

## Annual Policy Report 2011

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Federal Office  
for Migration  
and Refugees



# Annual Policy Report 2011

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



Co-financed by the  
European Commission





# Annual Policy Report 2011

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the European Migration Network (EMN)



# Executive Summary

The 2011 Policy Report by the German National Contact Point for the European Migration Network (EMN) provides an overview of the most important political discussions and developments in migration, integration and asylum in the Federal Republic of Germany for the year 2011. The report focuses in particular on measures enacted by the Federal Republic of Germany for implementing the European Pact on Immigration and Asylum and the Stockholm Programme of the European Council (a separate report on implementing concrete goals is in the appendix to this report). These measures are supplemented by additional laws and initiatives by the Federal Government in the areas of migration, integration and asylum. Furthermore, the report describes the general structure of the political and legal system of Germany, and outlines the most important political and institutional changes of 2011.

Central migration, integration and asylum debates of 2011 pertained to the following topics:

- Lack of skilled workers, decline in labour force potential and facilitation of the immigration of skilled foreign workers.
- Refugees and asylum, human rights situation in Syria, permanent right of residence regulation for foreigners with exceptional leave to remain as well as suspension of transfers to Greece.

The Federal Republic of Germany has enacted a number of legal amendments/political initiatives throughout 2011; these include the following measures:

- Act to Implement Residence Directives of the European Union and Amend National Legislation to the EU Visa Code (a.k.a. Second Directive Implementation Act). This Act implements e.g. the EU Repatriation Directive and the EU Employer Sanctions Directive.
- Act to Combat Forced Marriage and Improve Protection of Victims of Forced Marriage and amend other Residence and Asylum Directives. This Act allows the issuance of a residence permit for youths and adolescents with long-term exceptional leave to remain if they are enrolled in or have successfully completed school and positive integration can be reasonably ensured. In addition, the Act is designed to create better protection options for the victims of forced marriage.
- Act to Improve the Assessment and Recognition of Professional Qualifications Obtained Abroad (a.k.a. Recognition Act). This Act facilitates the integration of persons with foreign professional qualifications into the labour market, and thereby their integration into society.
- Launching of the European Visa Information System (VIS) as well as enacting the Act to Create a Central Visa Warning File in Germany. These measures are intended among other issues to hinder human trafficking, prevent irregular migration and improve internal security.
- Enacting by the Federal Government to submit a draft bill to implement the EU directive on the conditions for entry and residence for third country citizens pursuing highly qualified employment (a.k.a. EU Blue Card or Guideline for Highly-qualified Manpower). Following the bill, the Federal Government enacted additional measures to facilitate the immigration of skilled workers and students from third countries.



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# Abbreviations

AA	Federal Foreign Office
ABG	Automated and Biometrically Supported Border Control
AG Rück	Return Working Group (IMK Subgroup)
ASMK	Conference of State Labour and Social Development Ministers
AufenthG	Residence Act
AufenthV	Residence Ordinance
AVwV	General Administrative Ordinance
AZR	Central Foreigner Registry
AZRG	Central Foreigner Registry Act
BAMF	Federal Office for Migration and Refugees
BASFI	Labour, Integration, Family and Social Affairs Authority
BeschV	Employment Ordinance
BIODEV II	BIometrics Data Experimented in Visas
BKA	Federal Criminal Police Office
BMAS	Federal Ministry of Labour and Social Affairs
BMI	Federal Ministry of the Interior
BMP-Projekt	Building Migration Partnerships Project
BMZ	Federal Ministry of Economic Cooperation and Development
BR-Drs.	Bundesrat Print
BSG	Health, Consumer Protection, Family and Social Affairs Authority
BT-Drs.	Bundestag Print
BT-PlPr.	Bundestag Plenary Minutes
BVerwG	Federal Administrative Court
BWA	Federal Association for Economic Development and Foreign Trade
CDU	Christian Democratic Union
CSU	Christian Social Union
EASO	European Asylum Support Office
ECRE	European Council on Refugees and Exiles
EG	European Community
EMN	European Migration Network
EPN	European Patrol Network
EU	European Union
EuGH	Court of Justice of the European Union
EUREMA	EU Pilot Project for Intra-European Relocation of Refugees Stranded on Malta
Eurostat	European Union Statistical Office
FDP	Free Democratic Party
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GAMM	Global Approach to Migration and Mobility/Global Approach to Migration
GG	Basic Law of the Federal Republic of Germany

ICMPD	International Centre for Migration Policy Development
IMK	Standing Conference of State Interior Ministers and Senators
IOM	International Organisation for Migration
KOBRA	Central Coordination and Advisory Centre for Victims of Trafficking
KOK	Nationwide Activist Coordination Group Combating Trafficking in Women and Violence Against Women in the Process of Migration
MAGS	Ministry of Labour, Equality and Social Affairs
MBE	Migration Consultation for Adult Immigrants
MIDWEB	Migration and Socio-Economic Development in the Western Balkans
MIFKJF	Ministry of Integration, Families, Children, Youths and Women
MITRAS	Operation Migration, Traffic and Security
NIP	National Integration Plan
NPD	National Democratic Party of Germany
OSZE	Organisation for Security and Cooperation in Europe
REAG/GARP	Reintegration and Emigration Programme for Asylum-Seekers in Germany/ Government Assisted Repatriation Programme
SIS	Schengen Information System
SGB	Code of Social Law
SOLWODI	Solidarity with Women in Distress (NGO)
SPD	Social Democratic Party of Germany
StAG	Nationality Act
StGB	Penal Code
SVR	Advisory Council of German Foundations for Integration and Migration
UM	Unaccompanied Minors
UNICEF	United Nations Children's Fund
URA	Temporary Return Project
VG	Administrative Court
VIS	Visa Information System
ZAV	International Placement Services of the Federal Employment Agency
ZuwG	Act to Control and Restrict Immigration and Regulate the Residency and Integration of EU Citizens and Foreigners

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# 1 Introduction: Purpose and Methodology

The Annual Policy Report 2011 gives an overview of the most important political discussions and developments in the field of migration, integration, and asylum in the Federal Republic of Germany in 2011. However, the report cannot claim to be complete. It was prepared by the German National Contact Point for the European Migration Network (EMN) at the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) in Nuremberg.<sup>1</sup>

In accordance with Article 9(1) of Council Decision 2008/381/EC of 14 May 2008 establishing the European Migration Network, each EMN National Contact Point is required to provide every year a report describing the migration and asylum situation in the Member State, which shall include legal changes, policy developments and key statistical data. This annual report on the migration and asylum situation (the “Annual Policy Report”) aims to meet the information needs of Community institutions and of Member States’ authorities and institutions by “providing up-to-date, objective, reliable and comparable information on migration and asylum”<sup>2</sup> and thus to support the decision-making process 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 with the most important contents and results of the Members States’ national reports.

Like its predecessors, the Annual Policy Report 2010 will serve another purpose as well. The report is to help monitor progress with the implementation of the

European Pact on Immigration and Asylum, which the European Council adopted at its meeting on 15/16 October 2008.<sup>3</sup> 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 Programme for the period 2010 – 2014 was adopted on 10 and 11 December 2009 by the Heads of State and Government.<sup>4</sup> 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.

1 The authors wish to thank Axel Böhm und Anika Pinzner for their assistance.

2 Art. 1(2) of the [Council Decision of 14 May 2008 establishing a European Migration Network \(2008/381/EC\)](#).

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

4 [The Stockholm Programme – An open and secure Europe serving and protecting the citizens](#), Official Journal of the European Union, C 115, 4 May 2010, p. 1-38.



In the framework of the “tracking method”<sup>5</sup>, which aims to monitor the implementation of the European Pact on Immigration and Asylum, the Commission will prepare an annual report, which will include contributions from the Member States and factual information from a range of sources. This report helps to prepare the annual discussion of the Pact in the Council and the European Council. This Policy Report 2010 for Germany is one of the contributions to the Commission’s annual report.

In terms of contents, the seventh Policy Report is mainly based on the Policy Reports of former years. It largely follows the structure provided by the EMN, which the EMN Contact Points for the other EU Member States use as well in preparing their national reports and which, for 2011, gives particular weight to the rules of the Pact and the Stockholm Programme.<sup>6</sup>

Chapter 2 gives an overview of the political structures, the existing institutions, any changes to these structures and general policy developments in 2011. Chapter 3 sketches relevant political and legal developments and important political debates on migration, integration and asylum. Chapters 4-8 deal 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 9 focuses on developments which affect the global, overall approach to migration. And Chapter 10 finally deals with concrete issues concerning the implementation and interpretation of EU law in 2011. The Appendix will give a systematic overview of the concrete implementation of the commitments and goals of the European Pact on Immigration and Asylum and the Stockholm Programme.

## 1.1 Methodology

The Policy Report 2011 is based on numerous sources of data and information. It is largely a more detailed version of the tabular report on the implementation of the commitments under the European Pact on Immigration and Asylum and the Stockholm Programme sent to the EU commission at the beginning of 2012. This tabular report (see the Appendix) mainly includes reports and information from the operative units of the federal departments which deal with the contents of the Pact and the Stockholm Programme at this level. Moreover, factual information from the relevant operative units of the Federal Office for Migration and Refugees (BAMF) was included. Information on political debates and the status of legislative procedures stems mainly from internet sources, such as printed papers and minutes of plenary meetings of the two chambers of parliament (Bundestag and Bundesrat), official journals and press releases or other public statements by ministries, authorities and political parties. In some cases, relevant statements and publications by non-governmental organisations or international organisations were used as well. Moreover, an analysis of the news coverage from nationwide print media was included for certain issues. All external sources are given in the footnotes.

The majority of figures and statistics were provided by the BAMF, the Federal Statistical Office, the Federal Employment Agency and IOM. As the Annual Policy Report was already completed by the beginning of March 2012, some data on migration for 2011 were not available yet.

5 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.

6 European Migration Network, Specifications for Annual Policy Report 2011 (Final Version: 31st October 2011), MIGRAPOL European Migration Network Doc 246.

With regard to the description of developments which go beyond the content of the Stockholm Programme or the commitments under the Pact we limited ourselves to the most important changes in 2010. Topics for this Report were selected and weighted according to their relevance to the work of political decision-makers at both the national and the European level. In particular, it was necessary to limit the number of issues dealt with in the section on “Main policy and/or legislative debates” (section 3.2). In order to keep the possible spectrum of issues manageable, only those debates were regarded as “main political debates” and included in the analysis which were given extensive treatment in the most important media (national newspapers, public and private TV stations) *and* which were an issue for the Federal Government, the Bundestag or the state parliaments. If chapters 4 – 8 mention developments beyond the commitments under the Pact and the Stockholm Programme, these are also events or debates which were key during the reporting period in the sense that they were the subject of national media reports and parliamentary debate.

## 1.2 Terms and Definitions

The terms used in this report are based on the Asylum and Migration Glossary of the European Migration Network and – if referred to – the terms used in the European Pact on Immigration and Asylum and the Stockholm Programme. Terms which refer to the legal situation in Germany are explained in the text or in footnotes. If any issues were already treated in preceding EMN Annual Policy Reports, the footnotes will refer to the relevant sections of these Reports.

# 2 General Structure of the Political and Legal System in Germany

## 2.1 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. 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.<sup>7</sup>

- The Federal Ministry of the Interior (BMI) bears the main responsibility. Beyond drafting legislation, it deals with European harmonisation and supervises

the Federal Office for Migration and Refugees, the central operative authority.

- Another important venue of policymaking is the Permanent 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.
- Issues of labour migration as well as the integration of migrants in the labour market are dealt with by the Conference of the Ministers and Senators of Employment and Social Affairs of the Federal States (ASMK), which – similar to the IMK – serves the cooperation and coordination of the Federal States' interests with regard to employment and social policy.
- Within the area of responsibility of the Federal Foreign Office, 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 government and is to be involved in

<sup>7</sup> These have remained largely unchanged during the reporting period. For a more detailed description please see Schneider, Jan (2009): [The Organisation of Asylum and Migration Policies in Germany](#), Nuremberg: Federal Office for Migration and Refugees.

any relevant legislative projects. Another task is to promote the integration of migrants who are permanently resident in Germany and to counteract xenophobia (cf. §§ 92 et seq. of the Residence Act (AufenthG)). Since 2005 the Commissioner has been institutionally attached to the Chancellery in the rank of a state minister.

- Similarly to the IMK, the Ministers and Senators responsible for integration in the Federal States regularly meet to deliberate and coordinate their political endeavours with regard to integration.
- 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 repatriates. 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.
- 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<sup>8</sup> 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 ethnic repatriates 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. Moreover, the BAMF coordinates information flows between the relevant authorities concerning the residence of foreigners who have come to Germany for employment purposes and of foreigners who might be a threat to public security and therefore be the subject of measures under foreigner, asylum or nationality law.<sup>9</sup>

- 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 repatriates. 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 (AZR) and the national Visa File.

## 2.2 General Structure of the Legal System

Legislative responsibilities overlap as well; lawmaking 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 Fe-

8 Subsidiary protection may be awarded to third-country national or stateless persons who do not fulfil the qualifications for recognition as refugees but who have put forward substantive reasons for proceeding on the assumption that they would, upon returning to their respective countries of origin, be at risk of suffering serious harm such as the imposition of the death penalty, torture or a serious individual threat to their life or physical integrity as a result of indiscriminate violence within the context of an international or domestic armed conflict.

9 For a more detailed description please see Schneider, Jan (2009): [The Organisation of Asylum and Migration Policies in Germany](#). The key tasks of the Federal Office are set out in section 75 of the Residence Act.

deral 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. 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, 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*).<sup>10</sup>

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

<sup>10</sup> In addition, questions regarding foreigners law' are discussed in a number of working groups with members from both the Federal level and the level of the Federal States. Problems of enforcement in the area of return of third country nationals who are obliged to leave the country are dealt with by the Return Working Group (AG Rück) which is a subgroup of the IMK. In the AG Rück, relevant units of the interior ministries on the Federal level and of the Federal States cooperate with each other and other relevant agencies.

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*)<sup>11</sup>, 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. The Residence Act has been modified in the years 2007, 2008, 2009, and 2011. In contrast, the entry of third-country nationals and their subsequent, short-term residence in Germany are regulated by the provisions of the Schengen Borders Code.<sup>12</sup>

<sup>11</sup> 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).

<sup>12</sup> 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.

- In October 2009, the General Administrative Regulation relating to the Residence Act (*Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz, AVwV*) entered into force. It aims in particular to harmonise administrative practices in the application of the Residence Act on the Federal territory and to guarantee minimum standards.<sup>13</sup>
- 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*).<sup>14</sup>
- 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 subsidiary 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*)<sup>15</sup> 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*).<sup>16</sup>
- The Ordinance Governing Residence<sup>17</sup> clarifies details concerning the entry into and residence in the Federal Territory, fees and procedural rules for the granting of residence titles.
- The Employment Ordinance<sup>18</sup> 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 Ordinance<sup>19</sup> supplements the Employment Ordinance and specifies under which conditions foreigners who are legally resident in Germany may take on a job.
- The Integration Course Ordinance<sup>20</sup> regulates details concerning the implementation of the integration courses foreseen in the Residence Act, such as the conditions for participation, data transmission, fees and the basic structure, duration and contents of the courses. Moreover, it governs the admission procedures for public and private course providers.
- The Ordinance on Determining Responsibilities in the Area of Asylum<sup>21</sup> 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 Tests<sup>22</sup> regulates the naturalisation tests (see section 4.5.1).

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.

<sup>13</sup> Joint Ministerial Gazette No. 42-61, dated 30 October 2009, p. 877.

<sup>14</sup> Asylum Procedure Act (*AsylVfG*).

<sup>15</sup> Act on Benefits to Asylum Seekers (*AsylbLG*).

<sup>16</sup> Central Register of Foreign Nationals Act (*AZRG*).

<sup>17</sup> Ordinance Governing Residence (*Aufenthaltsverordnung, AufenthV*).

<sup>18</sup> Employment Ordinance (*Beschäftigungsverordnung, BeschV*).

<sup>19</sup> Employment Procedure Ordinance (*Beschäftigungsverfahrenverordnung, BeschVerfV*).

<sup>20</sup> Integration Course Ordinance (*Integrationskursverordnung, IntV*).

<sup>21</sup> Ordinance Reformulating the Ordinance on Determining Responsibilities in the Area of Asylum (*Asylzuständigkeitsbestimmungsverordnung, AsylZBV*).

<sup>22</sup> Ordinance on Naturalisation Tests.

# 3 General Developments Related to Asylum and Migration

## 3.1 General Political Developments

### *Elections in the Federal Republic of Germany*

While there were no national elections in Germany in 2011, there were seven state parliament elections. The Federal States that held elections were: Hamburg, Saxony-Anhalt, Rhineland-Palatinate, Baden-Württemberg, Bremen, Mecklenburg-Vorpommern and Berlin. 2011 was also known as the “super election year” due to the unusually high number of state elections.

The first elections were on 20 February 2011 for the Hamburg Parliament House of the City State, which were called following the breakdown of the black/green coalition under Christoph Ahlhaus (Christian Democratic Union - CDU). The Social Democratic Party of Germany (SPD) made strong gains compared to the parliament elections of 2008, receiving the most votes at 48.4%. This gave the SPD the absolute majority of seats in the city parliament. The Christian Democratic Union (CDU) received 21.9%, Alliance 90/The Greens received 11.2%, the FDP (Free Democratic Party) received 6.7% and The Left received 6.4%.<sup>23</sup> On 7 March the city parliament elected Olaf Scholz (SPD) to the First Mayor of the Hanseatic City of Hamburg. Olaf Scholz presides over a social-democratic Senat. The CDU minority government of Christoph Ahlhaus was thereby dissolved.

State parliamentary elections occurred in Saxony-Anhalt on 20 March. The CDU received the most votes with 32.5%, followed by The Left with 23.7%, the SPD

with 21.5% and Alliance 90/The Greens with 7.1%. The FDP received 3.8% and was unable to be represented in the state parliament due to the 5% hurdle.<sup>24</sup> On 19 April 2011, the state parliament of Saxony-Anhalt elected Reiner Haseloff (CDU) the new premier, replacing Wolfgang Böhmer (CDU), who had announced before the elections that he would not be available for further office. The grand coalition between the CDU and the SPD continued.

One week after the state parliamentary elections in Saxony-Anhalt, on 27 March 2011, state parliamentary elections were held in both Baden-Württemberg and Rhineland-Palatinate. In Baden-Württemberg, the CDU received 39.0% of the votes, Alliance 90/The Greens received 24.2%, the SPD received 23.1% and the FDP received 5.3%.<sup>25</sup> The reigning black/yellow coalition between the CDU and the FDP lost its majority in the Baden-Württemberg state parliament. Stefan Mappus (CDU) was unseated as premier. The results were considered “historic”, since on 12 May 2011 the state parliament elected Winfried Kretschmann (Alliance 90/The Greens) the first Green premier in the Federal Republic of Germany and the CDU became an opposition party in the Baden-Württemberg state parliament for the first time since 1953, unable to elect the premier.

In the state parliamentary elections of Rhineland-Palatinate, the SPD lost just under 10% of the votes compared to the elections in 2006, yet still became the strongest party with 35.7% of the votes – just ahead

<sup>23</sup> [Amtlicher Anzeiger 2011: Wahl zur Hamburgischen Bürgerschaft und die Wahlen zu den Bezirksversammlungen am 20. Februar 2011.](#)

<sup>24</sup> [Statistisches Landesamt Sachsen-Anhalt 2011: Wahl des 6. Landtages von Sachsen-Anhalt am 20. März 2011.](#)

<sup>25</sup> [Statistisches Landesamt Baden-Württemberg 2011: Endgültiges Ergebnis der Landtagswahl am 27.03.2011 mit Vergleichsangaben von 2006.](#)



of the CDU with 35.2%. Alliance 90/The Greens made strong gains, receiving 15.4%; the FDP however only received 4.2% and lost representation in the state parliament.<sup>26</sup> On 18 May 2011, Kurt Beck (SPD) was re-elected premier of the Rhineland-Palatinate state parliament. He heads a red/green coalition between the SPD and Alliance 90/The Greens, no longer governing under the absolute SPD majority of the previous election period.

Parliament House of the City State elections were held in Bremen on 22 May 2011, with the SPD receiving 28.6% of the votes, Alliance 90/The Greens 22.5%, the CDU 20.4% and The Left 5.6%. The FDP only received 2.4% and lost its representation in the city parliament.<sup>27</sup> With this result, the ruling red/green coalition under Jens Böhrnsen (SPD) expanded the majority it had been building in the Bremen Senate since 2007. Böhrnsen was confirmed as mayor by the city parliament on 30 June 2011.

Elections for the state parliament of Mecklenburg-Vorpommern were held on 4 September 2011. The SPD improved its standing over the state elections of 2006, becoming the strongest party with 35.6% of the vote. The CDU received 23.0%, The Left received 18.4%, Alliance 90/The Greens 8.7% and the National Democratic Party of Germany (NPD) 6.0%. Alliance 90/The Greens thus gained representation in the state parliament for the first time, and the NPD regained representation for the first time since 2006. The FDP lost representation with 2.8%.<sup>28</sup> The grand coalition between the SPD and the CDU continued and Erwin Sellering (SPD) was confirmed as premier of Mecklenburg-Vorpommern on 25 October 2011.

Two weeks later, elections were held for the Parliament House of the City State of the federal capital of Berlin. The SPD became the strongest party with 28.3% of the vote, despite slight losses. The CDU received 23.3%, Alliance 90/The Greens 17.6%, The Left 11.7%

and the Pirate Party<sup>29</sup> 8.9%. The FDP received only 1.8% of the vote and lost representation in the Parliament House of the City State.<sup>30</sup> The Pirate Party gained representation in a state parliament for the first time. The previous coalition between the SPD and The Left lost its majority in the Parliament House. Following failed negotiations with The Greens, the SPD allied itself with the CDU in a grand coalition. The Government Mayor Klaus Wowereit (SPD) was re-elected by the Parliament House on 24 November 2011, marking his fourth consecutive term.

### ***Changes in the Political Responsibilities for Migration and Asylum***

Dr. Hans-Peter Friedrich from the Christian Social Union (CSU) became the Federal Minister of the Interior on 3 March 2011; migration and asylum fall under his purview. Prior to this appointment he had been the chairman of the CSU national committee in the German Bundestag since October 2009. The previous Federal Minister of the Interior, Thomas de Maizière (CDU), made a lateral move into the Ministry of Defence following the resignation of the previous Minister of Defence, Karl-Theodor zu Guttenberg (CSU), on 1 March 2011.

The new government in the federal state of Hamburg appointed Michael Neumann (SPD) Senator for Internal Affairs and Sport on 23 March 2011, replacing Heino Vahldieck (CDU). Integration falls under the purview of the Senator for Labour, Integration, Family and Social Affairs. This office has been held by Detlef Scheele since 23 March 2011. The Labour, Integration, Family and Social Affairs Authority (BASFI) was newly formed at the beginning of the new election period out of the jurisdictions of the Health, Consumer Protection, Family and Social Affairs Authority (BSG) and the Economics and Labour Authority (BWA).

26 Landeswahlleiter Rheinland-Pfalz 2011: Wahlergebnisse der Landtagswahl 2011.

27 [Landeswahlleiter Bremen 2011: Bürgerschaftswahl Land Bremen 2011.](#)

28 [Amtsblatt von Mecklenburg-Vorpommern 2011: Endgültiges Ergebnis der Wahl zum Landtag von Mecklenburg-Vorpommern am 4. September 2011 einschließlich Wahlkreis 33 – Rügen I \(Nachwahl am 18. September 2011\).](#)

29 The German Pirate Party was formed in September 2006 following Sweden's example. It supports strengthening of citizens' rights, direct democracy and co-determination, reforming copyright and patent law, the free exchange of knowledge, better privacy protection, respecting the constitutionally guaranteed right to privacy, greater transparency and freedom of information, as well as free education.

30 [Die Landeswahlleiterin für Berlin 2011: Endgültiges Ergebnis Wahl zum Abgeordnetenhaus von Berlin 2011.](#)



Following the state parliamentary elections in Saxony-Anhalt, Holger Stahlknecht (CDU) was appointed Minister for Internal Affairs and Sport of Saxony-Anhalt on 19 April 2011, succeeding Holger Hövelmann (SPD). The ministry thus changed from the SPD to the CDU. Integration falls under the purview of the Ministry of Labour and Social Affairs of Saxony-Anhalt, headed by Norbert Bischoff (SPD) since 19 April 2011. The Ministry's activities are based on a reorganization of expertise between the State Ministry for Economics and Labour and the State Ministry for Health and Social Affairs from the previous election period.

Reinhold Gall (SPD) became State Interior Minister on 12 May following the change of government in Baden-Württemberg, succeeding Heribert Rech (CDU). Bilkay Öney (SPD) moved from the Berlin SPD to Baden-Württemberg to head the newly formed Ministry of Integration – the first independent integration ministry in the Federal Republic. Öney is the first person with migration background appointed to a ministry post in Baden-Württemberg.

Roger Lewentz (SPD) was appointed Minister for Internal Affairs and Sport in Rhineland-Palatinate on 18 May 2011 following state parliamentary elections. He was elevated from the office of State Secretary of the same ministry, replacing Karl Peter Bruch (SPD). Irene Alt (Alliance 90/The Greens) is responsible for integration, heading the Ministry of Integration, Families, Children, Youths and Women (MIFKJF), which was created through a reorganization of the then-responsible ministries. The new Ministry is responsible for areas such as integration and migration, which were formerly under the purview of the Ministry of Social Affairs, as well as foreigners and asylum, which were previously managed by the Ministry of the Interior.

After the city parliamentary elections in Bremen, Ulrich Mäurer (SPD) remained Senator for Internal Affairs and Sport. The areas of immigration affairs and integration are the responsibility of the Senator for Social Affairs, Children, Youths and Women. Anja Stahmann (Alliance 90/The Greens) has held this office since 30 June 2011. Her predecessor was Ingelore Rosenkötter (SPD).

In Mecklenburg-Vorpommern, Lorenz Caffier (CDU) was appointed to the office of Minister for Internal Affairs and Sport. Integration falls under the purview of the Ministry of Labour, Equality and Social Affairs

(MAGS), headed by Manuela Scheswig (SPD) as in the last election period.

Following the city parliamentary elections in Berlin, Frank Henkel (CDU) became the Senator for Internal Affairs and Sport, succeeding Ehrhart Körting (SPD), who held the office in the previous election period. The Senator for Labour, Integration and Women is Dilek Kolat (SPD), appointed 1 December 2011. Her predecessor was Carola Bluhm (The Left).

The chair of the Standing Conference of State Interior Ministers and Senators (IMK) was held in 2011 by Hesse Interior Minister Boris Rhein (CDU).

### 3.2 Main Policy and/or Legislative Debates

#### *Debates on Lack of Skilled Workers and Labour Market-Oriented Immigration*

The debate on the lack of skilled workers and the immigration of foreign skilled labour was also continued in 2011.<sup>31</sup> On the one hand, economic representatives stated that not all open positions in certain sectors, occupations and regions can be filled by German citizens, so the focus is turned to qualified foreigners.<sup>32</sup> On the other hand, others insisted that the lack of skilled labour is overestimated and vacant positions should be filled with German citizens.<sup>33</sup> The debate over the existing lack of skilled labour intermingled with reports that the labour force in Germany will shrink markedly in the coming years due to demographic changes, and in the long run an increase in the lack of skilled labour

31 Cf. [Politikbericht 2010](#) by the German National Contact Point for the European Migration Network (EMN), Nuremberg: Federal Office for Migration and Refugees-BAMF, p. 16f.

32 Cf. e.g. "Her mit den Ausländern", Focus, 12 November 2011.

33 Cf. "[Bundesregierung bleibt Beweise schuldig](#)", Spiegel Online, 21 February 2011; "CSU sperrt sich gegen Zuwanderung", Frankfurter Allgemeine Zeitung, August 11, 2011. Critics of the lack of skilled labour regularly reference the following study: Bremke, Karl (2010): [Fachkräftemangel kurzfristig noch nicht in Sicht](#), German Institute for Economic Research (DIW), Berlin.

could be expected as a result.<sup>34</sup> Government sources and the media referred to an estimate by the Federal Employment Agency showing a reduction of 6.5 million people in the labour force potential by 2025.<sup>35</sup>

During the first half of 2011, demands to counter the lack of skilled labour with an increase in immigration were further supported by good economic and labour market data. The debate was also furthered by the Federal Government and the Federal States. On 22 June 2011, the Federal Government published the draft “Securing Skilled Labour: Goals and Measures of the Federal Government”,<sup>36</sup> on 15 April 2011, the federal state of Saxony an initiative in the Bundesrat to reform the immigration of skilled workers<sup>37</sup> and on 8 September 2011 the National Regulatory Control Council released the results of the “Entry Optimisation for Skilled Workers and Executives”.<sup>38</sup>

In the second half of 2011, cautious economic forecasts muffled undifferentiated demands for more foreign workers. However, the debate on the lack of skilled labour and labour market-oriented immigration continued. Studies and media reports, for example, explicitly separated the lack of skilled labour from the

economic situation and explained its increase with reference to demographic developments.<sup>39</sup>

The uncertainty of the overall economic situation in the European Union and the high unemployment rates, especially among young people in other European states such as Spain and Greece, resulted in considerations of increasing skilled worker migration from crisis regions in the EU to Germany.<sup>40</sup> The Federal Employment Agency, in the shape of the International Placement Services (ZAV), made targeted solicitations to qualified immigrants from Spain, Portugal and Greece.<sup>41</sup>

Since 1 May 2011, citizens of eight EU states<sup>42</sup> have had complete access to the German labour market. Potential increases in immigration from these states and possible effects on the labour market have been discussed as a result of this opening.<sup>43</sup> In general, the impression prevails that potential fears of a great wave of immigrants from Central and Eastern Europe were not realised, although the influx of immigrants did increase compared to the previous year.<sup>44</sup>

In conjunction with a lack of skilled labour in the German labour market, the media also seized on the Act to Improve the Assessment and Recognition of Professi-

34 Cf. e.g. Federal Ministry of the Interior (2011): [Demografiebericht: Bericht der Bundesregierung zur demografischen Lage und künftigen Entwicklung des Landes](#), Berlin; Federal Employment Agency (2011): [Perspektive 2025: Fachkräfte für Deutschland](#), Nuremberg; Federal Ministry of Labour and Social Affairs (2011): [Fachkräftesicherung: Ziele und Maßnahmen der Bundesregierung](#), Berlin.

35 Cf. e.g. Federal Employment Agency (2011): [Perspektive 2025: Fachkräfte für Deutschland](#), Nuremberg; Federal Ministry of Labour and Social Affairs (2011): [Fachkräftesicherung: Ziele und Maßnahmen der Bundesregierung](#), Berlin; McKinsey Deutschland (2011): [Wettbewerbsfaktor Fachkräfte: Strategien für Deutschlands Unternehmen](#), Berlin; “Die missverständliche Zahl der 6,5 Millionen”, ZEIT ONLINE, 18 May 2011.

36 Federal Ministry of Labour and Social Affairs (2011): [Fachkräftesicherung: Ziele und Maßnahmen der Bundesregierung](#), Berlin.

37 Cf. [Press Release](#) “Innenminister Ulbig bringt sächsische Zuwanderungsinitiative in den Bundesrat ein”, Saxony State Ministry of the Interior, 15 April 2011.

38 National Regulatory Control Council (2011): [Einreiseoptimierung Projektbericht über die Optimierung des Verfahrens zur Einreise von Fach- und Führungskräften aus Drittstaaten](#), Berlin. The project was created in cooperation with the Federal States of Hesse and Saxony, along with Baden-Württemberg, Rhineland-Palatinate and select foreigner authorities.

39 Cf. e.g. “Der Fachkräftemangel kennt keine Konjunkturlaute”, Trade Journal from December 20, 2011; Kappler, Markus, Holger Bonin, Andrea Sachs (2011): [Forschungsbericht “Wertschöpfungseffekte der Fachkräftesicherung”](#), Centre for European Economic Research (ZEW), Mannheim; “Germany Has One of the Oldest Populations” (German), Frankfurter Allgemeine Zeitung, October 6, 2011; Federal Statistical Office (2011) [Statistisches Jahrbuch 2011](#), Wiesbaden; “Deutschland droht dramatischer Fachkräftemangel”, Berliner Zeitung, 22 August 2011.

40 Cf. e.g. “Rösler will Fachkräfte aus Südeuropa holen”, Financial Times Deutschland, 5 December 2011; “¡Adiós, ingenieros!”, Frankfurter Allgemeine Zeitung, 12 November 2011; “Auf ins Wirtschaftswunderland”, Der Spiegel, 9 August 2011.

41 “Fachkräfte aus der EU gesucht”, Frankfurter Rundschau, 19 July 2011; “Gesucht: Ingenieure aus Krisenstaaten”, Süddeutsche Zeitung, 19 June 2011; “Bundesagentur umwirbt Arbeitslose aus Krisenstaaten”, SPIEGEL ONLINE, 18 July 2011.

42 Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, The Czech Republic and Hungary.

43 Cf. e.g. “Bloß nicht Deutschland”, Der Spiegel, 10 October 2011.

44 Cf. e.g. “Vom Ansturm der Millionen ist nichts zu sehen”, Nürnberger Nachrichten, 12 July 2011, Federal Office for Migration and Refugees (2012) [Freizügigkeitsentwicklung](#), Nuremberg.

onal Qualifications Obtained Abroad.<sup>45</sup> The Bundestag passed the Act on 29 September 2011; the Bundesrat passed it 4 November 2011. The act takes effect on 1 April 2012.<sup>46</sup>

The Federal Government implemented the European Union's Blue Card on 7 December.<sup>47</sup> In addition, the salary limit in accordance with § 19 Residence Act was lowered to 48,000 Euros, and the residence regulations for international students were eased.

### **50-Year Anniversary of Labour Recruitment Agreement with Turkey**

The recruitment agreement with Turkey on placing labourers in the Federal Republic celebrated its 50<sup>th</sup> anniversary on 30 October 2011. The agreement became a milestone of German post-war migration history: today approximately 2.5 million people of Turkish descent live in Germany, forming the largest migrant community in the country. The Federal Government paid homage to the men and women who came to Germany as a direct or indirect result of the agreement in various ways, including a ceremonial act in the "Weltsaal" of the Federal Foreign Office in Berlin. Chancellor Angela Merkel and Turkish president Recep Tayyip Erdogan were both present at the event.<sup>48</sup> On 26 October the Bundestag agreed to hold a discussion on the anniversary of the recruitment agreement.<sup>49</sup>

45 Cf. e.g. "Migranten willkommen", Handelsblatt, 29 September 2011; "150 Bewerbungen, drei neue Anzüge", Süddeutsche Zeitung, 9 August 2011; "[Endlich zurück in den eigentlichen Beruf](#)", Süddeutsche.de, 29 September 2011; "[Mit dem Taxifahrer Ing. soll bald Schluss sein](#)", FAZ.NET, 7 November 2011.

46 [BGBl. I Nr. 63 12 December 2011, p. 2515](#).

47 Cf. [Press Release](#), "Bundesregierung beschließt Erleichterung bei der Zuwanderung ausländischer Fachkräfte", Federal Ministry of the Interior, 7 December 2011.

48 Cf. [Press Release](#), "50. Jahrestag deutsch-türkisches Anwerbeabkommen", Federal Ministry of the Interior, 2 November 2011; "Ganz unten", Frankfurter Allgemeine Zeitung, 31 October 2011; "Angekommen", Süddeutsche Zeitung, 30 October 2011.

49 Cf. [BT-PIPr 17/135](#) of 2 October 26, 2011, p. 16025A – 16034C.

### **Debate on Refugees and Asylum**

The number of asylum applications increased from the previous year by 10.7% to 45,740 applications.<sup>50</sup> Above all, applicants from Afghanistan (+31.5% from previous year), Iran (+35.4%), Syria (+76.8%) and Pakistan (+202.4%) seeking asylum increased rapidly.<sup>51</sup> In the case of Syria, the increase in asylum-seekers is based on the Syrian government's actions against the population.<sup>52</sup> The deteriorated human rights situation<sup>53</sup> in Syria was ultimately reflected in the debate over halting deportations of Syrian refugees. The BMI announced in April that the Federal Office for Migration and Refugees would temporarily issue no further decisions on asylum in regard to Syria.<sup>54</sup> Due to the temporary nature of the rule, the human rights organisation PRO ASYL<sup>55</sup>, along with Alliance 90/The Greens, called for the German Bundestag to issue a permanent resolution and suspend the re-admission agreement.<sup>56</sup>

The right of residence regulation of 4 December 2009 expired on 31 December 2011, which permitted foreigners with exceptional leave to remain to stay in Germany on a "test residence permit".<sup>57</sup> Even before this deadline, organisations such as Caritas and Diakonie called for a more generous right of residence instead of the practice of continuously extending exceptional leave to remain (a.k.a. successive leaves).<sup>58</sup> As of 1 July 2011, the newly created § 25a AufenthG

50 Statistical Office of the European Union (2012): "Asylum and New Asylum Applicants by Citizenship, Age and Sex Annual Aggregated Data", Luxembourg; internal calculations.

51 Ibid.

52 Cf. e.g. "[Immer mehr Syrer suchen Zuflucht in Deutschland](#)", tagesschau.de, December 29, 2011; Hamburg; "Weit weg vom Folterknast", Süddeutsche Zeitung, 26 October 2011.

53 Cf. e.g.: "[UN listen Assads Gräueltaten auf](#)" ZEIT ONLINE, 28 November 2011; for background information, see Federal Office for Migration and Refugees (2011): "[Umsturz und Unruhen in der arabischen Welt](#)", Nuremberg.

54 Cf. [BT-PIPr. 17/155](#) of 26 January 2012, p. 18611A/B.

55 Cf. [Press Release](#), "Rücknahmeabkommen mit Syrien beenden!", PRO ASYL, 25 May 2011.

56 Cf. [BT-Drs. 17/5775](#) of 11 May 2011; "[Grüne fordern Abschiebestopp](#)", Das Parlament, 30 May 2011.

57 On the regulation, cf. [Press Release](#), "Innenminister verständigen sich über Altfallregelung", Internal Affairs and Sport Authority, Bremen, 4 December 2009.

58 Cf. <http://www.aktion-bleiberecht.de/>; "Wenn Armut zur Flucht zwingt", Süddeutsche Zeitung, 24 May 2011.

established an indefinite right of residence regulation for youths and adolescents (cf. section 5.1.2).<sup>59</sup> This new regulation only affects a portion of foreigners with exceptional leave to remain in Germany. Following the amendment, the opposition parties sought further to establish a more generous right of residence regulation: in the Bundestag, both The Left and Alliance 90/The Greens each brought forward a proposal, and the SPD introduced a bill for a permanent right of residence regulation.<sup>60</sup> On 16 December 2011, Schleswig-Holstein introduced a bill in the Bundesrat.<sup>61</sup> Even the media debated a potential new regulation on the right of residence for foreigners with exceptional leave to remain.<sup>62</sup> However, the interior ministers and senators in the IMK agreed on 9 December 2011 not to extend the expiring right of residence regulation.<sup>63</sup>

### 3.3 Institutional Developments in the Area Migration, Asylum and Integration

#### *Integration Advisory Council*

As part of developing the National Integration Plan (NIP) from a global integration concept to an action plan with clearly defined and verifiable goals, the Federal Government convened a Federal Advisory Council on Integration, which was publically announced on 13 January 2011.<sup>64</sup> The integration advisory council supports and advises the Federal Government Commissioner for Migration, Refugees and Integration, Maria Böhmer (CDU), who presides over the

advisory council. The 32-person integration advisory council consists of up to 10 representatives primarily from active migrant organisations as well as one representative from crucial community organisations, foundations, the Federal Employment Agency, central employers associations, the German Confederation of Trade Unions, the relevant German sports associations and charitable organisations. In addition, the advisory council has up to six representatives from churches and religious communities, three representatives from the scientific and research communities and up to five other individuals.

#### *High-Ranking Consensus Group on Immigration and Skilled Labour*

In April 2011, the High-Ranking Consensus Group on Immigration and Skilled Labour was established from a consortium of various German foundations in order to create reform proposals for steering labour migration. The office of the consensus group was established in Office of the Advisory Council of German Foundations for Integration and Migration (SVR).<sup>65</sup> The recommendations should draw majority support across the parties. The consensus group was headed by the former Federal Minister of Defence, Peter Struck (SPD) and the former Minister of Intergenerational Affairs, Family, Women and Integration in North Rhine-Westphalia, Armin Laschet (CDU). The board consists of a total of 13 people, including politicians from various political parties and representatives from unions and employers associations. The consensus group submitted its final report on 30 November 2011. The report made recommendations on how immigration could make a targeted contribution to the lack of skilled labour. The final report simultaneously argued that the first priority must be giving people in Germany better chances on the labour market. According to the consensus group, however, the targeted immigration of skilled workers should also be conducted as an important component in combatting the lack of skilled labour.<sup>66</sup>

59 Cf. Act of 23 June 2011 – Federal Law Gazette Part I 2011 No. 33 of 30 June 2011, p. 1266.

60 Cf. [BT-Drs. 17/7459](#) of 25 October 2011; [BT-Drs. 17/7463](#) of 26 October 2011; [BT-DRS 17/7933](#) of 29 November 2011.

61 Cf. [Press Release](#), “Schleswig-Holstein stellt Initiative zum Aufenthaltsrecht vor”, Ministry of Justice, Equality and Integration of Schleswig-Holstein, 16 December 2011; [BR-Drs. 773/11](#) of 30 November 2011.

62 Cf. e.g. “[Schwarz-Gelb findet Ausländer wertvoll](#)”, taz.de, 8 December 2011; “[Klassenzimmer ohne Aussicht](#)”, ZEIT ONLINE, 13 September 2011.

63 Cf. [Press Release](#) “Innenminister setzen ein deutliches Zeichen zur Bekämpfung des Rechtsextremismus und Rechtsterrorismus”, Ministry of Internal Affairs and Sport of Hesse, 9 December 2011.

64 Cf. Press and Information Office of the Federal Government: [Press Release No. 05](#) “[Böhmer: ‘Unser Dialogprinzip hat sich bewährt’](#)”, Berlin, 13 January 2011.

65 Cf. [www.svr-migration.de](http://www.svr-migration.de).

66 Cf. consensus group website: [www.konsensgruppe.de](http://www.konsensgruppe.de).

***Frankfurt Institute for Empirical Migration and Integration Research***

The Institute for Empirical Migration and Integration Research was established on 16 December 2011 at the Goethe University of Frankfurt. The institute is sponsored by the university, the Federal Employment Agency, the German Football Association and the non-profit Hertie Foundation. The board of trustees is chaired by the Federal Government Commissioner for Migration, Refugees and Integration Commissioner, Maria Böhmer. The institute will initially consist of three professors and have an annual budget of 1.5 million Euros. The institute's research should be practical, interdisciplinary and Europe-oriented. The Federal Employment Agency and the German Football Association will provide the institute with its data. The institute intends to contribute to better recognising the potential of people with migration background and harnessing it for society.<sup>67</sup>

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67 Cf. [Press Release](#), "Neues Institut für empirische Migrations- und Integrationsforschung gegründet", Hertie Foundation, 16 December 2011.

# 4 Legal immigration and integration

## 4.1 Economic migration

### 4.1.1 Background and General Context

The goal of the Federal Government is to meet the current regional, job-specific and sectoral skilled labour needs as well as to cover the expected increase in the demand for skilled labour by increased education and vocational training of domestic workers, encouraging more women and older people to work, reducing vocational and academic drop-out rates and helping people with migration history living in Germany to receive required qualifications. However, at the same time Germany also requires immigrants from the European Union and third countries, as improved mobilisation of domestic labour force potential is not expected to fully cover the need for skilled labour.<sup>68</sup>

The demographic development and economic structural transformation toward globally networked science- and research-intensive industries and services is

expected to increase the lack of skilled labour over the medium- and long-term.<sup>69</sup>

§§ 16 to 21 of the Residence Act and the Employment Ordinance open up numerous paths for partially permanent, partially temporary residence for third country nationals in Germany for the purpose of employment, such as foreign seasonal workers, contracted employees, graduates of German universities, skilled workers, highly qualified workers, researchers and self-

68 Cf. Federal Ministry of Labour and Social Affairs (2011): [Fachkräftesicherung: Ziele und Maßnahmen der Bundesregierung](#), Berlin.

69 Cf. e.g. High-Ranking Consensus Group on Immigration and Skilled Labour (2011): [Vom Anwerbestopp zur Gewinnung von Fachkräften](#), Berlin; Parusel, Bernd/Schneider, Jan (2010): [Deckung des Arbeitskräftebedarfs durch Zuwanderung](#) – Study by the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF.

Table 1: Issued Residence Documents by Selected §§

Year	§ 16 AE Studies, Language Course, Schooling	§ 17 AE Training	§ 18 AE Employment	§ 19 NE Highly Qualified Persons	§ 20 AE Research Purposes	§ 21 AE Self- employment
2011	78,615	6,369	64,903*	706	384	3,702
Initial entry before 1 January 2011	59,066	3,341	48,588	547	242	3,005
Initial entry after 1 January 2011	19,549	3,028	16,315	159	142	697

\* 46.409 AE to pursue qualified employment as per § 18 (4) 1 AufenthG.

Source: Federal Office for Migration and Refugees (2012): "Migration Monitoring", Nuremberg.



employed.<sup>70</sup> Table 1 shows the residence documents issued according to the pertinent §§ AufenthG<sup>71,72</sup> in the years 2010 and 2011. After 2009 saw numerous renewals e.g. under the Labour Migration Regulation Act,<sup>73</sup> the Federal Government resolved on 7 December to implement the EU Blue Card as well as better facilitate access to the labour market for highly qualified persons and foreign students.<sup>74</sup> The Bundestag and the Bundesrat also passed the Act to Improve the Assessment and Recognition of Professional Qualifications Obtained Abroad, which takes effect on 1 April 2012.<sup>75</sup>

Some offers support third country nationals in finding employment in the German labour market, such as international placement by the Federal Employment Agency, for which the ZAV is responsible. The ZAV has compiled information on its website for interested foreign workers.<sup>76</sup> On the Federal Employment Agency website, people from third countries seeking employment can search for posted job openings from German

employers and post their own applicant profile.<sup>77</sup> The Federal Employment Agency releases monthly analyses of reported jobs (bottleneck analyses) according to occupation. These analyses monitor the ratio of open positions to the unemployed as well as the duration of vacancies in individual occupational groups.<sup>78</sup> This allows conclusions to be made regarding the labour needs in certain occupations.

#### 4.1.2 National Developments

##### *Global Concept of the Federal Government to Secure Skilled Labour*

The Federal Government enacted a global concept to secure skilled labour on 22 June 2011, consolidating political measures to meet skilled labour demand and launch new strategies to mobilise skilled labour.<sup>79</sup> Promoting the domestic labour force has priority and is divided into four areas: activation and securing employment, better harmonisation of family and career, training opportunities for all from the beginning as well as qualification: education and vocational training. These efforts should also be supplemented with efficient immigration of qualified skilled labour. The concept will immediately suspend the priority check<sup>80</sup> by the Federal Employment Agency as per § 39(2)1(1) AufenthG for mechanical and automotive engineers, electrical engineers and physicians; a clear lack of skilled labour has already been determined in

70 For a detailed description of the entry options for third country nationals to pursue employment, see Parusel, Bernd/Schneider, Jan (2010): [Deckung des Arbeitskräftebedarfs durch Zuwanderung](#) – Study by the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF; High-Ranking Consensus Group for Immigration and Skilled Labour (2011): [Vom Anwerbestopp zur Gewinnung von Fachkräften](#), Berlin.

71 AE: Residence Permit, NE: Permanent Settlement Permit).

72 With the introduction of the electronic residence document on 1 September 2011, comprehensive organisational changes have been made to the application and issuing process that affect documentation in the AZR. Residence documents are now generally created at the Federal Printing Office, whereby the cards are only produced after the first 20,000 applications. The creation of the residence document is transmitted to the AZR when the electronic residence document is issued to the foreigner. The first electronic residence documents were delivered to the foreigners authorities in the 39th calendar week, so presumably only a few were handed out to foreigners. The majority of the residence documents saved in September were exceptional instances in which a label was issued by the foreigners authority or where the application was submitted before 1 September 2011.

73 Cf. [Politikbericht 2010](#) by the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF, p. 25f.

74 Cf. [Press Release](#), “Bundesregierung beschließt Erleichterung bei der Zuwanderung ausländischer Fachkräfte”, Federal Ministry of the Interior, 7 December 2011.

75 Cf. e.g. [Press Release](#), “Bundesrat stimmt Anerkennungsgesetz zu”, Federal Ministry of Education and Research, 4 November 2011.

76 Cf. [www.ba-auslandsvermittlung.de](#).

77 Cf. [www.arbeitsagentur.de](#).

78 Cf. [http://statistik.arbeitsagentur.de/Navigation/Statistik/Statistische-Analysen/Analytikereports/Zentral/Monatliche-Analytikereports/Analyse-der-gemeldeten-Arbeitsstellen-nach-Berufen-Engpassanalyse-nav.html](#).

79 Cf. [Press Release](#), “Fachkräfte gewinnen – Wohlstand sichern”, Federal Ministry of Labour and Social Affairs, 22 June 2011; Federal Ministry of Labour and Social Affairs (2011): [Fachkräftesicherung: Ziele und Maßnahmen der Bundesregierung](#), Berlin.

80 The priority check as per § 39(2)1(1) AufenthG sees if employing a foreigner for a specific position will have deleterious effects on the labour market, particularly in regard to employment structure, regions and economic branches, and that for this position no Germans or legally equally employable foreigners, or other foreigners who have priority access to the labour market according to EU law are available.

these occupational groups. This suspension takes effect on 22 June 2011 on order from the Federal Ministry of Labour and Social Affairs to the Federal Employment Agency.<sup>81</sup>

### Recognition Act

On 29 September 2011, the Bundestag passed the Act to Improve the Assessment and Recognition of Professional Qualifications Obtained Abroad (a.k.a. Recognition Act);<sup>82</sup> the Bundesrat enacted the law on 4 November 2011. The Act was announced in the Federal Law Gazette on 12 December 2011 and takes effect on 1 April 2012. The Act eases the integration of persons with foreign professional qualifications into the labour market, thus facilitating their integration into society. In this manner, the Act contributes to securing a skilled labour base in Germany. The Recognition Act consists of a new federal law (the Professional Qualifications Assessment Act) and amendments to existing regulations on recognising professional qualifications in 63 federal occupational laws and ordinances for regulated professions (e.g. academic and non-academic healthcare professions and master craftsmen).<sup>83</sup> The Act establishes balanced and uniform criteria for recognising foreign professional qualifications. It also broadly nullifies the connection between employment and German citizenship. An application can also be submitted from abroad. The Federal Ministry of Education and Research estimates that approx. 2.9 million people with migration history live in Germany who obtained their highest professional qualification abroad; furthermore, it is estimated that approx. 285,000 of those could apply for recognition according to the new Act. The Act applies for around 500 professions for which qualification is uniformly regulated nationwide. These include physicians, nurses, master craftsmen and all qualifications for the 350 German educational professions in the dual system. The states

will also adapt the occupations in their area of responsibility (teachers, educators, social education workers, engineers).<sup>84</sup>

### Facilitation for Highly Qualified Persons and International Students

The Federal Cabinet enacted significant measures to facilitate the immigration of foreign skilled workers on 7 December 2011.<sup>85</sup> In addition to implementing the EU Blue Card<sup>86</sup> (see 4.1.3), the salary limit as per § 19(2)3 AufenthG was reduced to 48,000 Euros from the contribution assessment limit for the general pension fund (66,000 Euros in 2011). However, the residence document is void if the immigrant receives social transfer benefits during the first three years. Further amendments should make it easier for graduates of German universities to find employment suitable to their qualifications (cf. section 4.3.2).

### Improved Information Retrieval

The Federal Employment Agency has posted all relevant information on skilled labour immigration online in compact form.<sup>87</sup> Interested skilled workers and employers can also obtain a rough estimation of whether or not the desired occupation is potentially eligible for admission to the labour market.<sup>88</sup>

## 4.1.3 Developments from the EU Perspective

### Implementation of the “EU Blue Card”

Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment (a.k.a. EU Blue Card or Guidelines for Highly-qualified Manpower) was supposed to actually

81 Cf. Federal Employment Agency (2011), [Zulassung ausländischer Fachkräfte zum deutschen Arbeitsmarkt](#), Nuremberg.

82 Cf. [Gesetz zur Verbesserung der Feststellung und Anerkennung im Ausland erworbener Berufsqualifikationen](#), BGBl. I No. 63 12 December 2011, p. 2515.

83 Cf. Federal Ministry of Education and Research (2011), [Anerkennung ausländischer Berufsqualifikationen](#), Bonn/Berlin.

84 Cf. also [www.anerkennung-in-deutschland.de](#).

85 Cf. [Press Release](#), “Bundesregierung beschließt Erleichterung bei der Zuwanderung ausländischer Fachkräfte”, Federal Ministry of the Interior, 7 December 2011.

86 [Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment](#).

87 Cf. [www.zav.de/arbeitsmarktzulassung](#).

88 Cf. [www.arbeitsagentur.de/migration-check-arbeitnehmer](#) and [www.arbeitsagentur.de/migration-check-arbeitgeber](#).



be implemented in national law by 19 June 2011. The Federal Government enacted a bill on 7 December to implement the directive.<sup>89</sup> According to the bill, a new residence document should be introduced: the EU Blue Card. Employment with a gross income of at least 44,000 Euros per year is required to obtain the EU Blue Card. No priority check is necessary; this should greatly expedite the issuance of a new residence document. For highly qualified persons in occupations with high demand for skilled labour (engineers, academic and comparable experts in IT and communications technology, as well as physicians), the salary limit is 33,000 Euros. Those possessing an EU Blue Card should receive a permanent residence document (settlement permit) after two years; family members have unrestricted labour market access. The Federal Government introduced the bill in the Bundesrat on 30 December 2011.<sup>90</sup> It is expected that the bill will take effect in July 2012.

## 4.2 Family reunification

### 4.2.1 Background and General Context

To protect marriage and family according to Art. 6 Basic Law, authorised family members of foreigners may be allowed residence in Germany. The entry and residence of foreign spouses and children of persons living in Germany is regulated by §§ 27-36 Residence Act.

### *Spousal Immigration*

From the view of the Federal Government and the German Bundestag, language ability obtained before entry helps to facilitate the integration of spouses in Germany. For this reason, foreign spouses of third country nationals living in Germany since September 2007 must demonstrate basic language ability prior to entry in order to receive a residence permit. Proof of language ability is waived for persons emigrating from certain countries. The language requirement also

applies to spouses of German nationals. The visa applicant must provide proof of basic German language ability at “reference level A1 of the Common European Framework of Reference for Languages” (CEFR) at a German embassy or consulate prior to entry. This was introduced with the goal of facilitating integration in Germany and preventing forced marriage.<sup>91</sup>

### 4.2.2 National Developments

#### *Creating a Right to Return and Protecting Victims of Forced Marriage*

The Combatting Forced Marriage Act took effect on 1 July 2011, which the Federal Government hopes will better protect the victims of forced marriage, and to this end revises § 51(4) AufenthG.<sup>92</sup> Prior to the revision of this section, a residence permit became void following an absence from Germany of at least six months. This means victims of forced marriage abducted to another country risk forfeiting their right of residence. Victims of forced marriage and abduction to another country now retain a right of return of at most 10 years after leaving Germany in order to improve protection of these individuals and avoid potential residential consequences of abduction. However, they must return three months after conclusion of the exigency at the latest. In these instances, the usual requirements for re-entry of self-sufficiency and the original application for a residence permit after the 21<sup>st</sup> birthday are waived.

Justification for the amendment is that forced marriage is a serious problem that has increasingly come to the public’s attention in recent years. More and more victims, especially young migrant women, are speaking publically about their experiences. To protect the victims, the bill, introduced by the Federal Government on 27 October 2010 and passed on 23 June 2011, is intended to intensify the fight against forced mar-

89 Cf. Bill of the Federal Government, “[Entwurf eines Gesetzes zur Umsetzung der Hochqualifizierten-Richtlinie der Europäischen Union](#)”.

90 Cf. [BR-Drs. 848/11](#) of 30 December 2011.

91 See also [Politikbericht 2010](#) by the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF, p. 25.

92 Act to Combat Forced Marriage and Improve Protection of Victims of Forced Marriage and Amend Other Residence and Asylum Regulations, BGBl. I No. 33 of 30 June 2011, p. 1266.

riage and increase public awareness of the injustice of forced marriage.<sup>93</sup>

Furthermore, the enactment of the law makes forced marriage a separate criminal act in the Penal Code (§ 237 Penal Code [StGB]); it was previously considered a particularly severe form of coercion. The penalty is incarceration for six months to five years, making it identical to the previous provision.

### **Dealing with Marriages of Convenience**

In addition to the amended right to return, the enactment of the Combating Forced Marriage Act also extended the term before receiving an independent right of residence. This is justified in that the independent right of residence designed to protect victims could be an incentive for marriages of convenience.<sup>94</sup> To counter this, spouses emigrating after July 2011 must now wait three years instead of two before receiving a right of residence independent of the marriage (§ 31(1)1 AufenthG).

### **Visa Facilitation**

Forms of facilitation when issuing Schengen visas were enacted on 14 December 2011 for specific groups of Turkish nationals. Children from six to 12 years of age, as well as persons up to 25 years of age participating in seminars, conferences, sporting, cultural or educational events held by non-profit organisations in Germany no longer are required to pay application fees for short-term residence visas. This step in the issuance process at the German embassy in Ankara and the general consulates in Istanbul and Izmir should contribute to further promoting Turkish youths

travelling to Germany.<sup>95</sup> Since 28 March 2011, Belarusian minors aged six to 12 can receive Schengen visas without charge.<sup>96</sup>

In general, German diplomatic representation are instructed by the Federal Foreign Office to check in each instance whether it is possible to reduce or waive the visa fee if the applied residence serves to promote cultural, foreign policy, developmental or other significant public interests or has humanitarian grounds.<sup>97</sup> The Visa Code, which entered into force on 5 April 2010, creates the relevant legal framework.

### **4.2.3 Developments from the EU Perspective**

#### **Language Requirements for Spousal Immigration**

Back in 2010, the Federal Administrative Court noted that the language requirement could result in hardship cases (BVerwG of 30 March 2010 - 1 C 8.09), however these could be avoided by issuing an immigrating spouse without the required German language ability a visa for language acquisition. However, this requires that the party in Germany cannot be expected to maintain the marriage abroad and the immigrating party cannot acquire the necessary German language ability due to the circumstances of his/her region of origin. This primarily pertains to emigrating spouses from particularly remote areas as well as countries in which German language courses and tests can only be completed under unreasonable conditions. In order to accommodate this conclusion, the Federal Ministry of the Interior and the Federal Foreign Office ordered the creation of the requirements for corresponding visa issuance in 2011.

Even though the Federal Administrative Court did not object to the general language requirements in its ruling of 30 March 2010, the court did assert its doubt regarding the obligatory language test prior to entry in an earlier ruling. In reference to an opinion by the EU

93 Bill of the Federal Government: Bill to Combat Forced Marriage and Improve Protection of Victims of Forced Marriage and Amend Other Residence and Asylum Regulations, German Bundestag, 17th legislative period, Drs. 17/4401, 13 January 2011.

94 Ibid.

95 [Press Release](#), "Gebührenfreiheit für Schengenvisa für Kinder zwischen 6 und 12 Jahren", German Embassy in Ankara, 9 January 2012.

96 Cf. website of the Embassy of the Federal Republic of Germany in Minsk: [http://www.minsk.diplo.de/Vertretung/minsk/de/01/visa\\_neu/visa\\_verfahren.html](http://www.minsk.diplo.de/Vertretung/minsk/de/01/visa_neu/visa_verfahren.html).

97 Cf. <http://www.auswaertiges-amt.de/cae/servlet/contentblob/350364/publicationFile/150662/Gebuehmerkleblatt.pdf>.

Commission, the court submitted the question whether the language requirement is in accordance with EU law to the Court of Justice of the European Union (EuGH).<sup>98</sup> Whether such accordance exists, however, is still pending.

## 4.3 Other Legal Migration

### 4.3.1 Background and General Context

Legal immigration options – in addition to labour migration, family reunification or migration on humanitarian grounds – are available for certain groups to come to Germany for educational purposes.

#### **Foreign Students**

Foreign students require a visa issued by the appropriate German diplomatic representation prior to entering Germany. This does not apply to students from the European Union as well as students from a number of other states.<sup>99</sup> An acceptance letter from a German university or recognised fulfilment of German university entrance requirements is required for a student visa, as well as proof of financing of the first academic year and proof of health insurance. In addition, proof of knowledge of the language of instruction is required upon application for the issuance of a visa.

Visas for foreign students are issued in an expedited process. While it generally requires the explicit consent of the foreigners authority responsible for the future place of residence, consent is considered given if this authority does not communicate any objections to the diplomatic representation at which the visa was applied within a period of three weeks and two business days (silence period) and the visa is issued. In certain cases, no consent is required.

After entry, the foreign student is issued a residence permit. The purpose of the course of study also includes language courses and other measures to prepare

for the course of study. Employment for a maximum of 90 full days or 180 half-days per year, along with student-oriented part-time employment in the university environment is permitted. Since enactment of the Immigration Act on 1 January 2005, the residence permit can be extended for up to one year after graduation in order to find employment suitable to the student's degree. This regulation should contribute to well educated students of foreign nationality being able to stay in Germany after completing their studies. In addition, since Fall 2007, no further priority checks are required as per § 27(3) and (4) of the Employment Ordinance (BeschV) for graduates of German universities. The number of foreign students in German universities has increased steadily. In the winter semester of 1998/1999, a total of 165,994 foreign students were matriculated; in winter semester 2011/2012 there were 263,848.<sup>100</sup> The federal cabinet enacted amendments to these rules in order to make it easier for third country nationals with German university degrees to find employment in Germany (cf. section 4.3.2).

#### **Acceptance Procedure for Jewish Immigrants from the Succession States to the Former Soviet Union**

The acceptance of Jewish immigrants into the country is viewed as the historical responsibility of Germany. While the acceptance procedure was primarily intended for humanitarian reasons and family reunification in addition to strengthening Jewish life in Germany before the Immigration Act was enacted, an additional primary goal of the acceptance procedure re-regulated between 2005 and 2007 is regulating immigration with regard to the integration options available in the states and municipalities. The integration of immigrants both in Jewish communities and German society should be promoted. Acceptance requirements such as a positive integration prognosis, basic knowledge of the German language and the possibility of acceptance in a Jewish community should ensure this goal is reached. The humanitarian goals should be achieved with exemptions for victims of National Socialism, considerations for family reunification and hardship rules.

<sup>98</sup> BVerwG, [BVerwG 1 C 9.10](#) of 28 October 2011.

<sup>99</sup> These are Iceland, Norway, Switzerland and Liechtenstein; also students from Monaco, San Marino, Andorra, Honduras, Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand and the United States, as well as students from Brazil and El Salvador due to bilateral agreements.

<sup>100</sup> Cf. Federal Statistical Office (2012): [Bildung und Kultur: Studierende an Hochschulen](#), Wiesbaden.

The acceptance procedure for Jewish immigrants is the first procedure to create integration prognoses on a points-based system. The acceptance procedure rules were evaluated in 2008, leading to some revisions.<sup>101</sup>

### **Acceptance Procedure for Ethnic German Immigrants**

Since 1950, over five million emigrants and their families have been admitted to Germany, forming one of the largest immigrant groups in the Federal Republic. This can be traced back less to the current immigration of ethnic Germans and more to the high immigration numbers during the 1990s. In 1990, a total of 397,073 ethnic Germans immigrated to Germany. From 1991 to 1995, this number exceeded 200,000 per year. Afterward, ethnic German immigration sank dramatically. Since then, only a few thousand individuals per year enter Germany as ethnic Germans or the family members of ethnic Germans.

## **4.3.2 National Developments**

### **Foreign Students**

A total of 69,110 residence permits were issued in 2011 for the purpose of study, i.e. according to § 16(1) AufenthG. On 31 December 2011, a total of 112,940 persons possessed a residence document for the purpose of study.<sup>102</sup> For finding employment after graduation (§ 16(4) AufenthG), 4,018 residence permits were issued.<sup>103</sup> In winter semester 2010/2011, a total of 184,960 foreign students<sup>104</sup> were enrolled in German

universities.<sup>105</sup> Foreigners who obtained their residence document e.g. during family reunification also fall under the category of foreign students.

### **Facilitation for Foreign Students to Find Employment in Germany**

The federal cabinet resolved on 7 December 2011 to make it easier for foreign graduates to find employment in Germany, together with implementing the EU Blue Card and reducing the minimum income level as per § 19(2)3 AufenthG. Graduates of German universities should be able to work unrestricted in the same year granted to find employment. According to the current legal situation, these graduates can only pursue part-time employment for 90 full or 180 half-days per year. After two years of employment in Germany, foreign graduates should be able to obtain a permanent right of residence. Further intended facilitations for foreign skilled labour is a simplification of the entry process for foreign researchers (§ 20 AufenthG) as well as authorisation to work in the field studied in Germany. The Federal Government introduced a corresponding bill in the Bundesrat on 30 December 2011.<sup>106</sup>

### **Jewish Immigrants in 2011**

The number of Jewish immigrants from the former Soviet Union accepted into Germany has sunk drastically since 2002.<sup>107</sup> In 2002, a total of 19,262 Jews from the former Soviet Union came to Germany; in 2011 this number fell to 986, a reduction of 95%.<sup>108</sup>

### **Ethnic German Immigrants in 2011**

The number of ethnic German immigrants accepted in Germany also continued to recede in 2011, by approx. 9% from 2010 for a total of 2,148 ethnic German immigrants. Around 97% of those came from states of the

101 Cf. [Politikbericht 2009](#) by the German National Contact Point for the European Migration Network (EMN), Nuremberg; BAMF, p. 30.

102 Federal Office for Migration and Refugees (2012): AZR Annual Statistics as of 31 December 2011, Nuremberg.

103 Federal Office for Migration and Refugees (2012): Immigration Monitor, Nuremberg. A direct comparison with the previous year's figures is difficult due to the introduction of the electronic residence document on September 1, 2011. Comprehensive organisational changes have been made to the application and issuing process in the foreigners authorities that affected the storage of data in the Central Foreigners Registry.

104 Foreign students are foreigners attending a German university who fulfilled their university entrance requirements abroad.

105 Cf. Federal Statistical Office (2011): [Bildung und Kultur: Studierende an Hochschulen](#), Wiesbaden.

106 Cf. [BR-Drs. 848/11](#) of 30 December 2011.

107 2006 is the only exception.

108 Federal Office for Migration and Refugees (2012): Entry of Jews from the Former Soviet Union Since 1991, Nuremberg; internal calculations.

former Soviet Union.<sup>109</sup> With this figure, the number of ethnic German immigrants has steadily declined in the last few years: 4,362 moved to Germany in 2008.<sup>110</sup>

The Federal Government enacted the draft of Ninth Act to Amend the Federal Displaced Persons Act put forward by the BMI on 2 February 2011.<sup>111</sup> The new law creates a hardship regulation to avoid unwarranted family separation amongst ethnic German immigrants. The new regulation makes it possible in case of hardship to belatedly include spouses or offspring in the acceptance letter for an ethnic German immigrant. This applies when the ethnic German already has established permanent residence and the spouse or offspring remaining in the settlement area meets the additional acceptance requirements according to the Federal Displaced Persons Act. According to previous law, the spouse and children must enter Germany together with the authorised ethnic German immigrant. The Act took effect on 9 December 2011.<sup>112</sup>

### **Electronic Residence Permit**

The EU electronic residence permit regulation (introduction of electronic residence permits)<sup>113</sup> prescribes that residence documents for third country nationals must henceforth be typically issued as independent permits with biometric features (two fingerprints and portrait). The technical standards outlined in the order, primarily to protect against forgeries, were implemented in a law enacted on 1 September 2011. In addition, the law is designed to improve the quality of and expedite data exchange pertaining to foreigners so that uniform standards can be determined in the future for electronic data exchange formats.

109 Federal Administrative Office (2012): [Jahresstatistik 2011 Herkunftsstaaten nach Monaten](#), Cologne; Federal Administrative Office (2012): [Jahresstatistik 2010 Herkunftsstaaten nach Monaten](#), Cologne.

110 Federal Administrative Office (2012): [Jahresstatistik 2008 Herkunftsstaaten nach Monaten](#), Cologne.

111 Cf. [Press Release](#) “Bundesregierung beschließt Härtefallregelung im Bundesvertriebenengesetz”, Federal Ministry of the Interior, 2 February 2011.

112 The Ninth Act to Amend the Federal Displaced Persons Act was announced on 4 December 2011, in the Federal Law Gazette, Part I 2011 No. 62 of 8 December 2011, p. 2426.

113 Cf. Council Regulation No. 380/2008 of 18 April 2008 amending Regulation (EC) No. 1030/2002 laying down a uniform format for residence permits for third country nationals

Following the introduction of electronic residence permits (cf. section 6.1.1), a number of foreigners authorities in Germany have also adapted their internal administrative processes (e.g. conversion to electronic calendar management, creation of automated expiration lists for existing residence permits). Despite the overall higher administrative effort, this manner allows foreigners to be promptly informed their residence permits are set to expire, by which the foreigner is instructed to bring the necessary documents in addition to a suggested appointment to extend an existing or apply for a new residence document. Previously, residence titles could generally be issued or renewed at a meeting with the foreigners authority; now two appointments are required at most.

### **4.3.3 Developments from the EU Perspective**

No developments in regard to the EU can be reported since the acceptance procedure for ethnic German immigrants, Jewish immigrants from the former Soviet Union and other types of legal migration not described in the other sections of this report do not fall under the jurisdiction of the European Union.

## **4.4 Integration**

### **4.4.1 Background and General Context**

Integration is a focus of Federal Policy. The Federal Ministry of the Interior carries the underlying responsibility for social cohesion and immigration. In addition, further ministries are responsible: such as the Federal Ministry of Labour and Social Affairs (BMAS), the Federal Ministry of Education and Research (BMBF) and the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). In the federal structure of state expenditure, the Federal Government primarily serves legislative functions while also executing tangible integration measures.

For the first time, integration offers have been legally anchored in the Residence Act that took effect on 1 January 2005. Integration is understood in Germany as a task for which federal, state and local governments are responsible. From the first integration summit in 2006 and the “National Integration Plan”, a series of essential action areas for integration work were identified, among them promoting the German language from the outset, increasing labour market chances, realising

equal opportunity and strengthening cross-cultural competence. As part of their coalition agreement for the 17<sup>th</sup> legislative period, the parties involved in the current Federal Government set the goal of facilitating the integration of immigrants in terms of equal opportunity and actual participation in all areas – in particular in social, economic and cultural life. Similarly, the willingness of German society to accept immigrants and the willingness of immigrants to integrate are seen as requirements for this to occur.<sup>114</sup> The integration measures are focused on immigrants with legal residence status and intention to stay, regardless of national, ethnic or religious origin. The 2011 budget for the BMI has earmarked around 264 million Euros for state-financed integration measures.

### Integration Course

In order for immigrants to integrate successfully, all legal immigrants receive a basic state offer of integration (integration course) that should support the immigrants own integration efforts.<sup>115</sup> The integration course was introduced in 2005 with the Immigration Act. There are currently seven different, nationally binding concepts for the various target groups of the integration courses, which are oriented on each target group both in content and progress. The integration courses consist of a 600-hour language and 60-hour orientation course. Additionally, courses are also offered for specific groups (parents, women, youths and the illiterate) with up to 1,200 hours of language instruction.

114 Cf. [Wachstum, Bildung, Zusammenhalt](#). The Coalition Agreement between CDU, CSU and FDP, 17th legislative period, p. 74.

115 The precise conditions for authorisation to participate in an integration course are set forth in §§ 44 and 44a AufenthG. In addition to new immigrants, migrants who have been living in Germany may take such a course or even – provided they receive social security as per SGB II – be required to take one. They must contribute only 1 Euro per hour; the course is free for recipients of social services and ethnic German immigrants (cf. [Politikbericht 2009](#) by the German National Contact Point for the European Migration Network, Nuremberg: BAMF, p. 33).

The orientation course should promote understanding of the German political system; in particular the meaning of free democratic basic order, the party system, the federal structure of Germany and the concepts of the welfare state, equal rights, tolerance and religious freedom should be imparted. The goal is to facilitate the integration of the immigrants into the new society and create identification opportunities. The successful acquisition of language is demonstrated with a German language test to be taken by the immigrant. Since the beginning of 2009, a national test is used in the orientation courses so that the knowledge gained in the orientation course can be demonstrated in a standardised and universally comparable process. Since 1 July 2009, the language course is also concluded with the newly developed scaled language test “German Test for Immigrants” (reference level A2 – B1 CEFR).

### Migration Consultation for Adult Immigrants (MBE)

Since 1 January 2005, consultation for adult immigrants is provided by the MBE. It supplements the integration course during and after. The percentage of consultation cases connected to participation in an integration course was around 75% in 2009 and 2010.<sup>116</sup> The consultation offices are staffed by the charities according to a stipulated key. The priorities of migration consultation for adult immigrants are set by a professional individual consultation that initiates and supports the integration process. It serves to assess the competences of immigrants, jointly create a customised promotion plan and monitor its implementation. Both newly emigrated persons as well as immigrants who have been living in Germany for some time may take advantage of the MBE. The Federal Office for Migration and Refugees is responsible for providing migration consultation for adult immigrants, and has set up a nationwide network for

116 Cf. [BT-Drs. 17/7471](#) of 26 October 2011.

Table 2: Consulted Persons in 2009 and 2010 by Quarter

Year	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter
2009	50,355	49,415	48,441	49,313
2010	50,581	48,321	47,111	46,304

Source: German Bundestag (2011): Printing 17/7471.



this purpose.<sup>117</sup> As Table 2 shows, approximately 46,000 and 50,000 immigrants were consulted in around 600 facilities per quarter in 2009 and 2010 (2009: 597, 2010: 615, 2011: 603).<sup>118</sup>

### **Projects to Promote the Immigrant Integration**

The Federal Government promotes projects on the social integration of immigrants with permanent right of residence. The foci of these community-oriented and residential environment-based projects are integration into the local community, preventive efforts (violence and addiction prevention, conflict management) and strengthening of existing expertise, cross-cultural competence, parents' parenting skills and social competence with recreational education offers, with the goal of improving mutual acceptance and cohabitation between locals and immigrants. In community-oriented project work, great value is placed on the networking and cooperation of all players involved in the integration process, as well as the promotion of civic involvement. Funding in the amount of 21.180 million Euros has been earmarked for 2011. A total of 18.180 million Euros has been estimated for 2012.

### **German Islam Conference (DIK)**

The German Islam Conference (DIK) is a forum of the Federal Ministry of the Interior for discussing specific questions related to Muslim life in Germany.<sup>119</sup> It is a long-term, institutionalised and structured communication process in which representatives from the Federal Government, the Federal States and municipalities and Muslims (organisations and individuals) participate in the diversity of Muslim life in Germany. The DIK was established in 2006.

### **National Integration Plan**

The National Integration Plan (NIP) is the first global integration concept since 2007. The Federal Government, the Federal States and municipalities, as well as

migrant representatives and many non-state organisations participated in its implementation. The start of the National Integration Plan was the 4<sup>th</sup> Integration Summit on 3 November 2010, which was held with the goal of a stronger verifiability of integration advancement. Strategic and operative goals, as well as tangible individual measures were developed across a total of 11 dialogue boards under the aegis of the federal ministries. The National Integration Plan also includes contributions from the Federal States and municipalities. The results were made public on 31 January 2012, at the 5<sup>th</sup> Integration Summit. Three dialogue boards, "Language Integration Courses", "Migrants in Public Service" and "Sport", are organised by the BMI.

### **4.4.2 National Developments**

#### **German Islam Conference (DIK)**

In 2011 the DIK used its plenary session to focus on the constitutional and institutional integration of Islam: promoting the nationwide exchange of questions of Islamic religious education; developing guidelines for the further regional and language education of religious personnel and other multipliers of Islamic communities at the local level; agreeing on central phenomena and definitions in the area of prevention in order to then be able to initiate practical measures on this basis. The topics for 2012 and 2013 are "Gender Quality" and "Prevention".

#### **Integration Course**

The Federal Office for Migration and Refugees conducted a comprehensive study on the efficiency and sustainability of integration courses and found that the courses yielded positive results for the participants e.g. in regard to employment, language ability and contact with Germans. Just under 800,000 individuals attended integration courses by the end of 2011.<sup>120</sup> In addition, the quality and effectiveness of the integration courses, as well as increasing funding for courses, are under

117 Cf. Federal Office for Migration and Refugees (2012): "Migrationsberatung für erwachsene Zuwanderer", Nuremberg.

118 Cf. [BT-Drs. 17/7471](#) of 26 October 2011.

119 Cf. [www.deutsche-islam-konferenz.de](http://www.deutsche-islam-konferenz.de).

120 Cf. Schuller, Karin, Susanne Lochner, Nina Rother (2011): Das Integrationspanel: Ergebnisse einer Längsschnittstudie zur Wirksamkeit und Nachhaltigkeit von Integrationskursen, Federal Office for Migration and Refugees, Nuremberg.

debate.<sup>121</sup> The funding provided to the Federal Office for Migration and Refugees to conduct the integration courses was considered insufficient by some. Compensation for the instructors of the integration courses was also criticised as being too low.<sup>122</sup> The Bundestag passed the budget on 25 November 2011 with a majority of the government coalition, in which funding for the integration courses will be increased for 2012 by 6 million Euros to around 224 million Euros.<sup>123</sup> Motions by the opposition parties<sup>124</sup> to greatly increase funding – and thereby explicitly increase instructor compensation – failed.

### **Act to Promote Social Participation and Integration in North Rhine-Westphalia**

The Cabinet of North Rhine-Westphalia passed a bill on 1 October 2011 to promote social participation and integration in North Rhine-Westphalia to be sent on to the state parliament. The state government intends to use the bill to pursue the following goals: establish a legal understanding of integration policy as an inter-departmental transversal policy; grant additional funding for integration measures; legally ensure through various regulations that people with migration background and their organisations are integrated into the democratic opinion-forming process to an even greater degree in the future, and that greater access to public service is available for individuals with migration backgrounds.<sup>125</sup> The North Rhine-Westphalia

State Parliament passed the Act on 8 February 2012,<sup>126</sup> making North Rhine-Westphalia the first territorial state in the country with an integration law.<sup>127</sup>

### **4.4.3 Developments from the EU Perspective**

The European Commission introduced the European Agenda for the Integration of Third Country Nationals on 20 July 2011.<sup>128</sup> The document lists measures designed to improve the economic, social, cultural and political involvement of immigrants. The main focus is on community action areas. The agenda also lists integration challenges to be overcome and discusses the role of countries of origin in the integration process. The Bundesrat commented on the European Agenda for the Integration of Third Country Nationals in its 886<sup>th</sup> session on 23 September 2011,<sup>129</sup> recognising the contribution of the agenda to the debate on the challenges of migration and integration in the EU. The Bundesrat encourages the current practice of integrating immigrants, which in Germany is largely the responsibility of the Federal States and municipalities. To resolve some criticisms it had, the Bundesrat suggested that immigrants be included more in the immigration and integration process, i.e. the positive integration effect of naturalisation and with it complete legal and political equality – when the legal requirements are met. The Bundesrat also suggests greater consideration of the cultural and religious diversity in the Member States for European measures in the area of integration policy.

## **4.5 Citizenship and Naturalisation**

121 Cf. [BT-Drs. 17/7383](#) of 19 October 2011.

122 Cf. e.g. “Herzhaft zugegriffen”, *Frankfurter Allgemeine Zeitung*, 21 March 2011; “Arbeit lohnt sich nicht”, *Nürnberger Nachrichten*, 21 May 2011; “Regierung kürzt Integrationskurse”, *taz.de*, 7 September 2011; *Migrationsrecht.net* (2011): “[Ringgen um Aufstockung der Mittel für Integrationskurse](#)”, Eschborn; [BT-Drs. 17/6924](#) of 6 September 2011; *Frankfurter Rundschau* (2011): “Kontrolle für Integrationskurse”, Frankfurt, 2 August 2011; “Sprachschulen betrügen bei Integrationskursen”, *Financial Times Deutschland*, 26 July 2011.

123 Cf. [BT-Drs. 17/6600](#) of 12 August 2011; *Migration und Bevölkerung* (2011): [Deutschland: Bundeshaushalt 2012 beschlossen](#), Berlin, 10/2011.

124 Cf. [BT-Drs. 17/7791](#) of 22 November 2011; Berlin; [BT-Drs. 17/7784](#) of 22 November 2011; [BT-Drs. 17/7787](#) of 22 November 2011.

125 Cf. North Rhine-Westphalia State Parliament (2011): “[Pressekonferenz mit Minister Gruntram Schneider zum ‘Gesetz zur Förderung der gesellschaftlichen Teilhabe und Integration in Nordrhein-Westfalen’ am 5. Oktober 2011](#)”.

126 Cf. [Press Release](#), “Gesetz zur Förderung der gesellschaftlichen Teilhabe und Integration sowie Abgeordnetengesetz verabschiedet”, North Rhine-Westphalia State Parliament, 8 February 2012.

127 Cf. *German Press Agency* (2011) “Minister: NRW bekommt Integrationsgesetz – ‘Vorreiterrolle’”, Berlin, 5 October 2011, Berlin. In 2010 Berlin became the first Federal State to enact an integration law (cf. [Politikbericht 2010](#) by the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF, p. 31).

128 Cf. [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘European Agenda for the Integration of Third Country Nationals’](#), COM(2011) 455 final; European Commission (2012): “[A common agenda for the integration of non-EU nationals](#)”, Brussels.

129 Cf. [BR-Drs. 425/11](#) of 23 September 2011.



### 4.5.1 Background and General Context

Foreigners who have been living legally in the Federal Republic for some time may apply for German citizenship under the general requirements of the Citizenship Act. The citizenship acquisition rule took effect on 1 January 2000, supplemented by the principle of *ius soli*: children born in Germany whose parents are both foreigners receive German citizenship at birth when at least one parent has legally and consistently resided in Germany for eight years and is in possession of a permanent right of residence. This citizenship acquisition rule is, however, linked with a mandatory choice: upon reaching adulthood, these children must decide between German citizenship and the foreign citizenship they typically inherit through their parents. According to § 29 Citizenship Act (StAG), they have until the age of 23 to decide. The same procedure also applies to children whose parents could apply for German citizenship for them in 2000 in accordance with a temporary arrangement (§ 40b StAG). Of these, more than 10,000 adults are undergoing the decision process since 1 January 2008.

Foreigners receive German citizenship through naturalisation. A series of conditions must be fulfilled at the time of application so that naturalisation can be legitimately requested – these include an indefinite right of residence and eight (six in special instances) years of consistent and legal residence in Germany, a self-secured means of subsistence and no criminal convictions during their stay (§ 10 StAG). The naturalisation of third country nationals generally requires the forfeiture/loss of prior citizenship; however, there are numerous legal exceptions, such as for persons

from countries that generally do not allow citizenship to be forfeited.<sup>130</sup> EU citizens and Swiss nationals also generally have the option of retaining their prior citizenship.

Naturalisation requires sufficient knowledge of the German language (level B1 of the Common European Reference Framework, CEFR). Since 1 September 2008, naturalisation applications must also demonstrate knowledge of the legal and social system and living conditions in Germany by taking a nationally standardised naturalisation test.

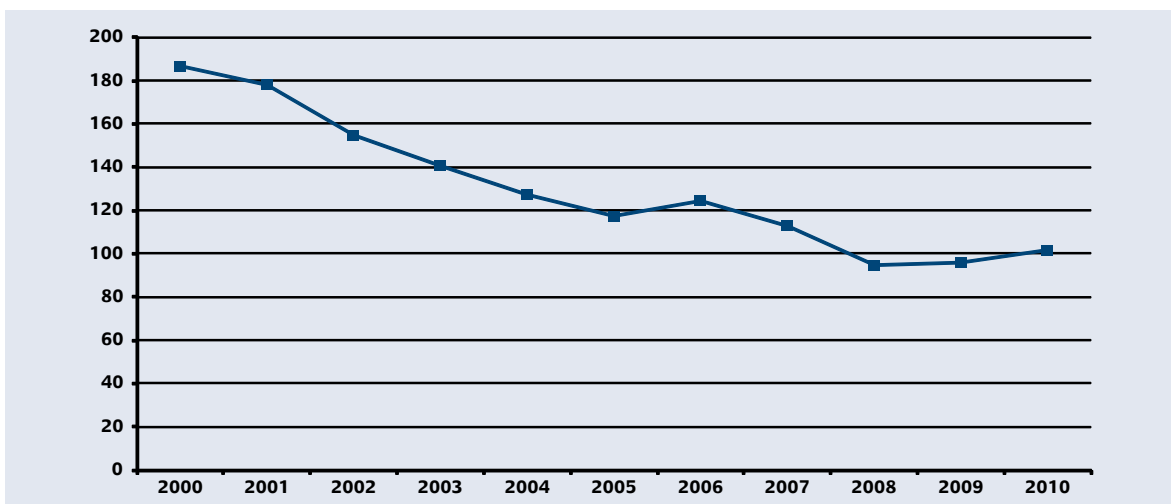
Figure 1 shows that the number of naturalisations between 2000 and 2010 has fallen from around 186,700 to around 101,600, for a reduction of just under 46%. The lowest number of naturalisations was in 2008, with around 94,500. Afterward, naturalisations through to 2010 rose slightly (by 1.7% from 2008 to 2009 and by 5.7% from 2009 to 2010). Similarly to naturalisations, the naturalisation rate<sup>131</sup> also fell from 2.6% to 1.4% between 2000 and 2010, with the lowest rate of 1.3% also being in 2008 (see Figure 2).<sup>132</sup>

130 Cf. the exception rules by the Federal Ministry of the Interior/Federal Office for Migration and Refugees (2012): [Migrationsbericht 2010](#) by the Federal Office for Migration and Refugees by Order of the Federal Government, Nuremberg, p. 228f.

131 The naturalisation rate is the ratio of the number of naturalisations and the number of foreigners in Germany.

132 Federal Statistical Office (2012): [“Einbürgerungen”](#), Wiesbaden.

Figure 1: Naturalisations in 1,000 Persons



Source: Federal Statistical Office (2012): “Einbürgerungen”, Wiesbaden.

## 4.5.2 National Developments

### *Bills to Amend Citizenship Law in the Bundestag*

The debate held in the last two years on the future of the “choice rule”<sup>133</sup> continued into 2011. The opposition attempted in 2010 to ease the legal regulations for naturalising foreigners. The SPD and Alliance 90/The Greens each introduced a bill and The Left introduced a motion.<sup>134</sup> However, in a notable vote, the bills and the motion were rejected in the Bundestag on 10 November 2011 by the governing coalition. All three submissions had the goal of moving away from the principle of avoiding multiple citizenship, reducing naturalisation periods and foregoing the choice rule (cf. section 4.5.1).<sup>135</sup> The media reported extensively on the failure of the efforts to ease naturalisation.<sup>136</sup>

### *Bill to Amend Citizenship Act in the Bundesrat*

The states of Baden-Württemberg, Bremen and Hamburg introduced a bill in the Bundesrat on 8 September 2011 to amend the Citizenship Act.<sup>137</sup> The bill was designed to rescind the choice rule and give all

children born or naturalised in Germany under § 4(3) or § 40b StAG the possibility to permanently retaining dual citizenship. The Committee on Women and Youth recommended the Bundesrat to introduce the bill in the German Bundestag. However, the leading Committee on Internal Affairs opposed the bill.<sup>138</sup> The Bundesrat decided on 25 November 2011 to not introduce the bill in the Bundestag.<sup>139</sup> In addition to the filing states, Baden-Württemberg, Bremen and Hamburg, the motion to annul the choice rule was also supported by Berlin, Brandenburg, North Rhine-Westphalia and Rhineland-Palatinate.

## 4.5.3 Developments from the EU Perspective

Questions of citizenship and naturalisation are the responsibility of the Member States. Thus there is nothing to report on developments in regard to the EU.

133 Cf. [Politikbericht 2009](#), p. 16.

134 Cf. [BT-Drs. 11/773](#) of 23 October 2010; [BT-Drs. 17/3411](#) of 26 October 2010; [BT-Drs. 17/2351](#) of 30 June 2010.

135 Cf. German Bundestag (2011): [Vorstöße zur leichteren Einbürgerung gescheitert](#), Berlin.

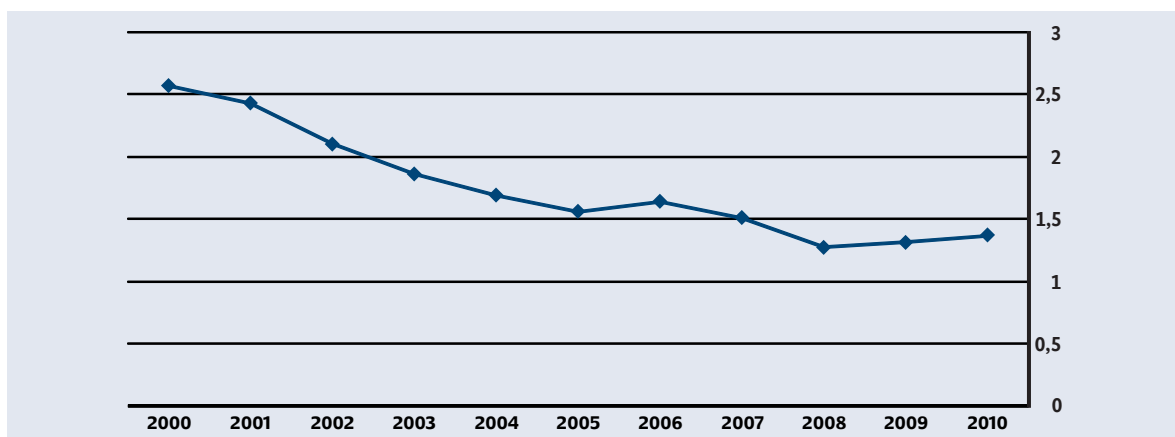
136 Cf. e.g. [The Parliament \(2011\): “Wieder Streit um Doppelpass”](#), Berlin, 14 November 2011; [Financial Times Deutschland \(2011\): “Es liegt nicht am Pass”](#), Hamburg, 11 November 2011; [Süddeutsche Zeitung \(2011\): “Zwang zur Entscheidung”](#), Munich, 11 November 2011.

137 Cf. [BR-Drs. 538/11](#) of 8 September 2011.

138 Cf. [BR-Drs. 538/1/11](#) of 14 November 2011.

139 Cf. [BR-Drs. 538/11](#) of 8 September 2011.

Figure 2: Naturalisation Rate in %



Source: Federal Statistical Office (2012): “Einbürgerungen”, Wiesbaden.

# 5 Illegal Immigration and return

## 5.1 Illegal Immigration

### 5.1.1 Background and General Context

Illegal immigration movements in Germany are managed with preventive measures and measures to control migration, such as in the visa process and securing external borders, measures promoting return/ to enforce the obligation to leave via deportation, but also pragmatic responses to the situation of persons residing illegally whose obligation to leave cannot be enforced.<sup>140</sup>

Third country nationals may only enter or reside in the Federal Territory when they possess a recognised or valid passport or passport substitute, unless not required by regulation. Additionally, foreigners generally require a residence document for entry and residence. If a foreigner enters the Federal Territory without the required passport or passport substitute/residence document, or if the foreigner is banned from entry, entering or residing in the Federal Territory is illegal. Residence is also illegal if the foreigner no longer fulfils the necessary residence requirements (e.g. by exceeding the permitted duration of stay, or “overstaying”). In these instances, the foreigner is generally obligated to leave the country. Residence documents become void e.g. when they expire, a reason for termination arises, they are retracted/revoked, or the foreigner is expelled or leaves the country due to circumstances that by their nature are not temporary.

Foreigners who have illegally entered and neither seek asylum nor can be taken into custody to be deported are distributed amongst the Federal States. The Federal Office for Migration and Refugees is responsible for distributing this group. Illegal entry and residence are

crimes punishable by fine or incarceration. Also liable to prosecution are those aiding or abetting others in illegally entering/residing, receiving or accepting a promise of financial gain or acting repeatedly for or to the benefit of multiple foreigners. Excluded from these, however, is aid provided for humanitarian reasons. Trafficking conducted by commercial or criminal organisations, or resulting in the death of the person being smuggled, is considered a criminal act (§ 97 AufenthG) punishable by a minimum sentence of one year for smuggling via criminal organisation and not less than three years in the event of death. Persons involved as part of their profession or socially recognised volunteer position (particularly pharmacists, physicians, midwives, health care professionals, psychiatrists, clergymen, teachers and social workers) are generally not considered accessory to the above mentioned crimes, provided their actions were objectively limited to fulfilling their legal/recognised duties (General Administrative Regulations relating to the Residence Act 95.1.4).

In many cases, commercial and criminal smuggling networks are utilised for illegal entry.<sup>141</sup> External controls (e.g. on the visa process and external border controls), as well as a system of internal controls on residence permits are part of the German system to control legal and prevent illegal migration. Additionally there are control mechanisms that are effected via data exchange, workplace inspections, close cooperation between authorities and mandatory reporting by public positions.

Illegal immigration is not only combatted with reactive, but also preventive measures, such as during the visa process. This serves e.g. to prevent illegal immigration.

<sup>140</sup> Cf. Schneider, Jan (2012): [Maßnahmen zur Verhinderung und Reduzierung irregulärer Migration](#). Study by the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF.

<sup>141</sup> Cf. [Migrationsbericht 2008](#) by the Federal Office for Migration and Refugees by Order of the Federal Government, Nuremberg: BAMF, p. 180.

tion.<sup>142</sup> One of the core requirements for visa issuance that a diplomatic representation must verify during the visa process is the willingness of the visa applicant to return to his/her country of origin before the visa expires. While reviewing each case, the appropriate diplomatic representation must assess, based on the applicant's individual living circumstances, whether or not it is sufficiently likely that the applicant will return to his/her country of origin before the visa expires. One indicator that can be used to evaluate willingness to return is the degree to which the applicant has ties to the country of origin, determined e.g. through familial or economic ties. The "verification of willingness to return" is conducted based on Article 21 of the Visa Code.<sup>143</sup>

Preventing and combating human trafficking necessitates an integrated approach, by which measures by border police to prevent illegal entry of irregular migrants should be closely connected to police measures both on the territory and abroad. For this purpose, the Federal Police, as the authority charged with controlling cross-border traffic, are closely networked into the security structure of the Federal Republic.

Special significance is given on the national level to the Analysis and Evaluation Centre GASiM (Joint Analysis and Strategy Centre for Illegal Immigration), which, under consideration of multi-crime and inter-institutional aspects, facilitates the formation of an integrated control approach. The requirement for ensuring an intensive exchange of information between all participating authorities is the consistent and interlinked use of all legal avenues.<sup>144</sup> The Federal Police obtain information abroad by using border police liaison officers as well as utilising document and visa consultants in core countries of origin/transit. A further component of gaining knowledge is cooperation with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and the European Police Office (Europol) in developing

or transmitting periodic and/or topic-specific joint evaluation products.

### 5.1.2 National Developments

#### *Residence Prospects for Youths with Long-Term Exceptional Leave to Remain*

Germany has not taken any measures to legalise the residence of foreigners living in-country who are not registered or have even gone into hiding. Thus the Federal Government continues to hold to its generally critical evaluation of such a regularisation policy. In 2007, a time-limited "grandfather clause" linked to strict requirements was enacted for migrants with long-term exceptional leave to remain who had made efforts to integrate. The clause, which was extended in 2009 by the IMK, was designed to accommodate the need for migrants who had had exceptional leave to remain for years and in part were well integrated to have permanent prospects in Germany.<sup>145</sup> A further extension of this clause at the end of 2011 was considered unnecessary by the IMK, who cited the generally available possibility of extending the test residence permits issued (upon positive integration prognosis and demonstration of efforts to secure a means of subsistence through employment) as part of the grandfather clause.<sup>146</sup>

In 2011, a special regulation was created for issuing residence documents for youths with long-term exceptional leave to remain. The IMK had resolved such a regulation back in November 2010,<sup>147</sup> according to which youths and adolescents with exceptional leave to remain should receive their own secured residence prospects, provided they meet certain requirements (in particular successful completion of school and training qualifications) and offer the promise of inte-

142 Cf. [BT-Drs. 17/2250](#) of 8 July 2010, p. 7 as well as Parusel, Bernd/Schneider, Jan (2012): [Visumpolitik als Migrationskanal](#). Die Auswirkungen der Visumvergabe auf die Steuerung der Zuwanderung. Study by the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF.

143 Cf. [BT-Drs. 17/2250](#) of 8 July 2010, p. 6.

144 Cf. [BT-Drs. 17/6720](#) of 2 August 2011.

145 Cf. [Bericht 2008 über Migration und Asyl](#) by the German National Contact Point for the European Migration Network (EMN), p. 30 as well as the [Politikbericht 2009](#) by the German National Contact Point for the European Migration Network, Nuremberg: BAMF, p. 15 and 37f.

146 Cf. collection of enactments to be published from the 193<sup>rd</sup> session of the Standing Conference of State Interior Ministers and Senators on 8 and 9 December 2011 in Wiesbaden, p. 28.

147 Cf. [Politikbericht 2010](#) by the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF, p. 36.

grating into the living conditions in Germany based on their integration efforts thus far. In addition, also the parents of these youths should receive a right of residence when they have made sufficient efforts at integration and can largely provide for the family on their own. A legal regulation was then created with the Combatting Forced Marriage Act that took effect in July 2011;<sup>148</sup> according to § 25a AufenthG, youths and adolescents with long-term exceptional leave to remain may be issued a residence permit if they are enrolled in or have successfully completed school and have a positive integration outlook. The person with exceptional leave to remain must have entered Germany before the age of 14, must have resided in the Federal Territory legally, with exceptional leave or with a residence title for specific purposes for six years uninterrupted and has either attended school for six years or has obtained a recognised school leaving certificate or training qualification. Criteria for successful school attendance are regular attendance and placement in the next grade. Additionally, previous integration efforts must make it appear that integration into the current living conditions is ensured. The parents/parent with sole custody of a minor receiving such a residence permit may also receive a right of residence if they are not responsible for the obstacles for their deportation and can fully provide means of subsistence on their own.<sup>149</sup>

### Visa Warning File

To prevent visa misuse and illegal entry, as well as preventing human trafficking and smuggling, the German Bundestag approved the creation of a central visa warning file in November 2011 on the initiative of the Federal Government.<sup>150</sup> This establishes a central warning file at the Federal Administrative Office that primarily serves to prevent visa misuse and combat illegal entry. After the Act to Create a Visa Warning File takes effect in mid-2013, the file will contain warning data on persons who have been legally sentenced to a fine or incarceration in connection with certain

148 Act to Combat Forced Marriage and Improve Protection of Victims of Forced Marriage and Amend Other Residence and Asylum Directives, BGBl. I No. 33 of June 30, 2011, p. 1266.

149 Cf. [BT-Drs. 17/5093](#) of 16 March 2011, p. 15f.

150 Cf. [BT-PlPr. 17/146](#) of 1 December 2011, p. 17469D/17470A.

criminal acts relevant to the visa process. The German visa warning file supplements the EU's Visa Information System (VIS) that was launched in October 2011 (cf. Section 10.1).

### Access to Educational Facilities for Children without Residence Status

The current Federal Government announced in its coalition agreement that it was going to modify the mandatory reporting requirement for public positions to allow children residing in Germany illegally to attend school.<sup>151</sup> In 2009, access to medical care for irregular migrants had been facilitated by appropriate requirements in the General Administrative Regulation of the Residence Act.<sup>152</sup>

In Germany, according to Basic Law, the states are responsible for regulating access to education and for compulsory attendance. The states regulate the right to attend school/compulsory attendance in the form of state schooling laws. Children residing illegally having access to schooling is not clearly regulated in the majority of the German Federal States, whereby vastly different general conditions apply.<sup>153</sup> A comparative study of practices in the Federal States for the Advisory Council of German Foundations for Integration and Migration found that the actual accessibility of the school system for irregular migrants primarily depends on the form of each state's enrolment process, whereby legal clarification on the federal level was suggested.<sup>154</sup>

151 Cf. [Wachstum, Bildung, Zusammenhalt](#). The coalition agreement between CDU, CSU and FDP, 17<sup>th</sup> legislative period, p. 79.

152 Cf. [Politikbericht 2009](#) by the German National Contact Point for the European Migration Network (EMN), Nuremberg: BAMF, p. 17.

153 Cf. "Humanität und Staatsräson auf Kollisionskurs: Der Schulzugang von Kindern irregulärer Zuwanderer", results of a study for the Mercator Foundation, SVR Info April 2010, p. 5; Sinn, Annette, Axel Kreienbrink, Hans Dietrich von Loeffelholz (2006): Illegal aufhältige Drittstaatsangehörige in Deutschland, 2005 research study as part of the European Migration Network, Federal Office for Migration and Refugees, Nuremberg.

154 Vogel, Dita/Assner, Manuel (2010): Kinder ohne Aufenthaltsstatus – illegal im Land, legal in der Schule. Study for the Advisory Council of German Foundations for Integration and Migration (SVR), February 2010, Hamburg/Berlin, p. 26.

As part of the second Directive Implementation Act, an exception was then introduced in the Residence Act to the mandatory reporting requirement as per § 87(1) and (2) AufenthG for schools and other educational facilities.<sup>155</sup> This should allow the children of third country nationals illegally living in Germany to attend school or another kind of educational facility nationwide without the illegal residence being reported to the police and foreigners authorities. The regulation marks a decision benefitting the right of children and youths to education, which in this case takes priority over the general public's interest in enforcing the right of residence.<sup>156</sup>

### 5.1.3 Developments from the EU Perspective

#### **Implementing EU Directives to Combat Irregular Migration**

Combating irregular migration is a core element of national immigration policy as well as of cooperation with other EU Member States and countries of origin and transit. Special importance is attached to the prevention of the (illegal) employment of irregular immigrants and the implementation of return policy. The Sanction Directive (2009/52/EC)<sup>157</sup> and the Return Directive (2008/115/EC)<sup>158</sup> were implemented into na-

tional law in 2011. The corresponding Act took effect on 26 November 2011 (cf. Section 10.1).<sup>159</sup>

According to the requirements of Directive 2009/52/EC, foreigners illegally hired by an employer should be able to more easily implement their compensation claims in the future. The statutory presumption is that the foreigner has been employed for at least three months so that s/he is due typical compensation for the employment. In addition to the employer, all involved companies on behalf of which the employer is acting are liable for the compensation claims of the illegally employed foreigner.

#### **Visa Information System (VIS)**

The EU's VIS serves to improve the enforcement of joint visa policy, consular cooperation and consultation between central visa authorities by facilitating the exchange between the Member States of visa applications and the associated decisions. Among other things, it should assist in simplifying the visa application process, prevent "visa shopping"<sup>160</sup> and contribute to preventing risks to the internal security of the Member States. Biometric data for applicants and other information should be collected and processed as part of the VIS, simplifying the application process for Schengen visas; according to the "one-stop principle", applicants will soon only have to appear at one visa location for applying and for submitting biometric data once every five years. The VIS was created based on the Council Decision of 8 June 2004 establishing the Visa Information System (2004/512/EC) and Regulation (EC) No. 767/2008 of the European Parliament and the of the Council of 9 July 2008 concerning the Visa Information System and the exchange of data between Member States on short-stay visas (VIS Regulation). The first application area, North Africa, was launched on 11 October 2011.<sup>161</sup> A "gradual regional roll-out" is planned.

155 Cf. BGBl I 2011 No. 59 of 25 November 2011, p. 2258.

156 Basse, Sebastian/Burbaum, Ann-Marie/Richard, Corinna (2011): Das "zweite Richtlinienumsetzungsgesetz" im Überblick, in: ZAR – Zeitschrift für Ausländerrecht und Ausländerpolitik, p. 361-368, here p. 367.

157 Directive 2009/52/EC of 18 June 2009 providing for [minimum standards on sanctions and measures against employers of illegally staying third country nationals](#).

158 Directive 2008/115/EC of 16 December 2008 on [common standards and procedures in Member States for returning illegally staying third country nationals](#).

159 BGBl. I 2011 No. 59 of 25 November 2011, p. 2258ff.; cf. also Section 10.1.

160 "Visa shopping" is when the applicant submits an application to the visa office at which s/he finds the (supposedly) best conditions – such as the number of documents to submit, the promptness or practice of issuing multi-year visas.

161 Cf. BT-Drs. 17/6223 of 16 June 2011, p. 6; "Start des schengenweiten Visa-Informationssystems", press release by the Federal Ministry of the Interior on 1 October 2011.



The Federal Ministry of the Interior has thus tasked the Federal Administrative Office as the central authority to create an infrastructure that allows German agencies to utilise the VIS application. An establishment team in the Federal Administrative Office will coordinate the planning of the national roll-out of the VIS under the aegis of the BMI and steer its technical implementation; this establishing was supported by e.g. the EU External Borders Fund. On the EU level, the Commission submits an annual progress report on the development of the VIS to the European Parliament and the Council.<sup>162</sup>

In preparation for launching the VIS, Germany is participating in the EU pilot project BIODEV II,<sup>163</sup> conducted under the auspices of the European Commission. In this project, biometric data (portrait and fingerprints) were collected and evaluated from Schengen visa applicants at the German embassies in Damascus (Syria) and Ulan Bator (Mongolia). The Federal Government positively evaluated the knowledge gained from this project.<sup>164</sup>

## 5.2 Return

### 5.2.1 Background and General Context

Return and promoting return are integral components of German migration regulation, whereby voluntary return is given priority as it is considered the more human and cost-effective form of return for third country nationals obligated to leave. In the past decades, the Federal Republic has concluded more than 30 bilateral re-admission agreements.<sup>165</sup>

In the area of voluntary return, Germany has been running the voluntary return programme “Reintegration and Emigration Programme for Asylum-Seekers

in Germany”/“Government Assisted Repatriation Programme” or REAG/GARP since 1979. Primarily oriented towards rejected asylum applicants, the programme offers travel and start-up assistance for the reintegration of persons from states of particular importance to German migration policy. The amount of start-up aid depends on the country of origin. The amount of funding and a list of countries of origin of importance to German migration policy are set annually by the Federal Ministry of the Interior and the Federal States under consideration of current political developments. This funding was increased at the beginning of 2009 in order to create better incentives for voluntary departure (doubling of REAG travel assistance and increase of GARP start-up assistance per target state by 50% to 60%). Since then, travel assistance totals 200 Euros for adults and 100 Euros for children under 12; start-up assistance totals 750 Euros for adults and 375 Euros for children under 12.

Furthermore, the temporary “URA 2” return project began in the Republic of Kosovo on 1 January 2009. The project is funded by the Federal Government and the Federal States of Baden-Württemberg, Lower Saxony, North Rhine-Westphalia and – since 2010 – Saxony-Anhalt. It is designed to offer returnees start-up assistance and ensure sustainable reintegration. Additionally, return management should be further improved overall.

As part of the project to support and implement the EU’s mobility partnership with Georgia, the Federal Republic is participating in the “Targeted Initiative Georgia” project – “Support Reintegration of Georgian returning migrants and the implementation of EU-Georgia Readmission agreement”. In addition to implementing the re-admission agreement, the focus of the project is the return and reintegration of 1,800 migrants. As part of its responsibility for one of the three main components of the project, the BAMF is responsible for the area of returnee reintegration, beginning the appropriate preparations in 2010. The BAMF is also participating in the EU-funded “Migration and Socio-Economic Development in the Western Balkans” (MIDWEB) project, whose foci are the areas of migration management and cooperation between the Western Balkan states. The project supports the temporary or virtual return of highly qualified persons whose expertise can contribute to the development of the Western Balkan states.

162 Cf. lastly 2010 COM (2011) 346 final for the reporting year.

163 BIODEV II stands for “BIometrics Data Experimented in Visas” and harkens back to a French initiative. In addition to Germany, seven EU Member States (Belgium, France, Great Britain, Luxembourg, Austria, Portugal and Spain) are participating in the project.

164 Cf. BT-Drs. 17/6225 of 16 June 2011, p. 4.

165 A listing of all re-admission agreements has been published on the website of the Federal Ministry of the Interior: <http://www.bmi.bund.de/cae/servlet/contentblob/151414/publicationFile/17366/Rueckkehr-Fluechtlinge.pdf>.

Other projects were the “Returning Skilled Labour” programme financed by the Federal Ministry of Economic Cooperation and Development (BMZ), and a project to strengthen the diaspora as part of the mobility partnership with the Republic of Moldova. The “Returning Skilled Labour” project supported in targeted fashion the professional integration of graduates and experienced skilled labour who received their professional qualification in Germany and are interested in returning to developing, emerging and transition nations. As part of the project to strengthen the diaspora, a joint job exposition between Germany and the Republic of Moldova offered companies from the Republic of Moldova the opportunity to meet with qualified job-seekers with professional and educational experience in Germany, which created an incentive to voluntarily return.

### 5.2.2 National Developments

The list of countries of origin of importance to migration policy that receive particular support as part of the REAG/GARP voluntary return programme was updated. In addition to transport and fuel costs and additional travel assistance (200 Euros per adult/adolescent and 100 Euros per child under 12), returning nationals from a total of 34 countries were able to

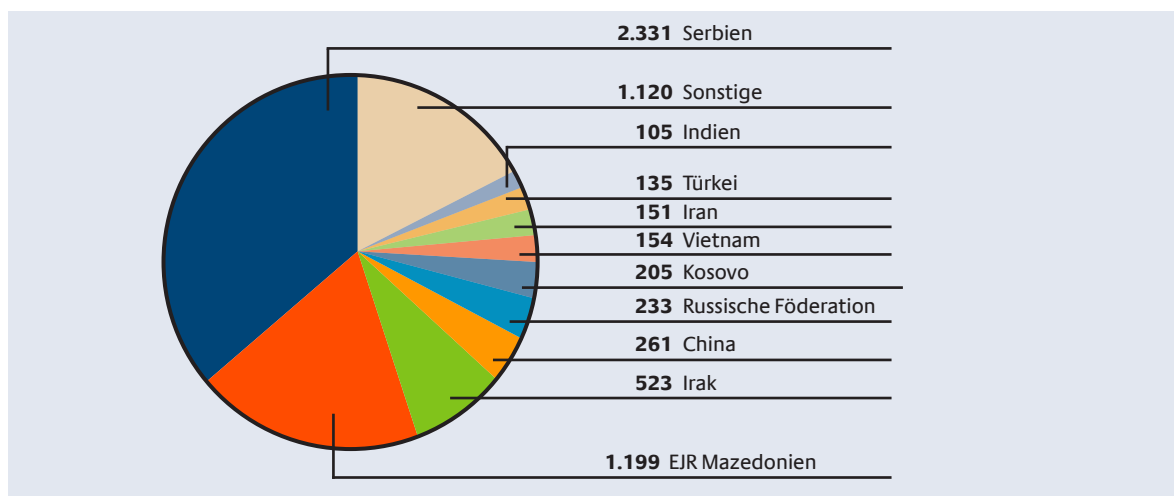
receive on-site start-up assistance for reintegration.<sup>166</sup> No start-up or additional travel assistance were given to nationals from Macedonia, Montenegro and Serbia/Bosnia-Herzegovina who entered Germany after the lifting of the visa obligation for these countries’ nationals (19 December 2009 for Macedonia, Montenegro and Serbia; 15 December 2010 to Bosnia-Herzegovina).

In 2011 a total of 6,417 funding grants for voluntary return were awarded through the REAG/GARP programme. Of those, 6,319 people actually departed. This means an increase from the previous year of over 41% (2010: 4,480 departures with REAG/GARP funding). Figure 3 shows that the majority of grants were awarded to Serbian nationals (absolute: 2,331, i.e. 36.3% of all grants) and to the former Yugoslavian Republic of Macedonia (1,199; 18.7%).<sup>167</sup> Other important groups of returnees were nationals from Iraq (523; 8.2%), China (261; 4.1%), the Russian Federation (233; 4.1%) and the Republic of Kosovo (205; 3.2%).

<sup>166</sup> Cf. REAG-/GARP programme 2011, Project “Bundesweite finanzielle Unterstützung freiwilliger Rückkehrer/Innenen”, bulletin for German authorities, charity members, specialised consultation centres, central return consultation centres, commissioners on foreigners and the United Nations High Commissioner for Refugees (UNHCR).

<sup>167</sup> Nationals from these countries who entered the Federal Republic after 19 December 2009 could however only receive funding for transport or fuel costs in the amount of up to 205 Euros.

Figure 3: Funding Grants in 2011 for the REAG/GARP Programme



Source: International Organisation for Migration (2012): “Statistik zum REAG-Programm”, Geneva.



### Targeted Initiative Georgia

A conference marking the official start of the EU-financed “Targeted Initiative” for Georgia took place in Tblisi on 17 March 2011 with the Federal Office for Migration and Refugees functioning as the German project partner (cf. section 5.2).<sup>168</sup> A component of the project is the social and economic reintegration of returning Georgians from the Member States of the European Union or third countries. The BAMF is involved in this project component by utilising long-term consultants. A mobility centre was opened in Tblisi in which a team of social workers and psychologists are available for the needs of returnees. In addition to ensuring immediate aid, an individual reintegration plan can also be created as needed.

### Handling Syrian Nationals Obligated to Leave

In light of the developments in Syria, the Federal Ministry of the Interior recommended to the states on 11 April 2011 to not enforce any deportations to Syria until the situation is resolved. In the face of this, the Federal Office for Migration and Refugees will preemptively forego any asylum decisions regarding Syria. According to the Federal States, repatriations to Syria have been suspended since the end of April 2011.<sup>169</sup> In the first quarter, a total of ten deportations to Syria have been performed nationwide.<sup>170</sup>

On 8 February 2012, Schleswig-Holstein enacted an explicit halt to deportations as per § 60a (1) AufenthaltG for Syrian nationals initially until 7 August 2012. As of 31 December 2011 a total of 132 Syrian nationals obligated to leave were residing in Schleswig-Holstein. They have been given exceptional leave to remain due to the decree. On 16 February 2012, Brandenburg’s interior minister also ordered a halt to deportations for Syrian nationals initially until 15 August 2012. In actuality, however, the Brandenburg Ministry of the Interior has reported that no further deportations to Syria have occurred since 2011.

168 [http://informedmigration.ge/en/index.php?news\\_tig](http://informedmigration.ge/en/index.php?news_tig).

169 Cf. [BT-PIPr. 17/155](#) of 26 January 2012, p. 18611A/B.

170 Cf. [BT-Drs. 17/5679](#), p. 11f.

### 5.2.3 Developments from the EU Perspective

#### *Implementing Directive 2008/115/EC on Common Standards and Procedures in Member States for Returning Illegally Staying Third Country Nationals*

According to Directive 2008/115/EC, EU Member States must generally issue a return decision against all third country nationals illegally residing in their territory (Art. 6 Sec. 1). Since the German Residence Act did not include a legal concept analogous to a return decision, implementing the directive resulted in changes. In the future, when an obligation to leave is justified by an administrative act according to the German law system, this act will represent the return decision in terms of the directive; if an obligation to leave arises by law, the administrative act of a written deportation warning included in the Residence Act as a recommendation will function as the return decision. Other important changes due to the directive were to e.g. departure deadlines, re-entry bans and pre-deportation detention.<sup>171</sup>

Support and Practical Cooperation with the EU Germany regularly participates in joint repatriation flights as part of its cooperation with other EU Member States. Flights organised by other states are used to remove those subject to immediate departure. Germany also offers the other Member States, when possible, the option of participating in flights under German auspices. National offices are responsible for organising and executing joint repatriation actions. In this regard, the European border protection agency FRONTEX is tasked with verifying that the conditions for coordinated repatriation efforts by the Member States are observed and finances the joint flights. Germany organised multiple joint repatriation flights and participated in flights organised by e.g. Austria, Ireland and Belgium in 2011.<sup>172</sup>

171 Cf. Basse, Sebastian et al. (2011): Das “zweite Richtlinienumsetzungsgesetz” im Überblick, in: ZAR 11-12/2011, p. 364ff.

172 Cf. [BT-Drs. 17/7288](#).

## 5.3 Actions against human trafficking

### 5.3.1 Background and General Context

Since 1999 the Federal Criminal Police Office (BKA) has created a “situation report” each year on the topic of human trafficking. It contains in condensed form the current knowledge at the time of the situation and development of both human trafficking for sexual and for labour exploitation. Human trafficking for sexual exploitation (§ 232 StGB) and human trafficking for labour exploitation (§ 233 StGB) are considered different criminal acts that have different law enforcement approaches (e.g. establishing suspicion and line of evidence).

In reporting year 2010, a total of 470 investigations with 730 suspects of human trafficking for sexual exploitation were closed.<sup>173</sup> Compared with the previous year, this represents a 12% decrease in cases. A total of 610 individuals – primarily women (96%) – were determined to be victims of human trafficking for sexual exploitation. As in the previous years, the victims were primarily German (19.8%), Romanian (19.5%) and Bulgarian nationals (18.9%). Compared to the previous year, however, there was a clear rise in victims from Hungary: in 2009 only 21 Hungarian nationals (3.0% of all victims) were registered; in 2010 this number more than doubled (53; 8.7%). However, this can be traced back to an extensive investigation in Berlin. The percentages of Polish and Nigerian nationals also increased markedly compared to 2009. At 86, around 14% of the 610 victims were residing in Germany illegally; of those victims, 41 were Nigerian nationals and 10 were from other African states.

In essence, the overall trend in human trafficking for sexual exploitation has only changed slightly in the past few years according to the BKA. It is still assumed that a considerable number of cases go unreported. Some of the greatest challenges lie in identifying victims and reacting to new methods of perpetration.

According to § 25(4a) Residence Act, a foreigner who was the victim of human trafficking for sexual exploi-

tation, labour exploitation or of promoting human trafficking may be granted a residence title for a temporary stay. The requirements are that the temporary presence of the foreigner for the purpose of pursuing criminal proceedings is considered appropriate, the foreigner has severed all ties to the accused and has declared his/her willingness to testify as a witness in the criminal proceedings. This also applies for foreigners subject to immediate departure. This regulation implements the EU’s “Victim Protection Directive” of 29 April 2004. The regulation serves to combat organised human trafficking; issuing a residence permit to victims should facilitate the prosecution of human traffickers and create an incentive for victims to cooperate with the authorities and the courts.<sup>174</sup> As of 31 December 2011, a total of 49 persons were residing in Germany on a residence permit in accordance with § 25(4) AufenthG as per the EU Victim Protection Directive.<sup>175</sup>

In order to better coordinate the fight, particularly against trafficking women, a “Federal/State Work Group on Trafficking Women” was established. The work group submitted a proposal in 2009 for a framework decision to intensify the fight against human trafficking. The proposal should comprehensively and uniformly raise European standards, improve victim support and intensify the prosecution of perpetrators.<sup>176</sup>

### 5.3.2 National Developments

#### *Work of the Parliament Committees*

In the German Bundestag, both the Committee on Legal Affairs and the Committee on Human Rights and Humanitarian Aid focused intensively on human trafficking in 2011. In a closed hearing of the Committee on Legal Affairs on 16 March 2011, experts from the Federal Criminal Police Office, the Organisation for Security and Cooperation in Europe (OSZE), the United States Department of Justice and the non-governmen-

<sup>173</sup> Compare here and in the following Federal Criminal Office (2011): [Menschenhandel, Bundeslagebild 2010](#), Wiesbaden. The situations report regarding the reporting year 2011 had not yet been published at the time of the compilation of the report.

<sup>174</sup> Cf. Parusel, Bernd (2010): [Europäische und nationale Formen der Schutzgewährung in Deutschland](#), Study II/2009 within the scope of the European Migration Network (EMN), Working Paper 30, Nürnberg: Bundesamt für Migration und Flüchtlinge, p. 23.

<sup>175</sup> Source: Central Register for Foreigners.

<sup>176</sup> Cf. [BT-Drs. 16/13804](#) of 20 July 2009, p. 2.

tal organisation Solidarity with Women in Distress (SOLWODI) advocated reforms. Due to changes in the prostitution trade e.g. by the EU's eastward expansion, it was recommended that the introduction of a permit requirement for all forms of brothels and brokering prostitution services be investigated. In addition, victim protection should be recognised as the duty of the state and promoted accordingly. To improve prosecution, it was recommended that specialised public prosecution departments be established that could combat human trafficking in a targeted manner.<sup>177</sup>

In a public hearing of the Committee on Human Rights and Humanitarian Aid on 30 November 2011, experts from the Central Coordination and Advisory Centre for Victims of Trafficking (KOBRA), the German Institute for Human Rights, the United Nations Children's Fund (UNICEF), the OSZE, the Hamburg Police University and the Nationwide Activist Coordination Group Combating Trafficking in Women and Violence Against Women in the Process of Migration (KOK) reported on problems from their perspective. Among other topics, discussions were held on a prospect of residence for victims after criminal proceedings have concluded, better protection of underage victims, a uniform nationwide cooperative effort between state and non-state bodies in consideration of the differences in law among the Federal States, as well as improved international cooperation against the increasing degree of transnational, organised criminal activity in the area of human trafficking. It was also recommended that underage victims of human trafficking in particular, such as children and adolescents used as drug runners, be protected from prosecution and a prospect of residence be created for victims of human trafficking after criminal proceedings have concluded due to the crime suffered.<sup>178</sup>

177 Cf. "[Menschenhandel in den Griff bekommen – Opfern helfen](#)", Committee on Legal Affairs (hearing), Berlin, 16 March 2011.

178 Cf. "[Einblicke in einen globalisierten kriminellen Markt](#)", Committee on Human Rights and Humanitarian Aid (public hearing), Berlin, 30 November 2011.

### 5.3.3 Developments from the EU Perspective

The Federal Government introduced an Act on the Council of Europe Convention on Action against Trafficking in Human Beings in the German Bundestag in October 2011.<sup>179</sup> The act stipulates that the Bundestag and the Bundesrat agree to the Council of Europe Convention of 16 May 2005 on Action against Trafficking in Human Beings signed by the Federal Republic of Germany in Strasbourg on 17 November 2005. The convention is intended to improve the requirements for combatting human trafficking, particularly in

Europe, on the regional level. It was initiated by the Council of Europe, as it is particularly suited to combat human trafficking on the regional level as a multilateral organisation of a regional nature. The agreement is intended to create the requirements for sustainable measures for the signatories and for closer European cooperation in areas such as harmonising criminal offences, efficient prosecution even beyond borders and good victim and witness protection.

In its opinion of the bill delivered on 23 September 2011, the Bundesrat noted that Council Directive 2004/81/EC and Directive 2011/36/EU of the European Parliament and of the Council were enacted to the benefit of protecting the victims of human trafficking.<sup>180</sup> The Bundestag addressed the bill on 20 October 2011 and voted to send it to the parliamentary technical committees.<sup>181</sup> Debate is still open as of the end of 2011.

179 [BT-Drs. 17/7316](#) of 17 October 2011.

180 Directive 2004/81/EC has already been implemented into German law; the deadline for implementing Directive 2011/36/EU is April 6, 2013. In a separate memorandum, the Bundesrat noted that the regulations of the convention were already largely effected in national German law, making no changes to German law, particularly to criminal law and right of residence, necessary upon ratification (BR-Drs. 466/11 of August 12, 2011, p. 33ff.).

181 [BT-PIPr. 17/133](#) of 20 October 2011, p. 15763B/C and 15871B-15878A.

# 6 Border Control

## 6.1 Control and Surveillance at External Borders

### 6.1.1 Background and General Context

Over the long-term, FRONTEX – while maintaining national jurisdictions – is intended to be expanded on the European level into a major player for coordinating and managing external EU borders. This shall be effected by e.g. the amendments to the FRONTEX regulation made in 2011.<sup>182</sup> In doing so, great importance shall be given to the strict observance of basic and human rights, particularly of legal guidelines pertaining to refugees. Germany has a major interest in actively participating in the further development of FRONTEX. In this context, Germany shall also continue to personally participate in joint operations at the EU's external borders and provide the agency with technical equipment.

Since the stationary border controls between Germany, Poland and The Czech Republic were phased out on 21 December 2007 and the controls between Germany and Switzerland were phased out on 18 December 2008, the Federal Police only still perform external border controls at international airports and seaports.

For the land borders, the elimination of the stationary border controls by the Federal Police is compensated by position-dependent, i.e. non-systematic border controls in areas near the border. Residence controls are also performed by the Federal Police along the federal railway system, in trains and at ports. Border protection includes preventing the illegal entry of foreigners and combatting cross-border criminal smuggling activity as well as other areas of criminal activity connected to cross-border crime.

<sup>182</sup> (EU) Regulation No. 1168/2011 of 25 November 2011.

### Using Modern Technologies

Control of the external borders is ensured according to the Schengen Borders Code and best practices developed by the Schengen States. Modern document reading and verification devices are in use in Germany that allow document authenticity to be efficiently verified based on optical and digital features. Furthermore, Germany is testing a registered traveller programme (ABG: Automated and Biometrically Supported Border Control) along with an automated border control (EasyPASS) based on the ePassport (cf. Section 4.3.2). Biometric features for ABG is an image of the iris, and for EasyPASS the portrait stored in electronic passports (ePassport) and the new personal identification cards. This means prior registration is not necessary for EasyPASS. In the future, expanding the use of biometric procedures at border controls will also assist in verifying the identities of document holders (visa control, ePassport control). Above all, the embassies and consulates, along with the Federal Police, are also participating in the national implementation of the European Visa Information System (VIS).<sup>183</sup>

### 6.1.2 National Developments

While border controls at the external borders of the Schengen Area are performed according to EU law, the procedures in the external EU borders not in the Schengen Area are oriented toward the national law of the respective Member States, even if those borders fall under EU law.<sup>184</sup> Since Germany is part of the Schengen Area, all activities and measures pertaining to border controls have a European dimension. Therefore no developments in the “national context” can be reported.

<sup>183</sup> Cf. Parusel, Bernd/Schneider, Jan: [Visumpolitik als Migrationskanal](#). Die Auswirkungen der Visumvergabe auf die Steuerung der Zuwanderung. Study by the German National Contact Point for the European Migration Network, Nuremberg 2011, Federal Office for Migration and Refugees.

<sup>184</sup> Cf. the Schengen acquis as per Article 1 Section 2 of Council Decision 1999/435/EC of 20 May 1999, ABl. L 239 of 22 September 2000, p. 1.

### 6.1.3 Developments from the EU Perspective

#### *Uniform Residence Title Format for Third Country Nationals*

For the most part, a law was enacted on 1 September 2011 amending German law to reflect Regulation (EC) No. 380/2008 of the Council of 18 April 2008 amending Regulation (EC) No. 1030/2002 laying down a uniform format for residence permits for third country nationals.<sup>185</sup>

#### *Plans for a European Entry/Departure System*

The EU Commission has already outlined the creation of an entry/departure system on various occasions – above all in regard to preventing illegal entry/overstaying of the residence duration permitted in the visa.<sup>186</sup> Such a system would facilitate the long-term recording of all entries and departures of third country nationals in the EU, thereby providing information at any time on which third country nationals are residing in the EU.

A legislative proposal to establish the entry/departure system is included in the action plan to implement the Stockholm Programme<sup>187</sup> and in the Commission Work Programme for 2011 as part of an initiative on “intelligent border control systems”. The goal, among other things, is to collect data to identify and record

illegal immigrants, especially persons residing in the Union longer than permitted, thereby contributing to discouraging irregular migrants and maintaining security.<sup>188</sup> Furthermore, the action plan and the Work Programme both envisage a legislative act for a registration programme for travellers with which pre-checked frequent travellers from third countries can enjoy easier border crossings at the external EU borders. In October 2011, the EU Commission sent another communication on possible tangible courses of action and how to proceed in this area.<sup>189</sup>

In Germany, the Bundesrat delivered an opinion on the EU communication on the Commission Work Programme for 2011 in accordance with the Act on Cooperation between the Federal Government and the States in Matters of the European Union and welcomed the legislative proposal on electronic data collection for the entry and departure of third country nationals across the external EU borders. According to the Bundesrat, it enables better abatement of illegal residence as well as organised criminal activity within the EU. However, it recommended collecting personal data according to the generally accepted principles of privacy and data security.<sup>190</sup>

185 Cf. BGBl I No. 17 of April 15, 2011, p. 610; on the contents of the Act cf. Politikbericht 2010 by the German National Contact Point for the European Migration Network (EMN), Nuremberg, p. 47.; [Council Regulation \(EC\) No. 380/2008](#) of 18 April 2008 amending [Council Regulation \(EC\) No. 1030/2002](#) laying down a uniform format for residence permits for third country nationals

186 Cf. Communication from the Commission to the Council and the European Parliament on [improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs](#), COM(2005) 597 final of 24 November 2005, p. 10f. and Communication from the Commission [on Policy priorities in the fight against illegal immigration of third country nationals](#), COM(2006) 402 final of 19 July 2006, p. 6f.

187 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – [delivering an area of freedom, security and justice for Europe's citizens - Action Plan Implementing the Stockholm Programme](#), COM(2010) 171 final of 20 April 2010, p. 47.

188 Cf. appendices to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Commission Work Programme for 2011”, COM(2010) 623 final, Part II of 27 October 2010, p. 6f.

189 Communication from the Commission to the European Parliament and the Council “Smart borders – options and the way ahead”, COM(2011) 680 final of 25 October 2011, Brussels.

190 BR-Drs. 693/10 (Decision) of 10 February 2011, p. 7.

## Schengen Governance

At the European Council summit in June 2011, a reform of the Schengen Agreement was discussed wherein a protection clause is introduced as part of a general authority of resolution at the Union level that should enable internal border controls to be temporarily re-established in exceptional cases, provided a Member State is no longer able to fulfil its obligations in accordance with Schengen regulations.<sup>191</sup> This was precipitated by events such as the re-establishment of customs controls by Denmark and Italy's course of action regarding the illegal entry of North Africans, who in numerous instances were issued a six-month residence permit on humanitarian grounds that enabled them to enter other states in the Schengen Area. Since the interior ministers of Germany, France and Spain adhered to national sovereignty as part of "Schengen governance",<sup>192</sup> the transfer of competence to the Commission to decide on the re-establishment of border controls was denied. The result of the Council of Ministers of Justice and the Interior of 13 December 2011 remained the ultimate decision-making authority of the Member States based on the Schengen Borders Code.<sup>193</sup>

191 Cf. *ibid.*: 354f. and Conclusions of the European Council of 23/24 June 2011, Doc. No. EUCO 23/11, Brussels, p. 8. The European Commission had then presented a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, according to which the reintroduction of border controls at internal borders should have generally rested on a decision by the EU Commission following prior consultation with the recommending Member State; cf. COM(2011) 560 final of 16 September 2011, Brussels.

192 Cf. "Innenminister von Deutschland, Frankreich und Spanien halten an nationaler Souveränität bei Grenzkontrollen fest", PR from the Federal Ministry of the Interior on 13 September 2011.

193 Cf. Council of the European Union, Note from the Presidency to the Council/Mixed Committee at ministerial level, Doc. No. 18196/1/11, 9 December 2011, Brussels (Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances – State of play) and Press Release 3135th Council meeting Justice and Home Affairs, Doc. No. 18498/11, 13/14 December 2011, Brussels.

## 6.2 Cooperation with Respect to Border Control

### 6.2.1 Background and General Context

#### *Representation Agreements for the Issuing of Visa in Third Countries*

Under representation agreements, Germany represents the Schengen partners Belgium, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Austria, Portugal, Sweden, Slovenia and Spain in a total of 233 instances (more Schengen partners are represented at other posts). Inversely, Germany is represented at 26 posts by the Schengen partners Belgium, France, Italy, the Netherlands, Norway, Portugal and Spain. The representation agreements are listed individually in Appendix 28 of the Visa Code Handbook.

### 6.2.2 National Developments

The Federal Republic provides bilateral education and facilities assistance for important countries of transit and origin for irregular migration. A declaration of intent regarding the pilot project "Joint German/Polish Mixed Posts" is currently under development to further develop cooperation with Poland.

### 6.2.3 Developments from the EU Perspective

#### *German Participation in Measures by the FRONTEX EU Border Protection Agency*

Germany's dedication thus far in regard to establishing the agency and its activities is based on the conviction that, with the expansion of the Schengen Area and Germany's thusly limited ability to control its own internal borders, effective protection of common borders is only possible when coordination and control is supranational and on a European level, and through this Germany's influence on the new external borders increases.

For this reason, it has been and continues to be the goal of Germany to guide the agency to the greatest possible effectiveness and efficiency through political, border police and technical support/participation



and influence. The activity of the agency is viewed as a compensatory measure for the elimination of systematic border controls in the interior. Its contribution to effective external border protection as an integral part of internal security thus also falls under German interest in light of Germany's geopolitical position.

As part of the CRATE Technical Central Register, Germany provides the border protection agency FRONTEX with select management tools and operating resources, participating in joint operations using Federal Police officers. In 2011, the Federal Republic supported the "Focal Points Landborder" project (data collection, periodic deployment of officers and a platform to coordinate operational cooperation at the focal points on the external borders) and the "Poseidon" project (coordinated police efforts to prevent irregular migration via Turkey's external land and sea borders).<sup>194</sup> Longer-term deployments to focal points are favoured by the Federal Police due to their higher usage value. Germany devotes numerous personnel to monitoring the external EU/Schengen borders primarily in the southeast. As of 19 September 2011, a total of 14 Federal Police officers were operating in Greece as part of the joint operations "Poseidon Land 2011", "Focal Point Land" and "Poseidon Sea 2011", and as part of bilateral cooperation; furthermore, eight Federal Police officers were deployed to the FRONTEX centre in Warsaw as seconded national experts, and two officers were loaned to FRONTEX as "temporary agents".<sup>195</sup> Beyond this, the Federal Police are involved in numerous research and development projects for the agency that address questions from the area of border protection technology.

### **Significant Innovations since Amending Regulation (EC) 2007/2004 (FRONTEX Regulation)**

In light of evaluations conducted and practical experience, the FRONTEX regulation was amended and expanded by "Regulation (EU) No. 1169/2011 of the European Parliament of 25 October 2011 amending Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union". The amendments took effect on 12 December 2011.

The goal of the new regulations is the clearly defined and orderly functioning of the agency in the coming years through specifying its mandate and rectifying established weak points. In addition to minor changes of an administrative nature, the current regulation also modifies core areas of the duties of the agency with partially significant effects on the future cooperation of the Federal Police with FRONTEX. Changes relevant to cooperation are, in particular:

- Deploying internal FRONTEX liaison officers to third countries.<sup>196</sup>
- Modifying the mechanisms for deploying task personnel.
- Leasing and procuring internal FRONTEX management tools and operational resources, improving the availability of operational resources.
- Risk analyses for evaluating the capacities available to the Member States for managing risks and costs.
- Processing personal data to create risk analyses/forward to Europol as well as for repatriation operations

<sup>194</sup> A tabular overview of the joint FRONTEX operations in which Germany participated/is participating can be found in the Appendix.

<sup>195</sup> Cf. [BT-Drs. 17/7210](#) of 28 September 2011, p. 3.

<sup>196</sup> As part of cooperating with third countries, Frontex will also now be able to send its own liaison officers to third countries. This deployment occurs within the foreign policy framework of the EU Neighbourhood Policy and is limited to states in which the exercise of border police duties fulfils minimum human rights standards.



### **“Operation Migration, Traffic and Security” (MITRAS)**

Germany participated in the coordinated Operation MITRAS (“Migration, Traffic and Security”) to combat illegal migration during the Hungarian Council Presidency in the first half of 2011. A total of 22 EU Member States participated in a week-long working with the authorities in these states responsible for controlling cross-border traffic as part of their general duties to target persons without regular residence status who had crossed a Schengen border. During the operation, the Federal Police discovered 346 persons who entered illegally via main traffic routes (cross-border federal motorways as well as rail and air connections), whereby control activities were increased during this period. In sum, around 2,000 such individuals were discovered across all participating EU Member States.<sup>197</sup>

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197 Cf. “Neue Kooperationen und Projekte europäischer Polizeien”, [BT-Drs. 17/7018](#) of 20 September 2011, p. 5f. as well as information from the Federal Police during an expert workshop on 30 June 2011.

# 7 International Protection and Asylum

## 7.1 Background and General Context

Residence for humanitarian or political reasons, or for reasons of international law, is quantitatively among the most significant purposes of residence in Germany. The requirements for accepting the politically persecuted as well as others seeking protection are outlined in Art. 16a Basic Law, §§ 22-25 and 60 Residence Act and the Asylum Procedure Act. The BAMF decides on asylum applications. The foreigners authorities of the Federal States are responsible for regulating residence during and after the asylum procedure.

Since 2005, the acceptance of asylum applicants and those seeking protection has been strongly influenced by the implementation of EU Directives and Regulations into German law. Following the enactment of the Immigration Act on 1 January 2005, which already introduced prominent changes to verifying refugee status by including non-state persecution, the implementation of the Residence Standards Directive (2003/9/EC), Qualification Directive (2004/83/EC) and Procedure Directive (2005/85/EC) into national law has been a major step toward a common European asylum system.

Despite the Europeanisation effect of the Immigration and Directive Implementation Act, a series of forms of guaranteeing protection continue to exist in the Federal Republic that are issued based on national legal basis alone. These do not conflict with the European protection system, but rather supplement it.<sup>198</sup>

The supplementary national regulations were used in previous years for e.g. humanitarian acceptance

actions independent of the asylum system. The national regulations independent from the European protection system, however, also partially refer to processing foreigners from third countries already residing in Germany who cannot depart or be deported. These regulations include, for example, exceptional leave to remain, the grandfather clause for those with long-term exceptional leave to remain, “temporary stay” and residence for persons subject to immediate departure.

From the view of the sitting Federal Governments over the last few years, a common asylum and immigration policy for the EU is sensible so that international migration movements can be better steered, controlled and managed. European cooperation should e.g. serve to distribute the costs associated with accepting refugees and prevent multiple asylum applications in various EU Member States, illegal immigration and abuse of the right to asylum.

Since 1953 more than 3.2 million people have submitted an asylum application in Germany, of those more than 2 million since 1990. Only around a quarter of the submitted asylum applications fall in the first two-thirds of this time period (i.e. until 1989). The majority (almost three quarters) of all asylum applications were by comparison submitted after 1990. Most applications were recorded in 1992 (438,191); since then the number of asylum applications has decreased heavily. After the all-time low of 19,164 initial applications in 2007, there has been a renewed increase in entry figures. A total of 41,330 initial applications were submitted in 2010 for an increase of 49.5% from the previous year (27,650).

<sup>198</sup> Cf. Parusel, Bernd (2010): [Europäische und nationale Formen der Schutzgewährung in Deutschland](#). Study II/2009 as part of the European Migration Network (EMN). Working Paper 30, Nuremberg: Federal Office for Migration and Refugees.

Table 3: Initial Asylum Applications in 2011 and 2010, Top Countries of Origin, Rounded Figures\*

No.	Country	2011	2010	Change in %	Absolute Change
	<b>Total</b>	<b>45,740</b>	<b>41,330</b>	<b>10.7</b>	<b>4,410</b>
1.	<b>Afghanistan</b>	7,765	5,905	31.5	1,860
2.	<b>Iraq</b>	5,830	5,555	5.0	275
3.	<b>Serbia</b>	4,580	4,980	-8.0	-400
4.	<b>Iran</b>	3,350	2,475	35.4	875
5.	<b>Syria</b>	2,635	1,490	76.8	1,145
6.	<b>Pakistan</b>	2,540	840	202.4	1,700
7.	<b>Russia</b>	1,690	1,200	40.8	490
8.	<b>Turkey</b>	1,580	1,340	17.9	240
9.	<b>Kosovo</b>	1,395	1,615	-13.6	-220
10.	<b>Macedonia</b>	1,130	2,465	-54.2	-1,335

\* The order is focused on the ten quantitatively most significant countries of origin in 2011.

Source: Statistical Office of the European Union (2012): "Asylum Applicants and Initial Asylum Applications by Nationality, Age and Gender Annual Aggregate Data", Luxembourg; internal calculations.

## 7.2 National Developments

### *Development of Asylum Application Figures and the Decision Practice*

In 2011, the Federal Office for Migration and Refugees (BAMF) received 45,740 asylum applicants, 4,410 more than in 2010 (+10.7%).<sup>199</sup> This marked the fourth consecutive year of increase in asylum applicant figures. However, it must be noted that the increase turned out to be lower both in absolute figures and in percent than in the two preceding years (from 2009 to 2010: 13,680 or 49.5%; from 2008 to 2009: 6,285 or 29.4%). As Table 3 shows, the increase is primarily focused on Afghanistan (increase of 31.5% from previous year), Iran (35.4%) and Syria (76.8%). The increase was particularly high for Pakistani asylum applicants at 202.4%. The least amount of change was in asylum applications from Iraqi (5.0%) and Serbian (-8.0%) nationals. In contrast, the number of Macedonian asylum applicants decreased sharply (-54.2%).<sup>200</sup>

The top countries of origin for asylum applicants in 2011 were Afghanistan (7,765), Iraq (5,380), Serbia (4,580), Iran (3,350), Syria (2,635), Pakistan (2,540), the Russian Federation (1,690), Turkey (1,580), Kosovo (1,395) and Macedonia (1,130).<sup>201</sup>

In regard to the recognition rate, the total protection rate remained largely constant compared to the previous year. While it dropped from 36.4% in 2009 to 23.0% in 2010, it remained mostly stable for 2011 at 24.0%.<sup>202</sup> The absolute figures also remained broadly constant compared to the previous year: 7,100 persons were recognised in 2011 as eligible for asylum as per Art. 16a GG or as refugees as per the Geneva Convention (2010: 7,755) and 2,575 persons received subsidiary/

199 Statistical Office of the European Union (2012): Asylum Applicants and Initial Asylum Applications by Nationality, Age and Gender Annual Aggregate Data, Luxembourg; internal calculations.

200 Ibid.

201 Ibid.

202 The figures for granting protection were taken from the Eurostat database to ensure EU-wide comparability. This resulted in slight deviations to the EMN Politikbericht 2010, which relies on statistical data from the Federal Office for Migration and Refugees.

humanitarian protection (2010: 2,690).<sup>203</sup> The total protection rate was slightly higher than the previous year, but still lower than in 2009, 2008 and 2007. The decline in the protection rate compared to these years is explained by the high decision figures for Serbia and Macedonia, for which the protection rate is under 1%.

In regard to the most important countries of origin, the protection rate in 2011 for asylum-seekers from Irak (55.3%), Iran (54.6%) and Syria (43.7%) was the highest. A majority from all three countries were guaranteed refugee protection as per the Geneva Convention on Refugees, while subsidiary protection played only a minor role. Due to the ongoing situation in Syria, the Federal Office for Migration and Refugees suspended rejections in asylum procedures for Syria in 2011.<sup>204</sup> Following a recommendation by the Federal Ministry of the Interior, the states have for the time being suspended deportations to Syria due to the humanitarian situation.<sup>205</sup>

Changes occurred in 2011 to the jurisprudence behind determining the identity of refugees: asylum applicants who have manipulated their fingertips so that their fingerprints cannot be taken will now have their asylum procedures halted and their expulsion ordered if they do not re-apply to have their fingerprints taken. However, the Bavarian Higher Administrative Court found in its ruling of 13 September 2011 (20 B 11.30220) that the foreigner upon request for an asylum procedure can only be obligated to cooperate in a manner sufficiently supported by law. If the law is limited to obligation to grant exceptional leave to remain, the Federal Office for Migration and Refugees is then generally prohibited from using an official order to compel cooperation beyond ascertainment and sanctioning any failure to do so with the cessation of a procedure. The Federal Office for Migration and Refugees is appealing this ruling in the Federal Admi-

nistrative Court with the authorised revision. For benefits for asylum-seekers, the first effects of a ruling by the Federal Constitutional Court on the standard benefits as per Social Code (SGB II) are starting to emerge (BVerfG 1 BvL 1/09 of 9 February 2010). Due to this ruling, the Federal Government submitted the benefits as per the Asylum-Seekers Benefits Act before the Federal Constitutional Court for review. However, before these proceedings were concluded, the Mannheim Social Court confirmed that a refugee is entitled to a greater amount.<sup>206</sup>

### **Resettlement Programme of the UN Refugee Agency (UNHCR)**

Germany declared itself back in 2010, during a humanitarian acceptance procedure, willing to accept Iranian refugees requiring protection from the massive repression against the opposition movement in Iran in special instances. The focus of German involvement is on accepting Iranian refugees from Turkey. Over 50 refugees have entered Germany since 2010, and the IMK announced in December 2011 that it was willing to accept 300 refugees per year for the next three years.<sup>207</sup>

### **International Cooperation**

In 2011 the Federal Government released eight million Euros to manage the refugee situation in North Africa. The focus of this effort was to supply and evacuate refugees.<sup>208</sup>

### **Situation in the Federal States**

Changes were made in some Federal States in 2011 to the regulations on place of residence and accommodations for refugees. The following Federal States enacted regulations in 2011 to restrict the movements

203 National law defines subsidiary protection more generously than the Qualification Directive. The data here are underlied by the definition of the Qualification Directive. The difference between subsidiary protection according to European law and subsidiary protection according to German law is recorded by Eurostat as humanitarian granting of protection; cf. Federal Office for Migration and Refugees (2011): [Bundesamt in Zahlen 2010](#), Nuremberg, p. 30.

204 "Weit weg vom Folterknast", Süddeutsche Zeitung of 26 October 2011, p. 6.

205 "Ministerium: weiterhin keine Abschiebungen nach Syrien", dpa of 3 August 2011.

206 "[Sozialleistungen für Asylbewerber. Unrühmliche Häufung der Lasten der Ärmsten](#)", Legal Tribune Online of 16 August 2011.

207 [Sammlung der zur Veröffentlichung freigegebenen Beschlüsse der 193. Sitzung der Ständigen Konferenz der Innenminister und -senatoren der Länder am 08./09.12.2011 in Wiesbaden](#); see also [BT.-Drs. 17/8562](#) of 7 February 2012.

208 See [BT.-Drs. 17/6431](#) dated 1 July 2011.

of asylum applicants (residence restrictions)<sup>209</sup> who no longer are required to reside in an accommodation centre: Mecklenburg-Vorpommern (regulation, dated 20 December 2011), Saxony-Anhalt (regulation, dated 15 March 2011), Lower Saxony (regulation, dated 13 September 2011), Saxony (regulation, dated 17 January, but only applies to those with exceptional leave to remain and not asylum applicants) and Schleswig-Holstein (regulation, dated 5 April 2011). Thuringia (regulation, dated 17 May 2011) has expanded the right of residence to asylum applicants no longer required to reside in an accommodation centre to pre-determined contiguous foreigners authority districts.<sup>210</sup>

In Bavaria, asylum-seekers with families whose process was decided upon by the initial instance may leave community housing and move into their own residences. This relaxation also affects rejected asylum-seekers for whom deportation obstacles have been established.<sup>211</sup>

In November 2011, Brandenburg's Minister of Social Affairs spoke out for cash benefits for asylum-applicants instead of benefits in kind. Most districts in Brandenburg do not issue benefits in kind or vouchers.<sup>212</sup>

209 The residence restriction is a requirement for foreigners living in Germany, especially for asylum seekers and foreigners with a toleration status. This restriction obliges the persons concerned to remain purely within the boundaries of an area set out by the competent authority.

210 See e.g. „Federal State Government Cancels the Residence Restriction Requirement for Asylum-Seekers and Former Asylum-Seekers with a Toleration Status in Mecklenburg-Vorpommern“, press release, Ministry for the Interior and Sports, Mecklenburg-Vorpommern dated 20 December 2011; „Permanent instead of always restricted“, Frankfurter Rundschau dated 21 December 2011; „Niedersachsen Relaxes Asylum Rules“, Frankfurter Rundschau dated 14 September 2011; „Neue Regeln zur Residenzpflicht“, press release of the State Ministry of the Interior of Saxonia dated 17 January 2011; „[Räumliche Beschränkung wird aufgehoben](#)“, press release, State Chancellery of the Federal State Saxony-Anhalt dated 15 March 2011; „Bewegungsraum erweitert“, press release, Ministry for Justice, Equality and Integration of the Federal State Schleswig-Holstein dated 5 April 2011; „[Bewegungsraum erweitert](#)“, press release, Ministry for the Interior of the Free State of Thuringia dated 17 May 2011.

211 „The Suffering of Children in Collective Housing Centres Relieved“, Nuremberg News dated 3 August 2011.

212 „Asylbewerber sollen Bargeld statt Gutscheine erhalten“, press release of the Ministry for Labour, Social Matters, Women and Families of Brandenburg dated 4 November 2011.

## 7.3 Developments from the EU Perspective

### *Asylum Applicants from Serbia and Macedonia*

Following the elimination of the visa requirement for Macedonian, Montenegrin and Serbian nationals on 19 December 2009, the number of asylum applicants filing their first application from Serbia and Macedonia in Germany rose noticeably in 2010. A decline of over 50% in asylum applicant figures for Macedonia was registered in 2011, however the number of asylum applications filing their first application from Macedonian nationals still increased tenfold compared to 2009, before the visa requirement was eliminated (Serbia: almost eight-fold). In reaction to this increase, the payment of cash to promote voluntary return from REAG/GARP<sup>213</sup> programme funding was suspended for nationals from these countries who entered Germany after the visa exemption was enacted on 19 December 2009. In addition to removing this unintentional financial incentive, the Council of the European Union discussed possible ways to suspend visa exemption as a reaction to the increases in asylum applicant figures from countries not subjected to the visa requirement.<sup>214</sup>

The Serbian government has announced/taken various measures during 2011 to reduce the misuse of visa exemption/to secure acquired freedom of travel. These include establishing an interministerial commission to monitor visa exemption, combatting document forgery, reviewing travel agencies and police investigations against smugglers, increased border controls at the Hungarian/Croatian border, media campaigns, improved cooperation with transit states and efforts to improve the situations of minorities.

On the occasion of a conversation with Acting Prime Minister and Interior Minister of the Republic of Serbia, Ivica Dačić, at the end of March 2011 in Belgrade, the Parliamentary State Secretary of the Federal Ministry of the Interior, Ole Schröder, declared that

213 Reintegration and Emigration for Asylum-Seekers in Germany/Government Assisted Repatriation Programme (cf. also EMN Politikbericht 2011).

214 „[JI-Rat in Brüssel: die Reform des Schengen-Systems im Fokus der EU-Innenpolitik](#)“, Press Release by the Federal Ministry of the Interior on 19 December 2011.

the Federal Government welcomes the measures taken by Serbia to prevent the misuse of visa exemption; Germany shall support Serbia in its efforts in suitable ways in the future as well.<sup>215</sup>

### ***Suspending Transfers to Greece***

On 28 November 2011, Federal Minister of the Interior Friedrich extended the suspension of transfers of asylum-seekers to Greece for another year, until 12 January 2013 as part of the Dublin Procedure.<sup>216</sup> Since 13 January 2011, Germany has invoked the sovereignty clause in cases where asylum-seekers entered Germany via Greece. This means that these asylum procedures will be conducted in Germany by the Federal Office for Migration and Refugees, although the Dublin Regulation decrees that Greece would be responsible for the asylum procedure. The goal of the suspension is to contribute to the strengthening of Greece's asylum system. Since the Federal Government is of the opinion that Greece is still a safe third country, the transfers have only been suspended temporarily. Back in 2009, Germany invoked the sovereignty clause for 2,288 takeover requests to Greece in 870 cases, and only performed 200 transfers. In 2010 the number of sovereignty invocations increased to 1,281 with 2,458 takeover requests. The number of actual transfers fell to 55.<sup>217</sup> The suspension was the reaction of the Federal Ministry of the Interior to ongoing proceedings in Federal Constitutional Court to review the validity of transfers to Greece.<sup>218</sup>

In this context, Germany also renewed its request to Greece to create sufficient capacity to conduct asylum procedures, ensure the situation in the reception centres are improved and increase border security measures.<sup>219</sup>

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215 "Parl. Staatssekretär Schröder auf Auslandsreise in Serbien", Newsflash by the Federal Ministry of the Interior on 28 March 2011: [http://www.bmi.bund.de/SharedDocs/Kurzmeldungen/DE/2011/03/PStS\\_Belgrad.html?nn=366856](http://www.bmi.bund.de/SharedDocs/Kurzmeldungen/DE/2011/03/PStS_Belgrad.html?nn=366856).

216 Cf. „Entscheiderbrief“ 9/2011, 18th Jg., Federal Office for Migration and Refugees, p. 3f.

217 "[Deutschland übt Selbsteintrittsrecht aus](#)", Press Release by the Federal Ministry of the Interior on 19 January 2011.

218 BVerfG, 2 BvR 2015/09 of 25 January 2011, Paragraph No. (1 - 3).

219 "[JI-Rat in Luxemburg: Griechenland auch im Fokus der EU-Innenpolitiker](#)", Press Release by the Federal Ministry of the Interior on 2 November 2011.

# 8 Unaccompanied Minors and Other Groups in Need of Particular Protection

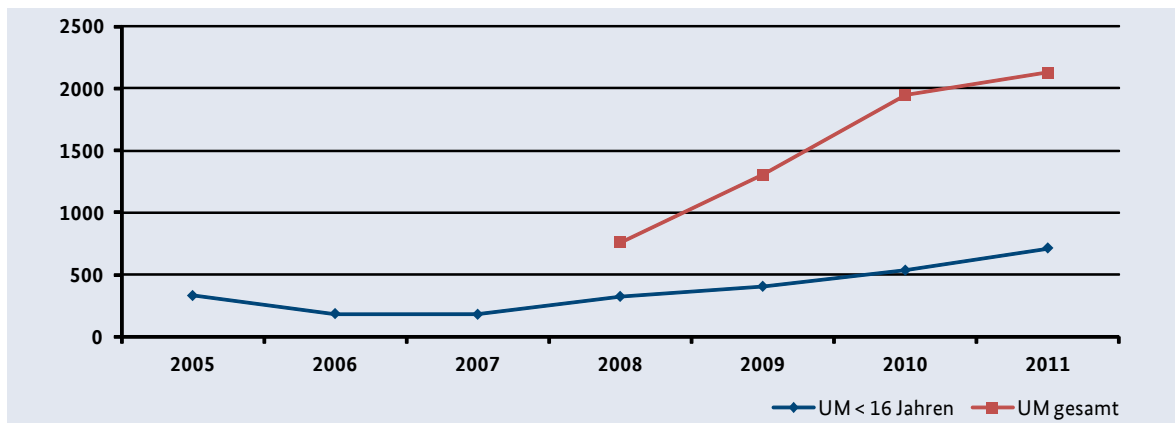
## Support for Greece by the EASO

In addition to relieving Greece through invoking the sovereignty clause in asylum procedures, Germany also provides support through the European Asylum Support Office (EASO). As members of the asylum support team sent by the EASO, employees of the Federal Office for Migration and Refugees (BAMF) also participated in the current measures to build an adequate asylum procedure over a total of four deployments. The work focused on creating an operational plan as well as procedure guidelines for unaccompanied minors. This measure is based on a three-year action plan presented by Greece together with the EASO to improve refugee protection. It is designed, among other measures, to ensure an efficient initial reception procedure and create reception centres and an independent asylum authority.

## Receiving African Refugees from Malta

In addition to Greece, Malta also received German assistance in 2011 in managing the reception of refugees. Germany received 153 persons with African nationalities who had fled from Libya to Malta. The refugees came from Somalia, Eritrea, Ethiopia, and Sudan. The humanitarian reception action focused in particular on families and single parents with newborns and small children. The refugees were prepared in Malta for their new lives in Germany through an initial cultural orientation and first impressions of the German language. Back in October 2010, Germany had received 102 African refugees from Malta for the EU Pilot Project for Intra-European Relocation of Refugees Stranded on Malta (EUREMA). Due to its geographic location and size, Malta is particularly affected by the current migration streams from North Africa across the Mediterranean.

Figure 4: Unaccompanied Minors, Initial Applicants in Persons\*

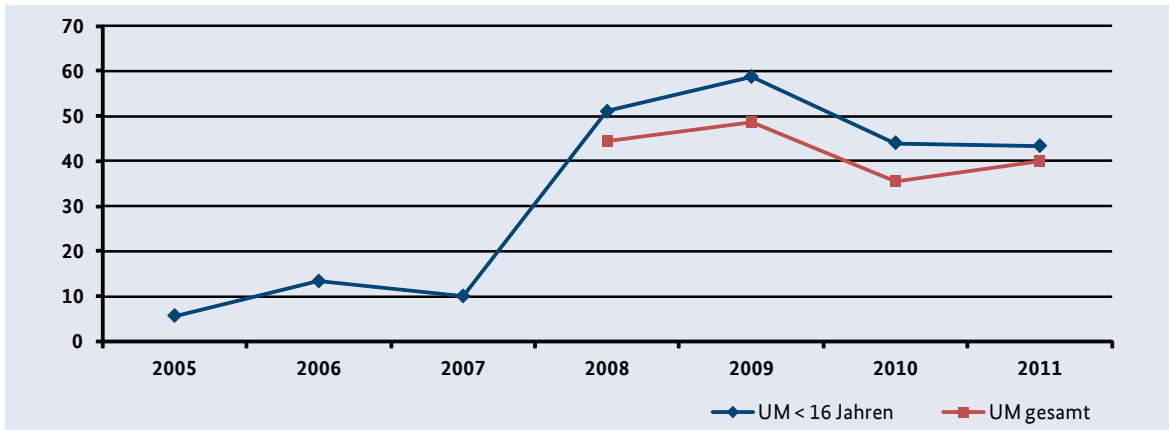


\* 16- and 17-year-old unaccompanied minors were not statistically recorded until after 2007.

Source: Federal Office for Migration and Refugees (2012): "Statistics for Unaccompanied Minors", Nuremberg.



Figure 5: Total Protection Rate in %\*



\* The total protection quota consists of the number of positive asylum applications, the granting of refugee protection and the determination of deportation bans in relation to the total number of decisions taken in the period concerned.

Source: Federal Office for Migration and Refugees (2012): "Statistics for Unaccompanied Minors", Nuremberg.

## 8.1 Background and General Context

### Unaccompanied Minors

Unaccompanied minors (UMs) come to Germany fleeing acts of war, human rights violations or economic distress and seek protection/better living conditions. Some lose their family members, others are separated from their parents while fleeing, still others are sent to Europe by their parents. The number of UMs submitting applications for asylum between 2002 and 2007 has declined. A total of 873 UMs under 16 applied for asylum at the BAMF in 2002, but only 180 applications were recorded in 2007. An increase was noted in 2008 to 324 UMs under 16. Counting the 16- and 17-year-old UMs "fit" for residence or asylum procedures (statistically recorded as of 2008), a total of 763 UMs applied for asylum in Germany in 2008. In 2009, the number of UMs applying for asylum in Germany totalled 1,304 persons. From 2009 to 2010 there was a large increase of 49.4% to 1,948. From 2010 to 2011, the number of initial applicants rose to 2,126; an increase of 9.14% (see Figure 4). The five top countries of origin for 2011 were Afghanistan (1,092 UMs; +36% from previous year), Iraq (199; -0.5%), Somalia (112; -56%), Syria (84; +47%) and Ethiopia (57; +24%).<sup>220</sup>

<sup>220</sup> Federal Office for Migration and Refugees (2012): "Statistics for Unaccompanied Minors", Nuremberg; internal calculations.

The total protection rate, i.e. number of persons granted asylum, granted refugee protection and determined to be undepotable in relation to the total number of decisions during a given time period, for UMs was 40% in 2011; up from 36% in the previous year. Compared to the years 2008 (44%) and 2009 (49%), the total protection rate has fallen. Figure 5 shows that the total protection rates for UMs under 16 and all UMs have developed similarly.

Even the number of minors travelling alone determined by the Federal Police has increased sharply from 2009 to 2010: in 2010 the Federal Police recorded 282 minors under 16 travelling alone. Compared to the previous year, in which 173 persons were recorded, this is an increase of 63%; in 2008 a total of 174 minors under 16 travelling alone were recorded. The top country of origin for all three years was Afghanistan. In 2010, 155 of the recorded minors travelling alone were Afghan – just under 60% more than in 2009.<sup>221</sup> The increase in recordings from Afghanistan is thus largely responsible for the overall increase in recorded minors travelling alone from 2009 to 2010.

The different residence, asylum and social measures and procedures used in conjunction with the entry, reception and potential return of UMs underlie special requirements due to national and international regulations on protecting children and adolescents.

<sup>221</sup> Compare [BT-Drs. 17/7433](#) dated 21 October 2011.

Regarding entry, for example, it is very important that minors travelling alone are recognised as such by the border authorities so that they – if no refusal or deportation is ordered and no relatives are residing in the Federal Republic – can be transferred to the appropriate youth welfare office, which then must arrange for the minor to be taken into care, assigned a guardian and provided adequate accommodations. Once taken into care, the “clearing procedure” plays an important role. It serves e.g. to determine the individual need for youth welfare measures and checks to see if the UM taken into care has relatives in Germany or another EU Member State and whether or not an application for asylum appears sensible. Thus far the “clearing procedure”, when available, is conducted differently depending on the Federal State. The asylum procedure, on the other hand, follows uniform criteria. In the BAMF, “specially assigned case officers” are appointed who are trained in handling UMs. They are instructed to make sure that the UM’s hearing is less formal than for adults. They are also obliged with addressing the needs to minors with particular sensitivity.<sup>222</sup>

### **Persons with Illnesses**

During the asylum procedure, applicants regularly present health impairments. The BAMF checks in these instances if protection can be granted due to imminent danger in the country of origin, particularly the risk of a serious decline in health. Depending on the asylum-seeker’s plea, protection can be granted in the form of asylum, recognising refugee status or subsidiary protection.

BAMF employees themselves are not trained in ascertaining illness, as they lack the necessary medical/psychological expertise. As such, a comprehensible diagnosis is required in order to take illnesses into consideration during the asylum procedure. Once such a diagnosis has been presented, it is possible, depending on the case, that the caregiver will be questioned or even an assessment ordered until the circumstan-

ces are clarified to such a degree that a final decision can be made on whether or not the requirements for granting protection have been fulfilled. In order to do such a procedure justice and be able to react sensitively during the hearing, sensitivity training was introduced in 1996 for case officers to assist in handling vulnerable asylum applicants.

## **8.2 National Developments**

### **Second Directive Implementation Act**

The Act to Implement the Residence Directives of the European Union and to Conform National Legal Regulations to the EU Visa Code (a.k.a. the Second Directive Implementation Act) took effect on 26 November 2011.<sup>223</sup> This implemented directives such as the EU Directive on common standards and procedures for returning illegally staying third country nationals (a.k.a. the Return Directive).<sup>224</sup> The act supplements the existing formal and procedural guarantees for foreigners obligated to return, introduces a standard upper limit of five years for entry and residence bans and regulates the enforcement of pre-deportation detention. In direct reference to UMs, the act e.g. sets forth that the authorities must ensure that the UM is transferred to a family member, legal guardian or suitable reception centre in the country of return.<sup>225</sup>

<sup>222</sup> For more information on the handling UMs in Germany, see Parusel, Bernd (2009): [Unbegleitete minderjährige Migranten in Deutschland – Aufnahme, Rückkehr und Integration](#), Working Paper 26 of the Federal Office Research Group, Nuremberg: BAMF; and Parusel, Bernd (2010): [Unbegleitete minderjährige Flüchtlinge – Aufnahme in Deutschland und Perspektiven für die EU](#), ZAR Book 7/2010, p. 233 ff.

<sup>223</sup> [Gesetz zur Umsetzung Aufenthaltsrechtlicher Richtlinien der Europäischen Union und zur Anpassung nationaler Rechtsvorschriften an den EU-Visakodex](#), Federal Law Gazette, No. 59 of 25 November 2011, p. 2258.

<sup>224</sup> [Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals](#).

<sup>225</sup> For a judicial critique of the second Directive Implementation Act cf. Basse et al. (2011): [Das “zweite Richtlinienumsetzungsgesetz” im Überblick](#), Zeitschrift für Ausländerrecht und Ausländerpolitik, 11/12/2011, pp. 261 – 412.

# 9 Global Approach to Migration

## 9.1 Background and General Context

### “Global Approach to Migration”/“Global Approach to Migration and Mobility” (GAMM)

The European Council passed the “Global Approach to Migration” in December 2005 as part of a multi-dimensional strategy to be understood as a global concept on migration.<sup>226</sup> This includes a crucial procedure against illegal immigration while simultaneously utilising the opportunities of legal migration and the stronger connection between migration and development policy in terms of combatting the causes of migration. The core concern is a partnership-based policy dialogue and closer cooperation with countries of origin and transit in the area of migration policy. In 2009 the Member States obligated themselves to further develop the global approach while observing geographic balance in the “Stockholm Programme”.<sup>227</sup> The main focus in the future should also be on cooperation with countries of origin and transit in Africa and Eastern and Southern Europe.

An important instrument of this global approach to migration is the EU mobility partnerships initiated in December 2007. These are political agreements creating incentives for third countries, particularly in the area of legal migration/development and combining them with obligations to cooperate in refugee protection/combating illegal migration. The joint declarations of each mobility partnership contain listings of participating states and the intended measures as an annex.

The first pilot mobility partnerships were concluded in June 2008 at the brink of a session of EU interior and justice ministers with Moldova<sup>228</sup> and Cape Verde<sup>229</sup>; Georgia following in November 2009.<sup>230</sup>

Germany is actively participating in the mobility partnerships with the Republic of Moldova and Georgia, approaching them with a series of projects and measures. In terms of promoting circular migration, *outward mobility* was facilitated as part of these mobility partnerships. Citizens of the Republic of Moldova and Georgia, and soon Armenia as well (cf. Section 9.2), with legal residence titles in Germany will have the ability to leave Germany for more than the usual six months without losing their residence titles.

Other instruments of the global approach to migration are at a glance:

- Creating migration profiles to gain specific information from third countries
- Conducting missions in select third countries along significant migration routes in order to plumb the possibility for dialogue and cooperation in preparation for the application of further global approach instruments
- Establishing cooperation platforms to locally or regionally coordinate existing or planned individual initiatives
- Mobility partnerships (see above).

226 Cf. European Commission (2012): [Cooperation with non-EU countries: the Global Approach to migration](#), Brussels.

227 [Das Stockholmer Programm – Ein offenes und sicheres Europa im Dienste und zum Schutz der Bürger](#), Official Journal No. C 115 of 04/05/2010 pp. 1 – 38.

228 Cf. [Joint Declaration on a Mobility Partnership between the European Union and the Republic of Moldova](#).

229 Cf. [Joint Declaration on a Mobility Partnership between the European Union and the Republic of Cape Verde](#).

230 Cf. [Joint Declaration on a Mobility Partnership between the European Union and Georgia](#).

The “Global Approach to Migration” was evaluated in the first half of 2011; this comprised a broad public consultation. The consultation confirmed the value of the global approach, yet showed that the global approach should be better adapted with other policy fields and the topical and geographic policy fields should be listed in a more balanced fashion. The EU Commission released a new edition of the global approach in response to these findings on 18 November 2011: “Global Approach to Migration and Mobility” (GAMM).<sup>231</sup> GAMM aims at a stronger interlink with foreign and development policy, as well as improved harmony with the EU’s internal policy goals, particularly with the Europe 2020 strategy and employment and education policy. The new approach also brings mobility and visa policy into the spotlight and supplements the three pillars of the global approach from 2005 – legal migration, irregular migration and relationships between migration and development – with a fourth pillar that affects international protection and the external dimension of asylum policy.<sup>232</sup>

### Prague Process

A conference of ministers in Prague launched the Prague Process on 28 and 29 April 2009: a political process with the goal of promoting migration partnerships between the participating EU states, the Schengen Area, Southeast and Eastern Europe and Central Asia – as well as Turkey.<sup>233</sup> The International Centre for Migration Policy Development (ICMPD)<sup>234</sup> is responsible for managing the Prague Process. In December 2010, Poland assumed responsibility for guiding the process from The Czech Republic. The Republic of Belarus joined the Prague Process that same month

and the Prague Process continued under the complete title: “The Prague Process: continuation for the Building Migration Partnerships dialogue”. The preparatory meetings have expanded the content dimension of the Prague Process. Independent cooperation areas will soon represent the topics of asylum and vulnerable groups.

## 9.2 Developments from the EU Perspective

### Mobility Partnerships

The mobility partnership between the European Union and Armenia was concluded on 27 October 2011. It is intended to strengthen mobility and cooperation on migration issues between the EU and Armenia. Various practical measures are planned that are designed to support Armenia in managing migration flows and informing, integrating and protecting migrants and returnees. Additionally, Armenia should receive assistance in better addressing issues of refugee protection as well as preventing and reducing illegal immigration and human trafficking. Until now, nine other EU Member States<sup>235</sup> in addition to the Federal Republic of Germany, and the European Training Foundation are involved in the mobility partnership with Armenia.<sup>236</sup> The EU Commission is striving to spur the dialogue and the operative cooperation with countries outside the EU in the area of migration and mobility. In this manner, countries such as Tunisia, Morocco and Egypt in the immediate vicinity of the EU will be offered mobility partnerships.<sup>237</sup> The Federal Republic of Germany supports this process.

231 Cf. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, [The Global Approach to Migration and Mobility](#), Brussels, COM(2011) 743 final.

232 [Press Release](#), “Stronger cooperation and mobility at the centre of the renewed EU migration strategy”, European Commission, 18 November 2011.

233 Cf. [Building Migration Partnerships](#), Joint Declaration.

234 Cf. [www.icmpd.org](http://www.icmpd.org).

235 Belgium, Bulgaria, The Czech Republic, France, Italy, the Netherlands, Poland, Romania and Sweden.

236 Cf. [Press Release](#), “Better mobility between the EU and Armenia”, European Commission, 27 October 2011.

237 Cf. [Press Release](#), “Stronger cooperation and mobility at the centre of the renewed EU migration strategy”, European Commission, 18 November 2011; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “[The Global Approach to Migration and Mobility](#)” of 18 November 2011, COM(2011) 743 final.

### ***Prague Process***

The Second Conference of Ministers on the Prague Process, under the title “Building Migration Partnerships in Action”, took place during the Polish EU council presidency in Poznań on 4 November 2011. The conference enacted the Prague Process Action Plan for 2012 to 2016, which consists of a list of 22 focus measures aimed at the development of cooperation in the area of migration between the Member States of the EU, the Euro Zone, the Commonwealth of Independent States, the Western Balkans, Georgia, Turkey and Central Asia.<sup>238</sup> The Federal Republic of Germany is participating in the Prague Process and will actively participate in the overall project to implement the action plan.

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238 Cf. Polish Presidency of the European Council (2011): [“Prague Process Action Plan Adopted for 2012-2016”](#), Warsaw.

# 10 Implementation of EU Legislation

## 10.1 Transposition of EU Legislation in 2011

The legislators in Germany also implemented numerous directives, regulations and decisions by the European Union in 2011, which are briefly mentioned below.

### *Directive 2008/115/EC (Return Directive)*

The Return Directive was completely implemented into national law when the Second Directive Implementation Act took effect on 26 November 2011 (Act to Implement Residence Guidelines of the European Union and Confirm National Legal Regulations to the EU Visa Code). Until the act took effect, the principles of the immediate effect of directives were applied and the Federal Ministry of the Interior provided application guidelines to the appropriate Federal States back on 16 December 2010 for implementing the aliens law, which contained principles for the direct application of the Directive as of 24 December 2010 (implementation deadline).

According to Directive 2008/115/EC, EU Member States must generally issue a return decision against all third country nationals illegally residing in their territory (Art. 6 Sec. 1). Since the German Residence Act did not include a legal concept analogous to a return decision, implementing the Directive resulted in changes. In the future, when an obligation to leave is justified by an administrative act according to the German law system, this act will represent the return decision in terms of the Directive; if an obligation to leave arises by law, the administrative act of a written deportation warning included in the Residence Act as a recommendation will function as the return decision. Furthermore, implementing the Return Directive curtails the possibility of deportation. This is only possible immediately after an external border is illegally

crossed or when the person is re-admitted by another Member State (cf. Section 5.2.3).<sup>239</sup>

### *Directive 2009/50/EC (EU Blue Card Directive)*

The deadline to implement this directive into national law in the Member States passed on 19 June 2011. The Federal Government introduced a bill on 7 December 2011 to implement the directive.<sup>240</sup> The Bundestag and the Bundesrat have yet to pass the bill. Due to the public discussion on the immigration of qualified workers, the provisions of the EU Blue Card Directive were not included in the Directive Implementation Act, but were addressed separately.<sup>241</sup>

### *Directive 2009/52/EG (Sanction Directive)*

The Sanction Directive<sup>242</sup> took effect on 20 July 2009. The Sanction Directive was implemented into national law through the Second Directive Implementation Act (effective: 26 November 2011). Since the instruments and regulations intended by the Sanction Directive are largely already anchored in German law, the legislators' need for implementation remained comparatively small. For example, social legislation already contains discouraging sanctions against employers who hire foreigners without legal residence, thereby

239 Basse, Sebastian/Burbaum, Ann-Marie/Richard, Corinna (2011): The "zweite Richtlinienumsetzungsgesetz" im Überblick, in: ZAR – Zeitschrift für Ausländerrecht und Ausländerpolitik, 361-368, p. 364ff.

240 Cf. [Press Release](#), "Bundesregierung beschließt Erleichterung bei der Zuwanderung ausländischer Fachkräfte", Federal Ministry of the Interior, 7 December 2011.

241 Basse, Sebastian/Burbaum, Ann-Marie/Richard, Corinna (2011): The "zweite Richtlinienumsetzungsgesetz" im Überblick, in: ZAR – Zeitschrift für Ausländerrecht und Ausländerpolitik, 361-368, p. 363.

242 Directive 2009/52/EC of the European Parliament and of the Council of 18 July 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals.

potentially exploiting them. According to the Social Code, this can be punished by a fine of up to 500,000 Euros – § 404 Social Code (SGB) Third Book (III). However, a regulation was created that states that illegally employed irregular migrants can receive a residence permit (similar to the implementation of the Victim Protection Directive; see above) if they are willing to testify in court (§ 25(4b) AufenthG). Further need to conform German law to implement the directive was found in e.g. the regulation on liability for deportation costs in conjunction with sanctioned illegal employment, the creation of new *corpra delicti* in criminal law or the obligation of the employer to pay stipulated compensation to those illegally employed.<sup>243</sup>

### **Regulation (EC) No. 380/2008 (Uniform Format of Residence Permit)**

The Regulation (EC) No. 380/2008 amending Regulation (EC) No. 1030/2002 (“Regulation on Uniform Residence Permits”) took effect on 19 May 2008, thus immediately applying in Germany. National law was substantiated by an act that essentially took effect on 1 September 2011, and amended to conform to the contents of the Regulation. In this context, the electronic residence permit (eResidence Permit) was introduced for the family members of third country nationals in Germany on 1 September 2011. With this, Germany implemented the European specifications on a uniform format for residence permits for non-EU citizens. The document contains personal data, information on residence status and employment in electronic form as well as biometric features. The biometric data can only be scanned by government entities such as security services or foreigners authorities. Issuance of the eResidence Permit should contribute to preventing illegal immigration and residence. Older residence permits will be replaced with the new electronic document upon extension.

243 Basse, Sebastian/Burbaum, Ann-Marie/Richard, Corinna (2011): Das “zweite Richtlinienumsetzungsgesetz” im Überblick, in: „ZAR – Zeitschrift für Ausländerrecht und Ausländerpolitik“, 361-368, p. 367.

### **Regulation (EC) No. 810/2009 (Visa Code)**

As a regulation, the Visa Code of 13 July 2009 must be immediately applied by the Schengen Member States and has applied in Germany in major part since 5 April 2010. Smaller amendments were made by the Second Directive Implementation Act to completely harmonise the German Residence Act with the Visa Code, such as clarifying that the airport transit visa is a separate visa type (§ 6(1) AufenthG). Furthermore, the appropriate security services were determined which must be informed of the issuance of visas by other Schengen states to nationals of separately defined states (§ 73a AufenthG).<sup>244</sup>

### **Revising the Qualification Directive**

The Recognition Directive (2011/95/EU) was passed on 13 December 2011 to replace the Qualification Directive (2004/83/EC of 29 April 2004), clarifying the effect of protection provisions. The revised Directive now states that the protection to be granted must be effective not just of a temporary nature. Internal protection requires that the applicant can reach a danger-free area of his/her country of origin safely and legally and is able to settle there. It must also be expected that he/she will in fact settle there. Moreover, it was clarified that gender-specific aspects, including gender identity, must be appropriately taken into consideration when determining membership in a social group. Although these regulations must still be implemented into national law, they are already being applied in the Federal Office for Migration and Refugees.

The Directive also harmonises the rights of persons promised refugee status and persons under subsidiary protection, meaning the extension of a residence permit for a person under subsidiary protection is for two years. Access to the labour market was also harmonised, and both refugees and those receiving

244 Basse, Sebastian/Burbaum, Ann-Marie/Richard, Corinna (2011): Das “zweite Richtlinienumsetzungsgesetz” im Überblick, in: „ZAR – Zeitschrift für Ausländerrecht und Ausländerpolitik“, 361-368, p. 367.



subsidiary protection are eligible to participate in integration courses. The Member States have until 21 December 2013 to implement the modified provisions into national law.<sup>245</sup>

### **Launch of the Visa Informations Systems (VIS)**

The VIS was created based on the Council Decision of 8 June 2004 establishing the Visa Information System (2004/512/EC) and Regulation (EC) No. 767/2008 of the European Parliament and the of the Council of 9 July 2008 concerning the Visa Information System and the exchange of data between Member States on short-stay visas (VIS Regulation). The first application area, North Africa, was launched on 11 October 2011.<sup>246</sup>

A “gradual regional roll-out” is planned, which started with entering applications for Schengen visas in the system in consulates in North Africa (Algeria, Egypt, Libya, Mauritius, Morocco and Tunisia, the followed by the Middle East (Israel, Jordan, Lebanon and Syria), the Gulf Region (Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates and Yemen) and Afghanistan.<sup>247</sup> The other roll-out regions are to be determined by the European Commission together with the EU Member States.

## **10.2 Experiences, debates in the (non-) implementation of EU legislation**

### ***EuGH on Revoking Refugee Status***

In a ruling on 2 March 2010,<sup>248</sup> the Court of Justice of the European Union (EuGH) decided on principles for revoking refugee status based on information including a submission by the Federal Administrative Court (BVerwG). Accordingly, it must be determined in

consideration of a “substantial and not just temporary change in the country of origin” that the circumstances that caused a foreigner to fear persecution cease to exist. If the original circumstances no longer exist, it must be determine whether or not this foreigner has a justified fear of persecution due to other circumstances. The same degree of likelihood must be applied as when refugee status was granted.

Based on this determination, the BVerwG initially ruled on 24 February 2011 that refugee status can be revoked if persecution in the country of origin has sustainably and not just temporarily ended.<sup>249</sup> In the relevant case, the court asserted that Iraqi refugees no longer had to fear persecution by the regime of Saddam Hussein. The political changes in the country of origin are the deciding factor: if these are sustainable enough and not just temporary that the fear of persecution can be considered unjustified, refugee status can be revoked.<sup>250</sup>

### ***Terrorism Provision in Applying Qualification Directive***

Based on the submission by the Federal Administrative Court, the EuGH ruled on 9 November 2010 on circumstances that result in disqualification for refugee status by the Qualification Directive in the event of terrorism. Accordingly, belonging to an organisation that uses terrorist methods does not automatically result in disqualification for refugee status.

This interpretation was accepted by the BVerwG in its ruling of 7 July 2011. It found that simply belonging to a terrorist organisation does not justify revocation of refugee status. Such revocation depends on individual responsibility for the organisation’s actions that represent serious, non-political crimes or run counter to the goals and principles of the United Nations.<sup>251</sup>

<sup>245</sup> Guideline 2011/95/EU dated 13 December 2011; see also „Entscheiderbrief“ 1/2012, 19. Jg., Federal Office for Migration and Refugees, page 2 and ff.

<sup>246</sup> Compare. BT-Drs. 17/6223 dated 16 June 2011, page 6; „Start des schengenweiten Visa-Informationssystems“, Press Release of the Federal Ministry of the Interior dated 11 October 2011.

<sup>247</sup> Compare Decision taken by the Commission 2010/49/EG dated 30 November 2009 for the determination of the first regions where the Visa-information system (VIS) will be put into operation (published under ref. no. K (2009) 8542), Amtsblatt der Europäischen Union, L 23 dated 7 January 2010, pages 62-64.

<sup>248</sup> Ref. no. C-175/08 in „Entscheiderbrief“ 3/2010, 17. Jg., Federal Office for Migration and Refugees, page. 5.

<sup>249</sup> BVerwG, Ruling of 24 February 2011 (10 C3.10).

<sup>250</sup> See also „Entscheiderbrief“ 6/2011, 18th Jg., Federal Office for Migration and Refugees, p.4.

<sup>251</sup> BVerwG, Ruling of 7 July 2011 - 10 C 26.10 and 10 C 27.10.

### ***Application of the Dublin II Regulation***

Regarding the application of the sovereignty clause as per Art. 3(2) Dublin Regulation, the Hesse Higher Administrative Court asked the EuGH for clarification as to whether or not the Dublin II Regulation made invoking the sovereignty clause mandatory when the situation in the target country is such that there is concern the rights of the asylum-seeker will not be assured. Furthermore, the EuGH should clarify whether or not an asylum applicant can be accorded a subjective right to act in his/her own name.<sup>252</sup>

In another ruling, the Hesse Higher Administrative Court found that the six-month deadline to transfer to the appropriate Member State according to Dublin first begins upon legal ruling in the main proceedings and not upon ruling on preliminary legal protection/consent of the appropriate Member State.<sup>253</sup>

Regarding the transfer deadline, the Regensburg Administrative Court found that Germany itself is obligated to verify the asylum applicant's fingerprints once the transfer deadline has elapsed according to Art. 4 EURODAC Regulation. Since the court states that this deadline does not serve to protect the asylum-seeker, once this deadline has elapsed the third countries themselves have the possibility of declaring themselves responsible and accepting the transfer.<sup>254</sup>

### ***Implementing the Return Directive***

According to a ruling by the Kassel Administrative Court, support must be granted to unaccompanied minors in the target country before a return decision is made. Thus cannot be done by the office responsible for enforcing return.<sup>255</sup>

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252 VGH Hesse, Ruling of 22 December 2010 – 6 A 2717/09.A.

253 VGH Hesse, Ruling of 23 August 2011, 2 A 1863/10.Z.A.; see also „Entscheiderbrief“ 10/2011, 18th Jg., Federal Office for Migration and Refugees, p. 3.

254 VG Regensburg, Ruling of 11 February 2011 - RN 7 10.30288.

255 VG Kassel, Ruling of 19 April 2011 - 1 K 1341/10.KS.A.

# Annex on Commitments in the European Pact and Stockholm Programme

## LEGAL IMMIGRATION AND INTEGRATION

### **1. Economic migration**

#### **1.1 European Pact on Immigration and Asylum** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Pact for this sub-section are in particular:

##### ***I(a) Implement policies for labour migration***

Please describe the (planned) introduction of a new labour migration policy or changes to the existing one. Elaborate any new aspects (e.g. introduction of quota, lists of professions, agreement with specific third countries, use of private recruitment services, etc). Specify whether these address any specific groups of migrants and describe any groups which are not addressed under the subsequent commitments in this sub-section. Also consider the effect of the economic crisis on labour migration (e.g. revision of quota, reduction of professions listed, etc).

After several legal measures to secure the supply of skilled labour had gone into force on 1 January 2009, Germany adopted the so-called Skilled Labour Concept in June 2011. As a first step in the area of migration, the priority checks have no longer been applied in identified shortage professions since June 2011. The list to identify shortage occupations is checked and updated every six months. Currently, the following professions are listed: Mechanical engineers, automotive engineers, electrical engineers and doctors of medicine.

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

Please describe any (planned) measures to facilitate access of highly qualified workers, students and researchers. Refer to the implementation of the Blue Card Directive. Describe any incentive mechanisms for highly qualified workers, students and researchers on top of the transposition and implementation of EU legislation. Also consider the effect of the economic crisis.

Highly qualified workers may immediately obtain a permanent right of residence in Germany if they earn a salary of at least 66,000 Euros. The salary threshold is coupled

with the contribution assessment ceiling for the statutory pension fund, which is to be determined annually. The Federal Government has adopted a draft law in which it is foreseen to lower this salary threshold to 48,000 Euros. Besides, there is also the possibility to grant scientists with special expertise or teaching personnel or scientific staff in leading positions such permanent right of residence immediately without these persons having to reach a salary threshold.

Compared to the same period in 2010, the number of immigrants from these groups of persons rose slightly but constantly by 120 persons to about 460 persons in the first half of 2011.

Moreover, all academics from third countries may be admitted to the German labour market provided that German workers as well as foreigners who have equal rights to take up employment or other foreigners who have a right of preferred access to the labour market according to the laws of the European Union are not available and if the working conditions are comparable with those of national workers.

The access to the labour market for foreign graduates from German universities was facilitated on 16 October 2007.

The number of university graduates who would like to stay in Germany for employment reasons increased when compared to the same period a year before. In 2009, the Federal Employment Agency issued 4,820 permits to employ foreign specialists with a German university degree. In 2010, this number stood at 5,676 permits, and from January to November 2011 6,709 permits were already issued.

The admission of scientists to Germany has, under normal circumstances, always been possible in an unbureaucratic way as a labour market check is not applied to them. Family members of managers, scientists and guest scientists have no longer been subject to priority checks since 1 January 2009. It is planned to introduce in this area further facilitations.

The implementation of the Blue Card Directive is given highest priority. In order to be better able to estimate the labour needs according to qualifications, branches and regions, the Federal Government – backed by scientific support – moreover develops a so-called *Jobmonitor*.

### ***I(c) Do not aggravate the brain drain***

Please describe any (planned) measures to favour circular or temporary migration, as well as other measures taken to avoid brain drain, for example awareness raising actions, development of data and indicators on this phenomena, prevention, list of countries and professions subject to brain drain.

As part of the development cooperation, the Federal Government supports the knowledge transfer into the developing countries through its “Returning Experts” Programme. The programme offers individual counselling on return and career planning, support to find a development-related work place, helps in the networking with important local

organisations and partly grants financial support. The Federal Government actively contributes with this programme to the transfer of know-how and to fight the brain drain.

### **1.2 Stockholm Programme (1-2 paragraphs in the text box created for each commitment)**

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

#### **1(b) Improving skills recognition and labour matching**

Describe any (planned) measures to improve the skills recognition of third-country nationals and labour matching between your (Member) State and third countries (including online employment, etc). Linked to this, describe whether and how your (Member) State analyses its labour market needs / shortages. Also consider the effect of the economic crisis.

Employment services:

Third-country nationals are offered, inter alia, the following possibilities to find employment on the German labour market:

- Services to find employment abroad offered by the Federal Employment Agency  
The International Placement Service (ZAV) of the Federal Employment Agency is in charge of international employment services. The ZAV offers on its homepage at [www.ba-auslandsvermittlung.de](http://www.ba-auslandsvermittlung.de) tips and recommendations for persons who are interested in working in Germany.
- JOBBÖRSE (JOB EXCHANGE) of the Federal Employment Agency  
On the homepage of the Federal Employment Agency ([www.arbeitsagentur.de](http://www.arbeitsagentur.de)) persons from third-countries can search for job offers placed by employers in Germany and may upload their own applicant profiles using the link "JOBBÖRSE".

Analysis of labour shortages: The Federal Employment Agency publishes monthly analyses of the demand for labour based on vacant work places entered and analysis of labour shortages according to professions. In doing so, the relation between vacant work places and the number of unemployed persons as well as the work place vacancy periods in the individual groups of professions is monitored.

By introducing the Recognition Act (Anerkennungsgesetz), the Federal Government has presented an act that is meant to facilitate the recognition in Germany of professional qualifications acquired abroad. The "Act for Improving the Establishment and Recognition of Professional Qualifications Acquired Abroad" was published in the Federal Law Gazette on 12 December 2011 and will enter into force on 1 April 2012.

The Recognition Act strengthens the legal right to an evaluation procedure of the professional qualifications acquired abroad. Moreover, a number of professions will be no

longer subject to the access to employment being coupled with possessing the German citizenship. The Act applies to about 500 professions whose qualifications are regulated on Federal level. These are professions such as medical doctors, medical health care personnel, master craftsmen and all qualifications of the 350 German apprenticeship occupations in accordance with the dual system of vocational training. The federal Länder will align the professions in their scope of competence (teachers, nursery school teachers, educational social workers, engineers) to the Act as well. This will contribute to a better appreciation of professional qualifications acquired abroad in Germany in the future. This is a milestone towards the integration into employment and the society and an important contribution to the acquisition of skilled workers.

[www.anerkennung-in-deutschland.de](http://www.anerkennung-in-deutschland.de)

### 1.3 Key statistics

<i>First residence permits, by reason</i>					
	Total	Family reasons	Education reasons	Remunerated activities reasons	Other reasons
1. HJ, 2011					
First permits	38.700	14.400	13.300	8.900	2.100

<i>Unemployment rates of Member State citizens versus third-country nationals residing in the (Member) State</i>	
	Third-country nationals
Unemployment rate (%)	14.3 (all foreigners, third-country nationals / EU)

## 2 Family Reunification

### **2.1 European Pact on Immigration and Asylum** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Pact for this sub-section are in particular:

#### ***I(d) To regulate family migration more effectively***

Please describe any new policies / legislation in this regard or changes to existing policies and legislation regulating family migration. Consider also your (Member) State's

reception capacity and the extent to which the family member's capacity to integrate is being taken into account in the admission procedure, e.g. their knowledge of the country's language, level of education, professional background, other.

The Act to combat forced marriages (Zwangsheiratsbekämpfungsgesetz), which entered into force in July 2011 (Federal Law Gazette I, p. 1266), extended from two to three years the minimum marital cohabitation time, regulated in Section 31 of the Residence Act (AufenthG), after expiry of which a foreign spouse may be granted an independent right of residence in case the marital cohabitation is terminated in order to better be able to combat marriages of convenience.

As regards the regulation of providing evidence of language skills in case of a subsequent immigration of spouses (Section 30 (1) sentence 1, no. 2 Residence Act), the Federal Foreign Office and the Federal Ministry of the Interior have ensured that a decision of the Federal Administrative Court dated 30 March 2010 (1 C 8.09) is taken into account by issuing decrees towards the competent authorities. According to this decision, a foreigner who has applied for a visa for subsequent unification of spouses without having a basic knowledge of German may be granted a visa in order to acquire German language skills in Germany according to Section 16 (5) of the Residence Act under particular exceptional circumstances. The prerequisite is that he or she could not acquire within appropriate time knowledge of the German language in the country of origin due to reasons beyond his or her control and that there is no reasonable possibility to establish the marital cohabitation abroad.

## **2.2 Stockholm Programme** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

### **2(b) The Directive on family reunification, the importance of integration measures**

Please describe any concrete (planned) measures to further promote the integration of third-country nationals coming for the purpose of family reunification.

No significant developments

## **3 Other legal migration**

### **3.1 European Pact on Immigration and Asylum** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Pact for this sub-section are in particular:



***I(e) to strengthen mutual information on migration by improving existing instruments where necessary;***

Please describe any (planned) sharing and exchanging of information on migration with other (Member) States, through existing networks and other instruments. Note that the European Migration Portal is to be discussed under the commitment below.

The mutual sharing and exchange of information was realised using the Council bodies and other bodies as well as forums of dialogue on EU level.

***I(f) Improve information on the possibilities and conditions of legal migration***

Please describe any (planned) measures to improve the provision of information on the possibilities and conditions of legal migration. These could include, for example, information campaigns, websites, specific centres, etc. Also refer to the European Migration Portal. Consider the effects of the economic crisis.

The Federal Employment Agency, which is responsible for granting work permits to foreign applicants, has compiled all information on the legal rights and procedures governing labour migration in the internet in a compact way ([www.zav.de/arbeitsmarktzulassung](http://www.zav.de/arbeitsmarktzulassung)).

Moreover, the Federal Agency for Employment offers a Migration Check in the internet, by means of which employers and interested foreign nationals can obtain initial information whether the intended employment could be admitted to the labour market.

[www.arbeitsagentur.de/migration-check-arbeitnehmer](http://www.arbeitsagentur.de/migration-check-arbeitnehmer)

[www.arbeitsagentur.de/migration-check-arbeitgeber](http://www.arbeitsagentur.de/migration-check-arbeitgeber)

The Migration Check is offered in English as well.

**3.2 Stockholm Programme (1-2 paragraphs in the text box created for each commitment)**

The relevant commitments in the Stockholm Programme are similar to the Pact objective above, hence no further information required.

**4 Integration**

**4.1 European Pact on Immigration and Asylum (1-2 paragraphs in the text box created for each commitment)**

The relevant commitments in the Pact for this sub-section are in particular:

***I(g) Promote harmonious integration in line with the common basic principles***

The common basic principles may be found in the JHA Council Conclusions of 19 November 2004, [www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/82745.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf), as well as the Commission Communication COM(2005) 389.

Please describe (planned) measures for the integration of third-country nationals, considering, for example, measures enabling immigrants to acquire a basic knowledge of the host society's language, history, and institutions, "efforts in education" "participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level", access to employment and public and social services, policy development on integration, etc.

**Knowledge of the German language** and basic knowledge of the social life in Germany are taught in the **Integration Courses** serving as a basic offer to all immigrants with prospects to stay in the country; experience gathered in the implementation of the integration courses has shown that there is an ongoing strong (structural) demand for 'catch-up' language training. One course comprises 600 hours of language training as well as a 45-hours orientation course addressing issues like the German legal system, history and culture. Besides, courses for special groups (parents, women, adolescents, illiterates) are available, which offer up to 1200 hours of language training.

***I(h) Promote information exchange on best practices in terms of reception and integration***

Please describe any relevant activity, e.g. the development of a national website and/or forum on integration, development of information exchanges between institutions and other stakeholders within your (Member) State, etc. Also consider possible contributions to the European Integration Forum and the European website on Integration.

The Integration Courses are supplemented by the **Migration Counselling for Adult Immigrants** (Migrationsberatung für erwachsene Zuwanderer – MBE), which offers advice services prior to, during and after the attendance of the courses. The advisory centres are staffed by the corresponding charitable organisations according to the personnel ratio agreed upon. The objective of the MBE is to initiate and accompany the integration process by offering professional and individual counselling services to persons who are about to come to Germany as well as to immigrants who have already been living in Germany for a longer while in order to enable them to live independently in their new social envi-

ronment. Per quarter, about 50,000 immigrants are offered counselling services in more than 600 centres throughout Germany.

In addition to the statutory integration offers, the Federal Ministry of the Interior (BMI) and the Federal Office for Migration and Refugees (BAMF) support **measures for the social integration of immigrants**. In 2011, funds amounting to 21.180 million Euros were foreseen (2012: 18.180 million Euros, 2013/2014: 16.680 million Euros).

In addition, the **German Islam Conference** (Deutsche Islam Konferenz – DIK) constitutes a forum established by the Federal Ministry of the Interior to discuss specific issues in the context of Muslim life in Germany. The conference is meant to allow an institutionalised and structured communication process for the long-term, which involves representatives from the Federal Government level, the federal Länder level and from the local authorities level as well as Muslims (both organisations and individuals) representing the large variety of Muslim life in Germany.

#### **4.2 Stockholm Programme** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

##### **3(b) to incorporate integration issues in a comprehensive way in all relevant policy areas**

Please elaborate whether and how integration issues are integrated on other national policies.

Integration policy is a **focal point in the politics of the Federal Government**. Many policy areas are concerned, such as: Labour (Federal Ministry for Labour and Social Affairs – BMAS), Education (Federal Ministry for Labour and Social Affairs -BMAS), Federal Ministry for Families, Senior Citizens, Women and Youth (BMFSFJ): **The Federal Ministry of the Interior** has the core competence for basic issues with regard to social cohesion and immigration planning.

Within the federal structure of official tasks the **Federal Government** assumes primarily legislative functions. The legislation on federal level has connected the areas of right of residence/requirements to be fulfilled for naturalisation and integration requirements. Moreover, the Federal Government independently implements integration measures.

The supported, state-funded integration measures (according to the budget plan 2011 for the BMI and portfolio approx. €264 million) are aimed at producing **equal opportunities**, i.e. at creating conditions which allow participation in economic and social life. They are

directed to all migrants possessing a legal residence status and having prospects of remaining in the country, independently of the national, ethnical or religious origin.

***3(e) improved consultation with and involvement of civil society***

Please describe consultation processes with civil society and their involvement in integration policymaking and measures.

With the **National Integration Plan (NIP)** set up in 2007, an overall integration policy concept has been established for the first time. The Federal Government, the federal Länder and local authorities, but also representatives of migrants as well as many NGOs were involved in its implementation. In order to better be able to monitor integration support measures, the National Action Plan for Integration was launched on the occasion of the 4<sup>th</sup> Integration Summit held on 3 November 2010. A total of 11 dialogue forums led by federal ministries or federal government commissioners worked on defining strategic goals, operational goals and specific individual measures. Besides, the National Action Plan will also comprise contributions from the federal Länder and local authorities. The results are to be presented to the public on the occasion of the 5<sup>th</sup> Integration Summit that will be held on 31 January 2012. The Federal Ministry of the Interior was responsible for conducting the three dialogue forums “Language and integration courses”, “Immigrants in the public administration” and “Integration by sport”.

***3(f) to enhance democratic values and social cohesion in relation to immigration and integration of immigrants and to promote intercultural dialogue and contacts***

Please describe any measures taken in this regard. For example, indicate whether these are included in integration courses and programmes, whether specific activities, e.g. events, have been organised, etc.

Cf. the above comments on integration courses

## **ILLEGAL IMMIGRATION AND RETURN**

### **5 Illegal Immigration**

**5.1 European Pact on Immigration and Asylum** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Pact for this sub-section are in particular:

***II(a) only case-by-case regularisation***

Please indicate whether any regularisation took place and how in your (Member) State legal status was given to illegally staying third-country nationals. Also provide information on trends with respect to the number of persons regularised.

Germany has taken no measures to legalize the residence of foreigners living in the country without being registered or who have absconded. Germany maintains its generally critical standpoint towards such legalisation policy.

The Act to combat forced marriages which entered into force in July 2011 (Federal Law Gazette I, p. 1266) contains a provision (Section 25 (a) Residence Act), according to which long-term tolerated youths and adolescents can be granted a residence permit if they are attending school or have finished school successfully and if a positive integration outlook can be assumed.

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

Please describe your (Member) State's policy concerning preventing irregular migration. Note that information on other relevant measures, such as border control are to be provided in the later sections of this report (see Sections 9 and 10).

Combating illegal immigration is a core element of the national immigration policy and in the cooperation with other Member States, countries of origin and countries of transit. Particular importance is given to the prevention of the (unlawful) employment of illegally staying persons and to the implementation of the repatriation policy. The Employer Sanctions Directive 2009/52/EC and the Return Directive 2008/115/EC have been transposed into national law. The corresponding Act went into force on 26 November 2011.

***II(d) to develop cooperation between Member States, using, on a voluntary basis and where necessary, common arrangements to ensure the expulsion of illegal immigrants***

Please describe cooperation with other (Member) States, with regard to the expulsion of persons found to be staying illegally on the territory, including biometric identification of illegal entrants, joint expulsion measures (e.g. flights), etc.

If needed, Germany participates on a regular basis in forced return flights organised by other Member States and offers itself other states participation in such flights organized by Germany provided that free capacities are available.

***II(g) take rigorous actions and penalties against those who exploit illegal immigrants***

Please describe the transposition and operational execution (e.g. prosecution of employers hiring persons illegally staying in your (Member) State) of the “Employer Sanctions Directive,” as well as other relevant actions and developments.

The Employer Sanction Directive 2009/52/EC was transposed into national law by adopting the Act on the implementation of residential Directives of the European Union and on aligning national legal provisions with the EU community code on visas. The Act went into force on 26 November 2011.

According to the provisions of Community law, foreigners who have been employed illegally by an employer will in future have better opportunities in the enforcement of remuneration claims. It is assumed that the foreigner was employed for three months and that he or she has a right to a remuneration normally paid for his or her employment. Besides the employer, all entrepreneurs on whose behalf the employer is working are generally held liable for the remuneration claims of the illegally employed foreigner.

***II(h) an Expulsion Decision taken by one Member State (MS) should be applicable throughout the EU and entered into the SIS obliging other MSs to prevent the person concerned from entering or residing***

Please describe any relevant developments with regard to expulsion decisions and the principle of mutual recognition of these decisions.

The Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals was transposed into national law in 2005 already. Corresponding alerts in the SIS according to Art. 96 (3) SIC are taken into account by the authorities in charge of the visa application procedures, of the border/immigration controls as well as those responsible for the procedures for issuing residence titles.

**5.2 Stockholm Programme (1-2 paragraphs in the text box created for each commitment)**

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

**4(j) more effective action against illegal immigration and trafficking in human beings and smuggling of persons by developing information on migration routes as well as aggregate and comprehensive information which improves our understanding of and response to migratory flows**

Please describe information collection activities undertaken in your (Member) State to identify migration routes, patterns and other relevant factors relevant to illegal immigration.

The prevention and combating of smuggling crimes requires a holistic approach. Border police measures to prevent illegal migrants from entering the territory unlawfully need to be closely linked with police measures in Germany and abroad. To this end, the Federal Police maintains close relations with the security authorities in Germany on all levels.

In this context, the Analysis and Evaluation Centre GASIM is of particular importance on national level. It allows to further develop a holistic counter measure approach taking into consideration aspects across crime categories and different authorities. A prerequisite for ensuring an intensive exchange of information among all authorities involved in this approach is a consequent and closely linked use of all legally available possibilities.

The Federal Police retrieves information abroad by deploying border police liaison officers as well as document and visa advisors in the main countries of origin and/or of transit.

Another part of the information retrieval is the cooperation with FRONTEX and Euro-pol which consists of the preparation and exchange of periodical and/or subject-related common evaluation results.

**4(k) increased targeted training and equipment support**

Please describe any training measures and equipment support to combat irregular immigration which are not linked to border control (which is discussed in section 9 below).

No significant developments.



**4(l) a coordinated approach by Member States by developing the network of liaison officers in countries of origin and transit.**

Please describe recent or planned developments with regard to your (Member) State's liaison officers in countries of origin and transit.

The Federal Police has currently deployed 24 border police liaison officers in EU Member States, but also in countries of origin and of transit for illegal migration (e.g. China, Russia, Moldova and Serbia). The offices are evaluated on a regular basis and the network is being further developed. For 2013 it is foreseen to send a liaison officer to Tunisia.

Moreover, the Federal Police – in consultation with the Federal Foreign Office – has currently deployed 34 document and visa advisors at 25 offices in 19 countries worldwide. They advise the German missions abroad in documentary checks and in the issuing of visas. Moreover, they support different airlines in the prevention of the unauthorized carriage of travellers coming by air to Germany and to the Schengen area.

### 5.3 Key statistics

<i>Third-country nationals regularised</i>	
Third-country nationals regularised	Data is not collected in Germany

## 6 Return

### 6.1 **European Pact on Immigration and Asylum** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Pact for this sub-section are in particular:

#### ***II(b) To conclude readmission agreements at EU or bilateral level***

Please list the number of bilateral agreements negotiated and achieved during the reference period, specifying their purpose and with which third country. Also list the EU readmission agreements in which your (Member) State took part during the reference period. You could use the following table:

Type of readmission	Third countries involved	Main purpose of the
---------------------	--------------------------	---------------------

agreement		agreement
(EU or bilateral)		
No significant developments		

Please only provide information on readmission agreements. Information on other agreements with third countries will need to be added in other sections of the report (e.g. Sections 8 and 13).

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

Please describe (planned) measures to promote voluntary return, assistance provided in voluntary return, provision of information to other (Member) States on person returned.

Since 1979 the German AVR-programme REAG/GARP is in place. Addressing rejected asylum-seekers in particular, the following types of assistance are granted within the framework of the programme: payment of transportation costs; travel assistance (200 Euros per adult, 100 Euros per child under 12 years of age) and –for nationals of third-countries of particular interest to Germany under migration aspects– GARP start-up cash (up to 750 Euros per adult, 375 Euros per child under 12 years of age).

**6.2 Stockholm Programme** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

***4(c) ensuring that the objective of the EU's efforts on readmission should add value and increase the efficiency of return policies, including existing bilateral agreements and practices***

Please describe how the bilateral and EU readmission agreements are contributing to the implementation of your (Member) State's return policy.

Concluding/supporting the conclusion of Readmission agreements – either at EU's or national level – is one of the main elements of the German return policy in terms of building up constructive relationships to third countries.

**4(e) assistance by the Commission and Frontex and Member States on a voluntary basis, to Member States which face specific and disproportionate pressures, in order to ensure the effectiveness of their return policies towards certain third states**

Please describe whether your (Member) State has benefited from / has provided any return support in case of specific and disproportionate pressures in your / in another (Member) State. Note that joint return flights are to be discussed under the following commitment.

No significant developments.

**4(f) increased practical cooperation between Member States, for instance by regular chartering of joint return flights**

Please describe practical cooperation with other (Member) States in the area of return, such as the organisation of joint return flights, the preparation of travel documents, etc.

As far as the situation is given, Germany cooperates with Frontex and other Member States involved in joint return measures as regards the measures outlined in Section 5 II (d).

### 6.3 Key statistics

<i>Third-country nationals ordered to leave and returned</i>			
Third-country nationals	Returned as part of forced return measures	Returned voluntarily	Within the third-country nationals returned voluntarily, number of third-country nationals returned as part of an assisted return programme
	Data is not available before the end of the year	Data is not available before the end of the year	The number of such departures is not available before the end of the year.

## 7 Actions against human trafficking

**7.1 European Pact on Immigration and Asylum** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Pact for this sub-section are in particular:

***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***

Please describe any (planned) actions at national level to fight human trafficking and incorporation of third countries within them, awareness raising actions in third countries addressing communities at risk, etc. Please only refer to cooperation with regard to combating human trafficking. Information on other types of cooperation will need to be provided in other sections of the report (e.g. Sections 10 and 13).

No significant developments.

**7.2 Stockholm Programme (1-2 paragraphs in the text box created for each commitment)**

The relevant commitments in the Stockholm are similar to the Pact commitments, hence no further description is required.

**7.3 Key statistics MI 6**

<b><i>Third-country nationals receiving a residence permit as victims of human trafficking</i></b>	
Third-country nationals	42

<b><i>Traffickers arrested and convicted: No data available</i></b>		
	Arrested / otherwise involved in a criminal proceeding	Convicted
Traffickers	No statistics available	No statistics available

**BORDER CONTROL**

**8 Control and surveillance at external borders**

**8.1 European Pact on Immigration and Asylum (1-2 paragraphs in the text box created for each commitment)**

The relevant commitments in the Pact for this sub-section are in particular:

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

Please describe any relevant (planned) developments to ensure more effective control, such as reinforcing border control staff, providing training, increasing overall resources. Note that technological means are to be described under the Pact commitment below.

Border controls are already implemented according to very high standards by the national authorities. On European level, FRONTEX – while respecting the national competences – is to become in the long-term one of the principal players in the coordination and the management of the protection of the external EU borders. This will be accomplished, inter alia, through the amendments of the Frontex-Regulation in 2011. Here, the strict adherence to the fundamental and human rights, and in particular the provisions governing refugee rights, is given high priority. Germany is highly interested in actively contributing to the further development of FRONTEX. In this context, Germany will also in future contribute personnel to joint measures at the external borders of the EU and will provide technical equipment to the Agency.

An efficient control of the external borders will be ensured in accordance with the Schengen Borders Code as well as the “Best Practices” elaborated by the Schengen states.

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

Please describe any new technological equipment purchased and used during the reference period, including IT systems, surveillance equipment, automated border controls and fast track lanes, etc. If possible, also make reference to any developments relevant to the EU entry / exit system, the EU Registered Traveller Programme, the Schengen Information System (SIS II) and European Border Surveillance System.

State-of-the-art document reading and document verification devices are being used in Germany, which allow an efficient verification of the authenticity of documents on the basis of optical and digital features. Moreover, a Registered Traveller Programme (RTP), an automated and biometric border surveillance system - AGB) as well as an automated border control (EasyPASS), based on the the e-passport, are being tested in Germany. The AGB uses as biometric feature the pattern of the iris; EasyPASS uses the facial picture stored on the electronic passport (ePASS) and on the identity card. Therefore, no previous registration is needed for EasyPASS. In future, the extended use of biometric methods will additionally help to verify the identity of document holders (visa control, control of e-passports) at border controls.

**8.2 Stockholm Programme (1-2 paragraphs in the text box created for each commitment)**

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

***7(i) invites the Member States and the Commission to explore how the different types of checks carried out at the external border can be better coordinated, integrated and rationalised with a view to the twin objective of facilitating access and improving security.***

Please describe any relevant (planned) actions taken to better coordinate different types of border checks (e.g. automated and non-automated, fast-track and non fast-track) at the external borders.

Cf. the explanations given under III (e).
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### 8.3 Key statistics

<i>Visas issued (in the first three quarters of 2011)</i>			
	Total Visas	Schengen Visas	National Visas
Visas	1,379,715	1,245,224	125,491

## 9 Cooperation with respect to border control

### 9.1 **European Pact on Immigration and Asylum** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Pact for this sub-section are in particular:

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

Please describe (planned) developments in relation to biometric visas, for example the share of visas issued which are biometric, regions covered, pilot measures and testing, etc, also referring to the Visa Information System (VIS).

All visas issued by German authorities can be used for biometric purposes due to the photo contained. In the VIS region (North Africa), biometric Schengen visas are issued; the fingerprints taken are transmitted to the VIS. Depending on the progress achieved in the VIS roll-out, Germany will intensify the collection of biometric data in the visa procedures.

With regard to cooperation between (Member) State consular services and the set up of joint consular services for visas, please describe any relevant progress in this area, for example listing the visa representation agreements signed and the (Member) States involved (please specify whether you (Member) State represents these (Member) States or vice versa).



Within the framework of representation agreements, Germany represents the Schengen partner countries Belgium, Denmark, Estonia, Finland, France, Greece, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Austria, Portugal, Sweden, Slovenia, Spain and Hungary in a total of 233 cases (at some office locations several Schengen partner countries are represented). In turn, Germany is represented at 26 office locations by the Schengen partner countries Belgium, France, Italy, the Netherlands, Norway, Portugal and Spain. The representation agreements are listed in detail in annex 28 to the visa code manual.

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

Please describe whether your (Member) State has benefited from / has provided any support with regard to border control in case of specific and disproportionate pressures in your / in another (Member) State. Also provide information on your (Member) State's relevant participation in FRONTEX, by type of activity (e.g. joint operations). Note that information on other forms of support with respect to disproportionate influxes are to be provided in other sections (e.g. section 7).

Operation	Type	Area	Period	Objectives	Area of operation	Personnel deployed (Number of service days)	Countries of operation	CRATE
Focal Points Land border 2011	JO	Land	April - November	Set-up of a permanent system of focal points in the problem areas at the external borders to collect data, to regularly deploy officers there and as a platform to coordinate the operational cooperation. Focus of the German involvement: South-Eastern external borders / Balkans	External land borders of the EU	1704 in addition 84 (heartbeat detector contingent)	BG, HU, PL, SLV, GRC,	28 service days for the heartbeat detector in HU

POSEIDON 2011 Land border	JO	Land	February - December	Coordinated police meas- ures to im- pede illegal migration over the ex- ternal land borders to Turkey	BG, GR - TR	1303	GR	2 patrol vehicles 2 ther- mal im- aging cameras with ve- hicles	No
JUPITER 2011 Land border	JO	Land	April - May and August - Septem- ber	Improvement of the border controls at the Eastern Euro- pean migra- tion routes	External land borders FIN, EE, LV, LI, PL, SK, HU, RO / RUS-MD	60	PL		

Focal Points Air border 2011	JO	Air	March - December	Set-up of a permanent system of focal points in the problem areas at the external borders to collect data, to regularly deploy officers there and as a platform to coordinate the operational cooperation.	Air borders of the EU	867	NL, GR, RO, ES, FR, IT, BG	No
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<p>HAMMER 2011 Air border</p>	<p>JO</p>	<p>Air</p>	<p>October - November</p>	<p>Further de- velopment of the flexible operational abilities of the MS/Frontex to ensure a quick response to changing situations</p>	<p>Controls de- pending on the situation on relevant EU airports con- nected with third countries</p>	<p>106</p>	<p>NOR, ISL, POR, DNK</p>	<p>No</p>
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<p>HUBBLE 2011 Air border</p>	<p>JO</p>	<p>Air</p>	<p>March</p>	<p>Improvement of border controls at EU airports connected with third countries, esp. Gulf states as well as Moscow, Istanbul, Cairo, Casablanca, Dakar, Addis Ababa.</p>	<p>EU airports connected with airport hubs in third countries</p>	<p>72</p>	<p>FIN, CZ, AUT involvement of document and visa advisors at the offices in Dubai, Cairo and Moscow</p>	<p>No</p>
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MIZAR 2011 Air border	JO	Air	June and July	Combat unau- thorized en- tries using forged EU travel docu- ments or abusing such documents	EU airports	65		PL, ES	No
METEOR 2011 Air border	JO	Air	April and May	Short-term operation at 1-2 airports to combat spe- cial kinds of cross-border crime - here in the context of the Ice hockey World- champion- ship in Slova- kia	Vienna airport	24		AUT	No



<p>JO with EU-wide approach 2011          Air border: JO HUBBLE 2011 - Phase II</p>	<p>JO</p>	<p>Air</p>	<p>May and June</p>	<p>open planned operational concept of HUBBLE: Improvement of the border controls at EU airports connected with airport hubs in third-countries, esp. in Africa</p>	<p>EU airports connected with airport hubs in third countries</p>	<p>29</p>	<p>BG</p>	<p>No</p>
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FOCAL POINTS Sea border	JO/P P	Sea	September	Set-up of a permanent system of focal points in the problem areas at the external borders to collect data, to regularly deploy officers there and as a platform to coordinate the operational cooperation.	Seaborders of the EU	60	LT	No
POSEIDON 2011 Sea border	EPN	Sea	April until December	Implementation of police measures in the eastern Mediterranean within the framework of a multi-annual programme	External border with TK	182	GRC	No

HERMES 2011 Sea border / HERMES 2011 EX- TENSION	EPN	Sea	July and August	Implement- ation of coor- dinated police measures to reduce illegal migration flows from Algeria and Tunisia within the frame- work of a multi-annual programme  HERMES ex- tension: addi- tionally in reply to mi- gration flows from Tunisia to southern Italy (esp. the island of Lampedusa)	IT	61	IT	Within the frame- work of HERMES 2011 Ex- tension 2 police heli- copters offered, not re- quested by Fron- tex
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INDALO 2011 Sea border	EPN	Sea	June - October	Implementation of coordinated police measures to reduce illegal migration flows from Algeria and Morocco within the framework of a multi-annual programme HERMES extension:	ES	150	ES	
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AENEAS Sea border	EPN	Sea	Implementation of coordinated police measures to reduce the illegal migration flows over the Ionic Sea to IT and GRC within the framework of a multi-annual programme	IT/GRC	408 (Police helicopter contingent)	IT	34 service days of police helicopter in ITA
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**III(f) intensify cooperation with the countries of origin and of transit in order to strengthen border control**

Please list any new or planned agreements, and other forms of bilateral and multilateral cooperation with third countries, specifying which countries, specifically in order to strengthen the control of external borders and to combat illegal immigration. This could include the provision of border equipment, training of border guards, etc. Please note that wider / more comprehensive agreements are to be described under section 13 addressing the Global Approach to Migration.

Major countries of transit and origin of illegal migration are supported with training courses and equipment. The training and equipment support measures for 2012 are currently being coordinated. To deepen the cooperation with Poland, a declaration of intent about the implementation of the pilot project "Joint German-Polish, mixed-staffed offices" is currently being coordinated.

**9.2 Stockholm Programme (1-2 paragraphs in the text box created for each commitment)**

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

**6(a) The European Council encourages the Commission and Member States to take advantage of the entry into force of the Visa Code and the gradual roll-out of the VIS**

Please describe the progress of implementation of the Visa Code and VIS, if not already provided under Pact Commitment III(b) above.

German consulates apply the provisions of the Visa Code.

The VIS has started its operation on 11 October 2011. Since then, the German missions abroad issue visas with biometric features (photo and fingerprints) in Northern Africa, the first area of implementation, and the frontier crossing points at the external German border. When border controls are conducted, the VIS is enquired for the number of the visa sticker in accordance with the provisions contained in the Schengen Borders Code from 31 October 2011 onwards. Since 14 December 2011 border controls at some frontier crossing points at the external border have been conducted in combination with a verification of the fingerprints of the visa holder; such control comprising the verification of the fingerprints is to be introduced at all frontier crossing points at the external borders by 2013. The preparatory works for taking the VIS into operation at German foreign missions in the Near East and the Gulf states – the next area of application – as well as the preparations for an access of the German police and security authorities to VIS according to the VIS access decision are being continued in accordance with the time schedules envisaged.

## ASYLUM

**10 International Protection****10.1 European Pact on Immigration and Asylum** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Pact for this sub-section are in particular:

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

Please provide information on support provided to (Member) States experiencing specific and disproportionate pressures on their national asylum systems, with regard to the processing of requests for international protection. This could include seconding staff and sending resources or equipment.

In order to improve the protection of refugees, Greece has – in consultation with the European Asylum Support Office (EASO) – presented in 2010 an action plan of three years (e.g. the introduction of the efficient initial reception procedure, set-up of reception facilities and establishment of an independent asylum authority). As members of the asylum support teams sent by EASO, also employees of the Federal Office for Migration and Refugees (BAMF) have participated in a total of 4 measures that have been initiated so far to establish an adequate asylum procedure. The focus of the work was laid on the preparation of an operational plan as well as on the drafting of guidelines on procedures for dealing with unaccompanied minors.

Please describe any action undertaken with regard to the reallocation from (Member) States experiencing specific and disproportionate pressures of beneficiaries of international protection to other (Member) States. This relates to intra-EU movements, for example, as part of EU projects.

In 2011, Germany has admitted 153 persons with African citizenships who fled from Libya to Malta. The refugees are originally from Somalia, Eritrea, Ethiopia and Sudan. The focus of this humanitarian admission is particularly on families and single parents with newly born babies and small children.

On Malta, the refugees were already given an initial cultural orientation and an introduction to the German language in order to prepare them for the new life in Germany. There, all refugees will have the opportunity to immediately participate in an integration course.



As in the past, Germany gives a clear sign of European solidarity with this admission. Already in October 2010, Germany admitted 102 African refugees from Malta.

Due to its geographical location and size, Malta is particularly affected by the current migration flows from Northern Africa crossing the Mediterranean. By admitting these refugees, Germany wants to ease the burdens on Malta.

***IV(d) strengthen cooperation with the Office of the United Nations High Commissioner for Refugees to ensure better protection for people outside the territory of European Union Member States who request protection, in particular by moving, on a voluntary basis, towards the resettlement within the European Union***

Please describe resettlement activities to your (Member) State of people placed under the protection of the Office of the UNHCR in third countries, specifying from which countries.

Germany has expressed its willingness to admit in special individual cases Iranian refugees, who are need of protection due to the massive repressions against the opposition movement in Iran. Such admissions took also place in 2011 in cooperation with the UNHCR, particularly in Turkey. Meanwhile, more than 50 refugees (since the beginning in 2010) have already come to Germany.

***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***

Please describe the *provision or planning of provision of such training (and in which way, number and percentage of border control staff trained)...*

No significant developments.

**10.2 Key statistics**

<b><i>Third-country nationals reallocated and resettled to your (Member) States MI 3</i></b>			
	Total	Reallocated	Resettled
Third-country nationals	Cf. the explanations in the comments on IV (d)		

<b>Training of border guards on asylum</b>		
	Total number of border guards	Border guards who received training
Border guards	No statistics available	No statistics available

## UNACCOMPANIED MINORS AND OTHER VULNERABLE GROUPS

### 11 Unaccompanied Minors (and other vulnerable groups)

#### 11.1 European Pact on Immigration and Asylum

No specific commitments are included.

#### 11.2 Stockholm Programme (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

**5(a) develop an action plan, to be adopted by the Council, on unaccompanied minors which underpins and supplements the relevant legislative and financial instruments and combines measures directed at prevention, protection and assisted return**

Please describe any developments in relation to unaccompanied minors at national and international levels.

No significant developments.

#### 11.3 Key statistics M I 6

<b>Unaccompanied minors</b>	
Number of unaccompanied minors	Data is collected only if an application for asylum is filed (Jan-Oct 2011: youths under 16 years, 588; between 16 – 18 years, 1,202)

## GLOBAL APPROACH TO MIGRATION (and Mobility)

### 12 External cooperation / global approach to migration

#### 12.1 **European Pact on Immigration and Asylum** (1-2 paragraphs in the text box created for each commitment)

The relevant commitments in the Pact for this sub-section are in particular:

#### ***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***

Please provide information on any (planned) EU level or bilateral agreements (e.g. Mobility Partnerships), which are in addition to those mentioned under Sections 1.1, Pact commitment I(a) Implement policies for labour migration; 7.1, Pact commitment II(b) To conclude readmission agreements; and 11, Pact commitment III(f) intensify cooperation with the countries of origin and of transit in order to strengthen border control. These could include wider, more comprehensive agreements covering various elements related to legal and illegal migration, as well as return. List them, including the third countries with which they have been concluded and their content. In case of bilateral agreements, also indicate whether the Commission was informed.

An example table is presented below.

Type of agreement	Third countries involved	Main purpose of the agreement
(EU or bilateral) EU mobility partnerships; Participation in the Prague Process (implementation of the action plan on “Establishment of migration partnerships”; BMP) as well as in the Africa-EU Partnership	Mobility partnerships exist with: Moldova, Georgia, Armenia -Being planned with North African countries (e.g. Tunisia, Morocco) - Countries participating in the different regional processes	To deepen the cooperation in the migration policy on the basis of the overall EU approach on migration

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

Please indicate whether, in relation to the labour migration policy and related developments set out in Section 1.1, whether any of these favour labour and circular migration and specify which third countries from the East and South of Europe.

Germany is actively involved in existing mobility partnerships with Georgia, Moldova and Armenia as well as in the preparation of the planned mobility partnerships with North African partners. Moreover, relevant regional cooperation processes are supported (e.g. Prague Process).

In line with the fostering of circular migration the so-called “outward mobility” has been facilitated within the framework of the EU mobility partnerships. Citizens of the Republic of Moldova and Georgia as well as Armenia in future, who have legal residence titles in Germany, have the possibility to leave Germany for a longer time than the usual 6 months (i.e. for up to 24 months) without losing their residence titles in Germany.

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

Please describe any cooperation, in addition to the cooperation outlined in Pact commitment V(a) above, Sections 8, Pact commitment II(e) cooperation with the countries of origin and of transit, in particular to combat human trafficking and section 11, Pact commitment III(f) intensify cooperation with the countries of origin and of transit in order to strengthen border control, which has focused on deterring or preventing illegal immigration. This may include concrete cooperation activities, capacity building and agreements.

Germany is actively involved in existing mobility partnerships with Georgia, Moldova and Armenia as well as in the preparation of the planned mobility partnerships with North African partners. Moreover, relevant regional cooperation processes are supported (e.g. Prague Process).

***V(d) More effective integration of migration and development policies***

Please describe any relevant activity, for example studies and development of such approach, solidarity development projects, etc.

Germany supports partner countries in the development and implementation of coherent migration policies by fostering regional platforms for the exchange of experience and good practices (Exp.: workshop series on migration policy on the Western Balkans).

Active participation in the Joint Expert Group within the framework of the EU-Africa Partnership on Migration, Mobility and Employment.

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

Please describe any relevant developments and activities in the area of remittances, including financial support to such actions, implementation of an instrument for transferring migrants' remittances, etc.

In cooperation with the Frankfurt School of Finance & Management, the Federal Government has launched the website [www.geldtransfair.de](http://www.geldtransfair.de). It is aimed at informing migrants about services of banks and other money transfer institutes and about the fees they charge for money transfers. The transparency of the money transfer market and the competition in this segment is to be increased this way. The aim is to make money transfers to the countries of origin cheaper and more secure. Meanwhile, the Frankfurt School of Finance & Management is solely responsible for running the website.

**12.2 Stockholm Programme (1-2 paragraphs in the text box created for each commitment)**

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

***11(h) how diaspora groups may be further involved in EU development initiatives, and how EU Member States may support diaspora groups in their efforts to enhance development in their countries of origin***

Please provide information on a possible national policy or actions with regard to supporting diaspora groups in enhancing development in their countries of origin.

The Federal Government supports development-related projects of migrants in their countries of origin. Migrant organisations can apply with their project proposals and receive counselling and may receive financial support as well. Since 2011, an independent programme has been running for this purpose.

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