there statistical information on persons who left Germany within the frame of a bilateral or an EU Readmission Agreement. Information on readmission requests⁴⁰ are collected only on particular occasions and for a limited period (e.g. during the initial phase of the respective agreement).

39 The implementation of return measures is conditional on the possession of valid travel documents. If the person concerned does not have (sufficient) documents, the foreigners authorities of the federal Länder must procure the travel documents required. The Länder have each established one or several (clearing) centres for obtaining replacement travel documents. For procuring replacement travel documents from particularly problematic countries, a coordination centre for return affairs was established in the competent division of the Federal Police headquarters in Potsdam. For the purpose of implementing the return measure, the foreigners authority transmits the passport or travel document to the police. In general, the Land police serve only as an assistant in the execution, i.e. they transfer the foreigner to the border or airport. There, the foreigner is taken over by the Federal Police who performs the transfer abroad. The transfer may end on board of the aircraft; alternatively, it may continue until the foreigner is handed over to the authorities in the transit area of the destination country. In individual cases, the accompanying personnel may be provided by the Land police or by the security personnel of the airlines. (cf. Kreienbrink 2007: 117 et seq.)

40 The transfer of a person to be taken back on the basis of a readmission agreement requires the submission of a readmission request to the competent authority of the requested state (cf. Article 6 of the EC-Russian Readmission Agreement). The request must contain information on the person concerned (such as given names, family name, date and place of birth), indication of the evidence regarding nationality, unlawful entry and residence, and the grounds for the readmission of the third-country national. The request should also include information if the person to be transferred needs help or care and, if applicable, information on protection or security measures for the transfer (cf. Article 7 of the EC-Russian Readmission Agreement).

However, data on forced and voluntary return are collected by the authorities dealing with remigration matters, irrespective of the existence of a readmission agreement. Removals are recorded by the Federal Police Headquarter within their responsibility (Kreienbrink 2007: 50f). Information on voluntary return can be derived from the documentation on eligible expenses prepared by IOM and forwarded to the BAMF as the financial settlement office for REAG/GARP funds.⁴¹

3.3.2 Readmission requests and voluntary return

As information on readmission requests is collected only on specific occasions, there are currently only data for Kosovo available.⁴² Since the bilateral readmission agreement with this country entered into force (1 September 2010), a total of 687 requests were made in the time period September 2010 to and including December 2010.⁴³ From January to end-October 2011, a total of 1,275 readmission requests were addressed to the Kosovo authorities.⁴⁴ For 2012, a total of 1,043 requests were addressed to Kosovo, for 2013 (as of

41 There are also some data on voluntary return collected by charitable organisations; however, the numbers collected here form only a portion of IOM's total figures (cf. Schneider/Kreienbrink 2010: 32).

42 A query at the Federal Police shows only less readmission requests by the Federal Police for the most relevant countries concerning voluntary return (Serbia, Macedonia, Russian Federation):
Serbia: 2010: 0; 2011: 3; 2012: 3; 2013: 7
Macedonia: 2010: 0; 2011: 39; 2012: 19; 2013: 25
Russian Federation: 2010: 0; 2011: 0; 2012: 3; 2013: 1
It must be taken into account, that readmission requests by the Länder are not counted by the Federal Police. Therefore these numbers cannot represent the entire Federal Republic of Germany.

43 Deutscher Bundestag 2011a: 14 et seq. Between September 2010 and end of March 2011, a total of 85 readmission requests were rejected by the Kosovo authorities. The main reasons were that the identity of the person in question could not be ascertained and the fact that the procedure had not yet been completed by the Kosovo authorities.

44 Deutscher Bundestag 2011b: 21 et seq. From January until October 2011, requests for 155 persons were rejected. The most frequent reason was that the identity of the person in question could not be ascertained. In some other cases, the persons did not come from Kosovo, or information on the last place of residence was missing, or readmission was rejected for other reasons not specified in greater detail.

30 November), the number was 1,262.⁴⁵ By contrast, the number of voluntary returnees to Kosovo under REAG/GARP was 165 for 2012 (2013: 324).

Data on voluntary return are available from the REAG/GARP Programme. Serbia, Macedonia and the Russian Federation account for roughly two thirds (67.2%) of all voluntary departures in 2013 (departure to Serbia: 3,158 persons; to Macedonia: 2,161, to Russia: 1,566). In total, only 101 persons were not citizens of the destination country (1.0%). Since 2010, the number of assisted voluntary departures has steadily increased (2010: 3,158 departures; 2013: 10,251).⁴⁶

Table 11: Voluntary departures of third-country nationals under REAG/GARP⁴⁷ by country of destination and nationality, TOP-3 countries, 2010-2013

	2010	2011	2012	2013
	Voluntary departures (REAG/GARP)			
Serbia				
Total	960	2,253	3,046	3,158
Nationality of destination country	950	2,245	3,038	3,143
Third-country national	10	8	8	15
Macedonia				
Total	530	1,168	1,398	2,161
Nationality of destination country	529	1,165	1,395	2,152
Third-country national	1	3	3	9
Russian Federation				
Total	203	239	199	1,566
Nationality of destination country	203	233	199	1,558
Third-country national	0	6	0	8
Total				
Total	4,480	6,319	7,546	10,251
Nationality of destination country	4,395	6,251	7,466	10,150
Third-country national	85	68	80	101

Source: IOM, BAMF.

⁴⁵ Deutscher Bundestag 2014b: 17 et seq. In 2012, a total of 130 readmission requests were rejected (of these 97 because the identity of the person could not be ascertained). In 2013, the number of rejections totalled 271 (of these 248 because the identity of the person could not be ascertained).

⁴⁶ For developments since 1979 see Schneider/Kreienbrink 2010: 30. In 2000, more than 60,000 citizens of the successor states to Yugoslavia received return assistance, accounting for over 90 % of all assisted persons.

⁴⁷ According to information provided by IOM, the applications for voluntary departures via REAG/GARP are higher than the actual departures: 2010: 4,600 applications; 2011: 6,700; 2012: 8,500; 2013: 11,400 applications.

3.4 Evaluation of return measures

A comprehensive and objective evaluation of return measures has not yet been conducted in Germany (cf. Schneider/Kreienbrink 2010: 90). Such a study would have to take into consideration various elements like the rationale behind the decision to return, structural factors (conditions in the country of origin/destination), individual factors (personality traits, social ties), political measures and the sustainability of return.

However, internal evaluation mechanisms are in place for individual projects, in order to optimise measures on site and in the destination countries. There is also no comprehensive evaluation within the sphere of removals. One reason is the lack of detailed data covering all aspects of the issue.

3.4.1 Bilateral agreements with third countries

In 2011, problems regarding the implementation of returns and the procurement of identity documents were encountered with several third countries (Table 12).⁴⁸ By contacting the competent authorities in these countries, cooperation could be improved in particular regarding the identification of persons.

Table 12: Problems encountered in the area of return, third countries with bilateral readmission agreement

Country	problems with implementation	problems with procurement of identity documents	Comments
Algeria	in general no problems	yes	no information
Kosovo	in general no problems	no information	no information
Morocco	yes	no information	no charter flights

Source: EMN 2011. Kosovo: Deutscher Bundestag 2011a: 15, Deutscher Bundestag 2014a: 22.

3.4.2 EU Readmission Agreements with third countries

Although substantial evaluations are not available yet, the Federal Police reports from its operative practice that the EU Readmission Agreements are largely applied without major difficulties (cf. Schneider 2012b: 74). This is especially true for those third countries that had previously been parties to bilateral agreements.

⁴⁸ Cf. EMN 2011.

4 Readmission agreements and re-entry

4.1 Data transfer to the destination country authorities

In cases of voluntary assisted return, there is generally no transmission of data to the authorities of the destination country. However, the applicant must give his or her consent that the competent authorities/bodies transmitting the application and IOM exchange and use information required for examining the conditions on eligibility, on payment and on refund of benefits. These personal data are all contained in the application.⁴⁹

The following bodies transmit the application:

- Land and municipal authorities (foreigners authorities, social welfare offices),
- Charitable organisations,
- Special advisory centres,
- Central repatriation counselling offices,
- United Nations High Commissioner for Refugees UNHCR

With regard to removals, it can be useful to inform the diplomatic or consular representations in the individual case, giving due consideration to data protection provisions, if the foreigners authority can be expected to support the foreigner who is obliged to depart, but in lack of means, e.g. by payment of the departure costs.⁵⁰ Additionally, Section 82 Residence Act stipu-

lates that the foreigner must cooperate in the procurement of the required documents. If necessary for the purpose of preparing and implementing measures under the foreigners legislation framework, an order may be issued requiring the person in question to report personally to the foreign representations of the state whose nationality he can reasonably be assumed to possess. In case of non-compliance, such orders may be compulsorily enforced (Section 82(4) Residence Act).

4.2 Reintegration assistance

Contrary to forcible return, voluntary return is generally regarded as the more sustainable form of remigration to the country of origin (cf. Schneider/Kreienbrink 2010: 82). According to IOM, sustainable return is achieved when returnees are able to reintegrate in the community of return, often through a productive role as a member of their community, without immediate inducement to leave again (cf. IOM 2008: 4).⁵¹

In this context, the German approach has recently been focusing on projects attempting to address the social and professional aspects of reintegration into the country of origin and sustainability of return. Most of these projects are tailor-made programmes taking into account the special situation in some return countries (crisis regions). Cooperation measures with local partner organisations are expected to contribute to the professional and social integration of returnees. In this context, the importance of joint measures and projects in the field of return is in the increase.⁵²

49 <http://www.iom.int/germany/de/downloads/REAG/REAG-GARP%20Antrag%202013.pdf> (accessed on 1 April 2014).

50 General Administrative Provision to the Residence Act, preliminary remarks to 53.10.3.

51 For details on the German return policy and on the viewpoint of returnees and their family members see Baraulina/Kreienbrink 2013.

52 Cf. Baraulina/Kreienbrink 2013: 48 et seq.

Start-up support

In 2012, the REAG/GARP Programme provided start-up support to people from important countries of origin relevant to migration policy, on the condition of co-financing by the competent federal Land.

In the same year, special funding was continued to be provided to citizens from Iraq and Afghanistan as well as for the Serbian and the Roma minorities from Kosovo. No start-up aid was given to nationals of Macedonia, Montenegro and Serbia/Bosnia-Herzegovina who entered Germany after the lift of the visa requirement for Germany (Macedonia, Montenegro and Serbia: 19 December 2009; Bosnia and Herzegovina: 15 December 2010).

There is no legal entitlement to these benefits. Return and start-up aid is provided to members of the following target groups:

- Persons entitled to benefits pursuant to Section 1 of the Asylum Seekers Benefits Act,
- Recognised refugees,
- Other foreigners who were granted residence under international law or on humanitarian or political grounds,
- Victims of forced prostitution or of trafficking in human beings.

When implementing voluntary return schemes, the special needs of vulnerable groups such as unaccompanied minors, elderly people, sick people and victims of forced prostitution or of trafficking in human beings are taken into consideration.

Table 13: Voluntary departures of third-country nationals under REAG/GARP and registered re-entries 2009-2013

	2009	2010	2011	2012	2013
departures	3,107	4,480	6,319	7,546	10,251
registered re-entries	100	256	524	152	/
share of re-entries	3.2%	5.7%	8.3%	2.0%	/

Source: IOM 2013: 13.

4.3 Re-entry after return

Returnees may decide to re-enter Germany for many different reasons. In these cases, the competent foreigners authority/social welfare office transmits a notification to IOM (cf. IOM 2013: 13). Re-entry does not automatically lead to a repayment claim. In 2004, the federal and the Land authorities agreed a 'procedure for reclaiming REAG-GARP funds upon re-entry into Germany', determining that funds need not be paid back if the following criteria are met (cf. IOM 2013: 13):

- The residence in Germany is temporary (e.g. for visiting or studying purposes);
- The departure took place when the person in question was of minor age and left together with his or her family;
- The person in question is granted refugee status;
- The new residence is granted under international law or on humanitarian or political grounds;
- Residence in the country of origin/destination prior to re-entry was longer than 5 years.

The notification of re-entry is carried out irrespective of any obligation of repayment that may have arisen and of the year of the departure supported REAG/GARP. The re-entry statistics only permit limited conclusions on the efficiency of funding under REAG/GARP.⁵³

In the time period 2009-2012, the proportion of registered re-entry was in the increase, but in 2012 both the absolute number and the share of return of former returnees decreased significantly (Table 13), with 152 re-entries of formerly supported returnees (proportion of all voluntary departures: 2.0%)

⁵³ For statistical and methodological reasons, the exact measurement of 'efficiency' would include a separate analysis of those persons who are exempt from repayments for the above reasons. However, these data are not available. Therefore, conclusions on the 'efficiency' are necessarily of a limited nature.

5 Conclusion

Return policy is a proven element of migration policy. Its instruments include voluntary return, support for voluntary return, reintegration, forced return and readmission of persons required to leave Germany by their countries of origin. In all cases, voluntary return is given priority over forced return in principle.

In the area of voluntary return, the responsible authorities are the Federal Ministry of the Interior and the Land ministries of the interior, IOM, BAMF and the authorities eligible for applications (social welfare office, foreigners authority, special counselling offices, central return counselling offices, UNHCR etc.). With regard to the enforcement of the obligation to depart, the main responsibility lies with the authorities charged with implementing foreigner law. Depending on the case, other institutions may also be involved.

Expulsion, deportation and removal lead by law to a re-entry ban. After the implementation of the Return Directive, a time limit must be set for a (re-)entry ban. The Federal Government intends to amend the Residence Act accordingly. In principle, the duration of the (re-)entry ban should not exceed five years. The decision on the duration is made on a case-by-case basis *ex officio*.

Readmission agreements specify the existing duties under international law to readmit own citizens. Presently, there are 13 readmission agreements in force which Germany concluded with third countries on a bilateral basis. The most recent of these (with Kosovo) entered into force in 2010. Apart from bilateral agreements, there are also readmission agreements at EU level (EURAs). They have priority over bilateral agreements. The latter continue to apply if they do not contradict EURAs and fill regulatory gaps. So far, EURAs have entered into force with 14 third countries. Also, Germany has concluded transit agreements (both for voluntary and forced return), enabling foreigners to return or be returned via the contracting Member State without the need of a transit visa.

A comprehensive and objective evaluation of return measures has not yet been conducted in Germany. Regarding the sustainability of return measures it is to be noted that the number of violations of re-entry bans is comparatively small. In 2013, of a total of nearly 500,000 registered persons against whom a re-entry ban was imposed, only 413 were refused entry and 4,498 were removed. Also, the proportion of registered re-entries after assisted voluntary return via the REAG/GARP Programmes is rather low (2012: 2.0%).

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Abbreviations

BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BMI	Federal Ministry of the Interior (Bundesministerium des Inneren)
EC	European Community
ECJ	European Court of Justice
EMN	European Migration Network
EU	European Union
EURAS(s)	EU Readmission Agreement(s)
EEC	European Economic Community
GARP	Government Assisted Repatriation Programme
IOM	International Organisation for Migration
NSIS	National Schengen Information System
REAG	Reintegration and Emigration Programme for Asylum Seekers in Germany
SIS	Schengen Information System
UNHCR	United Nations High Commissioner for Refugees

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