

## Annual Policy Report 2012

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Veröffentlichungsversion / Published Version

Forschungsbericht / research report

### Empfohlene Zitierung / Suggested Citation:

Müller, A., Mayer, M. M., & Hofmann, U. (2013). *Annual Policy Report 2012*. (Annual Policy Report / Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ)). Nürnberg: Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ); Bundesamt für Migration und Flüchtlinge (BAMF) Nationale Kontaktstelle für das Europäische Migrationsnetzwerk (EMN). <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-68283-6>

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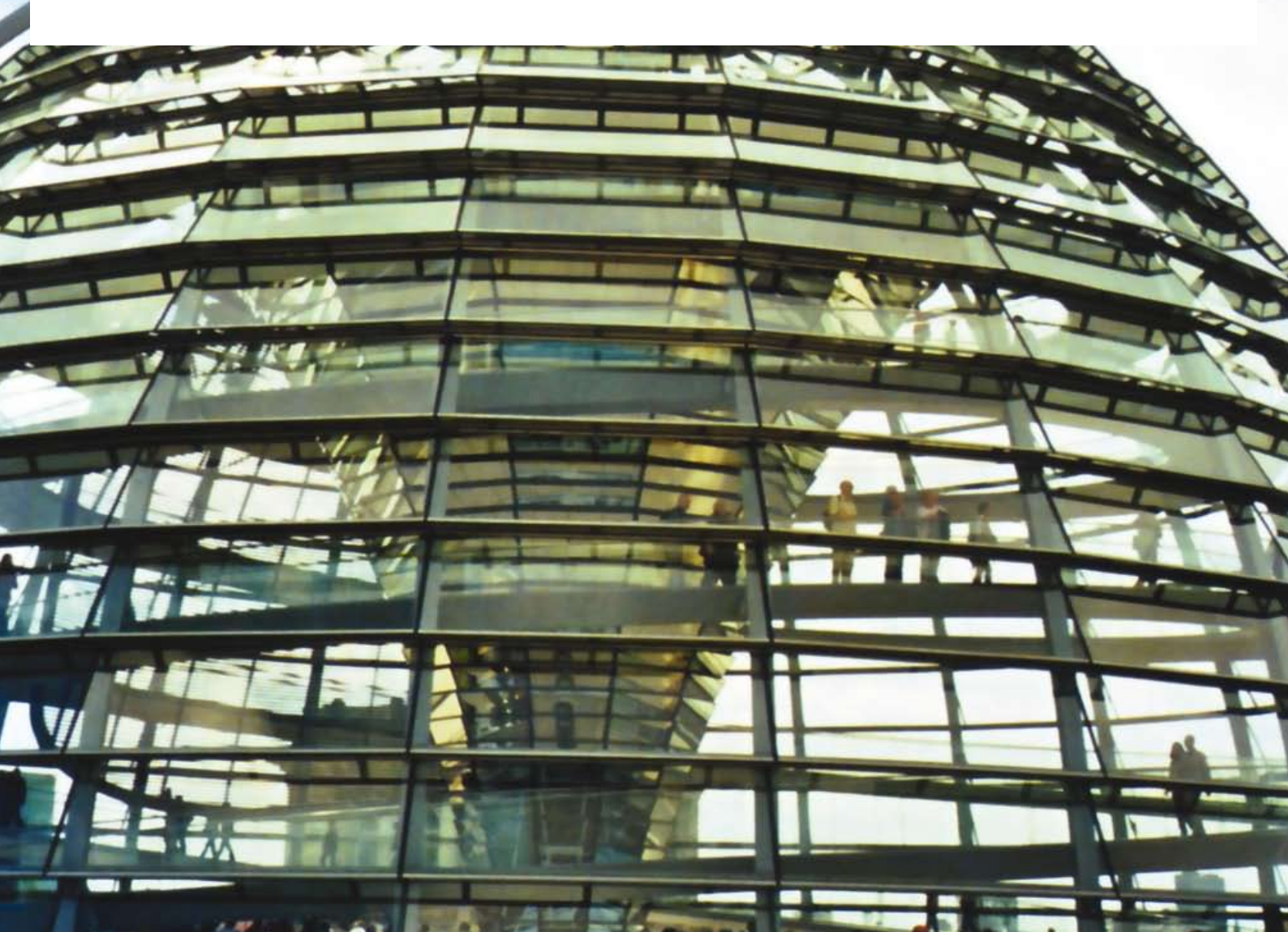
Federal Office  
for Migration  
and Refugees



# Annual Policy Report 2012

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



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European Union





# Annual Policy Report 2012

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the European Migration Network (EMN)



# Summary

The 2012 Policy Report of the German National Contact Points for the European Migration Network (EMN) provides an overview of the most important political discussions and developments in the areas of migration, integration and asylum in the Federal Republic of Germany in the year 2012. As such, the Report refers specifically to measures the Federal Republic of Germany has undertaken to implement the Global Approach to Migration and Mobility, EU Action on Migratory Pressures, the EU Strategy towards the Eradication of Trafficking in Human Beings and the European Agenda for the Integration of Third-Country Nationals (the Annex to this report contains a special overview on the implementation of defined goals and objectives). These measures are supplemented by additional laws and initiatives adopted by the Federal Government in the areas of migration, integration and asylum. Furthermore, the report explains the general structure of the political and legal system in Germany and outlines the most important political and institutional changes that took place in 2012.

The key debates on migration, integration and asylum of the year 2012 referred to the subjects:

- Refugees and asylum, in particular the rising number of applications for asylum filed by foreigners from Serbia and Macedonia as well as the implications of the ruling handed down by the Federal Constitutional Court on the constitutionality of benefits securing asylum seekers' livelihoods under the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz - AsylbLG).
- The shortage of skilled workers, the decline in the potential of gainfully employed persons and facilitating the migration of highly qualified workers from other countries.

- Obligation to opt for one nationality and the acceptance of dual citizenship.

The German Bundestag adopted a number of statutory amendments over the course of 2012; they involve the following measures, inter alia:

- Act to improve the assessment and recognition of foreign professional qualifications (Gesetz zur Verbesserung der Feststellung und Anerkennung im Ausland erworbener Berufsqualifikationen – Anerkennungsgesetz), the so-called Recognition Act. This Act regulates the recognition of occupational and professional qualifications in state-recognized occupations and professions gained abroad. The aim is to help to ensure that migrants living in Germany who have gained professional qualifications in third countries can practice their learned professions in Germany, thereby helping to secure the availability of skilled workers in Germany.
- The Act on the transposition of 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 (Directive 2009/50/EC). The Act entered into force on 1 August 2012. This Act transposed 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 that defines the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment and created the „EU Blue Card“ as a new residence permit. In addition, it includes a simplified job application procedure for highly qualified third-country nationals and graduates from German universities.



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# 1 Introduction

## Structure and content

The 2012 Policy Report provides a general overview of the most important political discussions and developments in the areas of migration, integration and asylum in the Federal Republic of Germany for the year 2012, although it does not claim to be exhaustive. The Report was drawn up by the National Contact Point for the European Migration Network (EMN) at the Federal Office for Migration and Refugees (BAMF) in Nuremberg.<sup>1</sup>

Pursuant to Section 9 subsection 1 of 2008/381/EC, Council Decision of 14 May 2008 establishing a European Migration Network, each National Contact Point shall provide every year a report describing the migration and asylum situation in the Member State, which shall include policy developments and statistical data. This annual report on the issues of migration and asylum ("Policy Report" for short) is intended meet the information needs of Community institutions and of Member States' authorities and institutions on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policy-making in the European Union in these areas (Section 1 subsection 2 Council Decision 2008/381/EC). The EMN also serves to provide the general public with information on these subjects. The European Commission, whose organisation the EMN belongs to, publishes theme-specific EMN Informs at its own initiative in addition to publishing the individual national Policy Reports to this end that are based on the Policy Reports of the individual Member States. The EMN Informs will be replacing the synthesis reports on these products from 2012 onwards.

- As in the previous years, parts of the national report will be incorporated into the Annual Report on Immigration and Asylum published each year by the European Commission (for 2011: COM 2012a).

In terms of content, this meanwhile seventh EMN Policy Report is based on the reports of the previous years. It will follow, by and large, the chapter structure specified by the EMN which other EMN National Contact Points of EU Member States have also opted for in drawing up their national reports. However, this year's Policy Report differs from the reports of the previous year in terms of structure as it no longer strictly follows the policy commitments the Member States undertook within the framework of the five-year Stockholm Programme and of the European Pact on Immigration and Asylum. Rather, the structure mirrors the EU's priorities in the field of immigration policy as outlined in the following key documents:

- Global Approach to Migration and Mobility (GAMM) (KOM 2012b)
- EU Action on Migratory Pressures – A Strategic Response<sup>2</sup>
- EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016)<sup>3</sup>
- European Agenda for the Integration of Third-Country National (COM 2011)

Chapter 1 provides an overview of the structure of the political system and of the legal foundations for German asylum and migration policies. Chapter 2 outlines political and legislative developments that are relevant to this context as well as important political debates

<sup>1</sup> The authors wish to thank Ms. Franziska Schwan for her involvement.

<sup>2</sup> cf. <http://register.consilium.europa.eu/pdf/en/12/st08/st08714-re01.en12.pdf>.

<sup>3</sup> cf. <http://ec.europa.eu/anti-trafficking/>.

in relation to migration, integration and asylum. Chapters 3 to 7 focus on concrete political and legal measures in the specific areas of migration and asylum policy. Chapter 8 focuses on developments relating to the global approach to the issue of migration. The final Chapter 9 presents the forums of multilateral cooperation in the area of migration which Germany is involved in.

The Annex deals with the concrete measures aimed at implementing the EU's political programme in the area of migration in a systematic and condensed form; it was drawn up by the Federal Ministry of the Interior (BMI).

### **Methodology**

The 2012 Policy Report is based on comprehensive sources of data and information. It is largely a more detailed version of the tabular report on the Annual Report of the EU Commission and of the European Asylum Support Office (EASO) (see Annex). Moreover, factual information from the relevant operative units of the Federal Office for Migration and Refugees (BAMF) has been included. Information on political debates and the status of legal developments stems mainly from internet sources, such as printed papers and minutes of plenary meetings of the two chambers of parliament (Bundestag and Bundesrat), gazettes of laws and ordinances or other public statements by ministries, authorities and political parties or public programmes. 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 indicated explicitly in footnotes.

The majority of figures and statistics were provided by the BAMF, the Federal Statistical Office (StBA) and the Federal Employment Agency (BA). As the 2012 EMN Policy Report had already been completed by the beginning of March 2013, some data on migration for 2012 was not yet available.

Topics and developments for this Report were selected and weighted according to their special relevance to the work of political decision-makers at both national and European level. In particular, it was necessary to limit the number of issues dealt with in the section on "Important policy and legislative debates in relation to migration, integration and asylum" (Section 2.2). 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 German Bundestag or the state parliaments.

### **Terms and definitions**

The terminology used in the report is based, by and large, on the Glossary of the European Migration Network. Any terms relating specifically to the legal situation in Germany are generally explained within 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.

## **1.1 General Structure of the Political System and Institutional Context**

Under the Basic Constitutional Law, the Federal Republic of Germany is a democratic and social Federal State (Section 20 subsection 1 of the Basic Law). Policies are formulated and implemented in a political system in which legislative and executive responsibilities are shared by the Federal Government and the 16 Federal States (Länder). The executive system of the Federal Republic is based on three principles: the chancellor principle, the collegiate principle and the departmental principle. Under the chancellor principle, the chancellor sets the guidelines for policy and manages the affairs of the Federal Government. The collegiate or cabinet principle says that matters of a general political nature must be decided upon together with all ministers; the cabinet has to reach majority decisions. Under the departmental principle, each minister bears responsibility for his or her department and has specific competencies for action.

Below, we will give a brief outline of the competences of the major actors in the areas of asylum, migration and integration policy (for an overview see Fehsenfeld et al. 2008; Schneider 2012a).

- 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 policy-making 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 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 relating to labour migration as well as the integration of migrants into the labour market are dealt with by the Conference of 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 in 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 any relevant legislative projects. Another task is to promote the integration of migrants who are permanently resident in Germany and to counteract xenophobia (cf. Sections 92 et seq. of the Residence Act (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 involving 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 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>4</sup> in accordance with the Qualification Directive and for deportation bans due to the conditions in the country of destination are met. The BAMF is also responsible for developing and implementing nationwide integration courses for immigrants, conducting migration research, promoting voluntary returns; keeping the Central Register of Foreign Nationals; recognising research institutions within the framework of the so-called EU Researchers Directive; conducting the admission procedure for Jewish migrants; coordinating 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 (for a more detailed description please see Fehsenfeld et al. 2008; Schneider 2012a).
  - The roughly 600 foreigners' authorities in the 16 Federal States are responsible for practically all residence and passport-related measures foreseen in the Residence Act and other immigration regulations, including decisions about removals,
- 
- 4 Foreigners are granted subsidiary protection because in their country of origin they fear the concrete danger of death penalty, torture or inhumane or degrading treatment or punishment or if they are endangered by an armed conflict in their country of origin. The foreigner may not be deported if deportation is inadmissible under the terms of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms or if the foreigner is to be deported to a state in which his or her life or liberty is under a concrete and substantial threat. Such threat may also stem from serious illness that cannot be treated adequately or at all in the country of origin.

the organisation of removals and the examination of the presence of any prohibitions on deportation outside the competency of the BAMF. Each year, the foreigners' authorities meet for an exchange of experience in one of Germany's major cities.

- The Federal Police has the responsibility of a border police competent for protecting the Federal Territory in order to prevent illegal entry of foreign nationals, human smuggling and human trafficking. Border police tasks entail surveillance of borders, police checks on cross-border traffic including the verification of travel documents and of the eligibility to enter the country, searches at the border and the prevention of threats which undermine border protection. The tasks of the Federal Police are laid down in the Act on the Federal Police (BPolG) and other regulations, such as the Residence Act (Section 71 subsection 3 Residence Act) or the Asylum Procedure Act (Section 18 Asyl-VfG). The Federal Police's competences in the area of residence law relate among others to the refusal of entry, removal and deportation of foreigners who are not in possession of a visa or a valid residence title, the revocation of a visa as well as, under specific circumstances, complementary measures under residence law (Schneider 2012c: 34). In the context of returning third-country nationals who are illegally staying in the Federal Territory, the Federal Police is among other tasks responsible for coordinating assisted return measures by air, and it collaborates closely with other authorities, in particular the Foreigners Authorities (Schneider 2012c: 34).
- In addition to numerous other administrative tasks it undertakes on behalf of the Federal Government, the Federal Office of Administration (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) consisting of the general database and the national Visa File.

## 1.2 General Structure of the Legal System in the Areas of Migration and Asylum

Legislative responsibilities overlap as well; lawmaking competencies are split between the Federal Government and the 16 state governments. In principle, the Federal States may adopt laws for all areas for which the Federal Government is not explicitly responsible. While some policy areas are subject to the exclusive legislative power of the Federal Government, the Federal Government and the state governments exercise concurrent legislative powers in most areas. This means that the governments of the 16 Federal States may adopt laws in a given field as long as the Federal Government has not done so before and taken responsibility (Articles 70-74 of the Basic Law). In practice, most issues that are subject to concurrent legislation have by now become subject to federal legislation. Issues that are relevant in terms of migration policy, such as nationality, freedom of movement, immigration and emigration, passports, national identity cards, registration issues and foreigners' rights of residence, have been regulated by federal laws. By the same token, all overarching legislation in the area of refugee and law governing matters concerning expellees has been adopted by the Federal Government as well. The only major policy areas that 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>5</sup>

At the level of the Federal States, 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 administra-

<sup>5</sup> Working groups of the Federal Government and the Federal States are responsible for dealing with all residence-related issues. Problems of enforcement in the area of returns of third-country nationals who are obliged to leave the country are dealt with by the Return Working Group (AG Rück), which is a sub-group of the IMK (see Section 1.1). In the AG Rück, relevant units of the interior ministries at federal level and of the Federal States cooperate with each other and other relevant agencies.



tive regulations. In addition, they influence the federal lawmaking process: 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 affect relations between the Federal Government and the Federal States need to be adopted by the Bundesrat (bill requiring Bundesrat approval). In all other cases (involving so-called bill of the Bundestag not requiring the consent of the Bundesrat), a veto by the Bundesrat can be overruled by a qualified majority in the Bundestag. As almost all political measures in the area of migration and asylum somehow affect the Federal States directly and burden them with administrative tasks, such laws generally need to be adopted by the Bundesrat.

### **Laws and ordinances**

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

- The Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Immigration Act - Zuwanderungsgesetz)<sup>6</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 amended continually between 2007 and 2012. By 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 (Regulation (EC) No. 562/2006).<sup>7</sup>
- 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>8</sup>
- Section 16a subsection 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 within the framework of an asylum procedure under the Asylum Procedure Act (Asylverfahrensgesetz - AsylVfG).
- Foreigners who are threatened by political persecution 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 have the right of asylum and those requiring subsidiary protection are also set out in the Residence Act (Section 25 subsection 1 and Section 60 subsections 2, 3, 5 and 7).
- The Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz - AsylbLG) provides the legal basis for benefits for asylum seekers during the asylum procedure and for other foreigners whose residence is not meant to be permanent.

6 Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern) (Zuwanderungsgesetz) (Immigration Act) of 30 July 2004 (Federal Law Gazette (BGBl. I, p. 1950); parts of the Immigration Act already entered into force on 6 August 2004 and on 1 September 2004 (see Section 15 subsection 1 and subsection 2 of the Immigration Act).

7 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 (Gesetz über die allgemeine Freizügigkeit von Unionsbürgern).

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

- The key legal basis for the administration of foreigners' data stored by the authorities is the Central Register of Foreign Nationals Act (Ausländerzentralregistergesetz - AZRG).

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

- The Ordinance Governing Residence (Aufenthaltsverordnung - AufenthV) 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 (Beschäftigungsverordnung - BeschV) 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 (Beschäftigungsverfahrensverordnung - BeschVerfV) supplements the Employment Ordinance and specifies under which conditions foreigners who are legally resident in Germany may take up employment.
- The Integration Course Ordinance (Integrationskursverordnung) - (IntV) 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 course. It also governs the admission procedures for public and private course providers.
- The Ordinance on Determining Responsibilities in the Area of Asylum (Asylzuständigkeitsbestimmungsverordnung - AsylZBV) regulates the competencies and responsibilities of the major operative authorities in the asylum procedure. In doing so, it takes into account key Community law, such as the Dublin Agreement or the EURODAC Regulation.
- The Ordinance on Naturalisation Tests (Einbürgerungstestverordnung) regulates the naturalisation tests (see Section 3.6.1).

# 2 Political, legal and institutional developments

## 2.1 General political developments

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

At federal level, the Federal Convention elected Joachim Gauck eleventh President of the Federal Republic of Germany in the first round of votes on 18 March 2012 with 991 of 1,228 votes. Joachim Gauck has succeeded Christian Wulff (Christian Democratic Union - CDU), who resigned as President of the Federal Republic on 17 February 2012. Joachim Gauck had previously been Chairperson of the association “Gegen Vergessen – Für Demokratie e.V.” (Against Forgetting – For Democracy) since 2003. He does not belong to any political party. He was the first Federal Commissioner for the Stasi Archives from October 1990 to October 2000.

State parliament elections were held in Saarland, Schleswig-Holstein and North Rhine-Westphalia in 2012: A new regional parliament was elected in Saarland on 25 March. Following the dissolution of the coalition between the CDU, Alliance 90/The Greens and the Free Democratic Party (FDP) led by Annegret Kramp-Karrenbauer (CDU) and the unsuccessful negotiations to form a grand coalition, it became necessary to call a general election. The CDU made minimal gains compared to the elections in 2009, garnering 35.2 % of the eligible votes, thus emerging as the strongest party. The Social Democratic Party of Germany (SPD) made strong gains with an increase of 6.1 percentage points, obtaining 30.6 % of the votes. The Pirate Party received 7.4 % of the votes and thus entered the state parliament of a German non-city state for the first time. Alliance 90/The Greens recorded slight losses; managing to scrape into the state parliament with 5 % of the votes. The FDP (Free Democratic Party) was unable to be represented in the

state parliament having lost 8 percentage points of the votes, receiving just 1.2% (Statistisches Amt Saarland 2012). Following successful negotiations, the CDU and SPD signed a coalition agreement; Annegret Kramp-Karrenbauer is head of the grand coalition as Minister-President.

In Schleswig-Holstein, the Constitutional Court had pronounced parts of the current Electoral Law unconstitutional in late August 2010. The decision rendered it necessary to amend the electoral law, to call fresh elections and to dissolve the reigning CDU-FDP coalition under Minister-President Peter Harry Carstensen (CDU) (Die Welt 2011). Fresh elections were held on 6 May 2012 from which the CDU emerged as the strongest party with 30.8 % of the votes – just slightly ahead of the SPD, which received 30.4 % of the votes. The CDU had taken a slight hit compared to the elections held in 2009, whereas the SPD managed to gain 5 percentage points. Alliance 90/The Greens were voted into the state parliament (13.2 %), FDP (8.2 %), the Pirate Party (8.2 %) and South Schleswig Voters' Association (Südschleswigsche Wählerverband - SSW), the party of the Danish minority that is exempt from the 5% hurdle. Alliance 90/The Greens hence received almost the same number of votes as in 2009, the FDP lost 6.7 percentage points and the Pirate Party improved its result by 6.4 percentage points (Statistisches Amt für Hamburg und Schleswig-Holstein 2012). The leading candidate of the CDU, Jost de Jager, offered to engage in talks with the SPD and Alliance 90/The Greens to explore the possibility of entering into negotiations to form a coalition but both parties refused. It was therefore up to the SPD as the second-strongest party to form a government. It formed a coalition with Alliance 90/The Greens and SSW headed by Torsten Albig (SPD) as Minister-President.

In North Rhine-Westphalia, the single plan for the Ministry of Home Affairs for the budget was presented

by the red-green minority government led by Hannelore Kraft (SPD) on 14 March. This led to the entire budget of the Land government being rejected and to the unanimous dissolution of the State Parliament (Spiegel Online 2012b). Fresh elections were held on 13 May: The SPD emerged as the strongest party with 39.1 % of the valid votes. The CDU received 26.3 %, Alliance 90/The Greens 11.3 %, FDP 8.6 % and the Pirate Party 7.8 %. SPD (4.7 percentage points); FDP (1.9 percentage points) and the Pirate Party (6.3 percentage points) managed to improve their results compared to the state parliamentary elections in 2010 (Landeswahlleiterin des Landes Nordrhein-Westfalen 2012). CDU (8.2 percentage points), Alliance 90/The Greens (0.8 percentage points) and The Left (3.1 percentage points) recorded losses. For The Left, this meant it failed to meet the 5% hurdle and was unable to enter the state parliament. By contrast, the Pirate Party gained representation in the state parliament of North Rhine-Westphalia for the first time. The SPD and Alliance 90/The Greens subsequently formed a coalition government under Minister-President Hannelore Kraft (SPD).

### ***Changes in the political responsibilities for migration and asylum***

The three state parliament elections held in 2012 resulted in several shifts in competency in the area of migration and asylum: In Saarland, Monika Bachmann (CDU) moved from the position of Minister for Labour, Family, Social Affairs, Prevention and Sport to Minister for Home Affairs and Sport following the state parliament elections on 9 May 2012. Integration falls under the purview of the Ministry for Social Affairs, Health, Women, which Andreas Storm (CDU) took over at the same time.

In Schleswig-Holstein, Andreas Breitner (SPD) was appointed Minister for Home Affairs on 12 June 2012 and has also taken over responsibility for integration from the Ministry for Justice and Equality. He is succeeding Rainer Wiegard (CDU) who took the helm on 5 June 2012 following the resignation of Klaus Schlie (CDU). In North Rhine-Westphalia, the Ministry for Labour, Integration and Social Affairs, that is responsible for integration-related issues, continues to be headed by Guntram Schneider (SPD), who has held this position since 2010. The Ministry for Home and Local Affairs responsible for issues relating to foreigners, asylum and nationality continues to be run by Ralf Jäger (SPD), who has held this position since 2010.

## **2.2 Overview of the main political developments and debates in the area of migration and asylum**

In 2012, a large number of topics dominated the public debate on the issues of asylum, migration and integration. Those debates that were also reflected in parliamentary procedures will be outlined briefly in the following. They focused on the rise in the number of asylum-seekers, the highly-publicised protests by asylum-seekers, police control practice, the integration of young Muslims, the endeavour to attract highly qualified migrants and the evaluation of and obligation to opt for one nationality in the Nationality Law.

### ***Rising number of asylum seekers from Serbia and Macedonia***

The number of foreigners applying for asylum for the first time was at its lowest in 2007 at 19,164. This number has since risen steadily and reached a new-time high in 2012 when 64,539 foreigners submitted asylum applications for the first time. Bosnia-Herzegovina, Serbia and Macedonia are the main countries of origin, accounting for over 20% of all the applications for asylum submitted (BAMF 2012b: 2.5 and 2.11) What is immediately striking is that the number of asylum applications submitted mainly by Roma increased hugely between the end of August and October 2012 after which it dropped abruptly (BAMF 2012a: 18, BAMF 2012c: 10, BAMF 2012b: 43).

As this sharp increase in asylum seekers from the Western Balkans had already been observed in the previous years, the Federal Ministry of the Interior considered to include Serbia and Macedonia in the list of safe countries of origin (Süddeutsche Zeitung 2012a: 8); the living conditions in these countries would not conflict with such a classification (Deutscher Bundestag 2012i: 17). The opposition does not share this view (Deutscher Bundestag 2012g: 1). The BAMF therefore handled these asylum applications with priority during the following months in order to keep the duration of stay in Germany and the respective drawing of social security benefits as short as possible. In order to be able to cope with the rising number of asylum applications, the BAMF hired auxiliary staff, surplus personnel from the Bundeswehr, Federal Police officers and additional interpreters on a temporary basis (Deutscher Bundestag 2012i: 9). Furthermore, the asylum procedure was optimised to ensure that a decision

on asylum applications could be taken within 10 days on average. According to the Chairperson of the Committee on Internal Affairs of the German Bundestag, Wolfgang Bosbach, an inquiry revealed that 90% of applications submitted by Macedonians and Serbs “were manifestly unfounded” (Die Welt 2013a). In connection with the high number of unfounded asylum applications filed, it was debated to reduce benefits for asylum seekers if there was evidence their applications were unfounded. This was also compatible with the decision handed down by the Federal Constitutional Court on asylum seeker benefits since these type of measures are not being pursued for migration policy purposes, but are aimed at preventing misuse of social welfare (see Section 5.1 and Deutscher Bundestag 2012i: 20–21; Süddeutsche Zeitung 2012d: 8).

Protest against this list of measures came from civil society. The Central Council of German Sinti and Roma (Zentralrat Deutscher Sinti und Roma), Pro Asyl, the Council on Refugees and the Protestant and Catholic Church voiced criticism about the guarantee of careful and fair case-by-case reviews. They also urged the Federal Government to desist from reducing social benefits for asylum seekers (Deutscher Bundestag 2012i: 19; Flüchtlingsrat Niedersachsen; PRO ASYL 2012a; Süddeutsche Zeitung 2012c: 6). Whereas Social Courts have so far refused to reduce asylum seekers’ benefits, since this would bring them below the subsistence level, the Federal Government decided not to grant start-up assistance for reintegration to asylum seekers from Serbia and Macedonia who were willing to return to their native country voluntarily as there was no guarantee their return would be permanent or that they would reintegrate as they could re-enter the Federal Republic any time without a visa (Deutscher Bundestag 2012g: 3).

### **Debate on asylum**

In the autumn of 2012, protests took place among asylum seekers and groups supporting them who were objecting to the residency requirement, deportations and the ban on employment (Berliner Morgenpost 2012). The protests culminated in a hunger strike among asylum seekers in Würzburg followed by a march on foot to Berlin with around 50 asylum seekers most of whom originated from Afghanistan, Iran and Turkey. The protesters started their march in Würzburg on 8 September and reached the capital of Berlin on 5 October 2012 (Pollmer 2012). The protest march was triggered by the suicide of an Iranian asylum seek-

er in Würzburg in late January 2012. The march and subsequent hunger strikes which captured widespread media attention were organised by the group “Refugee Tent Action”. The residency requirement against which the campaign is allegedly directed limits a foreigner’s residency which obliges asylum seekers to take up residence in a district assigned to them which they may only leave for brief periods subject to approval by public authorities. Furthermore, asylum seekers have hitherto been prohibited from taking up employment during the first year of their residence in Germany. The so-called “priority principle” continues to apply to asylum seekers after the first year which means they can only qualify for a work permit if the job cannot be filled by a German, an EU citizen or any other third-country national who has been living in Germany for a longer period of time.

In response to the protests, the SPD, The Greens and The Left advocated that the residency obligation be abolished. The Commissioner for Integration Maria Böhmer and the Land Ministers of Lower Saxony, Schleswig-Holstein, Brandenburg and Mecklenburg-Western Pomerania called for the ban on employment to be relaxed for asylum seekers. The Synod of the Protestant Church in Germany, PRO ASYL and the Refugee Council also declared their solidarity with the protesters. The BMI was reluctant to abolish the residency requirement and to grant unlimited access to the labour market because this would not be well received in regions where unemployment is high, also involving the risk of the spread of dumping wages (Märkische Allgemeine 2012; Tagesspiegel 2012; PRO ASYL 2012b; Zeit Online 2012). By contrast, the opposition parties spoke out in favour of abolishing the residency requirement and the ban on employment for asylum seekers and persons whose deportation had been suspended within the framework of parliamentary processes and also of providing better accommodation (Deutscher Bundestag 2011b, Deutscher Bundestag 2012b, Deutscher Bundestag 2012a). Some aspects of the residency requirement have been eased at federal state level (see Section 5.1.2).

### **Debates on lack of skilled workers and labour market-oriented immigration**

The debate on the lack of skilled workers launched in recent years (BAMF/EMN 2011; BAMF/EMN 2012; Federal Government 2012c) was continued in 2012. One of the motivating factors was the transposition of the 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 on 1 August 2012. It introduced a few additional simplifications to facilitate the admission of highly qualified workers and self-employed persons from third countries<sup>9</sup> who are seeking qualified employment in Germany. This step with which above all a new residence permit was introduced in the form of the EU Blue Card was generally well received (see OECD 2013); however, it did reap some criticism and objections were raised, for instance, that it is more difficult under the new regulations to obtain an immediate, unlimited residence permit in Germany (cf. Financial Times Germany 2012c), and that rules of immigration for skilled workers were still too bureaucratic and complicated (cf. Die Welt 2012). Another important aspect of the debate on skilled labour involved reports on the immigration of skilled workers from EU crisis-ridden regions that had particularly high rates of unemployment; success stories were discussed as well as the many (language) difficulties on the labour market in Germany as well as the various types of irregular employment (Der Spiegel 2012b; Financial Times Deutschland 2012b; Frankfurter Rundschau 2012; Handelsblatt 2012).

### **Police controls**

The judicial review of police action in carrying out checks on unsuspecting persons (see Section 3.7.3) was the topic of public debate and parliamentary inquiries. As such, the Federal Government underlined the lawfulness of carrying out random checks to gain information and for the detection and prevention of cross-border crime provided they were not aimed at border control (Deutscher Bundestag 2012j: 2). At the same time, it emphasized the fact that the Federal Police does not use racial profiling when carrying out these checks (Deutscher Bundestag 2012h: 3, Deutscher Bundestag 2012c). The President of the Federal Police Dieter Romann was appalled at the Federal Police being accused of racism, giving assurance that the legal situation and internal regulations rule this out completely (Der Spiegel 2012a: 28). The Head of the Federal Anti-Discrimination Agency, Christine Lüders, had warned after the decision handed down by Koblenz Administrative Court that ID checks being

carried out because of a person's skin colour would threaten co-existence in Germany and all endeavours to prevent discrimination (Deutscher Bundestag 2012c: 2). In appellate proceedings, the Higher Administrative Court Rhineland-Palatinate regarded the control measure as illegal. Human rights organisations applauded the decision. However, the Chairperson of the German Police Trade Union, Rainer Wendt, expressed his disappointment at the decision handed down by the court, saying this was hampering police work (Spiegel Online 2012a).

### **Obligation to opt for one nationality in citizenship law**

In 2012, the Research Group of the Federal Office published two studies examining the naturalisation patterns of foreigners and the number of foreigners availing themselves of the so-called obligation to opt for one nationality in citizenship law (see Section 3.6.2 and Weinmann et al. 2012; Worbs et al. 2012). The BMI identified a need for additional information based on the studies but did not see any need for legislative action. The Federal Government Commissioner for Migration, Refugees and Integration, Maria Böhmer, supported the endeavours undertaken by the BMI by carrying out an information campaign on the obligation to opt for one nationality. The Ministries of Integration of a number of Federal States (such as Baden-Württemberg, North Rhine-Westphalia and Schleswig-Holstein) took the results of the studies as an opportunity to criticise the existing obligation to opt for one nationality and to seek to gain support for the approval of dual nationality (Ministry for Integration Baden-Württemberg 2012b, SPD et al. 2012). At federal level, the discussion about the obligation to opt for one nationality was continued in 2012. The opposition parties had already filed petitions in the Bundestag in the previous years (Bundestag printed paper – BT-Drs. 17/7654) and bills (Bundestag printed paper 17/542) to abolish the obligation to opt for one nationality which were rejected by the government coalition (Stoltenberg 2012). At its meeting held on 12 December 2012, the Committee on Internal Affairs of the German Bundestag decided, however, to hold a public hearing on the nationality law based on the above-mentioned printed papers and research results of the Federal Office (Deutscher Bundestag 2012q).

<sup>9</sup> As such the investment and workplace requirement that had previously applied as a regular requirement consisting of an investment of €250,000 and the creation of five jobs was abolished. For specific information, please refer to Block and Klingert (2012: 21ff.).

# 3 Legal Migration and Mobility

## 3.1 Economic Migration

### 3.1.1 Background and General Context

The goal of the Federal Government is to meet the current regional, job-specific and sectoral skilled labour needs first and foremost with the domestic potential of employable persons. 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 a migration background living in Germany to receive qualifications that are in demand are some of the relevant areas of activity. 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 (BMAS 2011, BMAS 2013). 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 (Hochrangige Konsensgruppe Fachkräftebedarf und Zuwanderung 2011; Parusel et al. 2010).

Sections 16 to 21 of the Residence Act and the Employment Ordinance open up numerous paths for the partially permanent, partially temporary residence of 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-employed persons. After 2009 saw numerous renewals, for instance, under the Labour Migration Regulation Act (Arbeitsmigrationssteuergesetz) (BAMF/EMN 2010: 25-27), the Federal Government resolved on 7 December 2011 to implement the EU Blue Card and to facilitate access to the labour market for highly qualified persons and foreign students (BMI 2011); the new Act entered into force on 1 August 2012.

### 3.1.2 National Developments

#### *Enhancing the establishment and recognition of professional qualifications obtained abroad*

On 1 April 2012, the Act to Improve the Assessment and Recognition of Professional Qualifications Obtained Abroad (Gesetz zur Verbesserung der Feststellung und Anerkennung im Ausland erworbener Berufsqualifikationen, the so-called Recognition Act – Anerkennungsgesetz) entered into force. By adopting this Act, the Federal Government has created a general legal entitlement to assessing professional qualifications obtained abroad as being equal to the same professional qualification in Germany. The intention was to make a sustainable contribution towards securing a skilled labour base in Germany and fostering the integration of persons with good foreign professional qualifications.

The Act establishes balanced and uniform procedures and criteria for recognising professional qualifications in the Federal Republic. In particular, the previous provisions governing the transposition of the so-called Directive 2005/36/EC on the recognition of professional qualifications were expanded, by and large, to include foreign professional qualifications and third-country nationals. According to the provisions set forth in the Recognition Act, professional qualifications obtained abroad can be recognised in Germany as being equal to similar German qualifications. It also nullifies the connection between employment and German citizenship in a large number of occupations and professions. The Act applies to around 500 professions for which qualifications are uniformly regulated nationwide (e.g. physicians, nurses, master craftsmen and all qualifications for the 350 German educational professions in the dual system). The difference between Germany's recognition policy and that of other countries is that it recognises practical vocational experience in addition to formal qualifications within the framework of an equivalence test.

The states will also adapt the occupations in their area of responsibility (teachers, educators, social education workers, engineers).

Moreover, the Federal Government has hugely expanded information and advisory services for the recognition of foreign qualifications. Since 1 April 2012, the online portal “Recognition in Germany”<sup>10</sup> has been providing information centrally about the recognition procedures and legal basis in English and German. The key tool is the so-called Recognition Finder which navigates people seeking information quickly to the appropriate authority responsible for their case and provides specific information about the procedure involved with just a few clicks of the mouse. In addition, the hotline launched by the Federal Office for Migration and Refugees at the request of the Federal Minister for Education and Research (BMBF) provides advice over the telephone in English and German to interested parties both at home and abroad. So far, the Federal States have been funding around 40 initial points of contact within the promotion programme “Integration through qualification – IQ”<sup>11</sup> that is being funded by the BMAS, BMBF and the Federal Employment Agency (BA). They provide preliminary information, advise persons seeking to have their qualifications recognised and refer them to the competent authorities. At the same time, the BA has established advising persons wishing to have their qualifications recognised as part of the advisory employment services.

***Transposition of 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***

The Act on the transposition of 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 entered into force on 1 August 2012. This Act not only transposed 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 which defined the above-mentioned conditions in the form of the EU Blue Card; it also contains major amendments to the Residence Act and legislation on the employment of foreigners that is intended to

enhance Germany’s attractiveness for highly qualified persons.

It is above all foreign students and graduates from German universities, foreigners undergoing vocational training, self-employed persons and start-up entrepreneurs who are benefiting from these amendments. Moreover, a special resident permit has been created for persons seeking employment that will make it easier for small and medium-sized companies in particular to fill vacancies that they have been unable to fill with highly qualified foreigners.

The main contents of the Act are as follows:

- There is only one residence permit with a salary limit for highly qualified persons, namely the EU Blue Card (Section 19a of the Residence Act).
- The minimum salary limit for the EU Blue Card was set at €44,800 for 2012 (2013: €46,400) (Section 5 subsection 3 of the Directive). The working conditions are not subject to any priority check or comparability check.<sup>12</sup>
- The income limit for professions which are in particular need of third-country national workers pursuant to Section 5 subsection 5 of the Directive (MINT professions, physicians and IT professions) is around €35,000 Euro (2013: €36,200). In principle, it is required to examine the comparability of working conditions.
- In principle, holders of an EU Blue Card can apply for a settlement permit (permanent national residence permit) after 33 months provided they continue to be employed and they have made compulsory contributions or voluntary contributions towards the statutory pension insurance or contributions towards comparable services.

<sup>12</sup> In certain occupations that are regulated in the Employment Ordinance (Beschäftigungsverordnung) and the Employment Procedure Ordinance (Beschäftigungsverfahrenverordnung), a residence permit can only be issued to third-country nationals for the purposes of specific employment if the position cannot be filled by a German national, an EU national or a third-country national holding a permanent residence permit. A priority review is carried out to ensure this requirement is met. The comparability review ensures that third-country nationals are not employed on less favourable conditions than Germans, EU nationals or third-country nationals holding a permanent residence permit.

<sup>10</sup> cf. [www.anerkennung-in-deutschland.de/html/de](http://www.anerkennung-in-deutschland.de/html/de).

<sup>11</sup> cf. [www.make-it-in-germany.com](http://www.make-it-in-germany.com).



- If the holders of the EU Blue Card have a good command of German, the settlement permit can be issued after a mere 21 months.
- Family members of persons holding an EU Blue Card do not have to prove they have a command of the German language prior to entry and have full access to the labour market as soon as they enter the Federal Republic.
- A residence permit has been introduced that is limited to six months for persons seeking employment (Section 18c of the Residence Act). In order to be eligible for this residence permit, foreigners must have a degree from a German university or comparable foreign university and they must be able to earn an independent living. The residence permit does not entitle the foreigner to take up employment and it cannot be extended.

### **Portals for qualified professionals**

Two special web portals were set up in June 2012 in conjunction with the campaign for qualified professionals implemented by BMAS, BMWi and BA. The national “Portal for qualified professionals” (Fachkräfte-Offensive)<sup>13</sup> serves as an initial port of call and targets all domestic workers, companies and interested members of the public. It also provides information about labour shortages and regional and supraregional projects. The welcome portal “Make it in Germany”<sup>14</sup> for foreign professionals provides information about employment opportunities in Germany and the legal requirements foreigners have to meet to take up employment, also providing an impression of life and housing in Germany.

### **Suspension of the priority review for professions that are hard to fill (shortage list procedure)**

Since June 2011, physicians and certain speciality engineers (mechanical engineers, automotive engineers, electrical engineers) have been exempt from the priority review (so-called shortage list procedure) (BA 2011). This procedure was expanded on 1 February 2012 at the initiative of the BMAS to include supply engineers, waste disposal engineers, steel and metal construction engineers and software development/programming

experts (BA 2012). The review to establish the equality of working conditions will be maintained. Experts are persons who have obtained a university degree lasting a minimum of four years or who have comparable qualifications.

### **Determining the demand for highly qualified workers**

So-called job monitoring was introduced at the initiative of the BMAS that defines the current and long-term demand for highly qualified workers according to industry, profession and region. To this end, a labour market forecast has been drawn up for the years up to and including 2030. Initial results are expected to be available in the spring of 2013.

## **3.2 Family Reunification**

### **3.2.1 Background and General Context**

To protect marriage and family according to Article 6 of the 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 Sections 27 to 36 of the Residence Act.

Language ability obtained before entry to Germany helps spouses to integrate and prevents forced marriages. For this reason, foreign spouses of third-country nationals and Germans living in Germany have been required since September 2007 to 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 to join family members (e.g. Australia, Japan and the USA). The language requirement also applies to Germans who move to Germany to join family, albeit to a lesser extent (cf. “National Developments”). The visa applicant must provide proof that they have a basic command of the German language at “reference level A1 of the Common European Framework of Reference for Languages” (CEFR) at a German embassy or consulate prior to entry (GER) (BAMF/EMN 2011: 25; BAMF/EMN 2012: 33; Schneider 2012a: 41-42).

On 1 July 2011, the so-called Act to combat forced marriages and to better protect the victims of forced marriages, and to amend further provisions govern-

<sup>13</sup> cf. [www.fachkräfte-offensive.de](http://www.fachkräfte-offensive.de).

<sup>14</sup> cf. [www.make-it-in-germany.com](http://www.make-it-in-germany.com).

ing residence and asylum law (Zwangsheiratsbekämpfungsgesetz)<sup>15</sup> entered into force in order to enhance protection of the victims of forced marriages. To this end, Section 51 subsection 4 of the Residence Act was amended. Before this subsection was amended, residence permits expired once the foreigner had been residing outside the Federal Republic of Germany for six months. This meant victims of forced marriages who had been abducted to another country risked losing their residence permit. The amendment allows victims of forced marriage and abduction to another country to retain a right of return of at most 10 years after leaving Germany. 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 21st birthday are waived (BAMF/EMN 2012: 33-34). In addition to the amended legislation on returns, the Act to combat forced marriages also extended the term within which foreigners obtain an independent right of residence from two years to three years (Section 31 subsection 1 (1) of the Residence Act). This is justified in that the independent right of residence designed to protect victims could be an incentive for marriages of convenience (BAMF/EMN 2012: 34).

### 3.2.2 National Developments

#### ***Language requirements for spousal immigration only apply to a limited extent***

The Federal Administrative Court (BVerwG) determined in a landmark decision handed down on 4 September 2012 that the legal requirement of an immigrating spouse having to prove they have a command of the German language can only apply to a limited extent. This decision says that a visa must be issued to an immigrating spouse if it is not possible or reasonable in individual cases for them to endeavour to learn the basics of the German language or if they have not succeeded in doing so within one year. These restrictions do not apply to spouses immigrating to join foreign nationals (BVerwG 10 C 12.12, decision handed down on 4 September 2012). The parliamentary party of The Left asked the Federal Government in a minor

interpellation (Bt-Drs.17/11661) to explain a number of issues as well as the implications of the decision (Deutscher Bundestag 2012m).

#### ***Custodial decisions by foreign authorities must be recognised***

The Federal Administrative Court ruled in a number of other landmark decisions on several cases on 29 November 2012 that German authorities and courts must recognise custodial decisions taken by foreign courts in visa proceedings (cf. BVerwG 10 C 4.12; BVerwG 10 C 5.12; BVerwG 10 C 11.12; BVerwG 10 C 14.12). The only exception is when the application of custodial decisions taken by foreign courts is incompatible with the public order (BVerwG 2012).

## 3.3 Students and Researchers

### 3.3.1 Background and General Context Students

Foreign students require a visa issued by the competent German diplomatic representation prior to entering Germany. This does not apply to students from the European Union or to students from a number of other countries. A foreigner must meet the requirements to be granted a residence permit for the purpose of studying at a state or state-recognised university or a comparable educational establishment (Section 16 of the Residence Act). These generally involve an acceptance letter from a German university, 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 generally required upon application for the issuance of a visa (Mayer et al. 2012: 24-28).

Visas for foreign students are issued in an expedited process. 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, for instance, by scholarship-holders of German academic organisations or German public agencies (Mayer et al. 2012: 24-28).

15 Act to combat forced marriages and to better protect the victims of forced marriages, and to amend further provisions governing residence and asylum law, Federal Law Gazette I no. 33 of 30 June 2011, p. 1266.

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

The number of foreign students in Germany has risen steadily over recent years: The number of foreign students from non-EU countries studying in Germany, for instance, rose from just under 121,000 in 2008 by around 6 % to just under 128,000 in 2011 (StBA 2012a).

### **Researchers**

Section 20 of the Residence Act which is transposing Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purpose of scientific research has provided the statutory basis for the immigration of researchers since August 2007. In order to be eligible for a residence permit for the purpose of scientific research, foreigners must have concluded an effective admission agreement for the purposes of conducting a research project with a research facility accredited by BAMF (BMI/BAMF 2012: 91). The residence permit is linked to the research project to be conducted but also allows foreign researchers to teach. Residence permits for research purposes pursuant to Section 20 of the Residence Act are generally issued in expedited proceedings and are exempt from compulsory consent by the foreigners authorities under Section 31 subsection 1 sentence 3 of the Residence Act. The spouses of researchers have access to the job market provided the working conditions are not less favourable than those of comparable German employees.

The number of persons who entered the Federal Territory and were granted a residence permit for research purposes (pursuant to Section 20 of the Residence Act) rose from 64 in 2008 to 317 in 2011 (BAMF 2012f; BMI/BAMF 2010).

In addition to residence permits pursuant to Section 20 of the Residence Act, foreigners can also conduct research within the framework of stays defined in Sections 16 to 21 of the Residence Act (see Klingert/Block 2012).

### **3.3.2 National Developments**

The Federal Government enhanced the legal conditions for students and foreign graduates of German universities in particular by adopting the Act transposing 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 with a view towards enabling more highly qualified foreigners to stay on in Germany that are so important to safeguarding the supply of highly-qualified workers: Students from third countries can now pursue full-time employment for 120 days or part-time employment 240 days per year alongside their studies.

The following simplifications entered into force on 1 August 2012 for graduates of German universities: The period they are permitted to look for a suitable job (Section 16 subsection 4 of the Residence Act) was increased from 12 to 18 months; during this period they have full access to the labour market. As a rule, no priority reviews have been carried out when foreign graduates of German universities were employed since 1 January 2009 if the position they found matched the qualification they obtained from the German university. The compulsory approval by the BA was fully abolished on 1 August 2012. In addition, things have been made easier pursuant to Section 21 subsection 2a of the Residence Act for this group of persons to become self-employed or to start-up their own business as the prerequisites of the Federal Republic having an economic interest or regional need have been abolished. If foreign graduates of German universities have successfully found employment, they may be granted a settlement permit after two years. This offers them the prospect of remaining permanently in Germany sooner (Mayer et al. 2012: 22-35).

In addition to the amendment to Section 18 subsection 4 of the Residence Act, foreign graduates of German universities and research can, in principle, also benefit from the newly-created EU Blue Card and residence permit for the purposes of seeking employment pursuant to Section 18c of the Residence Act (see Section 3.1.2).

### 3.4 Other Legal Migration

#### 3.4.1 Background and General Context

Jewish immigrants from the former Soviet Union and ethnic German immigrants have legal immigration opportunities – in addition to migration for employment purposes, training and education, family reunification and migration on humanitarian grounds.

##### ***Jewish immigrants***

Germany has been admitting Jewish immigrants and their family members from the successor states to the former Soviet Union since 1990.<sup>16</sup> This must be seen against the backdrop of Germany's historical responsibility for the Holocaust. The intention is to foster the integration of migrants both into Jewish communities and into German society. In order to be eligible for admission, these persons must prove they are of Jewish descent, offer the prospect of successful integration, have a basic command of the German language and have the option of being admitted to a Jewish community, all of which are aimed at accomplishing goals. Exceptional rules apply to the victims of National Socialism. They are exempt from the compulsory integration forecast and from the requirement of proving they have a command of the German language. Family members of Jewish immigrants are also admitted. Section 23 subsection 2 in conjunction with Section 75 (8) of the Residence Act and ordinance issued by the BMI of 24 May 2007 and the amendment to the ordinance issued by the BMI on 21 December 2011 provide the statutory basis for the admission of Jewish immigrants. Section 23 subsection 2 of the Residence Act permit the BMI to admit foreigners if there is a special political interest in doing so, subject to coordination with the supreme state authorities. This regulation created a legal basis for the admission of Jewish emigrants from the successor states to the Soviet Union to compensate them for the abolition of the Act on Measures in Aid of Refugees Admitted under Humanitarian

Relief Programmes (Gesetz über Maßnahmen für im Rahmen humanitärer Hilfsaktionen aufgenommene Flüchtlinge auszugleichen) (Storr 2008: 2).

The number of Jewish immigrants from the former Soviet Union accepted into Germany has sunk drastically since 2002.<sup>17</sup> In 2002, a total of 19,262 Jews and their dependants from the former Soviet Union came to Germany; in 2012 this number fell to 458. This represents a reduction of just under 98 %.

##### ***Ethnic German immigrants***

Since 1950, over five million ethnic German immigrants and their family members have been admitted to Germany. They form the largest group of immigrants in the Federal Republic. This can be attributed to the high influx of immigrants during the 1990s. In 1990, 397,073 ethnic Germans immigrated to Germany. Over 200,000 ethnic Germans immigrated each year between 1991 and 1995. After this, there was a sharp decline in the number of ethnic Germans immigrating. In the meantime, only a few thousand ethnic Germans and their family relatives come to Germany each year. In 2012, 1,820 ethnic Germans immigrated.

#### 3.4.2 National Developments

##### ***No ban on deportation for Jewish immigrants under refugee law***

The Federal Administrative Court decided on 22 March 2012 that Jewish immigrants from the former Soviet Union who have been admitted since 1991 are not equivalent to legal contingent refugees – at least since the Immigration Act entered into force on 1 January 2005. This means that the ban on deportation pursuant to Article 33 of the Geneva Convention relating to the Status of Refugees and the transposition thereof in Section 60 of the Residence Act does not automatically work to their benefit (BVerwG 1 C 3.11, decision of 22 March 2012).

<sup>16</sup> Cf. Decision of the Council of Ministers of the GDR of 11 July 1990, decision by the Council of Minister-Presidents of 9 January 1991.

<sup>17</sup> The year 2006 forms an exception.

## 3.5 Integration

### 3.5.1 Background and General Context

Integration is a cross-sectional task and 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, operational integration measures. Federal policy steps have also been backed by overall integration policy concepts and guidelines of the Federal States. The local authorities are also major players in terms of integration policy (BAMF/EMN 2012).

For the first time, integration offers have been legally anchored in the Residence Act that took effect on 1 January 2005 (Sections 43-45 of the Residence Act). Integration is perceived 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 Action Plan” (2012), a series of essential action areas for integration work were identified, including promoting the German language from the outset, increasing opportunities on the labour market, realising equal opportunities and strengthening cross-cultural competence. As part of their coalition agreement for the 17th legislative period, the parties involved in the current Federal Government set themselves the goal of facilitating the integration of immigrants in terms of equal opportunities and actual participation in all areas, particularly 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 (CDU et al. 2009: 74). The integration measures are aimed at immigrants with legal residence status and the intention to stay.

#### **Integration course**

In order for immigrants to integrate successfully, all legal immigrants receive a basic state offer of integration (integration course) that is intended to support

the immigrants’ own integration effort.<sup>18</sup> The integration course was introduced with the Immigration Act in 2005. There are nationally binding concepts for the various target groups of the integration courses, which are oriented to each target group both in terms of content and progress. The general integration course consists of a 600-hour language and a 60-hour orientation course. In addition, courses are also provided for the illiterate, women/parents and young people with up to 900 hours of language instruction. Intensive courses comprise 400 hours of language tuition and 30 hours orientation course. The integration courses are delivered nationwide by over 1,300 providers (above all adult education centres, language schools, specialised technical schools, education establishments or Church organisations) (BAMF 2012h). By the end of September 2012, over 525,000 persons had completed an integration course; 50,000 in 2012 alone (BAMF 2013: 9). In January 2012, the BAMF issued the millionth participation certificate for an integration course (BAMF 2012g). In 2012, expenditure for the implementation of integration courses under the Ordinance on Integration Courses amounted to just under €162 million.

#### **Migration Consultation for Adult Immigrants (MBE)**

Since 1 January 2005, consultation for adult immigrants has been provided by the MBE. It supplements the integration course during and after. The percentage of consultation cases associated with participation in an integration course was around 75% in 2009 and 2010 (Deutscher Bundestag 2011d). 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 creates a customised promotion plan and monitors its implementation. Both newly

<sup>18</sup> The exact conditions for entitlement to participate in an integration course are defined in Sections 44 and 44a of the Residence Act. In addition to new immigrants, migrants who have been living in Germany and German nationals are also entitled to take such a course. Under certain conditions, provided they are receiving social welfare or if they are in particular need of integration, persons may actually be required to take an integration course. As a rule, participants pay a contribution of €1.20 per hour, certain participants are exempt from paying anything at all.

immigrated persons as well as immigrants who have been living in Germany for some time may take advantage of the MBE. The BAMF is responsible for providing migration consultation for adult immigrants, and has set up a nationwide network of consultation offices (BAMF 2012i). In 2012, around €25 million was earmarked in the federal budget for the MBE.

### **Projects aimed at promoting the integration of immigrants**

The Federal Government promotes projects on the social integration of immigrants (BAMF/EMN 2012). The projects are intended to supplement the statutory integration services of the Federal Government such as integration courses and migration consultation. They start where there are contact possibilities between immigrants and the local community, namely in the residential environment and the pertinent facilities and clubs. In local project work, the aim is to create opportunities for encounter between immigrants and locals that enhances mutual acceptance and strengthens social cohesion. Other goals are to strengthen individual competences and abilities of immigrants and to help them to participate in society. National projects are promoted from budgetary funds of the BMI and BMFSFJ for age-independent projects and projects for young people and young adults. The projects are implemented by associations, clubs, migrant organisations, foundations, initiatives and federal, regional and local authorities.

Around €18 million was earmarked in the federal budget 2012 for the promotion of projects on the social integration of immigrants.

Other programmes being implemented at federal level include:

- The “Programme for teaching German for professional purposes to persons with a migration background in the Federal Territory” that is funded by the European Social Fund and organised the BAMF (term: 27 August 2008 to 31 December 2013).
- The ESF “XENOS – Integration and Diversity” programme that supports projects against marginalisation and discrimination in the transition phase between school, training and the working world is funded by the BMAS and ESF (term: 13 June 2008

to 30 June 2014)<sup>19</sup> The programme is part of the National Integration Action Plan of the Federal Government.

### **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 Muslims in Germany.<sup>20</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 Action Plan (NAP-I)**

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 participate in its implementation. With the goal of a stronger verifiability of integration advancement, the National Action Plan was presented at the 5th Integration Summit on 31 January 2012. 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 Action Plan also includes contributions from the Federal States and municipalities.

## **3.5.2 National Developments**

### **Second Integration Indicator Report**

On 12 January 2012, the Federal Government Commissioner for Migration and Refugees presented the “Second Integration Indicator Report”. The report outlines how integration in Germany progressed between 2005 and 2010. It addresses eleven different sub-areas such as childhood education, education, training and integration into the labour market (Bundesregierung 2012c). The report ascertains positive developments, particularly among persons with a migration background who were born in Germany (second generation): Persons with a migration background have made

<sup>19</sup> cf. [www.xenos-de.de](http://www.xenos-de.de).

<sup>20</sup> cf. [www.deutsche-islam-konferenz.de](http://www.deutsche-islam-konferenz.de).

up a significant amount of lost ground compared to the domestic population in relation to the number of children attending daycare facilities and those who migrate into vocational training. Old applicants entering vocational training and persons living in households in which no member is gainfully employed actually managed to reach the level of the population as a whole (Beauftragung der Bundesregierung für Migration 2012: 10). Numerous leading media covered the results of the Report, applauding the integration successes achieved while also pointing out the need for further progress (Frankfurter Allgemeine Zeitung 2012c; Süddeutsche Zeitung 2012b).

### ***Fifth integration summit and “National Action Plan”***

The Fifth Integration Summit convened on 31 January 2012 and adopted the “National Action Plan Integration” (Federal Government 2012b). The representatives of the Federal Government, Federal States, local authorities, welfare organisations, industry, trade unions, academia, sport, culture, media, religious communities and migrant organisation drew up the Action Plan together. The focus has been placed on the issues of language, education, training and the labour market. Areas such as migrants in the public service, healthcare and nursing care have been taken into account for the first time (Bundesregierung 2012a). The Action Plan is aimed at giving integration policy a more binding shape and measuring the results achieved (Federal Government 2012b: 10). The presentation of the Action Plan generated a huge media response. The opposition and trade unions criticised the list of measures and called for further-reaching integration efforts, for instance, suggesting that persons with a migration background be given better voting rights (Netzwerk Migration in Europa 2012b: 2).

### ***Integration courses***

The second Ordinance Amending the Ordinance on Integration Courses entered into force on 1 March 2012. The number of hours of the orientation courses was raised from 45 to 60 hours of tuition. This brings the total number of hours of the general integration courses up to 660 hours of tuition. The price per hourly lesson for course participants was raised from €1 to €1.20.

### ***ESF-BAMF programme***

The ESF-BAMF programme offers professional language courses at different levels. It provides flex-

ible solutions and individual support particularly for highly qualified workers. In 2012, the programme was supplemented and has since been available to asylum seekers and persons whose deportation has been suspended if they meet certain conditions. In addition, selective “Pre-integration measures” were conducted in European countries of origin this year.

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

The plenary session of the DIK which convened on 19 April 2012 addressed the issue “Gender equality as a common value” in the year under review. The DIK issued a declaration against domestic violence and forced marriages. The document emphasises that Islam rejects domestic violence and marriages entered into against the will of one of the spouses. In addition to the declaration, other results and measures were presented such as the results achieved by the project group “Better integration of Muslims in the labour market”, the interim report of the DIK working group “Prevention work with young people”, the first part of the handout issued by the DIK project group “Role models in Muslim milieus” and the youth competition “Success stories” in which young people between the age of 16 and 26 are called upon to profile a successful person who is a Muslim” (Deutsche Islam Konferenz 2013).

### ***Faith-oriented Islam lessons and university centres for Islamic theology***

Endeavours to help the four million Muslims living in Germany to practice their religion progressed in the year under review: North Rhine-Westphalia was the first federal state to introduce faith-oriented religious lessons for Muslim pupils at the beginning of the 2012/2013 school year. 33 primary schools launched these lessons for around 2,000 pupils (Landesregierung Nordrhein-Westfalen 2012). Hesse decided in December 2012 to follow suit at the beginning of the 2013/2014 school year with 25 primary schools (Hessisches Ministerium der Justiz 2012). These steps taken by both state governments were accompanied by regular media reports.

Furthermore, university research and theory of Islam Theology were expanded in 2012 in order to ensure there was a steady supply of teachers for Islamic Religion. The University of Erlangen-Nuremberg became the fourth university to open state-funded Centres for Islamic Theology in October 2012, three other universities having done so the previous year (Münster/

Osnabrück, Tübingen and Frankfurt/Gießen) (BMBF 2012).<sup>21</sup>

***Act to promote social participation and integration in North Rhine-Westphalia (Gesetz zur Förderung der gesellschaftlichen Teilhabe und Integration in Nordrhein-Westfalen)***

The Act to promote social participation adopted by the state parliament of North Rhine-Westphalia on 8 February 2012 entered into force on 25 February 2012 (for a description of the contents cf. BAMF/EMN 2012: 41). This means North Rhine-Westphalia is the first federal non-city state that has adopted an integration law.

***State agreements with Muslims in Hamburg and Bremen***

Hamburg was the first Federal State to conclude agreements with the three Islamic associations and Alevite community in Germany on 14 August 2012 following a negotiation process lasting five years. The aim is to enable Muslim teachers to teach Islamic religion; in addition some Muslim public holidays (the Muslim feast of Eid-el-Kabir, Ramadan and Ashura) are treated like religious holidays in Hamburg. Further content of the agreements involved, inter alia, practical aspects of practising one's religion, building places of worship and cemeteries as well as issues relating to basic values and the constitutional system (Staatskanzlei Hamburg 2012). The agreements were signed on 13 November. However, they have yet to be ratified by the city parliament. The vote is scheduled for the spring of 2013 (Die Welt 2013b).

Bremen Senate concluded an agreement with similar content with the Muslims of Bremen on 11 December 2012 (Bundespresseportal 2012). The city parliament of Bremen ratified the content on 24 January 2013. Bremen was hence the first Federal State to conclude an agreement with Islamic associations (Senat Bremen 2013).

## 3.6 Nationality and Naturalisation

### 3.6.1 Background and General Context

On 1 January 2000, the provisions on the acquisition of German nationality by birth according to principle of ancestry were complemented by the principle of the place of birth (*ius soli*). Since then, 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: Pursuant to Section 29 of the Citizenship Act, these children must decide between German citizenship and the foreign citizenship, typically inherited through their parents, as soon as they reach adulthood and are notified accordingly by the competent authorities. The same procedure also applies to children who have received German citizenship upon their parents' application for them in 2000 in accordance with a temporary arrangement (pursuant to Section 40b of the Citizenship Act).

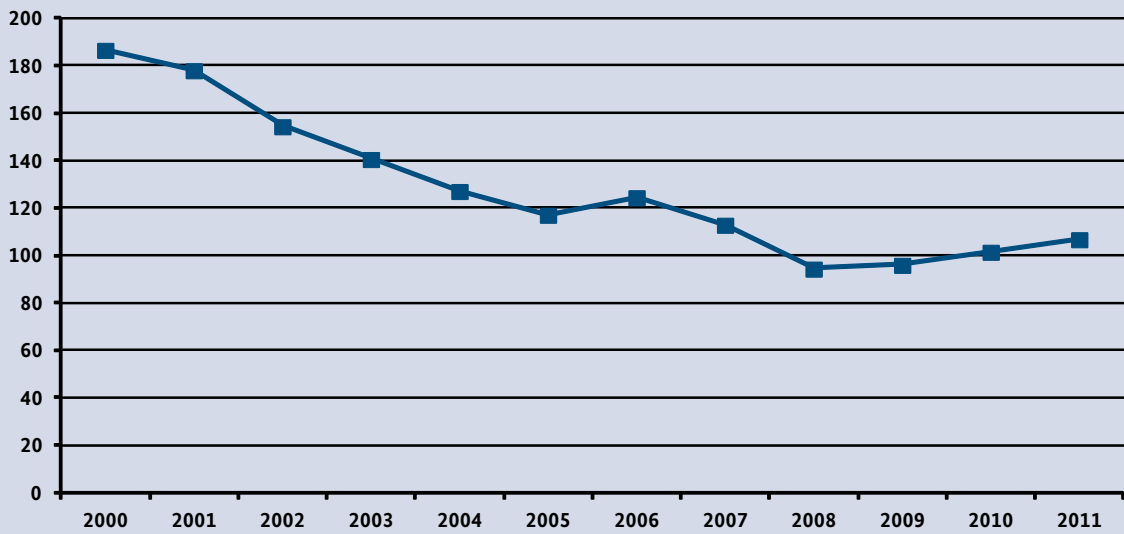
Foreigners who have been rightfully residing in Germany for a longer period can receive German citizenship through naturalisation. A series of conditions must be fulfilled at the time of the decision on their application so that naturalisation can be legitimately requested. These include an indefinite right of residence and eight (six in special instances) years of legal consistent residence in Germany, (Section 10 of the Citizenship Act), having a self-secured means of subsistence and a clean police record (Section 10 of the Citizenship Act). 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 (BAMF 2011b). EU citizens and Swiss nationals 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 applicants must also demonstrate knowledge of the legal and social system and living conditions in Germany by taking a nationally standardised naturalisation test. Persons who have completed school education in Germany are exempt from the test (Weinmann et al. 2012: 209).

<sup>21</sup> The BMBF will support the establishment of Centres for Islamic Theology to the tune of approx. €20 million over a period of five years based on a recommendation issued by the Scientific Council of January 2012.

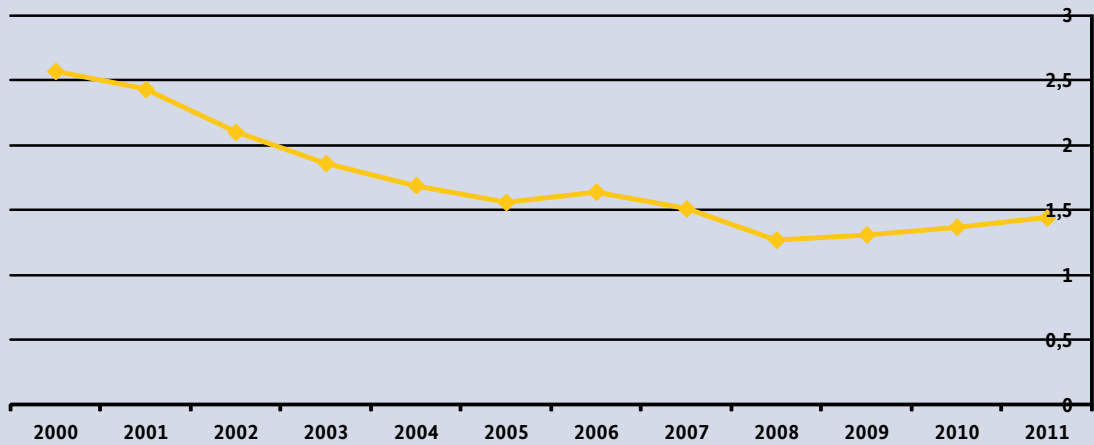


Figure 1: Naturalisations in 1,000 Persons



Source: StBA (2012b)

Figure 2: Naturalisation rate in percent



Source: StBA (2012b)

Figure 1 shows that the number of naturalisations between 2000 and 2011 has fallen from around 186,700 to around 106,900. This represents a reduction of just under 43 %. The lowest number of naturalisations was in 2008, with around 94,500. After this, the numbers of naturalisations through to 2011 increased slightly (by 5.7% from 2009 to 2010 and by 5.2% from 2010 to 2011). Similarly to naturalisations, the naturalisation

rate<sup>22</sup> also fell from 2.6% to 1.4% between 2000 and 2011, with the lowest rate of 1.3% also being in 2008 (see Figure 2 and StBA 2012b).

<sup>22</sup> The naturalisation rate is the ratio of the number of naturalisations and the number of foreigners in Germany.

### 3.6.2 National Developments

#### **Information campaigns**

In 2012, by implementing advertising and information campaigns several Federal States campaigned for foreigners who fulfilled the legal requirements to obtain German citizenship to opt for naturalisation. The Department of Interior Affairs and Sport of the Free and Hanseatic City of Hamburg identified 137,000 foreigners in their area of competency who met the residence-related requirements. In 2012, they invited 52,241 of these foreigners to attend a consultation; 12,154 persons had accepted this invitation by the end of the year (Behörde für Inneres und Sport Hamburg 2013). The Minister for Integration of North Rhine-Westphalia Guntram Schneider announced that he would be implementing a similar campaign (derwesten.de 2012).

#### **Facilitating naturalisation at Federal State Level**

Baden-Württemberg facilitated naturalisations in 2012, inter alia, by allowing foreigners from certain countries of origin such as Iraq to keep their current citizenship; by the same token, foreign conscripts who are required to complete their military service before being allowed to surrender their citizenship can become naturalised without having to surrender their current citizenship. Periods of education and study are counted towards the relevant residence period relevant for naturalisation (Ministerium für Integration Baden-Württemberg 2012a). Furthermore, recognised refugees and asylum seekers in Baden-Württemberg are to have easier access to German citizenship (Ministerium für Integration Baden-Württemberg 2012c); these goals were also agreed in the Saarland Coalition Agreement between the CDU and SPD (CDU Saar et al. 2012).

#### **Case law on naturalisation**

In addition to policy rules, case law also has an impact on the implementation of the Citizenship Law (Staatsangehörigkeitsrecht). Lüneburg Higher Administrative Court ruled that refusal of the country the foreigner is currently a national of to allow that person to surrender his or her citizenship because they have not yet reached the age of full legal accountability does not entitle that foreigner to dual citizenship (OVG Lüneburg ruling of 8 February 2012, 13 LC 240/10; ZAR 2012, 125). In another case, Lüneburg Higher Administrative Court ruled that no legal entitlement exists to

a residence permit being granted in order to meet the naturalisation requirements (OVG Lüneburg, ruling of 29 March 2012, 8 LA 25/12; ZAR 2012, 400).

Several supreme court rulings defined the requirements for naturalisation in 2012. The Federal Administrative Court, for instance, ruled that anyone convicted of a criminal offence that exceeds the severity limit of 90 daily rate fines or 3 months' imprisonment precludes naturalisation as the severity limit is deemed to have been greatly surpassed (BVerwG, ruling of 20 March 2012, 5 C 5.11; ZAR 2012, 396). In other proceedings, the Court decided that any previous membership of an anti-constitutional organisation (in this particular case, the Kurdistan Workers' Party PKK) precludes naturalisation unless the foreign can prove that he/she has had a change of heart (BVerwG, ruling of 20 March 2012, 5 C 1.11; ZAR 2012, 393). If facts suggest a naturalised person has not only engaged in anti-constitutional activities but was subsequently convicted of supporting a terrorist organisation prior to naturalisation, naturalisation can be revoked according to a ruling handed down by Stuttgart Administrative Court (VG Stuttgart, ruling of 27 November 2012, 11 K 1038/12).

## 3.7 Managing Migration and Mobility

### 3.7.1 Visa Policy

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

Visa policy in Germany is a central mechanism used to control migration in advance and to monitor access to the Federal Territory. In principle, a distinction is made between a Schengen visa which allows a person to travel within the Schengen area for up to three months but does not allow the holder to work (so-called C visa) and a national visa for long-term stays (so-called D visa). D visas allow travellers to enter the Schengen area and are a prerequisite for subsequent applications being filed for a national residence permit (see Parusel et al. 2012 for general information about visa policy). Within the framework of the visa procedure, entry requirements are checked prior to arrival at the border on the one hand whereas checks relevant for security are carried out on the other. This means the visa procedure is a key tool for implementing migration and security policy.

Contrary to C visas, the issuing of D visas for longer-term stays is based on national law although it has been specified under European law that national visas also entitle the holders to reside briefly in other Schengen countries. In Germany, the issuing of national visas is oriented to the provisions set forth in the Residence Act.

Very little discretionary scope remains within national visa policy regarding the issuing of short-term visas (C visas). Visa policy comes under the remit of the home affairs and judicial policy of the EU where the “communityisation” process is far advanced. EU Regulations specify both the visa procedure and what third-country nationals require a visa and what nationals are allowed to enter the European Union and stay for brief periods without a visa. The Community competence also applies to visa charges, the decision on the documents that need to be submitted with visa applications and the rights visa holders have if visa applications are rejected. One of the most important criteria regarding the examination of visa applications is the willingness of the person applying for a visa to return to their native country once the visa expires.

Germany represents the Schengen partners 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 231 cases within the framework of representation agreements (several Schengen partners are represented in a number of different locations). Vice versa, Germany is represented by the Schengen partners Belgium, France, Italy, the Netherlands, Norway, Portugal and Spain in 26 locations. The representation agreements are included in Annex 28 to the Visa Code Manual.

The Visa Information System (VIS) which was established in October 2011 is used, inter alia, to implement the visa policy. It contains information about visas that have been approved, issued and refused as well as applicants' biometric data. Contrary to the national visa warning file, all applications filed in EU Member States are recorded in the VIS and can be accessed by any Member State at any time (see Section 4.1.3). This enables the authenticity of visas to be checked when persons cross the border. Since October 2011, border officers have been making use of the opportunities offered by the VIS; for instance, the serial number of

the visa of each person crossing the border is matched against the VIS database; standard checks also include matching the fingerprints of travellers with the biometric data stored in the VIS.

### National Developments

The German Embassy implemented several measures in 2012 to facilitate the movement of travellers between Turkey and Germany. Since 3 September 2012, persons wishing to apply for a visa have been able to do so not just at the German Embassy in Ankara but also via the acceptance centres for visa application of the company iDATA in Ankara, Istanbul, Bursa and Gaziantep. There are plans to open further centres in Izmir and Antalya (Deutsche Botschaft Ankara 2012a). This measure supplements the waiver of fees for Schengen visas for children between the age of 6 and 12 which was introduced on 14 December 2011 (Deutsche Botschaft Ankara 2012b).

### Developments in the EU context

Referring to the rise in the number of asylum seekers from the Balkan states, the BMI, together with Belgium, the Netherlands, Luxembourg, France and Sweden spoke in favour of the visa requirements being reintroduced for short-term stays of nationals of Serbia, Macedonia and Montenegro at the meeting of Ministers of Home Affairs and Justice held on 25 October 2012 (Migration Policy Group 2012b). The Federal Foreign Office continued the visa dialogue with a view to liberalising the visa rules for short-term stays regarding the EU's Eastern European neighbouring countries (AA 2012).

### 3.7.2 Schengen Governance

#### Background and General Context

By adopting the Schengen Agreement and the Convention Implementing the Schengen Agreement, the Benelux states, France and the Federal Republic abolished border controls along their common borders. In 1999, the provisions set forth in both Agreements were incorporated into the acquis of the Treaty of Amsterdam. With the Treaty of Amsterdam, the provisions set forth in both Agreements were incorporated into the acquis of the EU and into Community law together with the Schengen Borders Code (Regulation (EC) No. 562/2006). This means that the provisions governing the abolition of border controls along internal borders and the provisions governing the passing of EU exter-

nal borders have become immediate, binding law. In accordance with the provisions set forth in the Schengen Borders Code, it is only permissible to resume controls at internal borders in exceptional cases and for a limited period of time.

### **Developments in the EU context**

#### ***Limited reintroduction of border controls***

The discussion initiated at the European Council summit meeting in June 2011 about the reform of the Schengen system and the possibilities the Member States have of reintroducing them if another Member State is unable to guarantee to meet the agreed level of protection along external borders was concluded in 2012 when a decision was adopted by the EU's Justice and Home Affairs Council (cf. BAMF 2012j: 57). The ruling had been preceded by an initiative of the German and French Ministers of the Interior to leave it up to the Member States to decide if they thought it was appropriate to reintroduce controls along internal borders. Germany and France managed to assert this stance vis-à-vis the European Commission which had insisted on having a say on the reintroduction of border controls. The compromise adopted now says that the European Commission and the European Council can comment on plans but that the decision to reintroduce border controls lies with the relevant Member State (Financial Times Deutschland 2012a).

In addition to reforming the Schengen system, Germany responded to the increase in illegal migration from this route in 2012 by increasing the number of random checks carried out by federal police officers on travellers from Greece which was the result of Greece's failure to adequately protect its external EU border. Between January and August 2012 alone, police officers detected 1,319 persons entering Germany unlawfully via Greece; in 2011, 1,814 persons entered Germany unlawfully on flights from Greece (Deutscher Bundestag 2012j: 5).

Against this backdrop, the Federal Minister of the Interior Friedrich reiterated his demand vis-à-vis Greece that it effectively protects the EU external border with Turkey (Migration Policy Group 2012a).

#### ***Introduction of the SIS II***

The Schengen information system SIS represents a key technical prerequisite for the Schengen system. It is used for conducting automated searches within

the EU. The databases of the SIS which the security authorities of the EU Member States have access to contain information about persons under suspicion, missing persons, persons on whom an alert has been issued as well as on vans under surveillance, bank notes, arms and identity documents that have been stolen. In accordance with the provisions set forth in the Schengen Borders Code, a SIS check is carried out on everyone crossing the border. The further developed SIS II was originally intended to be launched in 2007 but the launch had to be postponed several times owing to technical difficulties. In Germany, the migration of data from the SIS to SIS II was by and large completed in 2012.

### **3.7.3 Border Monitoring**

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

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 stationary border controls by the Federal Police is compensated for by situation-dependent, i.e. non-systematic random controls in areas near the border. Controls of travellers' residence status are also performed by the Federal Police along the federal railway system, on trains and at ports. Border protection includes preventing the illegal entry of foreigners and combating cross-border criminal smuggling activity as well as other areas of criminal activity associated with cross-border crime. Section 22 subsection 1 a of the Federal Border Police Act (Bundespolizeigesetz) (BPolG) stipulates that persons may be stopped and interviewed briefly and may have their ID papers checked in order to obtain information and to enable federal border police to gain experience. As such, these types of checks led to over 16,000 persons being discovered in 2011 who had either entered Germany unlawfully or were residing here illegally. These high figures continued in 2012: The numbers for the third quarter of 2012 exceeded the values of the previous year by a substantial 26.4 % (Deutscher Bundestag 2012h: 1, 6, 8).

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. State-of-the-art document reading and document verification devices are being used in Germany, which facilitate the efficient verification of the authenticity of documents on the basis of optical and digital features. Moreover, a Registered Traveler Programme (RTP), an automated and biometric border surveillance system – AGB) as well as an automated border control (EasyPASS), based on the e-passport, are being tested and operated in Germany. The AGB uses the pattern of the iris as the biometric feature; EasyPASS uses the facial picture stored on the electronic passport (ePASS) and on the identity card. Therefore, no previous registration is needed for EasyPASS. Starting 2014, the automated border control system based on EasyPASS is to be rolled out on a larger scale at 5 major airports in Germany. A total of 90 to 100 control slots will be set up for this procedure. In future, the extended use of biometric methods at border controls will play an increasingly important role, in particular for verifying the identity of document holders (visa control, control of e-passports). It is above all the missions abroad and the Federal Police who are involved in the national implementation of the European Visa Information System (VIS) (Parusel et al. 2012).

### **National Developments**

#### ***Checks carried out on persons irrespective of whether there are indications of illegal border crossings/compensation measures by police forces***

In October 2012 a court ruling clarified how checks carried out on persons irrespective of whether there are indications of illegal border crossings are to be handled. Such checks are conducted to compensate for the abolition of border controls (see Section 2.2). This was prompted by a German national with dark skin being checked by police officers travelling on a train between Kassel and Frankfurt am Main in December 2010. The police officers said they carried out the check because this route was frequently used for illegal entry. Due to the respective legal provisions, the said checks were carried out on a random basis and they also target persons who look like foreigners. In the initial proceedings, Koblenz Administrative Court dismissed the action filed by the person concerned against the control measure (VG Koblenz 5 K 1026/11.KO, ruling of 28 February 2012). However, in the appellate proceedings, Higher Administrative Court Rhineland-Palatinate regarded the check as unlawful because checks

on a person based merely on his or her skin colour is incompatible with the ban on discrimination set forth in the Basic Law (OVG Koblenz 10532/12, ruling of 29 October 2012). The representatives of the Federal Police apologized to the claimant, whereby the procedure was declared as settled by both parties. The Head of the Federal Anti-Discrimination Office welcomed the decision. By contrast, criticism was voiced by the German Police Trade Union (Deutsche Polizeigewerkschaft – DPoIG) which objected that German case did not do justice to police reality (Netzwerk Migration in Europa 2012a).

#### ***Cooperation with third countries in the area of border control***

Cooperation between the Federal Police and border control agencies of EU member states as well as third countries is provided demand-tailored to the needs of agencies responsible for border controls or aviation security in third countries. In the framework of the pre-arrival strategy, cooperation with third countries in the area of border control is a central element of integrated border management at the external EU-borders; besides the deployment of liaison officers as well as document and visa consultants, it entails the tool of capacity building for border police.

When appropriate to the migratory situation, these measures aim at improving cooperation with other border control agencies, which is also the added value for the Federal Police. In effect, these measures serve the purpose to increase the efficiency of the Federal Police's border control measure at external EU borders as well as to more successfully combat illegal migration and human smuggling. Furthermore, border control capacities are strengthened in countries which are relevant for the border related tasks of the Federal Police.

Within the frameworks of Support by Training and Equipment (AAH) and of the Stability Pact for South Eastern Europe (SOE), altogether 89 measures have been conducted in 2012 with a focus on South and East European Countries, the countries of the Arabian peninsula, the Middle East, South-Western and Central Asia as well as Tunisia, the Russian Federation, China and Afghanistan; these measure amounted for a total volume of about €467,000. Support by Equipment is only available in conjunction with training and consulting measures. For 2013, it is intended to continue the programme Support by Training and Equipment.

### 3.7.4 Frontex

#### **Background and General Context** ***The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union***

On the long-term, FRONTEX – while respecting national jurisdictions – is intended to be expanded at European level into a major player for coordinating and managing external EU border. This shall be effected, inter alia, by the amendments to the FRONTEX Regulation (Regulation 1168/2011/EU). In doing so, great importance shall be given to the strict observance of basic and human rights, particularly legal guidelines pertaining to refugees.

#### ***Main changes since the Amendment to Regulation (EC) 2007/2004 (FRONTEX Regulation)***

Against the backdrop of evaluations conducted and practical experience gained, the FRONTEX Regulation has been adapted and expanded by the “Regulation (EU) No 1168/2011 of the European Parliament and of the Council 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 entered into force on 12 December 2012.

The aim of the amendments is to ensure the Agency can work in a clearly defined, adequate way in the next few years by defining its mandate and eliminating any weakpoints discovered. In addition to minor administrative changes, the current regulation also modifies core areas of the Agency’s tasks with some significant implications for the future cooperation of the Federal Police and FRONTEX. Changes affecting cooperation involve in particular:

- Secondment of FRONTEX-own liaison officers to third countries.<sup>23</sup>
- Modifications of the mechanism to second mission staff.

- Leasing and procurement of FRONTEX own command, control and operational equipment and supplies; enhancing the availability of command, control and operational equipment and supplies.
- Risk analysis to evaluate capacities that are available to Member States to cope with threats and burdens.
- Process personal data as warranted by the purpose so that risk analysis can be carried out or forwarded to Europol and other EU law enforcement agencies as well as for return measures.
- Appointing a fundamental rights officer and creating a consulting platform, which support the executive director and the managing.

#### **Developments in the EU context**

In the first three quarters of the year 2012, Germany was involved in seven missions coordinated by FRONTEX with Federal Police officers (Deutscher Bundestag 2012e, Deutscher Bundestag 2012d, Deutscher Bundestag 2012f, Deutscher Bundestag 2013). Two of these missions – Poseidon Land and Poseidon Sea – served to carry out border police measures to protect the EU’s external border between Greece and Turkey. Whereas Poseidon Sea, which four Federal Police officers were involved in over the year, focused on securing the border of the Eastern Mediterranean, between 97 (113 in total for 2012) Federal Police officers were involved in securing the land border between Turkey and Greece within the framework of Operation Poseidon Land. This mission will place the initial secondment of the Rapid Border Intervention Team (RABIT), with which the EU Member States assisted the Greek border protection measures at the turn of the year 2010/2011 in Evros, on a long-term footing (FRONTEX 2012b). In addition to focusing on Greece, 27 (49 in total for 2012) Federal Police officers took part in Joint Operation Focal Points 2012 at land, sea and air borders. By the same token, 9 Federal Police officers took part in Operation Eurocup 2012 in a bid to respond to the increased number of fans travelling between Poland and Ukraine which hosted the European Cup (Deutscher Bundestag 2012d). Over 100 police officers from 23 EU Member States were deployed at the European Cup. Whereas the officers deployed in Poland were entrusted with the same executive powers as Polish Border Police officers, the border police officers deployed in Ukraine (without participation of the Federal

23 Frontex will now be able to second its own liaison officers to third countries within the framework of cooperation with third countries. As such, the secondment will take place within the foreign policy framework of EU neighbourhood policy and will be limited to countries which perform border police tasks and meet minimum human rights standards.

Police) merely performed advisory tasks (FRONTEX 2012a). Furthermore, the Federal Police deployed one officer to support the Polish Border Guard within the Joint Operation Jupiter and one officer to support Italian border control agencies within the Joint Operation AENEAS. In addition to participating in joint FRONTEX operations, 8 officers of the German Federal Police took part in the Flexiforce pilot project (Deutscher Bundestag 2012f).

In addition to FRONTEX operations, Germany provided bilateral support to Greece in 2012 when officers of the Federal Police were deployed at the airports of Thessaloniki and Athens and at the sea ports of Igoumenitsa and Patras. They also provided assistance to Italy at the sea port of Ancona (Deutscher Bundestag 2012e, Deutscher Bundestag 2012d, Deutscher Bundestag 2012f, Deutscher Bundestag 2013).

# 4 Irregular Migration and Return

## 4.1 Irregular migration

### 4.1.1 Background and General Context<sup>24</sup>

Illegal migration movements in Germany are managed with preventive measures and measures to control migration, such as in the visa process and securing of external borders, measures promoting returns/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 (Schneider 2012c).

Illegal entry and unlawful residence are crimes punishable by fine or imprisonment. 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 several 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 to be a criminal act (Section 97 of the Residence Act) punishable by a minimum sentence of one year for smuggling via a criminal organisation and of no 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).

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 manage migration and prevent illegal migration, see Section 3.7). Additionally there are control mechanisms that are effected via data exchange, workplace inspections, close cooperation between authorities and mandatory reporting by public positions. Illegal migration is not only combated with reactive, but also preventive measures, for instance, during the visa process. This serves, inter alia, to prevent illegal migration (Deutscher Bundestag 2010; Parusel et al. 2012). 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.

Special significance is given at 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 integrated use of all legal avenues (including the Federal Police, BAMF, the financial control section of the Federal Customs Administration (FKS), the Federal Criminal Police Office (BKA) (Deutscher Bundestag 2011c). 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 and 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.

<sup>24</sup> A detailed outline of measures undertaken by Germany to prevent irregular migration can be found in Schneider 2012c and EMN/BAMNF 2012: 45ff.



### 4.1.2 National Developments

#### ***Illegal entry and residence***

There has been a steady increase in recorded crime involving irregular migration since 2011. The number of non-German suspects involving illegal entry rose from 22,075 persons in 2010 to 24,181 persons in 2011; corresponding to an increase of 9.5 % year-on-year.<sup>25</sup> A further, slight increase by 8.9 % to 26,332 persons was recorded in 2012. The most important countries of origin in relation to suspects in 2012 were Afghanistan with 2,897 persons (2011: 3,037, -4.6 %), Turkey with 1,649 suspects (2011: 1,607, +2.6 %), Serbia with 1,446 persons (2011: 1,168, +23.8 %), Russia with 1,340 persons (2011: 1,109, +20.8 %), and Iraq with 1,183 suspects (2011: 1,761, -32.8 %). There has been an even larger increase in the recorded offence of unlawful residence; in 2012 42,253 cases of suspected unlawful residence of non-German nationals were recorded corresponding to an increase of 18.2 % compared to 2011 (35,725 non-German suspects). The higher numbers of unlawful residence can probably be attributed to the abolition of checks carried out along EU internal borders. In 2012, the most important countries of origin in relation to suspects were Turkey with 4,000 suspects (2011: 4,566, -12.4 %), Afghanistan with 3,238 persons (2011: 2,935, +10.3 %), Serbia with 3,001 persons (2011: 2,090, +43.6 %), Kosovo with 1,987 persons (2011: 1,042, +90.7 %), and Iran with 1,832 suspects (2011: 1,297, +41.3 %).

#### ***Asylum seekers who go underground***

Out of the 47,297 decisions to allocate asylum applicants to competent initial reception centres, 2,689 persons failed to comply with the decision and went underground after filing their application for asylum (Lautscham 2012).

25 The numbers are based on the Police Statistics on Criminal Offences (PKS) compiled by the Federal Criminal Police Office (BKA). These statistics distinguish between suspects who are illegally residing in the Federal Territory but are recorded under a different offence, and suspects who are recorded under the offences “illegal entry” and “illegal stay”. This report refers to the offences “illegal entry” and “illegal stay”. Therefore the presented figures differ from those in the Federal Government’s Migration Report 2011 (BMI/BAMF 2013).

### 4.1.3 Developments in the EU context

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 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) (for more details information on VIS, please refer to BAMF/EMN 2012: 49; Parusel et al. 2012: 78f.).

In the first area of application, North Africa, the VIS was launched on 11 October 2011. On 10 May 2012, it was rolled out in the second region “Middle East” and on 2 October 2012 in the third region “Gulf region”. The VIS serves to enhance the implementation of the common visa policy, consular cooperation and consultation between the central visa authorities. It facilitates the exchange of data between the Schengen states in relation to visa applications and the pertinent decisions.

Among other things, it should assist in simplifying the visa application process, and prevent the possibility of “visa shopping”. It also contributes to preventing risks to the internal security of the Member States. In addition to the applicant’s data, the intended travel destination and biometric data (fingerprints and facial photograph) are recorded in the VIS. In principle, this data is collected and processed for each visa application for a short-term stay regardless of the outcome of the visa procedure.

This data is retrieved to verify the visa holder’s identity as part of the checks carried out on persons crossing the border.

## 4.2 Return

### 4.2.1 Background and General Context

Return policy is an effective and approved tool of migration management. It encompasses fundamental questions of voluntary return, assistance for returnees, reintegration, forced returns and the readmission by their countries of origin of people obligated to leave the German territory.

In the area of voluntary return, Germany launched the Government-*Länder*-Programme REAG/GARP “Re-integration and Emigration Programme for Asylum-Seekers in Germany”/“Government Assisted Repatriation Programme”. Besides providing funding for travel, the programme offers travel and start-up assistance for the reintegration. 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. Nationals of Macedonia, Montenegro, Serbia or Bosnia-Herzegovina did not receive any start-up aid or additional travel assistance if they had entered Germany after the date on which the respective visa requirement was abolished (for Macedonia, Montenegro, Serbia: 19 December 2009; for Bosnia-Herzegovina: 15 December 2010). The Federal States are mainly responsible for (forceful) measures to enforce the obligation to leave the country. Besides, the Federal Police is pursuant to Section 71 subsection 3 No 1 d of the Residence Act responsible for the return of foreigners. The readmission agreements, which have been concluded by the Federal Republic with some countries of origin, are binding documents of international law; they lay down administrative provisions. Such agreements concretise the obligation by international common law to readmit ones nationals.

Furthermore, the agreements concluded within the last years usually entail provisions relating to readmission and transit of persons who are not nationals of the contracting parties (third-country nationals and stateless persons). Thus, these agreements are in line with current EU-standards.

In addition, also the EU is more and more concluding readmission agreements with countries of origin on behalf of its member states.<sup>26</sup>

In addition, there are a large number of projects being implemented in support of the reintegration of returnees with a specific focus (see BAMF/EMN 2012: 50).

## 4.2.2 National Developments

### ***Establishing the identity of deportees***

Sigmaringen Administrative Court ruled that a lack of transparency in establishing people’s identity by bringing in representatives of the suspected country of origin does not constitute a violation of fundamental rights. However, if the foreigner in question voices justified doubts about the procedure or about the outcome of the process to establish his or her identity, the competent authorities must ask the representatives of the suspected country of origin to explain what methods they used to establish the foreigner’s identity (VG Sigmaringen, ruling of 6 June 2012, 6 K 625/12, ZAR 2012, 348; see BAMF 2011a for more information about establishing the identity of deportees).

### ***Deportations to Syria suspended***

In 2001, the Federal States suspended deportations to Syria owing to the humanitarian situation, thereby following a recommendation issued by the Federal Ministry of the Interior. In May 2012, this measure was extended by the IMK until 31 March 2013 (Entscheidungsbrief 2012b).

### ***Deportations subject to time periods***

Following two decisions handed down by the Federal Administrative Court (BVerwG 1 C 7.11, ruling of 14 February 2012 and BVerwG 1 C 19.11, ruling of 10 July 2012), the Returns Directive 2008/115/EC indicates that deportations must be carried out within certain time periods. If the competent foreigners authorities have already issued an unlimited deportation order, they are obliged to limit it retroactively.

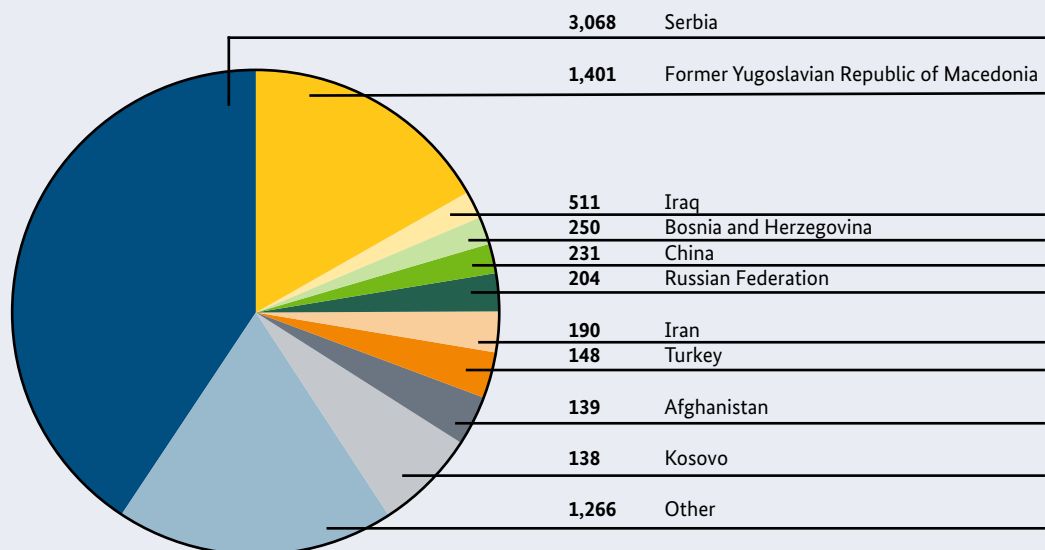
### ***Promoting returns REAG/GARP***

In 2012, a total of 7,546 grants were approved to facilitate voluntary returns via the REAG/GARP programme; 5,506 of these for asylum seekers whose applications had been rejected. This represents an increase of around 18 % compared to 2011 (in 2010, 6,417 grants were funded). Figure 3 shows that the majority of funds were granted to Serbian nationals (in absolute terms: 3,068, i.e. 40.7 % of all grants) and to nationals of the Former Yugoslavian Republic of Macedonia (1,401, 18.6 %).<sup>27</sup> Other important groups among returnees

26 A list of all return agreements has been published on the Federal Ministry of the Interior’s website: [http://www.bmi.bund.de/DE/Themen/Migration-Integration/Auslaenderrecht/Rueckkehr/rueckkehr\\_node.html](http://www.bmi.bund.de/DE/Themen/Migration-Integration/Auslaenderrecht/Rueckkehr/rueckkehr_node.html).

27 However, nationals of these countries who entered the Federal Republic after 19 December 2009 were only eligible to receive transport costs or fuel costs amounting to €205.

Figure 3: Funding Grants in 2012 for the REAG/GARP Program



Source: BAMF

were nationals from Iraq (511; 6.8 %), Bosnia-Herzegovina (250; 3.3 %), China (231; 3.1 %) and the Russian Federation (204; 2.7 %).

#### 4.2.3 Developments in the EU context

Germany regularly participates in return flights within the framework of cooperation with other EU countries. On the one hand, flights organised by other countries are used to deport foreigners who are obliged to leave the country. On the other hand, Germany gives other Member States the option of participating in flights under German management within the framework of capacities available. It is the respective national agencies who are responsible for organising and implementing common returns. As such, FRONTEX is responsible for checking that the terms for coordinated return endeavours are adhered to. It also finances common flights. In 2012, Germany organised several common flights and participated in flights that had been organised, inter alia, by Austria, Italy and Spain (source: GASiM/BPol).

# 5 International Protection and Asylum

## 5.1 National Asylum System

### 5.1.1 Background and General Context

Residence on humanitarian or political grounds, or for reasons of international law, is quantitatively among the most significant purposes of residence in Germany. The requirements for admitting foreigners being persecuted on political grounds as well as others seeking protection are outlined in Article 16a of the Basic Law, Sections 22 to 25 and 60 of the Residence Act and the Asylum Procedure Act. The BAMF decides whether or not to grant asylum applications. During the asylum procedure, the asylum seeker receives a preliminary entitlement to remain in the country in order to process the application for asylum. (Schneider 2012b). As long as the asylum seeker is obliged to continue living in the reception facility, the Federal Office is responsible for issuing the residence permit (Section 63 subsection 3 of the Asylum Procedure Act). After this period, the foreigners authority of the district where the asylum applicant is obligated to take residence is responsible for issuing the entitlement to remain in the country (Section 63 subsection 3 of the Asylum Procedure Act).

Despite the European harmonisation in the area of asylum, a series of forms of guaranteeing protection continues to exist in the Federal Republic (humanitarian reception campaigns, temporary suspension of deportations of persons obliged to leave the Federal Republic, temporary residence), that are issued based on national legal basis alone. These do not conflict with the European protection system, but rather supplement it (Parusel 2012).

Since 1953 more than 3.4 million people have submitted an asylum application in Germany, of those more than 2.3 million since 1990. The highest number of applications were filed in 1992 (438,191). Since then, there has been a sharp decline in the number of applications filed for asylum. After the all-time low of 19,164 initial applications in 2007, there has since been a renewed increase in entry figures. A total of 64,539 initial applications were submitted in 2012. This represents an increase of 41.1% compared to the previous year (45,741) (BAMF 2012b: 2.11).

Since 2005, the acceptance of asylum seekers and those seeking protection has been strongly influenced by EU Regulations and the implementation of EU Directives 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 towards creating a common European asylum system.

## 5.1.2 National Developments

### Development of Asylum Application Figures

Table 1: Initial asylum applications filed in 2011 and 2012, main countries of origin, rounded figures

	2012	2011	Change %	Change in absolute terms
<b>Total</b>	64,540	45,740	41.1%	18,800
<b>Serbia</b>	8,475	4,580	85.0%	3,895
<b>Afghanistan</b>	7,500	7,765	-3.4%	-265
<b>Syria</b>	6,200	2,635	135.3%	3,565
<b>Iraq</b>	5,350	5,830	-8.2%	-480
<b>Macedonia</b>	4,545	1,130	302.2%	3,415
<b>Iran</b>	4,350	3,350	29.9%	1,000
<b>Pakistan</b>	3,410	2,540	34.3%	870
<b>Russia</b>	3,200	1,690	89.3%	1,510
<b>Bosnia and Herzegovina</b>	2,025	305	563.9%	1,720
<b>Kosovo</b>	1,905	1,395	36.6%	510

\*The order is based on the ten most important countries of origin in 2012 in terms of numbers. Source: Eurostat\*

In 2012, 64,540 applications for asylum were filed, 18,800 more than in 2011 (+41.1 %). The number of asylum seekers hence rose for the fifth year in succession. As Tabelle 1 shows, the increase in numbers was identified above all in the main countries of origin Serbia (increase of 85 % compared to 2011), Macedonia (+302.2 %), Syria (+135.5 %) and Russia (+89.3 %). Asylum seekers from Bosnia accounted for the highest increase at 563.9 %. The number of applications for asylum by Afghan nationals remained more or less unchanged (-3.4 %), the same applies to Iraqi nationals (-8.2 %).

The main countries of origin in terms of asylum seekers in 2011 were Serbia (8,475), Afghanistan (7,500), Syria (6,200), Iraq (5,350), Macedonia (4,545), Iran (4,350), Pakistan (3,410), Russian Federation (3,200), Bosnia and Herzegovina (2,025), and Kosovo (1,905).

In terms of the recognition rate, the overall rate of applications granted rose slightly year-on-year. Although the number of applications granted fell from 36.4 % in 2009 to 24.0 % in 2011, it increased slightly to 29.2 %

in 2012.<sup>28</sup> Increases were also recorded in absolute figures compared to 2011: In 2012, 8,765 persons were recognised as having the right of asylum under Article 16a of the Basic Act or as refugees under the Geneva Convention (2011: 7,100). By contrast, the number of persons granted subsidiary protection or humanitarian protection more than trebled; 8,375 persons were granted subsidiary protection or humanitarian protection in 2012 (2011: 2,575).<sup>29</sup> The overall protection rate was therefore slightly higher than in the two previous years but still lower than in 2008 and 2009. The decline in the rate of protection compared to these years can be explained by the high number of decisions taken on

<sup>28</sup> The statistics on protection granted were taken from the Eurostat database in order to safeguard EU-wide comparability.

<sup>29</sup> National law defines subsidiary protection more liberally than the Qualification Directive. The information provided here is based on the Qualification Directive. The difference between subsidiary protection under European law and subsidiary protection under German law is recorded in Eurostat as the granting protection on humanitarian grounds (cf. BAMF 2012e: 27).

the countries of main origin Serbia and Macedonia, in which the protection rate was less than 1 %.

Regarding the most important countries of origin, in 2011 asylum seekers from Syria showed the highest protection rate (96.3 %), followed by Iraq (62.2 %) and Iran (56.6 %). Many of the nationals from the countries of origin Iran and Iraq were granted refugee status under the Geneva Convention on Refugees whereas subsidiary protection played just a minor role. Owing to the escalating civil war in Syria, the BAMF has been suspending rejections of asylum applications filed by Syrian nationals since 2012 and generally grants subsidiary protection to persons who were not politically active in the country of origin (Henning 2012). Out of the 7,755 initial decisions taken on nationals of Syria, 1,985 persons were recognised as having the right of asylum or as refugees under the Geneva Convention whereas 5,480 persons were granted humanitarian protection or subsidiary protection.

### **Changes at the Federal Office**

In July 2012, the branch of the Federal Office in Friedland was upgraded to become an independent field office. Since the former field office in Oldenburg was restructured at the same time to become a branch of Friedland, nothing has changed regarding the overall number of field offices. The new field office is responsible for asylum-related matters only whereas the branch in Oldenburg continues to be responsible for integration measures in the western part of Lower Saxony. The processing of appeals for Lower Saxony has also been pooled here (Entscheiderbrief 2012a).

### **Decision-making**

Owing to the high number of asylum applications filed by nationals of the Balkan states and to the recognition rate of less than one percent, the BAMF processes these applications with priority in order to minimize the admission and accommodation costs for local authorities on the one hand and to ensure there is enough capacity available to process asylum applications filed by other persons in need on the other hand (Gräfin Praschma 2012).

On 4 September 2012, the BVerwG decided on the consequences for determining a person's status in relation to the Geneva Convention on Refugees if this person has been safe from persecution in another third country. According to the subsidiarity principle

of the Geneva Convention and pursuant to Section 27 AsylVfG, granting refugee status was excluded if the applicant has already found protection in another third country, is still able to rely on this protection and is able to return to this country. According to the BVerwG, this legal practice conflicts with the provisions of EU-directives. Pursuant to Art. 12 Para. 1 of the Qualification Directive (Directive 2011/95/EU), subsidiarity of refugee protection only relates to cases of protection or assistance by one of the UN's institutions or organisations, or if the respective person enjoyed similar or the same rights as one of the third country's nationals.

EU law pursues a procedural approach. According to Art. 25 Para. 2 b) of the Procedures Directive (Directive 2005/85/EG), member states may regard applications for asylum as unfounded if a state which is not an EU member state, is to be regarded as the first state of asylum pursuant to Art. 26 of the Procedures Directive. This holds, if the respective state provides a sufficient degree of protection and adheres to the principle of non-refoulement and if the applicant will be readmitted by this country. In Germany, these provisions are implemented by Section 29 subsection 1 AsylVfG, according to which, an application for asylum is void if it is obvious that the foreigner was safe from prosecution in a third country and returning him to this country is possible. According to the BVerwG, subsidiarity of refugee protection can only be considered in such a procedural understanding. If the BAMF does not make use of these provisions and decides according to the substance of the application, other possibilities for protection cannot be considered.

The courts also clarified security-based exclusion criteria. Hamburg Higher Administrative Court, for instance, ruled that a prison sentence of up to three years at least does not represent grounds for exclusion for recognition as having the right of asylum or as a refugee within the meaning of the Geneva Convention if the overall sentence has been given for multiple crimes that are punishable by less than three years for each individual offence. If individual offences can be prosecuted separately because they were committed at different times and are not associated with each other under the rules of the Code of Criminal Procedure (Strafprozessordnung), these offences do not automatically result in the exclusion of refugee status (OVG Hamburg 13 LB 50/09, ruling of 8 February 2012).

Furthermore, a ruling handed down by the European Court of Justice in September 2012 led to changes in German asylum procedure practise in conjunction with persecution by means of restricting religious freedom. The BVerwG requested clarification within a preliminary ruling by the European Court of Justice (ECJ) if and under what conditions sanctions against asylum applicants who left their country of origin without being persecuted for eventually practising their religion in public would result in granting refugee status. In order to precisely establish, which measures qualify as persecution in accordance with Art. 9 Para. 1 a) of the Qualification Directive, it is according to the ECJ not appropriate to distinguish between measures that should intervene into a “core area” (“forum internum”) of practising one’s religion and measures which do not interfere with such a “core area”. Violating the freedom of religious exercise could also qualify as persecution, if the asylum seeker, due to exercising this freedom, might be factual endangered of being persecuted or subjected to inhuman or degrading treatment or punishment by an actor, who is a potential persecutor. As soon as it becomes certain, that the applicant will practise his religion upon return to his country of origin, so that he becomes endangered of persecution, the applicant has to receive the refugee status. When processing an application for asylum, national authorities cannot request the applicant to refrain from practising or expressing his faith in order to avoid persecution (ECJ C-71/11, ruling of 5 September 2012).

As the importance of practising one’s religion for an individual’s personality is in principle comparable to the identity shaping nature of one’s sexual identity, this decision has also consequences within the asylum procedure for recognising threats of persecution due to homosexuality or sexual identity. As a consequence, the BAMF has adjusted its decision practice accordingly.

### **Benefits for asylum seekers**

The political debate in 2012 also focused on the amount of benefits asylum seekers are eligible for (see also Section 2.2). In Germany, they are defined in Section 3 of the Asylum Seekers Benefits Act (AsylbLG). The benefits for asylum seekers have not been adjusted since the AsylbLG was adopted in 1993. The benefits for asylum seekers can be granted as benefits-in-kind or paid out as monetary benefits; it falls within the competency of the Federal States to decide what benefits to grant. On 18 July 2012, the BVerfG ruled that the

benefits granted under Section 3 AsylbLG are evidently insufficient. The Court explained its ruling by saying that pursuant to Article 1 paragraph 1 of the Basic Law, both German nationals and foreign nationals are entitled to a minimum subsistence level that honours their human dignity. This includes both the “physical existence of the person as well as ensuring everyone can maintain relationships with others and can participate in social, cultural and political life to a minimum extent”. The definition of a decent life is not based on the conditions prevailing in the refugees’ countries of origin but on conditions in Germany (BVerfG 1 BvL 10/10, ruling of 18 July 2012). This means the legislator is obliged to recalculate transparent, comprehensible and reality-based benefits for asylum seekers immediately. As a transitional measure, the benefits for asylum seekers were retroactively adjusted on 1 January 2011 to the level of benefits under the Social Code SGB II (adjusted for funds for household effects). Adult asylum seekers living alone now receive €330 per month instead of €224; young people receive €260 instead of €200 (DPA 2012). On 23 November 2012, the Bundesrat decided to abolish the Asylum Seeker Benefits Act and to incorporate the relevant groups of persons into the existing benefits systems under SGB II and XII. The Bundesrat explained its decision by saying that the length of time it takes to complete the asylum procedure does not mean it can be assumed foreigners will be staying for a short time only but that notwithstanding this it must be ensured at all times that the minimum subsistence level is met (Bundesrat 2012a, Bundesrat 2012b). At the end of November 2012, the Federal Government presented a bill on the reform of the Asylum Seeker Benefits Act that envisaged raising the benefits to the level of Hartz IV benefits, saying they could also be paid as benefits-in-kind. The Federal Government has also decided not to grant social welfare to asylum seekers until they have been residing in the Federal Republic for at least two years (Netzwerk Migration in Europa 2012c: 1).

### **Developments in the Federal States**

In the course of protest campaigns organised by the “Refugee Tent Action” group in 2012 that were directed, inter alia, against the residency requirement in Germany, the state governments of Baden-Württemberg and Hesse issued ordinances according asylum seekers’ freedom of movement within the federal state (see Section 2.2). In doing so, these two Federal States followed the example set by Saxony, Thuringia, Bavaria, Berlin, Brandenburg and Rhineland-Palatinate

which have relaxed the residency requirement in the previous years. Based on the experience gained by these Federal States, it is not to be expected that there will be an increase in the number of asylum seekers going underground, committing criminal offences or asylum procedures being delayed despite relaxation of the residence obligation because it is not possible to reach asylum seekers; rather, the abolition of the residency requirement has reduced red tape and pressed ahead with integration. However, the relaxation in the residency requirement does not apply to asylum seekers who have seriously breached their obligation to cooperate in asylum procedures, who have committed a criminal offence or are suspected of committing a criminal offence. Moreover, they are only permitted to travel to other Federal States if special permits are issued (Netzwerk Migration in Europa 2012b: 3, Netzwerk Migration in Europa 2012c: 2).

### 5.1.3 Developments in the EU context

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

Although some improvements have been made to the Greek asylum system, the BMI confirmed in December 2012 that there is further need for reforms in Greece. Federal Minister of the Interior Dr. Friedrich therefore decided to suspend transfers of asylum-seekers to Greece until 12 January 2014 as part of the Dublin Procedure. According to the BMI, this decision is not calling the Dublin II Regulation in general into question. Rather, the Dublin procedure guarantees that each individual application for asylum will be examined (BMI 2012c). The BAMF has suspended all transfers of asylum seekers to Greece since 13 January 2011.

#### ***Transfers to other EU Member States***

In principle, transfers to other Member States are being carried out without any restrictions. Malta forms an exception; vulnerable persons are not being transferred to Malta at present.

## 5.2 Common European Asylum System

### 5.2.1 Background and General Context

The European Union is aiming to develop a Common European Asylum System in two steps. Based on the Treaty of Amsterdam and the decisions of the European Council in Tampere in 1999, binding minimum standards were issued with the Directive on Admission

(2004/83/EC) and Council Directive (2005/85/EC) on minimum standards on procedures in Member States for granting and withdrawing refugee status that were aimed at harmonising the legal situation in the individual Member States. Furthermore, asylum competencies have been regulated with the Dublin II Regulation (2003/343/EC). Whereas the Dublin II Regulation directly applies in the Member States, periods of up to three years have been granted for transposition of the Directives into statutory regulations and administrative provisions.

In December 2009, the European Council adopted the Stockholm Programme for the years 2010-2014 and highlighted the political goal in the asylum area of creating a common asylum procedure and a uniform status for persons who are granted asylum or subsidiary protection on the basis of an evaluation of the existing legal instruments. Article 78 of the Treaty of Lisbon currently provides the legal framework for further-reaching harmonisation in asylum policy. In December 2011, the European Parliament and Council adopted the amended Qualifications Directive (2011/95/EC).

After they were transposed in Germany, some of the content of these tools were discussed in the Bundesrat and in the German Bundestag in 2012 and were specified by the rulings handed down by the Federal Constitutional Court (BVerfG), the Federal Administrative Court (BVerwG) and the Higher Administrative Court (OVG).

### 5.2.2 National Developments

The parliamentary group of The Greens filed a motion in January to regulate the transfers of asylum seekers with a view to enhancing legal protection in asylum procedures (Bt-Drs. 17/8460). The European Court of Human Rights (ECHR) had ruled in a policy decision handed down on 21 January 2011 that Sections 3 and 13 of the European Convention on Human Rights are being breached if there is no possibility of filing an effective appeal in another Member State prior to the asylum seeker's transfer (M.S.S. against Belgium and Greece, appeal no. 30696.09). The ECJ ruled that a transfer to the competent country is unlawful if persons seeking protection are at risk of inhumane or denigrating treatment owing systemic deficiencies in the asylum procedure (ECJ C-411/10, ruling of 21 December 2011). The German provisions, which, accord-



ing to the parliamentary group of The Greens rule out the suspensive effect of legal remedy against transfers under the Dublin II Regulation, are therefore incompatible with the European Convention on Human Rights. The Federal Government rejected the motion, stating that the ECJ and ECHR had not referred to German legal practise in their rulings and that there were sufficient grounds for exemption in Germany from the Dublin Regulation (Deutscher Bundestag 2012o).<sup>30</sup>

## 5.3 European Asylum Support Office

### 5.3.1 Background and General Context

The European Asylum Support Office (EASO) is an agency of the European Union that has its registered office in Malta and is intended to help the EU Member States to enhance practical cooperation on asylum matters. In addition to providing assistance in the operational area, EASO coordinates multilateral components of the intra-European relocation programme with which EU countries admit refugees from the Member States which receive a particularly large number of asylum seekers (see BAMF/EMN 2012: 65).

### 5.3.2 Developments in the EU context

In 2012, the European Asylum Support Office (EASO) focused on the following tasks:

- Implementing the Action Plan for Greece,
- Migration of projects to the EASO (in particular further developing the European Training Programme in the area of asylum (EAC)),
- Further development of the EASO organisation on Malta,
- Expansion of country-of-origin information and quality initiatives.

Asylum support teams (ASTs) were seconded to Greece to help implement the Action Plan in a bid to enhance the effectiveness and efficiency of the asylum and admission procedure. Greece was provided with support

above all in initial proceedings, the European Training Programme in the area of asylum, administrative support for the new asylum service and with the systems of the initial admission centres (European Asylum Support Office 2012: 5 and 15).

### 5.3.3 National Developments

Germany provides experts for various ASTs and seconded two employees of the BAMF to Greece in 2012 for two missions aimed at helping to establish an adequate asylum procedure. The work focused on training measures about interview techniques and drawing up a training manual on leadership qualities. Furthermore, employees of the BAMF also participated in the activities of the European Asylum Curriculum (EAC) within the framework of EASO. In a total of 12 missions, they acted as instructors for international colleagues or cooperated in further developing and developing the EAC training module. In addition, employees of the BAMF took part in conferences and expert workshops organised by EASO in 2012 (see Anhang).

## 5.4 Cooperation with third countries including Resettlement

### 5.4.1 Background and General Context

On 9 December 2011, the Permanent Conference of the Ministers and Senators of the Interior of the Federal States (IMK) advocated that the Federal Republic of Germany participate permanently in the admission and resettlement of refugees from third countries in particular need of protection in the interest of further developing refugee protection. Resettlement is implemented in cooperation with the UNHCR with funding provided by the EU Commission. The relevant admission ordinances are issued by the Federal Ministry of the Interior in coordination with the Federal States.

### 5.4.2 National Developments

Germany will be admitting 300 refugees each year for the programme period 2012 to 2014. The Federal Government will receive support from the UNHCR and the European Commission. In April 2012, the Federal Ministry of the Interior issued instructions to admit up to 200 persons who had fled the violence in Libya in 2011 and had found shelter in the Shousha refugee

<sup>30</sup> For further information on exemptions from the Dublin Regulation, please see Section 5.1.3.

camp on the Tunisian-Libyan border. 202 persons from this refugee camp were admitted in September 2012. Owing to the positive experience gained with the admission of over 2,501 Iraqi nationals in 2009/2010 who had fled Syria and Jordan and as a token of solidarity with the Turkish government, the Federal Ministry of the Interior decided to admit another 100 Iraqi refugees from Turkey in 2012 (BMI 2012a, BMI 2012b). 105 Iraqi refugees arrived in Germany from Turkey in October 2012. In addition to participating in resettlement, Germany agreed to admit a further 5,000 Syrian refugees over the course of 2013 (DPA 2013).

# 6 Unaccompanied Minors and other Vulnerable Groups

## 6.1 Unaccompanied Minors

### 6.1.1 Background and General Context

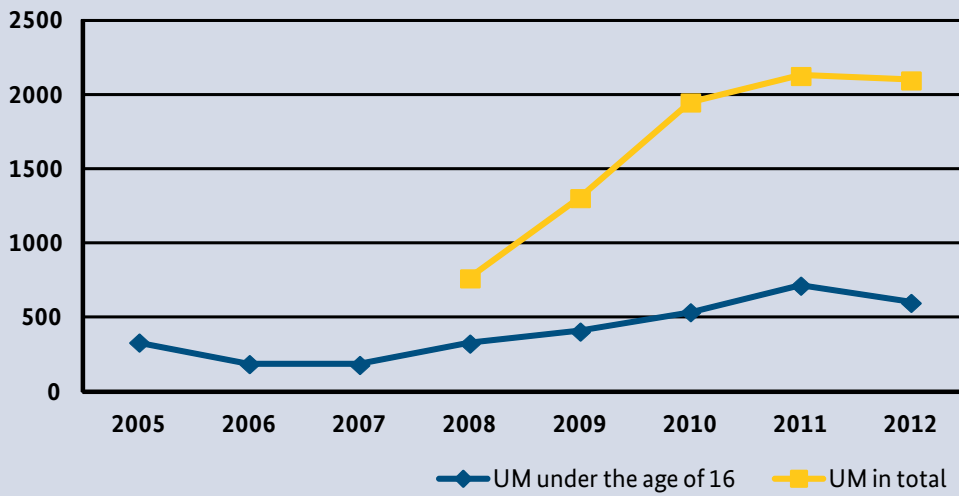
Unaccompanied minors (UMs) come to Germany fleeing acts of war, human rights violations or economic distress and seeking protection/better living conditions. Some lose their family members, others are separated from their parents while fleeing, still others are sent to Europe by their parents. The number 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. 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 German totalled 2,126 persons. From 2011 to 2012, the number of first-time applicants dropped slightly to 2,096; corresponding to a decline of around 2.4 % (see Figure 4). The five top countries of origin for 2012 were Afghanistan (1,003 UM, -8.2 % year-on-year), Iraq (152, -23.6 %), Somalia (127, +13.4 %), Syria (134, +58.3 %) and Pakistan (111, +105.6 %).<sup>31</sup>

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 41 % on 2012 compared to 40 % in 2011. Compared to the years 2009 (49 %) and 2010 (35 %), the total protection rate shows slight fluctuations. Figure 5 shows that the total protection rates for both UMs under 16 and all UMs have developed similarly.

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. Once taken into care, the “clearing procedure” plays an important role. This procedure serves, for instance, to determine the individual need for youth welfare measures and examines whether 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 to address the needs of minors with particular sensitivity (Parusel 2009, Parusel 2010).

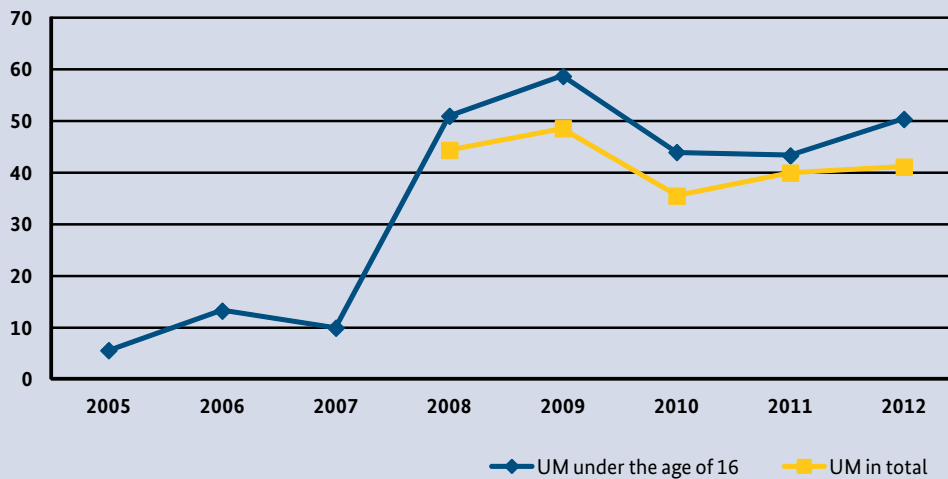
31 Source: BAMF.

Figure 4: Unaccompanied minors, number of persons filing their first application for asylum\*



\* Unaccompanied minors aged 16 to 17 were not included in the statistics up to and including 2007

Figure 5: Overall protection rate in percent



### 6.1.2 National Developments

#### ***Improving methods use to estimate a person's age***

One key aspect of granting protection to unaccompanied minors is determining their age. In order to be able to assess the validity of the systems used on the one hand and to raise the reliability of age estimates, a project is to be implemented at Wilhelms University

Münster between 2012 and 2015 that is co-financed by the European Refugee Fund EFF on the evaluation and, if applicable, further development of methods used to establish a person's age. In addition, guardians for unaccompanied minors are to be recruited and trained in the "do it" project that is co-financed by the EFF.

### **Transposition of Council Directive 2008/115/EC**

Germany transposed the Returns Directive (Directive 2008/115/EC) into national law by creating Section 58 subsection 1a of the Residence Act. Since then, public authorities are obliged to obtain certainty before deporting an unaccompanied minor that he or she has at least one family member, person entitled to custody or a relevant admission facility in the country of destination. This means the legal situation has been adapted to desist from the former practise of deporting unaccompanied minors who were left to care for themselves in the country of destination (Britting-Reimer 2012).

## **6.2 Other Vulnerable Groups**

### **6.2.1 Background and General Context**

During the asylum procedure, applicants regularly present health problems. The BAMF checks in these instances if protection can be granted due to imminent danger in the country of destination, particularly the risk of a serious decline in health. Determination of such a deportation ban is however subordinate to protection by asylum, recognising refugee status or subsidiary protection.

BAMF employees themselves are not trained to diagnose illness, as they lack the necessary medical/psychological expertise. They are however trained in treating vulnerable groups in order to recognise indications for illnesses. If the question whether an applicant is fit to participate in the asylum procedure or the substantial decision depends on whether the applicant suffers from such illness, it might be necessary to commission a medical examination.

### **6.2.2 National Developments**

In order to do justice to the specific situation of refugees, new psychotherapy treatment methods are being developed for refugees and survivors of systematic violence since 2012 that are financed with EFF funds.

# 7 Actions against Trafficking in Human Beings

## 7.1 Background and General Context

The German Criminal Code (Strafgesetzbuch - StGB) defines the following offences in the area of trafficking in humans: Human trafficking for the purposes of sexual exploitation (Section 232 StGB) and human trafficking for the purposes of labour exploitation (Section 233 StGB). They are considered to be different criminal acts that have different law enforcement approaches (e. g. establishing suspicion and line of evidence).

Pursuant to Section 25 subsection 4a of the Residence Act, a foreigner who has been the victim of trafficking for sexual exploitation, labour exploitation or promoting human trafficking may be granted a residence permit 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 with the accused and has declared his/her willingness to testify as a witness in the criminal proceedings. This also applies to foreigners obliged to leave the country. These provisions implement the “EU Victim Protection Directive” of 29 April 2004. The regulation serves to combat human trafficking; issuing a residence permit to victims is intended to facilitate the prosecution of human traffickers and to create an incentive for victims to cooperation with law enforcement authorities and the courts (Parusel 2012: 23). On the reference date 31 December 2012, 54 persons were residing in Germany with a residence permit issued under Section 25 subsection 4a of the Residence Act in accordance with the EU Victim Protection Directive.<sup>32</sup>

In order to better coordinate the prevention of trafficking in women in particular, a “Working Group of the Federal Government and Federal States on the Prevention of Trafficking in Women” was set up in Germany. The working group submitted a proposal in 2009 for the adoption of a Framework Decision to step up measures to prevent trafficking in humans. The proposal is to raise European standards in a comprehensive and uniform way, to improve victim support and to tighten the prosecution of human traffickers (Deutscher Bundestag 2003: 2).

In addition to criminal prosecution, Germany is also providing advice and granting protection. At the turn of the year 2011/2012, there were 40 advisory agencies in Germany that specialize in human trafficking; some of them offering sheltered accommodation (Deutscher Bundestag 2012k: 13).

In 2007, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) in cooperation with the “Nationwide Activist Coordination Group combating trafficking in women and violence against women in the migration process e.V. (KOK)” that is funded by the Federal Government developed training and further training programmes for advisory agencies for the victims of human trafficking for sexual exploitation that are coordinated nationwide. The programme is directed at police officers, specialized advisory agencies, the judiciary, customs, the financial control section of the Federal Customs Administration, prisons and other authorities (BMFSFJ 2007b).

The Victims Compensation Act (Opferentschädigungsgesetz) was adopted in the Federal Republic of Germany in 1976. It was amended in 1993 and most recently in 2009. Under this Act, the victims of violence are entitled to the same benefits as victims of war irrespective of other social systems. The Federal Ministry for Labour and Social Affairs published the brochure “Assistance for the victims of violence” as a handout

<sup>32</sup> Source: Central Register of Foreigners.

for police officers and other agencies that specialize in looking after victims that is intended to provide the victims of trafficking in humans, amongst other, with swift, transparent information on any compensation to which they may be entitled. The brochure can be downloaded from the Internet free of charge and can also be sent through the postal service (BMAS 2012). The guidelines drawn up by the Working Group of the Federal Government and Federal States on the Prevention of Trafficking in Women provides a detailed insight into compensation available to victims of trafficking in humans for sexual exploitation (BMFSFJ 2007a).

## 7.2 National Developments

### ***Measures for identifying, protecting and assisting victims of trafficking in human beings***

In 2011, KOK was commissioned by the BMAS to conduct a comprehensive expert study on the area of trafficking in humans for sexual exploitation. The study addresses the phenomena and frequency of trafficking in humans for labour exploitation and takes stock of support systems that are already in place. In addition, the study examines the experience gained by the police, the criminal police, labour authorities, social courts and administrative courts, analyses the applicability of the Victims Compensation Act and the statutory accident insurance and discusses valid statutory provisions in this area. According to the study, one of the main problems associated with trafficking in humans for sexual exploitation is the great difficulty in identifying the persons concerned, also saying that there is a lack of clarity on the existence of initial suspicion. On the other hand, another outcome of the study was the basic punishability of unlawful residence if there is insufficient evidence of trafficking in humans for sexual exploitation and that the victims fail to report this to the police for fear this could have implications for their residence status (Cyrus et al. 2011: 73-74). There are very few cases in which trafficking in humans for sexual exploitation is suspected; in the year 2008, the Police Crime Statistics only reported on 27 cases of suspicion involving 96 victims and 44 suspected human traffickers. A survey carried out among police officers dealing with trafficking in humans estimated that there were 80 cases of human trafficking per year between 2005 and 2009, with on average 12 cases involving trafficking in humans for exploitation and 68 cases involving trafficking in

humans for prostitution (Vogel 2011: 316-318). The KOK issued recommendations on the development of viable support structures for the victims of trafficking in humans for labour exploitation and for prevention and information campaigns on the basis of the findings of the survey (KOK 2011).

Some success has been achieved at legislative level in the very recent past. In June 2012, the German Bundestag adopted a bill on the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005. Whereas the Federal Government and the parliamentary groups Alliance 90/The Greens and The Left approved the bill, the SPD abstained (Deutscher Bundestag 2012l). It had previously demanded that amendments be made to guarantee the victims of trafficking in humans medical, financial and legal assistance. The SPD is also seeking to gain support for the victims of trafficking in humans having access to education, employment, translation services and compensation. The party is demanding that the right of residence of the victims of trafficking in humans should not be contingent on their willingness to testify as witnesses in criminal proceedings. They say the definition of the offence of trafficking in humans set forth in Section 233 of the Criminal Code should be broadened (Deutscher Bundestag 2011a). The Federal Government rejected the motion filed by the SPD as there is no urgent need for improvement to fulfil the legal status. In addition, the Council of Europe Convention on Action against Trafficking in Human Beings had to be ratified swiftly as Germany was already lagging behind by international standards (Deutscher Bundestag 2012l). The ratification of the Convention will strengthen the rights of the victims of trafficking in humans and exploitation. In addition, an independent monitoring mechanism will check that the signatory states actually transpose the Convention (Deutscher Bundestag 2012p).

### ***Statistics***

Since 1999, the Federal Criminal Police Office has been publishing the "Federal Situation Report" on trafficking in human beings. It provides a condensed outline of the latest findings on the situation and development in the area of trafficking in humans for sexual exploitation and trafficking in humans for labour exploitation.

In the year under review 2011, 482 preliminary investigations involving 753 registered suspects were brought

to a conclusion in the area of trafficking in humans for sexual exploitation. Compared to the previous year, this represented an increase of 3 % regarding preliminary proceedings and suspects. The number of victims of trafficking in humans for sexual exploitation has risen by 5 % compared to 2010; all in all 640 persons were identified as victims. The majority of victims are women (94 %). 145 victims were underage. For the first time in several years, the majority of victims were not German (21.7 %) but Romanian (25.8 %). As the previous year, many of the victims originated from Central and Eastern Europe (61 %) – in particular from Bulgaria (15.35 %) and Hungary (8.85 %). The high proportion of victims from Romania and Bulgaria can be attributed to relaxed entry, residence and labour conditions for nationals of these new EU Member States. Fewer than 8 % of the 640 victims were residing unlawfully in Germany, including 23 Nigerian victims and 9 victims from other African countries.

In the area of trafficking in humans for labour exploitation in 2011, 13 preliminary investigations were brought to a conclusion, 11 fewer than the previous year (24). This decline can be attributed to complex investigations carried out by the Land Criminal Police Office of Lower Saxony against a company that was suspected in 2010 of being involved in trafficking in humans for the purposes of labour exploitation. In 2011, on average 2 suspects were identified in each preliminary proceedings. A total of 25 suspects were identified. The perpetrators originated mainly from Germany; 18 suspects were men. In 2011, 32 victims of trafficking in humans for labour exploitation were registered, 9 fewer than the previous year (41). The vast majority originate from Poland and Romania. A large majority of victims (18) were employed in agriculture – followed by residential households and the catering industry.

In conjunction with these two offences, however, the Federal Criminal Police Office suspects that there are a considerable number of unidentified cases. This can be attributed to the fact that the majority of victims originate from the new EU Member States which makes it much more difficult to identify the victims of trafficking in humans and to carry out investigations into the perpetrators. In addition threat scenarios and dependencies deliberately created by the perpetrators make the victims far less willing to cooperate with the police. Exploitative labour is frequently the only means for many of the victims to provide for their families in

the countries of origin; this is why they tend to accept debt, reprisals and violence and in many cases fail to report them (BKA 2012a, BKA 2012b).

### 7.3 Developments in the EU context

In order to tighten criminal prosecution of traffickers in humans, Member States have to implement Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA until 6 April 2013 (European Parliament et al. 2011). The competent Federal Ministry of Justice is currently drafting a relevant bill that will implement this directive (Deutscher Bundestag 2012r).



# 8 Global Approach to Migration and Mobility

## 8.1 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 (Global Approach to Migration, see KOM 2012b). This includes a crucial procedure against illegal immigration while simultaneously using the opportunities of legal migration and the stronger connection between migration and development policy in terms of combating 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 undertook a commitment to further develop the global approach while observing geographic balance in the “Stockholm Programme” (Europäischer Rat 2010). 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 tool of 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 fringes of a session of EU Home Affairs and Justice Ministers with Moldova<sup>33</sup> and Cap Verde,<sup>34</sup> followed by Georgia in November 2009<sup>35</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 in future Armenia, with legal residence will be able to leave Germany for more than the usual six months without losing their residence permits.

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 explore the possibility for dialogue and cooperation in preparation for the application of further global approach instruments;
- Establishing cooperation platforms to coordinate existing or planned individual initiatives at local or regional level.

33 <http://register.consilium.europa.eu/pdf/en/08/st09/st09460-ad01.en08.pdf>.

34 cf. <http://register.consilium.europa.eu/pdf/en/08/st09/st09460-ad02.en08.pdf>.

35 cf. <http://register.consilium.europa.eu/pdf/en/09/st16/st16396-ad01.en09.pdf>.

## 8.2 Developments in the EU context

### **Mobility partnership with Armenia**

The mobility partnership between Germany, nine EU Member States and the European Commission on the one side and Armenia on the other was concluded in October 2011 within the framework of GAMM. Germany is planning within this context to safeguard better *outward mobility* for Armenians who are residing lawfully in Germany (Council of the European Union 2011). In return, Armenia has declared its willingness to expand the preventive measures it takes to prevent irregular migration, inter alia, by signing a returns agreement with the EU and by modernising its border protection. The *Targeted Initiative for Armenia* is another component of the mobility partnership. It is endeavouring to expand the capacities of the Armenian authorities and civil society in the area of migration management and to strengthen returnees' ability to reintegrate. The project is designed to last three years and is being implemented under the auspices of France. The BAMF is participating on Germany's behalf by seconding short-term experts in the IT area whereas the German Association for International Cooperation (Gesellschaft für Internationale Zusammenarbeit – GIZ) is responsible for implementing the components relating to development policy.

Promoting the reintegration of voluntary returnees is also the focus of the programme *Return Assistance in Armenia – Cooperation OFII-BAMF (RACOB)* which the Federal Office is implementing in cooperation with the French immigration authority *Office Français de l'Immigration et de l'Intégration OFII*. Within the framework of the project, returnees receive assistance in particular in starting up businesses and in obtaining professional qualifications in Armenia.

As part of the mobility partnership between the EU and Armenia, an agreement was concluded in 2012 to facilitate the granting of visas for Armenian nationals which will enter into force in the course of 2013 and will relax entry conditions in the Schengen area (EaP Panel on Migration and Asylum 2012b). EU nationals already have possibilities of short stays in Armenia without a visa (EaP Panel on Migration and Asylum 2012a).

### **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 (Czech EU Council Presidency 2009). The International Centre for Migration Policy Development (ICMPD)<sup>36</sup> is responsible for managing the Prague Process. In August 2012 four pilot projects were launched within the framework of the *Prague Process Targeted Initiative* on the subjects of illegal migration, legal migration, migration and development, international protection and asylum. Germany and Sweden are managing the pilot project on international protection and asylum which is intended to bring the asylum systems of the Balkan states and selected countries in Eastern Europe and Central Asia up to European standards. To this end, parts of the European Asylum Curriculum will be translated into Russian and copies will be provided to the asylum authorities of the destination countries. Training seminars will also be delivered in the target countries.<sup>37</sup> The Prague Process represents a continuation of the Building Migration Partnership Conference.

## 8.3 National Developments

### **Portability of social benefits**

Bilateral agreements with third countries on the facilitation of labour migration also play a major role outside the institutional framework that GAMM provides. They are used in particular to coordinate social welfare systems in Germany and in the countries of origin with the actual living conditions of labour migrants. These agreements specify the portability of vested social benefits so that vested pension rights are not lost when people migrate on to other countries or return to their country of origin; the intention is also to prevent foreigners having to pay compulsory contributions both to social insurance in Germany and in the country of origin. A bilateral agreement was concluded

<sup>36</sup> cf. <http://www.icmpd.org>.

<sup>37</sup> cf. <http://www.icmpd.org/Projects.1619.0.html>.

with Brazil in 2009, an agreement was concluded with India in October 2011 whereas the negotiations with the Philippines began in March 2012 on the conclusion of an agreement on social insurance.

### ***Relations with the countries of the Western Balkans***

The foreign policy components of migration management also impacted bilateral and multilateral relations outside GAMM; this affected above all Germany's relations with the Balkan states in 2012. In addition to announcing that it would reconsider visa-free travel for nationals of the Balkan states which led to a rise in the number of asylum seekers (see also Sections 2.2 and 3.7.1), the matter was also discussed at high-ranking bilateral level. Following complaints filed by Germany and consultations between the EU Commissioner for Home Affairs, Cecilia Malmström, and representatives of the Macedonian government and the summoning of the Macedonian Ambassador by the Parliamentary State Secretary at the Federal Ministry of the Interior, Dr. Ole Schröder, Macedonia announced in October 2012 that it would revise the departure regulations for its nationals (Frankfurter Allgemeine Zeitung 2012b; Badische Zeitung 2012). Departure with the intent of filing an application for asylum was declared a criminal offence; the same applies to aiding and abetting which is targeted at travel companies in particular (Frankfurter Allgemeine Zeitung 2012a). By contrast, Serbia announced that it would bear the costs incurred by EU Member States processing the asylum applications of Serbian nationals. The intention is to prevent the visa requirement from being reintroduced as demanded by Germany and five other Member States (Süddeutsche Zeitung 2012e).

# 9 Information Exchange for Policy Making

## 9.1 Information Exchange on EU-level

### EMN

In accordance with the goal of the EMN to provide the EU institutions with up-to-date, objective, reliable data and information on the areas of asylum and migration that can be compared throughout the EU, the German National Contact Point for the EMN published a national policy report for the year 2011 as well as the following studies:

- Visa policy as a migration channel
- Measures to prevent and reduce irregular migration
- Misuse of the family reunification legislation - marriages of convenience and abuse of acknowledgement of paternity
- Migration of international students from third countries
- Measures and challenges in identifying persons' identity within the framework of the asylum procedure and deportations
- Internal mobility of third-country nationals
- Organisation of asylum policy and immigration policy in Germany (update)

The demand for EMN products was very large in 2012 (product downloads exceeded 26,500). The studies on unaccompanied minor migrants, the prevention and reduction of irregular migration and on the misuse of family reunification met particularly high demands. In addition to drawing up and sending hard copies of the studies, the national EMN website of the Federal Office

also serves to provide information for policy-makers at EU level as well as at national level and for the public at large. The German National Contact Point for the EMN contributes actively to the EMN Bulletin and EMN Informs and translated these products into German in 2012 together with its Austrian and Luxembourg partners in order to raise distribution among national stakeholders.

### EASO

Members of the ASTs seconded by EASO in 2012 also included employees of the BAMF who participated in two missions aimed at setting up an adequate asylum procedure in Greece. The work focused on training measures about interview techniques and drawing up a training manual on leadership qualities. Furthermore, employees of the BAMF also participated in the activities of the European Asylum Curriculum (EAC) within the framework of EASO. In a total of 12 missions, they acted as instructors for international colleagues or cooperated in developing and enhancing the EAC training module. For the exchange of information and best practices, employees of the BAMF also regularly take part in conferences and expert workshops organised by EASO (see Section 5.2).

## 9.2 Information Exchange on Regional and National Level

### ***Bilateral cooperation – Germany and Austria***

In June 2012, the Federal Republic of Germany and the Republic of Austria concluded a bilateral agreement to cooperate in combating cross-border illicit labour and illegal, cross-border labour leasing. The bilateral cooperation between the Ministries of Finance of both countries is intended to improve control of irregular internal labour migration in future and to prosecute those involved. Both countries undertake to plan and implement joint preventive measures, to exchange information about investigation and working methods, to provide access to personal data required for investigations and to provide information about the progress made in criminal proceedings (Republik Österreich et al. 2012).

### ***Regional cooperation – Council of the Baltic Sea States***

As a member of the Council of the Baltic Sea States, the Federal Republic of Germany is actively involved in the Taskforce Against Trafficking in Human Beings. The aim of this task force is to combat trafficking in humans by means of implementing preventive measures, by supporting the victims of trafficking in humans, promoting cooperation between the adjacent states and by improving existing measures and lawmaking. Between 2008 and 2010, the task force, for instance, drew up a handout for diplomats and consular staff with the help of the IOM and provided them with training on victim protection and victim support. Together with the United Nations Office on Drugs and Crime, the task force drew up recommendations for enhanced cooperation between state and non-state players in the Baltic Sea region for the protection and support of the victims of trafficking in humans. In addition, the task force cooperates with research institute of the 11 Member States of the Council of the Baltic States. The status quo of data collection in the individual states has been systematically recorded and indicators have been developed for future data collection in order to enhance the data situation in the area of human trafficking and data exchange between the states of the Baltic Region (Council of the Baltic Sea States Secretariat 2012).

### ***GDISC***

The General Directors' Immigration Conference (GDISC) provides a platform for the exchange of information between the European migration authorities in which Germany is represented by the BAMF. The activities of the GDISC focus above all on consulting on practical problems. The Conference was launched in 2004 by the Netherlands EU Council Presidency. In addition to the EU Member States, other countries involved include Norway, Iceland, the Former Yugoslavian Republic of Macedonia, Bosnia and Herzegovina, Croatia and Turkey.<sup>38</sup>

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38 [www.gdisc.org](http://www.gdisc.org).

# 10 Implementation of EU Legislation

## 10.1 Transposition of EU Legislation 2012

### ***Transposition of the Directive on Highly Qualified Workers***

On 1 April 2012, the Act to Implement the EU Highly Qualified Directive entered into force. Inter alia, it creates a residence permit for highly qualified third-country nationals with an income threshold, the EU Blue Card (Section 19a Residence Act). Besides the Directive's provisions, additional amendments to the Residence Act were implemented, which are designed to improve the possibilities for skilled workers to find and take up employment (see Section 3.1.2 and 3.3.2).

### ***Technical Requirements for the SIS II***

In 2012, the migration of data from the Schengen Information System SIS to the second generation of the Schengen Information System SIS II was completed to the greatest possible extent. Originally, the SIS II should have been operational by 2007 (Council Regulation (EC) No 1104/2008); however, due to technical difficulties the launch was delayed several times (see Section 3.7.2.2).

### ***Launch of the Visa Information Systems***

The Visa Information System (VIS), which is based on the Council Decision of 8 June 2004 (2004/512/EC), became operational in the first region of application, Northern Africa, on 11 October 2011. Subsequently, the Middle East followed as second region of application on 10 May 2012; in the Gulf Region, the VIS became operational on 2 October 2012 (see Section 4.1.3).

## 10.2 Experiences, Debates in the (non-) Implementation of EU Legislation

### ***Persecution on Religious Beliefs***

On request of the BVerwG, the ECJ clarified on 5 September 2012 what qualifies as persecution on religious beliefs (ECJ C-411/10, ruling of 21 December 2011). It ruled that the decisive factor is whether practising ones religion is being persecuted with inhuman or demeaning punishment or treatment. The possibility of avoiding punishment by abstaining from practising ones religion is not relevant for processing an application for asylum (see Section 5.1.2).

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# Abbreviations

AA	Federal Foreign Office (Auswärtiges Amt)
AAH	Support by Training and Equipment (Ausbildungs- und Ausstattungshilfe)
ABG	Automated and Biometrically Supported Border Control (Automatisierte und Biometriegestützte Grenzkontrolle)
AG Rück	Return Working Group (Arbeitsgruppe Rückführung – Unterarbeitsgruppe der IMK)
ASMK	Conference of State Labour and Social Development Ministers (Konferenz der Ministerinnen und Minister bzw. Senatorinnen und Senatoren für Arbeit und Soziales der Länder)
AsylbLG	Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz)
AsylVfG	Asylum Procedure Act (Asylverfahrensgesetz)
AsylZBV	Ordinance Determining Asylum Competences (Asylzuständigkeitsbestimmungsverordnung)
AST	Asylum Support Teams (Asyl-Unterstützungsteam)
AufenthG	Residence Act (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet – Aufenthaltsgesetz)
AufenthV	Residence Ordinance (Aufenthaltsverordnung)
AVwV	General Administrative Regulation relating to the Residence Act (Allgemeine Verwaltungsvorschrift zum Aufenthaltsrecht)
AZR	Central Register of Foreign Nationals (Ausländerzentralregister)
AZRG	Central Register of Foreign Nationals Act (Gesetz über das Ausländerzentralregister)
BA	Federal Employment Agency (Bundesagentur für Arbeit)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BeschV	Employment Ordinance (Beschäftigungsverordnung)
BIODEV II	BIometrics Data Experimented in Visas
BKA	Federal Criminal Police Office (Bundeskriminalamt)
BMAS	Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales)
BMBF	Federal Minister for Education and Research (Bundesministerium für Bildung und Forschung)
BMFSFJ	Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend)
BMI	Federal Ministry of the Interior (Bundesministerium des Innern)
BMP-Projekt	Building Migration Partnerships-Projekt
BMWi	Federal Ministry of Economics and Technology (Bundesministerium für Wirtschaft und Technologie)
BMZ	Federal Ministry for Economic Cooperation and Development (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung)
BPolG	Federal Border Police Act (Bundespolizeigesetz)
BT-Drs.	Bundestag printed paper (Bundestagsdrucksache)
BVA	Federal Office of Administration (Bundesverwaltungsamt)
BVerfG	Federal Constitutional Court (Bundesverfassungsgericht)
BVerwG	Federal Administrative Court (Bundesverwaltungsgericht)
CDU	Christian Democratic Union (Christlich Demokratische Union)
DIK	German Islam Conference (Deutsche Islam Konferenz)
DPA	German Press Agency (Deutsche Presse-Agentur)
DPolG	German Police Trade Union (Deutsche Polizeigewerkschaft)

EAC	European Asylum Curriculum
EASO	European Asylum Support Office
ECHR	European Court of Human Rights (Europäischer Gerichtshof für Menschenrechte – EGMR)
ECRE	European Council on Refugees and Exiles
EFF	European Refugee Fund (Europäischer Flüchtlingsfonds)
EMN	European Migration Network (Europäisches Migrationsnetzwerk)
ESF	European Social Fund (Europäischer Sozialfonds)
EU	European Union (Europäische Union)
EUBAM	EU Border Assistance Mission to Moldova and Ukraine
ECJ	European Court of Justice (Europäischer Gerichtshof)
FDP	Free Democratic Party (Freie Demokratische Partei)
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Europäische Agentur für die operative Zusammenarbeit an den Außengrenzen)
GAMM	Global Approach to Migration and Mobility/Global Approach to Migration (Gesamtansatz für Migration und Mobilität/Gesamtansatz zur Migrationsfrage)
GASiM	Joint Analysis and Strategy Centre for Illegal Immigration (Gemeinsames Analyse- und Strategiezentrum irreguläre Migration)
CEFR	Common European Framework of Reference for Languages (Gemeinsamen europäischen Referenzrahmen für Sprachen – GER)
GFK	Geneva Convention on Refugees (Genfer Flüchtlingskonvention)
GG	Basic Law (Grundgesetz für die Bundesrepublik Deutschland)
GIZ	German Association for International Cooperation (Gesellschaft für Internationale Zusammenarbeit)
ICMPD	International Centre for Migration Policy Development (Internationale Zentrum für Migrationspolitikentwicklung)
IMK	Permanent Conference of the Ministers and Senators of the Interior of the Federal States (Ständige Konferenz der Innenminister und –senatoren der Länder)
IntMK	Conference of Ministers and Senators of the Federal States responsible for Integration (Konferenz der für Integration zuständigen Ministerinnen und Minister, Senatorinnen und Senatoren der Länder)
IntV	Integration Course Ordinance (Integrationskursverordnung)
IOM	International Organization for Migration (Internationale Organisation für Migration)
KOK	Nationwide Activist Coordination Group combating trafficking in women and violence against women in the migration process (Bundesweiter Koordinationskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess)
MBE	Migration Consultation for Adult Immigrants (Migrationsberatung für erwachsene Zuwanderer)
MITRAS	Operation Migration, Traffic and Security
NAP-I	National Integration Action Plan (Nationaler Aktionsplan Integration)
NIP	National Integration Plan (Nationaler Integrationsplan)
OECD	Organisation for Economic Co-operation and Development
OFII	Office Français de l'Immigration et de l'Integration (French Office for Immigration and Integration)
OVG	Higher Administrative Court (Oberverwaltungsgericht)
PKK	Kurdistan Workers' Party (Kurdische Arbeiterpartei)
PKS	Police Statistics on Criminal Offences (Polizeiliche Kriminalstatistik)
RABIT	Rapid Border Intervention Team
RACOB	Return Assistance in Armenia – Cooperation OFII-BAMF
REAG/GARP	Reintegration and Emigration Programme for Asylum-Seekers in Germany/Government Assisted Repatriation Programme

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SIS	Schengen Information System (Schengener Informationssystem)
SGB	Social Code (Sozialgesetzbuch)
SOE	Stability Pact for South Eastern Europe (Stabilitätspakt Südosteuropa)
SOLWODI	Solidarity with Women in Distress (Nichtregierungsorganisation)
SPD	German Socialdemocratic Party (Sozialdemokratische Partei Deutschlands)
SSW	South Schleswig Voters' Association (Südschleswigscher Wählerverband)
StAG	Citizenship Act (Staatsangehörigkeitsgesetz)
StBA	Federal Statistical Office (Statistisches Bundesamt)
StGB	German Criminal Code (Strafgesetzbuch)
UM	Unaccompanied Minor (Unbegleitete Minderjährige)
UNICEF	United Nations Children's Fund (Kinderhilfswerk der Vereinten Nationen)
VG	Administrative Court (Verwaltungsgericht)
VIS	Visa Information System (Visa-Informationssystem)

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# Annex

## A German 2012 contribution to the annual reports of the Commission and of EASO (as per: 28 November 2012)

This Common Template includes specific spaces for EMN NCPs to provide information and statistics in relation to developments at national level that have been developed to implement EU policy, legislative and financial instruments, or any developments which were the result of actions at EU level in relation to specific policy topics.

The information collected shall be used to inform the Commission's Annual Report on Immigration and Asylum, and shall be the only source of factual information at (Member) State level for the topics covered by the Report. Thus when providing information, as with all EMN Common Templates, it is important to emphasise that the content should be as relevant to the topic under consideration, and as concise, as possible. You should aim to provide only one or two paragraphs for each of your responses. It should also, where relevant, describe concrete actions or measures, for example, resulting from the entry into force of new legislation. Examples are given in each of the sub-sections.

You should also foresee liaising with respective EASO NCPs as information requested in this template will also serve to inform EASO's Annual Report. In addition, information collected in this Template should also be coordinated with information made available at (Member) State level via National Contact Points on Integration (NCPs), the Frontex Risk Analysis Network (FRAN) and National Rapporteurs working against Trafficking in Human Beings.

The **key statistics** that will illustrate each topic of the Annex and be presented in the Commission's Annual Report on Immigration and Asylum will come from Eurostat, once available. These key statistics are in line with Council Regulation 862/2007 on Union Statistics on migration and international protection and will provide some "headline" statistics in the area of migration, international protection and external border management.

In addition, EMN NCPs are requested to try to provide some statistics (even tentative) which are not available through Eurostat but are relevant for some of the topics relevant to the Commission's Annual Report. We would, therefore, request that you provide, where possible and even if tentative, statistics on any of the following:

- First residence permits 2012, by reason;<sup>1</sup> (Section 1.1)
- The unemployment rate of third-country nationals;<sup>2</sup> (Section 1.5.1)
- The number of visas issued (including the number of Schengen visas and national visas); (Section 1.6.1)
- The number of third-country nationals being returned to their home country as part of forced return measures,

1 These data are generated by Eurostat, but are usually not available for the publication of the Commission's Annual Report on Immigration and Asylum in May 2012.

2 Based on the ILO definition, Eurostat defines unemployed persons as those aged 15 to 74 who: (1) are without work; (2) are available to start work within the next two weeks; and (3) have actively sought employment at some time during the previous four weeks. The unemployment rate is the number of people unemployed as a percentage of the labour force. The labour force is the total number of people employed plus unemployed. Current deviations from the definition of unemployment in the EU Labour Force Survey: Spain, Sweden, Italy and United Kingdom: Unemployment is restricted to persons aged 16-74. In Spain and Italy the legal minimum age for working is 16. Employment data used for Italy includes also those above 74. Unemployment rate can be broken by groups of country of citizenship, age groups and sex.

the number of third-country nationals being returned voluntarily and, within these, the number of third-country who returned as part of an assisted return programme and, if available, the number of persons among the returned (forcibly or voluntarily) who had applied for international protection and were served with a final negative decision; (Section 2.2)

- The number third-country nationals relocated to your Member State; (Section 3.3.2)
- The number third-country nationals resettled in your Member State (Section 3.4.2)
- The number of unaccompanied minors (UAMs), differentiating between those applying and those not applying for asylum (Section 3.5)
- The number of third-country nationals receiving a residence permit as victims of human trafficking; and the number of traffickers arrested and convicted. (Section 5.4).

Standardised Tables have been added in the Annex to the specification template to provide these statistics. In keeping with the practice of Eurostat, your statistics should be rounded up or down to the nearest 5. Please provide, if possible, these additional (tentative) statistics initially for the first nine months of 2012, i.e. from January 2012 to September 2012 inclusive.

## 1. LEGAL MIGRATION AND MOBILITY

### 1.1 Key Statistics

First residence permits, by reason					
	Total	Family reasons	Education reasons	Remunerated activities reasons	Other reasons
First permits (1st half of 2012)	10,544	2,216	4,216	2,843	1,269

### 1.2 Promoting legal migration channels

Please describe any (planned) measures to improve the provision of information on the routes to and conditions of legal migration for third-country nationals. These could include, for example, information campaigns, websites, specific centres, referring to any approaches that combine information with pre-departure measures, for example, upgrading skills and / or proficiency in EU languages, and also the role and impact of the EU Immigration Portal in your (Member) State.

The Federal Office for Migration and Refugees (BAMF) is the central agency in Germany responsible for advising migrants. The [www.bamf.de](http://www.bamf.de) website contains extensive information on migration-related questions. This website is quadrilingual, being available in German, English, Russian and Turkish. Furthermore, the BAMF has a hotline for questions regarding the recognition of foreign vocational qualifications which can also answer more detailed questions, for instance on the EU Blue Card.

There are also about 600 advice facilities in Germany. A total of 164,465 immigrants had attended one of these advice centres nationally by mid-2012.

Two specific Internet portals have been in operation since June 2012 in connection with the Qualified Professionals Initiative organised by the Federal Ministry of Labour and Social Affairs (BMAS), the Federal Ministry of Economics and Technology (BMWi) and the Federal Employment Agency (BA). The domestic [www.fachkräfte-offensive.de](http://www.fachkräfte-offensive.de) portal operates as a starting portal for the Qualified Professionals Initiative and addresses all domestic workers, enterprises as well as the interested public. It also provides information on shortages on the labour market, as well as on regional and national projects. The [www.Make-it-in-Germany.com](http://www.Make-it-in-Germany.com) welcome portal for foreign professionals



provides information on opportunities to work in Germany and on the legal prerequisites for this, and provides an impression of life and living in Germany.

### **1.3 Economic migration**

#### **1.3.1 Satisfying labour market needs**

Describe whether and how your (Member) State analyses its labour market and skills needs / shortages, and any cooperation with other (Member States), for example, through the Public Employment Services. Please describe the (planned) introduction of any new labour migration policies or changes to the existing ones, e.g. introduction of quota, lists of professions, agreement with specific third countries, use of private recruitment agencies / services, etc.). Also consider the effect of the economic crisis on labour migration (e.g. revision of quota, reduction of professions listed, etc.) and how economic migration is considered to contribute to economic growth.

An employment monitoring service is being prepared on behalf of the BMAS which portrays both the current and the long-term need for labour, broken down by sectors, occupations and regions. Based upon this, a labour market prognosis ranging until 2030 will be drawn up. Initial results will be available in the spring of 2013.

#### **1.3.2 Skills Recognition**

Describe any (planned) measures to improve the validation of diplomas, qualifications and skills of third-country nationals and labour matching between your (Member) State and third countries (including online employment, etc.), including any measures introduced for already resident third-country nationals (in the context of better integration). Describe any exchanges of practical information and co-operation with other EU Member States. Describe any specific measures to avoid brain waste. Consider also how such measures will contribute to economic growth.

With the “Act to Improve the Identification and Recognition of Vocational Qualifications obtained Abroad” (Gesetz zur Verbesserung der Feststellung und Anerkennung im Ausland erworbener Berufsqualifikationen (the so-called Recognition Act [Anerkennungsgesetz]), which came into force on 1 April 2012, the Federal Government is creating a general legal right for the first time to have the equivalence of a foreign vocational qualification with the German reference occupation verified. This makes a lasting contribution to ensuring the availability of professionals and towards integration for people with good foreign qualifications.

The procedures and criteria for the professions that are regulated under federal law are to be simplified, expanded and improved. In particular, the previous regulations to implement Professional Recognition Directive 2005/36/EC are primarily being expanded to include third-country qualifications and nationals. According to the provisions of the Recognition Act, vocational qualifications that were acquired abroad can now be recognised in Germany as equivalent to a German qualification. Furthermore, a whole series of occupations will no longer require candidates to be German nationals. The Act applies to roughly 500 occupations where the qualifications are regulated nationally (e.g. doctors, qualified nursing staff, master craftspersons and all qualifications of the 350 German training occupations in the dual system). What is special in an international comparison is that, in addition to the formal qualifications, practical professional experience is also considered in the context of the check on equivalence.

The Länder are also adjusting the professional regulations within their remit (teachers, educators, social educationists, engineers).

What is more, the Federation has massively expanded the information and advice services on the recognition of foreign qualifications. Since 1 April 2012, the online “Recognition in Germany” portal has been providing information on a centralised basis in German and English on recognition procedures and the legal bases. It centres on the so-called recognition finder, which enables interested parties to easily find the appropriate responsible agency and to obtain individual procedural information. Additionally, the hotline operated by the Federal Office for Migration and Refugees on behalf of the Federal Ministry of Education and Research (BMBF) offers telephone advice in German and English for interested parties from Germany and abroad. The promotional programme entitled “Integration through qualification – IQ”, which is funded by the BMAS, the BMBF and the BA, has so far promoted roughly

40 initial contact points in the Länder which provide introductory information, advise those seeking recognition and refer them to the competent agencies. At the same time, the BA has established an advisory service on recognition within its role of providing advice under labour law.

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

### 1.3.3 Cooperation with partner / third countries for economic migration

Please provide information on any (planned) EU level or bilateral agreements (e.g. Mobility Partnerships), which help to implement policies for labour migration. List them (see table below), including the third countries with which they have been concluded, and provide details of their content and the rationale for concluding the agreement. Please also indicate whether any of these favour circular migration, and specify which third countries are involved, including from the Southern Mediterranean<sup>3</sup> and Eastern Partnership<sup>4</sup>. In the framework of Mobility partnerships (and Common Agendas) please advise whether Migration and Mobility Resource Centres (MMRCs) have / will be set up in the partner countries.

No significant developments.

Type of agreement	Third countries involved	Main purpose and rationale for the agreement
(EU or bilateral)		
Bilateral social insurance agreement with Brazil of 3 December 2009	No	Portability agreement on pensions and accident insurance, including the arrangements for posted workers ("avoiding double insurance")
Bilateral social insurance agreement with India 12 October 2011	No	Portability agreement on pensions and accident insurance, including the arrangements for posted workers ("avoiding double insurance")
Negotiations on a social insurance agreement with the Philippines to start at the beginning of March 2013	No	Portability agreement on pensions and accident insurance, including the arrangements for posted workers

### 1.3.4 Highly qualified workers

Please describe any (planned) measures to facilitate access of highly qualified workers. Refer to the implementation of the EU Blue Card Directive. Describe any incentive mechanisms for highly qualified workers on top of the transposition and implementation of EU legislation. Consider also how such measures will contribute to economic growth. (Information relating to the mitigation of 'brain drain' should be provided in Section 4.4).

The Act Transposing the Directive on Highly-qualified Persons (Gesetz zur Umsetzung der Hochqualifizierten-Richtlinie) came into force on 1 August 2012. This Act not only transposed the Directive on highly-qualified persons, which establishes the prerequisites for the entry and residence of third-country nationals to exercise highly-qualified employment, but also contains considerable amendments to residence law and the law on the employment of foreigners which are intended to make Germany more attractive for highly-qualified persons.

The new regulations over and above the transposition of the directive particularly benefit foreign students and graduates of German universities, foreigners who are undergoing vocational training, as well as the self-employed and those starting businesses. Moreover, a special residence title for job-seeking is to be created which will make it easier for small and medium-sized enterprises in particular to find foreign professionals for posts which they have previously been unable to occupy.

The main points of the Act are:

<sup>3</sup> Morocco, Algeria, Tunisia, Libya and Egypt.

<sup>4</sup> Ukraine, Belarus, Moldova, Georgia, Armenia and Azerbaijan.

- There is only one single residence title for highly-qualified persons with a salary threshold, the EU Blue Card.
- The minimum earnings threshold for the EU Blue Card for 2012 is set at 44,800 Euro (Article 5(3) of the Directive). There will no longer be a priority check or a check on the comparability of the working conditions.
- The income threshold for professions for which there is a particular need in accordance with Article 5(5) of the Directive (MINT professions, doctors and IT professions) is roughly 35,000 Euro (34,944). There must be a check on the comparability of the working conditions.
- Holders of an EU Blue Card receive a settlement permit as a matter of principle (national permanent residence title) after 33 months if their employment contract continues to apply.
- If holders of the EU Blue Card have a good knowledge of German, the settlement permit is issued after 21 months.
- Family members do not need to prove a knowledge of German before entering the country, and may work without restrictions immediately after entering the country.
- A residence permit is to be introduced limited to six months for job-seeking, its issuance being contingent on university graduation and on their being able to support themselves independently.
- Students may work 120 whole days or 240 half days in addition to their studies with no further permit being necessary (previously 90/180).
- The period for seeking a suitable job for foreign graduates of German universities is increased from 12 to 18 months, and they are permitted to engage in any form of gainful employment without restrictions during this period.
- It will be made easier for foreign university graduates to become self-employed or to start up in business.
- Foreign university graduates who have found a suitable job will receive a settlement permit after two years.
- Foreigners who entered the country to engage in vocational training can remain after they have completed their training if they find employment in the occupation that they have learned. They will be given one year to look for a suitable job and may work without restrictions during this period.
- They will be entitled to engage in other additional employment for up to ten hours per week during their occupational training.
- The requirements for granting residence permits to persons starting up in business have been considerably relaxed. In particular, the standard requirement that the recipient should invest 250,000 Euro and create five jobs has been waived.

### **1.3.5 Students and researchers**

Please describe any (planned) measures to facilitate greater mobility of students and researchers, also as a pathway towards meeting labour market needs. Describe any incentive mechanisms in place for students and researchers on top of the transposition and implementation of EU legislation. Consider also how such measures will contribute to economic growth. (Information relating to the mitigation of 'brain drain' should be provided in Section 4.4).

The following rules apply over and above the directives on students and on researchers:

To students:

Foreigners who do not yet have a place on a course of studies can receive a residence title for up to nine months to apply to study.

- More hours of gainful employment are permitted in addition to studying than required by the directives, and gainful employment does not require a labour market check in this period.
- Successful graduates following on from their studies may be given a residence permit for job-seeking for 18 months, and they may take on any gainful employment without restrictions during this period.
- 

For researchers:

- An accelerated visa procedure is applied.
- Spouses of researchers have unrestricted access to the labour market.

This makes access to the German labour market easier, and a contribution is made to the further development of research and innovation in Germany.

#### 1.4 Family Reunification

Please describe any new policies / legislation or changes to existing policies and legislation regulating family migration. Consider also your (Member) State's human rights obligations, 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. knowledge of the country's language, level of education, professional background, other. Please also describe any concrete (planned) measures to further promote the integration of third-country nationals coming for the purpose of family reunification

No significant developments.

#### 1.5 Integration<sup>5</sup>

##### ***1.5.1 Promoting integration through participation: socio-economic contribution of migrants***

Please describe (planned) measures for the integration of third-country nationals through their increased socio-economic contribution, including measures to enhance language skills; improve attainment on the education system; and improve access to social and health services. Describe any specific measures to meet the needs of vulnerable groups of migrants. Describe also how EU funding (e.g. the European Fund for the Integration of Third-Country Nationals and the European Refugee Fund) is being (better) used to support migrants' participation.

NB Information in relation to labour market integration should be provided in Section 1.2.2.

**Knowledge of German** and basic knowledge of life in Germany is imparted via the **integration course** as a basic service that is offered to all immigrants who have prospects to remain. The experience gathered in the implementation of the integration courses has shown that there is still a considerable (structural) need for catch-up language promotion. The course encompasses a 600-hour language course and a 60-hour orientation course on questions related to the German legal system, history and culture. Moreover, courses for special groups (parents, women, juveniles, the illiterate) are available with up to 1,200 hours' language teaching.

The European Integration Fund (EIF) 2012 annual programme was expanded on the basis of the 2011 annual programme, and several special aspects were added. These include in particular the inclusion of a culture of welcome in measure type 7.

In detail these are the following eight types of measure:

pre-integration

- integration through training
- training services for special target groups
- integration through participation in society
- monitoring, evaluation, indicators
- opening towards other cultures, and
- communication and cooperation between the Member States

One of the goals of the European Refugee Fund (ERF) national programme for Germany is to improve the integration of those members of the target group of the ERF who are allowed to reside in Germany permanently.

Projects in this area include:

- improvement of language skills,
- improvement of educational programs for school and work, and
- improvement of social integration and social participation.

<sup>5</sup> Please also refer to the European Agenda for the Integration of Third-Country Nationals, COM(2011)455 final.

The BMAS' "Work-related language promotion programme for persons with a migration background in the sphere of the Federation (ESF-BAMF Programme)", which is promoted using funds from the European Social Fund (ESF), serves to improve work-related knowledge of German. The goal is to enhance the chances of people with a migration background to become integrated into the first labour market. In a new approach, language lessons are linked with elements of vocational further training. The programme was expanded to also give persons entitled to remain and refugees access to work-related language promotion. This deliberately promotes opportunities on the labour market as well as helping to stabilise and safeguard employment for this target group in the long term.

Annual average unemployment rates of (Member) State citizens versus third-country nationals residing in the (Member) State for 2012		
	Third country nationals	Total national population
Unemployment rate (%)	not separately recorded	13.8% (in June 2012, related to all civilians in gainful employment)

### ***1.5.2 Promoting integration through participation: rights and obligations – achieving equal treatment and belonging***

Please describe measures taken to increase migrants' participation in the democratic process. These might include for example, increasing the participation of migrant representatives (including women) in the design and implementation of integration policies; outreach programmes and work placements to build capacity within migrant organisations and encourage support at local level; and measures to enhance democratic participation, for example, training mentors, granting voting rights in local elections etc.

The integration courses are supplemented by **Migration advice for adult immigrants (MBE)** as an advisory service before, during and after attending the course. The advice centres are occupied by the charitable associations according to an agreed table. The goal of MBE is to initiate and manage the integration process through individual professional counselling soon after entry into the country, but also for immigrants who have been living in Germany for a prolonged period, in order to enable them to act in a self-determined manner in their new living environment. Roughly 50,000 immigrants are advised per quarter in more than 600 facilities nationwide.

Migrants' organisations (MOs) are increasingly involved by the Federal Government as dialogue partners, and are called on to help shape social integration. Migrants' organisations have so far been supported at federal level within project promotion. Their civil commitment has been enhanced since 2008 through further training events and organisation advice provided via the Federal Office for Migration and Refugees. Support for MOs is furthermore provided by implementing tandem projects between established institutions and smaller migrants' organisations.

### ***1.5.3 Promoting action at local level***

Please describe any relevant activity with the active involvement of local authorities, e.g. addressing integration challenges in disadvantaged urban areas; improving multi-level cooperation between different levels of governance. You should also describe how EU funding is being applied to improve local, more targeted approaches to integration.

In the federal structure of the State's tasks, the Federation has a largely statutory function, whilst the Länder primarily implement the statutes. Integration policy is a cross-sectional task which involves various policy fields at both federal and Land level. The 16 Länder in Germany have adopted overall integration policy concepts and guidelines in the past which combine and coordinate their many individual measures. Integration however ultimately takes place in situ, so that the local authorities take on a special role as integration policy players. Towns administered as independent districts, as well as districts and municipalities themselves, also face tasks of integration necessitating the provision of staff and funding.

The Federal Ministry of the Interior however also carries out some additional integration activities of its own in the field of integration and has an authority of its own to implement statutory tasks as well as projects in the shape of the Federal Office for Migration and Refugees.

In addition to integration courses and migration advice, the integration activities of the Federal Ministry of the Interior include integration projects which are community orientated and target specific residential areas. This focuses on projects promoting societal and social integration of immigrants into local communities.

The promoted projects address the situation in which immigrants live and meet locals in everyday life. This means in the facilities and associations of the urban districts. The landscape of integration projects facilities is broad. These include both the migrants' organisations and to a significant degree also the major welfare associations (e.g. the Caritas Society [Caritasverband e.V.], the Social Service Agency [Diakonisches Werk] of the Evangelical Church, the National Society for Worker Welfare [Arbeiterwohlfahrt], the Equal Representation Welfare Association [Paritätischer Wohlfahrtsverband], Central Welfare Office for Jews in Germany [Zentralwohlfahrtsstelle der Juden in Deutschland]) as well as local institutions. The advantage of including migrants' organisations as project institutions is that they can play an important bridging role between immigrants and the majority society.

The "XENOS - Integration and Diversity" ESF-Federation programme promotes activities to combat marginalisation and discrimination in the transition between school, training and the world of work. The focus is on disadvantaged juveniles and young adults with and without a migration background who are at a disadvantage as concerns access to school, training and jobs. XENOS aims to impart special qualifications and to strengthen structures which reduce xenophobic and discriminatory attitudes and in particular support migrants when entering the labour market and in becoming sustainably integrated into society.

XENOS is a part of the Federal Government's National Integration Plan and is promoted by the Federal Ministry of Labour and Social Affairs (BMAS) and the European Social Fund (ESF).

In the EU promotion phase 2007-2013, the BMAS is promoting the federal "XENOS - Integration and Diversity" programme through 365 projects and project associations nationally with a promotional volume of 234 million €, 171 million € of which consist of funds from the European Social Fund and 63 million € come from budgetary funds of the BMAS.

The project work focuses on reducing prejudices and making the juveniles and young adults with and without a migration background more employable through vocational orientation, by increasing their mobility and developing intercultural and social skills, as well as increasing their ability to face conflicts. With regard to company players, as well as those in the public administration, it is explicitly a matter of awareness creation on topics related to cultural diversity, increasing willingness to undergo training and providing internships and/or training places, as well as preparing and entrenching diversity concepts in the organisation and staffing structures of companies and public administrations.

Another major aspect of project promotion is awareness creation among broad population groups on topics related to cultural diversity to improve social cohesion in towns, rural areas and European border regions.

The special XENOS programme entitled "ESF-Federation programme for support on the labour market for persons entitled to remain (Bleibeberechtigte) and refugees with access to the labour market" has been promoting persons entitled to remain since 2008 (statutory backlog arrangement in the Residence Act [Aufenthaltsgesetz] for persons whose deportation has been temporarily suspended for many years) and persons with a refugee background who have (at least subordinate) access to the labour market. Amongst other things, the project will offer until 2014 both (recognition) advice and (adjustment) skill-building and placement services.

In the 2007-2013 ESF promotion period, the BMAS provided subsidies to the tune of 84 million € for the programme on persons entitled to remain, 46 million € of which consisted of funds from the European Social Fund while 29 million € came from budgetary funds of the BMAS.

43 advisory networks with roughly 220 individual projects were active in a first round of promotion in the period from September 2008 to October 2010. The term of the projects was approx. two years. The advisory agencies, which are networked with one another, are active in all the Federal Länder.

A placement rate of 54 % was achieved in the first promotional round, corresponding to roughly 5,600 out of more than 12,000 participants. Among the participants, roughly 27.2 % were persons entitled to remain, 27.8 % were persons whose deportation had been temporarily suspended, and about 8 % persons with permission to reside. 37% of the further participants had other residence documents than these.

Moreover, the programme participants have had full access to the ESF-BAMF language programmes since 2012.

The projects have regularly carried out recognition advice sessions since 2008, and have organised corresponding adjustment-type skill-building activities for participants. Data have been collected from the group of participants on their pre-existing vocational qualifications. These are vital for assessing the target group's potential for integration.

Major results regarding pre-existing qualifications: comprehensive individual data on the group of persons entitled to remain and refugees with access to the labour market are available for the first time in 11,060 cases which can provide information on the type and level of the qualifications.

Furthermore, approx. 10,000 multipliers were involved in meetings, training courses or further project measures.

The second round of promotion will run with 28 networks (230 individual projects) until mid-2014.

#### ***1.5.4 Involvement of countries of origin***

Countries of origin may play a role in the integration of migrants before departure, during stay in the EU, and on return. Please describe any measures to support integration involving countries of origin at any / all of these stages. Pre-departure measures may include provision of information on visas and work permits, language training, vocational training, recognition of qualifications and skills; measures during stay may include support to diaspora communities, promotion of transnational entrepreneurship, increasing trade between countries of origin and stay; measures to support return may include developing a rights-based framework for re-integration and for temporary and circular migration.

So-called "outward mobility" for nationals of selected countries of origin (third countries) with legal residence in Germany was made easier, so that these individuals may stay in their country of origin for up to 24 months (e.g. to increase capacity, start a business or similar) without losing their German residence title.

The Federal Government offers various opportunities for migrants from developing countries in the context of its development cooperation on the various phases of a migration cycle. The goal is to bring about a triple-win situation in which the migrants, the countries of origin and the host country all benefit from migration. The programme to promote the development policy commitment of migrants' organisations supports migrants in implementing development policy projects in their countries of origin. The programme entitled "Returning Professionals" offers a broad offer to support voluntary returnees who wish to carry out development policy activities in their countries of origin. In some countries, migrants are advised on how to start up in business. The homepage [www.geldtransfair.de](http://www.geldtransfair.de) provides information on conditions for transferring money and is to help make remittances by migrants to their countries of origin faster, cheaper and more secure.

#### ***1.5.5 Cooperation, consultation and coordination of stakeholders***

Please describe any additional information not included above on the processes for cooperation, consultation and coordination of national, regional and local authorities, including civil society, countries of origin and with EU level institutions and actors. Please describe relevant activity, such as the development of a national website and / or fo-

rum on integration, development of information exchanges between institutions, and possible contributions to the European Integration Forum, the European Website on Integration and the National Contact Points on Integration.

No significant developments.

## **1.6 Managing Migration and Mobility**

### **1.6.1 Visa Policy**

Please describe (planned) developments in relation to the implementation of the Visa Code and the Visa Information System (VIS), including developments in relation to biometric visas, for example the share of visas issued which are biometric, regions covered, pilot measures and testing, cooperation between (Member) States' consulates and the set up joint consular services for visas.

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).

German consulates apply the provisions of the Visa Code.

All visas issued by Germany are biometric with regard to the photograph which they contain.

The VIS became operational on 11 October 2011. Since this time, visas with biometric characteristics (photograph and fingerprints) have been issued at the German missions abroad in the respective operating regions and at Germany's external border crossing points. Since 31 October 2011, in line with the requirements of Article 7(3) of the Schengen Borders Code (SBC), border checks on the external borders of the VIS have included as a minimum checking the number of the visa sticker. Border controls at some external border crossing points have been carried out since 14 December 2011 as a standard check in combination with a verification of the visa holder's fingerprints. These standard checks are to be carried out at all external border crossing points by 2013. The preparations for the launch of the VIS in the German missions abroad in further operating regions, as well as the preparations for access to the VIS for the German police and security authorities, are going ahead in accordance with the VIS access decision. Germany will be expanding the collection of biometric data in the visa procedure as the VIS roll-out continues.

In the context of a total of 231 representation agreements, Germany represents the Schengen partners Belgium, Denmark, Estonia, Finland, France, Greece, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Austria, Portugal, Sweden, Slovenia, Spain and Hungary (some offices represent several Schengen partners). Conversely, Germany is now being represented in 29 offices by the Schengen partners Belgium, France, Italy, the Netherlands, Norway, Austria, Portugal and Spain. Further offices are being discussed. The representation agreements are listed in Annex 28 to the Handbook for the Visa Code.

<b>Visas issued in 2012 (from January 1 to September 30)</b>		
	<b>Schengen Visas</b>	<b>National Visas</b>
<b>Visas</b>	<b>1,386,946</b>	<b>136,797</b>

### **1.6.2 Schengen Governance**

Please describe any recent developments in relation to Schengen Governance. For example, where relevant, you could include any (planned) actions in relation to the new Schengen acquis, temporary suspension of Schengen, developments in relation to Regulation (EU) No 1342/2011 facilitating border crossing for Kaliningrad area etc.

No significant developments.



## 2. IRREGULAR MIGRATION

NB. The questions in this Section have the purpose of reporting activities in Member States that have contributed to the six Strategic Priority Areas outlined in the Strategic Response to EU Action on Migratory Pressures.<sup>6</sup>

### 2.1 Strategic Priorities

#### **Priority I: Strengthening cooperation with third countries of transit and origin on migration management**

The relevant challenges in the Strategic Response for this sub-section are in particular:

##### ***I.2. Ensure implementation of all EU readmission agreements to their full effect***

Please describe activities undertaken to support the implementation of EU readmission agreements (implementing protocols, cooperation (including diplomatic pressure) with third countries to encourage implementation)

To support the implementation of the EU's readmission agreements, the focus is on cooperation with the third countries in addition to the conclusion of implementation protocols. An implementation protocol with Montenegro was concluded in 2012, and a bilateral exchange of notes on EU readmission agreements was initiated with Macedonia.

##### ***I.3. Enhance the capacity of countries of origin and transit to manage mixed migration flows***

Please describe any specific developments to equip countries of first asylum with the means to guarantee refugee protection and to better manage mixed migration flows.

No significant developments.

##### ***I.4-7 Prevention of irregular migration from (a) the Southern Mediterranean countries; (b) the Eastern Partners; (c) the Western Balkans; and (d) the Western Mediterranean and the African Atlantic coast***

Please describe any specific cooperation activities in your Member State to prevent irregular migration in relation to the specific geographical regions outlined above.

No significant developments.

#### **Priority II: Enhanced border management at the external borders**

The relevant challenges in the Strategic Response for this sub-section are in particular:

##### ***II.2 Preventing and combating irregular immigration by ensuring strong and efficient border control Agreements with third countries***

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. This could include the provision of border equipment, training of border guards, etc. Any specific measures to combat irregular migration should be set out in Section 2

No significant developments.

##### ***Border control including Frontex operations***

a. Please describe any new border control developments, including technological equipment for border control 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 /

6 8714/1/12 REV 1 <http://register.consilium.europa.eu/pdf/en/12/st08/st08714-re01.en12.pdf>

exit system, the EU Registered Traveller Programme, the Schengen Information System (SIS II) and European Border Surveillance System.

The Federal Police is planning to introduce the EasyPASS (partly) automated border control procedure at five major German airports for EEC and Swiss nationals by 2014 (approx. 90-100 tracks). The technical requirements for participation by the Federal Police in SIS II have been in place since 2008. Extensive data migrations to consolidate and operate the new wanted persons and stolen property categories in SIS II have already been initiated and will be largely completed in November 2012.

b. 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.

see item II a.

c. Please describe any relevant (planned) developments to ensure more effective control of the external land, sea and air borders, such as reinforcing border control staff, providing training, increasing overall resources etc.

see item II a.

d. 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 activities, by type of activity (e.g. joint operations).

No significant developments.

e. Please describe any additional (planned) activities not already described above that contribute to the strengthening of security and preventing irregular migration at the external borders e.g. (i) use of advanced passenger information in accordance with Directive 2004/82/EC; (ii) identification of irregular migration routes - specifically inside the Schengen area.

re i)

The Federal Police recently called on 54 airlines to provide passenger data on the basis of Directive 2004/82/EC and of section 31a of the Federal Police Act (Bundespolizeigesetz).

re ii)

Germany is currently affected by several migration routes within secondary migration, the principle of these being secondary migration from the tension point at the external border (Greece) via the Balkan route (GRC-MKD-SRB-HUN-AUT-DEU-DNK-SWE). This route is increasingly fanning out because of the anti-migration measures being carried out on the external border, as well as along the route, and of the developments in the destination countries. Particular significance also applies to air travel here (direct as well as via neighbouring states).

Additionally, secondary migration from the Mediterranean area via Austria, France and to some degree via Switzerland should be mentioned.

Another route leads via the Eastern European external borders, Poland and/or the Czech Republic to Germany and on to Western Europe. This route is characterised by labour migration.

### **Priority III: Preventing irregular migration via the Greek-Turkish Border**

The relevant challenges in the Strategic Response for this sub-section are in particular:

#### ***III.1 Ensuring effective border controls are in place at the Greek-Turkish border***

Please describe activities to support Operation Poseidon and Attica. Also, describe any other activities undertaken to increase operational capacity at the Greek-Turkish border

No significant developments.

### ***III.2 Combating irregular immigration transiting Turkey to EU***

Please describe any bilateral activities to assist the Turkish authorities to strengthen their capacity to combat irregular migration and to ensure the dignified return of third-country migrants through escorted transit and assisted voluntary return projects via Turkey.

No significant developments.

### **Priority IV: Better tackling of abuse of legal migration channels**

The relevant challenges in the Strategic Response for this sub-section are in particular:

#### ***IV.1 Prevent an increase in unfounded asylum applications as a direct consequence of introducing visa free regimes in third countries and decrease the number of overstayers in the Schengen area***

Please describe any measures introduced to monitor the effects of visa free regimes in your Member State. What have been the results of these monitoring activities? Describe here any key findings – especially in relation to the impact of visa free regimes on the number unfounded asylum applications registered in your Member State.

No significant developments.

#### ***IV.2 Combating and preventing irregular migration caused by visa liberalisation***

Please describe measures taken to ensure the accelerated and swift return of persons from visa-free third countries found to be making unfounded asylum applications, to be overstaying permissions to stay or otherwise abusing legal migration channels.

No significant developments.

### **Priority V: Safeguarding and protecting free movement by prevention of abuse by third-country nationals**

The relevant challenges in the Strategic Response for this sub-section are in particular:

#### ***V.1 Improve the understanding of abuse of free movement rights by third country nationals and organised crime aiming at facilitating irregular immigration***

Please describe Member State activities taken to gather, analyse and share information on the fraud and abuse of free movement. In particular, describe any monitoring activities that have worked particularly well and any efforts taken to improve monitoring tools and procedures for detecting false documents, and the dissemination of findings that may contribute to a better understanding of misuse of free movement. In particular, describe any activities undertaken as part of EU Joint Investigation Teams, via the FREEMO expert group, or through the EUROPOL Platform for Experts.

Abuse of freedom to travel by third country nationals is also regularly the subject of analyses at the Joint Centre for Illegal Migration Analysis and Policy (GASIM), in which migration developments are subject to continuous integral strategic observation and analysis at inter-departmental level. The GASIM works together with other comparable European centres with the aim of applying effective strategies against this phenomenon (best practice).

In other respects: No significant developments.

#### ***V.2 Prevent the fraudulent acquisition and use of free movement rights by third-country nationals***

Please describe measures taken to implement enhanced security standards for EU documentation on legal stay (residence cards etc.), including use of biometrics and any actions taken to ensure common validation standards at borders and domestic controls. Describe also any measures to improve the security of the application and issuance processes for identity/EU documentation.

Germany has been issuing residence titles in line with the requirements of **Council Regulation (EC) No 380/2008 of 18 April 2008** since 2011 as separate documents with biometric characteristics (fingerprints and photographs).

#### **Priority VI: Enhancing migration management, including cooperation on return practices**

The relevant challenges in the Strategic Response for this sub-section are in particular:

##### ***VI.1 Ensuring that all Member States have efficient migration management systems in place in order to be prepared for fluctuating migration pressures***

Please describe any specific measures undertaken to address unexpected migration flows.

The GASIM contributes through its integral interdepartmental and interinstitutional approach towards improving the efficiency and effectiveness of the measures to react to unexpected migration pressures. The GASIM draws up comprehensive analyses of all available information, and supports and promotes the integral strategy to combat irregular migration. The tasks furthermore include: collecting all available information, operating an early-warning system, cooperating with similar partner facilities in the EU, making recommendations, as well as initiating research projects and joint other projects.

##### ***VI.2 Maximising the potential of a common EU approach in the field of return, both voluntary and forced in compliance with existing EU acquis***

Please describe measures taken to develop swift, sustainable and effective return using a common EU approach and in particular actions to (i) share best practice on return (voluntary and forced); (ii) improving cooperation with stakeholders in the field; (iii) improving operational cooperation on joint return operations; (iv) support voluntary return programmes; (v) improve cooperation on assisted voluntary return programmes,

Germany will continue to regularly participate in return flights organised by other Member States and also offers them participation in flights organised by Germany as capacities allow.

Germany is implementing a project promoted from funds of the ERF 2011 to develop a concept to intensify and improve cooperation with African states in which cooperation in obtaining documents to travel home as well as the implementation of returns is difficult.

Voluntary return takes precedence over forced returns. Additional importance furthermore attaches to reintegration in the home country.

The German REAG/GARP AVR programme has been in place since 1979. 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 in terms of migration – GARP start-up cash (up to 750 Euros per adult, 375 Euros per child under 12 years of age).

## **2.2 Key statistics**

<b>Third-country nationals returned (by nationality where possible)</b>			
	<b>Returned as part of forced return measures</b>	<b>Returned voluntarily</b>	<b>Among third-country nationals returned voluntarily, the number of third-country nationals returned as part of an assisted return programme</b>
<b>Nationality 1</b>	No intrayear ...	... data are ...	... available
<b>Nationality 2 etc.</b>			
<b>Total</b>			

### 3. INTERNATIONAL PROTECTION INCLUDING ASYLUM

*This Section will also be used to provide information to inform EASO's Annual Report.*

#### **3.1 Common European Asylum System**

Please describe any specific measures undertaken to support the further development of the Common European Asylum System, including projects undertaken with other Member States under the ERF.

No significant developments.

#### **3.2 Cooperation with the European Asylum Support Office (EASO)**

##### **3.2.1 Participation in EASO activities**

Please provide information on your (Member) State's relevant participation in EASO activities, by type of activity (e.g. provision of staff for Asylum Support Teams).

As members of the Asylum Support Team seconded by EASO, staff of the Federal Office for Migration and Refugees (BAMF) also took part in a total of two deployments in this year as part of the activities so far to establish a suitable asylum procedure in Greece. This work focussed on training activities concerned with interview techniques and drawing up a training manual on leadership qualities.

Furthermore, staff of the BAMF was also involved in the activities of the European Asylum Curriculum (EAC) within EASO. In a total of 12 deployments, they worked as trainers for international colleagues or on the further development of the EAC training modules and/or the establishment of new modules.

Moreover, staff of the BAMF also regularly attends conferences and expert workshops organised by the EASO.

##### **3.2.2 Provision of support by EASO to the Member States**

Please provide information on relevant support provided by EASO to your (Member) State, by type of activity (e.g. training, emergency support etc.)

Germany has not received any kind of EASO support up to this point.

#### **3.3 Intra-EU solidarity including Relocation**

##### **3.3.1 Support to national asylum systems**

Please provide information on support provided to (Member) States experiencing specific and disproportionate pressures on their national asylum systems. This might include support in the processing of requests for international protection, seconding staff (for the Asylum Intervention Pool / EAC Expert Pool), sending resources or equipment.

see No. 3.2.1

##### **3.3.2 Relocation**

Please describe any action undertaken with regard to the relocation 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.

No significant developments.

Third-country nationals Relocated to your (Member) State	
	Relocated
Third-country nationals	

### 3.4 Enhancing the external dimension including Resettlement

#### 3.4.1 *Cooperation with third countries*

Please describe specific cooperation with relevant non-EU countries to strengthen their asylum systems, including national asylum legislation and asylum policy frameworks (e.g. through Regional Protection Programmes).

Germany supports the external dimension of the EU's asylum and migration policy through large numbers of activities at bilateral and regional level, as well as EU activities. Within the Global Approach to Migration and Mobility (GAMM), this particularly includes active participation in existing mobility partnerships with the Republic of Moldova, Georgia and Armenia, including participation in EU-promoted projects within the mobility partnerships (targeted initiatives). Germany also supports the negotiations on future mobility partnerships with Tunisia and Morocco, and in doing so has also submitted specific project proposals. Germany is also actively involved in regional processes such as the EU-Africa Partnership on Migration, Mobility and Employment, as well as in the Prague Process, and is also committed here for instance through participation in a pilot project ('Quality and training in the asylum processes') within the targeted initiative of the Prague Process. Pilot project 4 to the European Asylum Curriculum, led by the Swedish Migration Board (SMB), is to be implemented together with the Federal Office for Migration and Refugees (BAMF) in a probable number of eight target states.

Germany also is contributing its expertise in the context of the Eastern Partnership. Germany has amongst other things organised and helped to design the "2nd Eastern Partnership Panel on Migration and Asylum" in Tbilisi together with Georgia in May 2012.

Furthermore, bilateral activities, such as TAIEX activities in the field of asylum with Turkey and the Republic of Moldova, are also being implemented as needed.

#### 3.4.2 *Resettlement*

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.

Following the decision taken in December 2011, Germany is taking part in a resettlement programme from 2012 to 2014, and resettling 300 persons per year (UNHCR submissions). At the appropriate time, the Federal Government will decide in consultation with the Federal Länder whether the programme will be continued beyond 2014 and if so, on what scale.

The Federal Ministry of the Interior selects the resettlement regions in close consultation with the Federal Foreign Office and with input from the Federal Länder.

The processing time for resettlement decisions is not defined by law – however, past experience (e.g. from the ad hoc admission of the 2,500 Iraqi nationals in 2009/10 and the 300 persons admitted from Tunisia and Turkey in 2012) revealed that decisions have been taken quickly, within less than four weeks after receipt of the submission on average, and the timeframe between submission and departure usually did not exceed six months.

The local authorities/NGOs are mainly involved in the post-arrival process. Local authorities take over responsibility after arrival in Germany. The refugees are offered inter alia migration advice services, migration services for young people and integration courses. Persons admitted are eligible for the entire system of government-sponsored integration services. Existing measures, in particular the migration advice/youth migration services, integration courses and job-related language courses (ESF-BAMF courses), already enable the promotion of integration based on individual circumstances and needs.

Germany admitted 300 persons under this resettlement programme in 2012. 105 were Iraqi nationals coming from Turkey, and 205 came from Tunisia (nationals from Sudan, Eritrea, Ethiopia, Congo, Nigeria, Pakistan and Somalia). Germany is already preparing the admission of another 300 persons in 2013 in close cooperation with the UNHCR.

Third-country nationals Resettled in your (Member) State	
	Resettled
Third-country nationals	300

#### 4. UNACCOMPANIED MINORS AND OTHER VULNERABLE GROUPS

##### 4.1 Unaccompanied minors and other vulnerable groups

Please describe any developments in relation to unaccompanied minors (UAMs) at national and international levels, including in the context the Action Plan <sup>7</sup> on UAMs and its Mid-term Review. Please also describe developments in relation to other vulnerable groups.

No significant developments.

##### 4.2 Key statistics

Unaccompanied minors		
Total	Unaccompanied minors not	
applying for asylum	Unaccompanied minors applying for asylum	
Jan-Oct 2012, under age 18	Not included in the statistics	1,630

#### 5 ACTIONS AGAINST TRAFFICKING IN HUMAN BEINGS

This Section should be completed also in the context of the “EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016)”<sup>8</sup>, and you should liaise with your national rapporteur on Trafficking in Human Beings.

##### 5.1 Measures to identify, protect and assist victims of trafficking

Please describe any (planned) actions at national level to fight human trafficking, including measures to identify, protect and assist victims of trafficking.

Victims of trafficking who are victim of a personal injury as a result of an intentional, unlawful assault on German territory are eligible for compensation based on the German Act on Compensation to Crime Victims. Surviving dependants of persons who died as a result of the damage to their health are also eligible for compensation (e.g. medical and curative treatment, aids and appliances, rehabilitation measures, monthly pension payments in cases of permanent damage to health). The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth published a brochure in cooperation with the Federal Ministry of Labour and Social Affairs in 2007 which includes all important information concerning the rights of victims of trafficking in relationship to the German Act on Compensation to Crime Victims.

The central statement of a study on “Development of effective measures to support victims of labour exploitation” – launched by the German Federal Ministry of Labour and Social Affairs and presented in March 2012 – is that human trafficking for labour exploitation has not yet really caught the attention of policy-makers and administrators,

<sup>7</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF> plus the Mid-term Review Report : [http://ec.europa.eu/dgs/home-affairs/e-library/docs/uam/uam\\_report\\_20120928\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/docs/uam/uam_report_20120928_en.pdf)

<sup>8</sup> <http://ec.europa.eu/anti-trafficking/>

at least in Germany. The Federal Ministry of Labour and Social Affairs has promised to analyze the study's conclusions meticulously and to discuss them with all relevant experts. It was agreed to intensify the cooperation with all parties involved in the process in order to prevent trafficking for the purpose of labour exploitation.

Together with various cooperation partners, the Federal Criminal Police Office has drawn up a brochure entitled "Identifying potential victims – taking the necessary action" (Potentielle Opfer identifizieren – Notwendige Maßnahmen ergreifen) to support the identification of victims of human trafficking for the purpose of exploitation of labour. This brochure addresses the staff of authorities which have initial contact with victims, such as uniformed police or financial control of illegal employment. The brochure serves the purpose of skill-building and awareness creation among this group of individuals and contains both general descriptions of phenomena and a list of indicators on the recognition of victims.

The German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration, Berlin (KOK), which is promoted by the Federal Government, published a "Manual on basic and further training and quality assurance for specialist advice centres for victims of trafficking in women/human beings" (Handbuch zur Aus- und Fortbildung und Qualitätssicherung für Fachberatungsstellen für Betroffene von Frauen-/Menschenhandel) in 2012. It consists of a social educational and a legal part. For the first time, it publishes guidelines, goals and quality criteria coordinated on a nationwide basis for the work of specialised professional advice agencies for those affected by trafficking in human beings.

## **5.2 Measures to prevent trafficking in human beings, and to increase the prosecution of traffickers**

Please describe any (planned) actions at national level to enhance the prevention of trafficking in human beings, and to increase the prosecution of traffickers.

With regard to planned actions at national level to enhance the prevention of trafficking in human beings, **Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing the Council Framework Decision 2002/629/JHA**, is to be transposed by 6 April 2013. An Act has been drafted at the responsible Federal Ministry of Justice by means of which the directive is to be transposed.

The Draft Bill has the following essential content, which corresponds to the transposition requirements of the above directive:

- to cover trafficking in human beings for the purpose of exploiting begging and criminal activities (Article 2§3 of the Directive)
- expansion of the qualifying element of the offence contained in section 233a subs. 2 No. 1 of the Criminal Code (assisting in human trafficking) to cases in which the victim is under 18 years old (Article 4§2 (a) of the Directive)
- expansion of the qualifying element of the offence contained in section 233a subs. 2 No. 2 of the Criminal Code to cases of gross negligence endangering the life of the victim Article 4§2 (c) of the Directive)

Furthermore, the Draft Bill also provides for the extension of sections 232 and 233 of the Criminal Code to cover trafficking in human beings for the purpose of the removal of organs (Article 2§3 of the Directive), which in accordance with the applicable law is largely already punishable as aiding and abetting criminal offences in accordance with the Transplantation Act (Transplantationsgesetz). The expansion of the qualifying elements contained in sections 232 and 233 of the Criminal Code to include the case constellations listed above (victim is aged under 18, gross negligence endangering the life of the victim) is not necessary in order to transpose the directive, but has been carried out for systematic reasons.

It is planned for the Act to enter into force within the present legislative period.



### 5.3 Coordination and cooperation among key actors

Please describe enhancements in coordination and cooperation among key actors and policy coherence, including to increase knowledge of and effective responses to changing trends in human trafficking. Please also identify cooperation with third countries (e.g. awareness raising actions in third countries addressing communities at risk). Please only refer to cooperation with regard to combating human trafficking in this section.

No significant developments, the well-established coordination mechanism of the Federal Working Group “Trafficking in Persons” (founded in 1997) continues its work.

### 5.4 Key statistics

Third-country nationals receiving a residence permit as victims of human trafficking		
Third-country nationals	15	
Traffickers arrested as suspects and traffickers convicted		
	Arrested / otherwise involved in a criminal proceeding	Convicted
Traffickers	No statistics available	No statistics available

Additional information on convictions in 2010:

Re section 232 of the Criminal Code total of 115 persons, of whom 84 male and 31 female

Re section 233 of the Criminal Code total of 13 persons, of whom 12 male and 1 female

Re section 233a of the Criminal Code total of 3 persons, of whom 2 male and 1 female

Source: Federal Statistical Office, Fachserie 10, Reihe 3, 2010

## 6. MAXIMISING DEVELOPMENT IMPACT OF MIGRATION AND MOBILITY

### 6.1 Mainstreaming of migration in development policies

Please describe any relevant activity, for example studies, and development of approaches to make migration an integral part in sectoral policies (e.g. agriculture, health, education etc.), solidarity development projects, etc. Please also highlight any migration-related initiatives with third countries in the framework of development policy.

German development cooperation promotes an exchange of experience and the regional dialogue between representatives of the diaspora and government institutions of partner countries within the series of workshops entitled “Migration politics in the Western Balkans”. The focus here was placed amongst other things on the development and implementation of migration strategies. The outcome of the workshop formed the basis for an analysis of selected countries’ migration strategies. Furthermore, the relevance of institutional coherency and coordination was discussed with representatives of various ministries and representatives of local administrations involved in migration policy.

German development cooperation is supporting a regional interdisciplinary dialogue in Central Asia on the promotion of development potentials in labour migration.

Within EU mobility partnerships, German development cooperation is providing institutional advice to improve promotion of the potentials of migration for sustainable development.

Migrants are included as important target groups in various programmes and projects of German development cooperation, including in support for the reform process in the vocational training system in Tajikistan, by involving the diaspora in rural economic development in Kosovo, by networking the Serbian diaspora with their country of origin to promote innovation and support the competitiveness of Serbian SMEs, etc.

Within German development cooperation, migration is intensively linked with other topical areas. Here are some example studies: “Business Responsibility and Migration”; “Migration and Rural Development”; “Business Bliss from Hard Work Abroad (Successful business models by migrants, their families or returnees incl. policy recommendations)”; and “Developing Support for Returnees – Supporting the Development of Serbia. A Needs Assessment Study of Serbian Returnees”.

### **6.2 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, co-development actions etc.

The remittances price comparison website [www.geldtransfair.de](http://www.geldtransfair.de) is being updated in order to heighten transparency on the market for remittances. The transparency created by the website is to lead to rising competition among providers for remittances, and hence to faster, cheaper, safer remittances for migrants living in Germany.

Within a technical cooperation activity to increase financial (basic) training (financial literacy) in Uzbekistan, remittance recipients are to be enabled to gain access to formal financial services (savings accounts in particular).

The FReDI Handbook (Financial Literacy for Remittances and Diaspora Investment – A Handbook on Methods for Project Design) was developed in cooperation with the “European Microfinance Platform” NGO. This describes methods on the use of the potential of financial literacy interventions to underpin the positive effects and to avoid negative effects of remittances – both for those sending and receiving the remittances. It targets multipliers in German and international development cooperation and is to be presented at national, European and international fora.

### **6.3 Working with Diasporas**

Please provide information on a possible national policy or actions with regard to 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 describe any specific activities to address migrant rights and the empowerment of migrants.

The Federal Government promotes migrants’ projects in their countries of origin which are relevant to development. Migrants’ organisations can apply with their project ideas and receive advice and where appropriate financial support. There has been a separate programme for this since 2011. The programme also deals with targeted capacity development measures in order to develop the ability of migrants’ organisations to develop and to set the stage for civil society cooperation between the diasporas and local grassroots structures.

Within development cooperation, the Federal Government promotes migrants’ private economic commitment in their countries of origin with the programme entitled “Migrants as entrepreneurs”. The programme offers those starting up in business from the diaspora advice, seminars and ongoing guidance in Germany and the country of origin.

### **6.4 Efforts to mitigate ‘brain drain’.**

Please describe any (planned) measures to mitigate 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.

The Federal Government is promoting the knowledge transfer to developing countries within development cooperation with the programme entitled “Returning Professionals”. The programme offers individual advice on returns and career planning, support in seeking a job relevant to development, networking with important local organisations and in some cases also financial support. With this programme, the Federal Government is making an active contribution towards the knowledge transfer and combating the brain drain.

## 7. PROVISION AND EXCHANGE OF INFORMATION TO SUPPORT POLICY DEVELOPMENT

### 7.1 Exchange of Information at EU level

Please describe any additional actions to provide and exchange information to support policy development at EU level. This might include for example, through networks such as the EMN, the Mutual Exchange Mechanism (MIM), EASO etc.

In line with the EMN's goal of providing to the bodies of the European Community up-to-date, objective, reliable data and information that can be compared at EU level in the spheres of migration and asylum, the German contact point of the EMN has drawn up a national report for 2011 on asylum and migration, as well as drafting the following studies in the course of the year:

- Visa Policy as a Migration Channel (Visumpolitik als Migrationskanal)
- Practical Measures for Reducing Irregular Migration (Maßnahmen zur Verhinderung und Reduzierung irregulärer Migration)
- Misuse of the right to family reunification - Marriages of convenience and false declarations of parenthood (Missbrauch des Rechts auf Familiennachzug – Scheinehen und missbräuchliche Vaterschaftsanerkennungen)
- Immigration by international students to Germany (Zuwanderung von internationalen Studierenden aus Drittstaaten)
- Measures and challenges in establishing identity within asylum procedures and deportations (Maßnahmen und Herausforderungen bei der Identitätsfeststellung im Rahmen des Asylverfahrens sowie von Abschiebungen)
- Intra-EU mobility of third-country nationals (Intra-EU Mobilität von Drittstaatsangehörigen)
- Update of the EMN study from 2009 on the organisation of asylum and immigration policy in Germany N.B: still being worked on; it can however be presumed that this product will be completed in 2012

In addition to these academic titles, there was also a direct exchange of information between the national contact points to support policy-makers on specific questions from the field of migration and asylum within a written ad hoc query system to which the German contact point made an active contribution.

In addition to drawing up and dispatching printed copies of the studies, the Federal Office's national EMN website is also used to provide information for political decision-makers at EU level – as well as at national level and for the broader public.

### 7.2 Exchange of Information at Regional and National levels

Please describe any additional actions to provide and exchange information to support policy development at regional and national levels. These might include specific actions with national contact points or rapporteurs, and the exchange of information within the 'regions' of Europe, for example, amongst the Baltic States. Please also describe any (planned) sharing and exchanging of information on migration with other (Member) States, through existing networks and other instruments (e.g. the European Migration Network, the Mutual Information Mechanism (MIM)). Please also describe the involvement of EU agencies

No significant developments.

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## Impressum

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**Publisher:**

Federal Office for Migration and Refugees  
– German EMN National Contact Point and  
Migration and Integration Research Section –  
90343 Nürnberg

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**Date:**

März 2013

**Layout:**

Gertraude Wichtrey  
Claudia Sundelin

**Photo:**

Thomas Gütthuber

**Suggested citation:**

Federal Office for Migration and Refugees (2013): Annual Policy Report 2012 by the German National Contact Point for the European Migration Network (EMN). Nuremberg: Federal Office for Migration and Refugees.

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