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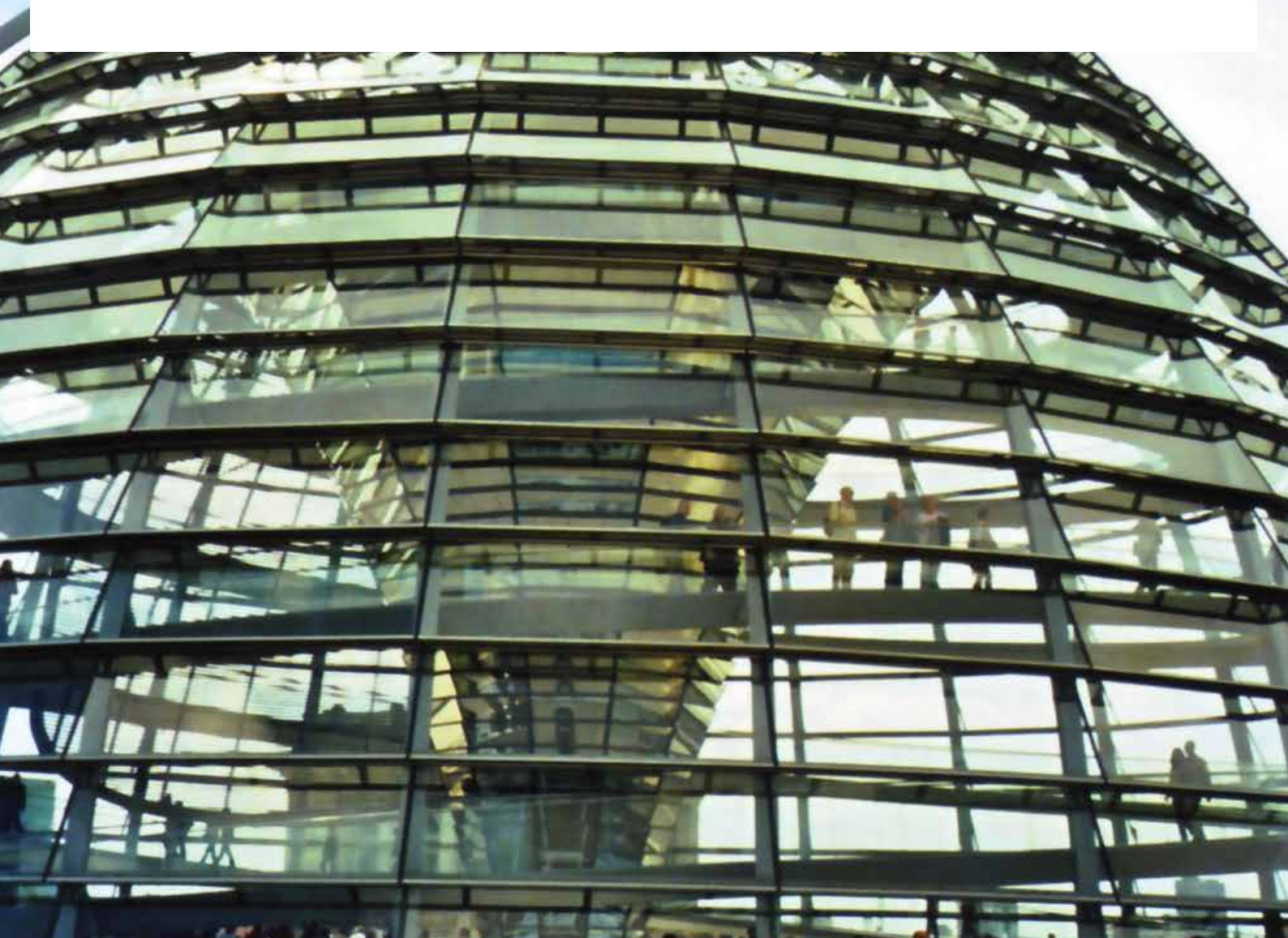


Federal Office
for Migration
and Refugees



Annual Policy Report 2013

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



Co-financed by the
European Union



Annual Policy Report 2013

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Summary

The 2013 Policy Report of 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 2013. 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. These measures comprise 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 2013.

The key debates on migration, integration and asylum of the year 2013 referred to the following issues:

- The rise in the number of applications for asylum and the political response to this phenomenon
- Protests by refugees
- The 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 2013; they involve the following measures, inter alia:

- Amendment to the Asylum Procedure Act (Asylverfahrensgesetz) for the transposition of the Qualification Directive (Qualifikationsrichtlinie)
- Amendment to the German Criminal Code (Strafgesetzbuch) and Code of Criminal Procedure (Strafprozessordnung) with a view to enhancing victim protection in cases of trafficking in human beings

Below the legislative activity of the German Bundestag, the Federal Ministry for Labour and Social Affairs amended the Employment Ordinance (Beschäftigungsverordnung - BeschV) in 2013 which provides the basis for the admission of labour migrants from specific occupational and qualification groups. (cf. Chapter 3.1).

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1 Introduction

Structure and content

The 2013 Policy Report 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 for the year 2013, although it does not claim to be exhaustive. The Report was drawn up by the National Contact Points for the European Migration Network (EMN) at the Federal Office for Migration and Refugees (BAMF) in Nuremberg.

Pursuant to Article 9 paragraph 1 of 2008/381/EC, Council Decision of 14 May 2008 establishing a European Migration Network, each National Contact Point shall provide an annual report describing the migration and asylum situation in the Member State, which shall include policy developments and statistical data. This report on issues of migration and asylum ("Policy Report" for short) is intended to meet the information needs of Community institutions and of Member States' authorities and institutions on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policy-making in the European Union in these areas. (Article 1 paragraph 2 of 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 that, the European Commission publishes the individual national Policy Reports based on the Policy Reports of individual Member States. 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 2012: COM 2013).

In terms of content, meanwhile the tenth EMN Policy Report is based on the reports of the previous years. By and large, it will follow 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 years insofar as it no longer strictly follows the policy commitments 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 Response¹
- EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016)²
- European Agenda for the Integration of Third-Country National (COM 2011)

Chapter 1 provides an overview of the structure of the political system, existing institutions, changes in these structures and the general political developments in 2013. Chapter 2 outlines political and legislative developments that are relevant to this context as well as important political debates in relation to migration, integration and asylum. Chapters 3 to 8 focus on concrete political and legal measures in the specific areas of migration and asylum policy. Chapter 9 focuses on developments relating to the global approach to the issue of migration. The final Chapter provides an overview of the transposition of European legal acts into German law in 2013.

¹ cf. <http://register.consilium.europa.eu/pdf/en/12/st08/st08714-re01.en12.pdf> (25 February 2014)

² cf. <http://ec.europa.eu/anti-trafficking/> (25 February 2014)

Methodology

The 2013 Policy Report is based on comprehensive sources of data and information. The information provided is based on the paper submitted to the European Commission at the end of 2013 on the Annual Report by the European Commission. Moreover, factual information from the relevant operational 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 publications by the BAMF and the National Contact Points of the European Migration Network and 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. Furthermore, a subject-specific analysis of the news coverage from nationwide media was included. All external sources are indicated explicitly as such.

The majority of figures and statistics were provided by the BAMF, the Federal Statistical Office (StBA) and the Federal Employment Agency (BA). As the 2013 EMN Policy Report had already been completed by the beginning of March 2014. Some data on migration were not yet available for 2013.

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”. (Chapter 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

Terminology used in the report is based. By and large, the 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

In the Federal Republic of Germany, 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 policies 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 players 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 and the Federal Police as the central operative authorities.
- Another important venue of policy-making is the Permanent Conference of the Ministers and Senators of the Interior of the Federal States (IMK)³, 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.

³ To make the text easier to read, the masculine form will be used in this report also for non-gender-neutral designations. It will refer to men and women alike.

- 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 relating to foreign countries.
- The Federal Government Commissioner for Migration, Refugees and Integration is appointed by the Federal Government. Since 2005, the Commissioner has been institutionally attached to the Chancellery in the rank of a Minister of State. The Commissioner has the task “in particular of assisting the Federal Government with further developing its integration policy [...]” and is to be involved in relevant legislative proposals. Another task is to promote the integration of migrants residing in Germany and to counteract xenophobia.⁴
- Similarly to the IMK, the Ministers and Senators responsible for integration in the Federal States meet at regular intervals to discuss 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 which Member State is responsible for carrying out the asylum procedure. It also decides on whether a petitioner is a refugee under the Geneva Convention and on whether the preconditions for subsidiary protection under the Qualification Directive and for target country-specific bans on deportation⁵ are met. If no need for protection is established, the BAMF also issues the deportation warning and/order. The BAMF is also responsible for developing and implementing nationwide integration courses for immigrants, conducting applied and policy-oriented 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 between the authorities responsible for labour migration 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, 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 twice in one of

⁴ Cf. Sections 92ff. of the Residence Act (AufenthG).

⁵ Foreigners facing a concrete threat, the death penalty or torture or any other inhumane or degrading treatment in their country of origin and foreigners facing a major threat in their country of origin from armed conflict are granted subsidiary protection. Deportation may turn out to be unlawful resulting from the application of the European Convention on Human Rights or if the deportation of a foreigner may potentially lead to a concrete risk to life, limb or freedom in the destination country. This threat can also result from serious illness that cannot be treated adequately or at all in the destination country.

Germany's major cities for an exchange of experience.

- The Federal Police (Bundespolizei - BPOL) is a superior federal authority among the subordinate authorities of the BMI. It is responsible for protecting the borders of the Federal Territory (border control) in a bid to prevent the unlawful entry and crimes involving smuggling of persons. As such, border control comprises border surveillance, carrying out police checks on cross-border traffic, inspecting documents entitling persons to cross the border and checking that persons are actually entitled to cross the border, conducting searches along the border and in an area of 30 km behind the border (50 km at sea borders) averting danger affecting border security. The tasks incumbent upon the Federal Police ensue from the Federal Border Police Act (Gesetz über die Bundespolizei - BPolG) and other statutory provisions, such as those set forth in the Residence Act (Aufenthaltsgesetz) (Section 71 subsection 3 of the Residence Act) and in the Asylum Procedure Act (Asylverfahrensgesetz) (Section 18 of the Asylum Procedure Act). The competencies of the Federal Police under the Residence Act refer, inter alia, to the non-admission and removal of foreigners who are not in possession of a visa or valid residence permit, revoking visas in certain cases and carrying out the escort measures ensuing from the Residence Act that go hand in hand with visa revocation (Schneider 2012b: 34). Within the framework of the repatriation of third-country nationals residing unlawfully in the Federal Territory, the Federal Police is responsible, inter alia, for coordinating escorted returns by air and in doing so cooperates closely with other authorities, the foreigners authorities in particular (Schneider 2012b: 34).

- In addition to performing numerous other administrative tasks on behalf of the Federal Government, the Federal Administration Office (BVA) is responsible for the entry and reception procedure for ethnic German repatriates. Moreover, it processes the data of the Schengen Information System (SIS) and, on behalf of the BAMF, the data stored in the Central Register of Foreign Nationals (AZR) 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; law-making 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 level, the federal level and the Federal States exercise concurrent legislative powers in most areas. This means that the 16 Federal States may adopt laws in a given field as long as the federal level 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 are 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 expelled persons has been adopted by the federal level 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).⁶

At the level of the Federal States, the Ministers or Senators of the Interior are responsible for all asylum and foreigners-law-related issues. Up to now, Berlin and North Rhine-Westphalia are the only Federal States to

⁶ 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.

have adopted an Integration Act⁷. Even if there are no other state laws in the areas of immigration, asylum and integration, the states have a major impact on the actions of the foreigners authorities, i.e. on administrative implementation, as they adopt decrees and administrative regulations. In addition, they influence the federal law-making 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 law-making, 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)⁸, 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) – which is 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).⁹

- 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.¹⁰
- Article 16a paragraph 1 of the Basic 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 at risk of 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 forth 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 forth in the Residence Act (Section 25 subsection 1 and Section 60 subsections 2, 3, 5 and 7).

7 In North Rhine-Westphalia, the „Act Promoting Social Participation and Integration“ (Gesetz zur Förderung der gesellschaftlichen Teilhabe- und Integration) entered into force on 14 February 2012. In Berlin, the „Act Regulating Participation and Integration in Berlin“ (Gesetz zur Regelung von Partizipation und Integration in Berlin) entered into force on 28 December 2010.

8 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 06.08.2004 and on 01.09.2004 (see Article 15 paragraph 1 and paragraph 2 of the Immigration Act)

9 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).

10 Joint Ministerial Gazette No. 42-61, dated 30.10.2009, p. 877.

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

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 Residence Ordinance (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 supplemented the Employment Ordinance and regulated until 30 June 2013 under which conditions foreigners who are lawfully residing in Germany were permitted to take up employment. The amendment to the Employment Ordinance on 1 July 2013 transposed the provisions set forth in the Employment Procedure Ordinance.
- 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 procedures. In doing so, it takes into account key Community law, such as the Dublin Agreement or the EURODAC Regulation.

- The Ordinance on Naturalisation Tests (Einbürgerungstestverordnung - EinbTestV) regulates the test procedure in respect of naturalisation.

2 Political, legal and institutional developments

2.1 General political developments

Elections in the Federal Republic of Germany

Elections to the German Bundestag and state parliament elections were held in Germany in Bavaria, Hesse and Lower Saxony in 2013.

On 22 September 2013, Members of the German Bundestag were elected for the 18th legislative term. The parliamentary group of the CDU and CSU won 41.5 % of the second votes cast. The SPD received 25.7 % of the second votes, the party THE LEFT received 8.6 % of the votes, Alliance 90/The Greens received 8.4 % of the votes. The FDP failed to get over 5% of the vote, thus denying them seats in the Bundestag for the first time since 1949. The CDU, CSU and SPD agreed to form a coalition government which replaced the coalition of Christian Democrats, CSU and the FDP. On 17 December 2013, the majority of Members of the German Bundestag elected Angela Merkel as Federal Chancellor. This is her third term in office.

State parliament elections were held in Hesse at the same time the Bundestag elections were being held. The CDU garnered 38.3 % of the votes, the SPD won 30.7 % of the votes, Alliance 90/The Greens received 11.1 % of the votes. The party THE LEFT obtained 5.2 % of the votes, the FDP obtained 5.0 %. The CDU and Alliance 90/The Greens agreed on 21 December 2013 to set up the first Black-Green state government in a non-city state. The Land government re-elected Volker Bouffier (CDU) Minister-President at a constituent meeting held on 18 January 2014.

The state parliament of Lower Saxony was newly elected at the beginning of the year, on 20 January 2013 to be precise. The CDU received 36.0 % of the votes. The SPD received 32.6 % of the votes. The FDP received 9.9 % and Alliance 90/The Greens obtained 13.7 %

of the votes. The SPD and Alliance 90/The Greens agreed to form a coalition government; on 19 February 2013, the Land government of Lower Saxony elected Stephan Weil (SPD) as Minister-President.

On 15 September 2013, state parliament elections were held in the Free State of Bavaria with the CSU receiving 47.7 % of the votes, the SPD receiving 20.6 %, Free Voters 9.0 % and Alliance 90/The Greens 8.6 %. The FDP, which was involved in the state government during the previous legislative term, failed to meet the 5% hurdle and was unable to enter the Bavarian state parliament, garnering just 3.3% of the votes. This means the CSU gained the absolute majority of members of the Bavarian state parliament. On 8 October 2013, the state parliament of the Free State re-elected Horst Seehofer (CSU) as Minister-President.

Changes in the Political Responsibilities for Migration and Asylum

There were several shifts in competency in the area of migration, integration and asylum policy at federal level following the elections to the Germany Bundestag. Hans-Peter Friedrich (CSU) was appointed Minister of Food and Agriculture having held the position of Minister of the Interior.¹¹ Thomas de Maizière (CDU) was appointed Federal Minister of the Interior on 17 December 2013. He had already held the position of Minister of the Interior before from October 2009 until March 2011. In between his first and current term in office as Minister of the Interior, he held the position of Federal Minister of Defence. Andrea Nahles (SPD) was appointed Federal Minister of Labour and Social Affairs on 17 December 2013. She took over from Ursula von der Leyen who was appointed Federal Minister of Defence. Aydan Özoğuz (SPD) was appointed Commissioner for Migration, Refugees and Integra-

¹¹ Hans-Peter Friedrich retired from this position in February 2014.

tion. She took over the position from Maria Böhmer (CDU) who moved to the Federal Foreign Office as Minister of State.

The state parliament elections held in 2013 also resulted in several shifts in competency in the area of migration and asylum at state parliament level. Boris Pistorius (SPD) was appointed Minister of the Interior and Sport at the state parliament of Lower Saxony. In doing so, he replaced Uwe Schünemann (CDU) whose party is no longer involved in the state government. Cornelia Rundt (SPD) took over from Aygül Özkan (CDU) as Minister for Social Affairs, Women, Family, Health and Integration.

In the wake of the state parliament elections in Bavaria and the subsequent formation of the state government, Emilia Müller (CSU) took over from Christine Haderthauer (CSU) as Minister of State for Labour and Social Affairs, Family and Integration responsible, inter alia for implementing the Asylum Seekers Benefits Act (AsylbLG). Joachim Herrmann (CSU) was re-appointed Minister of Home Affairs.

Changes at UNHCR Germany

The Dutch national Hans ten Feld is the new representative of the United Nations High Commissioner for Refugees (UNHCR) in Germany. He has replaced Michael Lindenbauer who moved to the German UNHCR office in Tokyo.

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

In 2013, a large number of issues dominated the public debate on the issues of asylum, migration and integration. The debates which 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, the creation of new accommodation for asylum seekers and the evaluation of and obligation to opt for one nationality in the Nationality Law.

Rising number of asylum seekers

The number of foreigners applying for asylum for the first time was at its lowest in 2007 at 19,165. This number has since risen steadily and reached a new-time high in 2013 when 109,580 foreigners submitted

asylum applications for the first time. This means the number of asylum applications submitted for the first time rose by 45,040 year-on-year (2012: 64,540); representing an increase of 69.8 %. The rise in the number of applications for asylum filed sparked a public debate about the various aspects of asylum policy from arranging accommodation for asylum seekers to the duration of asylum procedure to the assessment of countries of origin in terms of asylum. In particular the Western Balkan states were in the center of attention.

The sometimes controversial public debate focused mainly on the new challenges facing local communities. In order to safeguard accommodation for asylum seekers and their relatives, the competent local communities were compelled to create new accommodation for asylum seekers¹². There was a growing trend among right-wing extremist initiatives and neo-Nazi organisations to use the increased publicity in 2013 to organise local protests against accommodation for asylum seekers, resp. to exploit such protests for their own purposes. According to Pro Asyl, a number of attacks were carried out on facilities accommodating asylum seekers (Kollender 2013). Partly, these protests met with a huge response from residents in some locations such as Schneeberg in Saxony and in Berlin-Hellersdorf. In response, counter-initiatives were set up by civil society stakeholders, who successfully counteracted these occurrences. Although these conflicts were played out on a local level, they also erupted in a variety of local communities throughout the Federal Republic. The former Vice-President of the German Bundestag, Claudia Roth (Alliance 90/The Greens), stressed the need to clamp down on racist tendencies (Geyer 18 November 2013). The former Federal Minister of Economics, Philipp Rösler, warned of the damage that could potentially be done to Germany's image abroad, saying that xenophobic protests could discourage much-needed highly qualified third-country nationals from moving to Germany (Greive 28 August 2013).

The Bavarian Minister for Home Affairs Joachim Herrmann (CSU) demanded that the asylum procedure be shortened, calling upon the Federal Government to increase staffing at the BAMF (Nürnberger Nachricht-

¹² cf. Müller 2013 on the organisation of accommodation for asylum seekers.

en 22 July 2013). The then Federal Minister of the Interior Hans-Peter Friedrich (CSU) allocated staff of the Federal Police to the BAMF (Süddeutsche Zeitung 16 August 2013). Following the elections to the German Bundestag, the newly formed coalition of the CDU, CSU and SPD agreed to provide the Federal Office with more personnel in the long term in order to reduce the average duration of the asylum procedure to less than three months (CDU/CSU/SPD 2013). Support by the Federal Police is still ongoing.

In addition to shortening the duration of the asylum procedure by increasing staff, the then Federal Minister of the Interior considered the option of declaring the non-EU Western Balkan countries safe countries of origin pursuant to Section 29a of the Asylum Procedure Act (cf. BAMF/EMN 2013). The new Government announced in the coalition agreement that it would be declaring Serbia, Macedonia and Bosnia-Herzegovina safe countries of origin within the meaning of Section 29a of the Asylum Procedure Act “in order to be able to process unsuccessful applications for asylum faster and to be able to terminate asylum seekers’ stay in Germany faster“ (CDU/CSU/SPD 2013: 109; PRO ASYL 2013).

Protests by refugees

The protests by refugees that began in the autumn of 2012 continued and escalated in 2013 (BAMF/EMN 2012). The demands made by foreigners seeking protection ranged from better living conditions and employment opportunities during the asylum procedure to suspension of deportation right up to recognition as asylum seekers. The protests took place mainly in Munich, Berlin and Hamburg. In Munich and Berlin, asylum seekers and supporters organised protest camps on central squares and went on hunger strike. After several persons refused to take fluids in Munich, the police evacuated the camp and put an end to the hunger strike. In Berlin, the district mayor and Senate tried to find a mutually agreeable solution to the situation (Küpper 1 November 2013). In Hamburg, protests were held by civil society and clashes occurred with supporters of ca. 300 persons from several African countries who had come to the city in the spring of 2013 with Italian residence permits. While the Senate of the Hanseatic City pressed for their stay to be terminated, supporters of the group “Lampedusa in Hamburg” demanded that they be permitted to stay (Frank 15 June 2013; Voigts 18 October 2013).

Obligation to opt for one nationality and multiple nationality

The year 2013 was marked by a heated political and public debate about the Citizenship Act in Germany. This debate was sparked above all by developments in relation to the so-called obligation to opt for one nationality. At the beginning of the year, the first group of persons obliged to opt for one nationality who were born in 1990 reached their 23rd birthday, the age at which they have to decide between German nationality and the foreign nationality of their parents. This affected around 3,400 persons in 2013. The majority of these persons opted for German nationality. By contrast, 176 persons (as at: 7 November 2013)¹³ lost German nationality, mainly because they failed to observe deadlines or to furnish proof that they had renounced their foreign nationality.

Several experts once again expressed doubts about the constitutionality of the obligation to opt for one nationality at a public hearing of the Committee on Internal Affairs of the German Bundestag held on 13 March 2013¹⁴ and the problems associated with implementing it. However, relevant parliamentary motions and bills by the SPD, ALLIANCE 90/THE GREENS and THE LEFT and by the Bundesrat aimed at abolishing the obligation to opt for one nationality and the general acceptance of multi-nationality in respect of naturalisation failed to reach a majority vote in the 17th German Bundestag. It was above all the Union parties CDU/CSU that refused to agree to relevant statutory amendments whereas the FDP indicated its willingness to reach a compromise. These positions were also reflected in the programmes of the parties for the elections to the German Bundestag on 22 September 2013. At the same time, numerous civil society organisations sought to gain support – as in the previous years – for the abolition of the obligation to opt for one nationality and for supporting the persons concerned. One example of this was the establishment of the legal aid fund for persons obliged to opt for

13 Response by the Federal Ministry of the Interior to a written query by the Member of the German Bundestag Sevim Dağdelen of 6 November 2013, reference number 11/22.

14 http://www.bundestag.de/dokumente/textarchiv/2013/43237537_kw11_pa_innere/index.html (4 December 2013).

one nationality¹⁵ in June 2013 which the Bertelsmann Foundation, the IG Metall trade union and the Protestant Church in Hesse and Nassau were involved in.

During the coalition negotiations between the CDU, CSU and SPD in November 2013, the controversial debate focused on the obligation to opt for one nationality and the issue involving a general acceptance of multi-nationality. As a compromise, the coalition agreement says that the obligation to opt for one nationality is to be eliminated for “persons born and reared in Germany”, but that otherwise the Citizenship Act will continue to apply (CDU/CSU/SPD 2013: 105). The issue how the prerequisites of being reared should be defined was subsequently the topic of an intensive debate (Alscher 2014). In order to transpose the changes to the obligation to opt as laid down by the coalition agreement, a draft act to amend the Citizenship Act (StAG) was presented on 27 March 2014.

Giving up the previous nationality continues to be compulsory for persons becoming naturalised in Germany – particularly for third-country nationals – which has been sharply criticised by representatives of Turkish migrant organisations in Germany. Turkish nationals represent the largest group of persons affected by the regulation. EU nationals and Swiss nationals have generally been permitted to hold dual nationality since the Citizenship Act was amended on 28 August 2007 (Section 12 subsection 2 of the Citizenship Act).

Basic issues relating to migration policy

Basic issues relating to migration policy continued throughout the year 2013 and indeed gained momentum towards the end of the year. The debate was conducted above all under the catchphrase “poverty migration” of EU nationals on the move. The debate was initiated by a policy paper published by the German Association of Cities (Deutscher Städtetag) on 14 February 2013 which assessed “the social balance and social peace in towns and cities [as] being seriously at risk owing to the sharp rise in migrants – in particular from Romania and Bulgaria” (Pape 2013: 2). The sharp rise in the number of migrants from Romania and Bulgaria was the subject of major controversy also

during the state parliament elections and the elections to the German Bundestag in 2013 and in the run-up to the full freedom of movement within the EU for Romanian and Bulgarian workers on 1 January 2014. As part of this debate, the basic issue to what extent migration is beneficial for the economy as a whole or is a burden on social systems was discussed. This is also relevant for migration policy vis-à-vis third countries. Employers’ associations emphasized the economic benefit of migration whereas the CSU stressed its determination to expel any migrants who were coming to Germany solely for the purpose of drawing welfare benefits (Süddeutsche.de 28.12.2013; Berger 08.01.2014). Representatives of the opposition, trade unions and civil society initiatives criticised the polemic and racist undertones of the debate in this context (Zeit Online 28.12.2013).

15 <http://www.wider-den-optionszwang.de/dl/PM-Rechtshilfefonds-Start.pdf> (4 December 2013)

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 domestic potentially 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 of relevant areas of activity. However, at the same time the Federal Government says 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 2013). The demographic development and economic structural transformation toward globally networked science- and research-intensive industries and services may potentially increase the lack of skilled labour over the medium and long-term - depending on the response to the demand for labour by companies (High-Ranking Consensus Group on Immigration and Skilled Labour 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 Act Implementing

Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Gesetz zur Umsetzung der Hochqualifizierten-Richtlinie der Europäischen Union) entered into force on 1 August 2012, introducing the EU Blue Card and facilitating access to the labour market for highly qualified persons and foreign students (BAMF/EMN 2013: 23). On 31 December 2013, there were 13,551 third-country nationals holding an EU Blue Card residing in Germany according to preliminary information from the Central Register of Foreigner Nationals, 6,083 or 45 % of whom were working in professions in which there is a shortage, so-called MINT professions or as physicians. 55 % (7,468) were employed as (other) academics.

3.1.2 National Developments

Revision of the Employment Ordinance as of 1 July 2013

With the entry into force of the Ordinance on the admission of foreigners for the purpose of taking up employment (Verordnung zur Änderung des Ausländerbeschäftigungsrechts; Federal Law Gazette I p. 1499) on 1 July 2013, the Employment Ordinance (Beschäftigungsverordnung) (BeschV) was fully¹⁶ revamped and greatly simplified. The previous Employment Procedure Ordinance (Beschäftigungsverfahrenverordnung) was also incorporated into the Employment Ordinance. The new Employment Ordinance makes

¹⁶ The principle now applies that any employment of third-country nationals is permissible without a priority examination and without approval unless it is explicitly subject to approval by the labour administration which will, if applicable, need to examine the working conditions only. The opposite had been the case previously: Previously any employment of third-country nationals was subject to examination whether a national worker was available for the employment in question (so-called priority examination) and to approval unless it was explicitly exempt from approval.

a distinction between migration for the purposes of long-term employment in Germany and temporary migration.

The new Employment Ordinance contains provisions governing access to the labour market for various groups of persons. The provisions previously set forth in different sections of the Ordinance that apply to holders of the EU Blue Card, foreign graduates of German institutions of higher education and executive staff and specialists are now harnessed in the Employment Ordinance.

Amendments to the Employment Ordinance regarding non-academic occupations

The new Section 6 of the Employment Ordinance regulates the prerequisites under which foreigners with professional skills can be permitted to seek employment in the training professions (non-academic skilled workers with vocational qualifications). This option is available to skilled workers in all state-recognised training professions requiring at least two years of vocational training.¹⁷

1. Third-country nationals who have completed vocational training in Germany in a state-recognised or similarly regulated training profession can take up employment that is commensurate with their professional qualifications (Section 6 subsection 1 of the amended Employment Ordinance). This also applies to school training leading to a regulated profession (such as educators, nurses).
2. Skilled workers from third countries who obtained their non-academic vocational qualifications abroad can, in principle, be admitted for employ-

ment in all state-recognised or similarly regulated training professions in future provided admission is necessary in order to meet the demand for workers with the relevant qualifications. In order to ensure that the foreign workers have the required qualifications to be employed as skilled workers, the competent agency abroad must recognise the professional qualifications obtained abroad as being equivalent to the vocational training completed in Germany in accordance with the provisions issued by the Federal Government or the federal states on the recognition of qualifications (Section 6 subsection 2 of the amended Employment Ordinance).

In order to be in a position to respond flexibly to future demand, the Federal Employment Agency (Bundesagentur für Arbeit - BA) has two instruments available to manage the admission of skilled foreign workers one of which must also be met:

1. The granting of approval can be linked to the skilled workers being recruited on the basis of placement talks with the Federal Employment Agency. This management tool was available under previously applicable law for the recruitment of nursing staff but can now be leveraged for other occupations and professional groups since the Employment Ordinance was amended.
2. The Federal Employment Agency establishes for the individual occupations and professional groups, taking the labour market data available on the development in the supply of labour and the demand for skilled workers into account, that the admission is justified in terms of labour market policy and integration policy in view of existing labour shortages. To this end, the Federal Employment Agency adds the occupation to the positive list. Admission is only possible once the occupation has been added to the positive list. The main indicators for establishing the positive list are ascertaining how many unemployed jobseekers are available for a job vacancy, how long jobs tend to remain vacant, the number of persons currently undergoing training and the number of workers expected to retire. The Federal Employment Agency can restrict the admission to certain countries of origin in these cases and can specify the number of foreign workers to be admitted based on labour demand.

¹⁷ Under the old legislation, the issuance of a residence permit for employment purposes in training professions was restricted to foreigners who had completed vocational training in Germany and who wanted to work in the occupation they had trained in. Access to the labour market was only granted to nursing staff if the Federal Employment Agency had agreed on a placement with the labour administration of the country of origin. The new Employment Ordinance has generally facilitated access to the labour market for skilled workers from third countries. However, what still needs to be observed is that the assessment whether vocational training within the meaning of the Employment Ordinance is academic or non-academic is based on German vocational training, i.e. any person who obtained a Bachelor's degree in a nursing profession comes under Section 6 and not Section 2 of the amended Employment Ordinance.

The current positive list also containing nursing and caring professions, amongst others. However, restrictions have been put in place for nursing and caring professionals from countries that have a shortage of healthcare professionals, bearing development policy aspects in mind, which means there is no admission for healthcare professionals from these countries of origin.¹⁸ In accordance with the provision incorporated into the Employment Ordinance by the “First Ordinance Amending the Employment Ordinance (Erste Verordnung zur Änderung der Beschäftigungsverordnung)¹⁹ of 31 October 2013, the Federal Employment Agency is the only authority permitted to recruit nursing and caring staff abroad and to arrange placements from foreign countries.

Employment is approved without a priority examination (Section 6 subsection 3 of the amended Employment Ordinance). In both cases, the prerequisite for granting approval by the Federal Employment Agency is that the working conditions are similar to those of comparable German workers with completed vocational training.

Since the beginning of 2013, the Federal Employment Agency has made arrangements with the employment authorities of Serbia, Bosnia-Herzegovina, the Philippines and Tunisia regarding the placement of nursing and care professionals. The Federal Employment Agency has made arrangements with the Chinese employment authorities to recruit 150 Chinese care assistants for the elderly in the form of a specific project.²⁰

Amendments to the Employment Ordinance regarding non-academic occupations and IT professionals

The new Section 2 subsection 3 of the Employment Ordinance contains the previous provision (Section 27 subsection 1 no. 1 of the previous Employment

Ordinance), according to which immigrants with an academic degree from a foreign university can be granted a resident permit for the purposes of taking up employment that is commensurate with their qualifications. Contrary to the preconditions for granting the EU Blue Card (cf. Chapter 3.1), no minimum income has been specified for them. Notwithstanding this, the employment is subject to the approval of the Federal Employment Agency as previously in cases outlined in Section 27 subsection 1 no. 1 of the previous Employment Ordinance. Foreign graduates of German universities have equal employment opportunities, they do not need the approval of the Federal Employment Agency to take up employment (Section 2 subsection 1 (3) of the Employment Ordinance), but merely the approval of the foreigners authorities who assess the adequacy of the working conditions (Section 16 subsection 4 of the Residence Act).²¹

The provision set forth in the previous Section 27 subsection 1 no. 2 of the former Employment Ordinance for IT professionals who have a recognised university degree or comparable qualification from another country was not incorporated into the amended Ordinance. There is no longer any need to maintain this traditional special regulation given that new training courses have meanwhile been introduced for persons working in IT professions. IT professionals with an academic degree have been entitled to apply for an EU Blue Card since 1 August 2012 in professions in which there is a shortage of labour. IT professionals who do not have an academic degree may be able to access the labour market in future on the basis of the new Section 6 subsection 2 sentence 1 no. 2 of the Employment Ordinance if there is a relevant demand for their skills.

Furthermore, foreigners with a qualification from German schools abroad who have a recognised degree or comparable degree from a foreign university and foreigners who completed vocational training in Germany in a recognised or similarly regulated training profession are entitled to a residence permit without a priority examination (Section 7 sentence 1 no. 1 and 2 of the amended Employment Ordinance). Graduates

18 cf. the list of countries published by the Federal Employment Agency (Annex 2 of the positive list) and the Annex to Section 38 of the Employment Ordinance

19 Federal Law Gazette. no. 65 of 6 November 2013: 3904-3904

20 cf. Deutscher Bundestag (2013: 4). In addition to the above-mentioned placement arrangements, the Federal Employment Agency is also trying to recruit nursing and healthcare professionals from EU countries, particularly within the framework of the EURES network. Campaigns to recruit nursing and healthcare professionals were implemented above all in Greece, Italy, Portugal and Spain.

21 Further exemptions from the need to obtain the approval of the Federal Employment Agency (pursuant to Section 39 of the Residence Act) and from the priority examination are set forth in Section 5ff. of the Employment Procedure Ordinance and the Employment Ordinance.

of German universities no longer need the approval of the Federal Employment Agency (Section 2 subsection 1 no. 3 of the amended Employment Ordinance).

Expansion of the group of third-country nationals entitled to a residence permit for the purposes of seeking employment

Owing to the amendment of Section 18c subsection 3 of the Residence Act and the entry into force on 6 September 2013 of the “Law to improve the rights of foreign workers and persons under international protection status of 29 August 2013” (Gesetz zur Verbesserung der Rechte von international Schutzberechtigten und ausländischen Arbeitnehmern vom 29. August 2013; Federal Law Gazette I p. 3484), third-country nationals who were residing in the Federal Territory, who are in possession of a residence title for the purposes of employment immediately before the residence permit was granted pursuant to Section 18c subsection 1 of the Residence Act and who can furnish proof they have a recognised university degree or comparable qualification may continue residing in Germany to seek a job that is commensurate with their qualifications provided they have a self-secured means of subsistence. Up to now, this provision only applied to persons entering Germany from another country in search of employment.

State legislation aimed at enhancing the establishment and recognition of professional qualifications obtained abroad

Back 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) entered into force. This was the first time a general legal entitlement was created at federal level to assess professional qualifications obtained abroad as being equal to the same professional qualifications in Germany and the procedures and criteria for regulated professions under federal laws were standardised and expanded.

Moreover, laws recognising foreign qualifications were adopted in the majority of Federal States for professions regulated under state laws (teachers, educators, engineers). Recognition Acts entered into force in the following Federal States between August 2012 and January 2014: Hamburg (1 August 2012), Saarland (1 December 2012), Lower Saxony (19 December 2012),

Hesse (21 December 2012), Mecklenburg-Western Pomerania (29 December 2012), North Rhine-Westphalia (15 May 2013), Bavaria (1 August 2013), Rhineland-Palatinate (16 October 2013), Brandenburg (1 January 2014), Saxony (1 January 2014), Baden-Württemberg (11 January 2014), Bremen (22 January 2014).²²

The information and counselling services introduced in parallel with the Recognition Act in 2012 (BAMF/EMN 2013: 23) for the recognition of qualifications obtained abroad were widely used in 2013. In addition to the online portal “www.anererkennung-in-deutschland.de”, 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. Between 2 April 2012 and 30 September 2013, advice was offered in 14,100 calls; persons keen to have their qualifications recognised from 147 different countries received advice.²³

So far, the around 40 initial points of contact within the promotion programme “Integration through qualification – IQ”²⁴ funded by the BMAS, BMBF and the Federal Employment Agency have been providing initial information to foreigners requesting information about having their professional qualifications recognised (BAMF/EMN 2013: 23). Between 1 August 2012 and 30 September 2013, 15,074 persons received advice from the IQ points of contact and were referred on to the competent authorities. The number of interested parties from 153 countries making contact throughout the Federal Territory to obtain advice was even higher (20,478) as many of the persons making contact had been in touch with their points of contact on more than one occasion.²⁵ At the same time, the BA has established that providing advice to persons wishing to have their qualifications recognised is part of the advisory employment services.

22 cf. <https://www.bq-portal.de/de/seiten/bund-laender-zustandigkeiten> (25 February 2014).

23 cf. www.anererkennung-in-deutschland.de/html/de/891.php (25 February 2014).

24 cf. <https://www.bq-portal.de/de/seiten/bund-laender-zustandigkeiten> (25 February 2014).

25 Cf. www.anererkennung-in-deutschland.de/html/de/daten_beratung.php (25 February 2014).

3.1.3 Developments in the EU context

The Republic of Croatia joined the EU on 1 July 2013 as the 28th Member State. The Federal Government limited the full freedom of movement for workers that goes hand in hand with EU membership for a transitional period of two years initially – with the option of extending it for another five years (the so-called “2+3+2 model”). The freedom of services was limited for the same transitional period for Croatia – at least for “certain vulnerable service industries”. In Germany, this applies first and foremost to the construction industry, the industrial cleaning industry and to the activities of painters and decorators (Deutscher Bundestag 2012: 73ff).

3.2 Family Reunification

3.2.2 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.

In order to facilitate the integration of foreign spouses in Germany and to prevent forced marriages, foreign spouses of third-country nationals and Germans living in Germany have been required since September 2007 to demonstrate they have a basic command of the German language prior to entry. 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 applies to third-country nationals moving to Germany to join a German spouse, albeit to a lesser extent. The Federal Administrative Court determined in a landmark decision handed down on 4 September 2012 that the legal requirement of a spouse immigrating to join a German 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 (Federal Administrative Court 10 C 12.12, de-

cision handed down on 4 September 2012; cf. BAMF/EMN 2013: 24f.). The visa applicant must furnish 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 (BAMF/EMN 2011: 25; BAMF/EMN 2012: 33; 41f.).

3.2.2 National Developments

General work permit for family members entering Germany to join their family

Since the Residence Act was amended on 6 September 2013, persons granted a residence permit for the purposes of family reunification have been allowed to take up employment (Section 27 subsection 5 of the Residence Act). Up to then, foreigners had to meet certain preconditions in order to take up employment.

Right of parents of an underage refugee to join their child until the child reaches the age of full legal accountability

The Federal Administrative Court (Bundesverwaltungsgericht) (BVerwG) ruled on 18 April 2013 that in principle both parents of an underage refugee who is residing in Germany are entitled to join their child. (BVerwG 10 C 9.12). However, this entitlement only applies until the child reaches the age of full legal accountability. The Court also outlined in its ruling that parents must have the possibility to effectively enforce their right to a visa with the help of a temporary injunction before the child reaches the age of full legal accountability, as anything to the contrary would prevent them from joining their child.

Residence permit also available to patchwork families for the purposes of family reunification

The Federal Administrative Court ruled on 30 July 2013 that foreigners living in Germany with their partner and children in a patchwork family are entitled to a resident permit in cases of extraordinary hardship if this is necessary to avoid infringing Article 6 of the Basic Law (BVerwG 1 C 15.12).

Independent right of residence of foreign spouses in respect of statutory amendments in transitional cases

In order for a foreign spouse to have an independent right of residence that continues regardless of the continuation of the marriage, they must have been residing in Germany for a minimum of three years

since 1 July 2011 (up to then two years). The Federal Administrative Court ruled on 10 December 2013 that the requirement of residing in the Federal Republic for three years also applies to foreigners who only filed a relevant application after the new regulation entered into force even though they would have met the requirements for an independent right of residence under the old law. (BVerwG 1 C 1.13).

Public authorities' contestation of the acknowledgment of paternity when they suspect paternity has been acknowledged merely for the purpose of obtaining a residence permit (faked fatherhood) is null and void

The Federal Constitutional Court (BVerfG) announced on 20 January 2014 (1 BVL 6/10)²⁶, that provisions governing public authorities' contestation of the acknowledgment of paternity pursuant to Section 1600 of the German Civil Code is unconstitutional and therefore null and void. The Act Supplementing the Contestation of Paternity Acknowledgement Act (Gesetz zur Ergänzung des Rechts zur Anfechtung der Vaterschaft) that entered into force on 1 June 2008 enabled Land authorities to contest paternity acknowledgements which they deemed to be fake fatherhoods if there was no "social-family relationship" between the father and child.²⁷

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).

After entry, the foreign student is issued a residence permit. The purpose of the course of study refers also to 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 rose, for instance, (foreign students who passed through the German educational system and those who passed through the educational system in another country) from just under 240,000 in the winter semester of 2008/2009 to over 280,000 in the winter semester of 2012/2013 (StBA 2013a). According to the coalition agreement of the parliamentary groups (CDU/CSU/SPD 2013: 29), this number is set to rise to 350,000 by 2020.

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 been providing 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 not linked to the research project to be conducted and also allows foreign researchers to teach (Section

26 <http://www.bundesverfassungsgericht.de/pressemitteilungen/bvg14-004.html> (15 February 2014).

27 In binational partnerships in which paternity is acknowledged and the mother and child are foreign nationals and the father is a German national, the child receives German nationality and the mother is granted a residence permit. In the case of couples who are not married, paternity is acknowledged on the basis of a declaration of intent by the father-to-be and the mother's consent.

20 subsection 6 of the Residence Act). 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 authority under Section 31 subsection 1 sentence 3 of the Residence Act²⁸. The spouses of researchers have access to the labour market (Section 27 subsection 5 of the Residence Act).

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) had risen from 64 in 2008 to 826 by 31 December 2012 according to the Central Register of Foreign Nationals (BAMF 2013a). This number of persons rose by another 181 in 2013 so that on the cut-off date 31 December 2013 a total of 1,007 researchers were residing in Germany under Section 20 subsection 1 of the Residence Act, 302 of whom entered the country after 1 January 2013.

In addition to residence permits pursuant to Section 20 of the Residence Act, foreigners are also (and mainly) able to conduct research within the framework of stays defined in Sections 16 to 21 of the Residence Act; since 1 August 2012 they can do so on the basis of the EU Blue Card (see Beirat für Forschungsmigration 2013; cf. Klingert/Block 2013: 22).

3.3.2 National Developments

There were no important developments in this policy area in the year 2013.

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 1990.²⁹ 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 Nazism. 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 no. 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 permits 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: margin reference 2).

The number of Jewish immigrants from the former Soviet Union accepted into Germany has dropped dramatically since 2002.³⁰ In 2002, a total of 19,262 Jews and family members from the former Soviet Union came to Germany; in 2013 this number fell to 346 (2012: 458). This represents a decline of more than 98 % (BAMF 2013a).

28 This provision applies provided the visa is not subject to approval pursuant to Section 34 subsections 3 to 5 of the Residence Ordinance.

29 Cf. Decision by the Council of Ministers of the GDR of 11 July 1990, decision by the Council of Minister-Presidents of 9 January 1991.

30 2006 was the only year to form an exception.

(Late) repatriates

Since 1950, over 4.5 million ethnic German immigrants (late repatriates)³¹ and their family members have been admitted to Germany. They form the largest group of immigrants in the Federal Republic. This can be attributed above all 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, 1,817 ethnic Germans and their family members came to Germany (Worbs et al. 2013); in 2013, 2,429 persons entered Germany.

3.4.2 National Developments***Place of residence requirement for Jewish immigrants***

Pursuant to a ruling handed down by the Federal Administrative Court on 15 January 2013, the settlement permit for Jewish immigrants can be linked to a place of residence requirement in order to ensure the costs incurred by the Federal States from social welfare payments are distributed evenly. As such, the principle of proportionality must be observed which means the duration of the place of residence requirement must be proportionate to the personal interests of the immigrant (BVerwG 1 C 7.12).

Simultaneous issuing of a settlement permit and an EU long-term residence permit

Pursuant to a ruling handed down by the Federal Administrative Court on 19 March 2013, the possession of an EU long-term residence permit pursuant to Section 9a of the Residence Act does not rule out possession of a settlement permit pursuant to Section 9 of the Residence Act. Although both residence titles are granted indefinitely, the settlement permit accords better legal status to the holder in terms of the grounds for revocation whereas the EU long-term residence permit allows holders to migrate to other EU Member States.

31 Persons of German origin from countries in Central and Eastern Europe who came to Germany by the end of 1992 are referred to as ethnic German resettlers, any persons who came to Germany after this date are referred to as late repatriates. The Act for Dealing with the Consequences of War (Kriegsfolgenbereinigungsgesetz - KfbG) provides the basis for this distinction.

As the Residence Act does not contain any mutual exclusion of several residence permits being granted at the same time and if the petitioner meets the requirements for both residence titles, the Court has ruled that it will be issued with both residence permits (BVerwG, 1 C 12.12).

Amendment to the Federal Act on Refugees and Expellees (Bundesvertriebenen- und Flüchtlingsgesetz)

On 14 September 2013, the 10th Act Amending the Federal Act on Refugees and Expellees (Änderungsgesetz zum Bundesvertriebenen- und Flüchtlingsgesetz - BVFGÄndG) entered into force. It contains some new provisions governing the immigration of late repatriates and their family members. Among other things, these provisions apply to the acknowledgement of German ethnic origin and include the spouses and children of late repatriates in the admission notice. This is intended to facilitate family reunification (Worbs et al. 2013: 22ff). Pursuant to the new provisions, such an avowal to Germanness can be fulfilled by declaration of nationality of by different means (Section 6 subsection 2 BVFG). Avowal by other means can be sustained in particular by proofing sufficient knowledge of the German language on B 1 level of the CER. Alternatively, avowal to the German people can be substantiated by knowledge of the German language acquired by through ones family.

Research clause in the Act on the Central Register of Foreigners (Ausländerzentralregistergesetz - AZRG)

In order to ensure the Federal Office for Migration and Refugees is able to fulfil its research mandate (pursuant to Section 75 no. 4 of the Residence Act), the recently established Section 24a of the Act on the Central Register of Foreigner Nationals gives the Federal Office access to personal data from the Central Register of Foreigner Nationals for research purposes. This means representative random samples of persons in possession of a residence permit can be drawn and that they can be used for quantitative studies carried out by the Federal Office for Migration and Refugees. This option was leveraged in the year under review 2013 to conduct a survey of third-country nationals who have graduated from German universities, inter alia, in relation to their socio-economic structure and intentions of remaining in the Federal Republic (cf. Hanganu/Hefß 2014).

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, immigration and integration. 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), the Federal Ministry of Economics and Technology (BMWi) and the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). In the federal structure of state expenditure, the federal level primarily serves legislative functions while also executing tangible, operational integration measures, for instance, through the Federal Office for Migration and Refugees (BAMF). Federal policy steps are also backed by overall strategic 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 statutory enshrined 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 at federal level, including realising equal opportunities and strengthening cross-cultural competence. The current coalition agreement of the Federal Government highlights the fact that migration is an opportunity and that immigrants contribute to prosperity and cultural diversity alike (CDU/CSU/SPD 2013: 105). This creates new challenges for integration, for instance, with a view to organising integration courses for different groups of immigrants.

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 efforts.³² The integration course was introduced with the Immigration Act in 2005. There are currently six different, 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. In addition to the general integration course consisting of a 600-hour language course and a 60-hour orientation course, classes are also provided for the illiterate, women/parents and young people with up to 900 hours of language instruction and 60 hours of orientation. Intensive courses for so-called fast learners 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, private language schools and specialised technical schools, education establishments and Church organisations). Between 2005 and the end of September 2012, almost one million persons had begun an integration course (BAMF 2013f.). Between the beginning of 2005 and the end of 2012, expenditure for the implementation of integration courses amounted to just under €1.5 million.

Migration Consultation for Adult Immigrants (MBE)

The MBE is a consultation service that is available to individuals for a limited period of time in addition to integration courses based on demand. The MBE was set up on a nationwide basis with the Residence Act in 2005 (Section 75 no. 9 in conjunction with Section 45 sentence 1 of the Residence Act). The clients of the MBE include new immigrants above the age of 27. Immigrants who have been living in Germany for some time and need to make up for lost ground in terms of integration may also participate in the MBE. The priorities in relation to migration consultation are set by individual, professional 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.

³² The exact conditions under which foreigners are entitled 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 job seekers’ benefits or if they are in particular need of integration, it may actually be compulsory for persons 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.

Central associations of non-governmental welfare organisations³³ and the Federation of Expellees (Bund der Vertriebenen) are commissioned with delivering the MBE. They receive funding from the federal budget. In 2013, around €26 million was earmarked in the federal budget for the MBE.³⁴

Youth migration services (JMD)

The youth migration services (JMD) provides migration-specific advice and support to young people with a migration background up to the age of 27 (Section 45 sentence 1 of the Residence Act / Section 9 subsection 1 sentence 4 of the Federal Act on Refugees and Expellees). The youth migration services are responsible for providing socio-educational support before, during and after integration courses and assist young migrants with their social and professional integration. The youth migration services are part of the EMPOWERING YOUNG PEOPLE (JUGEND STÄRKEN) initiative (basis: Sections 83; 13 of Social Code Book VIII – socio-educational provision for young people). Under the auspices of this initiative, four programmes provide individual assistance aimed at fostering integration of socially disadvantaged young people who tend to be (no longer) reached by regular services and who are increasingly reliant on support. This support is complemented by group-specific measures, for instance, in the area of sport, culture and handicrafts as well as advanced language courses and job application training.

Projects aimed at promoting the integration of immigrants

The Federal Government promotes projects on the social integration of immigrants. 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, for example, in the residential environ-

ment 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. Given that sustainable integration can only succeed if the host society provides integration services and develops a basic open-mindedness towards and tolerance of immigrants, it is a matter of establishing a culture of welcome and recognition also with the help of project work.

National projects are promoted from budgetary funds appropriated by the BMI (for age-independent projects) and BMFSFJ (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 €18.9 million was earmarked in the Federal Budget in 2013 for the promotion of projects aimed at fostering the social integration of immigrants.

Another important programme that is being implemented at federal level with funds from the European Social Fund is the “Programme for teaching German for professional purposes to persons with a migration background in the Federal Territory” (ESF-BAMF programme).

German Islam Conference (DIK)

The German Islam Conference (DIK) is a forum for dialogue between representatives of the German government and Muslims in Germany. The DIK was established in 2006. In the first phase between 2006 and 2009, it focused on three focal areas: “German societal order and consensus of values”, “Issues of religion within the concept of the German Constitution” and “The private sector industry and the media as bridge-builders”. Cooperation strategies between Muslims and security authorities were also discussed in the “Security and Islam” discussion group. In the second phase (2009 to 2013), the participants defined a work programme with three focal points in May 2010. The introduction of Islam religious lessons and the establishment of Islam theology at German universities was supplemented under the heading “Fostering institutionalised cooperation and integration-related project work” and socio-political advanced training was provided for religion teachers. Enhancing the participation of Muslims, for instance, in terms of access

33 National Society for Worker Welfare (Arbeiterwohlfahrt), Caritas Germany (Deutscher Caritasverband), Social Service Agency of the Evangelical Church in Germany (Diakonie Deutschland – Evangelischer Bundesverband), German Red Cross, the German Non-Denominational Welfare Association (Deutscher Paritätischer Wohlfahrtsverband) and the Central Board of Jewish Welfare in Germany (Zentralwohlfahrtsstelle der Juden).

34 <http://www.bamf.de/SharedDocs/Pressemitteilungen/DE/2013/20130503-0012-pressemitteilung-mbe.html> (11 March 2014).

to the labour market, was discussed under the heading “Participation and gender equality”. Furthermore, the influence religion has on stereotypes was examined. Measures against anti-Muslim prejudice, anti-Semitism and religious extremism among Muslims were developed under the heading “Prevention of extremism, radicalisation and social polarisation”.

National Integration Action Plan (NAP-I)

Since 2007, the National Integration Plan (NIP) is the first global integration concept on the federal level. The federal level, the Federal States and municipalities, as well as migrant representatives and many non-state organisations have been involved in its implementation. With the goal of a stronger verifiability of integration advancement, the National Integration Action Plan (NAP-I) was presented at the 5th Integration Summit on 31 January 2012. Strategic and operational goals, as well as concrete individual measures were developed across a total of 11 dialogue boards under the auspices of the competent federal ministries. The National Integration Action Plan also includes contributions from the Federal States and local authorities which implement them at their own initiative. The progress reached by the individual projects and measures was presented by all stakeholders at the 6th integration summit held on 28 May 2013. This provisional assessment focuses on labour, the labour market, qualifications and language (Commissioner of the Federal Government for Migration 2013).

3.5.2 National Developments

Sixth integration summit and “National Integration Action Plan” (NAP-I)

The sixth integration summit held on 28 May 2013 took provisional stock of the NAP-I adopted by the Federal Government, the Federal States and municipalities in 2012. As such, Federal Chancellor Angela Merkel emphasised the following: “We want to be a country that fosters integration”. In order to achieve this goal, it is important to perceive integration as a cross-sectional task and to attain participation in all areas of life. This summit focused above all on integration into the labour market and recognition of professional qualifications, raising the number of gainfully employed persons and employees with a migration background in the civil service (for instance, through www.wir-sind-bund.de) and on creating a culture of welcome and recognition (Federal Government Commissioner for Migration 2013).

Structural promotion of migrant organisations

Migrant organisations (MO) are indispensable players in respect of local integration work. That is why they are involved as experts in the demand-oriented organisation of efforts to promote integration. However, many migrant organisations work on a voluntary basis with a relatively low level of organisation and with few human resources.

The BAMF has therefore promoted a total of ten projects aimed at developing structures and promoting networking among professional migrant organisations operating at national level within the framework of national project funding since 1 November 2013. One particular focus in this context is networking with other stakeholders involved in the promotion of integration at federal level – including other migrant organisations. The aim is to assist with the professionalisation of migrant organisations and umbrella associations of migrant organisations operating at national level and to empower them as cooperation partners in the long term.

Coalition agreement of the Federal Government for the 18th legislative term

In the coalition agreement for the 18th legislative term, the parties agreed that the National Integration Action Plan (NAP-I) would continue to provide the basis for integration policy (CDU/CSU/SPD 2013: 106). With a view to expanding a culture of welcome, it was agreed, inter alia, that the nature of foreigners authorities as service providers would be strengthened as they are the initial point of contact with public authorities in Germany for third-country nationals immigrating to Germany in many cases. At the same time, it is emphasized that opening up the state and society for other cultures is crucial for co-existence and successful integration.

Agreement was also reached on the issue of the pre-integration of new immigrants. In order to assist with the transition to state-funded initial integration services (integration course and migration advice), pre-integration measures in the countries of origin and advisory and information services immediately prior to entry are to be enhanced, for instance, on the issues of language, recognition of professional qualifications, information about the educational system and information on the possibilities of residing for the purpose of taking up employment or a degree course (CDU/CSU/SPD 2013: 107).

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 has brought the total number of hours of the general integration courses up to 660 hours of tuition. The contribution per hourly lesson for course participants was raised from €1 to €1.20.

The success of the integration courses is demonstrated in particular by the rising number of participants in recent years and the large number of participants who passed the final language exam. In the first 6 months of 2013, 56 % of all examinees taking the language exam achieved level B1 and 35.3 % reached level A2 of the Common European Reference Framework (CEFR) (BAMF 2013b).

From the launch of the integration courses in 2005 up to and including September 2013, a total of 1.29 million persons were entitled to take part in integration courses. Meanwhile, almost 966,000 persons have availed themselves of this opportunity and are currently attending or have attended one of the almost 74,000 courses that have been delivered so far (BAMF 2013f). In the first nine months of 2013 alone, the number of new participants totalled 86,000.

German Islam Conference

On 7 March 2013, the plenum of the German Islam Conference convened for the last time in the 17th legislative term. Whereas in the previous years, the plenary sessions dealt above all with issues relating to religious integration, advanced training of Imams and promoting gender equality, “work to prevent social polarisation” was the focus in 2013, with anti-Muslim prejudice, anti-Semitism and religious extremism among Muslims being the topic of discussion. A joint declaration was published on these discussion points in early May (Deutsche Islam Konferenz 2013).

It was noted in the coalition agreement that the German Islam Conference would be continued in the 18th legislative term. The German Islam Conference is to continue to be the most important forum for dialogue with Muslim organisations based on the spirit of trust. At the end of January 2014, the Minister of the Interior Thomas de Maizière met for initial talks with representatives of Muslim associations. As stipulated, in March 2014 they reached an agreement within a com-

mon programme on issues, structure and objectives of the third phase of the German Islam Conference during the current legislative term.

3.6 Nationality and Naturalisation

3.6.1 Background and General Context

On 1 January 2000, the birthplace principle (*jus soli* - “right of soil”) was added to the provisions governing the acquisition of German nationality. 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. However, up to now this citizenship acquisition rule has been linked to an obligation to opt for one nationality. Pursuant to Section 29 of the Citizenship Act (*Staatsangehörigkeitgesetz*), upon reaching adulthood and at the request of the relevant authorities, these children must decide between German nationality and the foreign nationality they typically inherit through their parents; they generally have until the age of 23 to decide.³⁵ The same procedure also applies to children born after 1990 whose parents could apply for German citizenship for them in 2000 in accordance with a temporary arrangement (pursuant to Section 40b of the Citizenship Act).

Foreigners who have been residing lawfully in Germany for several years, can obtain German nationality through naturalisation. A series of conditions must be fulfilled at the time the decision is taken to file an application for naturalisation so that naturalisation can be legitimately requested. These include an indefinite right of residence and eight (seven or six in special instances) years of consistent and legal residence in Germany, 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 2011). EU citizens and Swiss nationals also generally have the option of retaining their prior citizenship.

³⁵ Generally speaking, EU nationals and Swiss nationals also have the option of retaining their prior nationality (Section 12, subsection 2 of the Citizenship Act).

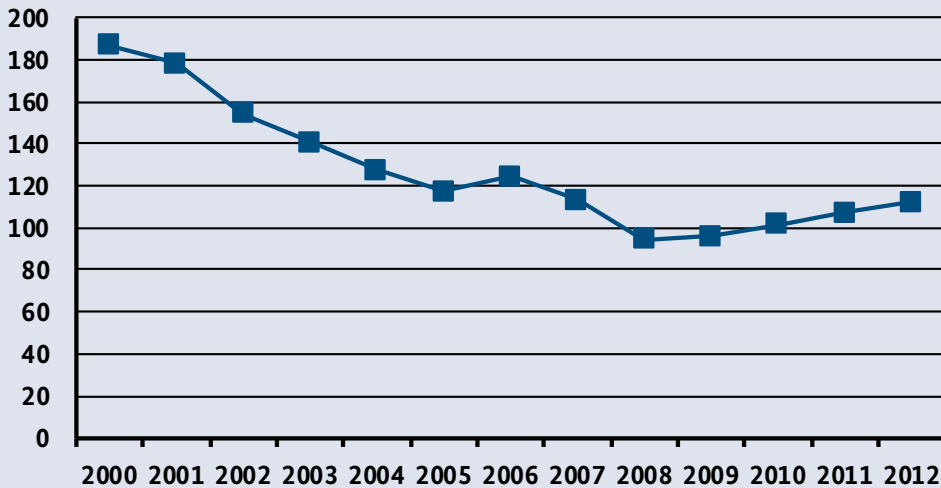
Naturalisation requires foreigners to have sufficient knowledge of the German language (level B1 of the Common European Reference Framework, CEFR). Since 1 September 2008, naturalisation applicants must also demonstrate knowledge of the legal and social system and living conditions in Germany by taking a nationally standardised naturalisation test. Persons who have completed school education in Germany are exempt from the test (Weinmann et al. 2012: 209).

Figure 1 shows that the number of naturalisations between 2000 and 2012 has fallen from around 186,700 to around 112,300. This represents a reduction of just

under 40 %. The lowest number of naturalisations was in 2008, with around 94,500. After this, naturalisations through to 2012 rose slightly once again (by 5.2 % from 2010 to 2011 and by 5.1 % from 2011 to 2012). Similarly to naturalisations, the naturalisation rate³⁶ also fell from 2.6% to 1.5 % between 2000 and 2012, with the lowest rate of 1.3% also being in 2008 (see Figure 2 and StBA 2012b).

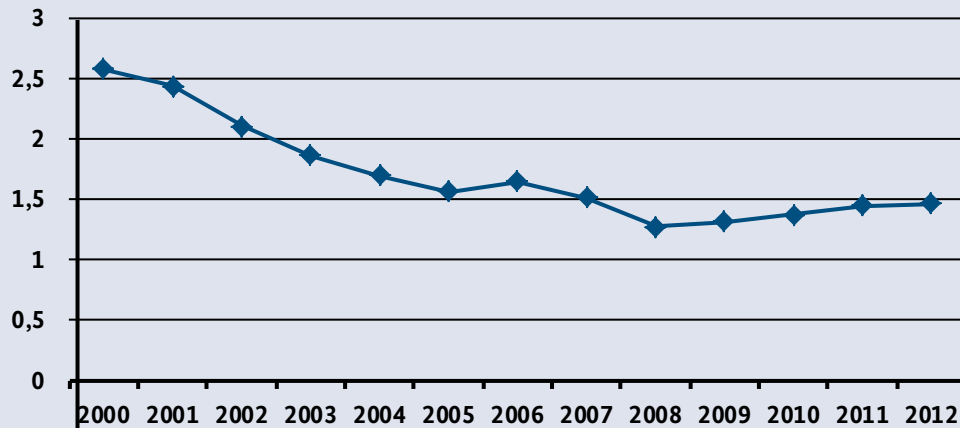
³⁶ The naturalisation rate is the ratio of the number of naturalisations and the number of foreigners in Germany based on the latest population census.

Figure 1: Naturalisations in 1,000 Persons



Source: StBA (2013b)

Figure 2: Naturalisation rate in percent



Source: StBA (2013b)

3.6.2 National Developments

Naturalisation campaigns

Several Federal States launched or continued with naturalisation campaigns in 2013. They are aiming to encourage foreigners who fulfil the legal requirements to obtain German citizenship to opt for naturalisation. This applies, inter alia, to the campaign “Your city. Your country. Your passport” launched by the Berlin Senate³⁷, the “German language. German diversity. German passport³⁸”-campaign launched by Baden-Württemberg, the naturalisation campaign launched by Rhineland Palatinate “Say yes to naturalisation³⁹” and the naturalisation campaign launched by the federal state of North Rhine-Westphalia⁴⁰ under the motto “I say yes to naturalisation now.” In Hamburg, the campaign is being implemented “Hamburg. My port. Germany my home”; in 2011, the mayor began sending letters to all 137,000 persons over the age of 16 who are potentially eligible for naturalisation to encourage them to become naturalised.⁴¹

Facilitating naturalisation and provisions governing the obligation to opt for one nationality at federal state level

In order to further facilitate naturalisation, the Ministry of Integration of the Federal State of Baden-Württemberg determined within the framework of a new administrative regulation on the Citizenship Act, amongst other things, that third-country nationals, who are particularly well integrated, for example in case of special professional performance or in case of graduates from a German institution of higher education, are eligible to apply for naturalisation after just six years. In addition, the requirement of furnishing proof that they have a command of the German language is waived in such cases. Third-country nationals over the age of 60 who are applying for naturalisation and who have been residing in Germany for a mini-

mum of twelve years are no longer required to take a naturalisation test.⁴²

The Federal State of Baden-Württemberg issued provisions on the obligation to opt for one nationality back in December 2012, offering the persons concerned additional possibilities of retaining both nationalities. The Senator for Home Affairs of Bremen adopted a decree to this effect in February 2013.⁴³ In the period between December 2013 and February 2014, in response to the provisions set forth in the coalition agreement and pre-empting the adoption of a new federal regulation, Hamburg⁴⁴, Rhineland-Palatinate⁴⁵ and Schleswig-Holstein⁴⁶ announced that they would suspend proceedings pending involving the obligation of third-country nationals to opt for one nationality or would cease to expedite them and that they would approve applications for dual nationality.

Case law on naturalisation

On 13 November 2013, Cologne Administrative Court ruled that the child of an Indian surrogate mother whose biological father is German is not entitled to German nationality (Cologne Administrative Court, ruling of 13 November 2013, 10 K 6710/11). The ruling came in effect on 29 December 2013.

3.6.3 Developments in the EU context

Croatia joined the European Union on 1 July 2013. This means Croatian nationals who wish to become naturalised in Germany can keep their Croatian passport. Persons with a Croatian background who are obliged to opt for one nationality may also be permitted to retain both nationalities permanently if they file a so-called application for permission to retain both nationalities in good time (Section 29 subsection 3 of the Citizenship Act).

37 <http://www.berlin.de/sen/aif/presse/archiv/20131014.1110.390283.html> (4 December 2013).

38 <http://www.mein-deutscher-pass.de/startseite.html> (4 December 2013).

39 <http://www.einbuengerung.rlp.de/> (4 December 2013).

40 http://www.mais.nrw.de/06_Service/001_Presse/001_Pressemitteilungen/pm_2013/007_Juli_2013/130708/index.php (4 December 2013).

41 http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Themendossiers/Tagung-Deutscher-werden-2012/20120702-tagung-einbuengerung-7-celikol-kersten.pdf?__blob=publicationFile (04.12.2013).

42 <http://www.integrationsministerium-bw.de/pb/,Lde/1584512/?LISTPAGE=1584084> (05.03.2014).

43 <http://www.senatspressestelle.bremen.de/sixcms/detail.php?gsid=bremen146.c.62411.de&asl=> (5 March 2014).

44 <http://www.migazin.de/2013/12/10/hamburg-optionspflicht-fuer-auslaender-de-facto-abgeschafft/> (11 March 2014).

45 http://www.rlp.de/no_cache/einzelansicht/archive/2014/february/article/optionspflicht-abschaffen/ (11 March 2014).

46 <http://www.kn-online.de/Schleswig-Holstein/Landespolitik/Streit-um-Doppelpass-Streit-um-Doppelpass> (11 March 2014).

3.7 Managing Migration and Mobility

3.7.1 Visa Policy

3.7.1.1 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). They allow travellers to enter the Schengen area and create the possibility 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; 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 residence law.

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 “communitarisation” 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 criterion 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 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.

3.7.1.2 National Developments

Visa Alert Database commissioned

The Visa Alert Database was commissioned on 1 June 2013. The database that is part of the Federal Office of Administration enables German missions abroad to exchange information about visa applicants, sponsors and guarantors who are on record for visa misuse, providing false information in the visa procedure or other visa-related misdemeanours. This also means that information available only to one particular mission abroad can now be made accessible to all visa and border authorities. At the same time, the BVA launched its Data Reconciliation Procedure (Datenabgleichverfahren – DAV). Within the DAV, data from visa applications by third-country nationals under the visa obligation, whose applications have however not been verified by the consultation procedure, are automatically checked against certain data stored in the anti-terror-database. Thereby, security agencies can also provide feedback to the diplomatic missions regarding this group, if persons from the terrorist scene intend to enter Germany.

3.7.2 Border Monitoring

3.7.2.1 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.

Even after the elimination of stationary border controls, exercising police powers in order to combat cross-border crime at internal Schengen borders is explicitly allowed by the provisions of the Schengen Borders Code. Residence controls are also performed by the Federal Police along the federal railway system, on trains and at ports. Border protection includes preventing and disabling the illegal entry and combating cross-border criminal smuggling activity as well as other areas of criminal activity associated with cross-border crime.

An efficient control of the external borders is founded on the Schengen Borders Code. 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 Traveller Programme (RTP), an automated and biometric border surveillance system - (AGB, see also section 3.7.2.2) as well as an automated border control (EasyPASS), based on the e-passport, are being tried and tested 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. In future, the use of biometric methods will gain momentum in particular to verify the identity of document holders (visa control, control of e-passports) during border controls. It is above all the missions abroad and the Federal Police who are involved in the national implementation of the European Visa Information System (Parusel et al. 2012).

3.7.2.2 National Developments

Expansion of the EasyPASS border control system

Preparations were underway in 2013 to further expand the automated EasyPASS border control system. Once the tender procedure had been completed in

August 2013, the system providers installed a reference system that is currently being used to test the new functions. The first new EasyPASS lanes will be commissioned consecutively at German airports from the first quarter of 2014 onwards. The automated border control system based on EasyPASS is to be rolled out at those four German airports, who serve the most passengers, starting in 2014. A total of 90 to 100 border control lanes will be set up for this procedure. The AGB-system mentioned in section 3.7.2.1 will be integrated into EasyPASS in the course of 2014 and the previous AGB-lanes will be dismantled.

Cooperation with third countries in the area of border control

Border police cooperation between the Federal Police and foreign police authorities of the EU Member States and third countries is oriented to the competent authorities entrusted with border control duties on an incident-related basis. As such, cooperation between the Federal Police and third countries - within the framework of their own anticipatory strategy - represents an important component of integrated border management for the protection of EU external borders and includes the instrument of (border) police related training and equipment assistance - in addition to the secondment of border police liaison officers and document and visa experts.

The aim of these measures - and therefore also concrete added value for the Federal Police - is to enhance cooperation with the respective foreign (border) police authorities, bearing migration-specific issues in mind. This ultimately serves the goal of rendering the performance of border police duties by the Federal Police along the EU external borders (airports and seaports) more efficient and enables irregular migration and international trafficking in human beings to be more effectively contained. In addition, the border police structures are being strengthened in countries of high importance to the Federal Police within the performance of border police duties.

Within the framework of the equipment and training assistance (AAH) and the Stability Pact for South-Eastern Europe (SOE), a total of 97 equipment and 12 training assistance measures were implemented in 2013 in collaboration with countries in Southern and South-East Europe, countries on the Arabian Peninsula, the Middle East as well as Tunisia, the Russian Federation, China and Afghanistan. Equipment and training assistance is to be continued in 2014.

3.7.3 Frontex

3.7.3.2 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

FRONTEX coordinates – while maintaining national competencies – the operational cooperation of the EU Member States at the external EU border. It supports the Member States as a “service provider” regarding the training of border guard officers in order to achieve harmonization, it conducts risk analysis and supports the Member States both technically and operationally, particularly through joint operations and other service provisions (information network “EUROSUR”, research and development, studies and recommendations etc.).

In doing so, great importance shall be given to the strict observance of basic and human rights, particularly legal guidelines pertaining to refugees. Since 2013 the agency’s independent Fundamental Rights Officer and the Consultative Forum responsible for fundamental rights matters are concerned with the respect for fundamental and human rights aspects in all FRONTEX activities. The legal foundation is provided by the amended FRONTEX Regulation from 2011 (Regulation (EU) No 1168/2011). This task is complemented by an established, critical reporting system, the monitoring and evaluation of taken actions, resulting in recommendations regarding operations and training procedures and, if necessary, freezing or suspension of common actions. FRONTEX is highly dedicated that the sovereign and competent national authorities respect these standards.

3.7.3.2 Developments in the EU context

Germany was involved in missions coordinated by FRONTEX in 2013 by seconding Federal Police officers. In 2013 the Federal Police participated with approximately 5,300 working days in FRONTEX-coordinated activities. Main focus was on the operation Poseidon Land at the land border between Turkey and Greece and on the Joint Operation Focal Points at land and air borders. The Federal Police also took part in the RABIT rapid intervention troop exercise carried out by FRONTEX along the Hungarian and Romanian external EU border by seconding two police officers to Hungary.

4 Irregular Migration

4.1 Background and General Context⁴⁷

Illegal migration movements in Germany are managed with preventative 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. This encompasses issuing residence permits for people whose deportation has been temporarily suspended as well as the facilitated access to education and health service for irregular migrants (Schneider 2012b).

Irregular entry and unlawful residence are crimes in principle 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 Vor 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 irregular migration, see Section 3.7). Additionally there are control mechanisms that are affected via data exchange, workplace inspections, close cooperation between authorities and mandatory reporting by public authorities. Illegal migration is not only combated with reactive, but also preventative measures, for instance, during the visa process. This serves, inter alia, to prevent illegal migration (Deutscher Bundestag 2011; 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 an integrated control approach. The requirement for ensuring an intensive exchange of information between the 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 2011). The Federal Police obtain information abroad by using border police liaison officers as well as utilising document and visa experts in countries of origin/transit for irregular migration. 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.

The Federal Police and the authorities of the Federal States of Hamburg and Bavaria entrusted with

⁴⁷ A detailed outline of measures undertaken by Germany to prevent irregular migration can be found in Schneider (2012c) and EMN/BAMF (2012: 45ff).

carrying out police checks on cross-border traffic and the customs authorities recorded a total of 25,670 persons entering the Federal Territory unlawfully (2011: 21,156). 3,829 persons seeking to gain entry were turned away. This represents an increase of 13.4% compared to 2011 (3,378) (BAMF 2013a).

4.2 National Developments

Asylum seekers who go underground

In 2012, 4,175 persons failed to comply with the decision allocating them to the competent initial reception centre, and went underground after filing their application for asylum (Lautscham 2013). All in all, 68,282 decisions on allocations were taken. When such a decision is taken, the asylum seeker is allocated to an initial reception centre which becomes his initial place of residence. Applications for asylum must be filed with the field office attached to the initial reception centre (Müller 2013).

Granting residence permits even if a person's identity is unclear

On 14 May 2013, the Federal Administrative Court ruled that the foreigners authorities should have a certain amount of discretion in granting residence to "well-integrated" young people if the identity of the applicant is unclear (BVerwG 1 C 17.12). Section 24a subsection 1 of the Residence Act created in 2011 enables well-integrated young people whose deportation has been suspended to obtain a residence permit if they fulfil certain conditions. These conditions include, inter alia, that the young person in question does not provide any false information regarding his identity or nationality. In this particular case, the competent foreigners authorities refused to process the application filed by a young woman whose nationality was unclear. This ruling obliges foreigners authorities to take discretionary decisions in these type of case scenarios.

New regulations at Lower Saxony's Hardship Commission

In May 2013, the Red-Green state government of Lower Saxony eased the regulations for the Federal State's Hardship Commission for asylum seekers. Since then, convictions for minor criminal offences or refusal to cooperate in establishing one's identity and in procuring a passport will not longer automatically lead to exclusion by the Hardship Commission. The

deadline for submissions to the Hardship Commission has also been extended from two to four weeks. In addition, the members of the Hardship Commission entitled to vote will include a representative of the Council on Refugees and a physician who has special experience in dealing with traumatised persons (Jung 15 May 2013).

5 Return

5.1 Background and General Context

Return policy is an effective and well-established component of migration management. Return policy includes policy issues relating to voluntary returns, promoting returns, reintegration, repatriation and the readmission of persons obliged to leave Germany by their countries of origin (for the development related aspects of reintegration, see chapter 9). Consistent with the principles stipulated by the Stockholm Programme on the EU-level (from 2 December 2009), voluntary return precedes forced return measures.

Germany launched the “Reintegration and Emigration Programme for Asylum-Seekers in Germany”/ “Government Assisted Repatriation Programme” or REAG/GARP) programme of the Federal Government/Federal States for voluntary returns in 1979. The programme offers travel and start-up assistance for the reintegration of persons from states of particular importance to German migration policy. The amount of 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 do not receive any start-up aid or additional travel assistance if they 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). In addition, there are a large number of projects being implemented in support of the reintegration of returnees in their country of origin (see BAMF/EMN 2012: 50).

The majority of these projects are customized programmes that take the special situations in some return countries (crisis-ridden regions) into account. Collaboration projects with local partner organisations

are intended to assist returnees with their professional and social reintegration. As such, common European measures and projects in the area of returns are gaining momentum. Transnational projects aimed at the joint promotion of reintegration in the country of destination (such as “European Reintegration Instrument” ERI project or the NGO project “European Reintegration Support Organization” ERSO) and networking initiatives (such as the Common Support Initiative, CSI) are importa

The Federal States are, by and large, responsible for enforcing the obligation to leave the Federal Territory. Pursuant to Section 71 subsection 3 no. 1 d of the Residence Act, the Federal Police is responsible for the return of foreigners from and to other states. Readmission agreements concluded between the Federal Government and some countries of origin are binding under international law and are confined to procedural regulations. They specify the existing obligation under international law for countries to readmit their own nationals.

In addition, the agreements concluded in recent years include the obligation, which is generally linked to certain preconditions, to admit and facilitate the transit of persons obliged to leave the country who are not nationals of the respective contracting party (third-country nationals and stateless persons). This ensures that these agreements meet current EU standards.

The EU is also concluding more and more readmission agreements with countries of origin on behalf of its Member States.⁴⁸

⁴⁸ A list of all return agreements has been published on the Federal Ministry of the Interior’s website: http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/RueckkehrFluechtlinge.pdf?__blob=publicationFile (10 March 2014).

5.2 National Developments

Expulsion of foreigners endangering the free democratic basic order

Pursuant to Section 54 subsection 5a of the Residence Act, a foreigner will generally be expelled if he or she endangers the free democratic basic order or the security of the Federal Republic of Germany, participates in acts of violence or publicly incites to violence in pursuit of political objectives. Following a ruling handed down by Göttingen Administrative Court on 8 January 2013, it is a concrete threat to the basic order that counts. Past behaviour can only be used as grounds for expulsion if it leads to the conclusion being drawn that the person in question might be a future threat to the free democratic basic order (Göttingen Administrative Court, 3 A 168/11).

Franco-German cooperation

On the basis of the “Joint declaration of cooperation on reintegration issues” issued by the French and German Ministers of the Interior on 5 November 2013, the BAMF is cooperating with the Office Français de l’Immigration et de l’Intégration (OFII) within the framework of the URA 2 return project in Kosovo. The project provides Kosovar nationals start-up entre-

preneurs returning from Germany and France with assistance with reintegration, the search for housing, medical treatment and advanced vocational training (BAMF 2013c).

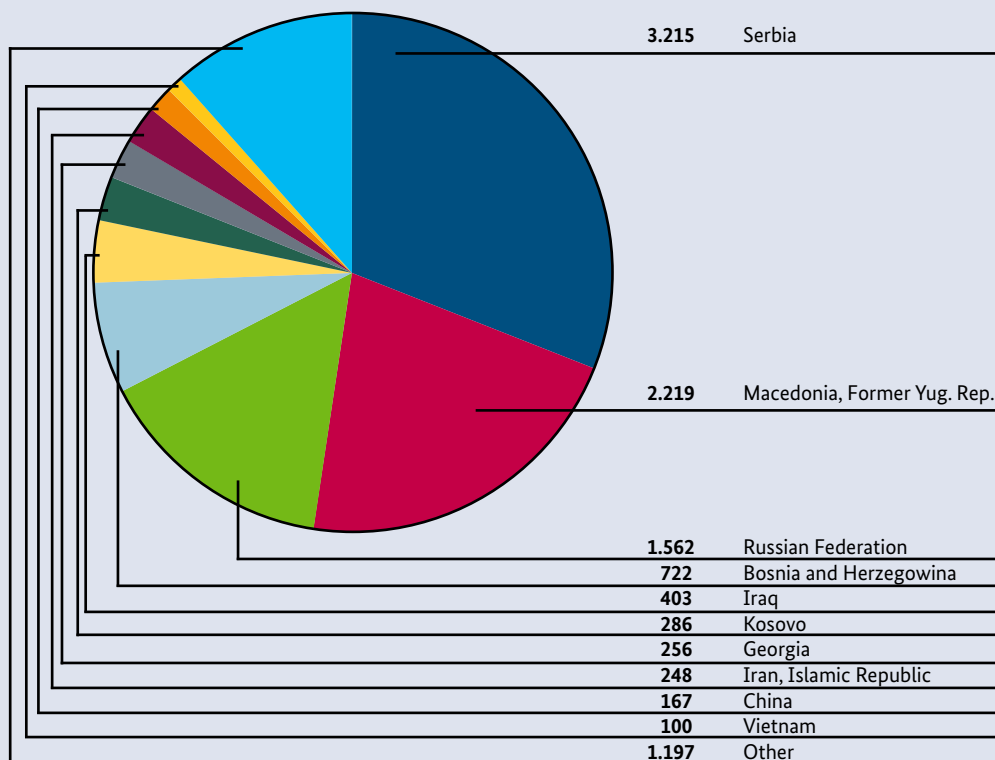
Deportations to Central Iraq

Since May 2013, Germany has been involved in the “Brussels Group Iraq” that has its registered office in Brussels along with other EU Member States. The aim of this intensified form of cooperation is to facilitate deportations to Central Iraq.

Deportation suspended during winter

By the end of December 2012, the Ministers for Home Affairs of Schleswig-Holstein, Thuringia, Bremen and Rhineland-Palatinate had taken the decision not to deport Roma in need of special protection until the end of March 2013. Over the course of the winter, Mecklenburg-Western Pomerania joined this moratorium. The Ministers for Home Affairs of Schleswig-Holstein, Bremen, Rhineland-Palatinate and Baden-Württemberg instructed the foreigners authorities for the winter of 2013/14 to suspend deportations in particular of persons in need of special protection to Serbia, Macedonia, Kosovo, Montenegro, Bosnia-Herzegovina and Albania until the end of March 2014. Thuringia suspended deportations until 15 January 2014.

Figure 3: REAG/GARP grants approved in 2013



Source: IOM Germany 2013

Promoting returns REAG / GARP

In 2013, a total of 10,375 grants were approved to facilitate voluntary returns⁴⁹ via the REAG/GARP programme; 7,182 for asylum seekers whose applications had been rejected. This represents an increase of around 38 % compared to 2012 (in 2012, 7,546 grants were approved to facilitate voluntary returns). Figure 3 shows that the majority of funds were granted to Serbian nationals (in absolute terms: 3,215, i.e. around 31 % of all grants) and to nationals of the former Yugoslavian Republic of Macedonia (2,219, 21 %).⁵⁰ Other important groups of returnees were nationals of the Russian Federation (1,562: 15 %), Bosnia-Herzegovina (722: 7 %) and Iraq (403: 4 %).

IOM Germany published a report on the implementation of the REAG/GARP programme for the first time in November 2013 (IOM Germany 2013).

Federal Office to play a stronger role in promoting voluntary returns

The amendment to Section 75 no. 7 of the Residence Act that entered into force with the Act improving the Rights of foreign workers and persons in need of special protection (Gesetz zur Verbesserung der Rechte von international Schutzberechtigten und ausländischen Arbeitnehmern) on 6 September 2013 has bestowed legal competency upon the BAMF for coordinating the programmes and taking part in projects to promote voluntary returns and pay out funds (already approved under these schemes).

Deportations to Syria suspended

In 2011, the Federal States suspended deportations to Syria owing to the anticipated humanitarian hardships in the country, thereby following a recommendation issued by the Federal Ministry of the Interior. Since April 2011, deportations to Syria have been suspended.

5.3 Developments in the EU context

Implementation Protocols on EU Readmission Agreements

The Implementation Protocols on the EU Readmission Agreement between the Federal Republic of Germany and Montenegro entered into force on 21 January 2013. Diplomatic notes have been exchanged with Georgia since June 2013 for the conclusion of this type of protocol whereas the implementation agreement with Bosnia-Herzegovina has been submitted to the Bosnians for signing. Implementation protocols regulate the implementation of the EU Readmission Agreements at technical-operational level.

49 These are the preliminary figures for grants approved to facilitate voluntary returns. They do not include the number of persons who have yet to leave the Federal Republic of Germany.

50 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.

6 International Protection and Asylum

6.1 National Asylum System

6.1.1 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. Asylum seekers receive a preliminary entitlement to remain in the country for the duration of the asylum procedure which permits them to reside temporarily while the procedure is being implemented (Section 55 of the Asylum Procedure Act). However, as long as the asylum seeker is obliged to continue living at the reception centre, the Federal Office is responsible for issuing the certificate confirming permission to stay (Section 63 subsection 3 of the Asylum Procedure Act) The foreigners authority of the district in which the asylum seeker is obliged to reside is then responsible for issuing the certificate confirming permission to stay (Section 63 subsection 3 of the Asylum Procedure Act).

Since 2005, the admission of asylum seekers and those seeking protection has been strongly influenced by EU Directives and the transposition of EU Regulations into German law. Following the enactment of the Immigration Act on 1 January 2005, which already introduced prominent changes to verifying refugee status by including non-state persecution, the implementation of the Residence Standards Directive (2003/9/EC), the amended Qualification Directive (2011/95/EU) and Procedure Directive (2005/85/EC) into national law has been a major step towards creating a common European asylum system.

Despite pan-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 2010a).

Since 1953, more than 3.5 million people have submitted an application for asylum in Germany, of those more than 2.5 million since 1990 (BAMF 2014: 8). The highest number of applications was 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 19,165 initial applications in 2007, there has since been a renewed increase in entry figures every since. A total of 109,580 initial applications were submitted in 2013. This represents an increase of 69.8 % in 2014 compared to the previous year (64,540). In 2013, a total of 126,995 initial and second applications for asylum were filed (Source: Eurostat).

6.1.2 National Developments

Development in the number of applications for asylum filed⁵¹

Table 1: Initial asylum applications filed in 2012 and 2013, main countries of origin

	2012	2013	Change in %	Change in absolute terms
Total	64,540	109,580	69.8%	45,040
Russian Federation	3,200	14,885	365.2%	11,685
Syria	6,200	11,850	91.1%	5,650
Serbia	8,475	11,460	35.2%	2,985
Afghanistan	7,500	7,735	3.1%	235
Macedonia	4,545	6,210	36.6%	1,665
Iran	4,350	4,425	1.7%	75
Pakistan	3,410	4,100	20.2%	690
Iraq	5,350	3,960	-26.0%	-1,390
Somalia	1,245	3,785	204.0%	2,540
Eritrea	650	3,615	456.2%	2,965

*Source: BAMF. The order is based on the ten most important countries of origin in 2013 in terms of numbers.

In 2013, 109,580 applications for asylum were filed, 45,040 more than in 2012 (+69.8 %). The number of asylum seekers hence rose for the sixth year in succession. As Table 1 shows, the rise is accounted for above all by the main countries of origin Russian Federation (+11,685 first-time applications for asylum, +365.2 %), Syria (+5,650 first-time applications for asylum, +91.1 %), Serbia (+2,985 first-time applications for asylum, +35.2 %) and Macedonia (1,665 first-time applications for asylum, +36.6 %). In terms of percent, in addition to the Russian Federation, there was a sharp rise in the number of asylum seekers from Eritrea with 3,615 first-time applications for asylum (+456.2 %) being filed and from Somalia with 3,785 first-time applications for asylum filed (+204.0 %). The number of applications for asylum by Afghan nationals remained more or less unchanged (+3.1 %), the same applies to number of applications for asylum by Iranian nationals (+1.7 %). There was merely a decline in the number of first-time applications for asylum filed by Iraqi nationals (-26.0 %).

51 The figures are based on the national asylum statistics of the BAMF and not on Eurostat. Until the final version has been completed, these statistics will be replaced by Eurostat data that can be compared on a pan-European basis.

The main countries of origin in terms of asylum seekers in 2013 were the Russian Federation, Syria, Serbia, Afghanistan, Macedonia, Iran, Pakistan, Iraq, Somalia and Eritrea (BAMF 2014: 16ff).

In terms of the recognition rate, the overall rate of applications granted decreased slightly from 29.2 % to 26.4 %.⁵² Yet the number of persons seeking protection status also rose in absolute terms owing to the overall rise in the number of asylum seekers despite the overall decline in the protection quota: 10,915 persons were recognised as having the right of asylum under Article 16a of the Basic Law or as refugees under the Geneva Convention (2012: 8,765). 9,210 persons were granted subsidiary or humanitarian protection (2012: 8,375).⁵³

52 Protection rates have been calculated based on the data provided by Eurostat in order to achieve EU-wide comparability.

53 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 2012: 27).

The protection rate among asylum seekers in 2013 in terms of the most important countries of origin were Syria (94.6 %), Eritrea (80.2 %) and Iran (59.1 %). 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 9,200 decisions taken on nationals of Syria, 2,905 persons were recognised as having the right of asylum or as refugees under the Geneva Convention whereas 5,795 persons were granted humanitarian protection or subsidiary protection.

Out of the asylum seekers filing a first-time application for asylum in 2013, 64.9 % were Muslim, 22.2 % were Christian, 4.8 % were Yezidi and 1.9 % were Hindu, whereas 2.7 % provided no denomination (BAMF 2014: 22).

Workload of the BAMF/implications for the duration of the procedure

In the opinion of Darmstadt Administrative Court, the rise in the number of asylum seekers since 2008 and the unchanged number of staff at the BAMF constitutes sufficient grounds for the BAMF setting priorities and being unable to decide on applications for asylum within the stipulated time period in individual cases. In the case at hand, the proceedings involved the application for asylum filed by an underage Afghan national in May 2012. The Court suspended the proceedings for six months owing to the staff and case load situation at the time (Darmstadt Administrative Court, ruling of 26 February 2013, 2 K 40/13.DA.A).

Response by the BAMF to the rise in the number of applications for asylum filed

In order to ensure that applications for asylum could be processed swiftly given the rise in the number of applications filed, the BAMF increased the number of staff working in the area of asylum in 2013. An additional 90 employees from other divisions were employed as decision-makers in the asylum procedure. Furthermore, the recruitment was expanded for this area and staff from other federal authorities were taken on temporarily for support.

In addition to increasing the number of staff, priority has been given to processing asylum applications filed by Syrian nationals and asylum seekers from the Western Balkans. The aim is to process applications for asylum first that have a proportionately high or low probability of being granted owing to the region of origin. In these cases, the processing time is relatively short. In addition, the time asylum seekers can draw benefits for under the Asylum Seekers Benefits Act is to be shortened particularly for those whose applications for asylum have been turned down.

Developments in the Federal States

Berlin and Brandenburg as well as Bremen and Lower Saxony eased the residence requirement which meant that refugees are now allowed to travel between the respective city and the neighbouring non-city state without a permit.⁵⁴ The Bavarian State Minister of the Interior called on the urban municipalities and district offices to refrain from charging fees from asylum seekers who applied for the permission to leave their designated district (Bayerische Staatskanzlei 2013). Furthermore, a passage was deleted from the Bavarian Ordinance implementing the Asylum Procedure (Asyldurchführungsverordnung - DVAsyl) according to which shared housing "was intended to encourage the refugees to return to their country of origin" (Section 7 subsection 5 sentence 3 of the DVAsyl, abolished; cf. Fourth Ordinance amending the Ordinance implementing the Asylum Procedure from 30 July 2013). It was noted in the coalition agreement concluded by CDU, CSU and SPD on 16 December 2013 that the "geographical restriction (the so-called residency requirement), for asylum seekers and refugees whose deportation has been temporarily suspended [...] is to be expanded to the respective federal state" (CDU/CSU/SPD 2013: 109).

Revocation of recognition as an asylum seeker/ revocation of refugee status

In accordance with a ruling by the Federal Administrative Court of 31 January 2013 (BVerwG 10 C 17.12)

⁵⁴ Brandenburg: Edict 5/2013 from 18 April 2013; Berlin: Amended versions of the procedural guidance of the Berlin Foreigners Authority from 11 September 2013; Bremen: Asylum Seekers Exemption Provision from 27 March 2013; Lower Saxony: Ordinance regarding the temporary stay of Asylum Seekers outside the area stipulated by their preliminary entitlement to remain in the country from 4 April 2013.

if an asylum seeker files an action against the revocation of entitlement to protection, the obligation of the Administrative Court is not limited to examining the grounds for revocation provided by the asylum authorities or the arguments of the parties concerned against the revocation. Rather, the Administrative Court must examine all grounds for and against the revocation of the need and worthiness for protection. With the same ruling, the Court reaffirmed the view that it is not possible to refuse refugee status to persons convicted to more than three years in prison for posing a threat to the public at large if the sentence was handed down as part of an overall sentence, but if the individual sentences were less than three years. In another ruling, the Federal Administrative Court confirmed the practise of the BAMF of withdrawing refugee status if it subsequently emerges that the applicant had lied about key facts that were crucial for the recognition. In this particular case, the petitioner had claimed to be a Syrian-Orthodox Christian from Turkey. However, after ten years it emerged that she was in fact an Armenian national who had neither lived in Turkey nor been the victim of persecution in her country of origin (Federal Administrative Court, ruling of 19 November 2013, 10 C 27.12).

Internal flight alternative

In view of the validity of bans on deportation in respect of regional conflicts, the Federal Administrative Court ruled that the situation in the actual place of destination must be decisive in respect of the predicted threat (BVerwG, ruling of 31 January 2013, BVerwG 10 C 15.12). Deportations to regions other than the person's region of origin are only permissible if the person in question had cut all ties with the region of origin before they fled and had settled in the region they are to be deported to. This means nobody can be deported to regions where they resided temporarily during the flight.

Fingerprints that cannot be used

The Federal Administrative Court ruled on 5 September 2013 on the consequences of not being able to use an asylum seeker's fingerprints. If there is evidence to suggest fingertips have been manipulated, the Federal Office is entitled to ask the asylum seeker to submit fingerprints that can be used within the framework of a formal request. If the asylum seeker fails to comply with this request within one month, the Federal Office for Migration and Refugees may suspend the proce-

dure without having to take a decision on the application for asylum (BVerwG 10 C 1.13).

Persecution on grounds of sexual orientation

Trier Administrative Court ruled in relation to the persecution of homosexuals relevant for asylum that in Iran men who come to the attention of public authorities as being homosexual may face beatings or imprisonment any time they are in contact with security authorities. They also face this risk even if there is no proof they have actually engaged in homosexual activities (Trier Administrative Court, ruling of 17 January 2013, 2 K 730/12.TR).

Albania/illegitimate child

If a woman from a patriarchal Northern Albanian family gives birth to a child out of wedlock, the life of mother and child may be at risk owing to the "traditional customary law of the Kanun in which the family's honour is the central value" (BAMF 2013d: 5). In the view of Magdeburg Administrative Court, this represents a threat within the meaning of Section 60 subsection 1 of the Residence Act that women's shelters in Albania cannot offer sufficient protection from owing to capacity problems (Magdeburg Administrative Court, ruling of 30 January 2013, 3 A 101/12 MD). In these case scenarios, this may result in refugee status being granted.

6.3.1 Developments in the EU context

Amendment to the Asylum Procedure Act (Asylverfahrensgesetz) for the transposition of the Qualification Directive

In order to meet the requirements of the Qualification Directive, the German Bundestag adopted the "Act Implementing Council Directive 2011/95/EU" in August 2013 which entered into force on 1 December 2013. Amongst other things, the newly-created Sections 3a-3e of the Asylum Procedure Act define what constitutes acts of persecution and grounds for persecution that are relevant for asylum, identify the players involved in acts of persecution as well as the players capable of offering protection and define what internal protection actually means. Furthermore, the amended Act stipulates that an application for subsidiary protection is filed automatically when an application for asylum is filed. An application for subsidiary protection can only be filed at the Federal Office together with an application for asylum and

no longer separately with the foreigners authorities. In addition to amending the Asylum Procedure Act, the Residence Act was amended along with the Act Implementing Council Directive 2011/95/EU to the effect that the rights of asylum seekers and persons entitled to subsidiary protection and their entitlement to benefits have been standardized (Richert 2013).

Aligning the AsylVfG to the Dublin III Regulation

In order to adapt the procedure of deporting asylum seekers to the competent Member State according to the Dublin III Regulation, Section 34a subsection 2 of the Asylum Procedure Act was also amended within the framework of the Act Transposing Council Directive 2011/95/EU. According to the legal situation since 6 September 2013, a fast-track appeal against a deportation order filed within one week of receipt of the deportation notice will have suspensive effect until a court decision is taken.

Persecution on the grounds of public expression of religion

The European Court of Justice ruled back in 2012 that a threat posed by the public expression of one's religion is deemed to be persecution relevant for asylum (ruling by the European Court of Justice of 5 September 2012, ECJ C-71/11; cf. also BAMF/EMN 2013: 46f.). The Federal Administrative Court implemented this view with its ruling of 20 February 2013 (BVerwG 10 C 20.12). This means the previous legal practise of denying the right of protection was abandoned if the asylum seeker could avoid persecution in his country of origin if he waived his freedom to practise his religion.

Swifter access to the labour market for asylum seekers and persons whose deportation has been suspended

The Act Implementing Council Directive 2011/95/EU not only created the possibility of filing a fast-track appeal against a deportation order in respect of Dublin transfers (see above) but also of gaining access to the labour market for asylum seekers in the initial procedure. The amendment of Section 61 subsection 1 of the Asylum Procedure Act which entered into force on 6 September 2013 grants asylum seekers secondary access to the labour market after nine months (previously: 12 months). Provisions set forth in the amended Reception Directive have been implemented before the deadline by virtue of this regulation. The coalition agreement of the parliamentary groups supporting the

government for the new legislative terms stipulates in this context that asylum seekers and persons whose deportation has been suspended will have access to the labour market after three months (CDU/CSU/SPD 2013: 110).

Transfers to Greece

In December 2013, the Federal Ministry of the Interior decided to once again suspend all transfers of asylum seekers to Greece in 2014 and urged the BAMF to invoke the sovereignty clause in respect of asylum seekers who had travelled to Germany via Greece. However, by extending the suspension of transfers, the Federal Ministry of the Interior does not intend to call the Dublin system for determining which Member State is responsible for implementing the asylum procedure as a whole into question. The BAMF has been suspending all transfers of asylum seekers to Greece since 13 January 2011.

6.2 European Asylum Support Office

6.2.1 Background and General Context

The European Asylum Support Office (EASO) is an agency of the European Union that has its registered office in Malta. It was established with the aim of enhancing practical cooperation between EU Member States 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 facing a particularly large influx of asylum seekers:

6.2.2 Developments in the EU context

In 2013, the European Asylum Support Office (EASO) focused on the following tasks in accordance with its annual work programme:

1. Developing a high-quality training programme for the area of asylum in all EU Member States
2. Providing information on countries of origin and issuing country-specific reports for all EU countries
3. Developing an early warning system for the area of asylum

4. Providing operational relief measures to Greece in order to assist with the Greek asylum system
5. Consolidating EASO

In addition to these focal points, the subjects “External dimension of the Common European Asylum System (CEAS)” and AST support services (Asylum Support Team) for Bulgaria were added to the EASO agenda as topical issues.

Germany seconded staff from its pool of experts for various AST profiles. EASO issued four calls for seconded national experts for a total of 31 measures within the framework of ongoing support measures in Greece, Italy and Bulgaria in 2013. In addition, experts were needed for emergency exercises in Hungary and Romania. The Federal Office for Migration and Refugees provided experts in 2013 for three AST missions in Greece and one AST mission in Bulgaria and for the emergency exercise; it was unable to find any expert in relation to its call for seconded national experts in Italy. With the exception of the mission for Bulgaria, EASO selected all the staff seconded by the BAMF for the AST missions.

Furthermore, employees of the BAMF also participated in the activities of the European Training System within the framework of EASO. In a total of six missions, they acted as instructors for international colleagues or cooperated in (further) developing the training modules. In addition, employees of the BAMF took part in conferences and expert workshops organised by EASO in 2013.

6.3 Cooperation with third countries including Resettlement

6.3.1 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 admis-

sion ordinances are issued by the Federal Ministry of the Interior in coordination with the Federal States.

6.3.2 National Developments

Germany admitted 293 Iranian, Iraqi and Syrian refugees from Turkey who had been accommodated in refugee camps within the framework of participation in the UNHCR resettlement programmes in 2013, similar to the previous year. In December 2013, the Permanent Conference of the Ministers and Senators of the Interior of the Federal States advocated that Germany continues to participate in the resettlement programme and that its scope should be broadened. It was noted in the coalition agreement of the parliamentary groups supporting the government for the new legislative term that the resettlement programme would be “continued, consolidated and expanded by 2015 at the latest in coordination with the Permanent Conference of the Ministers and Senators of the Interior of the Federal States (IMK)”. Family reunification is also to be facilitated for resettlement refugees (CDU/CSU/SPD 2013: 110).

The Federal Minister of the Interior decided in May 2013 outside of this programme in the context of admission on humanitarian grounds to admit 5,000 Syrians who had fled from the civil war. In December 2013, the decision was taken to expand the contingent to a total of 10,000 refugees from Syria.⁵⁵ They are granted a residence period for two years initially pursuant to Section 23 subsection 2 of the Residence Act. Then, the situation in Syria will be evaluated again. Regarding the first contingent, the UNHCR proposes the refugees to be admitted to the Federal Office for Migration and Refugees. In the context of the second contingent, the Federal States will be providing proposals respectively filing applications for admission to the BAMF, which will be reviewing them and taking the decisions. In addition, UNHCR submits proposals for admissions to the Federal Office for Migration and Refugees. Particular regard is given to persons in need of special protection who fulfil certain humanitarian criteria, refugees who have special ties with Germany and persons who are capable of making a special contribution to reconstruction after conflict has ended.

⁵⁵ http://www.bmi.bund.de/DE/Themen/Migration-Integration/Asyl-Fluechtlingschutz/humanitaere-aufnahmeprogramme/humanitaere-aufnahmeprogramme_node.html (11 March 2014).

7 Unaccompanied Minors and other Vulnerable Groups

7.1 Unaccompanied Minors

7.1.1 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 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. At the BAMF, “specially assigned case officers” who are trained in handling UMs are the decision-makers on applications for asylum. 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 2010b).

In Germany, the term includes persons under the age of 18 who are separated from both parents and are being looked after by an adult entrusted with their care, unaccompanied minors who file an application for asylum or who apply for temporary protection from deportation with foreigners authorities are not

just considered to be capable of performing procedural acts and having legal capacity when they are over the age of 18 but are currently considered to have reached the age of full legal accountability and to be capable of performing procedural acts at the age of 16 pursuant to Section 12 subsection 1 of the Asylum Procedure Act and Section 80 subsection 1 of the Residence Act.⁵⁶ This means that 16 and 17-year-olds can currently perform procedural acts under the Asylum Procedure Act and Residence Act without a legal guardian (cf. BAMF/EMN 2009). It is intended to raise the age limit to 18 years of age.

7.1.2 National Developments

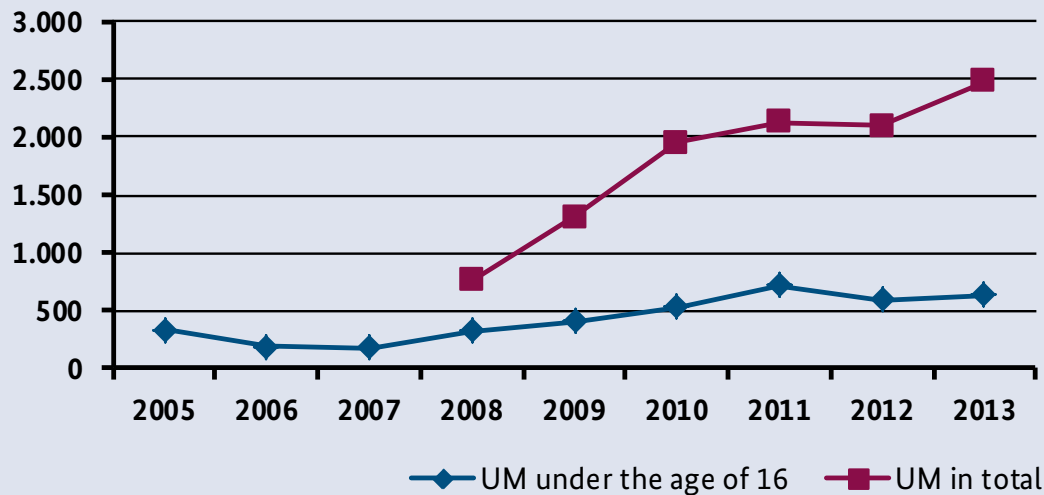
After the number of applications for asylum filed by UMs declined between 2002 (873 applications) and 2007 (180), the number has once again risen steadily since 2008 (324). In 2013, the number of UMs applying for asylum in Germany totalled 2,485 persons. This represented an increase of 18.6 % year-on-year (2012: 2,096, see also Figure 4). The five main countries of origin for 2013 were Afghanistan (961 UM, -31.1 % year-on-year), Somalia (354, +187.7 %), Syria (287, +115.8 %) and Eritrea (138, +253.8 %).⁵⁷

The total protection rate, i.e. number of persons granted asylum, granted refugee protection and protection from deportation in relation to the total number of decisions during the given time period, rose to 57% in 2013. In 2012, the total protection rate had been 41 %. The trend in the total protection quotas for UMs under

⁵⁶ „A foreigner who is at least 16 years of age shall be capable of performing procedural acts in accordance with this Act, unless he has no legal capacity according to the terms of the Civil Code or unless he would have to be offered assistance or be subject to a reservation of consent in this matter if he had reached the age of full legal accountability“ (Section 12 subsection 1 of the Asylum Procedure Act).

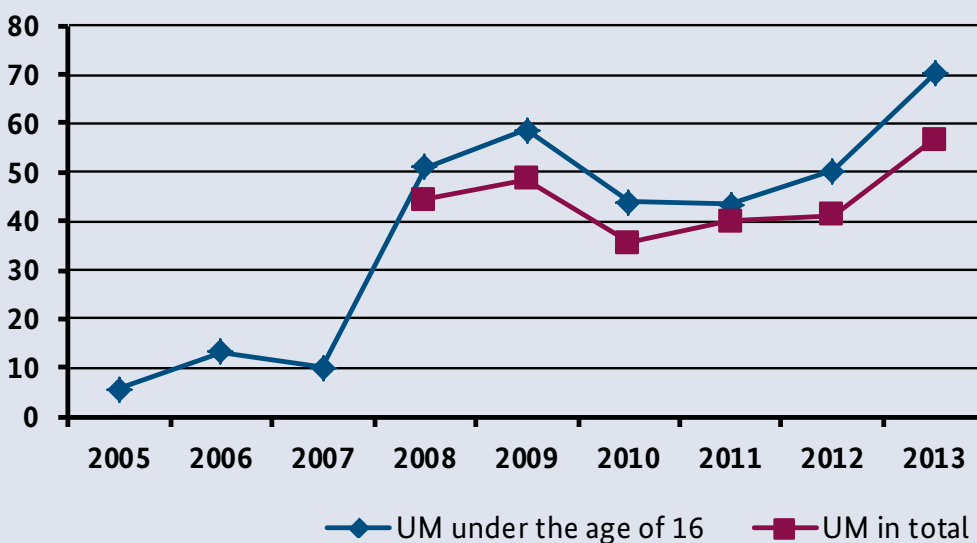
⁵⁷ Source: BAMF.

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



* Source: BAMF: Unaccompanied minors aged 16 to 17 were not recorded in separate statistics up to and including 2007

Figure 5: Overall protection rate in %



Source: BAMF

the age of 16 and of all UMs have developed in parallel (cf. Figure 5).

Right of reunification for parents

According to the Federal Administrative Court, both parents of UMs have a right to be granted a visa for the purposes of family reunification. If the Embassy grants one of the two parents a visa before the other parent, it cannot refuse the other parent the visa on the grounds that one parent entitled to care and custody is already

residing in the Federal Territory (BVerwG, ruling of 18 April 2013, BVerwG 10 C 9.12).

Protection against deportation for UMs

Pursuant to Section 58 subsection 1a of the Residence Act, prior to the deportation of an unaccompanied foreign minor, the authorities must ensure that in the state to which he or she is to be returned he or she will be handed over to a member of his or her family, to a person possessing the right of care and custody or

to an appropriate reception centre. This is intended to protect UMs from threats in the country of origin even if no refugee protection, subsidiary protection or national bans on deportation can be granted (BVerwG, ruling of 13 June 2013, BVerwG 10 C 13.12).

Raising the age of legal capacity in the asylum procedure to 18

In the coalition agreement for the new legislative term, the parliamentary groups supporting the government announced that the age limit for unaccompanied minors would be redefined. “The age of legal capacity is to be raised to 18 in the Asylum Procedure Act and Residence Act” in order to impose an obligation regarding “priority of youth services law for unaccompanied minor refugees” (CDU/CSU/SPD 2013: 110).

7.2 Other Vulnerable Groups

7.2.1 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.

BAMF employees themselves are not trained to diagnose illness. However, they are trained in how to deal with groups of persons in special need of protection so that they are able to identify people who are ill. Furthermore, “special case officers” are available as decision-makers for groups of persons in special need of protection. 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.

7.2.2 National Developments

There were no relevant trends in this policy area in the year 2013.

8 Actions against Trafficking in Human Beings

8.1 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).

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 willingness to testify as a witness in the criminal proceedings. This also applies to foreigners subject to immediate departure. This regulation implements 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 cooperate with law enforcement authorities and the courts (Parusel 2010a: 23).

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 in 1997 which was renamed “Working Group of the Federal Government and Federal States on the Prevention of Trafficking in Humans” in November 2012. The tasks of the Working Group include “a continuous exchange of information about the manifold activities in the Federal States and in national and

international bodies, analysing the concrete problems encountered in the fights against trafficking in humans and, if applicable, common campaigns for the prevention of trafficking in humans”⁵⁸

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 programmes are directed at police officers, specialized advisory agencies, the judiciary, customs, the financial control section of the Federal Customs Administration, prisons and other authorities (BMFSFJ 2007).

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”⁵⁹ as a handout 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.

58 <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=73008.html> (25 February 2014).

59 http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a719-hilfe-fuer-opfer-von-gewalttaten-256.pdf?__blob=publicationFile (25.02.2014).

8.2 National Developments

Statistics

Since 1999, the Federal Criminal Police Office has been publishing the “Federal Situation Report” on trafficking in human beings since 1999. 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 2012, 491 preliminary investigations involving 769 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 2 % regarding preliminary proceedings and suspects. By contrast, the number of officially reported victims of trafficking in humans for sexual exploitation has dropped by around 5% compared to 2011; all in all 612 persons were identified as victims of sexual exploitation. The majority of victims were women (96 %). 100 victims were under-age. In 2012, the majority of victims originated from Bulgaria (25.3 %), Romania (20.9 %), Hungary (7.7 %), Poland (3.8 %) and Nigeria (2.1 %). As in the previous years, many of the victims came from Central and Eastern Europe (66%). The high proportion of victims from Romania and Bulgaria can probably be attributed to the relaxed entry, residence and labour conditions for nationals of these new EU Member States (BKA 2012).

In the area of trafficking in humans for labour exploitation in 2012, eleven preliminary investigations were brought to a conclusion, therefore two fewer than the previous year (13). In 2012, a total of seven suspects were identified, 18 fewer than in the previous year. In 2012, 14 victims of trafficking in humans for labour exploitation were registered, 18 fewer than in the previous year (32). The vast majority originate from Romania. Most of the victims were employed in the hospitality and construction industry (BKA 2013: 9f.).

Nationwide hotline “Violence against women”

The Federal Office set up a “Violence against women” hotline on 6 March 2013 for families and civil society tasks. By dialling the number 08000 116 016, people can obtain advice on how to deal with all types of violence against women, including trafficking in women. The hotline helps to refer people on to local counselling and protection facilities.

Expansion of victim protection

The “Act Strengthening the Rights of Victims of Sexual Abuse” (Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs - StRORMG) that entered into force on 30 June 2013 focuses on the need of victims of human trafficking for protection in criminal proceedings and in the criminal process. The possibilities of making audio and visual recordings of interviews with the victims of human trafficking were expanded with the amendment of Section 58a subsection 1 of the Criminal Procedure Act to spare them the ordeal of having to testify several times. By the same token, the victims of trafficking in humans also have the right to be informed when convicted criminals’ sentences are reduced or when they are on leave from prison.

9 Migration and Development

9.1 Background and General Context

While the interrelation between migration and development has been a topic of scientific interest for some time now, discussions in Germany on strengthening the links between migration and development policy have only started in 2006/2007. Here, the focus has been on coordinating the two policy areas and their inherent priorities, which should lead to greater policy coherence. In this context, a major challenge is in integrating the differing political objectives of the two fields: Whereas migration policy focuses predominantly on managing migration flows, development policy aims at improving and supporting structures in the poorer countries (of origin) (Baraulina et al. 2012). The objective of enhancing the integration of the two policy fields also increases the need for coordination among the participating actors. At the federal level, the main actors are the Federal Ministry of the Interior (BMI, responsible for the German migration policy) and the Federal Ministry for Cooperation and Development (BMZ, responsible for the German development policy). At the operational level, the implementing bodies and authorities of these ministries are playing a major role. For the BMZ, these are the Gesellschaft für Internationale Zusammenarbeit (GIZ) and the Centre for International Migration and Development (CIM); with regard to the implementation of migration policy, the Federal Office for Migration and Refugees is the key actor.

Currently, Germany is delivering two main development programmes relevant to migration: CIM offers a programme for returning (academic) experts ('Rückkehrende Fachkräfte'), supporting them by means of financial aid, information on job vacancies and a network of advisors in the countries themselves. The Sector Project 'Migration and Development', initiated

by GIZ in 2006, aims at making the issue of migration a permanent feature in all aspects of development cooperation. In 2012, the project was moved to CIM.

Conversely, when it comes to migration policy, development policy considerations are in the focus of attention mainly in connection with the topic of assisted voluntary return. This is chiefly reflected in the growing emphasis of reintegration aspects within the REAG/GARP Programme (see the section 5). To this end, the BAMF has set up a new 'Return and Reintegration Coordination Agency'. Also, development policy aspects play a role within the frame of the German participation in the EU Mobility Partnerships. Among other things, the provisions for legal migration have been liberalised insofar as foreigners whose stay abroad is in the interest of the Federal Republic of Germany are now granted a longer period of stay abroad without losing their residence title (see section 51.4.1.2 of the General Administrative Regulations on the Residence Act). Within the Mobility Partnerships, this provision is applied to citizens of Moldova, Armenia and Georgia, enabling them to leave Germany for a longer time period than the six months stipulated in Section 51 subsection 1 no. 7 of the German Residence Act without losing their residence title.

9.2 National developments

Migration and development in the German government's coalition agreement

The Coalition Agreement of the new German government states that "migration issues should be more firmly and more specifically anchored in development-policy cooperation with third countries, with the objective of better controlling inward migration and combating the causes of involuntary migration and seeking refuge." This should produce a "better fit between migration, foreign and development policies". This requires a "Strategy for Migration and Development" to be drawn up (CDU/CSU/SPD 2013).

High-level conference on migration and development

In order to anchor migration issues more firmly into development cooperation, the Federal Ministry for Economic Cooperation and Development organised the conference 'Migration of Professionals from Developing Countries to Germany: Chances, Risks and Opportunities' in June 2013, reuniting representatives of different countries and ministries.

Dialogue on development policy with migrant organisations

Building on two training and networking events on the issues of 'participation in global processes on migration and development' and 'diaspora and development' staged by GIZ, ICMPD and the Swiss Agency for Development and Cooperation SDC, the BMZ invited representatives of migrant organisations for informal talks during the UN High Level Dialogue held in New York in September 2013.

Migration and development in the implementation of Mobility Partnerships

Under the Mobility Partnership with Armenia, GIZ, CIM and BAMF implemented two projects to improve the reintegration of returnees to Armenia, one of them with the participation of the French Migration Office OFII. Here, the focus of support concentrated on the setup of small-scale business by returnees and on returning experts who can contribute to the development of their country. Besides, GIZ completed a project supporting investments of Armenian citizens living in Germany.

In Georgia, three projects were carried out in 2013 with the participation of CIM, GIZ and BAMF, focussing on strengthening administrative capacities for the reception of returnees and their integration to the local labour market. Also, qualified returnees who are able to contribute to the development of their home country were supported by finance and advisory services under the Programme 'Migration for Development'.

Within the Mobility Partnership between Morocco and the EU Member States established by a joint declaration in 2013, Germany is planning to extend the programmes 'Migration for Development' and 'Returning Experts' to Morocco. Additionally, it is envisaged to reinforce the network of German-Moroccan university partnerships.

10 Implementation of EU Legislation

Transposition of the Qualification Directive

The “Act Implementing Council Directive 2011/95/EU (Gesetz zur Umsetzung der Richtlinie 2011/95/EU) (Qualification Directive) contained important amendments to the Asylum Procedure Act on 1 December 2013. For instance, some provisions governing the protection of refugees and subsidiary protection set forth in the Residence Act have also been incorporated into the Asylum Procedure Act. In terms of content, Section 3a of the Asylum Procedure Act also defined the lack of protection from acts of persecution as acts of persecution that are relevant for asylum. By the same token, the prerequisites for the availability of internal flight alternatives were also defined in more detail. In addition, the group of persons who can be granted family protection was expanded and now includes the parents and siblings of persons entitled to protection.

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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)
AST	Asylum Support Teams (Asyl-Unterstützungsteam)
AsylbLG	Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz)
AsylVfG	Asylum Procedure Act (Asylverfahrensgesetz)
AsylZBV	Ordinance Determining Asylum Competences (Asylzuständigkeitsbestimmungsverordnung)
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)
AZR-G	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)
BGBI	Federal Law Gazette (Bundesgesetzblatt)
BKA	Federal Criminal Police Office (Bundeskriminalamt)
BMAS	Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales)
BMBF	Federal Ministry 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)
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)
BPOL	Federal Police (Bundespolizei)
BPolG	Federal Border Police Act (Bundespolizeigesetz)
BVA	Federal Office of Administration (Bundesverwaltungsamt)
BVerfG	Federal Constitutional Court (Bundesverfassungsgericht)
BVerwG	Federal Administrative Court (Bundesverwaltungsgericht)
BVFGÄndG	Act Amending the Federal Act on Refugees and Expellees (Änderungsgesetz zum Bundesvertriebenen- und Flüchtlingsgesetz)

CDU	Christian Democratic Union (Christlich Demokratische Union)
CEFR	Common European Framework of Reference for Languages (Gemeinsamen europäischen Referenzrahmen für Sprachen – GER)
COM	European Commission (Europäische Kommission)
CSU	German Islam Conference (Deutsche Islam Konferenz)
DAV	Data Reconciliation Procedure (Datenabgleichverfahren)
DIK	German Press Agency (Deutsche Presse-Agentur)
DPA	Christian Democratic Union (Christlich Demokratische Union)
DVAsyl	Ordinance implementing the Asylum Procedure (Asyldurchführungsverordnung)
EAC	European Asylum Curriculum
EASO	European Asylum Support Office
ECJ	European Court of Justice
EFF	European Refugee Fund (Europäischer Flüchtlingsfonds)
EinbTestV	Ordinance on Naturalisation Tests (Einbürgerungstestverordnung)
EMN	European Migration Network (Europäisches Migrationsnetzwerk)
ESF	European Social Fund (Europäischer Sozialfonds)
EU	European Union (Europäische Union)
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 Illegale Migration)
GG	Basic Law (Grundgesetz für die Bundesrepublik Deutschland)
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, Senatorin- nen 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 vio- lence 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)
NAP-I	National Integration Action Plan (Nationaler Aktionsplan Integration)
NIP	National Integration Plan (Nationaler Integrationsplan)
OFII	Office Français de l'Immigration et de l'Intégration (French Office for Immigration and Integration)
RABIT	Rapid Border Intervention Team
REAG/GARP	Reintegration and Emigration Programme for Asylum-Seekers in Germany / Govern- ment Assisted Repatriation Programme
SIS	Schengen Information System (Schengener Informationssystem)
SGB	Social Code (Sozialgesetzbuch)
SOE	Stability Pact for South Eastern Europe (Stabilitätspakt Südosteuropa)
SPD	German Socialdemocratic Party (Sozialdemokratische Partei Deutschlands)
StAG	Citizenship Act (Staatsangehörigkeitsgesetz)

StBA	Federal Statistical Office (Statistisches Bundesamt)
StGB	German Criminal Code (Strafgesetzbuch)
UM	Unaccompanied Minor (Unbegleiteter Minderjähriger)
UNHCR	United Nations High Commissioner for Refugees (Hoher Flüchtlingskommissar der Vereinten Nationen)
VG	Administrative Court (Verwaltungsgericht)
VIS	Visa Information System (Visa-Informationssystem)

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