

Annual Policy Report 2009

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Annual Policy Report 2009

by the German National Contact Point for the
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Executive Summary

The Policy Report 2009 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 2009. In particular, it deals with the current status and the implementation of the measures described in the European Pact on Immigration and Asylum, which the European Council adopted at its meeting on 15 - 16 October 2008. Under the European Pact, all Member States entered into key commitments in immigration and asylum policy.

During 2009, the Federal Republic of Germany took a number of measures to implement the targets of the European Pact on Immigration and Asylum. The most important developments are as follows:

- Germany participated in a pilot project dealing with the resettlement of persons in need of protection currently living in Malta;
- numerous legal changes entered into force on 1 January 2009 which aimed to make it easier for highly qualified people, students and researchers to come to Germany (Labour Migration Steering Act);
- the three large-scale efforts in integration policy were continued – i.e. the implementation of the National Integration Plan, the further development of the National Integration Programme, and the dialogue in the framework of the German Islam Conference.

Other key political and legal developments in the field of migration, integration and asylum in 2009 were as follows:

- A follow-up regulation for the regulations governing old cases (people whose deportation had been suspended for several years), which ran out on 31 December 2009, was adopted and the rules for a “residence permit on trial” were extended;
- the resettlement of a total of 2,500 Iraqi refugees from Syria and Jordan was started;
- the new government formed after the elections on 27 September 2009 set new priorities in the area of migration/integration.

One of the most important institutional changes in the field of politics and society was the creation of an advisory alliance to the federal government concerning the need of labour (“Alliance for Labour”).

Concerning experiences with the implementation of EU law, the most important issues are decisions by national courts and the European Court of Justice (ECJ) on issues such as visa policy and cross-border services, the interpretation of the Qualification Directive and transfers in the framework of the Dublin Procedure.

Introduction

The Policy Report 2009 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 2009. 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 issues (the “Policy Report”) 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”¹ and thus to support decision-making processes at the EU level. 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 on its own responsibility with the most important contents and results of the national reports.

In contrast to earlier reports, this year’s Policy Report serves another purpose as well. In line with a suggestion by the Commission, the reports by the 27 national Contact Points of the EMN are to help monitor progress with the implementation of the European Pact on Immigration and Asylum, which was adopted by the European Council on 15 – 16 October 2008.² Under the European Pact the Member States have entered into five basic commitments in immigration and asylum policy. The details and the concrete implementation of these commitments are one of the issues of the Stockholm Programme. The five-year Stockholm Programme³ for the period 2010 – 2014 was adopted on 1 December 2009 by the Council of Ministers of the Interior and Justice and on 10 and 11 December 2009 by the Heads of State and Government. The basic commitments under the European Pact on Immigration and Asylum are as follows:

- Shaping legal immigration with a view to the priorities, needs and reception capacities defined by each Member State and promotion of integration;
- fighting illegal immigration, in particular by making sure that illegally resident foreigners return to their countries of origin or move to a transit country;
- increasing the efficiency of border controls;
- creating a Europe of asylum;
- developing a comprehensive partnership with the countries of origin and transit which promotes synergies between migration and development.

In the framework of the “tracking method”⁴, which aims to monitor the implementation of the European Pact on Immigration and Asylum, the Commission will prepare an annual report, which will in-

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

² Note of the Council of the European Union on the European Pact on Immigration and Asylum, doc. no. 13440/08, 24 September 2008

³ Communication from the Commission on a new EU multi-year programme in the field of justice and interior affairs: “An area of freedom, security and justice serving the citizen”, 10 June 2009, [COM \(2009\) 262 final](#).

⁴ Communication from the Commission to the Council and the European Parliament: “Tracking method for monitoring the implementation of the European Pact on Immigration and Asylum”, 10 June 2009, [COM \(2009\) 266 final](#).

clude contributions from the Member States and factual information from a range of sources. This report will help to prepare the first annual discussion of the Pact in the European Council in June 2010. This Policy Report 2009 for Germany is one of the contributions to the Commission's annual report. In addition to general information on institutional developments and a description of the most important political and legal developments in the areas of immigration and asylum in 2009, it therefore focuses in particular on the progress made with the implementation of the measures foreseen in the European Pact on Immigration and Asylum. In terms of contents, this fifth Policy Report is largely based on the Policy Report 2008.⁵ It follows the structure provided by the EMN, which the EMN Contact Points of the other EU Member States use as well in preparing their national reports and which, for 2009, gives particular weight to the rules of the Pact.⁶

Chapter 1 gives an overview of the political structures, the existing institutions, any changes to these structures and general policy developments in 2009. Chapter 2 sketches relevant political and legal developments and important political debates on migration, integration and asylum. Chapter 3 deals extensively with the concrete political and legal measures in twelve specific areas of immigration and asylum policy with a focus on the basic commitments under the Pact and any progress and new developments in this respect. Chapter 4 finally deals with the implementation and interpretation of EU law in 2009.

⁵ [Policy Report 2008](#) of the German National Contact Point for the European Migration Network (EMN), Nuremberg: Federal Office for Migration and Refugees.

⁶ European Migration Network, Specifications for Annual Policy Report 2009 (Final Version: 20th July 2009), MIGRAPOL Doc 171.

1 General Structure of the Political and Legal System

1.1 General structure of the political system and institutional context

Under the Basic Constitutional Law, the Federal Republic of Germany is a democratic and social federal state (Art. 20(1) of the Basic Constitutional Law). Policies are formulated and implemented in a political system in which legislative and executive responsibilities are shared by the federal government and the 16 federal states (*Länder*). The executive system of the Federal Republic is based on three principles: the chancellor principle, the collegiate principle and the departmental principle. Under the chancellor principle, the chancellor sets the guidelines for policy and manages the affairs of the federal government. The collegiate 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 departmental principle, each minister bears responsibility for his or her department and has specific competences for action.

Below, we will sketch the competences of the major actors in the areas of asylum, migration and integration policy.⁷

- 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 venue of policymaking is the 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 state and federal level.
- In coordination with the BMI, the Federal Ministry of Labour and Social Affairs (BMAS) handles the legal basis for the employment of foreigners and their sector-specific integration into the labour market.
- Under the supervision of the Federal Ministry of Foreign Affairs, the embassies and diplomatic missions abroad are responsible for all passport and visa issues related to foreign countries.
- 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 any 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 institutionally attached to the Chancellery in the rank of a state minister.
- The Federal Government Commissioner for Repatriation Issues and National Minorities is attached to the BMI 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.

⁷ These have remained largely unchanged during the reporting period. For more detailed descriptions please see the [Policy Report 2007](#) and Schneider, Jan (2009) "[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 BMI and is a competence centre for numerous tasks in the fields of migration, integration and asylum. The headquarters of the BAMF are located in Nuremberg; moreover, it has 22 branch offices that are spread across all German 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 Register of Foreign Nationals; recognising research institutions in the framework of the so-called EU Researchers Directive; conducting the admission procedure for Jewish migrants from the former Sowjet Union; 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.⁸
- The roughly 600 foreigners' 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, the organisation of removals and the examination of the presence of any prohibitions on deportation outside asylum procedures.
- 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 Register of Foreign Nationals.

1.2 General structure of the legal system

Legislative responsibilities overlap as well; legislative competencies are split between the federal government and the 16 Länder governments. In principle, the Länder may adopt laws for all areas for which the federal government is not explicitly responsible. While some policy areas are subject to the exclusive legislative power of the federal government, the federal government and the state governments exercise concurrent legislative powers in most areas. This means that the governments of the 16 states may adopt laws in a given field as long as the federal government has not done so before and taken responsibility (Art. 70 – 74 Basic Constitutional Law). In practice, most issues that are subject to concurrent legislation have by now become subject to federal legislation. Issues that are relevant in migration policy, such as nationality, freedom of movement, immigration and emigration, national identity cards, registration issues and foreigners' rights of residence, have been regulated by federal laws. All overarching legislation in the area of refugee and resettlement law has been adopted by the federal government as well. The only major policy subjects which are relevant for migration and are almost exclusively regulated by the federal states are education, research and police affairs; however,

⁸ For a more detailed description please see the [Policy Report 2007](#) and Schneider, Jan (2009) "[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.

removals of foreigners who are obliged to leave the country and transfers under the Dublin Procedure are organised in cooperation with the Federal Police (*Bundespolizei*).

At the Länder level the ministers or senators of the interior are responsible for all asylum and aliens-law-related issues. Even if there are no state laws in the areas of immigration, asylum and integration, the states have a major impact on the actions of the foreigners' authorities, i.e. on administrative implementation, as they adopt decrees and administrative regulations. In addition, they influence federal lawmaking by their rights of participation and veto in the Bundesrat – the second chamber of the German parliament, which consists of representatives of the 16 federal states. In lawmaking, the Bundesrat has a similar role to that of the upper houses or senates in other parliamentary democracies. The Bundesrat discusses each and every bill adopted by the Bundestag (the first chamber of parliament). However, only draft bills of major importance and/or draft bills which will increase the states' administrative expenses need to be adopted by a majority in the Bundesrat as well. In all other cases, a veto by the Bundesrat can be overruled by a qualified majority in the Bundestag. As almost all political measures in the area of migration and asylum somehow impact the federal states directly and burden them with administrative tasks, such laws regularly need to be adopted by the Bundesrat.

Laws and Ordinances

German immigration law is based on international law, European Community law and German constitutional and statute law.

- The Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (the Immigration Act, *Zuwanderungsgesetz*)⁹, whose main provisions entered into force on 1 January 2005, was the beginning of a fundamental redirection of foreigners' law. The Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act, *Aufenthaltsgesetz*) – the key element of the Immigration Act – forms the most important legal basis for the entry, residence and employment of third-country nationals in Germany. It also defines the legal minimum state efforts to promote integration, in particular via language and orientation courses. In contrast, the 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.¹⁰
- Article 16a(1) of the Basic Constitutional Law (*Grundgesetz*) grants persons who are subject to political persecution a right to asylum in Germany. Applications for asylum are examined in the framework of an asylum procedure under the Asylum Procedure Act (*AsylVfG*).¹¹
- Foreigners who are threatened by political prosecution are granted refugee status within the meaning of the Convention relating to the status of refugees of 28 July 1951 (Geneva Convention) pursuant to the provisions set out in the Asylum Procedure Act and the Residence Act. The rules for granting residence permits to persons who are entitled to asylum and for subsidi-

⁹ Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Immigration Act) of 30 July 2004 (Federal Law Gazette I, p. 1950); parts of the Immigration Act already entered into force on 6 August 2004 and on 1 September 2004 (see Art. 15 (1) and (2) of the Immigration Act).

¹⁰ [Regulation \(EC\) No. 562/2006](#) of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). Issues concerning the residence and freedom of movement of citizens of other EU Member States are regulated in the second part of the Immigration Act, the Act on the Freedom of Movement of EC Nationals (Free Movement Act/EU) of 30 July 2004 [Federal Law Gazette I, p. 1950, 1986], last amended by Article 7 of the Act dated 26 February 2008 [Federal Law Gazette I, p. 215].

¹¹ Asylum Procedure Act (*AsylVfG*) in the version promulgated on 2 September 2008 (Federal Law Gazette I, p. 1798), as amended by Article 18 of the Act dated 17 December 2008 (Federal Law Gazette I, p. 2586).

ary protection are also set out in the Residence Act, section 25 (1) and section 60 (2), (3), (5) and (7).

- The Asylum Seekers Benefits Act (AsylbLG)¹² forms the legal basis for benefits for asylum seekers during the asylum procedure and for other foreigners whose residence is not meant to be permanent.
- The key legal basis for the administration of foreigners' data stored by the authorities is the Central Register of Foreign Nationals Act (*Ausländerzentralregistergesetz*, AZRG).¹³

Below the federal level there have been a number of ordinances which set out the legal framework for the residence, employment and integration of foreigners as well as benefits for asylum seekers and procedures for dealing with them.

- The Ordinance Governing Residence¹⁴ clarifies details concerning the entry into and residence in the Federal Territory, fees and procedural rules for the granting of residence titles.
- The Employment Ordinance¹⁵ clarifies the procedures for permitting 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 Ordinance¹⁶ supplements the Employment Ordinance and specifies under which conditions foreigners who are legally resident in Germany may take on a job.
- The Integration Course Ordinance¹⁷ 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 admission procedures for public and private course providers.
- The Ordinance on Determining Responsibilities in the Area of Asylum¹⁸ regulates the competencies and responsibilities of the major operative authorities in the asylum procedures. In doing so, it takes into account key Community law, such as the Dublin Agreement or the Eurodac Regulation.
- The Ordinance on Naturalisation Tests¹⁹ regulates the naturalisation tests (see chapter 3.8).

¹² Act on Benefits to Asylum Seekers (AsylbLG) of 5 August 1997 (Federal Law Gazette I, p. 2022), last amended by Article 2 e of the Act dated 24 September 2008 (Federal Law Gazette I, p. 1856).

¹³ Central Register of Foreign Nationals Act (AZRG) of 2 September 1994 (Federal Law Gazette I, p. 2265), last amended by Article 4 (4) of the Act dated 30 July 2009 (Federal Law Gazette I, p. 2437).

¹⁴ Ordinance Governing Residence (Aufenthaltsverordnung, AufenthV) of 25 November 2004 (Federal Law Gazette I, p. 2945), last amended by the Ordinance dated 15 June 2009 (Federal Law Gazette I, p. 1287).

¹⁵ Employment Ordinance (Beschäftigungsverordnung, 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).

¹⁶ Employment Procedure Ordinance (Beschäftigungsverfahrensverordnung, 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).

¹⁷ Integration Course Ordinance (Integrationskursverordnung, 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).

¹⁸ Ordinance Reformulating the Ordinance on Determining Responsibilities in the Area of Asylum (Asylzuständigkeitsbestimmungsverordnung, AsylZBV) of 2 April 2008 (Federal Law Gazette I, p. 645).

¹⁹ Ordinance on Naturalisation Tests of 5 August 2008 (Federal Law Gazette I, p. 1649).

General Administrative Regulation relating to the Residence Act

In its meeting of 18 September 2009 the Bundesrat approved the General Administrative Regulation relating to the Residence Act (*Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz, AVwV-AufenthG*). This Regulation aims in particular to harmonise administrative practices in the application of the Residence Act both in Germany and at the embassies, which grant visa, and to guarantee minimum standards. It entered into force at the date of its publication in the Joint Ministerial Gazette in October 2009.²⁰

²⁰ Joint Ministerial Gazette No. 42-61, dated 30 October 2009, p. 877.

2 Political; Policy and Legislative; and Institutional Developments

2.1 General political developments

Elections in the Federal Republic of Germany

On 27 September 2009, elections to the 17th Bundestag (German parliament) were held. The conservative sister parties Christian Democratic Union (*Christlich Demokratische Union*, CDU) and Christian Social Union (*Christlich Soziale Union*, CSU) won the elections with a joined share of 33.8% of the valid second votes. Nevertheless, their overall result was somewhat lower than in the preceding elections (-1.4 percentage points), largely due to major losses by the CSU in Bavaria. The social democrats (*Sozialdemokratische Partei Deutschlands*, SPD) suffered considerable losses and gathered only 23% of the vote (-11.2 percentage points). The liberals (*Freie Demokratische Partei*, FDP) increased their share of the vote by almost 5 percentage points, to 14.6%, and became the third-largest group in the Bundestag. The parties The Left (11.9%) and Alliance 90/The Greens (10.7%) also increased their shares of the vote in comparison to 2005 and entered parliament again. All other parties obtained a cumulative 6% of the vote, with no party overcoming the 5% threshold for representation in parliament. The Pirate Party (*Piraten-Partei*), which participated in elections for the first time ever, got 2% of the vote, the right-wing extremist party *Nationaldemokratische Partei Deutschlands* (NPD) got 1.5%. At only 70.8%, voter participation was the lowest ever (about 7 percentage points lower than in 2005). The 17th Bundestag has 622 members. The strongest group is that of the CDU/CSU (239 seats), ahead of the SPD (146 seats), the FDP (93 seats), the Left (76 seats) and Alliance 90/The Greens (68 seats). On 26 October 2009, the CDU, the CSU and the FDP signed a coalition agreement²¹, and on 28 October Angela Merkel (CDU) was re-elected as chancellor of the Federal Republic.

In addition to the Bundestag elections, state elections (*Landtag* elections) were held in five federal Länder. Early elections were held in Hesse on 18 January 2009 after the state parliament had dissolved on 19 November 2008 on the grounds that efforts to form a government had failed after the state elections of January 2008.²² The CDU won the elections with a share of 37.2% of the vote, so caretaker state prime minister Roland Koch was re-elected. The SPD suffered considerable losses and registered its worst result ever in Hesse (23.7%). Both the FDP and the Greens considerably increased their shares of the vote (16.2% and 13.7%, respectively). The Left was the fifth party to enter the Landtag (5.4% of the vote). The CDU and the FDP formed a coalition government.

At the state elections in Saarland held on 30 August 2009, the CDU gained 34.5%, the SPD 24.5%, the Left 21.3%, the FDP 9.2% and Alliance 90/The Greens 5.9% of the vote. The CDU formed a coalition with the FDP and the Greens. This is the first coalition between these three parties at Länder level. Peter Müller (CDU) was re-elected prime minister.

On 30 August 2009, the Thuringians elected a new state parliament, too. In Thuringia, the CDU got 31.2% of the vote, the Left 27.4%, the SPD 18.5%, the FDP 7.6% and the Greens 6.2%. On 30 October Christine Lieberknecht (CDU) was elected prime minister by the Thuringian state parliament. She heads a CDU/SPD coalition.

The Brandenburg state elections, which took place on the same date as the Bundestag elections (27 September), kept prime minister Matthias Platzeck (SPD) in office. The social democrats gained 33%

²¹ [Growth, Education, Unity](#). The coalition agreement between the CDU, CSU and FDP for the 17th legislative period.

²² see [Policy Report 2008](#), p. 9 *et seq.* (EN, p. 7)

of the vote. The Left became the second-strongest group in the state parliament (27.2%), followed by the CDU (19.8%). In contrast to 2004, when the SPD (which was the strongest group at the time, too) formed a coalition with the CDU, it now allied itself with the Left; the coalition agreement was signed on 5 November 2009. Beyond the SPD, the Left and the CDU, Alliance 90/The Greens (5.6%) and the FDP (7.2%) are represented in the Brandenburg state parliament.

On 27 September state elections were also held in Schleswig-Holstein. In that state, the CDU gained 31.5% of the vote, the SPD 25.4%, the FDP 14.9%, the Greens 12.4% and the Left 6.0%. The South Schleswig Voters' Committee (*Südschleswigscher Wählerverband*, SSW), which represents the Danish minority in Schleswig-Holstein and is exempt from the five-percent threshold, got 4.3% of the vote. Peter Harry Carstensen (CDU) was re-elected prime minister. He leads a CDU/FDP coalition government.

European elections took place on 7 June in Germany. At 43.3%, voter participation was roughly in line with the EU average (43.0%). In Germany, the CDU gained 30.7% of the vote (2004: 36.5%), the SPD 20.8% (2004: 21.5%), Alliance 90/The Greens 12.1% (2004: 11.9%), the FDP 11.0% (2004: 6.1%), the Left 7.5% (2004: 6.1%) and the CSU 7.2% (2004: 8.0%). 10.8% of the vote went to other parties (2004: 9.8%). The Federal Republic of Germany holds 99 seats in the European Parliament (out of a total of 736).

Changes in political responsibilities for migration and asylum issues

Now that coalition negotiations between the CDU, the CSU and the FDP after the parliamentary elections are over, the CDU again holds the Federal Ministry of the Interior, which is responsible for migration and asylum policy issues (among other things). As former Minister of the Interior Wolfgang Schäuble (CDU) became Minister of Finance, Thomas de Maizière (CDU), who had headed the Chancellery during the 16th legislative period, was appointed Minister of the Interior in October 2009.

In Brandenburg, the state elections also led to a change at the top of the Ministry of the Interior. On 6 November, Rainer Speer (SPD) took over from Jörg Schönbohm (CDU). New Ministers of the Interior were also appointed in Saarland, Saxony, Schleswig-Holstein and Thuringia in autumn 2009. They are as follows: Saarland: Stephan Toscani (CDU; since 10 November 2009); Saxony: Markus Ulbig (CDU, 30 September 2009); Schleswig-Holstein: Klaus Schlie (CDU, 27 October 2009); and Thuringia: Peter Huber (CDU, 4 November 2009).

It was Bremen's turn to chair the Standing Conference of the State Ministers and Senators of the Interior in 2009.

2.2 General overview of main policy and/or legislative debates

Plans to introduce a visa warning file

The CDU, CSU and FDP coalition government announced in its coalition agreement of 26 October 2009 that it plans to establish a central visa warning file during the 17th legislative period. In particular, the database is to support the German visa authorities in their work and speed up the visa procedure. It was agreed that data on hosts, guarantors or corroborators shall only be recorded as a necessary addendum to data sets if there are warning elements in the file.²³

²³ [Growth, Education, Unity](#). The coalition agreement between the CDU, CSU and FDP for the 17th legislative period, p. 113.

A visa and host warning file was already planned to be introduced by the past federal government at the end of the 16th legislative period as a national complement to the European Union Visa Information System (VIS). However, the draft bill was controversial within the coalition itself and in society and failed at the beginning of March 2009 due to resistance by then Minister of Justice Brigitte Zypries, who went back on her initial support for the project, quoting massive criticism by the churches, associations and the business world.²⁴

Expiration of the legal provisions for old cases

In connection with the Act on the Implementation of EU Directives on Residence and Asylum Issues of 19 August 2007 (Directives Implementation Act) the Bundestag created time-limited provisions for old cases, i.e. migrants without residence permits whose deportation had been suspended for a long time and who had made integration efforts (section 104a Residence Act) could be issued with a residence permit. This provision aimed to take into account the fact that some migrants who were, in principle, obliged to leave Germany, but had been living in the country for years and were integrated into German society wanted to have a chance of permanently staying in Germany.²⁵ Many of them, however, were only granted a “residence permit on trial”, as they were unable to provide for their own needs by working, not least due to the difficult labour-market situation in the wake of the economic crisis. As the residence permits on trial were to run out on 31 December 2009, however, Members of the Bundestag and refugee support organisations called for follow-up provisions in order to prevent that the persons concerned would fall back into the weak status of a temporary suspension of deportation (exceptional leave to remain, *Duldung*) and would be obliged to leave Germany.²⁶

The Federal Ministry of the Interior and the CDU/CSU parliamentary group also found that some holders of a residence permit on trial were unable to have it prolonged, simply because the difficult economic situation rendered them unable to provide for their own needs by working, and that a follow-up regulation should be found, if at a lower level than a full-fledged law.²⁷ On 4 December 2009 the Standing Conference of the Ministers and Senators of the Interior of the federal Länder agreed upon a follow-up regulation (see chapter 3.9.2).

Considerations concerning the establishment of a Federal Ministry for Migration/Integration

Ahead of the parliamentary elections on 27 September 2009 and during the coalition negotiations between the CDU, the CSU and the FDP, several experts and representatives of migrant organisations considered the establishment of a separate ministry for migration and integration.²⁸ However, the coalition agreement signed by the CDU, the CSU and the FDP on 26 October 2009 does not foresee any changes in the responsibilities of the federal ministries or at the lower levels of government in terms

²⁴ See [Migration und Bevölkerung No. 3/2009](#), p. 1.

²⁵ see [Policy Report 2008](#), p. 30.

²⁶ See for example [Position Paper of Pro Asyl and Refugee Councils](#) on occasion of the Conference of the Ministers of the Interior in December 2009, “Hartherzige Vorschläge zum Bleiberecht. Flüchtlingsorganisationen zu den Vorschlägen einiger Landesinnenminister im Vorfeld der Innenministerkonferenz”, 26 November 2009; motion of the parliamentary group of Alliance 90/The Greens “Verlängerung der Frist für die gesetzliche Altfallregelung”, [Bundestag printed paper 13/12434](#) of 25 March 2009; motion of the parliamentary group of The Left “Für ein umfassendes Bleiberecht”, [Bundestag printed paper 17/19](#) of 10 November 2009; draft bill of the parliamentary group of Alliance 90/The Greens “Entwurf eines Gesetzes zur Änderung des Aufenthaltsgesetzes”, Bundestag [printed paper 17/34 \(new\)](#) of 13 November 2009; draft bill of the parliamentary group of the SPD “Entwurf eines Gesetzes zur Änderung des Aufenthaltsgesetzes (Altfallregelung)”, [Bundestag printed paper 17/207](#) of 15 December 2009.

²⁷ See, for example, MP Reinhard Grindel, [Bundestag plenary protocol 17/7](#) of 26 November 2009, p. 456D. On 4 December 2009 the Standing Conference of the State Ministers and Senators of the Interior decided upon a follow-up regulation (see also chapter 3.9).

²⁸ See “Ein Integrationsministerium?”, *Frankfurter Allgemeine Zeitung*, 10 October 2009, p. 6; *Süddeutsche Zeitung*, 13 October 2009, p. 5; AFP, 18 October 2009; *Migration und Bevölkerung* 8/2009, p. 1.

of integration and migration. The Federal Ministry of the Interior and the Federal Government Commissioner for Migration, Refugees and Integration at the Chancellery, Maria Böhmer, will both continue to bear the main responsibility for matters pertaining to integration and migration.

Introduction of integration agreements

However, the coalition agreement provides for the introduction of “integration agreements” between migrants and the state. These agreements are to underline the binding character of individual integration promotion. They will contain commitments to the necessary measures for successful integration into German society and the German labour market and will be reviewed regularly. The federal government hopes to reach both new migrants and foreigners who have been living in Germany for some time with this instrument. The agreements will focus on language skills, education and training as well as on information and advice on services offered by government and community organisations. Individual consultation, for example via “integration facilitators” (*Integrationslotsen*), is to be included as well. Integration agreements are to be introduced gradually from 2010. Society, migrant associations and researchers responded differently to the federal government’s initiative, with the reactions spanning the whole range from fundamental support to rejection.²⁹

Discussion about the „option provision“ and double nationality

Against the background that, since 2008, several thousands of young adults in Germany who hold two nationalities have to decide upon one of them within five years³⁰, the future handling of this option provision in nationality law was discussed ahead of the federal elections 2009. The Expert Council on Integration and Migration (*Sachverständigenrat der deutschen Stiftungen für Integration und Migration*) called for a suspension of the option provision, as the current rule left considerable room for interpretation by authorities and courts – a fact which increased the likelihood of numerous lawsuits if the rule was to be enforced.³¹ In their coalition agreement the CDU/CSU and the FDP agreed on keeping the option provision. However, the first option cases are to be “examined to determine if there is a need for changes in procedural law or substantive law, and if so, then suitable proposals should be drawn up”. The federal government’s aim is to see as many people as possible opt for German citizenship if they qualify. Unreasonable obstacles to naturalisation are therefore to be removed.³²

Access to education and healthcare for illegal migrants

The federal government also announced in its coalition agreement that it wanted to change the information obligations of public agencies in such a way that children of illegal immigrants can go to school without having to fear to be detected and removed. Social organisations such as the German Institute for Human Rights had called for improving the education of children of illegal migrants and presented recommendations to that effect to policymakers.³³ In mid-September 2009, the Bundesrat

²⁹ See [“Integrationsvertrag soll kommen”](#), SWR International, 23 November 2009.

³⁰ See [Policy Report 2008](#), p. 26 et seq.

³¹ See [“Viel getan, viel zu tun: Empfehlungen für die neue Regierungskoalition”](#), information by the Expert Council of German Foundations on Integration and Migration (SVR), October 2009, p. 4.

³² [Growth, Education, Unity](#). The coalition agreement between the CDU, CSU and FDP for the 17th legislative period, p. 109.

³³ See Hendrik Cremer, [“Das Recht auf Bildung für Kinder ohne Papiere. Empfehlungen zur Umsetzung”](#), Policy Paper No 14, German Institute for Human Rights, December 2009.

had adopted the General Administrative Regulation relating to the Residence Act (*Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz*, AVwV-AufenthG)³⁴, which makes it easier for illegal migrants to get medical help. Foreigners who do not hold a residence permit receive health insurance via the social offices (e.g., section 4 AsylbLG). So far, these offices were obliged to report illegal migrants to the foreigners' authorities. Now, hospital administrations and social offices are no longer obliged to report such information.

Based on a draft bill prepared by the SPD parliamentary group, the Bundestag discussed potential legislation for the first time on 26 November.³⁵ The debate will be continued in the parliamentary committees in 2010.

2.3 Institutional developments

“Alliance for Labour”

As foreseen in its action programme “Labour migration’s contribution to securing the skilled labour base in Germany” of 16 July 2008³⁶, the federal government convened an alliance to advise the federal government concerning the demand for labour (the “Alliance for Labour”) in spring 2009. The Alliance was chaired by then Minister of Labour and Social Affairs Olaf Scholz (SPD). The Alliance for Labour is to provide a long-term platform for an open dialogue about the demand for foreign labour in Germany; it is maintained by the new federal government in the 17th legislative period. The Alliance’s task is to make statements on the current and future development of the demand for and supply of labour in Germany, broken down by sectors, regions and qualification. Moreover, concrete bottlenecks in the supply of qualified labour are to be presented and the effects of demographic changes on the labour market in Germany are to be analysed in detail. In addition, the participants are to develop proposals to meet the demand for labour. A lack of qualified labour is to be prevented by providing targeted qualification and by immigration. The Alliance for Labour includes numerous government officials and representatives of society. It consists of representatives of the responsible federal ministries and the Federal Government Commissioner for Migration, Refugees and Integration as well as high-ranking representatives of the federal Länder, the trade unions, the employers’ associations, the craft associations, the chambers of commerce, business and academia.

Following the kick-off event on 30 March 2009, the second meeting of the Alliance took place on 1 July 2009. Participants took a joint decision to establish and prepare a labour-market monitoring system.³⁷

German Islam Conference

On 25 June 2009, the fourth and – for now – last plenary meeting of the German Islam Conference (DIK) established by then Federal Minister of the Interior Wolfgang Schäuble in 2006 took place.³⁸ Three out of the four Muslim associations represented in the DIK approved a joint, final declaration

³⁴ See [Bundesrat printed paper 669/09](#) of 27 July 2009 and [Bundesrat printed paper 669/09/01 \(decision\)](#) of 18 September 2009 as well as *Frankfurter Rundschau*, 19 September 2009, p. 7.

³⁵ See draft bill by the SPD parliamentary group “Entwurf eines Gesetzes zur Änderung des Aufenthaltsgesetzes”, [Bundestag printed paper 17/56](#) of 24 November 2009; [Bundestag plenary protocol 17/7](#) of 26 November 2009, pp. 507B-514A.

³⁶ See [Policy Report 2008](#), p. 13 et seq.

³⁷ See [Resolution by the alliance to advise the federal government concerning the demand for labour](#), 1 July 2009.

³⁸ For detailed information on the DIK see [Policy Report 2008](#), p.11 et seq.

and called for continuing the work. They declared that they shared the recommendations summarised in the final declaration. These include, for example, promoting a consensus on social values, finding solutions for practical, religion-related issues in schools and establishing faculties for Muslim theology in Germany. In his speech at the final meeting, Mr Schäuble called for further progress and creating cooperation from the dialogue interspersed with concrete steps, saying: “In order to do so, we should be involved closely in the ideas of the federal Länder and strengthen the links between the Islam Conference and the Länder and local authorities.”³⁹

The coalition agreement between the CDU, the CSU and the FDP says that the DIK is to be continued in the 17th legislative period, and Mr. Schäuble’s successor, Minister of the Interior Thomas de Maizière, announced that the work of the DIK will be continued and deepened.

Federal advisory committee for integration

In the framework of developing the National Integration Plan (NIP) from an overall concept for integration policy to an action plan with clearly defined and measurable goals, the federal government plans to continue the institutionalised dialogue in good faith between the state and society, in particular migrants, in the 17th legislative period. The Bundestag is to be included in this procedure. A federal advisory committee for integration is to be established; its main task will be to support and advise the Federal Government Commissioner for Integration in her work. Members of this committee are to represent a broad and balanced spectrum from practice, academia and research.

³⁹ [Speech by Federal Minister Dr. Wolfgang Schäuble](#) at the opening of the 4th plenary meeting of the German Islam Conference (DIK) on 25 June 2009 at Berlin; own translation.

3 Specific Developments in Asylum and Migration

3.1 Control and Monitoring of Immigration

3.1.1 Commitments in the European Pact on Immigration and Asylum

Commitment II(c): ensure that risks of irregular migration are prevented

n/a

Commitment II(h): an Expulsion Decision taken by one Member State (MS) should be applicable throughout the EU and entered into the SIS/ implementation of Directive 2001/40/EC

The Council Directive on the mutual recognition of decisions on the expulsion of third country nationals⁴⁰ was incorporated into German law in 2005. Pursuant to Section 58 (2) sentence 1 no. 3 of the German Residence Act (*Aufenthaltsgesetz*, *AufenthG*), the requirement to leave the Federal territory is enforceable if the foreigner becomes obliged to leave the Federal territory by virtue of a ruling on his or her return pursuant to Article 3 of the Directive, provided that the ruling concerned is recognised by the competent authority. Any alerts in the SIS pursuant to Art. 96 (3) of the Schengen Convention will be observed by the competent authorities in the visa procedure during border/entry control and in the residence permit procedure.

The Federal Office for Migration and Refugees acts as National Contact Point in the sense of the Council Decision on the compensation of the financial imbalances resulting from the application of the Directive.⁴¹ The National Contact Point is responsible for communicating the relevant data to the other Member States. One of its most important tasks is to ensure that the Member State which has made the decision compensates the executing Member State for its expenses. It is the foreigners' authorities which decide on whether the Directive is applied and whether the legal preconditions for its application exist.

Commitment III(a): more effective control of the external land, sea and air borders

An effective control of the external borders is ensured pursuant to the Schengen Borders Code and the "best practices" identified by the Schengen countries.⁴²

Commitment III(b): generalise the issue of biometric visas, improve cooperation between MSs' consulates and set up joint consular services for visas

World-wide, Germany has entered into 233 Schengen representation agreements for 18 Member States; negotiations on eight further representation agreements are currently underway with two Member States. Germany is represented by six partners at a total of 25 locations.

⁴⁰ Directive [2001/40/EC](#) of 28 May 2001.

⁴¹ Council Decision [2004/191/EC](#) of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals (Official Journal L 60, p. 55).

⁴² Cf. also Commission Recommendation establishing a common "[Practical Handbook for Border Guards \(Schengen Handbook\)](#)" to be used by Member States' competent authorities when carrying out the border control of persons, C (2006) 5186 final.

Commitment III(d): solidarity with MS subjected to disproportionate influxes of immigrants

The Federal Republic of Germany supports certain Member States in the context of FRONTEX deployments (see section 3.12.1).

Commitment III(e): deploy modern technological means for border control

Up-to-date document readers and document verification systems enable the border control authorities to efficiently verify the authenticity of an ID document on the basis of visual and digital features. The Labour Migration Control Act⁴³ of 20 December 2008 implements the Council Regulation on standards for security features and biometrics in passports and travel documents.⁴⁴ An amendment to Section 99 (1) no. 13a Residence Act created the legal basis necessary for an ordinance to regulate the issuance of German travel documents for foreigners, travel documents for refugees and travel documents for stateless persons in line with European standards. This provision entered into force on 25 December 2008 (the remainder of the Labour Migration Control Act entered into force on 1 January 2009). The Fourth Ordinance to Amend the Ordinance Governing Residence,⁴⁵ which was adopted pursuant to this provision, entered into force on 29 June 2009.

In the future, biometric systems will help to verify the identity of document holders in border control procedures (visa controls, controls of e-passports). Introducing auto gates for persons who enjoy freedom of movement within the EU and for registered travellers whose identity is verified beforehand will reduce lines in front of conventional passport control booths and free up staff for controls of third-country nationals.

Germany has supported the preparatory Commission work on the planned proposals for legal provisions by

- participating in the Commission consultation procedure with the Member States, which started in October 2008,
- answering the questionnaires on a number of organisational, technical and legal aspects of the project presented by the presidencies of the Council working group on border issues and
- participating in the Schengen-wide survey on the number of entries into and exits out of the Schengen area, which was conducted between 31 August and 6 September 2009.

Commitment III(f): intensify cooperation with the countries of origin and of transit in order to strengthen border control

Germany has deployed 22 liaison officials of the Federal Police to 21 countries on the basis of bilateral agreements. This deployment helps to improve international cooperation and to jointly influence migration flows early on. Moreover, deploying experienced border police officers to other EU border authorities is a useful way to communicate border-police know-how, to provide support in concrete border-police activities and to intensify and improve cooperation. In 2009, six officials were deployed

⁴³ Act to Control the Immigration of Highly Qualified Foreigners adequate to the Labour Market and to amend further regulations of the Resident Law (Arbeitsmigrationssteuerungsgesetz) of 20 December 2008 (Federal Law Gazette I, 24 December 2008, p. 2846).

⁴⁴ [Council Regulation \(EC\) No 2252/2004](#) of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (Official Journal L 385, p. 1).

⁴⁵ [Federal Law Gazette I, p. 1287](#).

to four locations on the basis of bilateral agreements. In addition, Germany has supported the conclusion of working agreements between FRONTEX and third countries.

3.1.2 Additional/Complementary Developments

Programme for internal security

On 3 June 2009, the Standing Conference of the State Ministers and Senators of the Interior adopted a follow-up programme to the German programme for internal security (“*Programm Innere Sicherheit*”).⁴⁶ The programme describes the current and expected security situation in Germany. Two of its main issues are “Demographics, migration and integration” and “Border security after the abolishment of border controls”. The programme describes the migration volume – i.e. immigration to and emigration from Germany – as “comparatively high”. It says that net immigration is positive even though the number of immigrants has declined considerably. The programme calls for:

- strengthening measures to build trust and improve the dialogue between security authorities and migrant associations;
- making migrant associations more aware of security-related issues;
- including migrants in staff selection procedures;
- strengthening the intercultural and language competence and the understanding of integration procedures within the police and the public administration.

The programme chapter on “Border security after the abolishment of border controls” focuses on the extension of the Schengen area and the related freedom of movement. As Switzerland joined the Schengen area in 2009, Germany no longer has any external borders apart from airports and seaports. The programme calls for making sure that criminals do not abuse the freedom of movement. Jörg Schönbohm, who was minister of the interior of Brandenburg at the time of the programme’s adoption, said that ensuring a close and smooth cooperation of the security authorities in border areas was necessary against the background of the freedom of movement.

3.2 Refugee Protection and Asylum

3.2.1 Commitments in the European Pact on Immigration and Asylum

Commitment IV (c): solidarity with MS which are faced with specific and disproportionate pressures on their national asylum systems

So far, Germany has not received official requests for support from other Member States which seek to obtain a compensation of expenses resulting from a disproportionate influx of asylum seekers. However, the Federal Republic is in principle open for a non-binding, EU-wide mechanism for the internal distribution of persons who can claim international protection within the framework of a European solution. In contrast, it rejects to enter into a binding agreement to share the burden.

Within the framework of an EU pilot project, Germany has agreed to admit 100 persons in need for protection from Malta.⁴⁷ Pursuant to a commitment made in 2008, on 10 December 2009 a group of 11 persons from Malta have been flown out of Malta and admitted to Germany. The refugees are from

⁴⁶ Regular conference of the state ministers and senators of the interior (2009): [Programm Innere Sicherheit, Fortschreibung 2008/2009](#).

⁴⁷ cf. [BT-Drs. \(printed paper\) 17/203](#) vom 15. Dezember 2009, p. 10.

Eritrea as well as Somalia and will be settled in the Federal States of Northrhine-Westphalia, Lower Saxony, Bavaria and Hesse.⁴⁸

Commitment IV (e): MS are invited to provide the personnel responsible for external border controls with training in the rights and obligations pertaining to international protection

The Federal Police Academy in Lübeck has been cooperating with the EU border protection agency FRONTEX since 2007 within the framework of a Declaration of Partnership. In 2009, the Federal Police participated in 15 out of 18 FRONTEX training projects. It is in this context that a seminar on Human Rights was organised at the Federal Police Academy, with 18 experts from a number of Member States and from the UNHCR participating in the development of a curriculum for a future FRONTEX seminar on this issue.

In principle, the regular training for police service covers all relevant legal areas, in particular EU law, human rights and asylum law, so training within the meaning of Commitment IV (e) of the European Pact on Immigration and Asylum is provided. Police officers regularly receive information on latest developments and can participate in training schemes.

3.2.2 Additional/Complementary Developments

Development of the number of asylum applications and decision practices

Compared to 2008, the number of first asylum applications rose by 25.2% in 2009 (from 22,085 to 27,649). According to the Federal Ministry of the Interior, this development is due to three factors. First, the number of Iraqi asylum applicants remained largely unchanged from 2008 (2009: 6,538 applications; 2008: 6,836). Second, the number of asylum seekers from Afghanistan increased considerably (from 657 in 2008 to 3,375 in 2009). Third, significantly more asylum applicants came to Germany from other main countries of origin such as Iran, Nigeria and India. In 2009, the five main countries of origin of asylum seekers in Germany were Iraq, Afghanistan, Turkey (1,429 initial applications), Kosovo (1,400 initial applications) and Iran (1,170 initial applications).

Concerning the decisions on first asylum applications in 2009, the total protection ratio fell slightly, from 37.7% in 2008 to 33.8% in 2009. 8,115 persons – among them 5,517 Iraqis – were recognised as refugees under the Geneva Convention or as entitled to asylum (28.2% of all asylum seekers) under the German Basic Constitutional Law. In addition, 1,611 persons (5.6%) were granted subsidiary protection (prohibition of deportation pursuant to section 60 (2), (3), (5) or (7) of the Residence Act). The total protection ratio is still considerably higher than in either 2007 (27.5%) or 2006 (6.3%). With a view to the main countries of origin, the protection ratio was highest in 2009 for asylum seekers from Iraq (63.9%) and Afghanistan (58.6%), with most of the Iraqi asylum seekers being recognised as refugees under the Geneva Convention and most of the Afghani applicants being granted subsidiary protection.

Resettlement of Iraqi refugees

On 19 March 2009, the first group of Iraqi refugees arrived in Germany. They are to be resettled on the grounds of a decision of the Federal Minister of the Interior and the state ministers and senators of

⁴⁸ Vgl. [„Aufnahme von 11 Flüchtlingen“](#), Deutsche Botschaft Valetta.

the interior dated 5 December 2008. Overall, 2,500 refugees from Iraq who are living in Syria and Jordania are to be brought to Germany. They will be granted residence pursuant to section 23 (2) of the Residence Act (“admission when special political interests apply”).⁴⁹

At the occasion of the constitution of the Bundestag and the federal government for the 17th legislative period, the UNHCR representation for Germany and Austria published a basic outline on refugee protection in October 2009.⁵⁰ The UNHCR wrote that the resettlement procedure for Iraqi refugees had made Germany play an exemplary role among the EU Member States and praised the country for making a considerable contribution in an international comparison to dealing with the consequences of the Iraqi refugee crisis. At the same time the UNHCR suggested creating a long-term, systematic resettlement programme in Germany in order to create binding rules for the regular resettlement of particularly vulnerable refugees from the countries they had first fled to. The number of potential resettlers was to be determined each year. The UNHCR wrote that creating such an institutionalised resettlement programme would permit quicker and more flexible responses to acute resettlement needs, if necessary.

Not only the UNHCR, but also the Federal Office for Migration and Refugees regard the resettlement of Iraqi refugees in Germany as a success and support resettlement as a measure of quick humanitarian help in the future, where appropriate in the framework of ad-hoc measures.⁵¹

Legal consolidation of Hardship Commissions

The Labour Migration Control Act lifted the deadline (31 December 2009) for cases of hardship falling under the provision of section 23a Residence Act on 1 January 2009. Thus, the provision will remain in place without a time limit.⁵² The new rule aims to find a humanitarian solution to particular cases of foreign nationals in Germany which cannot be resolved adequately through routine application the Residence Act.⁵³

3.3 Unaccompanied Minors and other vulnerable groups

Asylum applications by unaccompanied minors

In 2009, 1,304 unaccompanied foreign minors made an initial asylum application in Germany. This means that the number of applications by unaccompanied minors rose palpably once again. In 2008, the number of asylum applications by unaccompanied minors had already risen significantly in comparison to the previous year (763 applications in 2008 compared to 180 in 2007).⁵⁴ The five main countries of origin of unaccompanied minors in 2009 were Afghanistan (453 unaccompanied minors), Iraq (223), Vietnam (61), Guinea (48) and Ethiopia (45). The rise in the overall figure is largely due to

⁴⁹ For details of the resettlement procedure see [Policy Report 2008](#), p. 18, and Parusel, Bernd (2010): [The Granting of Non-EU Harmonised Protection Statuses in Germany](#), Research Study II/2009 in the framework of the European Migration Network, Working Paper 30, Nuremberg: Federal Office for Migration and Refugees, p. 27-28 and 73-74.

⁵⁰ UNHCR (2009): [Eckpunkte-Papier zum Flüchtlingsschutz](#), Berlin: UNHCR Regional Office for Germany and Austria.

⁵¹ See “Auf der Flucht vor dem Klimawandel”, *Süddeutsche Zeitung*, 21 November 2009.

⁵² The Hardship Commissions established on the *Länder* level may lodge a petition to the respective State Government to order a residence permit to be issued to a foreigner who is enforceably required to leave the Federal territory, if urgent humanitarian or personal grounds justify the foreigner’s continued presence (cf. [Policy Report 2008](#), p. 19).

⁵³ Cf. Parusel, Bernd (2010): [The Granting of Non-EU Harmonised Protection Statuses in Germany](#), Research Study II/2009 in the framework of the European Migration Network, Working Paper 30, Nuremberg: Federal Office for Migration and Refugees, p. 28-29.

⁵⁴ See [Policy Report 2008](#), p. 19.

a surge in the number of applicants from Afghanistan. The number of unaccompanied minors from Afghanistan who filed an asylum application in Germany jumped from 61 in 2008 to 453 in 2009.

The protection ratio⁵⁵ of unaccompanied minors seeking asylum also continued to rise in 2009 and reached a historical high. From 10% in 2007 (unaccompanied minors below the age of 16), the protection ratio jumped to 44.4% in 2008 and 48.6% in 2009 (including unaccompanied minors aged 16 or 17).

Withdrawal of the German reservation in respect of the UN Convention on the Rights of the Child

In 1992 the Federal Government had declared that the provisions of the UN Convention on the Rights of the Child (UN Children's Rights 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 interpretation 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.

The coalition agreement between the CDU, the CSU and the FDP signed after the elections of 27 September 2009 says on the issue of children's rights that the new government will aim to withdraw this reservation, which has been criticised by Human Rights Organisations for a long time.⁵⁶

Asylum seekers with special needs

Asylum applicants regularly claim health issues in asylum procedures. Post-traumatic stress disorder (PTSD) is often invoked. Between 1 January and 30 September 2009, 372 persons claimed in their application that they had suffered a trauma. In such cases the Federal Office for Migration and Refugees examines whether protection may be granted for health reasons. Depending on the asylum seeker's claims, this protection can take the form of the applicant's being recognised as entitled to asylum, his being recognised as a refugee under the Geneva Convention or being granted subsidiary protection under section 60 (7) sentence 1 AufenthG. However, there are no statistical data on whether an asylum seeker is granted protection on the grounds that he has suffered a trauma or for other reasons.

The BAMF staff themselves are not trained to recognise PTSD or other psychological illnesses, as they do not have the necessary medical and psychological education. The face-to-face asylum interview therefore simply aims at recognising unusual behaviour or unusual statements by the asylum seekers and thus to collect evidence whether they might be victims of violence or gender-specific persecution. If interviewers get the impression that the asylum seeker suffers from a psychological illness, the responsible authority will be informed in order to ensure that the asylum seeker receives the necessary medical treatment. In order to deal adequately with such procedures and respond sensitively to any such clues during the interview, a number of psychosocial centres have held trainings on rais-

⁵⁵ The total protection ratio is the sum of recognised asylum seekers under the Basic Law, the number of refugees who are granted protection under the Geneva Convention and the number of people who enjoy subsidiary protection in relation to the total number of decisions taken in the relevant year.

⁵⁶ See [Growth, Education, Unity](#). The coalition agreement between the CDU, CSU and FDP for the 17th legislative period, p. 98. On the reservation in respect of the UN Convention, please see Parusel, Bernd (2009): [Unaccompanied Minors in Germany - Reception, return and integration arrangements](#), Working Paper 26 der Forschungsgruppe des Bundesamtes, Nuremberg: Federal Office for Migration and Refugees, p. 15-16.

ing awareness among case-workers of the BAMF on how to deal with traumatised asylum seekers since 1996.

In 2009, the BAMF started to evaluate the measures taken in case an asylum seeker claims a psychological illness with the help of internal and external experts. The evaluation focuses on procedures and on the effectiveness of the measures taken by the BAMF for dealing adequately with claims of a psychological illness, in particular PTSD. It will be concluded in 2010.

3.4 Economic Migration

3.4.1 Commitments in the European Pact on Immigration and Asylum

Commitment I (a): implement policies for labour migration

With its Action Programme on Securing the Skilled Labour Base of 16 July 2008, Germany adopted a number of measures which entered into force on 1 January 2009 in the framework of the Labour Migration Control Act.⁵⁷ However, these measures are not connected to the current economic crisis. Among other things, the Act makes it easier for university graduates from new EU Member States and third countries and for graduates of German schools abroad to migrate to Germany, improves labour-market access for family members of highly-qualified immigrants and grants well-qualified persons whose deportation has been temporarily suspended to remain a right to stay, provided that they have an occupational qualification and are integrated into the labour market.

Beyond these legal changes, a labour-market monitoring was established in 2009 in order to better identify the current, medium and long-term needs for labour and to estimate the development of labour supply and demand. Taking into account longer-term factors, the results of this monitoring will help to take pragmatic decisions in individual cases in the future. On 30 March 2009 the Federal Ministry of Labour and Social Affairs created an alliance to advise the Federal government concerning the demand for labour (“alliance for labour”). The alliance for labour is to become a regular platform and develop measures to close gaps and effectively prevent a lack of skilled labour in the future. One measure is to provide qualification opportunities for the domestic workforce so that the potential of all people who live in Germany can be exploited, another is to steer immigration inflows of highly-qualified workers, since there may be bottlenecks on the labour market for university graduates in particular even if the domestic potential is exploited in full (see also chapter 2.3).

Commitment I (b): increase the attractiveness of the EU for highly qualified workers and further facilitate the reception of students and researchers

The Labour Migration Control Act introduced a number of legal changes as of 1 January 2009, which make it easier for highly qualified workers, students and researchers to enter Germany.

- Since 2005, highly qualified workers may be granted a permanent residence permit immediately (section 19 AufenthG). Highly qualified workers are scientists with special technical knowledge, teaching and scientific personnel in prominent positions and specialists and managers with particular professional knowledge who receive a certain minimum salary. In order to keep qualified persons in Germany or give them an incentive to move to the country, the minimum salary required for a settlement permit for highly qualified specialists is now based

⁵⁷ Cf. footnote 43; cf. also [Policy Report 2008](#), p. 20f.

on a new, annual calculation basis (section 19 (2) no. 3 Residence Act). As a result, the required salary was reduced by about one-quarter to EUR 64,800 for 2009.⁵⁸ The number of immigrants who belong to this circle of persons rose from 227 in the first half of 2008 to 350 in the first half of 2009.

- A supplement to section 20 (6) sentence 2 of the Residence Act permitted changes to research projects undertaken by researchers who came to Germany under the so-called EU Researcher Directive.⁵⁹
- The minimum investment of foreign start-up entrepreneurs pursuant to section 21 (1) sentence 2 of the Residence Act was reduced again, from EUR 500,000 to EUR 250,000.
- Section 18a of the Residence Act created a new legal basis for granting a residence permit for the purpose of employment to qualified and well-integrated foreigners whose deportation had been temporarily suspended. In these cases, the Federal Employment Agency consents to the residence permit without a test of preferential access, and once the foreigner has been employed for two years in a job which is in line with his or her qualifications he or she has unlimited access to the labour market. Foreigners whose deportation has been suspended may also be included in qualification promotion measures, provided that they meet certain requirements (cf. articles 2a and 2b of the Labour Migration Control Act).
- On 1 January 2009, the entry into force of the Ordinance to Amend the Employment Procedure Ordinance and the Ordinance on Working Permits of 10 November 2008⁶⁰ lifted the test of preferential access for family members of highly qualified workers from third countries and for highly qualified workers from the new EU Member States and their families. At the same time, sometimes subject to other preconditions, the full labour-market test for persons whose deportation has been temporarily suspended and the necessity of consent or approval from the Federal Employment Agency for foreigners who entered Germany as teenagers and for apprentices from the new EU Member States with a German school-leaving certificate were lifted. The asylum procedure will be included in the waiting period for labour-market access for persons whose deportation has been suspended. The test of preferential access was lifted for family members of managers, researchers and research fellows as of 1 January 2009, too, so the labour-market administration will only test whether their qualifications are adequate for the job in the future (test of equal qualification).⁶¹

Beyond these legal changes, the newly created “Welcome Centers” are another incentive for highly qualified workers to come to Germany. Hamburg and Dresden, for example, established Welcome Centers for highly qualified persons in 2007 and 2008, respectively, which give advice on work, studying, living and family issues. Some universities have established such agencies, too (for example Bonn or Konstanz). The Alexander von Humboldt Foundation, the Donors’ Association for German Science and Deutsche Telekom Stiftung have established the Welcome Centers for international re-

⁵⁸ Due to the reduction of the minimum salary and the resulting potential for abuse, false or incomplete information given by the employee to the employer which result in an employment contract that, in turn, serves as basis for a residence permit granted pursuant to section 19 (2) no. 3 AufenthG may form the basis for expulsion pursuant to section 55(2) no. 1a AufenthG.

⁵⁹ Council [Directive 2005/71/EC](#) of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (Official Journal L 289, p. 15).

⁶⁰ [Federal Law Gazette I, S. 2210](#).

⁶¹ Cf. section 8 Ordinance on Official Procedures Enabling Resident Foreigners to take up Employment of 22 November 2004 (Federal Law Gazette I, No. 62, p. 2934), last amended by Article 7 Paragraph 2 of the law of 21 December 2008 (Federal Law Gazette I, p. 2917). Since 1 January 2009, this checking of proper working conditions and salary is also performed with regard to labour market access of the spouse of a researcher, who has taken residence on the basis of section 20 of the Residence Act. So far, this group was entitled to take up employment without any restrictions whatsoever. The introduction of this parity check was to safeguard equal treatment with the beforementioned family members.

searchers in the framework of a joint programme to strengthen the international competitiveness and attractiveness of German universities. The programme foresees a competition to support the establishment of structures to assist international researchers and their families at German universities. The focus is on better exploiting and providing existing knowledge, structuring procedures and creating a network between the different actors within the university.

Commitment I (c): do not aggravate the brain drain

No political measures were taken that might result in the emigration of skilled labour.

3.4.2 Additional/Complementary Developments

Immigration by seasonal workers

When the Labour Migration Control Act entered into force on 1 January 2009, the maximum period for which unqualified or low-qualified seasonal workers may be employed in Germany was extended from four to six months per year. According to figures by the Federal Labour Agency, 294,828 seasonal workers were employed in Germany during 2009. Overall, 9,611 more seasonal workers came to Germany than in 2008 (285,217).

187,507 seasonal workers – i.e. roughly two-thirds in 2009 – were Polish nationals. However, the number of Polish seasonal workers has declined considerably since 2004. While 286,623 Polish seasonal workers came to Germany in 2004, their number fell to 236,267 in 2006 and to 194,288 in 2008.

3.5 Family Reunification

3.5.1 Commitments in the European Pact on Immigration and Asylum

Commitment I (d): to regulate family migration more effectively

Even before the European Pact on Immigration and Asylum was adopted the German Residence Act already included a sophisticated system of rules on family reunification, which took into account the integration capabilities of the families.

Spouses of third-country nationals

The federal government believes that a basic knowledge of the German language obtained ahead of the entry into Germany will make it easier for a foreign spouse to get their bearings in Germany. That is why foreign spouses of third-country nationals who live in Germany have to prove a basic knowledge of the language in order to obtain a residence permit since September 2007. Proof of a basic knowledge of the language is waived for nationals of certain countries (see Section 30 (1) sentence 3 no. 4 of the Residence Act). Against the background of an overall decline in the numbers of immigrants who came to Germany for family reunification purposes the number of visas granted for foreign spouses fell in 2008.⁶² However, no further decline became visible in 2009. During the first three quarters of 2009, 24,905 visas for spouses were granted (Quarter 1: 7,825; Q2: 8,053; Q3: 9,027).⁶³

⁶² See [Policy Report 2008](#), p. 21 et seq.

⁶³ See Bundestag printed paper [16/13978](#), p. 3 and Bundestag printed paper [17/194](#), p. 2.

Compared to the first three quarters of 2008 (total: 22,674; Q1: 6,458; Q2: 7,771; Q3: 8,445), this is an increase of more than 10%. The figures on language tests available so far show that, in 2008, 60,111 spouses took the “Start Deutsch 1” examination drafted by the Goethe-Institut worldwide. In the 15 main countries of origin, 80% of those who had attended the preparatory courses offered by the Goethe-Institut passed the test in 2008; the share was 54% for external candidates not participating in preparatory courses. The total share of those who passed the test in the framework of family reunification or family formation was 66% in the 15 main countries of origin, i.e. roughly the same as in other language tests offered by the Goethe-Institut. The federal government believes that lower rates of success in certain countries, such as Ethiopia, Nigeria or Bangladesh, are due to illiteracy and the candidates’ lack of experience concerning learning a foreign language and experiencing test situations.⁶⁴

In the first half of 2009, 19,415 persons took the “Start Deutsch 1” examination. 64% of them passed.⁶⁵

3.5.2 Additional/Complementary Developments

Judgment on the legal requirement of a secure livelihood

A decision by the Federal Administrative Court of 30 April 2009 says that the legal requirement of a secure livelihood (section 5 (1) no. 1 AufenthG) cannot be waived by discretion for spouses of third-country nationals.⁶⁶ The Court clarified in its strict interpretation of the law that any exception to the precondition of sufficient livelihood may only be made under special, atypical circumstances of particular importance or if granting a residence permit is obligatory for higher-ranking reasons. In particular, the court emphasised that the protection of marriage and family within the meaning of the Basic Constitutional Law or Article 8 of the European Convention on Human Rights cannot be used as a justification for granting a residence permit. In fact, the plaintiff, her husband and the minor son might live as a family in Turkey, the Court said. Moreover, the Federal Administrative Court’s decisions on the preconditions of an exception to a regular removal due to the protection of marriage, family life and privacy (Art. 6 of the Basic Constitutional Law, Art. 8 of the European Convention on Human Rights) cannot be applied to the regular preconditions for granting a residence permit in the framework of family reunification.

Decision of the Bundesrat on protecting victims of forced marriages

In the framework of the vote on the General Administrative Regulation on the Residence Act (see chapter 3.4.2) the Bundesrat called for better protection for victims of forced marriages. In its decision dated 18 September 2009 it asked the federal government to offer victims of forced marriages better opportunities to return to Germany.⁶⁷ It argued that, if victims of forced marriages left Germany together with their spouse (and were possibly forced to do so), their residence permit should not become invalid within half a year. Currently, a residence permit becomes invalid six months after the holder’s leaving Germany at the latest, provided that the holder does not re-enter Germany in the meantime (section 51 (1) no. 7 of the Residence Act). Moreover, the Bundesrat suggested examining whether the special situation of victims of forced marriages might be improved by a new suggestion to this effect

⁶⁴ See Bundestag printed papers [16/12979](#), p. 5 et seq. and [16/13978](#), p. 13 et seq.

⁶⁵ See Bundestag printed paper [17/194](#), p. 5.

⁶⁶ Decision by the 1st senate, [BVerwG I C 3.08](#).

⁶⁷ See Bundesrat printed paper [669/09 \(Beschluss\)](#).

in the General Administrative Regulation on the Residence Act in the context of resettlement from foreign countries for urgent humanitarian reasons (section 22 of the Residence Act).

3.6 Other legal migration

3.6.1 Commitments in the European Pact on Immigration and Asylum

Commitment I (f): improve information on the possibilities and conditions of legal migration

Germany offers comprehensive information on immigration on the internet. In particular, the websites of the responsible federal ministries and of the Federal Employment Agency are very informative. These are as follows:

- the Federal Foreign Office⁶⁸
- the Federal Ministry of Labour and Social Affairs⁶⁹
- the Federal Ministry of the Interior⁷⁰
- the Federal Employment Agency⁷¹

In addition, the Federal Ministry of Labour and Social Affairs has published leaflets (Working in Germany). The website of the Federal Office for Migration and Refugees (www.bamf.de) offers basic information on legal immigration⁷² and details on research immigration in its “Migration” menu.⁷³ Moreover, leaflets on research immigration were published in several languages; they and the website are updated if necessary.

Other internet sites are directed at potential immigrants who are interested in coming to Germany for academic or economic purposes. The Federal Ministry of Education and Research maintains the portal www.research-in-germany.de, which promotes Germany’s sophisticated science, research and development landscape. The English-language career, education and lifestyle portal www.young-germany.de by the Federal Foreign Office particularly addresses young people. Foreign students or school-leavers who are interested in studying in Germany can also get information on the website www.campus-germany.de, which is supported by the German Academic Exchange Service. The Federal Ministry of Economics and Technology runs a special portal with comprehensive information for foreign businesspeople and entrepreneurs (www.german-business-portal.info). The ministry also maintains a portal which gives general information on how to found a company (<http://www.existenzgruender.de>).

3.6.2 Additional/Complementary Developments

Resettlement procedure for Jewish immigrants

The resettlement of Jewish immigrants in Germany has to be seen against the background of Germany’s historic responsibilities. It aims to strengthen both Jewish communities and German society as

⁶⁸ <http://www.auswaertiges-amt.de/diplo/en/WillkommeninD/EinreiseUndAufenthalt/Zuwanderungsrecht.html> (in English).

⁶⁹ http://www.bmas.de/portal/37570/property=pdf/2009_09_09_faq_beschaefigung_auslaendischer_englisch.pdf (in English).

⁷⁰ http://www.zuwanderung.de/EN/Home/home_node.html?_nnn=true.

⁷¹ <http://www.arbeitsagentur.de/zentraler-Content/Veroeffentlichungen/Merkblatt-Sammlung/MB7-Beschaefigung-ausl-AN.pdf>.

⁷² http://www.bamf.de/cln_153/nn_441880/DE/Migration/Informationen/informationen-node.html?_nnn=true.

⁷³ <http://www.bamf.de/forschungsaufenthalte>.

a whole on the grounds of steered, qualified immigration of Jewish persons. The procedure for Jewish immigrants is the first immigration procedure to use a scorecard for integration forecasts. The reception procedure was evaluated in 2008 and reworked in some aspects:

- Improvements to the scorecard and extensions of the scope for discretionary decisions helped to arrive at a better steering of qualified migration. In particular, younger migrants, whose immigration is to be welcomed for demographic reasons, and qualified older migrants, for whose qualifications there is a demand in Germany, can be supported in a more targeted fashion.
- Moreover, the disqualification rule that was in force since 1 May 2005 was mitigated. Under the initial rule, it was not allowed to make a new application if reception had been granted before, but the permit had not been used and run out. No exceptions to the rule had been allowed. In addition, it affected all second applications filed since 1 July 2001 in retrospect. Now, all second applications filed between 1 July 2001 and 31 December 2007 are to receive a favourable answer.
- In addition, at the suggestion of the BAMF, the condition that certificates of birth, marriage or death issued before 1990 need to be presented to prove Jewish nationality or origin was re-examined. Numerous applicants claim that they cannot provide such old documents. Under the new rules, at least one certificate of birth, marriage or death issued before 1990 is to be introduced in the procedure as so-called “anchor document”. If, however, the applicant can explain credibly why no old documents can be produced, newer documents can be taken into account in order to prove Jewish origin or nationality. However, in order to ensure a uniform procedure the authorities still need to clarify which type of documents may be recognised.

Potential Jewish immigrants can get detailed information on the reception procedure on the website of the BAMF. Application forms and leaflets are available in both German and Russian. Jewish immigration from the former Soviet Union to Germany has been declining since 2003, and the downtrend continued in 2009. In 2009, 1,008 Jewish immigrants came to Germany, down from 1,436 in 2008 and 2,502 in 2007.

Procedure for ethnic German repatriates

On 11 July 2009, the Eighth Act to Amend the Federal Expellees Act of 6 July 2009 entered into force and led to several changes in the procedure for ethnic German repatriates and their families in order to clarify the legal situation, simplify administrative practice and increase the speed of the procedure.⁷⁴

The number of ethnic German repatriates who came to Germany has declined considerably over the last few years. In 2009 and 2008, 3,360 and 4,362 ethnic German repatriates came to Germany, respectively, down from as many as 397,073 in 1990.

Employment of “consular teachers” for native-language lessons

On 18 December, an amendment to the Employment Ordinance ensured that so-called “consular teachers” may come to Germany beyond 31 December 2009 in order to give native-language lessons at schools (for example in Turkish). Consular teachers are employed by the former recruitment countries. Supervised by the responsible consular representative in Germany, they give language lessons at

⁷⁴ [Federal Law Gazette I, p. 1694.](#)

German schools. Without this amendment, the legal basis for employing consular teachers (section 26 (1) of the Employment Ordinance, which foresees that, after approval by the Federal Labour Agency, a residence permit may be granted for taking up such an employment) would have ceased to exist on 31 December 2009.

3.7 Integration

3.7.1 Commitments in the European Pact on Immigration and Asylum

Commitment I (g): promote harmonious integration in line with the common basic principles

The National Integration Plan of 2007 provided a new foundation for German integration policy. The Plan addresses the integration of all people with a migration background who live in Germany and is structured along the following ten issues:

- Improvement of integration courses,
- Promoting German language skills right from the start,
- Ensuring a good education and qualification and improving chances on the labour market,
- Improving the situation of women and girls,
- Realising equal opportunities,
- Local integration
- Culture and integration,
- Integration through sports,
- Integration through citizens' involvement and strengthening equal participation,
- Media and science.

Representatives of all levels of government – the federal government, the states and the local authorities –, of civil society and of the migrants agreed upon a sustainable integration policy.

The National Integration Plan consists of clear goals and more than 400 concrete measures and commitments of government and non-government actors. After its presentation in July 2007 the Chancellor drew a positive interim conclusion at the 3rd integration summit in November 2008. First, migrant organisations were included in the dialogue as equal partners. Second, the focus is on the competencies and abilities of migrants. The National Integration Plan tries to find solutions for integration problems.

New immigrants from third countries have had the right to participate in a German language course since 1 January 2005. Migrants who already live in Germany may also attend such a course or even be obliged to do so if they touch the basic support for unemployed. They pay only a symbolic fee of EUR 1 per lesson; lessons are free for those who touch basic support or for ethnic German immigrants. The courses have been extended and improved in the past four years. Special courses are offered for particular target groups.

Legal hurdles for foreigners' access to employment have been largely reduced in the last few years. There are numerous measures to support labour-market integration, for example migrant-specific programmes (for example a programme financed in part by ESF funds to teach employment-related language skills).

Continuing processes in integration policy

The three overarching processes in integration policy – implementation of the National Integration Plan, development of the nationwide integration programme, dialogue in the framework of the German Islam Conference – were continued in 2009.

In terms of the nationwide integration programme – a long-term procedure to improve the quality of integration promotion pursuant to section 45 Residence Act – the issue of the recognition of foreign professional qualifications, which is part of the area of professional integration, met with nationwide political interest. The federal state of Saarland is promoting the establishment of a clearing agency to recognise foreign qualifications in line with the recommendations of the integration programme. This clearing agency will focus on structured measures to prepare recognition procedures. Beyond providing advice on recognition issues, the clearing agency will particularly focus on providing and presenting information, directing applicants to competent recognition agencies or migrant services and to support applicants during the procedure. The pilot project aims to examine the usefulness and necessity of a clearing agency. Experiences in Saarland will serve as a basis to determine how the concept can be best transferred to other regions or federal states.

Suggestions and ideas for all areas of action were discussed in workshops and talks with representatives of migrant organisations and included as proposals in the nationwide integration programme.⁷⁵

In the framework of the German Islam Conference (DIK)⁷⁶ concrete recommendations for action were developed in the four working groups on German society and consensus on values (working group 1), religious issues against the background of the German constitution (working group 2), the economy and the media as a bridge (working group 3) and security and fundamentalist Muslim movements (discussion group) and released at the 4th plenary session on 25 June 2009. From the participants' vantage point, the Conference has helped to considerably improve the relationship between the government and the Muslims.

The research department of the Federal Office for Migration and Refugees prepared a study on “Muslim life in Germany” on behalf of the DIK.⁷⁷ In 2008 the BAMF already established the Security Dialogue Clearing Agency. This Agency coordinates the cooperation of mosque associations and the security authorities.⁷⁸ Moreover, the BAMF supports the internet presence of the DIK, which provides the latest reports on the DIK and on how Muslims live in Germany.

Tests within the framework of the nationwide integration course

In 2009 new final exams for the integration courses were introduced. Since the beginning of the year participants have been obliged to take a uniform test at the end of the orientation courses which are to provide immigrants with basic knowledge about the German legal system, culture and history. A list of 250 multiple-choice questions was scientifically prepared and tested by the Institute for Educational Progress at the Humboldt University Berlin. This list covers issues such as religious diversity, equal rights of men and women, education, treatment of people from other cultures, teaching and family. The new test ensures that the knowledge obtained in the orientation course is tested in a standardised

⁷⁵ The draft of a nation-wide Integration Programme is currently coordinated and is anticipated to be published in the spring of 2010.

⁷⁶ Cf. [Policy Report 2008](#), p. 11f.

⁷⁷ Haug, Sonja/Müssig, Stephanie/Stichs, Anja (2009): [Muslim Life in Germany](#). A study conducted on behalf of the German Conference on Islam, Federal Office for Migration and Refugees, Nuremberg.

⁷⁸ Cf. [Policy Report 2008](#), p. 9.

and comparable procedure. In order to help immigrants prepare for the test the BAMF has made a sample questionnaire and the complete list of questions available for download from its integration portal⁷⁹ and created an interactive tool to answer them online.

Since 1 July 2009, a newly developed, scaled language test (“Deutsch-Test für Zuwanderer”, language level A2 – B1 GER) has been used to test the knowledge of German at the end of the language course. The new test was developed between 2006 and spring 2009 by the Goethe-Institut and telc GmbH on behalf of the Federal Ministry of the Interior and has replaced the former tests “Start Deutsch 2 (A2)” and “Zertifikat Deutsch (B 1)”. It is based on the framework curriculum for integration courses prepared by the Goethe-Institut. The new language test enables participants to prove their actual competence in a uniform test, which examines their language abilities at the competence levels A2 – B1 of the Common European Framework of Reference. The format and content of the language test are more strongly oriented towards the target group, i.e. migrants. Sample tests and additional information are being provided on the integration portal of the BAMF (see footnote 79).

In the first half of 2009, 71,751 applicants were approved for participation in an integration course (8.3% less than in the first half of 2008). 57,416 new participants started an integration course (2.8% less than in the preceding year).

Concepts for specialised integration courses

In 2009 the special integration courses for young people, women and parents and the literacy courses were revamped. The new versions take into account the improved framework conditions resulting from the revision of the Integration Course Ordinance at the end of 2007, such as the increased number of lessons in the language course (900 instead of 600 teaching units for certain target groups) and the chance to repeat the course. The integration course for women is directed at female immigrants who cannot participate in a general integration course for cultural or personal reasons. The integration course for parents was developed for parents who want to actively shape their children’s education. The integration course for young people helps young adults to obtain the language skills they need in order to join the German education system or access the labour market as quickly as possible. The literacy course gives migrants who cannot or not adequately read or write or who can only read or write a non-Latin script the opportunity to obtain basic reading and writing skills and the German-language skills necessary for basic communication. In addition, a concept for a new intensive course, which is directed at quick learners and highly qualified people, was released in 2009.

Commitment I (h): promote information exchange on best practices in terms of reception and integration

Germany regularly exchanges information about good practices and recent developments with the other Member States in the Network of National Contact Points on Integration and has, in the wake of the Integration Minister Conference at Potsdam in May 2007, considerably contributed to a better exchange of information on intercultural dialogue between the Member States by organising two expert meetings and contributing to the report adopted at the meeting of the Integration Ministers at Vichy.

Moreover, a German initiative resulted in a conference on the development of integration indicators at the European level, which took place at Berlin in June 2009; this conference prepared the ground for

⁷⁹ <http://www.integration-in-deutschland.de>.

further work on the development of European integration indicators.⁸⁰ At another meeting during the Swedish EU presidency, which took place on 14 – 16 December 2009 in Malmö, suggestions of concrete indicators for employment, education, social inclusion and active citizenship were presented for the first time.⁸¹

3.7.2 Additional/Complementary Developments

Development of indicators for a nation-wide integration monitoring

In June 2008 a working group on “Indicator Development and Monitoring” of the federal states was established; it is led by Berlin and North Rhine-Westphalia. The working group is based on a decision by the ministers and senators of the federal states who are responsible for integration. The Federal Office for Migration and Refugees, the Federal Statistical Office and the Federal Government Commissioner for Migration, Refugees and Integration are represented as well. The working group has the following tasks: define the term “migration background”; compile a set of integration indicators as a basis of a joint integration monitoring by the federal states; and determine necessary statistical changes so that integration in Germany can be monitored on the basis of uniform data.

In the first half of 2009, seven key data and 28 core indicators were defined. The key data refer to socio-demographic data on immigration and population structures in the federal states. The indicators refer to the areas “Early training and language promotion”, “School and vocational training”, “Employment and income”, “Health”, “Living”, and “Crime, violence and discrimination”. The conference of the state ministers and senators who are responsible for integration approved the set of indicators in June 2009, and a pilot study will be conducted in seven out of the 16 federal states in order to test the implementability of the indicators, among other things. A report is to be presented at the next meeting of the ministers and senators on 19 March 2010.

3.8 Citizenship and Naturalisation

Naturalisation tests

Since 1 September 2008, applicants for naturalisation have had to prove their knowledge of the German legal and social system and the way of life in Germany in a uniform naturalisation test pursuant to section 10 (5) of the German Nationality Act (*Staatsangehörigkeitsgesetz, StAG*). Administrative agreements transferred the actual organisation of the tests from the federal states to the BAMF. The test questionnaires developed by the Institute for Educational Progress (IQB) at the Humboldt University Berlin pursuant to the Ordinance on Naturalisation Tests (*Einbürgerungstestverordnung, EinbTestV*) are binding. The Ordinance on Naturalisation Tests also regulates the obligatory basic structure and the contents of the naturalisation course as set out in the naturalisation curriculum. It is the federal Länder which are responsible for offering naturalisation courses. At the moment, naturalisation tests can be taken at 552 test centres across Germany. In 2008 and during the first half of 2009, more than 60,000 persons took a naturalisation test in Germany; 98.6% of them passed. The majority of the participants were born in Iraq (10.2%), Turkey (6.3%), Poland (5.2%), the Ukraine (5.1%), Iran (4.8%) and the Russian Federation (4.5%).

⁸⁰ Cf. “[Principles for Monitoring and Evaluation of Integration Policies](#)” Federal Government Commissioner for Migration, Refugees and Integration, June 2009.

⁸¹ See the [Conclusions](#) on the website of the Swedish EU Presidency.

Repeals of naturalisations

In order to implement decisions by the highest German courts, the Law on the Amendment of the Nationality Act of 5 February 2009 introduced rules on repealing naturalisation decisions or permissions to keep German citizenship if these decisions or permissions were obtained by fraud, threat or corruption or by providing consciously wrong or incomplete information. Moreover, rules for a deadline for the repeal were introduced. The law makes clear that even the threat of statelessness basically does not prevent a repeal. Naturalisations or permissions to keep German citizenship cannot be repealed if five years have passed after they were granted. The amendments also defined the potential effects of a repeal of the German citizenship of a person on people who did not participate in this person's illegal action and the consequences of a successful paternity challenge to citizenship. The new rules entered into force on 12 February 2009.⁸²

3.9 Illegal Immigration

3.9.1 Commitments in the European Pact on Immigration and Asylum

Commitment II (a): only case-by-case regularisation

Germany has not taken any measures to legalise the residence of illegal immigrants. It continues to regard legalisation critically, not least against the background of the recent economic crisis.

Commitment II (g): take rigorous actions and penalties against those who exploit illegal immigrants.

German law already includes deterring and proportionate sanctions against persons who employ and potentially exploit illegal residents. The German Social Code foresees a fine of up to EUR 500,000 for such behaviour (section 404 SGB III).

3.9.2 Additional/Complementary Developments

Prolongation of the „probationary residence permit“

According to the Federal Government's conception, the legal regulations governing old cases (sections 104a and 104b of the Residence Act), which expire on 31 December 2009,⁸³ are not meant to cater to the registration of absconded aliens and thus may not be interpreted as a means of legalisation. Rather, the rules on old cases are meant to take into account the desire of foreigners of having a permanent future in Germany if their deportation has been suspended for a long time and if they are well integrated. The rules target persons who are in possession of an exceptional leave to remain (*Duldung*), who are well integrated and who have found their place in the German economy and society and can largely provide for their own needs.

Sections 104a and 104b of the Residence Act list five different legal bases for granting a residence permit.

- A “residence permit on trial” pursuant to section 104a (1) sentence 1 of the Residence Act forms the legal basis for granting a residence permit to foreigners who are subject to an enforceable obligation to leave Germany and to their children who are not of age and live in the

⁸² [Federal Law Gazette I, p. 158.](#)

⁸³ Cf. [Policy Report 2008](#), p.27.

same household. It is granted if foreigners cannot provide for their own needs; such residence permits on trial were initially valid until 31 December 2009 at the latest and were to be prolonged only if the foreigner succeeded in ensuring his subsistence in the meantime. On 4 December 2009, the Standing Conference of the Länder Ministers and Senators of the Interior agreed upon a follow-up regulation which, at heart, is equivalent to prolonging the “residence permit on trial” for two years. Holders of a provisional residence permit who are able to prove that they had held at least a part-time job for the past six months on 31 December 2009 or who can credibly prove that they will hold a part-time job in the next six months by 31 January 2010 will be granted a residence permit until 31 December 2011. The same applies if the permit holders have successfully completed school or vocational training by the end of 2009 or are still in training, as this suggests that they are well integrated and will be able to ensure their livelihoods in the future. Holders of a residence permit on trial who cannot prove employment which would entitle them to a prolongation of their residence permit may receive another residence permit on trial for two years if they can prove that they have tried to find work to provide for their needs and the needs of their family, if any, and if the assumption seems justified that they will be able to provide for their needs within the next two years.⁸⁴

- Section 104a (1) sentence 2 in conjunction with section 23 (1) sentence 1, Residence Act forms the legal basis for granting a residence permit to foreigners and their minor children who can provide for themselves by means of an economic activity.
- Section 104a (2) sentence 1 in conjunction with section 23 (1) sentence 1 of the Residence Act gives a separate right to a residence permit for adult unmarried children of foreigners whose deportation has been suspended for several years, even if the children themselves have not lived in Germany for the required number of years.
- Section 104a (2) sentence 2 in conjunction with section 23 (1) sentence 1 of the Residence Act spells out a “grandfather clause” for unaccompanied minor migrants.
- Section 104b in conjunction with section 23 (1) sentence 1, Residence Act, grants a residence permit to unmarried, well-integrated 14-to-17-year-olds in their own right if their parents have left Germany and do not meet the requirements for being granted or having prolonged their residence permit under the legal regulations governing old cases.

Strategy Centre for Illegal Migration (GASIM)

The authorities represented at GASIM (Federal Ministry of the Interior, Federal Criminal Police Office, Federal Police, Federal Intelligence Service, Monitoring Authority for Illegal Employment and, if necessary, the Federal Foreign Office and the Federal Office for the Protection of the Constitution) provide a range of different products on current aspects of illegal migration with a connection to Germany. The cooperating authorities make the results available to the relevant departments of the federal government, in particular the Federal Ministry of the Interior and the users at the federal and Länder level. GASIM itself does not take any measures in the fight against illegal migration. However, the results of its work may be used for measures taken by other authorities.

In 2009, cooperation within GASIM was newly conceptualised. It focuses on an overarching approach for the quick exchange and comprehensive analysis of all available and relevant information and

⁸⁴ Collection of the decisions for publication of the [189th meeting of the Standing Conference of the State Ministers and Senators of the Interior](#) on 4 December 2009 in Bremen, p. 17.

knowledge. The Federal Police is responsible for the external representation of GASIM and for formatting and publishing all GASIM products on Extrapol, the intranet platform of the security authorities. The Federal Office for Migration and Refugees is responsible for establishing Infopool, a secure encrypted information platform to inform and advise foreigners' authorities in particular.

Healthcare for illegal immigrants

One of the effects of the General Administrative Regulation on the Residence Act (*Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz*, AvwV-AufenthG), which entered into force on 31 October 2009, is that foreigners who are illegally resident in Germany may now obtain treatment in hospitals without having to fear detection and removal. Section 87(2) of the Residence Act deals with public bodies' (for example social security offices') obligation to notify the foreigners' authorities if they become aware of a foreigner's illegal residence in Germany (i.e. the foreigner holds no residence permit or exceptional leave to remain). However, section 88(2) of the Residence Act in conjunction with section 203 of the German Criminal Code limit the notification obligation insofar as personal data given to the public body by a doctor or pharmacist, for example, may not be passed on to the foreigners' authority due to privacy rules. This rule does not apply to foreigners who are a threat to public health or who are drug users.

No. 88.2.4.0 of the AVwV now clarifies that no personal data provided to a public body by certain professions may be passed on to the foreigners' authorities, apart from the exceptions mentioned above.⁸⁵ It spells out that doctor-patient confidentiality also extends to patient secrets. Moreover, pursuant to No. 88.2.3 AvwV, administrative accounting personnel of public hospitals now also belongs to the group of persons defined in section 203 (1) no. 1 of the Criminal Code (doctors, dentists, pharmacists and other medical staff).

In Germany, foreigners who do not hold a residence permit receive health insurance benefits from the social security offices (see, e.g., section 4 of the Asylum Seekers Benefits Act). Even if doctors inform the social security offices of the personal data of illegal migrants during the invoicing procedure, the social security offices may no longer pass on these data.

3.10 Actions against human trafficking

3.10.1 Commitments in the European Pact on Immigration and Asylum

Commitment II (e): cooperation with the countries of origin and of transit, in particular to combat human trafficking and to provide better information to communities under threat

Germany participated actively in the EU migration missions to Armenia, Belarus and Kenya, the cooperation platform on migration and development in Ethiopia and the pilot mobility partnership with the Republic of Moldova. The establishment of the migration information office in Mali, which aims at explaining the dangers of illegal migration, was supported in principle.

⁸⁵ See [Bundesrat printed paper 669/09](#) of 27 July 2009 and [Bundesrat printed paper 669/09/01 \(Beschluss\)](#) of 18 September 2009 as well as *Frankfurter Rundschau*, 19 September 2009, p. 7.

3.10.2 Additional/Complementary Developments

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 28 October 2009 summarises all investigations conducted in 2008. In 2008, 482 investigation procedures on trafficking in human beings for the purpose of sexual exploitation were concluded. While the number of procedures was up again in a year-on-year comparison (+6%; 2007: 454), the number of registered victims (676) was down 2% in comparison to 2007 (689).

In line with developments seen in the preceding years, most victims (90%) came from Europe in 2008. There was a striking increase in the number of victims with Romanian, Bulgarian and Nigerian nationality. 24% of the victims were minors, with the number of 14-to-17-year-old victims almost doubling in a year-on-year comparison (to 146). The number of suspects of trafficking in human beings also rose in year-on-year terms in 2008. At 785, it was up 10% from 2007. German citizens continued to be the largest group of suspects (40%; 316 out of 785 suspects). Bulgarian, Romanian and Turkish nationals made up the majority of foreign suspects.

In addition, investigations against groups from Sub-Saharan Africa play a major role. Last year, the Federal Criminal Police Office (BKA) conducted an investigation procedure on behalf of the prosecutors in the town of Aachen against a Nigerian group suspected of human trafficking for the purpose of sexual exploitation and connected crimes. The investigation showed that the group had repeatedly smuggled Nigerian women into Germany and made them prostitutes; the suspects kept the prostitution revenues for themselves. This led to large-scale police action in September 2009, with a number of arrest and search warrants being executed.

Despite the repeated rise in investigation procedures numerous human trafficking crimes remain unresolved. The main challenge is that it is difficult to identify victims of human trafficking and to respond to new types of crime. The prosecuting authorities are increasingly faced with the phenomenon that citizens of the new EU Member States – where most foreign victims of human trafficking come from – may be legally resident in Germany and offer prostitution as a free-lance service. It is impossible to make checks for suspected violations of residence provisions, which were an important starting point for investigations into human trafficking in the past. In response to these problems, the Institute of Law Enforcement Studies and Training of the Federal Criminal Police Office has initiated a research project to improve the recognition of victims. The study takes the victims' vantage point to analyse which factors may be crucial for the victims' willingness to testify.

Since 2005, human trafficking for the purpose of labour exploitation has been a criminal offence, too. In 2008, the police criminal statistics registered a total of 27 cases (2007: 92). The number of cases thus dropped by 71%. (Illegal) Employment in Germany is still a key reason for migration. Most offences take place in the hotel and restaurant sector and in private households, at the detriment of foreigners who are illegally staying in Germany.⁸⁶

⁸⁶ See Federal Criminal Police Office (2009): [Human Trafficking – National Situation Report 2008](#), press-release summary, Wiesbaden: BKA.

3.11 Return Migration

3.11.1 Commitments in the European Pact on Immigration and Asylum

Commitment II (b): to conclude readmission agreements at EU or bilateral level

Germany is participating constructively in negotiations on EU return agreements. A bilateral agreement with Syria was signed on 14 July 2008 and entered into force on 3 January 2009.⁸⁷ Moreover, the text of a bilateral readmission agreement with the Republic of Kosovo was finalised; however, at the time of writing the agreement was not yet signed and in force.⁸⁸

The agreement with Syria was criticised in 2009 by human rights organisations and opposition parties. The critics focus on the fact that the agreement permits to return stateless Kurds to Syria if they have come to Germany via that country.⁸⁹ So far, however, the return of Kurds to Syria largely failed due to Syria's rejection of letting these persons (re-)enter the country. The German federal government thinks that the situation of stateless Kurds in Syria is problematic, as some of them do not seem to have any rights at all. According to estimates, this applies to about 250,000 - 300,000 out of more than a million Kurds in Syria. While the Syrian president and the Congress of the ruling Baath party announced in 2004 and 2005, respectively, that the legal status of stateless Kurds was to be clarified, no action has been taken so far.⁹⁰

A complete list of return agreements can be found on the homepage of the Federal Ministry of the Interior.⁹¹

Commitment II (f): to devise incentive systems to assist voluntary return and to keep each other informed

Voluntary returns are supported by the combined national programme "Reintegration and Emigration Programme for Asylum-Seekers in Germany" (REAG) / "Government Assisted Repatriation Programme" (GARP), which pays for the travel expenses and grants returnees a lump-sum travel and start-up assistance. At the beginning of 2009 the assistance was increased. GARP travel assistance was doubled, and REAG start-up assistance was increased by 50% or 60%, depending on the target country. In 2009 the number of voluntary returns assisted by REAG/GARP totalled roughly 3,120. This is an increase from the previous year: In 2008, 2,799 persons left Germany with REAG/GARP assistance.

From 1 January 2009, the federal government and the federal Länder of Baden-Württemberg, Lower Saxony and North Rhine-Westphalia have supported the return project "URA 2" in the Republic of Kosovo, which initially was to run out on 31 December 2009. The project was now prolonged until 31 December 2010. Saxony-Anhalt has been participating since 1 January 2010. The project aims at making the return easier for returnees and at ensuring their long-term integration. Moreover, the overall return management is to be improved further. Among other things, the project includes comprehensive social and, if necessary, psychological assistance. Returnees from Baden-Württemberg, Lower Saxony and North Rhine-Westphalia – and from 2010 from Saxony-Anhalt, too – may, moreover, claim im-

⁸⁷ See [BGBI II, S. 811](#).

⁸⁸ See [Bundestag printed paper 16/14129](#) of 12 October 2009.

⁸⁹ See [Bundestag printed paper 17/68](#) of 25 November 2009 and [Bundestag printed paper 17/237](#) of 15 December 2009.

⁹⁰ See [8. Bericht der Bundesregierung über ihre Menschenrechtspolitik in den auswärtigen Beziehungen und in anderen Politikbereichen](#) (Eighth Report of the Government of the Federal Republic of Germany on its Human Rights Policy in the Context of Foreign Relations and Other Areas of National Policy), published by the Federal Foreign Office, p. 322 et seq., and [Bundestag printed paper 16/10786](#) of 5 November 2008.

⁹¹ <http://www.bmi.bund.de/cae/servlet/contentblob/151414/publicationFile/17366/RueckkehrFluechtlinge.pdf>.

mediate assistance in getting a home, furniture or necessary medical treatment and may participate in professional training or labour-market measures and start-up training. This support can be claimed from the central returnee centre “URA – the bridge” at Prishtina.

The Federal Ministry for Economic Cooperation and Development finances, for example, a programme for returning highly-qualified workers. It targets the professional integration of returning university graduates and skilled, experienced workers from developing countries, emerging markets and transformation countries who have gained additional professional qualification in Germany. The focus is on getting skilled workers to work in areas which are key to development. Beyond jobseeking support and advice, the programme offers financial support to skilled workers who are interested in returning to their countries of origin. Employers can get help under the programme, for example in screening applicants. The programme for returning highly-qualified workers participates in the mobility partnership with the Republic of Moldova and makes it easier for returnees to enter the labour market in the Republic of Moldova. Overall, the programme covers about 20 countries.⁹²

Moreover, a project on strengthening the diaspora is conducted in the framework of the mobility partnership with the Republic of Moldova. A job fair jointly organised by Germany and the Republic of Moldova gives Moldovian companies an opportunity to meet highly qualified workers with professional or educational experience in Germany and thus create incentives for voluntary returns.

The Federal Office for Migration and Refugees already established an Information Centre for Voluntary Return (ZIRF) in 2003. This Information Centre coordinates, shapes and creates networks for return assistance, improves advice by bundling information, helps to efficiently use available funds and aims to increase the number of voluntary returnees. Under its ZIRF Counselling procedure the ZIRF offers targeted and individual advice on return support.

There is no data exchange concerning persons who have received return assistance with other EU Member States. Data are only exchanged with other Schengen Member States in the framework of the Dublin Procedure if they refer to migrants who have made an asylum application in another EU Member State.

3.12 External Relations/Global Approach

3.12.1 Commitments in the European Pact on Immigration and Asylum

Commitment V (a): conclude EU-level or bilateral agreements with the countries of origin and of transit containing clause on legal and illegal migration as well as development

A draft of a framework agreement on cooperation in migration issues with the Republic of Ghana was prepared.

Commitment V (b): offer the nationals of partner countries to the East and South of Europe opportunities for the legal immigration

With its Action Programme on Securing the Skilled Labour Base of 16 July 2008, Germany adopted a number of measures which entered into force on 1 January 2009 in the Labour Migration Control Act (see also section 3.4.1).

⁹² Cf. the web-page of the [“Returning Experts Programme”](#).

- Giving skilled workers with a university degree better opportunities of immigration,
- Making labour-market entry easier for family members of highly-qualified workers,
- Making immigration easier for graduates of German schools abroad,
- Extending a right to stay to persons whose deportation was suspended, provided that they have a professional qualification and are integrated into the labour market.

In the framework of the pilot mobility partnership with the Republic of Moldova, legal preconditions for improving the outward mobility of Moldovian nationals with a right of residence were created.

Commitment V (c): cooperation with the countries of origin and of transit in order to deter or prevent illegal immigration

On request, Germany provides FRONTEX with four helicopters, one police ship (for the North and Baltic Seas) and ten portable thermal cameras in the framework of the Central Record of Available Technical Equipment (CRATE). In 2009, three FRONTEX operations required two transport helicopters each, and four operations fell back on up to two thermal cameras of the federal police each. Germany has currently deployed 51 federal police officers to the Frontex project “Rapid Border Intervention Teams” (RABITs). In 2009, 32 officers participated in the RABIT training and 30 officers in the RABIT workshop; six officers took part in two joint RABIT exercises. In 2009 Germany deployed 34 officers to 17 FRONTEX Focal Point measures and 78 officers to 11 FRONTEX Joint Operations.

Germany actively supports preparing guidelines for FRONTEX marine operations and is in favour of including recognised standards of current international and European law in marine, refugee and humanitarian-rights law.

Commitment V (d): more effective integration of migration and development policies

Germany supports including migration in national strategies to fight poverty. Moreover, it actively participates in the EU cooperation platform on migration and development with Ethiopia. Germany co-chairs the working group “Returns and Refugees”, whose first meeting took place in May 2009.

Germany participates actively in the Joint Expert Group in the framework of the EU-Africa MME partnership (migration, mobility and employment).

The Federal Ministry for Economic Cooperation and Development finances a project in the region Oriental in Morocco, which helps small and medium-sized companies to use funds from transfers from expatriate Moroccans and investments by returnees. The project is cofinanced by the EU and is to be continued.

Commitment V (e): promote co-development actions and support instrument for transferring migrants' remittances

In the framework of the mobility partnership with the Republic of Moldova the strengthening of the diaspora is supported by regular meetings which help to create a better network of organisations and institutions in Moldova and Germany. This also extends to advice to returnees.

Since 2006 advice has been given to migrant associations from developing countries and small-scale social projects have been funded in the countries of origin. The Federal Ministry for Economic Cooperation and Development has created an internet site which permits to compare costs for money transfers from Germany to the 33 most important countries of origin.⁹³ Transfers to Moldova and Georgia are already captured in the system.

⁹³ <http://www.geldtransfair.de>.

4 Implementation of EU Legislation

4.1 Progress during 2009 in the transposition of EU legislation

Regulation on Community Statistics on migration and international protection

Concerning the EU Regulation on Community Statistics on migration and international protection⁹⁴, the year 2009 was characterised by technical implementation measures and finetuning. 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 immigration and emigration or on the fight against illegal entry) which need to be delivered to Eurostat under the Regulation are provided by the Federal Police and the Federal Statistical Office.

4.2 Experiences, debates in the (non-)implementation of EU legislation

Visa policy and cross-border services

In its judgment dated 19 February 2009 (the “Soysal” judgment)⁹⁵ the European Court of Justice (ECJ) found that the Federal Republic of Germany is obliged to exempt Turkish lorry drivers from a visa requirement if they want to enter Germany in order to provide services for an undertaking established in Turkey and if they were allowed to provide such services without a visa at the time when the “standstill” clause in Article 41 of the Additional Protocol to the Association Agreement between the EEC and Turkey at the beginning of 1973 entered into force. The federal government’s review of the judgment showed that no action needs to be taken concerning the visa requirement for groups of persons who do not want to enter Germany for the purpose of actively providing services. In particular, the “Soysal” judgement does not mean that Turkish nationals may enter Germany without a visa in order to receive services (passive freedom of services), for example as tourists or in the framework of visits to their families. The federal government is currently examining the types of active cross-border services which might make Turkish nationals exempt from the visa requirement against the background of the “Soysal” judgment and researching ways to implement this requirement in practice. Until this examination, which entails consultations at the EU level due to its relevance for Community law, is terminated, the visa and border examination regime for this group of persons will remain unchanged.⁹⁶

Interpretation of the EU Qualification Directive

In a judgment dated 5 March 2009⁹⁷ the Federal Administrative Court analysed for the first time after the Qualification Directive⁹⁸ entered into force the conditions under which asylum seekers may be recognised as refugees for religious reasons. In the case, the court explained that the plaintiff might be

⁹⁴ 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).

⁹⁵ See case [C-228/06](#).

⁹⁶ See [Bundestag printed paper 16/12743](#) of 23 April 2009.

⁹⁷ See [BVerwG 10 C 51.07](#).

⁹⁸ [Council Directive 2004/83/EC](#) of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

recognised as a refugee if restrictions in her home country prevented her so severely from exercising her religious beliefs that the core of her right to religious freedom was violated. Whether this core covered only a “minimum”, as defined in asylum law pursuant to Art. 16a(1) of the Basic Constitutional Law, i.e. the exercise of religious beliefs at home and in the neighbourhood, or whether and under what preconditions refugee protection under the Qualification Directive extended to worship in public was doubtful under European law, the Court argued. This required a decision by the European Court of Justice (ECJ). However, as the court of appeal had not sufficiently clarified the situation regarding the relevant case – a fact which was disapproved of – the Federal Administrative Court was unable to apply to the ECJ.

Transfers to Greece

Like other EU Member States, even the Federal Republic of Germany continued in 2009 to transfer asylum seekers to Greece in the framework of the Dublin Procedure.⁹⁹ However, the German authorities invoked the sovereignty clause, which permits a Member State to carry out an asylum procedure even though another EU Member State is officially responsible, considerably more frequently than in 2008, thus preventing a transfer of asylum seekers back to Greece. Between 1 January and 31 October 2009, 1,855 take-charge requests were made to Greece. 181 transfers took place, whereas the sovereignty clause was invoked in 560 cases. In 2008 (1 January until 31 December) 800 take-charge requests were made, 222 persons were transferred and the sovereignty clause was invoked in 130 cases.¹⁰⁰ As in 2008, several courts had to decide in 2009 whether, in the framework of the Dublin Procedure, asylum seekers may be transferred to Greece or not¹⁰¹. The Federal Constitutional Court took several decisions which had the effect that a number of transfers of asylum seekers from Germany to Greece under the Dublin II Regulation were temporarily suspended under a provisional order.¹⁰² Courts have repeatedly pointed out that asylum seekers could not rely on having access to a fair and effective asylum procedure in Greece and that they might become homeless.

Several refugee organisations also criticised the situation of asylum seekers in Greece during the year. On 10 November 2009, the organisation Pro Asyl e.V. and other refugee organisations from the Netherlands, Finland and the UK filed a complaint with the European Commission, calling upon it to start an infringement procedure against Greece before the European Court of Justice on the grounds of Greece’s neglecting all key European asylum directives. Pro Asyl claims it is virtually impossible to obtain protection in Greece.¹⁰³ Transfers to Greece were also an issue in the Bundestag. Following an interpellation by the parliamentary group of The Left, the federal government said the responsible authorities examined closely in each case in which Greece was involved whether the sovereignty clause in the Dublin II Regulation should be invoked. Generally, however, the German authorities should continue to carry out transfers.¹⁰⁴

⁹⁹ 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.

¹⁰⁰ See Bundestag printed paper [17/203](#), p. 6.

¹⁰¹ For an overview of the judgements see Bundestag printed paper [16/14149 \(neu\)](#), p. 15 et seq.

¹⁰² Decisions of 8 September 2009 (2 BvQ 56/09), of 23 September 2009 (2 BvQ 68/09), of 9 October 2009 (2 BvQ 72/09) and of 5 November 2009 (2 BvQ 77/09).

¹⁰³ PRO ASYL e.V., [press release of 10 November 2009](#).

¹⁰⁴ See Bundestag printed paper [17/203](#), p. 2.

Recognition of professional qualifications obtained abroad

The implementation of the EU Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications¹⁰⁵ 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 implementation of the Directive was complicated in Germany. It required amendments to more than 100 laws and ordinances at both the federal and Länder level. On 9 December 2009 the federal cabinet approved a draft paper by the Federal Ministry of Education and Research that foresees a simple procedure to assess and recognise the qualifications of immigrants to Germany. Among other things, applicants are to have a legal claim on an individual recognition procedure for all professional qualifications obtained abroad. This claim is to cover both regulated and non-regulated professions. If the qualifications are found to be equivalent, this fact is to be confirmed by the relevant authority (“recognition”). If the proven qualification is not equivalent to the requirements of the domestic qualification, the existing professional competence is to be recognised, if possible (“partial recognition”). Major gaps and potential additional qualification requirements in comparison to German qualifications are to be determined and documented as well. Moreover, information on training opportunities is to be provided. This is to help applicants to participate in targeted additional qualification measures.¹⁰⁶

Implementation of the Council Decision 2008/633/JI of 23 June 2008

On 23 June the EU Council took a decision on granting the Member States’ authorities and Europol access to the Visa Information System (VIS) for data retrievals for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences (VIS access decision).¹⁰⁷ Police and prosecution authorities as well as secret services will be able to consult the Visa Information System with the purpose of preventing, detecting and investigating terrorist and other serious criminal offences. The Council decision did not have an immediate effect, but required national implementation.

On 6 May the Bundestag, with the approval of the Bundesrat, adopted a law granting police and prosecution authorities as well as secret services access to the Visa Information System (VIS Access Act).¹⁰⁸ Among other things, the law clarifies that all police authorities, public prosecutors and secret services of the federal government and the states may access the VIS in order to prevent, detect and investigate terrorist and other serious criminal offences. The VIS is currently being established and will consist of a database with data on Schengen visa stored by the responsible authorities (in particular visa, border and immigration authorities). One purpose is to prevent repeated visa applications to different EU Member States and uncover false identities.

¹⁰⁵ [Directive 2005/36/EC](#) of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications.

¹⁰⁶ See federal government (2009): [Eckpunkte zur Verbesserung der Feststellung und Anerkennung von im Ausland erworbenen beruflichen Qualifikationen und Berufsabschlüssen](#), as of 9 December 2009.

¹⁰⁷ [Council decision 2008/633/JHA](#) of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.

¹⁰⁸ [Gesetz über den Zugang von Polizei- und Strafverfolgungsbehörden sowie Nachrichtendiensten zum Visa-Informationssystem](#) (VIS Access Act – VISZG), Federal Law Gazette I, p. 1034.

Appendix: Methods, Terms and Definitions

The Policy Report 2009 is based on numerous sources of data and information. The explanations concerning the implementation of the European Pact on Immigration and Asylum are largely based on a report by the Federal Ministry of the Interior, which was submitted to the European Commission as the German contribution to the tracking method for the Pact at the end of 2009. In addition to that, factual information from the responsible units of the Federal Office for Migration and Refugees was used. Statements on political debates and legal developments are largely based on internet sources, such as printed papers and minutes of plenary meetings of the German Bundestag and Bundesrat, Ordinance and Law Gazettes and statements by ministries, authorities and parties made in press releases and public programmes. In some cases, statements and publications of non-governmental and international organisations were included. Articles from major newspapers and magazines on certain topics were incorporated as well. All external sources are explicitly mentioned in footnotes.

Figures and statistics were largely provided by the Federal Office for Migration and Refugees, the Federal Statistical Office, the Federal Labour Agency and the International Organisation for Migration (IOM). Since the Policy Report 2009 had to be completed considerably earlier in the year than its predecessors, some migration data for 2009 were not yet available at the time of writing.

In terms of developments in 2009 which go beyond the contents of the Pact, only the most important changes were mentioned. 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 (chapter 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.

The terminology used for this report is based largely on the glossary of the European Migration Network and the terms used in the European Pact on Immigration and Asylum. Terms which deal with the particular legal situation in Germany are explained in the text or in footnotes. If certain issues were already mentioned in earlier Policy Reports, the footnotes will reference the relevant parts of the reports.