

### Policy Report 2008

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Veröffentlichungsversion / Published Version

Forschungsbericht / research report

#### Empfohlene Zitierung / Suggested Citation:

Schneider, J., & Parusel, B. (2009). *Policy Report 2008*. (Annual Policy Report / Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ)). Nürnberg: Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ); Bundesamt für Migration und Flüchtlinge (BAMF) Nationale Kontaktstelle für das Europäische Migrationsnetzwerk (EMN). <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-68273-1>

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Jan Schneider, Bernd Parusel

## **Policy Report 2008**

of the National Contact Point for Germany in the European Migration Network (EMN)



National Contact Point for Germany in the EMN



Project financed by the  
European Commission

Publisher:  
Federal Office for Migration and Refugees  
Migration and Integration Research Department  
90343 Nürnberg  
Germany  
Date: July 2009

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## Summary

The Policy Report 2008 gives a general overview of the key political debates and developments in the fields of migration, asylum and integration in the Federal Republic of Germany in 2008.

The main institutional changes in the political structure and in society are as follows:

- the establishment of a standing conference of the integration ministers and senators of the Federal States (*Länder*);
- the establishment of a coordinating body for the cooperation between the security authorities and Muslim organisations;
- the establishment of the consultant “Expert Council of German Foundations on Integration and Migration”.

The key political and legal developments in the field of migration, integration and asylum in 2008 were as follows:

- continuation of the dialogue between the Federal Government and representatives of Muslims living in Germany, for example in the framework of the third plenary meeting of the German Islam Conference (DIK) in March 2008;
- the third “integration summit” in November 2008, at which an interim summary was given on the extent to which the participants in the National Integration Plan (NIP) had implemented their commitments;
- the adoption of the “Labour Migration Control Act” and of amendments to a number of Ordinances in the field of employment to ensure that a sufficient number of highly qualified workers will be available in the future and to improve the labour-market access of foreigners whose removal was temporarily suspended;
- the abolishment of the time limit for the legal basis for the so-called “Hardship Commissions”, which, at state level, deal with cases of foreigners who are obliged to leave Germany, but whose removal is prevented on urgent humanitarian or personal grounds.
- the decision by the Ministers and Senators of the Interior of the *Länder* to permit about 2,500 refugees from Iraq, who are currently resident in Jordan and Syria, to resettle in Germany;
- the introduction of a naturalisation test which foreigners have to pass in order to obtain German citizenship.

With a view to the implementation and interpretation of Community laws the following aspects are of importance:

- the implementation of the EU Regulation on Community Statistics on migration and international protection;
- the adoption of a legal basis for the European Migration Network (EMN);
- a judgement by the Federal Administrative Court on the practical implementation of parts of the EU Qualification Directive, which resulted, among other things, in changes to the decision-making practice in the field of subsidiary protection for asylum applicants;
- the effects of a judgement by the European Court of Justice on the storage of personal data of Union citizens in the German Central Aliens Register;
- progress with the implementation of the EU Directive on the recognition of professional qualifications.

## Introduction

The Policy Report 2008 gives a general overview of the key political debates and developments in the field of migration and asylum in the Federal Republic of Germany in 2008. It was prepared by the German National Contact Point for the European Migration Network (EMN) at the Federal Office for Migration and Refugees (BAMF) in Nuremberg.

Pursuant to Article 9(1) of the Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (EMN), each National Contact Point for the EMN shall provide every year a report describing the migration and asylum situation in the Member State, which shall include policy developments and a number of basic statistical data. This annual report on migration and asylum (“Policy Report”), together with the studies conducted in the framework of the EMN, aims to “meet the information needs of Community institutions and of Member States’ authorities and institutions on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration and asylum”.<sup>1</sup> The goal is to support policymaking in the European Union. Moreover, the results arrived at in the framework of the EMN are to be made available to the public. In addition to the individual, national reports the European Commission, to which the EMN reports, prepares an annual summary with the most important contents and results (synthesis report).

The 2008 report is the fourth of its kind. It is based on earlier Policy Reports for Germany (in particular for 2006 and 2007) and is structured in the same way as those of other National Contact Points in other Member States. Chapter 1 gives an overview of the political structures, the existing institutions, any changes to these structures and general policy developments in 2008. Chapter 2 sketches relevant political and legal developments and important political debates on migration, integration and asylum. Chapter 3 focuses on the implementation and interpretation of EU law in the field of asylum and migration.

Only a selected number of developments and changes in 2008 were analysed because, due to the summary character of the report, not all developments in German migration and asylum policy can be discussed in detail. The decision on which developments to include was based on the criterion which facts or developments are particularly relevant for policymakers at the national or European level. In particular, a selection had to be made in the chapter on important political debates with regard to migration, integration and asylum (ch. 2.2). In order to narrow down the potential range of issues somewhat we decided to limit the analysis of “important political debates” to those which were reported on in detail by the mass media (nationwide papers, public-sector and private TV stations) *and* which were dealt with by the Federal Government, the *Bundestag* or the state parliaments.

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<sup>1</sup> Art. 1(2) of the [Council Decision of May 14 2008 establishing a European Migration Network](#).

# 1 Political Developments in the Federal Republic of Germany

## 1.1 General structure of the political system and of the institutions in the area of migration and asylum

Under the Basic Law, the Federal Republic of Germany is a democratic and social federal state (Art. 20(1) Basic Law (GG)). Policies are formulated and laws and regulations are adopted in a political system in which legislative and executive responsibilities are shared by the Federal Government and the 16 states. Issues relevant to migration, such as nationality, freedom of movement, immigration and emigration, national identity cards and foreigners' rights of residence are mainly regulated in federal laws. Legislation on refugees and displaced persons is adopted at the federal level, too.<sup>2</sup> The executive system of the Federal Republic is based on three principles: the chancellor principle, the cabinet principle and the principle of ministerial autonomy. Under the chancellor principle, the chancellor sets the guidelines for policy and manages the affairs of the Federal Government. The cabinet principle says that matters of a general political nature must be decided upon together with all ministers; the cabinet has to reach majority decisions. Under the principle of ministerial autonomy (*Ressortprinzip*), each minister bears responsibility for his or her department and has specific competences for action.

Below, we will sketch the competences of the major institutions in the areas of asylum, migration and integration policy.<sup>3</sup>

- The Federal Ministry of the Interior (BMI) bears the main responsibility. Beyond drafting legislation, it deals with European harmonisation and supervises the Federal Office for Migration and Refugees, the central operative authority.
- Another important place of policymaking is the standing conference of the ministers and senators of the interior of the Federal States (IMK), in which the Federal Minister of the Interior participates in an advisory capacity. The conference usually takes place twice a year at the highest political level; its unanimous decisions are political recommendations and, as such, are taken into account in legislative and administrative practice at the *Länder* and federal level.
- In coordination with the Federal Ministry of the Interior, the Federal Ministry of Labour and Social Affairs handles the basic principles for employing foreigners and for the sector-specific integration of migrants into the labour market.
- Under the supervision of the Federal Ministry of Foreign Affairs, the embassies abroad are responsible for all passport and visa issues abroad.
- The Federal Government Commissioner for Migration, Refugees and Integration is appointed by the Federal Government. The Commissioner advises the Federal Government and is to be involved in relevant legislative projects. Another task is to promote the integration of migrants who are permanently resident in Germany and to counteract xenophobia (cf. sections 92 *et seq.* of the Residence Act). Since 2005 the Commissioner has been attached to the Chancellery in the rank of a state minister.
- The Federal Government Commissioner for Matters Related to Repatriates and National Minorities in Germany is attached to the Federal Ministry of the Interior and is responsible for coordinating all measures directed at ethnic German resettlers. With a view to national minorities the Commissioner is the key point of contact; he or she represents the Federal Government in existing or future contact institutions and provides information.

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<sup>2</sup> The only important policy areas which are related to migration issues and are mainly regulated at the state level are education, research and police matters.

<sup>3</sup> These have remained largely unchanged during the reporting period. For more detailed descriptions please see the [Policy Report 2007](#) and Schneider, Jan: [The Organisation of Asylum and Migration Policies in Germany](#), Nuremberg: Federal Office for Migration and Refugees.

- The Federal Office for Migration and Refugees (BAMF) is a superior federal authority among the subordinate authorities of the Federal Ministry of the Interior and is a competence centre for numerous tasks in the fields of migration, integration and asylum. The headquarters of the Federal Office are located in Nuremberg; moreover, it has 22 branch offices which are located across the 16 German states (*Länder*). The BAMF conducts all asylum procedures in Germany including the Dublin procedures to determine responsibility in the asylum procedure and decides on whether a claimant is a refugee under the Geneva Convention and on whether the preconditions for subsidiary protection are met. The BAMF is also responsible for: drafting, implementing and developing integration courses for immigrants; refocussing the advice provided to adult migrants who are no longer in training; promoting projects for the social integration of resettlers and foreigners who are permanently resident in Germany; scientific research on migration issues; promoting voluntary returns; keeping the Central Aliens Register; recognising research institutions in the framework of the so-called EU Research Directive; conducting the acceptance procedure for Jewish migrants; and developing the nationwide integration programme pursuant to section 45 Residence Act. Moreover, the BAMF coordinates information flows between the relevant authorities concerning the residence of foreigners who have come to Germany for employment purposes and of foreigners who might be a threat to public security and therefore be the subject of measures under foreigner, asylum or nationality law.<sup>4</sup>
- The roughly 600 immigration authorities in the 16 states are responsible for practically all residence and passport measures foreseen in the Residence Act and other immigration regulations, including decisions about removals and removal organisation and the examination of circumstances outside asylum procedures which prevent removals.
- In addition to numerous other administrative tasks it undertakes on behalf of the Federal Government, the Federal Administration Office (BVA) is responsible for the entry and reception procedure for ethnic German resettlers. Moreover, it processes the data of the Schengen Information System (SIS) and, on behalf of the BAMF, the data stored in the Central Aliens Register.

## 1.2 General political developments

### 1.2.1 Elections in the Federal Republic of Germany

In 2008 elections were held in five of the *Länder*. On 27 January voters elected new state parliaments in both Hesse and Lower Saxony. Despite some losses, the CDU (conservatives) remained the strongest party in Hesse. The social democrats (SPD) gained more seats in the state parliament. In addition to the liberals (FDP) and Alliance 90/The Greens, the Left Party entered the Hessian parliament for the first time. Since the parties did not succeed in forming a government coalition by the first meeting of the new state parliament on 5 April, the CDU government led by Prime Minister Roland Koch remained in office as caretaker government. On 19 November 2008 the state parliament was dissolved and new elections were held on 18 January 2009.<sup>5</sup>

In Lower Saxony the government was confirmed in office; the CDU and FDP renewed their coalition agreement. In Lower Saxony, too, the Left Party entered the state parliament for the first time; it is in the opposition, together with the SPD and the Greens.

The elections to the senate in Hamburg on 24 February resulted in the first “black-green” government coalition at state level. The CDU lost its absolute majority and formed a coalition with Alliance 90/The Greens. The SPD remained the second-largest party and is in the opposition, together with the Left Party, which entered the senate for the first time. The FDP did not get into the senate.

<sup>4</sup> For a more detailed description please see the [Policy Report 2007](#) and Schneider, Jan: [The Organisation of Asylum and Migration Policies in Germany](#). Nuremberg: Federal Office for Migration and Refugees. The key tasks of the Federal Office are set out in section 75 of the Residence Act.

<sup>5</sup> The CDU increased its share of the vote in these elections and formed a coalition government with the FDP, which won additional votes as well.



The elections to the Bavarian state parliament on 28 September resulted in a new government coalition between the CSU and the FDP. While the CSU remained the strongest group in parliament, it lost its absolute majority and needed a coalition partner for the first time. In addition, the SPD, Alliance 90/The Greens and, for the first time, the Free Voters are represented in the Bavarian parliament.

On 6 July the elections to the senate in Bremen (original date: 13 May 2007) were repeated in one Bremen constituency due to a decision of the Bremen Constitutional Court. The result did not change the fact that the SPD and Greens hold a majority in the senate.<sup>6</sup>

### **1.2.2 Political responsibilities for migration and asylum issues**

At the state level the ministers or senators of the interior are responsible for all issues related to asylum and foreigners law. They considerably influence the foreigners authorities' actions by decrees and administrative regulations. New ministers of the interior were appointed in four states in 2008: In Schleswig-Holstein Lothar Hay (SPD) took office on 15 January 2008; on 7 May 2008 Ulrich Mäurer (SPD) and Christoph Ahlhaus (CDU) took over as senators of the interior in Bremen and Hamburg, respectively; and since 8 May 2008 Manfred Scherer (CDU) has been at the helm of the ministry of the interior in Thuringia.

## **1.3 Institutional developments**

There were no major changes in the ministerial responsibilities in the areas of migration, asylum and integration and no new organisations or authorities were established at either the federal or the state level in 2008. However, on 1 March 2008 a comprehensive reorganisation came into force. Furthermore, some institutional changes occurred: an Integration Minister Conference, in which the responsible ministers and senators for integration issues of the states participate, was established, the Security Dialogue Clearing Agency was established and new a policy advisory capacity was created.

### *Organisational Realignment of the Federal Police*

On 1 March 2008, a comprehensive reorganisation of the Federal Police marked the most radical reform within the Federal Police forces to date. The new Federal Police Headquarters (*Bundespolizeipräsidium*) in Potsdam constitutes the reform's centrepiece. It superseded the formerly five regional Federal Police Headquarters and now governs the entire Federal Police by uniform standards, both in terms of large scale operations and the protection of vital traffic infrastructure such as airports and railways. The former Federal Police Offices (*Bundespolizeiämter*) were regionally pooled and upgraded to serve as Federal Police Administrations (*Bundespolizeidirektionen*). The formerly 128 Federal Police Inspectorates (*Bundespolizeiinspektionen*), which carried out the operative policing tasks, were merged to 77 inspectorates in order to function both more potently and more efficiently. Comprehensive, area-wide coverage is safeguarded through Federal Police Stations (*Bundespolizeireviere*), which are installed under the purview of the inspectorates. The total staff of the Federal Police ranges at 40,000 and has remained unchanged.

### *Integration Minister Conference*

On 10 April 2008 the state ministers and senators responsible for integration issues supported the idea to establish a regular Integration Minister Conference similar to the standing conferences of the ministers for other departments. They took a decision to this effect at their meeting on 30 September 2008, in which the Federal Government Commissioner for Integration participated. In most cases, the ministers and senators of the interior are also responsible for integration and immigration policy. So far,

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<sup>6</sup> See [Policy Report 2007](#), p. 6.

North Rhine-Westphalia is the only state to have a separate ministry for this area: the Ministry for Intergenerational Affairs, Family, Women and Integration.

The goal of the Integration Minister Conference is to improve the coordination of integration efforts between the states and the Federal Government Commissioner for Integration further. It will supplement the cooperation of the State Commissioners for Integration and Foreigners' Affairs, which have met at an annual conference for more than 15 years. Among other things, the integration ministers and senators decided at their meeting to present the first report on the realisation of their commitments under the National Integration Plan, which was agreed upon at the Second Integration Summit on 12 July 2007, to the Prime Ministers of the states.

Moreover, the ministers agreed on defining nationwide integration indicators for the evaluation of integration measures and to unify the use of specialist terms.<sup>7</sup> A working group led by the Federal States of North Rhine-Westphalia and Berlin was established. This working group has three main tasks:

- development of a definition of the term “persons with a migration background”
- compilation of integration indicators as a basis for a common integration monitoring by the states
- changes to statistics so that the data on which the integration monitoring is based are as comparable as possible.

The working group's main task is to harmonise the integration reporting by the Federal Government and the states. The necessary indicators have been developed in the meantime.

#### *Security Dialogue Clearing Agency*

Pursuant to the resolution taken at the third plenary of the German Islam Conference (DIK) the Security Dialogue Clearing Agency was created on 13 March 2008 at the BAMF. The Clearing Agency is a national coordination institution which aims to get an overview of all cooperation projects between security authorities and Muslim organisations and to support the implementation of these projects. Its tasks are to support the creation of a national network of contacts with security authorities and Muslim organisations, to provide experts for dialogue events and for an exchange of information, to support basic and further training projects of the security authorities, to provide information services from the security authorities to Muslims and to help to prepare information material.<sup>8</sup>

#### *Expert Council of German Foundations on Integration and Migration*

On 15 October 2008, eight German foundations established the Expert Council of German Foundations on Integration and Migration. The foundations aim to provide a total of EUR 1.7 million over three years to the independent body of research experts, which is to comment on integration and migration policy issues in an annual report and a number of opinions. The goal is to give well-founded and practice-oriented recommendations to policymakers at the federal, state and local level and to civil society.

The initiative by Stiftung Mercator, VolkswagenStiftung, Bertelsmann Stiftung, Freudenberg Stiftung, Gemeinnützige Hertie-Stiftung, Körber-Stiftung, Vodafone Stiftung, ZEIT-Stiftung Ebelin und Gerd Bucerius has no precursors in the German foundation landscape. For the first time several different foundations will back a joint project. This underlines the particular importance of integration and migration for society.<sup>9</sup>

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<sup>7</sup> Press release on the conference of the integration ministers and senators in Lower Saxony; Newsletter Migration und Bevölkerung, no. 9, November 2008.

<sup>8</sup> See German Islam Conference (2008): [Zwischen-Restümee der Arbeitsgruppen und des Gesprächskreises](#), Presentation for the Third Plenary Session of the German Islam Conference, 13 March 2008, Berlin (Addendum 4); an overview is available on the [BAMF website](#), where the Agency can also be contacted.

<sup>9</sup> German website of the Expert Council of German Foundations on Integration and Migration ([Sachverständigenrat deutscher Stiftungen für Integration und Migration](#)).

## 2 Political and legislative developments in the area of migration and asylum

### 2.1 General structure of the legal system in the area of migration and asylum

The general structure of the legal system in the area of migration and asylum was presented in detail in the Policy Report 2006 and the EMN Study on the Organisation of the Asylum and Migration Policy<sup>10</sup>, so a summary should be sufficient at this point.

In Germany, the federal legislator is responsible for most legal regulations in the areas of asylum as well as migration and integration law. In addition, there are a number of ordinances and administrative rules at both the federal and state level. Since the administration is the responsibility of the states, particular attention is given to coordination, for example in the regular conference of the state ministers and senators of the interior.

#### *Key laws*

German immigration law is based on international law, European Community law and German constitutional and statute law. Article 16a(1) of the Basic Law grants foreigners who are subject to political persecution a right to asylum. Their applications are examined as set out in the Asylum Procedure Act (AsylVfG).<sup>11</sup> Foreigners who have no right to asylum, but are threatened by political persecution, may, under the provisions of the Asylum Procedure Act and the Residence Act<sup>12</sup>, be recognised as refugees within the meaning of the Geneva Convention<sup>13</sup> (section 3 Asylum Procedure Act in conjunction with section 60(1) and (8) sentence 1 Residence Act). The provisions on subsidiary protection are also included in the Residence Act (section 60(2), (3), (5) and (7)). The residence status of these foreigners is also identified in the Residence Act (section 25(1) and (2) or (3)); it applies to both successful asylum applicants and recognised refugees. The Asylum Seekers' Benefits Act (AsylbLG)<sup>14</sup> defines benefits for asylum applicants during the asylum procedure and for other foreigners who are staying in Germany for protection or as refugees, but whose residence is not meant to be permanent (for details see section 1 AsylbLG).

The Residence Act (AufenthG) also regulates the entry, residence, employment and integration of third-country nationals. It defines the legal minimum state efforts to promote integration, in particular via language and orientation courses. In contrast, the initial entry of third-country nationals and their subsequent, short-term residence in Germany are regulated by the provisions of the Schengen Convention and the Schengen Borders Code.

The key legal basis for the administration of foreigners' data stored by the authorities is the Central Aliens Register Act (*Ausländerzentralregistergesetz*, AZRG).<sup>15</sup>

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<sup>10</sup> Please see the [Policy Report 2006](#) and Schneider, Jan: [The Organisation of Asylum and Migration Policies in Germany](#), Nuremberg: Federal Office for Migration and Refugees.

<sup>11</sup> [Asylum Procedure Act](#) in the version promulgated on 2 September 2008 (Federal Law Gazette I, p. 1798), last amended by Article 18 of the Act dated 17 December 2008 (Federal Law Gazette I, p. 2586).

<sup>12</sup> Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory ([Residence Act](#), AufenthG) in the version promulgated on 25 February 2008 (Federal Law Gazette I, p. 162), last amended by Article 1a of the Act dated 22 December 2008 (Federal Law Gazette I, p. 2965).

<sup>13</sup> [Geneva Convention relating to the status of refugees of 28 July 1951](#) (promulgated by an act dated 1 September 1953 – Federal Law Gazette II, p. 559 – entered into force on 22 April 1954 pursuant to the announcement of the Federal Minister for Foreign Affairs of 25 April 1954 – Federal Law Gazette II, p. 619); Protocol on the status of refugees of 31 January 1967 (entered into force on 4 October 1967 (Federal Law Gazette 1969 II, p. 1294)).

<sup>14</sup> Act on Benefits for Asylum Seekers (AsylbLG) of 5 August 1997 (Federal Law Gazette I, p. 2022), last amended by Article 2e of the Act dated 24 September 2008 (Federal Law Gazette I, p. 1856).

<sup>15</sup> Act on the Central Aliens Register (AZRG) of 2 September 1994 (Federal Law Gazette I, p. 2265), last amended by Article 2 of the Act dated 26 February 2008 (Federal Law Gazette I, p. 215).

### *Key ordinances*

Following a previous authorisation by law, ordinances are issued by the Federal Government or the responsible Federal Minister. If so required by law, they must be adopted by the *Bundesrat*.

- The Residence Ordinance<sup>16</sup> clarifies details concerning the entry into and residence in the Federal Territory, fees and procedural rules for the granting of residence titles.
- The Employment Ordinance<sup>17</sup> clarifies the procedures for admitting the employment of foreigners who want to move to the Federal Republic of Germany from a third country in order to take up a job and lists the relevant fields of employment.
- The Employment Procedure Ordinance<sup>18</sup> supplements the Employment Ordinance and specifies under which conditions foreigners who are legally resident in Germany may take on a job.
- The Integration Course Ordinance<sup>19</sup> regulates details concerning the implementation of the integration courses foreseen in the Residence Act, such as the conditions for participation, data transmission, fees and the basic structure, duration and contents of the courses. Moreover, it governs the permission procedures for public and private course providers.
- Procedures and implementation matters are already dealt with comprehensively in the Asylum Procedure Act and the Act on Benefits for Asylum Seekers. However, the Ordinance Determining Asylum Competences<sup>20</sup> needs to be mentioned in connection with organisational competences. It determines the competences and responsibilities of the most important authorities in the asylum procedure. In doing so, it takes into account key Community law, such as the Dublin Agreement or the Eurodac Regulation.
- The Ordinance on the Implementation of the Central Aliens Register Act (AZRG Implementation Ordinance)<sup>21</sup> regulates the content of the Aliens Central Register and the transmission of the data stored in it.

## **2.2 Important political debates with regard to migration, integration and asylum**

### *Dialogue with Muslims and German Islam Conference*

A significant number of the migrants who live in Germany are Muslims. The German Islam Conference (DIK) was established in autumn 2006 in order to improve the religious and social integration of the Muslim population in Germany.<sup>22</sup>

On 13 March 2008 the third plenary meeting of the DIK took place in Berlin. The interim results of three working groups and a fourth discussion circle that was to debate on the key issues for the DIK were discussed and approved. The Federal Ministry of the Interior summarised the results of the debates in the working groups and the discussion circle in an Interim Resume.<sup>23</sup>

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<sup>16</sup> [Ordinance Governing Residence](#) (AufenthV) of 25 November 2004 (Federal Law Gazette I, p. 2945), last amended by Article 3 of the Labour Migration Control Act dated 20 December 2008 (Federal Law Gazette I, p. 2846).

<sup>17</sup> Ordinance on the admission of foreigners for the purpose of taking up employment (Employment Ordinance, BeschV) of 22 November 2004 (Federal Law Gazette I, p. 2937), last amended by the Second Ordinance Amending the Employment Ordinance of 19 December 2008 (Federal Law Gazette I, p. 2972).

<sup>18</sup> Ordinance on Official Procedures Enabling Resident Foreigners to take up Employment (Employment Procedure Ordinance, BeschVerfV) of 22 November 2004 (Federal Law Gazette I, p. 2934), last amended by Article 7(2) of the Act dated 21 December 2008 (Federal Law Gazette I, p. 2917).

<sup>19</sup> Ordinance on the Implementation of Integration Courses for Foreigners and Repatriates (Integration Course Ordinance, IntV) of 13 December 2004 (Federal Law Gazette I, p. 3370), last amended by the First Ordinance Amending the Integration Course Ordinance dated 5 December 2007 (Federal Law Gazette I, p. 2787).

<sup>20</sup> Ordinance Amending the Ordinance Determining Asylum Competences (Ordinance Determining Asylum Competences, AsylZBV) of 2 April 2008 (Federal Law Gazette I, p. 645).

<sup>21</sup> Ordinance on the Implementation of the Central Aliens Register Act (AZRG-DV) of 17 May 1995 (Federal Law Gazette I, p. 695), last amended by Article 4 of the Act dated 20 December 2008 (Federal Law Gazette I, p. 2846).

<sup>22</sup> See [Policy Report 2006](#), p. 8 pp., and [Policy Report 2007](#), p. 9 pp.

<sup>23</sup> German Islam Conference (2008): [Zwischen-Resümee der Arbeitsgruppen und des Gesprächskreises](#), Presentation for the Third Plenary Session of the German Islam Conference, 13 March 2008, Berlin.

With regard to a basic issue, namely acceptance of the Basic Law and German values, the participants of the conference agreed that integration requires that Muslims who live in Germany are actively willing to learn and use the German language and, moreover, to fully respect the German legal system and the values expressed in the Basic Law. Moreover, the participants agreed to include religious education for Muslims as a regular subject in the curriculum for state schools; the subject is to be taught in German. The paper describes several ways to introduce the lessons in religious education as quickly as possible on the basis of the current actual and legal situation and in agreement with all participants. In addition, the Islam Conference emphasised the importance of mosque building for the integration of Muslims in Germany: “By building mosques, the Muslim communities leave behind the backyards and provisional buildings and document their willingness to become a part of German society in the long run.” (own translation) Moreover, it called for responsible, unprejudiced and differentiated reports on the Islam and Muslims in the media and recommended the employment of a significantly larger number of qualified migrant workers in the TV and radio broadcast stations and print media in order to make use of their particular knowledge and intercultural understanding.

In the course of the conference, from time to time, differences of opinion flared up between the more conservative representatives of the Coordination Council of Muslims and the more liberal representatives of Islam. A number of controversial issues were not resolved (for example a comprehensive commitment to German values or girls’ participation in swimming lessons or school trips). Despite numerous controversies Minister of the Interior Wolfgang Schäuble (CDU) said there was no alternative to the Islam Conference. All participants believed that the Conference should be continued.<sup>24</sup>

The internet site of the DIK was released in December 2008 in order to spread knowledge about the goals and results of the DIK and trigger a public discussion of the issues it deals with.<sup>25</sup> The page is maintained by the Federal Office for Migration and Refugees.<sup>26</sup> The fourth and, for now, last plenary meeting of the DIK took place on 25 June 2009. The participants proposed to continue the dialogue.

### *Debate about youth crimes*

The violent attack of a 17-year-old Greek and a 20-year-old Turk on a pensioner in Munich at the end of December 2007 triggered a discussion about harsher punishments for adolescents and about delinquency rates among young foreigners.<sup>27</sup> The CDU in Hesse took up this issue in its election campaign ahead of the state elections held on 27 January 2008. Hessian Prime Minister Roland Koch (CDU) presented a six-stage plan at the beginning of January 2008, pursuant to which foreigners might be threatened with removal if they were sentenced to a prison term of at least one year (so far: three years). Moreover, he called for raising the maximum prison sentence for young criminals from 10 to 15 years and for extending the scope of criminal law for adults to adolescents aged 18 – 21. Koch’s demands and the content and style of his election campaign were criticised by other parties and migrants’ associations; some of them accused him of populist manoeuvres to gain votes. The SPD argued that the existing laws were sufficient, they simply had to be implemented more forcefully. In an open letter published in the weekly newspaper “Die Zeit” 21 well-known Germans of Turkish background called for a more sensitive and objective approach in the discussion about youth violence.<sup>28</sup>

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<sup>24</sup> Süddeutsche Zeitung, 14 March 2008; Frankfurter Allgemeine Zeitung, 14 March 2008.

<sup>25</sup> Internet page of the German Islam Conference ([in German](#)).

<sup>26</sup> In addition, the DIK commissioned the study “Muslimisches Leben in Deutschland” (“Muslim Life in Germany”) prepared by the research group of the BAMF; cf. Sonja Haug, Stephanie Müssig, Anja Stichs (2009): [Muslimisches Leben in Deutschland](#), Nuremberg: Federal Office for Migration and Refugees. A [Summary](#) can be downloaded in English; a full translation will be available soon at <http://www.bamf.de/>.

<sup>27</sup> Newsletter Migration und Bevölkerung, no. 1, January 2008; Newsletter Migration und Bevölkerung, no. 2, February/March 2008.

<sup>28</sup> Die Zeit, 24 January 2008.



### *Debate about integration after fire in a residential building and visit by the Turkish Prime Minister*

A fire in a Ludwigshafen house which was mainly inhabited by Turkish migrants on 3 February 2008 and a speech given by Turkish Prime Minister Erdogan in Cologne triggered a debate about the integration of Turks and Germans of Turkish origin in Germany. The fire killed nine people and injured 60 others. Its cause was initially unclear. The statements of two girls, who claimed to have seen an arsonist in the house's hall, and the fact that the house had been used by right-wing extremists in the past triggered speculation about a xenophobic background in the Turkish media. Leading Turkish politicians linked the tragedy to earlier cases of arson.<sup>29</sup> Following a request by the Turkish government, four Turkish investigators were included in the investigations. Federal Minister of the Interior Wolfgang Schäuble (CDU) warned that erroneous suspicions and prejudices might harm the integration process.<sup>30</sup> The tensions were eased by a visit of Turkish Prime Minister Tayyip Erdogan to Ludwigshafen on 7 February 2008. Erdogan called for moderation and praised the work of the German police forces and fire-fighters.<sup>31</sup> A few days later, another appearance of Erdogan made considerable stir, as he addressed the Turkish-origin migrant community in Germany with a speech, which was held in Turkish and followed by an audience of about 16,000 in the Cologne Arena. In particular, his statements on integration were controversially discussed in public afterwards.<sup>32</sup> On the one hand, Erdogan called for German language competences as the most important prerequisite for successful integration. Yet on the other hand he proposed the establishment of Turkish-language schools and universities in Germany and called assimilation as a "crime against human dignity". On 23 July 2008 the Frankenthal prosecutors terminated the investigations on the fire in Ludwigshafen. While the cause of the fire could not be determined, the investigators concluded that premeditated arson or a xenophobic attack were out of the picture.

### *Action programme of the Federal Government*

As a follow-up Measure to its decisions on access to the labour market of August 2007<sup>33</sup> the Federal Government adopted a programme on the "Contribution of Labour Migration to Safeguard the Stock of Skilled Professionals in Germany"<sup>34</sup> on 16 July 2008. The programme aims to attract more highly qualified workers from abroad in order to counteract the lack of specialists in a number of sectors. For example, it foresees a complete opening of the labour market for university graduates from the new EU Member States. University graduates from third countries are to get free access to the labour market, too. Moreover, the minimum income for highly skilled workers is to be lowered. The programme was implemented by the Labour Migration Control Act passed by both the *Bundestag* and *Bundesrat* in December (see ch. 2.3.4, "Economic migration"). Moreover, the Federal Government's action programme announced the establishment of an alliance to advise the government in decisions on immigration which reflect the needs of the labour market ("alliance for labour"). This alliance was to assemble representatives of employers and trade unions, researchers, members of the Federal Government and state representatives.<sup>35</sup>

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<sup>29</sup> Frankfurter Rundschau, 6 February 2008.

<sup>30</sup> Reuters, 7 February 2008.

<sup>31</sup> Frankfurter Allgemeine Zeitung, 8 February 2008

<sup>32</sup> Newsletter Migration und Bevölkerung, no. 2, February/March 2008.

<sup>33</sup> See the [Policy Report 2007](#), p14 pp.

<sup>34</sup> Federal Ministry of the Interior/ Federal Ministry of Labour Work and Social Affairs (2008): Aktionsprogramm der Bundesregierung "Beitrag der Arbeitsmigration zur Sicherung der Fachkräftebasis in Deutschland", Berlin.

<sup>35</sup> In spring 2009 the alliance for labour was formed at the Federal Ministry of Labour and Social Affairs as a permanent platform for an open dialogue about the needs of the German labour market. It consists of members of the federal and state governments and representatives of the business world, of trade unions and of employer and industry associations. With the help of researchers, it will draft a labour market monitoring procedure, which is to reflect, among other things, companies' expectations of their future qualified labour requirements. The alliance for labour is to present its first report by 31 December 2009. It will make annual reports in the future.

### *Third Integration Summit and National Integration Plan*

On 6 November 2008 the third Integration Summit of the Federal Republic of Germany took place. Roughly 200 participants from the Federal Government, the states and the local authorities as well as representatives of civil society and migrants met at the Chancellery, where the Federal Government presented its first progress report<sup>36</sup> on the National Integration Plan (NIP) adopted in summer 2007. This was the first step to find a common basis for the various integration initiatives of the Federal Government, the *Länder*, the local authorities and civil society. The NIP had been prepared by a dialogue of representatives of all government levels, important non-government organisations and migrant organisations. In the Progress Report these actors reported on the implementation of the NIP. Among other issues, the Federal Government emphasised the implementation of the measures to improve the integration courses pursuant to the amendment of the Integration Course Ordinance at the beginning of December 2007. For example, the number of lessons in the specialised integration courses tailored to certain target groups was raised from 645 to 945. Moreover, special courses for adolescents and women were introduced. Migrants who are obliged to participate in the courses and participants who are exempt from the course fees can obtain a refund of the money spent on travelling to the integration course. If the course is passed within two years after the participation permit was issued, half of the course fee will be refunded.<sup>37</sup> In 2008, EUR 169.4 million were spent on integration courses.

The Federal Government said it planned to make available roughly EUR 750 million per year for integration measures in the areas of education, language, job training and work as well as for civil-society measures and sports.

## **2.3 Political and legal developments with regard to migration, integration and asylum**

### **2.3.1 Migration control and monitoring**

#### *Development of the number of foreigners in Germany in 2008*

At the end of 2008 the Central Aliens Register (AZR) showed that about 6.73 million persons in Germany were foreign citizens. Their number declined by just below 0.3% versus 2007. The number of Turkish nationals fell most: At 1.69 million, it was 25,200 lower at the end of 2008 than in 2007 (-1.5%). This development is largely due to naturalisations.

In contrast, the number of citizens of another EU Member State grew significantly, by 24,200 persons or 1.0%. This development is almost exclusively due to a rise in the number of Romanians, Poles and Bulgarians.

At the end of 2008 roughly 5.36 million (79%) of all foreigners living in Germany were nationals of another European country. 35% (2.36 million) were citizens of one of the 27 EU Member States, and another 29% (1.97 million) were nationals of the three EU candidate countries (Turkey, Croatia and Macedonia). 15% (1.03 million) came from other European countries. 12% were Asians, 4% Africans and 3% Americans. 1% had no nationality or their nationality was unclear.

By countries, most foreign nationals who were resident in Germany were Turks (25%), followed by Italians (8%), Poles (6%), citizens of Serbia and Montenegro including their successor countries (jointly 5%), Greeks (4%) and Croatians as well as citizens of the Russian Federation (3% each). Overall, the foreigners who live in Germany come from 188 out of the 192 member states of the United Nations.

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<sup>36</sup> Bundestag printed paper 16/10800, First Progress Report on the National Integration Plan.

<sup>37</sup> Numerous changes to the integration courses are based on an evaluation of the courses by a consulting firm commissioned by the Federal Ministry of the Interior. The final report titled "Evaluation der Integrationskurse nach dem Zuwanderungsgesetz" was released in January 2007 and can be downloaded from the internet ([German only](#)).

According to the AZR, a bit more than 403,400 foreign nationals entered Germany or were born here in 2008, i.e. 1,000 more than a year before. During the same period 307,800 foreigners left the country or died, i.e. 28,700 more than in the year before. Roughly 112,900 people were deleted from the register for other reasons, for example naturalisation.<sup>38</sup>

### *Act on challenging fake paternities*

On 1 June 2008 an act to supplement the right to challenge paternity entered into force which triggered major amendments to the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) and the Residence Act.<sup>39</sup> Government authorities can now challenge paternity recognitions if there is neither a social or familial father-child relationship nor biological paternity. The new law was passed in December 2007 by the government coalition (CDU/CSU and SPD). The *Bundesrat* adopted it in February 2008.

The act mainly aims at cases in which a German man or a foreigner with a secure residence title recognises his paternity for a child in order to protect the mother against removal. According to a statistic compiled by the state ministers of the interior, within 12 months in 2003 and 2004 a total of 1,694 unmarried mothers of German children, who were obliged to leave the country at the time of the paternity recognition, were granted titles of residence on the grounds of this paternity recognition. While this figure does not give any information about the number of cases which actually abuse paternity law (for example because there is no biological or social relationship between the father and the child), they show, from the vantage point of the Federal Government and conference of the ministers of the interior, that there is a non-negligible number of potentially abusive paternity recognitions.<sup>40</sup> In fact, there are three possible cases which may lead to unlawful consequences in terms of nationality or residence decisions or in terms of social benefits.<sup>41</sup>

The act supplements the provisions on challenging paternity set out in the Civil Code by granting state authorities a right to challenge paternity, too. This challenge can be made if there is or was no social or familial relationship between the child and its putative father and if the paternity recognition creates or may create the legal preconditions for the child's or one of its parents' entry to or residence in Germany. This provision is to prevent the disruption of a family on the grounds of a paternity challenge; such an event would run counter to the Basic Law, which protects the family. If the court grants a paternity challenge, the paternity of the putative father is annulled in retrospect from the day of birth of the child.<sup>42</sup>

## **2.3.2 Protection of refugees and asylum**

### *Development of the number of asylum applications and decision practice*

The number of first-time asylum applicants rose 15.2% in comparison to 2007 (19,164 persons), to 22,085 persons in 2008. Following a continuous decline since 1995, the number of asylum applications in 2008 exceeded the figures for 2006 and 2007, but remained below the figure for 2005 (28,914). In contrast, the number of repeat applications fell 46.7% year-on-year. In 2008 5,933 persons made a repeat asylum application, versus 11,139 in 2007. Overall, 28,018 asylum applications were received by the Federal Office for Migration and Refugees in 2008, down from 30,303 in 2007.

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<sup>38</sup> See Federal Statistical Office (2009): [Bevölkerung und Erwerbstätigkeit. Ausländische Bevölkerung Ergebnisse des Ausländerzentralregisters - 2008](#), Fachserie 1 Reihe 2, Wiesbaden: Federal Statistical Office. Please note that these figures are based on the figures of the Central Aliens Register (AZR). The AZR data refer to individuals and will be collected only if these persons remain in the Federal Territory permanently. The AZR data are therefore below the case-related data of the official migration statistics of the Federal Statistical Office. Foreigners are usually not registered in the AZR until they remain for more than three months in Germany, whereas people are registered in the migration statistics as soon as they notify the authorities of moving into or out of Germany.

<sup>39</sup> Act Supplementing the Right to Challenge Paternity of 13 March 2008 (Federal Law Gazette I, p. 313).

<sup>40</sup> Cf. *Bundestag* printed paper 16/3291, pp. 2, 11.

<sup>41</sup> For details see the reasons for the law set out in the *Bundestag* printed paper 16/3291, p. 10 ff.

<sup>42</sup> See "Bundestag verabschiedet Gesetz zur Anfechtung von Scheinvaterschaften", press release of the Federal Ministry of Justice, 13 December 2007.



As in the preceding year most first-time asylum applicants (6,836) came from Iraq in 2008. The second country of origin was Turkey (1,408 persons), followed by Vietnam (1,042). A bit more than two-thirds (67.7%) of all asylum applications were made by men. 77.7% of all applicants were aged below 30.

Concerning the decisions on first-time asylum applications in 2008, a significant increase in the overall protection ratio is visible, i.e. a larger share of asylum applicants were recognised as entitled to asylum or as refugees or received subsidiary protection in the form of removal prohibitions. In 2008 the ratio was 37.7%, up from 27.5% in 2007 and only 6.3% in 2006. In contrast, the share of rejected applications fell to a historical low (32.5%, down from 44.6% in 2007 and 57.8% in 2006). The protection ratio was particularly high for asylum seekers from Iraq (78.4%) and from Somalia (78.8%). The high protection ratio for Iraqis is largely due to the fact that, since mid-2007, the Federal Office for Migration and Refugees has assumed that there is group persecution of religious minorities (e.g. Yezidis) in Iraq, provided that individual members of these minorities do not have an internal escape alternative.

### *Transfers to Greece*

In 2008 several administrative courts in Germany dealt with the question whether asylum seekers may be transferred to Greece or not in the framework of the Dublin Procedure.<sup>43</sup> Some administrative courts granted a preliminary injunction against removal orders to Greece and pointed out that a fair and efficient asylum procedure was not guaranteed there. Rather, applicants were potentially faced with legally relevant and irreversible disadvantages such as arrests, homelessness or immediate removal to the persecuting country. Other administrative courts rejected applications for preliminary injunctions. They argued that the applicants could reasonably be expected to make their asylum applications in the Member State responsible under the Dublin II Regulation, including Greece.<sup>44</sup>

Several refugee organisations sharply criticised the situation of asylum seekers in Greece during the year. The UNHCR reported on unresolved problems within the Greek asylum system, such as automatic detention, lack of translators, asylum hearings held in a language unknown to the applicants, insufficient information about the status of the procedure, insufficient quality of the procedure, low protection ratios and a lack of accommodation.<sup>45</sup> Following an examination of the situation, the Federal Ministry of the Interior and the Federal Office for Migration and Refugees saw no reason to completely suspend transfers to Greece under the Dublin Procedure. However, the sovereignty clause, which permits a Member State to enter into the asylum procedure even though another EU Member State is officially responsible, was used more generously, particularly in the case of asylum seekers who need a higher degree of protection, for example unaccompanied minors or applicants who need medical care. In 2008, Germany directed 800 take-charge requests at Greece; 220 persons were actually transferred and in 130 cases the sovereignty clause was invoked.<sup>46</sup>

### *Amendments to the Ordinance on Determining Asylum Competences*

On 2 April 2008 the Ordinance on Determining Asylum Competences (*Asylzuständigkeitsbestimmungsverordnung*, AsylZBV) was amended. This ordinance regulates the competencies and responsibilities of the major operative authorities in the asylum procedures. It takes into account all relevant Community laws, such as the Dublin II Regulation and the Eurodac Regulation.

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<sup>43</sup> If a third-country national applies for asylum in a Member State, this Member State will determine pursuant to the responsibility criteria of the [Dublin II Regulation](#) which Member State is responsible for the examination of the application. If another Member State is responsible for the examination of the application, a take-charge request (take-on or take-back request) is directed at this other Member State.

<sup>44</sup> Cf. Federal Office for Migration and Refugees, *Entscheidungen Asyl*, no. 11/2008.

<sup>45</sup> See the UNHCR Germany press release, 16 April 2008.

<sup>46</sup> See *Bundestag* printed paper 16/12647.

In particular, responsibility for the Dublin Procedure was partially shifted from the Federal Office for Migration and Refugees to the border authorities. Before the introduction of the Dublin Procedure, the German border authorities could invoke re-admission agreements to return foreigners who had illegally entered Germany to the countries they had come from; it was not necessary to involve the Federal Office for Migration and Refugees or other institutions. Since the introduction of the Dublin Procedure, however, this solution was no longer possible in many because the new procedure must be adhered to and “Dublin cases” had to be processed by the Federal Office for Migration and Refugees. In order to retain the operational advantages of the re-admission procedures under the Dublin Procedure, the AsylZBV transferred the responsibility for processing Dublin cases partially to the authorities responsible for police controls of cross-border traffic. The border authorities are responsible if the foreigner is arrested near the border and shortly after having illegally entered Germany from the neighbouring Member State (“border procedure”). Responsibility will shift from the border authorities to the Federal Office only if it is impossible to have the foreigner re-admitted to the neighbouring Member State within 48 or 96 hours.<sup>47</sup>

The main change caused by the amendment to the AsylZBV in April 2008 is that responsibility will remain with the border authorities even if it is impossible to have the foreigner re-admitted within these time limits. The initial time limits made cooperation between the authorities more difficult. In order to make it more efficient again, the Federal Police now has the principle responsibility for border procedures under the Dublin Procedure, unless it transfers responsibility to the Federal Office for Migration and Refugees. Decisions on such transfers are taken on the basis of a list of criteria. All cases in which major research efforts are necessary to determine the responsibility of the neighbouring country or in which a re-admittance is not possible in the near future are transferred to the Federal Office for Migration and Refugees.<sup>48</sup>

#### *Instructions and guidelines on countries of origin in the asylum procedure*

The Federal Office for Migration and Refugees may continue to keep secret the guidelines on countries of origin used in the asylum procedure. This was the outcome of a decision taken by the Ansbach administrative court on 22 January 2008 in a suit filed by the refugee support organisation Pro Asyl and the working group on aliens and asylum law of the German Lawyers’ Association.

The Freedom of Information Act<sup>49</sup>, which took effect in 2006 and which the plaintiffs had invoked, basically gives every citizen the right to request the federal authorities to permit access to official information. Pro Asyl and the working group had filed a suit for the release of all internal instructions of the Federal Office for Migration and Refugees and of the country-specific guidelines which serve as a basis for the asylum officers’ decisions. The Office had refused this request and argued that secrecy was a higher-ranking interest. The guidelines include information by official institutions, for example the Federal Foreign Office, which is already classified as “restricted” by them and may therefore not be published. Moreover, the Office believes that, if the assessment of certain situations or the legal conclusions contained in the guidelines were released, asylum seekers would strategically amend their statements in asylum hearings. This would make it more difficult to take just decisions. However, in order to take into account the changes under the Freedom of Information Act as far as possible, the Office has re-examined guidelines and instructions with a view to dropping the security classifications at least for parts of these documents. As a result, several documents now are in part publicly accessible and in part restricted. The security classifications remain in place for the chapters on prohibitions of removal for reasons of illness, security, persecution on religious grounds and persecution on the grounds of belonging to a certain social group in the “Asylum Instruction” (*Dienstanweisung Asyl*).

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<sup>47</sup> 48 hours if the German authorities cooperate with foreign authorities near the border; 96 hours if they cooperate with a central authority located farther inland.

<sup>48</sup> Cf. Federal Office for Migration and Refugees, *Entscheidungen Asyl*, no. 8/2008.

<sup>49</sup> Freedom of Information Act of 5 September 2005 (Federal Law Gazette I, p. 2722).

The Office still holds that the guidelines on the countries of origin are restricted in full and that it is impossible to release only parts of them.

The court followed the arguments of the Federal Office and ruled that a publication of the guidelines would make it considerably more difficult to examine the credibility of asylum seekers' statements and threaten or even prevent a well-founded decision in asylum procedures.<sup>50</sup>

### *Admission of Iraqi refugees*

On 5 December 2008, the Federal Minister of the Interior and the *Länder* ministers and senators of the interior decided to admit about 2,500 Iraqi refugees, who at the time lived in Syria and Jordan, to Germany. The resettlement decision is based on section 23(2) Residence Act ("admission when special political interests apply"). The Community Ministers of the Interior had decided in November 2008 to permit the resettlement of up to 10,000 Iraqi refugees in the EU, based on voluntary actions of the member states.

The refugees who may resettle in Germany are selected by the Federal Office for Migration and Refugees. For this purpose the Federal Office established a project group for special procedures on humanitarian grounds at its headquarters in Nuremberg. In the run-up to the decision procedure, the office of the United Nations High Commissioner for Refugees (UNHCR), based on the admission criteria set out in the admission decree, proposes a list of persons, which come into consideration. Thus, the project group at Nuremberg conducts a preliminary examination of the cases proposed by UNHCR. Subsequently, officials of the Federal Office for Migration and Refugees temporarily based on site in Jordan and Syria prepare the final decision on the basis of personal interviews.<sup>51</sup>

It is vulnerable refugees who may resettle in Germany. These are people who are unlikely to have the chance to return to Iraq or be integrated in Iraq's neighbouring countries in the foreseeable future, in particular:

- members of minorities (in particular religious minorities) persecuted in Iraq;
- persons with particular medical needs, including traumatised persons and victims of torture;
- single women who have to support or take care of their relatives.

The Federal Ministry of the Interior has instructed the Federal Office for Migration and Refugees to pay attention to the following criteria in the selection process:

- integration abilities (as indicated by the education or vocational training, professional experience and language knowledge of the refugees);
- maintaining family unity;
- family connections or other connections that may support refugees' integration to Germany;
- degree of vulnerability.

Persons who used to hold an important position in Iraq under the former regime, persons sentenced for offences that are regarded as crimes in Germany and persons who are believed to have connections to organised crime or terrorist associations will not be accepted for resettlement.

Accepted refugees will be airlifted to Germany and get initial accommodation in the former Friedland camp in Lower Saxony. From there, they will be distributed to the states according to the so-called *Königstein Key*.<sup>52</sup> The refugees will be initially granted a residence permit for three years pursuant to section 23(2) Residence Act. This means that, in a number of matters, they have the same legal and material rights as recognised refugees; they have immediate access to integration measures (integration courses) and certain social benefits, and employment may be taken up. A separate visa procedure

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<sup>50</sup> See Federal Office for Migration and Refugees, *Entscheidungen Asyl*, no. 2/2008; Newsletter Migration und Bevölkerung, no. 2, February/March 2008.

<sup>51</sup> UNHCR (2009): *Informationen zum Ablauf des Aufnahmeverfahrens für irakische Staatsangehörige aus Syrien und Jordanien im ersten Halbjahr 2009*, Berlin: UNHCR.

<sup>52</sup> The "Königstein Key" marks the allocation basis and is calculated for each year on the basis of the tax receipts and the population of the states.

in the German Diplomatic Missions abroad is not necessary; yet the so-called visa consultation procedure for security examination is carried out by the BAMF. The refugees will be given a reception promise by the BAMF with their photograph. The International Organisation for Migration (IOM) will organise the journey to Germany and medical examinations before take-off. The first Iraqi refugees arrived in the Federal Republic on 19 March 2009.

#### *Abolishment of time limits for Hardship Commissions*

Following an amendment to the Immigration Act passed on 20 December 2008, the state Hardship Commissions may request their responsible state government to grant a residence permit to foreigners whose removal is hindered for important humanitarian or personal reasons. The legal basis for these commissions was in force since 1 January 2005 (section 23a Residence Act) and was initially designed as a sunset clause to become invalid on 31 December 2009. Under this provision, the supreme state authority may, in individual cases and on petition from a Hardship Commission, order that a foreigner who is enforceably obliged to leave Germany is granted a residence permit by way of derogation from the legal prerequisites for the issuance and extension of residence titles. The establishment and make-up of the Commissions and the details of the procedures are regulated by statutory instruments in the individual states.

On 31 December 2008, a total of 4,567 foreigners in Germany held a residence permit under the rules for cases of hardship.<sup>53</sup>

### **2.3.3 Unaccompanied minors and other vulnerable groups**

#### *Improvement of statistical evaluations*

As the EU Regulation on Community statistics on migration and international protection entered into force (see ch. 3.1), the Federal Office for Migration and Refugees made some changes to the collection of statistical data on unaccompanied minor asylum seekers in 2008. Up until and including 2007, only unaccompanied minors below 16 years of age were registered as such in the statistics. While 16 and 17-year-old asylum seekers were registered as well, there was no mention of their being accompanied or not. This means that 2008 is the first year for which data are available on the number of unaccompanied minors who have applied for asylum in the Federal Republic of Germany (this does not touch upon the issue of their legal capacity under the asylum or aliens law).<sup>54</sup>

#### *Number of asylum applications by unaccompanied minors*

The more detailed figures show that, in 2008, 439 unaccompanied minors aged 16 or 17 and 324 unaccompanied minors aged below 16 filed asylum applications with the Federal Office for Migration and Refugees. This is a significant increase versus 2007. In 2007 there were 180 asylum applications by unaccompanied minors below 16. In 2008, unaccompanied minor asylum seekers mainly came from Iraq, Vietnam and Afghanistan (2007: Iraq, Ethiopia and Eritrea).

The protection ratio (see above, ch. 2.3.2) of unaccompanied minors also rose significantly in 2008 compared to 2007. While the protection ratio of unaccompanied minors below 16 was 10% in 2007, it was 43.3% in 2008 (unaccompanied minor asylum seekers aged up to and including 17). The increase is largely due to a higher number of applicants from Iraq and to the fact that the Federal Office for Migration and Refugees assumes group persecution of religious minorities in Iraq.

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<sup>53</sup> Cf. *Bundestag* printed paper 16/12029, p. 8.

<sup>54</sup> Unaccompanied minors aged 16 or 17 were not registered as such before 2008 due to their ability to perform procedural acts under the Asylum Procedure Act and the Residence Act. These Acts stipulate: "A foreigner who is 16 years of age or older shall be capable of performing procedural actions pursuant to this Act, provided that he or she would not be legally incapacitated in accordance with the German Civil Code or, on attaining majority, would not require supervision and prior approval in this matter" (Section 12(1) of the Asylum Procedure Act and section 80(1) of the Residence Act).

### *Discussion about rescinding the reservations concerning the UN Children's Rights Convention*

On 3 June 2008 the states of Berlin, Bremen and Rhineland-Palatinate made a motion for a resolution in the *Bundesrat* to have Germany's reservations concerning the UN Children's Rights Convention rescinded.<sup>55</sup> In 1992 the Federal Government had declared that the provisions of the Convention did not mean that a foreigner was permitted to illegally enter into or reside in the Federal Republic and that the Convention did not affect the right of the Federal Republic to pass laws and ordinances concerning foreigners' entry into or the prerequisites for their residence in Germany or to distinguish between German nationals and foreigners. This reservation was to prevent any mistaken or exaggerated interpretations of the Children's Rights Convention, such as the idea that children from all countries world-wide had a claim to entry into Germany and to a right of residence.

However, for years now non-government organisations in the field of asylum and refugees have regarded this reservation as a sign that Germany does not give children's welfare priority above restrictions under its immigration law and have been calling for its abolishment.

The *Bundesrat* rejected the motion for a resolution filed by Berlin, Bremen and Rhineland-Palatinate on 13 June 2003 with a majority.<sup>56</sup>

### **2.3.4 Economic migration**

#### *Labour Migration Control Act*

As a follow-up to the Meseberg cabinet decisions of 24 August 2007 to make entering Germany easier for engineers and to improve employment opportunities for foreign graduates of German universities, the Federal Government launched an action programme on 16 July 2008 (see ch. 2.2). The main aim was to make it easier for highly qualified workers to enter Germany and thus to counteract the threat of a lack of specialist workers. In order to implement the programme the Federal Government presented a draft of a law to control the immigration of highly qualified workers in line with the labour market's requirements and to amend other residence provisions (the Labour Migration Control Act) on 22 September 2008<sup>57</sup>. This law provides numerous rules on issues which are important for economic or labour-market-based immigration.

The Labour Migration Control Act was discussed quickly and, following an appeal to the mediation committee, finally passed on 18 December 2008 by the *Bundestag* and on 19 December 2008 by the *Bundesrat*.<sup>58</sup> The new Act, which entered into force on 1 January 2009, and the amendments to the relevant ordinances are a step towards a more flexible approach to steering labour migration in the overall immigration policy. The new rules are as follows:

- The income limit for specialists and managers with particular professional experience, who can, like other highly qualified workers, immediately obtain a settlement permit under section 19 Residence Act, was reduced from EUR 86,400 (in the western Federal States) to EUR 64,800 (reference year 2009) due to a change in the calculation basis;<sup>59</sup>
- the minimum investment of foreign start-up entrepreneurs pursuant to section 21 Residence Act was reduced again, from EUR 500,000 to EUR 250,000;
- the maximum period for which lowly qualified or unqualified seasonal workers may be employed was extended from four to six months per year;

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<sup>55</sup> See *Bundesrat* printed paper 405/08.

<sup>56</sup> See *Bundesrat* printed paper 405/08 (B).

<sup>57</sup> See *Bundestag* printed paper 16/10288.

<sup>58</sup> Act to Control the Immigration of Highly Qualified Foreigners adequate to the Labour Market and to amend further regulations of the Residence Law (Gesetz zur arbeitsmarktadäquaten Steuerung der Zuwanderung Hochqualifizierter und zur Änderung weiterer aufenthaltsrechtlicher Regelungen) of 20 December 2008 (Federal Law Gazette I, p. 2846).

<sup>59</sup> Note that certain groups of highly qualified workers do not need to prove a minimum income to obtain a settlement permit. Under section 19(2) sentences 1 and 2 Residence Act, this provision applies to scientists with special technical knowledge and teaching and scientific personnel in prominent positions.

- in order to better exploit the potential of foreigners who are obliged to leave the country, but have been granted exceptional leave to remain, qualified foreigners may under certain circumstances (particular qualification, proof of sufficient language skills and of accommodation and no major crimes; see section 18a(1) Residence Act) and with the approval of the Federal Employment Agency be granted a residence permit in order to take a job that is in line with their professional qualification; no examination of priority will be made. Pursuant to the Employment Procedure Ordinance, foreigners who have been granted exceptional leave to remain may be permitted to work in other areas if they have been residing in the Federal Territory legally, under an exceptional leave to remain or under a residence authorisation for at least one year; if they have resided for at least four years in Germany without interruptions or if they have completed an officially recognised vocational training, the Federal Employment Agency will not make a priority examination (section 10 Employment Procedure Code). The prerequisites for getting support for vocational training under the Federal Training Assistance Act and the Social Code were amended so that foreigners with exceptional leave to remain may touch benefits if they have been resident lawfully, under a residence authorisation or under exceptional leave to remain in the Federal Territory for at least four years without interruptions.
- Amendments to ordinances improved the labour-market access for highly qualified workers: based on the Ordinance on the Access of Foreign University Graduates to the Labour Market, specialists with a university or university of applied sciences degree in the areas of mechanical or automobile engineering or electrical engineering have had equal access to the labour market already since 16 October 2007.<sup>60</sup> From 1 January 2009, this rule applies to specialists of *all* faculties who graduated from foreign universities. In information and communication technology it is even allowed to employ specialists who do not hold a university degree, provided that their qualification obtained abroad is *comparable* to a recognised degree from a foreign university.<sup>61</sup> In all these cases the Federal Employment Agency will only review the working conditions and the salary, but will not analyse the labour market with a view to whether preferred applicants are available.

#### *Effects of the financial crisis on labour migration*

Generally, changes in the economic situation do not bring about immediate, but rather delayed consequences for the labour market. Thus, possible repercussions of the international economic and financial crisis, which set in at the end of 2008, on immigration to Germany cannot be foreseen at this point. According to the OECD, both labour market and unemployment rates in Germany had not been affected noticeably in January 2009.<sup>62</sup> Likewise, at the time of completion of this report, no reliable insights as to the possible effects of the crisis on immigration to Germany were available. In the reference period, no actions have been taken as a result of the crisis to restrict the entry of labour migrants. Rather, it is expected that the Labour Migration Control Act, which came into force on 1 January 2009, will facilitate flexible reactions of public authorities to changes on the labour market or a shift in the economy's demand for foreign workers.

### **2.3.5 Family reunification**

#### *Decline in the number of visas granted to spouses*

In 2008 German embassies world-wide granted 5.2% fewer visas to spouses who wanted to join their partners in Germany than in 2007. This is what the Federal Government answered to a minor interpel-

<sup>60</sup> Ordinance on the Labour-Market Access of Foreign University Graduates of 9 October 2007 (Federal Law Gazette I, p. 2337). The Ordinance on University Graduates' Access to the Labour Market was rescinded as of 1 January 2009 and included in the Employment Ordinance and Employment Procedure Code (see footnotes 17 and 60).

<sup>61</sup> Second Ordinance to Amend the Employment Ordinance of 19 December 2008 (Federal Law Gazette I, p. 2972).

<sup>62</sup> See OECD (2009): International Migration Outlook, SOPEMI 2009, S. 15.

lation in the *Bundestag* on 17 February 2009.<sup>63</sup> Migration to Germany for the purpose of family reunification has been declining for some years now. The number of visas granted on the grounds of family reunification declined from more than 85,000 in 2002 to 30,766 in 2008. One reason is that, owing to the EU enlargement, nationals who formerly needed a visa now benefit from the freedom of movement and are therefore no longer registered in the family reunification statistics. In addition, the significant decline in 2008 is due to the fact that, since September 2007, foreign spouses of third-country nationals who live in Germany have been obliged to prove their basic knowledge of German before entering Germany in order to obtain a residence permit. This rule does not extend to spouses from countries which are exempt from the visa requirement, such as Australia, Japan, or the US.<sup>64</sup> The Federal Government believes that a basic knowledge of German obtained ahead of the entry to Germany will ease orientation and integration for the spouse in Germany. In addition, the rule is to help to prevent forced marriages. However, critics hold that that numerous spouses find it difficult to prove their knowledge of German. In particular, spouses who cannot read or write are prevented from joining their family in Germany.<sup>65</sup>

### 2.3.6 Nationality and naturalisation

#### *Introduction of the naturalisation test*

In 2008, 94,470 foreigners were naturalised in Germany. This is a year-on-year decline of 16.4%; in 2007, 113,030 foreigners were naturalised. The downtrend in the number of naturalisations since 2000 continued, with only a short interruption in 2006.

At the beginning of July 2008 the Federal Ministry of the Interior presented the contents of the first nation-wide naturalisation test. Since 1 September 2008, passing this test is one of the prerequisites for obtaining German citizenship. The legal basis of the test is section 10(7) of the Nationality Act. Details are regulated in the Ordinance on Naturalisation Tests of 5 August 2008.<sup>66</sup> The test is conducted by the Federal Office on Migration and Refugees in cooperation with roughly 500 evening schools (*Volkshochschulen*).

The naturalisation test asks questions on the legal and social system and the way of living in Germany. Applicants must answer at least 17 out of 33 multiple-choice questions correctly within one hour to pass the test. 30 out of 300 possible questions can be asked anywhere in Germany and cover the subjects „Life in a Democracy“, “History and Responsibility” and “People and Society”. In addition, three questions on the relevant federal state, for example about the state coat of arms or the state capital, are selected from ten possible questions. The evening schools offer preparation courses for the naturalisation test. Participants have to pay a fee of EUR 25 to take the test. They can repeat it as often as they wish.

There had been a controversial discussion about the test in Germany. While opposition parties criticised it as an attempt to make it more difficult for migrants to obtain German citizenship, the Federal Minister of the Interior explained that, while Germany was generous about granting citizenship, certain preconditions had to be fulfilled for a naturalisation. There was also a discussion about the selection and compilation of the questions on the German social system and history in the test.<sup>67</sup>

9,000 immigrants took the test during the first two months after its introduction. Roughly 98% of them passed it according to figures compiled by the Federal Office for Migration and Refugees.

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<sup>63</sup> *Bundestag* printed paper 16/11997, p. 13.

<sup>64</sup> See the Policy Report 2007, p. 16.

<sup>65</sup> Newsletter Migration und Bevölkerung, no. 10, December 2008.

<sup>66</sup> Ordinance on the Naturalisation Test and the Naturalisation Course (Einbürgerungstestverordnung) of 5 August 2008 (Federal Law Gazette I, p. 1649).

<sup>67</sup> Newsletter Migration und Bevölkerung, no. 6, August 2008.

### *Amendment to the law on repealing German citizenship*

On 13 November 2008, the *Bundestag* adopted a law to amend the Nationality Act.<sup>68</sup> With the draft law the Federal Government implemented two decisions passed by the Federal Constitutional Court in 2006.<sup>69</sup> According to these decisions, the constitutional provision of Art. 16(1) sentence 1 Basic Law (“No German may be deprived of his citizenship”) does not hinder the authorities to repeal a decision to grant German citizenship if this decision was made on the basis of fraudulent evidence. However, the court pointed out that the situation needed to be legally regulated, in particular with a view to certain cases (for example derivative naturalisations of family members) and to the periods within which such repeals are possible.

This was the basis on which the parliament has fleshed out and extended the rules on repealing and losing German citizenship set out in the Nationality Act. German citizenship can be lost if one or more preconditions are met. These include fraud, threat or corruption and the provision of consciously wrong or incomplete information which was key to the application for naturalisation. Under the law, German citizenship can be repealed only within the first five years after naturalisation. The repeal may extend to family members (spouses, children) who obtained derivative naturalisations at the same time. However, in these cases the authorities must examine whether these persons have obtained an independent naturalisation claim in the meantime. Moreover, the authorisations must decide whether and to what extent they participated in the fraud, threat or corruption or in the provision of consciously wrong or incomplete information which resulted in naturalisation. Children’s welfare must be a priority in the discretionary procedure.

Based on a suggestion by the Federal Constitutional Court, clear principles were introduced for children who were born in Germany and might lose their German citizenship if a German father successfully challenges his paternity and the mother is a third-country national. In these cases German citizenship cannot be lost if the child is older than five years. In the case of younger children the authorities will assume that they are not yet aware of their nationality and losing German nationality is not detrimental to them as they have no concept of its being a reliable basis for belonging to society on an equal footing.

A new rule makes a fraudulently obtained naturalisation a crime: “Providing or making use of untrue or incomplete information concerning key prerequisites for naturalisation in order to wrongfully obtain naturalisation for oneself or for others is punished by a prison sentence of up to five years or a fine.” (section 42 Naturalisation Act)

### *Register on decisions pertaining to matters of nationality and citizenship*

The Federal Administrative Office (BVA) introduced a new register on nationality decisions (*Register zu Entscheidungen in Staatsangehörigkeitsangelegenheiten; EStA*) at the end of 2008. Pursuant to section 33 of the Nationality Act, the register will compile entries on decisions on nationality certificates, decisions on the statutory loss of German citizenship and decisions on the acquisition, possession and loss of German citizenship taken between 31 December 1960 and 28 August 2007. The following data may be stored in the register: the basic personal data of the person concerned, including his/her address at the time of the decision, the way in which and the date on which the decision or certificate or the loss of citizenship take effect, and the name, address and reference number of the authority which took the decision. The authorities which are responsible for nationality matters are required to transmit the relevant data immediately to the Federal Administrative Office.

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<sup>68</sup> The amendment entered into force on 6 February 2009; cf. the Law on the Amendment of the Nationality Act of 5 February 2009 (Federal Law Gazette I, p. 158).

<sup>69</sup> Judgement of 24 May 2006 (2 BvR 669/04); decision on the non-acceptance of a suit of 24 October 2006 (2 BvR 696/04).



The purpose of the new register is to make comprehensive research on former decisions superfluous and to accelerate the processing of applications to determine nationality or of passport applications abroad. The German embassies can also get nationality information from the register.

In December 2008 the development of the EStA register with an external service provider was finished. Following a test phase with some pilot authorities in January 2009, the register has been available to all nationality authorities since 9 February 2009.

#### *Obligatory choice for adults with dual citizenship*

As 2008 started, roughly 3,300 young adults in Germany who hold both German and another citizenship will be obliged to decide on one of the two citizenships within five years. This duty to opt is based on the amendment of the Nationality Act in 1999, which introduced “*ius soli*” elements into the law. From 1 January 2000, children born to foreigners in Germany are automatically granted German citizenship if at least one of the parents has been legally resident in Germany for eight years and holds a settlement permit. If, however, the children also obtain a foreign nationality from their parents at birth, they will, once they turns 18, have to declare in writing at a request of the responsible authorities whether they want to retain the German or the foreign nationality. If adolescents choose the foreign nationality, they will regularly lose German citizenship. In return, adolescents will have to prove that they have given up their foreign citizenship. If they do not do so by their 23<sup>rd</sup> birthday at the latest, they will automatically lose their German citizenship. However, in certain cases they may get permission to keep the foreign nationality if they submit an application in writing to this effect. They may do so until their 21<sup>st</sup> birthday. In particular, this is an option if giving up the foreign nationality is impossible or unacceptably difficult, if there is an international agreement with a third country on this issue or if the foreigner is a citizen of another EU Member State or of Switzerland.<sup>70</sup>

The period within which the children with dual nationality born since 2000 will have to opt for one of them will start to run in 2018. However, the amendment to the Nationality Act included a transitory regulation, pursuant to which foreign children aged less than 10 on 1 January 2000 could be granted a German passport at request. Almost 50,000 children benefited from this rule at the time. In 2008, roughly 3,300 of these adolescents – those born in 1990 – celebrated their 18<sup>th</sup> birthdays and received a letter from the authorities. If any of them do not opt for one of their nationalities by their 23<sup>rd</sup> birthday, the first procedures to repeal their German citizenship will take place from 2013 under the current law. Under the current law, a total of roughly 320,000 persons will have to opt for one nationality between 2008 and 2024.<sup>71</sup>

### **2.3.7 Integration**

The Act on the Implementation of Residence and Asylum Directives of the European Union, which entered into force in August 2007, resulted in amendments to Chapter 3 (“Integration”) of the Residence Act. The new rules introduced the principle of “support and demand” in order to clarify that the state may support integration, but also requires foreigners who want to stay in Germany to make integration efforts themselves. This includes, in particular, learning a sufficient amount of German, respecting the state monopoly on force, recognising the values of the Basic Law and respecting the freedom of faith, religion, opinion and the press and equality of men and women. The law foresees that immigrants have to prove their successful participation in an integration course (language level B1 GER). At the same time the range of persons admitted to integration courses was extended to Jewish migrants and Germans in need of integration.

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<sup>70</sup> See sections 12 and 29 of the Nationality Act in the amended version released in the Federal Law Gazette III, number 102-1, last amended by Article 1 of the law of 5 February 2009 (Federal Law Gazette I, p. 158).

<sup>71</sup> The data refer to 2006; see *Bundestag* printed paper 16/8092.

Foreigners who hinder others in their integration efforts or act in a way to promote disintegration may be expelled. Non-compliance with the obligation to participate in an integration course is pursued as an administrative offence.

In December 2008 a reworked version of the concept for a national integration course was published. This had become necessary due to the review of the Integration Course Ordinance. Descriptions of the placement system, the possibilities of repeating the course and the standardised tests introduced in 2009 were newly included (see ch. 2.2 „*Third Integration Summit and National Integration Plan*”).

The number of participants in integration courses rose from roughly 114,000 in 2007 to about 121,000 in 2008. Most participants were women (66.7%).

### **2.3.8 Illegal migration**

#### *Joint Analysis and Strategy Centre on Illegal Migration (GASIM)*

The Joint Analysis and Strategy Centre on Illegal Migration (GASIM), a cooperation platform managed by the Federal Police and established by the Federal Ministry of the Interior in May 2006, was the subject of a number of interpellations in the *Bundestag* in 2008. One of them was based on a charge made in a TV broadcast that the GASIM illegally collected and stored personal data. The Ministry rejected these charges.

Members of the *Bundestag* also tried to get more information on the work of the Strategy Centre. In its response to an interpellation the Federal Government made clear that 40 employees worked for GASIM in 2007, including staff of the Federal Ministry of the Interior, of the Federal Criminal Police Office (BKA), the Federal Police (BPol), the Federal Office for Migration and Refugees (BAMF), the Federal Intelligence Service (BND) and the Monitoring Authority for Illegal Employment (FKS), a customs unit. If necessary, the Federal Foreign Office and the Federal Office for the Protection of the Constitution are represented at GASIM.

The authorities represented at GASIM work in different ways on current aspects of illegal migration, with a particular focus on Germany. The cooperating authorities make the results available to the relevant departments of the Federal Government, in particular the Ministry of the Interior and the authoritative users at the federal and state level. GASIM itself does not take any measures in the fight against illegal migration. However, results of its work may be used for measures taken by other authorities.<sup>72</sup>

#### *Enlargement of the Schengen area*

In June 2008 Federal Minister of the Interior Wolfgang Schäuble painted a positive picture of the enlargement of the Schengen area. On 21 December 2007 stationary border controls between Germany, Poland and the Czech Republic as well as other EU Member States were abolished. This led to an increase in the number of illegal entries to Germany at the beginning of 2008. One reason was that persons who held visas that were only valid for Poland or the Czech Republic tried to enter the Schengen area even though their visa did not give them the right to do so. The numbers declined again later on. The Federal Ministry of the Interior draws the conclusion that borders can be effectively protected even without stationary border controls.<sup>73</sup>

#### *European police action to fight illegal immigration*

The French EU Presidency initiated a European search for criminals on the railway network, which took place between 24 and 29 September 2008. The Federal Government claimed that the action, which was criticised in the press and by opposition parties, aimed to improve police cooperation and intensify controls in trains and railway stations. 17 Member States, among them Germany, partici-

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<sup>72</sup> See *Bundestag* printed paper 16/8482.

<sup>73</sup> See „Bundespolizei hat ihre Aufgaben gut erfüllt – Bundesminister Dr. Schäuble zieht positive Zwischenbilanz nach der Schengen-Raum-Erweiterung“, press release of the Federal Ministry of the Interior, 21 June 2008.

pated in the initiative. The Federal Police, which is responsible for border and train policing in Germany, found 149 persons who had illegally entered or were illegally residing in Germany. Moreover, the police officers uncovered thefts, cases in which persons had fraudulently claimed benefits and instances of vandalism and personal injuries. People smugglers were not caught during the action.<sup>74</sup> There were no legal measures in the area of illegal migration in 2008, apart from the Act on challenging fake paternities (see ch. 2.3.1).

### **2.3.9 Measures against trafficking in human beings**

#### *National Situation Report on Human Trafficking*

Since 1999 the Federal Criminal Police Office (BKA) has been preparing an annual National Situation Report on Human Trafficking. The report presented on 15 July 2008 summarises all investigations conducted in 2007. In 2007, 454 investigation procedures on trafficking in human beings for the purpose of sexual exploitation were concluded in Germany. This is a year-on-year increase of 29% (2006: 353). However, the number of victims was 11% lower than in 2006 (689 vs. 775).

As in the preceding years, most victims (89%; 614 out of 689) came from European countries in 2007. There was a striking increase in the number of victims with Bulgarian, Hungarian and Nigerian nationality. The number of suspects also rose in year-on-year terms in 2007, by 8% to 714. German citizens continued to be the largest group of suspects in 2007 (48%; 344 out of 714 suspects). Most foreign suspects were Turkish and Bulgarian nationals. Trafficking in human beings for the purpose of exploitation of workers did not become a criminal offence until 2005. According to the National Situation Report, it is not quite possible to give a final assessment of such cases in 2007. Overall, 92 cases were registered, up from 78 in 2006. This is an increase by 18%.

The National Situation Report also states that (illegal) employment in Germany is a key reason for migration. Most offences take place in the hotel and restaurant sector and in private households.<sup>75</sup>

#### *Agreement on police cooperation with Belgium, France and Luxembourg*

On 24 October 2008, the Ministers of the Interior and of Justice of Germany, Belgium, France and Luxembourg signed an agreement on deepening the cross-border cooperation of their police and customs authorities. Since the signing of the Schengen Convention in 1990, the cooperation between the police and the customs authorities has made progress in this European region, which is characterised by intensive individual and trade traffic. The new agreement will help to intensify the cross-border cooperation between the participating countries further. The goal is to improve security in the border regions and to give the authorities more options to fight the most serious crimes. This includes trafficking in human beings and human smuggling. The common centre will have its seat in Luxembourg and employ for now 31 staff, most of them from France.<sup>76</sup>

There were no new laws in the area of trafficking in human beings in 2008.

### **2.3.10 Return migration**

#### *Signing of a readmission agreement with Syria*

On 14 July 2008, Syria and the Federal Republic of Germany signed a bilateral readmission agreement and an implementation convention. Under the agreement, each of the two contract parties promises to readmit nationals of the other contract party who are obliged to leave the country, third-country nationals and stateless persons to its territory. In Germany, Art. 2 of the Agreement and 5 II of the implementation convention are particularly important in practice. These articles regulate the readmis-

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<sup>74</sup> See *Bundestag* printed paper 16/11576.

<sup>75</sup> See Federal Criminal Police Office (2008): *Menschenhandel – Bundeslagebericht 2007*, press-release summary, Wiesbaden: BKA.

<sup>76</sup> See „Unterzeichnung eines Vertrags über Polizei- und Zollzusammenarbeit zwischen Deutschland, Belgien, Frankreich und Luxemburg“, press release of the Ministry of the Interior, 24 October 2008.

sion of stateless persons and the issuance of the documents which serve as proof of residence. The readmission agreement entered into force on 3 January 2009.

At the moment Germany has concluded about 30 valid bilateral readmission agreements with other countries. Most of the contract partners are eastern and south-eastern European countries. In addition, a number of agreements to facilitate the return of third-country nationals who are obliged to do so have been concluded at the level of the European Union since 2002 and are thus valid for all EU Member States. At the moment eleven such EU agreements are in force; a readmission agreement with Pakistan was initialled in September 2008.<sup>77</sup>

### **2.3.11 Other**

#### *Regulations governing old cases*

In connection with the Act on the Implementation of EU Directives on Residence and Asylum Issues of 19 August 2007 (Directive Implementation Act) the *Bundestag* created time-limited provisions for old cases, i.e. migrants who had for a long time had an exceptional leave to remain and made integration efforts (section 104a Residence Act). This provision aimed to take into account the desire of those migrants who had been living in Germany for years and were integrated into German society to have a chance of permanently staying in Germany. Foreigners may be granted a residence permit on the grounds of the regulations governing old cases if, on 1 July 2007, they have been continuously resident in the Federal Territory for eight or six years (the latter if one or more minor children live in the household) legally or with an exceptional leave to remain, have an adequate knowledge of spoken German and have not conducted a criminal offence. The residence permit is limited until 31 December 2009. It will be prolonged if the foreigners can prove that they independently and sustainably ensure their subsistence and that they have been largely gainfully employed. Moreover, a legal basis for the residence of well-integrated children was created even in cases in which their parents do not meet the requirements for old cases and have to leave the Federal Territory; however, care and custody of the children must be ensured (section 104b Residence Act).

According to the *Länder*, a total of 33,693 residence permits were granted under the provisions for old cases between 28 August 2007 (entry into force of the Directive Implementation Act) and 31 December 2008. They were granted to 7,091 people from Serbia and the Kosovo, 4,615 migrants from Serbia and Montenegro and 2,733 Turkish nationals.<sup>78</sup> While these figures suggest at first sight that the provision for old cases was a success – a large number of migrants with exceptional leave to remain obtained a residence permit – some criticism was voiced towards the end of 2008. For example, members of the *Bundestag* pointed out that only one-fourth of those who theoretically met the preconditions were granted a preliminary right to remain (for example a preliminary residence permit). Moreover, there was a risk that many of those who benefited from the provisions for old cases might be granted only an exceptional leave to remain once the time limit is over, since the tight labour-market situation rendered them unable to fulfil the requirement of independently ensuring their subsistence.<sup>79</sup> Ensuring subsistence means that the foreigners with provisional residence permits may not touch social-security benefits.

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<sup>77</sup> See the [list](#) provided by the Federal Ministry of the Interior.

<sup>78</sup> See *Bundestag* printed paper 16/12029.

<sup>79</sup> *Frankfurter Rundschau*, 25 March 2009.

## 3 Transposition of EU legislation in national law

### 3.1 Transposition of EU legislation in 2008

The Federal Administrative Court (BVerwG) in Leipzig appealed to the European Court of Justice (ECJ) in Luxembourg in two cases in 2008. The issues referred to the Court of Justice concern the interpretation of the Qualification Directive.<sup>80</sup> One aim of this Directive is to harmonise the legal basis for the existence and loss of refugee status as defined by the Geneva Convention within the European Union. In Germany, the Directive was transposed into national law in August 2007 by the Act on the Implementation of EU Directives on residence and asylum issues.<sup>81</sup> The procedures were interrupted until the European Court of Justice gives a decision. Moreover, the Federal Administrative Court took a fundamental decision which defines the practical implementation of Art. 15c of the Qualification Directive.

#### *Interpretation of the Qualification Directive: Revoking a recognition as refugee*

In a ruling of 7 February 2008 the Federal Administrative Court asked the European Court of Justice whether a recognition as refugee can be revoked under the Qualification Directive if the circumstances which triggered the recognition have ceased to exist and if the refugee need not fear persecution for other reasons in case of a return to the country of origin, or whether additional conditions must be met. For example, it might be necessary that there is an authority in the country of origin which could, in principle, protect the refugee or that, contrary to the regular decisions by the Federal Administrative Court, the foreigner is not subject to other threats which may stem, for example, from the general security situation or the general living conditions. Moreover, the referral will clarify whether, in case of such a revocation, the threat of new and different persecution is to be examined in the same way as in the case of new applications.

#### *Interpretation of the Qualification Directive: Reasons for exclusion*

On 14 October 2008, the Federal Administrative Court asked the European Court of Justice whether a plaintiff is excluded from being recognised as a refugee and asylum applicant on the grounds of terrorist activities ahead of his entry into the Federal Territory. The Federal Administrative Court referred a number of questions to the European Court of Justice concerning the interpretation of the reasons for exclusion under the Qualification Directive. The plaintiff is a Turkish national and, between 1993 and 1995, actively supported the armed fight of a left-wing, extremist group in Turkey. In fact, the would-be asylum applicant was a member of an organisation which is listed in the list of persons, groups and entities in the annex to the Common Position of the European Council on the application of specific measures to combat terrorism and which uses terrorist methods, and he has actively supported the armed fight of this organisation.

First, the Federal Administrative Court asked the European Court of Justice to clarify whether this is to be interpreted as committing a serious, non-political crime or an act contrary to the purpose and principles of the United Nations within the meaning of Art. 12(2) lit. b and c of the Qualification Directive. If the applicant did commit such a crime or act, the next question is whether an exclusion from recognition as a refugee pursuant to Art. 12(2) lit. b and c of the Qualification Directive presupposes that the applicant is still a threat. If not, the next question to be clarified is whether an exclusion from recognition as a refugee pursuant to Art. 12(2) lit. b and c of the Qualification Directive requires the court to conduct an examination of proportionality in the individual case. This, in turn, requires further clarification concerning the following questions:

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<sup>80</sup> [Directive 2004/83/EC](#) (“Qualification Directive”).

<sup>81</sup> See [Policy Report 2007](#), p. 27.

- Does the Court have to take into account in the examination of proportionality that the applicant may not be expelled pursuant to Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or pursuant to national rules?
- Is the exclusion disproportionate only in particular, exceptional cases?
- Is it admissible under Art. 3 of the Qualification Directive that, even though a reason for exclusion pursuant to Art. 12(2) of the Qualification Directive exists, the applicant can claim asylum under national constitutional law?

*Interpretation of the Qualification Directive: Subsidiary protection*

A fundamental decision of the Federal Administrative Court of 24 June 2008<sup>82</sup> resulted in changes in the decision practice on subsidiary protection and more concrete guidelines for the application of Art. 15c of the Qualification Directive.

The Federal Administrative Court has decided that, in case of subsidiary protection, the courts must differentiate between protection on the basis of European law and protection on the basis of national law. Since the European types of protection entail further-reaching rights, they have to be examined ahead of national protection.

European protection is included in the rules which translate Art. 15 of the Qualification Directive into German law: These are:

- Protection against torture pursuant to Art. 15b Qualification Directive: Section 60(2) Residence Act
- Protection against the death penalty pursuant to Art. 15a Qualification Directive: Section 60(3) Residence Act
- Protection against dangers in the framework of an armed conflict pursuant to Art. 15c Qualification Directive: Section 60(7) sentence 2 Residence Act.

Afterwards, national types of protection are to be examined, in particular:

- Protection against removal if this measure is not permissible under the European Human Rights Convention of 4 November 1950: Section 60(5) Residence Act;
- Apart from removal, significant other risks for the individual (such as a significant deterioration in health because of a lack of medical care in the country of origin): Section 60(7) sentence 1 Residence Act.

There are no changes to the current decision practice with a view to the prerequisites for section 60(2) and (3) Residence Act. Despite minor differences in the wording, Section 60(7) sentence 2 Residence Act is equivalent to Art. 15(c) of the Qualification Directive.

The application of section 60(7) sentence 2 of the Residence Act presupposes an international or internal armed conflict; the decision on whether such a conflict exists is made in line with international law criteria. Taking into account Art. 1(1) of the Additional Protocol II of 8 June 1977 to the Geneva Conventions of 12 August 1949, an internal armed conflict exists if there are violent clashes between national and dissident armed forces or other organised armed groups and it does not exist if there are only internal disturbances and tensions such as riots, isolated and sporadic acts of violence etc (Art. 1 no. 2 of the Additional Protocol II of 8 June 1977 to the Geneva Conventions of 12 August 1949). Moreover, an internal armed conflict is assumed to exist if the actual situation is somewhere between the two extremes defined in Art. 1 of the Additional Protocol II of 8 June 1977 to the Geneva Conventions of 12 August 1949. The armed clashes must have reached a certain degree of intensity and permanence. However, an internal armed conflict need not extend to the whole territory of a state.

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<sup>82</sup> BVerwG [10 C 43.07](#).

The protection seeker must be a civilian. This term is to be defined in comparison to participants in the conflict; it covers persons who have not actively carried arms and taken part in the hostilities. The applicant must be subject to considerable personal danger to life and limb due to arbitrary violence in the framework of the conflict. The general danger incurred in the framework of an internal armed conflict usually is not serious enough to assume that all inhabitants of an affected region are affected seriously and personally, i.e. as individuals (cf. recital 26 of the Qualification Directive). However, an intensification of the dangers stemming from the armed conflict may result in the required degree of danger.

The view of the Federal Administrative Court is in line with the requirements of the European Court of Justice quoted in the application for a preliminary ruling made by the *Nederlandse Raad van State* on 17 February 2009.<sup>83</sup> The European Court of Justice requires a typical degree of arbitrary violence in an existing, armed conflict which exceptionally reaches such a level that there are reasonable grounds for the assumption that a returning civilian would in fact be subject to a serious, individual threat simply by being present in the area of the conflict. Moreover, a general danger may become sufficiently serious because individual circumstances intensify it. This, too, is in line with the interpretation of the European Court of Justice, which argues that the necessary degree of arbitrary violence may be lower if the applicant can prove that he or she is particularly affected by circumstances inherent in his or her personal situation. Such an interpretation of section 60(7) sentence 2 Residence Act or Art. 15c Qualification Directive may in practice be applied to applicants from Afghanistan, the Democratic Republic of Congo, Iraq, Somalia, Sri Lanka and Sudan.

#### *Regulation on Community Statistics*

2008 was the first reporting year in which the Regulation on Community Statistics on migration and international protection was in use.<sup>84</sup> The Federal Office for Migration and Refugees provides Eurostat with data with regard to Articles 4 (Statistics on international protection) and 6 (Statistics on residence permits and residence of third-country nationals). Other data on migration developments in Germany (for example on inhabitants or on the fight against illegal entry) which need to be delivered to Eurostat under the Directive are provided by the Federal Police and the Federal Statistical Office.

#### *Legal basis for the EMN*

On 14 May 2008, the EU Council decided to establish the European Migration Network (EMN), which had so far done project work, as a permanent structure. Pursuant to Article 1(2) of the Council Decision<sup>85</sup> the main goal of the EMN is to meet the information needs of Community institutions and of Member States' authorities and institutions on migration and asylum by providing up-to-date, objective, reliable and comparable information on migration and asylum with a view to supporting policymaking in the European Union in these areas. The EMN consists of the National Contact Points appointed by each Member State and the EU Commission and is led by a Steering Board. This Steering Board consists of one representative from each member state and one representative of the Commission and is assisted by two scientific experts.

The National Contact Point of the EMN in Germany, which was established during the project phase ahead of the adoption of the legal basis by the Council upon appointment of the Federal Ministry of the Interior, rests with the Federal Office for Migration and Refugees.

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<sup>83</sup> Case C-465/07 ([OJ C 90, S. 24](#)).

<sup>84</sup> See Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers ([OJ L 199](#), p. 23).

<sup>85</sup> Council Decision of 14 May 2008 establishing a European Migration Network ([2008/381/EC](#)).



### *Directive on the recognition of professional qualifications*

In 2008 Germany had not yet fully implemented the EU Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications.<sup>86</sup> The Directive establishes rules according to which a Member State which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications has to recognise professional qualifications obtained in one or more other Member States for access to this profession. This Directive affects not only EU nationals who want to pursue a regulated profession in another Member State, but in certain cases also third-country nationals whose qualification was recognised in one Member State.

The period for implementation ended on 20 October 2007. Since then, the recognition of a qualification for access to a regulated profession must be made on the basis of the system created by the Directive. The key components of this system are as follows:

- Qualifications are automatically recognised if the professional training requirements were harmonised (e.g. for doctors, nurses, midwives, veterinarians, dentists, pharmacists and architects).
- In certain artistic, trade and industrial professions, recognition is based above all on professional experience. Recognition will be automatic if a migrant has been working in the profession for the length of time required in the Directive.
- Recognition is in principle automatic for artists, traders and industry workers who have not accumulated the professional experience required under the Directive and for all professions where training requirements have not been harmonised yet. If, however, there are significant differences between the required trainings which cannot be compensated for by professional experience, lifelong learning etc., compensating measures (tests or adjustment training courses) may be required.

The implementation of the rules is still in progress at the state level; it is the *Länder* which are responsible for the recognition procedures for regulated professions in Germany. Overall, the Directive requires amendments to more than 100 laws and ordinances at the federal and state level. The states are currently implementing the introduction of a deficit test in the framework of recognition procedures as required under the Directive and handle this task differently. In some cases this also applies to individual professions. For example, several states have amended their laws concerning the recognition of teacher qualifications or passed ordinances to meet the requirements of the Directive in 2008.<sup>87</sup>

### *Decision of the European Court of Justice on the storage of data on Union citizens*

The German Central Aliens Register (AZR) stores personal data of foreigners who reside in Germany for more than three months. The Central Aliens Register is kept by the Federal Office for Migration and Refugees in Nuremberg. The data are processed and used on order and by request by the Federal Office for Migration and Refugees by the Federal Administrative Office (BVA). The register is to support the security, police and judicial authorities in fulfilling their tasks in the area of fighting and investigating crimes or actions which endanger public security. In addition, it supports statistical purposes.

In its judgement of 16 December 2008 in the case *Heinz Huber vs Federal Republic of Germany*<sup>88</sup> the European Court of Justice ruled that only those personal data may be compiled which are necessary to apply the residence regulations for European Union citizens. Processing and storing data of European Union citizens for statistical purposes or for the fight against crime is not necessary within the meaning of the EU Data Protection Directive<sup>89</sup> and violates Community law.

<sup>86</sup> Directive [2005/36/EC](#) of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications.

<sup>87</sup> See Bundesministerium für Wirtschaft und Technologie, *Schlaglichter der Wirtschaftspolitik*, monthly report, December 2008, p. 27-31.

<sup>88</sup> Case C-524/06 ([O.J. C 44](#), p. 25).

<sup>89</sup> Directive [95/46/EC](#).



The plaintiff, an Austrian citizen, regarded himself as discriminated against by the storage of his personal data in the Central Aliens Register; he asked for having his data deleted on the grounds that there is no comparable database for German nationals. Based on the judgement of the European Court of Justice, the Federal Ministry of the Interior instructed the Federal Office for Migration and Refugees and the Federal Administrative Office at the beginning of 2009 to store and transmit data of European Union citizens in the Central Aliens Register only to the extent approved by the judgement for the time being. The Federal Ministry of the Interior is currently examining the question whether and in what way the collection of Union citizen data in the Central Aliens Register may be changed in the long run.<sup>90</sup>

### 3.2 Experience with the implementation of EU laws

Since the core components of the EU Directives in the area of asylum were already implemented in the Immigration Act (entry into force: 1 January 2005) and the Directive Implementation Act (entry into force: 28 August 2007), there was no major debate on the implementation of Community law in 2008. However, experts and politicians still assess changes in details in the areas of migration and asylum triggered by EU regulations. With a view to asylum granting, some observers argue that persecution by non-government agencies has been a more important reason than before since the Qualification Directive was implemented in German law. Overall, the protection ratio for asylum seekers has increased. From the Federal Government's vantage point the Immigration Act and the Directive Implementation Act have led to considerable improvements in the area of refugee protection. In addition to higher awareness of persecution by non-government actors and of gender-related persecution the improvements affect refugee protection for asylum seekers who refused to do military service on the grounds of actions that run counter to international law and subsidiary protection for people affected by international or internal armed conflict.<sup>91</sup>

Non-governmental organisations such as PRO ASYL attentively watch the development of the Community asylum and migration policy. While they regard closer cooperation within the EU as fundamentally positive, they criticise that, from their vantage point, the EU tends to shut the doors too closely against refugees. There is criticism about actions of the Member States at the external borders of the Union, which are coordinated by the EU border protection agency FRONTEX.<sup>92</sup>

Another point of criticism is that the EU Member States continue to pursue very different paths in asylum policy (recognition and procedures), despite an impressive body of Community Directives and Regulations. In a speech given in June 2008, Federal Minister of Justice Brigitte Zypries assessed the EU asylum laws as "clearly positive", but said that the individual Member States differed considerably in recognising refugees in practice. This was a consequence of the leeway the Directives gave the individual Member States. However, this leeway was not just a weakness of the common system, but had positive aspects as well. Germany, for example, was able to introduce a right to stay which gave ten thousands of people who had been living in Germany for a long time the opportunity to remain in the country permanently. Pointing to the positive aspects of national leeway, the Minister argued against a quick further unification of asylum policies in the EU.<sup>93</sup>

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<sup>90</sup> See *Bundestag* printed paper 16/12569.

<sup>91</sup> *Bundestag* printed paper 16/7687, p. 14.

<sup>92</sup> See PRO ASYL, *Abdrängen und Zurückweisen*, 2008.

<sup>93</sup> See the speech of Federal Minister of Justice Brigitte Zypries at the 8<sup>th</sup> Berlin Symposium on Refugee Protection, 23 June 2008.

### *Implementation of the Researcher Directive*

The Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research<sup>94</sup> was implemented with the Act on the Implementation of Residence and Asylum Directives of the European Union in national law. Since then, more than one hundred research institutions have applied to the Federal Office for Migration and Refugees for being recognised as entitled to conclude admission agreements with researchers from third countries. As of 31 December 2008, 101 third-country nationals held a residence permit for researchers in Germany. This figure was below the expectations.

### *Implementation of the Return Directive*

After the Directive on common standards and procedures in Member States for returning illegally staying third-country nationals of 27 October 2008<sup>95</sup> was passed, the Federal Ministry of the Interior started to examine potential consequences for the German foreigners law. Some details of the Residence Act will need to be changed, probably in the areas of refusal of entry at the border, removal after illegal entry and concerning the time limits for prohibitions of legal (re-)entry and residence.<sup>96</sup> The Return Directive must be transposed into national law within two years.

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<sup>94</sup> Directive [2005/71/EC](#).

<sup>95</sup> Directive [2008/115/EC](#).

<sup>96</sup> See Franßen-de la Cerda, Boris (2009): Die Vergemeinschaftung der Rückführungspolitik – das Inkrafttreten der EU-Rückführungsrichtlinie – Teil 2, *Zeitschrift für Ausländerrecht und Ausländerpolitik*, Vol. 29, no. 1, p. 17-21.