

## Migration, Integration, Asylum: Political Developments in Germany 2014

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Federal Office  
for Migration  
and Refugees



# Migration, Integration, Asylum

Political Developments in Germany 2014

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



Co-financed by the  
European Union





# Migration, Integration, Asylum

Political Developments in Germany 2014

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

Federal Office for Migration and Refugees 2015



# Summary

The 2014 Policy Report of the German National Contact Point 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 2014. The report refers specifically to measures taken by the Federal Republic of Germany to implement the Global Approach to Migration and Mobility, EU Action on Migratory Pressures, the EU Strategy towards the Eradication of Trafficking in Human Beings, and the European Agenda for the Integration of Third-Country Nationals. The report also describes the general structure of the political and legal system in Germany, and outlines the most important political and institutional changes in these policy areas in 2014.

Core debates in 2014 on migration, integration, and asylum focused on:

- The increase in applications for asylum and the political reaction
- Refugee protests
- The requirement to choose one nationality and the acceptance of dual citizenship

The German Bundestag passed a number of amendments over the course of 2014, which include:

- An amendment to the Asylum Procedure Act classifying Bosnia and Herzegovina, Serbia, and the Former Yugoslavian Republic of Macedonia as safe countries of origin, and repealing the residency requirement
- An amendment to the Asylum Seekers' Benefits Act
- An amendment to the Nationality Act repealing the requirement to choose one nationality

In addition to the legislation of the Bundestag, the Federal Ministry for Labour and Social Affairs (BMAS) revised the Employment Ordinance (BeschV) in 2014, which forms the basis for allowing immigrants in certain occupations and with certain qualifications to seek employment (see Sections 4.2 and 6.1.2).



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# 1 Introduction

## *Structure and content*

The 2014 Policy Report provides an overview of the most important political discussions as well as political and legislative developments in the areas of migration, integration, and asylum in the Federal Republic of Germany in the year 2014. Nevertheless, it does not purport to be exhaustive. The report was written by the German National Contact Point for the European Migration Network (EMN) at the Federal Office for Migration and Refugees (BAMF) in Nuremberg.

Pursuant to Article 9 section 1 Council Decision number 2008/381/EC dated 14 May 2008 establishing a European Migration Network, each National Contact Point shall provide an annual report on the “migration and asylum situation in the Member State”, which shall include policy developments, legal changes, and basic statistical data. This year’s report on migration, integration, and asylum (“policy report” for short) is intended to provide the Community Institutions of the EU, and the authorities and institutions of the Member States the information they require by “providing up-to-date, objective, reliable, and comparable information on migration and asylum” in order to support policy-making in the European Union (Article 1 section 2 Council Decision number 2008/381/EC). The findings gathered for the EMN are also intended for the public. In addition to publishing the national policy reports for these purposes, the European Commission (to which the EMN belongs) also publishes its own EMN Informs on specific topics that build on the policy reports of the Member States and which provide a comparison of the national results.

This tenth EMN policy report is based on the reports from previous years, largely following the layout specified by the EMN and also used by the EMN National Contact Points of other EU Member States when writing their national reports.

Chapter 1 provides an overview of the structure of the political system, existing institutions, changes in these structures, and general political developments in 2014. Chapter 2 outlines relevant political and legislative developments, as well as important political debates on migration, integration, and asylum. Chapters 3 to 8 focus on specific political and legal measures in certain areas of immigration and asylum policy, while chapter 9 takes a look at developments affecting the Global Approach to Migration and Mobility.

## **Methodology**

The 2014 Policy Report is based on numerous sources of data and information. The information provided is based on information from German Federal Authorities as well as factual information from the relevant organisational units of the BAMF. Information on political debates and the status of legal developments is drawn primarily from publications by the BAMF and the National Contact Point for the European Migration Network, as well as online sources such as official records and committee minutes of the German Bundestag and German Bundesrat, ordinance and law gazettes, and official statements from ministries, authorities, and political parties made to the press or in public programmes. Relevant statements or publications from non-governmental or international organisations, as well as relevant news coverage from national media were also included. All external sources are explicitly cited.

Most figures and statistics were provided by the BAMF, the Federal Statistical Office (StBA), and the Federal Employment Agency (BA). Since the editing of the 2014 EMN Policy Report was scheduled to be finished by February 2015, some data on migration for 2014 were not yet available at the time the report was written.

Events were chosen and weighted based on how relevant the facts and developments could be to the work of policy-makers, both on a national and European

level. Specifically, it was necessary to limit the number of issues addressed in the section on “important political and legislative debates on migration, integration, and asylum” (Section 2.2). In order to narrow down the range of possible topics, only debates receiving extensive coverage by leading media (national dailies, public and private television broadcasters) and addressed by the Federal Government, the German Bundestag, or Parliaments of the Federal States were considered to be “important political debates” and included in the report.

### **Terms and definitions**

The terminology used in this report is largely based on the Glossary<sup>1</sup> of the EMN. Terms referring specifically to the legal situation in Germany are regularly explained in the text or in footnotes. Background information from previous EMN policy reports is referenced accordingly.

## **1.1 General structure of the political system and institutions for migration and asylum**

In the Federal Republic of Germany, policy is formed and implemented in a political system in which legislative and executive authority is divided between the Federal Government and the 16 Federal States. The executive branch operates on three principles: the chancellor principle, the collegiate principle, and the departmental principle. Under the chancellor principle, the chancellor sets policy guidelines and manages the affairs of the Federal Government. Under the collegiate (or cabinet) principle, however, issues of general political importance must be decided by a majority of ministers. Finally, the departmental principle gives the ministers responsibility for and the authority to run their departments.

Below is a brief outline of the roles of the top players in asylum, immigration, and integration policy (for an overview, see Fehsenfeld et al. 2008; Schneider 2012a).

- The Federal Ministry of the Interior (BMI) has primary responsibility. In addition to drafting legislation, it addresses European harmonisation and supervises the BAMF and the Federal Police (BPOL) as the central operational authorities.
- Another important venue for policy-making is the Permanent Conference of Ministers and Senators for the Interior of the Federal States (IMK), in which the Federal Minister of the Interior participates in an advisory role. The conference usually takes place twice a year, and its unanimous decisions serve as policy recommendations with strong binding effects that are often taken into consideration in the legislation and administrative practice of the Federal States and the Federal Government.
- The Federal Ministry of Labour and Social Affairs (BMAS) works with the BMI on the basics of the employment of foreign nationals and their integration into the labour market according to their profession.
- Issues on labour migration and the integration of migrants into the labour market are also addressed by the Conference of Ministers and/or Senators for Labour and Social Affairs (ASMK) which, similar to the IMK, help the Federal States to work together to coordinate their interests in labour and social policy.
- The diplomatic missions abroad supervised by the Foreign Office (AA) are responsible for passport and visa issues.
- The Federal Commissioner for Migration, Refugees, and Integration is appointed by the Federal Government. Since 2005, the office of the Commissioner has been a Minister of State under the purview of the Federal Chancellery. The Commissioner is tasked with “assisting the German Federal Government in particular with advancing its integration policy” (§ 93 number 1 AufenthG) and is involved in relevant legislation (§ 94 section 1 AufenthG). Other tasks include promoting the integration of migrants living in Germany and combatting xenophobia.<sup>2</sup>

1 Glossary of the European Migration Network: [http://www.bamf.de/DE/DasBAMF/EMN/Glossary/glossary-node.html;jsessionid=9833F2EF3845F7409CD-198CA0F64C8AB.1\\_cid368](http://www.bamf.de/DE/DasBAMF/EMN/Glossary/glossary-node.html;jsessionid=9833F2EF3845F7409CD-198CA0F64C8AB.1_cid368) (2 Mar 2015).

2 Cf. §§ 92ff. AufenthG.

- Similar to the IMK, the Ministers and Senators of the German Federal States responsible for Integration regularly meet to discuss and coordinate political projects on integration (IntMK).
- The Federal Government Commissioner for Repatriation Issues and National Minorities operates under the BMI and is responsible for coordinating all measures relating to ethnic German repatriates. The Commissioner is the central contact for national minorities, represents the Federal Government in current and future contact committees, and provides information.
- The BAMF is a superior federal authority among the subordinate authorities of the BMI and performs many duties in its role as the competence centre for numerous tasks in the field of migration, integration, and asylum. The BAMF examines the constitutional right of refugees against persecution and conducts all asylum procedures in Germany, including the Dublin procedure to determine responsibility in the asylum procedure; it determines both refugee status under the Geneva Convention relating to the Status of Refugees and the requirements for subsidiary protection under the Qualification Directive and for national bans on deportation<sup>3</sup>. If protection is deemed unnecessary, the BAMF also issues the deportation warning and/or order. In addition to conducting the asylum procedure, the BAMF coordinates the humanitarian reception programme of the Federal Government and Federal States, as well as Germany's participation in the UNHCR resettlement programme (see Section 6.3). The BAMF is also responsible for developing and implementing the national integration programme, conducting applied/policy-related migration research, promoting voluntary return, running the Central Register of Foreign Nationals, recognising research institutes under the EU Researchers Directive, conducting the reception procedure for Jewish immigrants, coordinating the authorities responsible for labour immigration, and taking action against threats to public safety under immigration, asylum, and nationality laws (for a detailed description, see Fehsenfeld et al. 2008; Schneider 2012a).
- The some 570 foreigners authorities in the 16 Federal States are responsible for practically all procedures relating to residence and passports under the Residence Act (AufenthG), for implementing other immigration regulations, including decisions about deportation and its organisation, and for examining any bans on deportation outside the authority of the BAMF. The foreigners authorities from Germany's major cities meet twice a year to exchange experiences.
- The Federal Police (BPOL) is a superior federal authority among the subordinate authorities of the BMI. It protects the borders of the German Federal Territory (border security) in order to prevent and stop unlawful entry and to fight people smuggling. Border security refers to policing the borders, conducting checks on cross-border traffic, including examining travel documents and authorising entry, conducting investigations along the border, and averting dangers affecting border security in an area up to 30 km inside land and 50 km inside sea borders. The duties of the Federal Police emanate from the Federal Police Act (BPolG) and other statutory provisions, such as those set forth by the Residence Act (§ 71 section 3 AufenthG) or the Asylum Procedure Act (§ 18 AsylVfG). The duties of the BPOL under the Residence Act are 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 2012: 34). The Federal Police is also responsible for coordinating the escorted removal via air of third-country nationals residing illegally in the Federal Territory in close cooperation with other authorities, specifically the foreigners authorities (Schneider 2012b: 34).
- Among its many other administrative duties on behalf of the Federal Government, the Federal Office of Administration (BVA) is responsible for the entry and reception procedures for ethnic

3 Foreign nationals receive subsidiary protection when they would face a tangible risk of death or torture, or other inhumane or degrading treatment in their country of origin, or when an armed conflict would place them in significant danger. Deportation may be ruled out due to the European Convention on Human Rights or if deportation to the country of destination would pose a significant, tangible risk to life, limb, or freedom. This risk can also be in the form of a serious illness that is not being treated adequately or at all in the country of destination.

German repatriates. It also processes the data in the Schengen Information System (SIS)<sup>4</sup> and in the Visa Information System (VIS), and on behalf of the BAMF the records in the Central Register of Foreign Nationals (AZR), consisting of a general database and the Visa File.

## 1.2 General structure of the legal system for migration and asylum

Legislative authority is also divided between the federal level and the Federal States. In general, the Federal States have the right to pass laws in all areas not explicitly under federal competence. While some policy areas are subject exclusively to Federal Law, the majority fall under concurrent legislation with the Federal States. This means that the 16 Federal States may only pass legislation where the federal level has not asserted its authority and done so already (Article 70-74 GG). In practice, most issues eligible for concurrent legislation have already been regulated by Federal Law, including migration issues such as nationality, freedom of movement, immigration and emigration, passports, registration, and right of residence and settlement for foreign nationals. Likewise all overarching legislation on refugees and expellees has been adopted at nationwide level. The only major policy areas in terms of migration that are almost exclusively under the jurisdiction of the Federal States are education, research, and policing, whereby the expulsion of foreign nationals required to depart, and transfers under the Dublin procedure are organised with the BPOL/BAMF.<sup>5</sup>

At the level of the Federal States, authority on asylum and immigration issues is vested in the Ministers and Senators of the Interior. Berlin and North Rhine-Westphalia are the only Federal States so far to pass legislation on integration.<sup>6</sup> Even if there are no other state laws on immigration, asylum, and integration, the Federal States effectively help to shape in particular the activities, i.e. the administrative implementation, of the foreigners authorities through decrees and administrative regulations. They also shape Federal Law in the form of the German Bundesrat, consisting of representatives from the 16 Federal States, which provides extensive rights of involvement and veto power. When passing laws, the German Bundesrat has a similar role to the upper houses or senates in other parliamentary democracies. While the German Bundesrat debates all bills passed by the German Bundestag, it is supposed to discuss only laws that specifically affect relations between the Federal Government and the Federal States. In all other instances, bills that do not pass the German Bundesrat can be overridden by a qualified majority in the German Bundestag. Since practically all political action in the area of migration and asylum directly affects the German Federal States in one way or another and burdens these with administrative tasks, such bills usually have to pass the German Bundesrat.

### **Laws and ordinances**

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

- Article 16a section 1 Basic Law (GG) grants the right to asylum to victims of political persecution. Applications for asylum are examined during the asylum procedure as set forth in the Asylum Procedure Act (AsylVfG).
- The provisions of the AsylVfG and the Residence Act grant foreign nationals facing political persecution refugee status in accordance with the Convention relating to the Status of Refugees of 28 July 1951. The German Residence Act also regulates the issuing of residence titles to those eligible for asylum or subsidiary protection, granted refugee status, and for whom deportation is prohibited

4 The German Federal Criminal Police (BKA) also runs the SIRENE database as an interface between the SIS and national databases, see also [https://www.bka.de/nn\\_196810/sid\\_1060E19D06B682598573AE8761A07191/DE/ThemenABisZ/ElektronischeFahndungssysteme/elektronischeFahndungssysteme.html?\\_\\_nnn=true](https://www.bka.de/nn_196810/sid_1060E19D06B682598573AE8761A07191/DE/ThemenABisZ/ElektronischeFahndungssysteme/elektronischeFahndungssysteme.html?__nnn=true) (10 Mar 2015).

5 Issues on residence are also addressed by a number of joint Federal Government and Federal State working groups. Problems with enforcing the return of third-country nationals obligated to leave are the focus of the Return Working Group (AG Rück), a sub-working group of the IMK (see Section 1.1). The AG Rück is the venue of cooperation between the proper organizational units of the Ministries of the Interior of the Federal Government and the Federal States, although the group also works together with other authorities.

6 The “Act to Promote Social Participation and Integration” was enacted in North Rhine-Westphalia on 14 February 2012. The “Act to Regulate Participation and Integration in Berlin” was enacted in Berlin on 28 December 2010.



(§ 25 sections 1 and 2 as well as section 3 in conjunction with § 60 sections 5 and 7 AufenthaltG).

- The Asylum Seekers' Benefits Act (AsylbLG) forms the legal basis for providing benefits to asylum seekers during the asylum procedure, and to other foreign nationals whose residence is not permanent.
- The Act to Control and Restrict Immigration and Regulate the Residence and Integration of EU Citizens and Foreign Nationals (Immigration Act – ZuwG)<sup>7</sup>, whose main provisions took effect on 1 January 2005, was the beginning of a fundamental shift in immigration law. The Act on the Residence, Employment, and Integration of Foreign Nationals in the Federal Territory (Residence Act – AufenthaltG) – the key element of the Immigration Act – forms the core legal basis for the entry, residence, and employment of third-country nationals. It also defines the legal minimum for state efforts to promote integration, specifically through language and orientation courses. The Residence Act has been amended continuously since 2007. However, the Schengen Border Code (Regulation [EC] number 562/2006) governs the initial entry and subsequent short-term stay of third-country nationals in Germany.<sup>8</sup>
- The General Administrative Regulation to the Residence Act (AvwV) took effect in October 2009 with the primary goal of standardising administrative practices in the application of the Residence Act throughout the Federal Territory and to guarantee minimum standards.<sup>9</sup>

7 Act to Control and Restrict Immigration and Regulate the Residence and Integration of EU Citizens and Foreign Nationals of 30.07.2004 (BGBl. I, 1950); parts of the Immigration Act took effect on 06.08.2004 and 01.09.2004 (cf. Article 15 sections 1 and 2 ZuwG).

8 Issues concerning the residence and freedom of movement of citizens of other EU Member States are governed in the second part of the Immigration Act, the Act on the General Freedom of Movement for EU Citizens.

9 GMBL. No. 42-61 of 30.11.2009, 877.

- The primary legal basis for the administration of government databases on foreign nationals is the Central Register of Foreign Nationals Act (AZRG).
- The acquisition of German citizenship is governed by the Nationality Act (StAG), which includes the conditions under which immigrants can be naturalised, the conditions under which children born in Germany to foreign nationals receive German citizenship, and the extent to which multiple citizenship is possible.

Below the federal level, a series of ordinances have been enacted to specify the legal framework for the residence, employment, and integration of foreign nationals, as well as for benefits for asylum seekers and the procedures for handling them.

- The Residence Ordinance (AufenthV) clarifies issues relating to entry and residence in the Federal Territory, fees, and procedural rules for issuing residence titles.
- The Employment Ordinance (BeschV) governs the procedures for permitting the employment of foreign nationals who wish to move to Germany from a third country for employment purposes and lists the corresponding range of activities.
- The Integration Course Ordinance (IntV) details the implementation of integration courses under the German Residence Act, including terms of attendance, data transmission, fees, the basic structure of the courses, course duration, and course content. It also governs the admission procedures for public and private course providers.
- The Ordinance on Determining Responsibilities in the Area of Asylum (AsylZBV) contains provisions on the competencies and responsibilities of the key operational authorities in the asylum procedure. It also takes into account important legal acts of the European Union, such as the Dublin Regulation or the EURODAC Regulation.
- The Ordinance on Naturalisation Tests (EinbTestV) governs the testing procedure for naturalisation.

# 2 Political, legal and institutional developments

## 2.1 General political developments

State Parliament elections were held in 2014 in the Federal States of Saxony, Brandenburg, and Thuringia.

### **State Parliament election in Saxony**

In the state legislative elections on 31 August 2014, the CDU won 39.4% of the vote, DIE LINKE 18.9%, the SPD 12.4%, and Bündnis 90/Die Grünen 5.7%. Another 9.7% of the vote went to the newly founded Alternative for Germany (AfD) party, which entered the race calling for more restrictive immigration and asylum policies. The FDP (3.8%) and NPD (4.9%) parties represented during the previous legislative period failed to win back seats in the Saxony state Parliament. The CDU and SPD agreed to form a coalition government and confirmed Stanislaw Tillich (CDU) for the Office of Minister-President. Markus Ulbig (CDU) remained Minister of the Interior. The Parliament of the Free State of Saxony voted to appoint a new Commissioner of Foreign Nationals at the end of 2014, with Geert Mackenroth (CDU) taking over for Martin Gillo (CDU) on 17 December 2014.

### **State Parliament election in Thuringia**

Elections for the State Parliament were held on 14 September 2014 in Thuringia, with the CDU winning 33.5% of the vote. DIE LINKE won 28.2%, while the SPD received 12.4%, the new AfD 10.6%, and Bündnis 90/Die Grünen 5.7%. At 2.5% of the vote, the FDP failed to secure any seats in the Thuringia State Parliament. The parties DIE LINKE, the SPD, and Bündnis 90/Die Grünen agreed to form a coalition government and, on 5 December 2014, appointed a member of DIE LINKE, Bodo Ramelow, to the Office of Minister-President for the first time in Germany. Asylum and immigration policy was shifted from the Ministry of the Interior to the Ministry of Justice, led by Dieter Lauinger (Bündnis

90/Die Grünen). Together with the Ministry for Consumer Protection, it formed the new “Thuringian Ministry for Migration, Justice and Consumer Protection”. The coalition agreement between the ruling parties also includes plans to both increase the competence of the Integration Advisory Council and reformulate the duties of the Commissioner for Foreign Nationals. Over the medium term, the Commissioner for Foreign Nationals will become a “Commissioner for Integration, Migration and Refugees” (DIE LINKE/SPD/Bündnis 90/Die Grünen 2014: 25). Petra Heß (SPD) has held the office since 1 October 2010.

### **State Parliament election in Brandenburg**

State Parliament elections were also held in Brandenburg on 14 September 2014, with the SPD coming out strongest at 31.9% of the vote. The CDU won 23.0% and DIE LINKE 18.6%. While Bündnis 90/Die Grünen made it back in with 6.2%, the FDP was unable to keep any seats with just 1.5% of the vote. The AfD, represented in the Federal state for the first time, received 12.2%. The SPD and DIE LINKE agreed to form a coalition government, which appointed Dietmar Woidke (SPD) to the Office of Minister-President. Karl-Heinz Schröter (SPD) became the Minister of the Interior. Doris Lemmermeier has been the Federal State Integration Commissioner since January 2013.

### **Formation of the state government in Hesse**

Following the Parliament election on 22 September 2013 in Hesse, CDU and Bündnis 90/Die Grünen agreed on 21 December 2013 to form the first black-green Federal State Government in a German non-urban federal state. During its constituting session on 18 January 2014, the State Parliament appointed Volker Bouffier (CDU) as Minister-President. The Office of the Minister of the Interior has been held by Peter Beuth (CDU) since 18 January 2014. The Commissioner for Integration is Jo Dreiseitel (Bündnis 90/Die Grünen).

## 2.2 Overview of main political developments and debates on migration and asylum

In 2014, a large number of issues shaped the public debate on asylum, migration, and integration. Debates that were also reflected in parliamentary procedures are outlined briefly below. These focused on the Lampedusa boat disaster, asylum law reform, highly publicised protests by asylum seekers, and the obligation to choose one nationality.

### *Reactions to the Lampedusa boat disaster*

In response to the Lampedusa boat disaster of 3 October 2013, the parliamentary group of the party DIE LINKE in the German Bundestag called for a new direction in refugee policy (Deutscher Bundestag 2014a). On 17 January 2014, the parties in the German Bundestag used this motion to express their shock and dismay at the incident while discussing its consequences to refugee and asylum policy. Representatives from the CDU/CSU parliamentary group called for action against people smuggling, which they held responsible for the disaster, as well as increased efforts to improve the situation in the countries of origin. They also emphasised the contribution made by EU border protection agency FRONTEX to the sea rescue. Representatives from the party DIE LINKE, however, blamed the EU's border protection policy, claiming that it forces those seeking protection to attempt more hazardous routes across the Mediterranean, thereby enlisting the aid of smugglers. As an alternative, the parliamentary group demanded legal entry options into the EU for asylum seekers as well as the dissolution of FRONTEX, which they view as an institution preventing the movement of refugees. Speakers from Bündnis 90/Die Grünen held similar positions. Representatives from the SPD countered with a demand for a border protection policy which is based on human rights, along with a quota system for receiving and distributing asylum seekers throughout the EU in order to ease the burden on the southern Member States (Deutscher Bundestag 2014j). Federal Minister of the Interior Thomas de Maizière (CDU) criticised that the sea rescue measures, which were intended to serve as an emergency assistance, "turned out to be a bridge into Europe" (BMI 2014d).

### *Expansion of the list of safe countries of origin*

Due to the increase in asylum seekers from Bosnia and Herzegovina, Serbia, and the Former Yugoslavian Republic of Macedonia, as well as the low protection rate for applications from these states, the Federal Government submitted a bill to the German Bundestag on 26 May 2014 classifying Serbia, the Former Yugoslavian Republic of Macedonia, and Bosnia and Herzegovina as safe countries of origin (Deutscher Bundestag 2014h). The amendment was decided back in 2013 during coalition negotiations of the Grand Coalition between the CDU/CSU and the SPD, and was included in the coalition agreement (CDU et al. 2013: 109). Expanding the list of safe countries of origin to include Albania and Montenegro was not supported by the SPD (Gajevic 2014a).

The law will add Serbia, the Former Yugoslavian Republic of Macedonia, and Bosnia and Herzegovina to the list of safe countries of origin alongside Ghana and Senegal, which have been considered safe since 1993, pursuant to Article 16a section 3 GG and § 29a section 2 in conjunction with Annex II to § 29a AsylVfG (Deutscher Bundestag 2014h). This list encompasses states which – due to the general political situation – can be legally assumed to be free of political persecution and that inhuman or degrading punishment or treatment does not exist there. If protection is not required, the application will be denied as manifestly unfounded (for a more detailed description, see Section 6.1.2). The Federal Government based the bill on capacity constraints in the asylum procedure as well as the need to feed and house asylum seekers (Deutscher Bundestag 2014h). The law should primarily serve to reduce the asylum procedure and length of stay in the cases affected, thereby easing the burden on the Federal Government, the Federal States, and municipalities, while acting as a deterrent (Deutscher Bundestag 2014h).

The classification as safe countries of origin was sharply criticised by opposition parties (specifically by DIE LINKE and the Bündnis 90/Die Grünen), church associations (EKD 2014), the UNHCR (2014), the German Institute for Human Rights (2014), non-governmental organisations (including PRO ASYL 2014; Amnesty International 2014), and others. Opponents to the bill cited discrimination against and dire straits faced by Roma in the western Balkans, and that the low protec-

tion rate was a self-made fact that could not be used to justify the law (Deutscher Bundestag 2014i).

With the votes of the CDU/CSU and SPD parliamentary groups, the German Bundestag passed the bill on 3 July 2014 (Deutscher Bundestag 2014o). In order to pass the German Bundesrat, the vote of at least one of the seven Federal States in which the parties Bündnis 90/Die Grünen or DIE LINKE was in the ruling coalition was required. Baden-Württemberg, governed by a green-red coalition, demanded further easements in asylum and immigration policy in exchange for its vote. The ensuing debate within the Bündnis 90/Die Grünen over how the Federal State was voting was controversially held in public, whereby the majority of party members spoke out against voting for the law. Despite the resistance from within the party, the state government of Baden-Württemberg voted for the bill in the German Bundesrat on 19 September 2014, giving it the vote it needed to pass the German Bundesrat (Bundesrat 2014c: 277). The law took effect on 6 November 2014.

The negotiated compromise includes numerous incentives for asylum seekers and those with exceptional leave to remain in addition to those passed by other laws, such as the Act to Improve the Legal Status of Asylum Seekers and Foreign Nationals with Exceptional Leave to Remain dated 23 December 2014 that took effect on 1 January 2015 (cf. in detail Chapter 6.1.2). The compromise reduced the waiting period for asylum seekers to be able to obtain permission for employment from nine months to three, and for those with exceptional leave to remain from one year to three months. Mandatory residence will also no longer be required after three months of residence, although four months were initially proposed. Even the priority check for the labour market will no longer be conducted after 15 months at the latest (Bundesrat 2014c: 279; see also the Second Ordinance Amending the Employment Ordinance of 6 November 2014, which took effect on 11 November 2014: BGBl. I, page 1683). Non-cash benefits will in turn only apply primarily while living in an initial reception facility and a revised cost sharing scheme with the Federal Government will be enacted that will save the Federal States and Municipalities on costs, specifically on healthcare (Bundesrat 2014c: 279). The state governments of Hesse and Rhineland-Palatinate, where Bündnis 90/Die Grünen are active, abstained (Zeit Online 2014a).

### **Protests by refugees**

As in previous years, 2014 saw numerous protests by asylum seekers, refugees, and support groups in a number of cities, including Hamburg, Berlin, Freiburg, Hanover, Konstanz, Munich, Osnabrück, and Regensburg (BAMF/EMN 2013; BAMF/EMN 2014; Freiburger Forum 2014; Morchner 2014; Schinkel 2014). Inter alia, these protests took the form of demonstrations (Flakin 2014; Norddeutscher Rundfunk 2014b; Süddeutsche Zeitung 2014b), hunger strikes (Amjahid/Kather 2014; Bayerischer Rundfunk 2014), squatting of buildings and public places (Nordbayern.de 2014b), direct talks with political representatives (Mai et al. 2014; Rennefanz/Zylka 2013), multi-day protest marches (Balzer 2014), and sit-ins to prevent deportations (Schmidt 2014). The refugees' demands include abolishing the residence requirement, easier access to the labour market, better living conditions, a moratorium on deportations, and the issuing of residence titles.

In Berlin, protests continued at the Oranienplatz square and at the Gerhart Hauptmann secondary school, which had been squatted by refugees since 2012 (Zeit Online 2014b; Straub 2014a). Lengthy negotiations resulted in a compromise with the German Senate of Berlin that has so far resolved the conflict. In exchange for vacating the protest camps at the Oranienplatz square and Gerhart Hauptmann secondary school, the German Senate of Berlin declared that it was willing to conduct comprehensive, case-by-case reviews, counsel refugees on their asylum procedures, and place a moratorium on deportations/transfers to other Member States (Senatskanzlei Berlin 2014). Implementing the compromise, however, resulted in further dispute (Süddeutsche Zeitung 2014a; Mai et al. 2014; see also Section 6.1.2). Hamburg saw similar processes, specifically in regard to the "Lambdusa in Hamburg" group (Twickel 2014; Kaiser/von Appen 2014). Protests occurred in other Federal States; refugees and support groups squatted the forecourt of the headquarters of the BAMF in Nuremberg for two days (Die Welt 2014b).

### **Requirement to choose one nationality and multiple citizenship**

The obligation to opt for one nationality and the issue of generally accepting multiple citizenship were the core topics of discussions during the coalition negotiations between the CDU/CSU and the SPD in November 2013. The coalition agreement included a

compromise in which the obligation to opt<sup>10</sup> for one nationality would be abolished “for persons born and raised in Germany”, but nationality law would remain otherwise unchanged (CDU/CSU/SPD 2013: 105). The issue of defining the requirement “raised” was subsequently discussed at length by the parties represented in the German Bundestag as well as within the governing coalition (Alscher 2014).

The parliamentary groups of the opposition parties Bündnis 90/Die Grünen and DIE LINKE took action shortly after the new German Bundestag was assembled, proposing motions and submitting bills (Deutscher Bundestag 2013b, 2013c und 2014f) to immediately and completely abolish the requirement to choose one nationality and provide solutions to those who have already lost their German citizenship (Worbs 2014: 58-59). An initial draft bill by the Federal Ministry of the Interior in early February 2014 called for those who have lived in Germany for at least 12 years (at least four of those years between the ages of 10 and 16) or can provide proof of having completed school in Germany to be exempt from the obligation to opt. After consulting the Federal Ministry of Justice, a bill was finally submitted on 27 March 2014 that defined “raised in Germany” as follows: at least eight years of primary residence in Germany, or six years of schooling in Germany, or a German school leaving certificate or training qualification by the age of 21. Those with citizenship in another Member State or Switzerland are now generally (i.e., without having to submit the previously required application to obtain approval to retain citizenship) exempt from having to choose one nationality. If none of the previously mentioned criteria is met, a hardship clause is designed to ensure that the requirement to choose one nationality does not apply to those who “have comparably close ties with Germany and [...] the requirement to choose one nationality would constitute particular hardship under the circumstances” (Deutscher Bundestag 2014g).

10 Obligation to opt “means – in simplified words – that children have to opt between both nationalities once they come of age. They are given a five year period for doing this. If until their 23rd birthday the young adults have not stated a declaration or declared to maintain the foreign nationality, they lose their German nationality. This is also the case, when the person wants to keep his or her German nationality but fails to prove in time, that he or she has lost or skipped his or her foreign nationality” (Worbs 2014: 17).

After the German Bundestag had passed the bill on 3 July 2014 and the German Bundesrat did not appeal to the Mediation Committee on 19 September 2014 during its 925th session, the amended Nationality Act (StAG) took effect on 20 December 2014. Despite the fact that the majority of those previously required to choose one nationality will now be able to retain both citizenships<sup>11</sup>, the principle of avoiding multiple citizenship was retained in German law. This means those applying for naturalisation will still typically have to forfeit their previous citizenship (§ 10 section 1 sentence 1 number 4 StAG), although now there are numerous exceptions (§ 12 StAG). In a prominent speech on 22 May 2014, President Gauck characterised dual citizenship as “a reality in the lives of a growing number of people”, and said that no one should be forced into a “purism that is out of touch with everyday life” (Bundespräsidialamt 2014: 5; cf. also Hailbronner 2014, Langenfeld 2014, Oltmer 2014, Pfaff 2014).

#### **Discussion on revoking citizenship for aiding foreign terrorist organisations**

In 2014, discussion emerged whether those who (intend to) travel to Syria or Iraq to join the “Islamic State”, especially those with dual citizenship, should have their German passports revoked. This would also allow their deportation from Germany. Such a suggestion has been made by the Bavarian Minister of the Interior Herrmann (CSU),<sup>12</sup> among others. While Article 16 section 1 GG, prohibits the deprivation of German citizenship, it is possible for it to be lost against a person’s will if that person will not become stateless as a result.<sup>13</sup> During its 200th session from 11-12 December 2014, the IMK asked the BMI to review “whether or not a loss provision can be created, specifically by amending the German Nationality Act”. This would “take into account an individual’s renunciation of the German rule of law and could complicate re-entry or

11 The Federal Minister of the Interior estimated this majority to be 90%, even based on the bill with stricter criteria, cf. <http://www.zeit.de/politik/deutschland/2014-02/doppelte-staatsbuergerschaft-kritik-de-maiziere-oezuguz> (18 December 2014).

12 Cf. <http://www.faz.net/aktuell/politik/inland/radikale-islamisten-bayerns-innenminister-herrmann-fordert-ab-schiebung-von-salafisten-13229573.html> (18 December 2014).

13 Unlike the loss of the nationality, revoking a wrongful naturalisation is in general also possible if the person would become stateless (§ 35 section 2 StAG).

facilitate expulsion and deportation upon completion of a sentence [...] for participating in hostilities in areas of conflict as part of a terrorist organisation” (Innenministerkonferenz 2014: 4).

***Access to integration courses for EU citizens, foreign nationals with residence permits for humanitarian or political reasons, or in accordance with international law, for asylum seekers, and those with exceptional leave to remain***

On 19 December 2013, the German Bundesrat submitted the “Bill on Opening Integration Courses to EU Citizens, Foreign Nationals with Residence Permits for Humanitarian or Political Reasons, or in Accordance with International Law, Refugees in ongoing Asylum Procedures, and Those with Exceptional Leave to Remain”. The Federal Government did not see the need for such a law, since EU citizens and third-country nationals with residence permits for humanitarian or political reasons, or in accordance with international law were allowed to attend integration courses with available seats. Unlike these groups, the stay of asylum seekers and those with exceptional leave to remain is not intended to be permanent, which is why these groups do not meet the requirement for attending integration courses. However, the bill will be reviewed to determine the extent to which the guidelines could be useful in fulfilling the goal contained in the coalition agreement of facilitating early language acquisition for asylum seekers and those with exceptional leave to remain (Deutscher Bundestag 2014l: 12). According to the BMI, a right to attend could be considered “potentially worthwhile” for those with residence permits for humanitarian or political reasons, or in accordance with international law (BMI 2014h: 10). Opening integration courses to asylum seekers and those with exceptional leave to remain is not being considered for the time being due to cost.



# 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, vocational, and sectoral need for skilled labour first and foremost through domestic labour force potential. Increased education and training for the domestic workforce, encouraging more women and older people to work, reducing vocational and academic drop-out rates, and helping those with a migration background already living in Germany to obtain qualifications are among the steps being taken. However, the Federal Government also wants immigration from the EU and third countries to continue, since improved mobilisation of domestic labour force potential is not expected to fully cover the need for skilled labour (BMAS 2015).

§§ 16 to 21 AufenthG, and the Employment Ordinance open up numerous paths for some third country nationals seeking employment to reside in Germany over the long term and others to reside temporarily, whether as contracted workers, graduates of German universities and vocational schools, skilled workers, highly qualified workers, researchers, or self-employed. Following numerous innovations in 2009, such as through the Labour Migration Regulation Act (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 took effect on 1 August 2012, introducing the EU Blue Card as a residence title in Germany and facilitating access to the labour market for the highly qualified and foreign students (BAMF/EMN 2013: 23). The EU Blue Card has since become an instrument of legal immigration enjoying increasing demand. On 31 December 2013, a total of 13,551 third-country nationals were residing

in Germany on the EU Blue Card; as of 31 December 2014, this number has risen to 20,421.

### 3.1.2 National developments

#### ***State legislation to improve the determination and recognition of professional qualifications acquired abroad***

On 1 April 2012, the German “Act Improving the Determination and Recognition of Professional Qualifications Acquired Abroad” (a.k.a. Recognition Act, BQFG) took effect (BAMF/EMN 2013: 22f.), creating for the first time at the federal level a general entitlement to have professional qualifications acquired abroad compared to those in the German reference profession, and standardising and expanding the procedures and criteria for federally regulated occupations.

The StBA released the recognition procedure figures for 2013 on 12 December 2014. In 2013, a total of 11,868 professional qualifications acquired abroad were recognised as fully equivalent or equivalent with restrictions. A total of 16,695 recognition procedures were conducted in 2013, with 1,476 applications rejected and 3,348 still pending at the start of 2014. The majority of completed recognition procedures were for medical professions. Of the 11,868 approved applications, 6,030 were from physicians, and another 2,403 from nurses.

Aside from the Federal Government, every Federal State has now enacted laws on recognising academic qualifications acquired abroad for state regulated professions (teachers, early childhood educators, engineers, social workers, etc.): Hamburg (1 August 2012), Saarland (1 December 2012), Lower Saxony (19 December 2012), Hesse (21 December 2012), Mecklenburg-Vorpommern (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 (5 February 2014), Berlin (19 February 2014), Thuringia (10 April 2014), Schleswig-Holstein (27 June 2014), and Saxony-Anhalt (1 July 2014).<sup>14</sup>

The information and consultation services introduced along with the Recognition Act in 2012 (BAMF/EMN 2013: 23) for recognising foreign qualifications were widely used in 2013 and 2014. The demand for such services remains high. In addition to the online portal “www.anerkennung-in-deutschland.de”, the central hotline launched by the BAMF on behalf of the Federal Ministry for Education and Research (BMBF) is frequently called by interested parties both in Germany and abroad. Between 2 April 2012 and 30 September 2014, consultation was provided on 395 reference professions in a total of 23,931 calls to 164 different countries. By comparison, on 30 September 2013, there had only been 13,100 consultation calls with nationals from 147 countries.<sup>15</sup> Around one-third of those seeking consultation had qualifications obtained in the Russian Federation (8.9%), Poland (8.6%), Turkey (6.4%), Romania (4.9%), or Ukraine (4.5%).<sup>16</sup>

So far, the approximately 40 initial contact points in the “Integration through Qualification – IQ”<sup>17</sup> programme funded by the BMAS, BMBF, and BA have been providing initial information to foreign nationals interested in having their professional qualifications recognised (BAMF/EMN 2013: 23). From 01 August 2012 to 30 September 2014, IQ contact points have provided consultation to 32,674 people from 165 different countries on 428 reference professions. Since many of those interested contacted the points several times, overall consulting is far higher, with a total of 48,951 consultation contacts (1 August 2012 – 30 September 2013: 15,074 people from 153 countries, 20,478 consultation contacts). Around one-third of those

seeking advice here also had qualifications from the Russian Federation (11.5%), Poland (11.4%), Ukraine (6.0%), Romania (5.1%), or Turkey (4.5%).<sup>18</sup> In 2014, the BAMF began coordinating the network originally started by the BMAS.

As part of the Federal Government’s demographic strategy, the “Working and Living in Germany Hotline” started on 1 December 2014 to offer multi-lingual consultation services to skilled labourers, students, and trainees interested in immigrating on topics such as entry, residence, education opportunities, job-seeking, and recognition of professional qualifications. To do this, the BAMF hotline was combined with the hotline run by International Placement Services (Zentrale Auslands- und Fachvermittlung – ZAV) of the Federal Labour Office.<sup>19</sup>

### 3.1.3 Developments referring to the EU

The transition period for Bulgaria and Romania regarding free movement of workers ended on 31 December 2013. As of 1 January 2014, workers from both states have complete freedom of movement (Hanganu et al. 2014).

The Republic of Croatia became the 28th Member State of the EU on 1 July 2013. The Federal Government limited the full freedom of movement for workers who come with EU membership for a transitional period of two years from the time of accession, with the option to be extended by another three years, and then another two years if necessary (the so called “2+3+2 rule”). The current limitations apply until 30 June 2015. Freedom to provide services was also limited for Croatian nationals for the same transitional period in the construction, industrial cleaning, and interior decorating industries (Deutscher Bundestag 2012a: 73ff.).

14 Cf. <https://www.bq-portal.de/de/seiten/bund-laender-zustandigkeiten> (08.01.2015).

15 Cf. <http://www.anerkennung-in-deutschland.de/html/de/891.php> (25.02.2014).

16 Cf. [http://www.anerkennung-in-deutschland.de/html/de/daten\\_bamf\\_hotline.php](http://www.anerkennung-in-deutschland.de/html/de/daten_bamf_hotline.php) (13.01.2015).

17 Cf. <http://www.netzwerk-iq.de> (25.02.2014).

18 Cf. [http://www.anerkennung-in-deutschland.de/html/de/daten\\_beratung.php](http://www.anerkennung-in-deutschland.de/html/de/daten_beratung.php) (12.01.2015).

19 Cf. <http://www.make-it-in-germany.com/de/fuer-fachkraefte/make-it-in-germany/hotline> (15.01.2015).



## 3.2 Family reunification

### 3.2.1 Background and general context

To protect marriages and families, Article 6 GG allows foreign nationals to reside with family members who are permitted to stay in Germany. The entry and residence of foreign spouses, children, parents, and other family members of those living in Germany are governed by §§ 27-36 AufenthG.

Since September 2007, the foreign spouses of third-country nationals living in Germany as well as those of German nationals must be able to demonstrate basic German language skills prior to entry in order to facilitate the spouse's integration in Germany. This rule is also designed to prevent forced marriages. Citizens from certain countries joining family members (e.g., Australia, Japan, the United States) and those joining family members who are permitted to reside in Germany on certain residence titles (e.g., EU Blue Card) are exempt from demonstrating German language skills. The Federal Administrative Court (BVerwG) handed down a landmark decision on 4 September 2012 stating that proof of German language skills when foreign spouses join German nationals can only be legally required to a limited extent. The decision also stated that a visa must be issued to the foreign spouse if individual circumstances make attempting to learn basic German impossible or unreasonable, or such attempts are not successful after one year. These restrictions do not apply to spouses joining foreign nationals, however a residence title for language acquisition in the Federal Territory can be issued to prevent unreasonable separation (BVerwG 10 C 12.12, decision of 04 September 2012; cf. BAMF/EMN 2013: 24f.). The visa applicant must provide proof of basic German language skills at reference level A1 of the Common European Framework of Reference for Languages (CEFR) at a German diplomatic mission prior to entry (BAMF/EMN 2011: 25; BAMF/EMN 2012: 33; 41f.).

### 3.2.2 National developments

#### ***Federal Administrative Court decision to abolish permit-free residence for Turkish children***

On 6 November 2014, the BVerwG handed down a decision stating that children born in Germany to Turkish workers and who required a residence permit

(regulated in § 33 AufenthG) due to the current legal situation cannot invoke the exemption from the residence permit requirement that used to apply (BVerwG 1 C 4.14). While the Ankara Agreement between the EEC and Turkey generally prohibits detrimental changes to the legal situation, extending the residence permit requirement to include foreign nationals under the age of 16 is justified by a compelling reason of public interest, namely the intention to effectively control immigration (BVerwG 2014).

### 3.2.3 Developments referring to the EU

#### ***European Court of Justice decision on Turkish spouses demonstrating language skills in their country of origin***

On 10 July 2014, the European Court of Justice (ECJ) ruled (C-138/13) that requiring Turkish spouses immigrating to Germany to demonstrate basic German language skills is in violation of the standstill clause of the Ankara Agreement (ECJ 2014). The standstill clause prohibits the introduction of new restrictions on the freedom of establishment (i.e., restrictions not already in place when this clause took effect in Germany in January 1973). Requiring the demonstration of German language skills in the country of origin as introduced in 2007 impedes family reunification, constituting a new restriction on the exercise of the freedom of establishment by Turkish nationals under the terms of this clause. The ECJ emphasises “that family reunification is an indispensable means of facilitating the family life of Turkish workers in the labour market of the Member States, and contributes to both improving the quality of their residence and promoting their integration in these states”. However, the ECJ also finds that a new restriction could be introduced on compelling grounds of public interest, if it is suitable “for achieving a legitimate goal”, and does not exceed what is necessary to do.

The BMI notes that the ECJ ruling only pertains to the spouses of Turkish nationals entitled to association, and ECJ decision maintains that the language requirement for third-country spouses continues to be compatible with EU law (BMI 2014c). According to the ECJ, the Ankara Agreement was violated due to the required proof of basic German language skills which left no room for considering any special circumstances in each case. The Federal Government is currently

reviewing the effects and extent of the ECJ's ruling (Deutscher Bundestag 2014c: 4). The AA and the BMI have agreed on an abatement directed at all diplomatic missions for a transitional period (Deutscher Bundestag 2014d: 7; 2014c: 3), and foreign spouses who wish to re-join their Turkish spouses entitled to association will be issued a visa without being required to demonstrate basic German language skills if doing so would present a hardship. The diplomatic missions will also make reasonable accommodations for hardships when joining other foreign nationals in justified instances. "Hardship" in this instance means that it is unreasonable to expect the foreign spouse to make an effort to acquire basic German language skills prior to entry or the spouse is unable to acquire these basic skills after one year of earnest effort.

The Federal Government believes this ruling by the ECJ does not constitute a direct prejudice regarding the issue of whether the language requirement is compatible with the Family Reunification Directive (2003/86/EC) or not (Deutscher Bundestag 2014c: 5).

### 3.3 Students and researchers

#### 3.3.1 Background and general context

##### **Students**

Foreign students require a visa issued by the appropriate German diplomatic mission prior to entering Germany. This does not apply to students from the European Union, Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand, or the United States. Foreign students from third countries must meet the requirements for being issued a student visa (§ 16 section 1 AufenthG). These generally include a letter of acceptance<sup>20</sup> from an accredited German university, proof of financing for the first academic year, and proof of sufficient health insurance. Acceptance to a university typically requires proof of knowledge of the language of instruction (Mayer et al. 2012: 24ff).

<sup>20</sup> Those still waiting for a letter of acceptance or having to take an entrance examination may apply for a student applicant visa, which is then turned into a student visa in Germany upon submission to the foreigners authority at the place of study.

Visas for foreign students are issued in an expedited process. While the visa generally must be expressly approved by the foreigners authority at the future place of residence, approval is considered given and the visa issued if this authority does not express any objections to the diplomatic mission where the visa was requested within a period of three weeks and two business days (silence period). In certain cases, no approval is required, such as for holders of scholarships from German scientific organisations or German public offices (Mayer et al. 2012: 24-28).

The foreign student is issued a residence permit after entry. In addition to the study permission, it includes language courses and any other measures in preparation for study.

The number of foreign students enrolled at German universities has risen steadily over recent years: while around 280,000 foreign students (both those who completed primary education in Germany and those who completed it abroad) were registered at German universities for the 2012-2013 Winter Semester (StBA 2013a), a total of 301,350 were registered for the 2013-2014 Winter Semester, about half of which (148,675) were women (StBA 2014a: 13). According to the coalition agreement between the governing parties (CDU/CSU/SPD 2013: 29), this number should increase to 350,000 by 2020.

##### **Researchers**

Since August 2007, the legal basis for the immigration of researchers from third countries has been § 20 AufenthG, which implements the so called EU Researcher Directive 2007/71/EC. In order to be eligible for a residence permit for the purpose of scientific research, foreign nationals must have effectively concluded an admission agreement to conduct a research project at a research facility accredited by the BAMF (BAMF 2012: 91). The residence permit is not limited strictly to the research project being conducted but also permits researchers to teach (§ 20 section 6 AufenthG). Visa for a residence permit under § 20 AufenthG are usually issued in an expedited process. Spouses of researchers are allowed to work (§ 27 section 5 AufenthG).

According to the AZR, the number of third-country nationals who have entered the Federal Territory and received a residence permit for the purposes of

scientific research (§ 20 section 1 AufenthG) has risen from 64 in 2008 to a total of 826 as of 31 December 2013 (BAMF 2013a). The total number of people in 2014 increased by 216, resulting in an AZR estimate of 1,042 researchers living in Germany pursuant to § 20 section 1 AufenthG as of 31 December 2014, of whom 261 entered after 31 December 2013.

In addition to residence permits under § 20 AufenthG third-country nationals are also (and primarily) conducting research on residence permits under §§ 16, 18, 19 or 21 AufenthG (cf. Klingert/Block 2013), and on EU Blue Cards under § 19a AufenthG, since 1 August 2012 (Beirat für Forschungsmigration 2013: 22).

### 3.3.2 National developments

There were no relevant legal developments in this policy area in the year 2014.

## 3.4 Other legal migration

### 3.4.1 Background and general context

In addition to migration on humanitarian grounds, for educational and economic purposes, and for reasons of family reunification, Jewish immigrants from the former Soviet Union and ethnic German repatriates have legal paths for immigrating to Germany.

#### **Jewish immigrants**

Germany has been admitting Jewish immigrants and their family members from the successor states of the former Soviet Union since 1990<sup>21</sup> as a result of Germany's historical responsibility for the Holocaust. The intention is to promote the integration of these immigrants into both Jewish communities and German society. Admission requirements, such as proof of Jewish ancestry, likelihood of successful integration, basic German language skills, and being able to be accepted into a Jewish community, are intended to en-

sure that these two goals are met. Victims of National Socialism are exempt from needing the otherwise required likelihood of successful integration and basic German language skills. Family members of applicants can also be admitted. The legal basis for admitting Jewish immigrants is formed by § 23 section 2 in conjunction with § 75 number 8 AufenthG, the BMI Order of 24 May 2007, and the amendment to the BMI Order of 21 December 2011. The BMI is authorised under § 23 section 2 AufenthG to admit foreign nationals out of special political interest in cooperation with the superior authorities of the Federal States. This regulation formed a legal basis for admitting Jewish emigrants from the successor states of the former Soviet Union to offset the abolition of the Act on Measures for Refugees Admitted under Humanitarian Aid Programmes (Storr 2008: marginal note 2).

The number of Jewish immigrants admitted into Germany from the former Soviet Union has dropped dramatically since 2002.<sup>22</sup> In 2002, a total of 19,262 Jews and their family members came to Germany from the former Soviet Union, while only 237 came in 2014 (2013: 246). Nevertheless, applications from Jewish immigrants for admission into Germany have increased greatly since 2014 due to the political events in Ukraine. It can be assumed that this will result in an increase in Jewish immigrants entering Germany.

#### **Ethnic German re-settlers and repatriates**

Since 1950, more than 4.5 million ethnic German re-settlers and repatriates<sup>23</sup> and their family members have been admitted into Germany, forming one of the largest groups of immigrants in Germany. This is primarily attributed to the high influx of immigrants during the 1990s: a total of 397,073 ethnic German re-settlers and repatriates came to Germany in 1990, although that number has fallen sharply in the years after. The lowest point so far was in 2012 at 1,817 (Worbs et al. 2013), and the number has increased slightly since then. A total of 2,429 ethnic German repatriates and their family members moved to

21 Cf. the decision of the Council of Ministers of the GDR of 11 July 1990 and the decision of the Conference of Minister-Presidents of 9 January 1991.

22 2006 was the only exception.

23 Those immigrating before the end of 1992 are termed "ethnic German re-settlers", while those immigrating after 1992 are termed "ethnic German repatriates". The basis for this distinction is the German Act to Resolve the Consequences of the Second World War (KfBG).

Germany in 2013, and another 5,649 in 2014. Of those, 5,613 came from the successor states of the former Soviet Union, 23 from Poland, and 13 from Romania.<sup>24</sup>

### 3.4.2 National developments

There were no developments in this area in 2014.

## 3.5 Integration

### 3.5.1 Background and general context

Integration is a cross-sectional task and a policy focus for the Federal Government. The BMI is responsible overall for social cohesion, immigration, and integration, while sharing these tasks with other ministries, such as the BMAS, the 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 governmental responsibilities, the federal level has a primarily legislative role, while also implementing tangible, operational integration measures, such as through the BAMF. Federal policy steps are also backed by overall strategic concepts and guidelines from the Federal States. In addition, local municipalities are important players in facilitating integration (BAMF/EMN 2012).

The Residence Act which took effect on 1 January 2005 enshrined integration offers into Federal Law for the first time (§§ 43-45 AufenthG). Integration is viewed in Germany as being a task for which the federal level, Federal States, and local authorities are responsible. The first integration summit in 2006 and the “National Action Plan on Integration” (2012) identified a series of essential spheres of activity at the federal level for promoting integration. These complement the then-prevailing notion of migrants being unilaterally responsible for integrating into the host society. The host society itself, as well as the structural and institutional requirements for participation, have since been increasingly included in integration efforts, for instance when implementing equal opportunity in the education system and in the training, labour,

and housing markets by strengthening cross-cultural competence and boosting the percentage of employees with migration backgrounds in schools, administration, and businesses.

In 2006, the Federal Anti-Discrimination Agency (Antidiskriminierungsstelle des Bundes – ADS) was established and the Anti-Discrimination Act commenced, which also included ethnic and religious discrimination. More than one-quarter of all consultation requests made to the ADS were on the topics of racism and ethnic origin (ADS 2014: 2). The ADS provides information on claims, identifies avenues for legal proceedings under statutory regulations to protect against discrimination, arranges consultations from other agencies, and strives for an amicable settlement between the parties involved (ADS 2015).

### *Integration course*

In order to support their participation in society, all legally resident immigrants with a long-term perspective have the opportunity to attend an integration course offered by the state.<sup>25</sup> 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 youths with up to 900 hours of language instruction and 60 hours of orientation. If the final language course examination is not passed, immigrants have the opportunity for another 300 hours of instruction. A so called intensive course is available for immigrants with academic qualification equivalent to the matriculation standard in Germany or immigrants who are looking to find work promptly (cf. BAMF 2013g: 10). This intensive course comprises 400 hours of language instruction and 30 hours of orientation course. Integration courses are provided nationwide by approximately 1,300 providers (primarily adult education centres, private language and vocational schools, educational institutions, initiative groups, and church organisations).

<sup>24</sup> Cf. <http://www.bund-der-vertriebenen.de/infopool/spaetauss1.php3> (2 February 2015).

<sup>25</sup> The exact conditions under which foreign nationals are entitled to attend an integration course are set forth in §§ 44 and 44a AufenthG. In addition to new immigrants, those who have been living in Germany and even German nationals may attend. Under certain conditions – specifically if they are receiving job seekers' benefits or have a special need for integration – it may even be compulsory for some individuals. Participants typically pay €1.20 per hour, but under certain conditions this fee can be waived.

From 2005 to mid-2014, over one million people had started an integration course – 1.2 million including those taking the course again (BAMF 2014f: 2). A total of €1.75 billion was spent on integration courses from the beginning in 2005 to the end of 2014.

### **Migration consultation for adult immigrants (Migrationsberatung für erwachsene Zuwanderer – MBE)**

MBE is an individual, demand-tailored consultation service that is available for a limited period of time in addition to the integration course that was established nationwide in 2005 by the Residence Act (§ 75 number 9 in conjunction with § 45 sentence 1 AufenthaltG). The clients of MBE include new immigrants over the age of 27. Immigrants who have been living in Germany for some time and need to catch up in terms of integration may also avail themselves of MBE. The focus of MBE is on initiating and supporting the integration process with professional, personal consultation to assess the abilities of immigrants and work with them to create an individual educational plan and monitor its implementation.

Independent welfare associations<sup>26</sup> and the Federation of Expellees are tasked with providing MBE and receive funding from the Federal Budget. In 2013 and 2014, around €26 million was earmarked in the Federal Budget for MBE.<sup>27</sup> In 2013, there were 581 consultation offices nationwide that gave around 240,000 consultations. The primary countries of origin of those who received consultation were Turkey (15%), the Russian Federation (11%), and Poland (6%). At the start of the consultation, 47% had been living in Germany for more than five years (BAMF 2014g: 16f.).

### **Youth migration services**

Youth migration services (Jugendmigrationsdienste – JMD) offer migration-specific consultation and support to young people with a migration background up to the age of 27 (§ 45 sentence 1 AufenthaltG; § 9 section 1 sentence 4 BVFG). JMD are responsible for

monitoring social welfare before, during, and after the integration courses and supporting young migrants in their social and professional integration. JMD are part of the Empowering Youth initiative (Initiative JUGEND STÄRKEN; based on §§ 83; 13 SGB VIII), under which four programmes at 800 locations in Germany provide individual support for improving the integration of socially disadvantaged youth who cannot (or can no longer) be reached by regular social services and are more dependent on support. This monitoring is complemented by a wide variety of specific group measures in sports, culture, crafts, etc. as well as supplemental language courses and job application training.

### **Projects on promoting the integration of immigrants**

The Federal Government funds projects on the social integration of immigrants that supplement statutory federal integration offers such as integration courses and migration consultation. They focus on where there are opportunities for everyday contact between immigrants and the host society, for instance in the neighbourhood and its organisations and associations. On-site project work aims at creating targeted opportunities for immigrants and locals to interact to improve mutual acceptance and strengthen social cohesion. Other goals include strengthening the individual skills and abilities of immigrants, and helping them to participate in society. Since sustainable integration is only possible if the host society also makes an effort to develop a basic openness to and tolerance toward immigrants and does not discriminate against them, it is also a matter of using these projects to establish a welcoming and accepting culture.

The goal of a “Welcoming Culture” is “to improve the existing structural conditions affecting new immigrants. This includes information and consultation services, pre-integration measures in the country of origin, and optimisation of the entry process” (Kolland/Kretzschmar 2014: 4). In addition to a welcoming culture, an accepting culture refers “to the intercultural openness of the host society in terms of a mutual understanding of integration, with the goal of achieving broad acceptance and appreciation of the accomplishments and qualifications of those with a migration background. Accordingly, an ‘accepting culture’ means accepting cultural and religious diversity, breaking down prejudices and discrimination in society, and promoting diversity” (Kolland/Kretzsch-

26 National Society for Worker Welfare, Caritas Germany, the Social Service Agencies of the Protestant Church in Germany, German Red Cross, German Non-Denominational Welfare Association, and Central Board of Jewish Welfare in Germany.

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



mar 2014: 4). One step toward this accepting culture is the German Vocational Qualification Assessment Law (Berufsqualifikationsfeststellungsgesetz – BQFG), which took effect in 2012 and makes immigrants legally entitled to have their foreign academic and/or professional qualifications recognised.

National projects are funded from the budgets of the BMI (for projects not based on age) and the BMFSFJ (projects for youth and young adults). The projects are conducted by associations, migrant organisations, foundations, initiatives, and public authorities operating on the federal level, the level of Federal States, and local authorities. Around €20.4 million were spent on projects promoting the social integration of immigrants in 2014.

Another important programme at the federal level is the programme for giving occupation-related instruction in the German language to those with a migration background that was established by the BAMF in 2007 and funded by the European Social Fund (ESF). This programme has just been re-approved for funding until 2020.<sup>28</sup> The programme targets registered job seekers with a migration background<sup>29</sup> who have completed compulsory schooling as well as an integration course, and have sufficient knowledge of German to participate in the programme, but who do not have sufficient knowledge of German and are not qualified enough to find a job. Participants in the “Federal ESF Integration Directive” programme or the “2nd Federal ESF Programme for Legal Immigrants and Refugees” can also attend ESF-BAMF courses (BAMF 2015b).

#### **Funding of integration projects by the Asylum, Migration and Integration Funds (AMIF)**

Since 1 January 2014 measures promoting the integration of third-country nationals are financed among others through the EU’s Asylum, Migration and Integration Funds (AMIF; Art. 8 to 10 Regulation 516/2014/EU). The AMIF’s funding period lasts from

2014 to 2020; these replace the SOLID-funds (2007–2013), which entail the European Refugee Funds (ERF), the European Integration Fund (EIF), and the European Return Fund (RF). Many of the projects funded by SOLID phased out in 2014 or are about to phase out during 2015. From €208 million of the funding period, about €92 million will be allocated to integration (BAMF 2015e).

#### **German Islam Conference**

The German Islam Conference (Deutsche Islam Konferenz – DIK) is a dialogue board between representatives of the Federal Government and Muslims in Germany. The DIK was established in 2006 with the goal of promoting the integration of Islam into German religious law and the participation of Muslims in German society. The representatives of the Federal Government included the Federal Minister of the Interior and representatives of relevant federal departments, state symposia, and select local authorities. Muslim representatives included representatives from Islamic umbrella organisations, as well as 10 individual Muslims not belonging to any organisation. Scientific experts and experts in the field also participated in the various working groups. In the first phase between 2006 and 2009, the DIK focused on three areas: “German social order and value consensus”, “Religious issues under the Constitution”, and “Private sector industry and the media as bridge-builders”. Cooperation strategies between Muslims and security agencies were also discussed in the “Security and Islamism” discussion group. One of the most important events in the first phase was the study titled “Muslim Life in Germany” (Haug et al. 2009) which included the first tally of Muslims living in Germany (between 3.8 and 4.3 million).

The second phase (2009 to 2013) focused again on three areas: “Fostering institutionalised cooperation and integration-based project work” monitored the teaching of Islam in school and the establishment of Islamic theology at German universities, while promoting advanced social studies and linguistics courses for Muslim and Alevite religious officials. Enhancing the participation of Muslims, for instance in accessing the labour market, was discussed under the topic of “Participation and gender equality” along with the influence of religion on social roles (cf. Becher/El-Menour 2014). Under “Preventing extremism, radicalisation, and social polarisation”, measures

28 More information on the programme and the 2014–2020 funding period can be found online: [http://www.bamf.de/DE/Infothek/ESFProgramm/Foerderperiode\\_2014-2020/foerderperiode\\_14-20-node.html](http://www.bamf.de/DE/Infothek/ESFProgramm/Foerderperiode_2014-2020/foerderperiode_14-20-node.html) (2 February 2015).

29 “Nationality and time of immigration do not matter – even ethnic German repatriates, individuals born in Germany, foreign families, and naturalised citizens are included” (BAMF 2015b).

were developed against Islamophobia, anti-Semitism, and religious extremism amongst Muslims. The DIK will continue during the current legislative period with changes in structure, participants, and topics (see Section 3.5.2).

### **National Action Plan on Integration**

Since 2007, the National Action Plan on Integration (NAP-I) has been the Federal Government's global integration concept. It was established and implemented by the Federal Government in cooperation with federal state and local governments, as well as migrant representatives and numerous non-governmental organisations. With the goal of increasing the verifiability of promoting integration, the NAP-I was presented at the 5th Integration Summit on 31 January 2012. Strategic and operational goals have been developed along with concrete individual measures across a total of 11 dialogue boards under the auspices of the appropriate federal ministries. The NAP-I also includes contributions by the Federal States and local municipalities implemented under their own responsibility. NAP-I measures were also implemented in 2014.

### **Structural funding of migrant organisations**

Migrant organisations (MOs) are experts in crafting needs-based opportunities for local migrant participation. However, many MOs are volunteer-based and have a relatively low level of organisation and few staff resources. This is why the BAMF has been funding a total of 10 projects focused on developing structures and building networks among professional, national migrant organisations since 1 November 2013 as part of its national project funding programme.

## **3.5.2 National developments**

### **Foreigners authorities to welcoming authorities**

Since October 2013, the BAMF has been funding a two-year model project titled "Foreigners Authorities – Welcoming Authorities", in which 10 Federal States are participating. The goal of the project is to work with the Federal States involved to put foreigners authorities on the path toward becoming "welcoming authorities". This includes reorganising internal processes and work flow, conducting training on cross-cultural competence or on role clarification in the "public order office – welcoming authority" area of conflict, external networking with relevant local

players, and networking within administration (BAMF without year).

At its meeting from 19-20 March 2014, the IntIMK unanimously decided to advance intercultural openness in foreigners authorities and registry offices nationwide and to remodel them into "welcoming authorities" (Grote 2014a: 1).

### **Migration consultation for adult immigrants (MBE)**

On 13 November 2014, the Budget Committee of the German Bundestag voted in its settlement meeting to increase funding for MBE by €8 million from €26 million to €34 million (BMI 2014f.). This budget increase is designed to create up to 120 additional consultation offices.

### **7th Integration Summit, Alliance for Further Education, and "wir sind bund"**

On 1 December 2014, the Federal Chancellery held the 7th Integration Summit, which focused on training, both in terms of attendance – specifically by young people with a migration background – and in terms of opportunity provided by business (Bundesregierung 2014b). The discussion also centred around developing additional measures to established means such as mentoring and end-to-end training in order to support young people in entering a career. In this context, Chancellor Merkel (CDU) also denounced discrimination against young people with a migration background in job interviews and hiring practices (Bundesregierung 2014b). The Federal Minister of the Interior de Maizière in turn underlined the responsibility of the Federal Government as an employer: "The Federal Government is also required as an employer to take care of its young talent. When we talk about training young people today, we must turn our attention more and more to this group as well, so that public service comes from the heart of society" (BAMF 2014h). The Federal Administration has already reacted to this sentiment with core information in German and seven other languages on the 130 occupations in the Federal Administration requiring formal training.<sup>30</sup> The Commissioner for Migration, Refugees and Integration, Özoğuz, added that "cross-cultural

<sup>30</sup> Arabic, English, French, Polish, Russian, Serbo-Croatian, and Turkish (BAMF 2014a).

competence in businesses and administration” needed improvement “to counteract discrimination” (Bundesregierung 2014b).

On 12 December 2014, representatives from private industry, trade unions, and the Federal States signed the “Alliance for Further Education” at the BMWi. One of the goals is “to facilitate vocational training for young people with migration-based problem areas”. The Alliance for Further Education replaces the “National Pact for Training and Young Skilled Labour”, which expired at the end of 2014 (BMW 2014).

#### **“Strong on the Job – Mothers with Migration Backgrounds Joining the Workforce” project**

The new “Strong on the Job – Mothers with Migration Backgrounds Joining the Workforce” programme will allow the BMFSFJ to speed up its activities to increase the integration of mothers with migration backgrounds in the labour market. As part of the Federal Government’s skilled labour strategy, the goal of the programme is to make mothers with migration backgrounds more visible on the labour market by funding around 80 projects nationwide between 2015–2020 that individually support mothers with migration backgrounds along their career path. The programme is designed to even open up paths to the labour market for female asylum seekers, who do not have priority access. In addition to selectively mobilising, consulting, and qualifying women, the programme seeks to win over more employers by hiring mothers with migration backgrounds. The six-year programme also focuses on structural measures with the goal of tuning labour market instruments in order to better meet the needs of this group and improve the networking of the relevant local labour market players.

#### **“Language & Integration Priority Day-care” programme**

As announced by the BMFSFJ on 24 July 2014, the Federal programme “Language & Integration Priority Day-care” that was first established in 2011 will continue until at least 31 December 2015. The Federal Government will provide an additional €100 million per year to help fund around 4,000 priority day-care centres nationwide (BMFSFJ 2014a). “This federal programme will help ensure that all children, regardless of origin and social conditions, have early opportunities for education and participation. Priority day-care centres are designed to improve language learning

opportunities specifically for children under the age of three, children from educationally disadvantaged families, and from families with a migration background” (BMFSFJ/Offensive Frühe Chancen 2014).<sup>31</sup> Support is focused on expanding “everyday language learning opportunities” for children, whereby day-care staff will be coached and monitored by language experts (BMFSFJ 2013).

#### **German Islam Conference**

The continuation of the DIK was included in the coalition agreement for the 18th legislative period. At the beginning of 2014, the Federal Minister of the Interior and representatives from central Islamic associations<sup>32</sup> agreed to a common working plan, as well as new topics, a new structure, and new goals for the third phase of the DIK. The DIK will address factual issues affecting the cooperation between the state and religious communities: first increasing Islamic welfare services and then clarifying the general organisational conditions for introducing Islamic pastoral care to the federal level, Federal States, and local government (military, correctional facilities, hospitals). Instead of the annual DIK plenum of previous years, the representatives will meet about every two months for a working committee focusing on one topic. A steering committee consisting of representatives from central Islamic associations and representatives from the relevant federal, state, and local governments will convene and appoint the working committee. Since individuals are no longer included, the parties will invite experts on each topic. The steering committee will convene one to two times per year in order to discuss and announce the findings of the working committee.

31 More information on the programme homepage: <http://www.fruehe-chancen.de>.

32 Representatives from the following associations and organisations are participating in the DIK of the current legislative period: Ahmadiyya Muslim Jamaat (AMJ), Alevite Community of Germany (AABF), Central Council of the Islamic Association of Bosniaks in Germany (IGBD), Islamic Association of Shiite Communities in Germany (IGS), Council on Islam for the Federal Republic of Germany (IRD), Turkish Community in Germany (TGD), Turkish-Islamic Union of the Institute for Religion (DITIB), Organisation of Islamic Cultural Centres (VIKZ), Central Council of Moroccans in Germany (ZMaD, also ZRMD), Central Council of Muslims in Germany (ZMD) (DIK 2014).



### **Structural funding of migrant organisations**

At the end of September 2014, the BMFSFJ together with the BMI founded the nationwide, multi-origin umbrella group of migrant organisations to contribute to the social and legal equality of female migrants and their organisations in Germany. The umbrella group is intended to primarily represent migration and women's topics at the German federal policy level in the media and to the general public, and network and professionalise MOs (BMFSFJ 2014b).

The BMFSFJ also funded the "MIGoVITA" project (Young People with Migration Backgrounds: Diversity and Participation in the Transition from School to Work) together with the Federal Agency for Civic Education from 2012-2014. With this intercultural project, the Otto Benecke Foundation, together with PHOENIX Cologne, Amaro Drom, and the Centre for Turkish Studies and Integration Research, will test the general conditions under which MOs for various sections of the population can all become qualified in the field of transitioning from school to work in order to more precisely foster young migrants and improve their opportunities for participation. The successful approaches worked out in the project will be developed further with the Federal Agency for Civic Education starting in 2015 with the "Active Roma Youth" project (BMI 2014i: 6).

### **Access to integration courses for those eligible for subsidiary protection**

In order to facilitate access to integration courses for those eligible for subsidiary protection as well, § 44 section 1 AufenthG was amended in 2013 to allow entitlement to an integration course with a residence permit of at least one year. This is intended to accommodate the fact that foreigners authorities typically limit the residence permit of those eligible for subsidiary protection to one year (BAMF 2014d).

## **3.6 Nationality and naturalisation**

### **3.6.1 Background and general context**

On 1 January 2000, the principle of *jus soli* (right of the soil) was added to the provisions governing the right of German citizenship according to the principle of *jus sanguinis* (right of blood). Since then, children born in Germany whose parents are both foreign nation-

als receive German citizenship at birth if at least one parent has been legally and consistently residing in Germany for eight years and has permanent right of residence. This form of obtaining citizenship was in general linked to the obligation to opt for one nationality until 20 December 2014: Pursuant to § 29 StAG these children were required upon reaching adulthood and receiving a notification from the proper authority to choose between German citizenship and the foreign citizenship obtained through their parents by the age of 23. The same also applied to children born after 1 January 1990 who have obtained German citizenship in 2000 on request of their parents as part of a temporary arrangement (§ 40b StAG) by naturalisation under the conditions of *ius soli*.<sup>33</sup> With the 2014 legal revision, most of those affected will be exempt from this requirement to choose one nationality in the future because they are considered "born and raised in Germany" (see also Section 2.2).

In addition to the principle of *jus soli*, foreign nationals who have been lawfully residing in Germany for several years can obtain German citizenship through naturalisation. A series of conditions must be fulfilled in order to be eligible for naturalisation, including residence status (rights of residence or residence title) with a long-term perspective as well as eight (if efforts at integration can be demonstrated: seven or six) years of consistent and legal residence in Germany, a self-secured means of subsistence<sup>34</sup>, as well as no criminal convictions (§ 10 section 1 StAG). The naturalisation of third-country nationals generally requires the forfeiture/loss of prior citizenship; however, there are numerous legal exceptions, such as for persons from countries that typically do not allow citizenship to be forfeited (BAMF 2011). People willing to be naturalised who have the nationality of another EU Member State are in general not obligated to give up this nationality.

Naturalisation requires foreign nationals to have sufficient knowledge of the German language (level B1 CEFR). Since 1 September 2008, those applying for

<sup>33</sup> For a comprehensive analysis of the obligation to opt for one nationality in force until the end of 2014 and the decision-making behaviour of persons concerned, please see Worbs (2014).

<sup>34</sup> This condition does not need to be fulfilled if the foreigner is not responsible for taking up of social benefits pursuant to the Social Code Book II or Social Code Book XII.

naturalisation must also demonstrate knowledge of the legal and social system, and living conditions in Germany by taking a national standardised naturalisation test. Those with a German school leaving certificate are exempt from this requirement (Weinmann et al. 2012: 209).

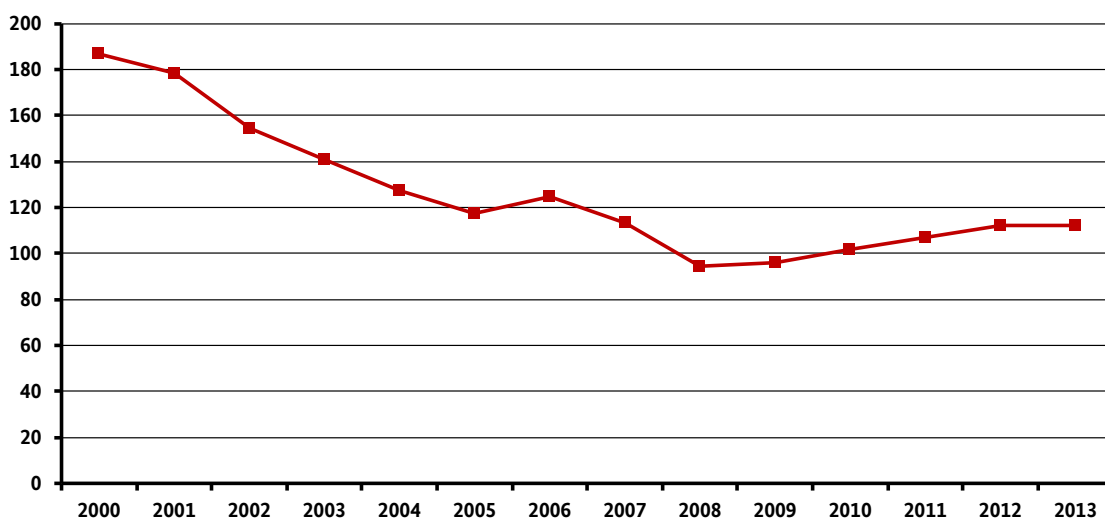
Figure 1 shows that the number of naturalisations between 2000 and 2013 has fallen from 186,700 to around 112,300 for a drop by just under 40%. The lowest point was in 2008, with around 94,500 naturalisations. After this, the number of people obtaining German citizenship rose slightly through to 2013 (by 5.2% from 2010 to 2011 and by 5.1% from 2011 to 2012; 2013 showed practically no change compared to the previous year). Since 2010, it has remained consistently above 100,000 annually.

The trend of what is known as the maximised naturalisation rate (Figure 2) shows a similar progression.

This indicator from the StBA applies to the number of domestic naturalisations and to the number of domestic foreign nationals who have been living in Germany for at least 10 years at the start of the reporting year. For the sake of simplicity, this duration of residence is chosen so that all requirements for naturalisation are likely to be fulfilled (StBA 2014b: 6). Similarly to the absolute figures, the maximised naturalisation rate fell from 4.9% to 2.4% from 2000 to 2013, with a low point of 2.1% in 2008, as well (see Figure 2).

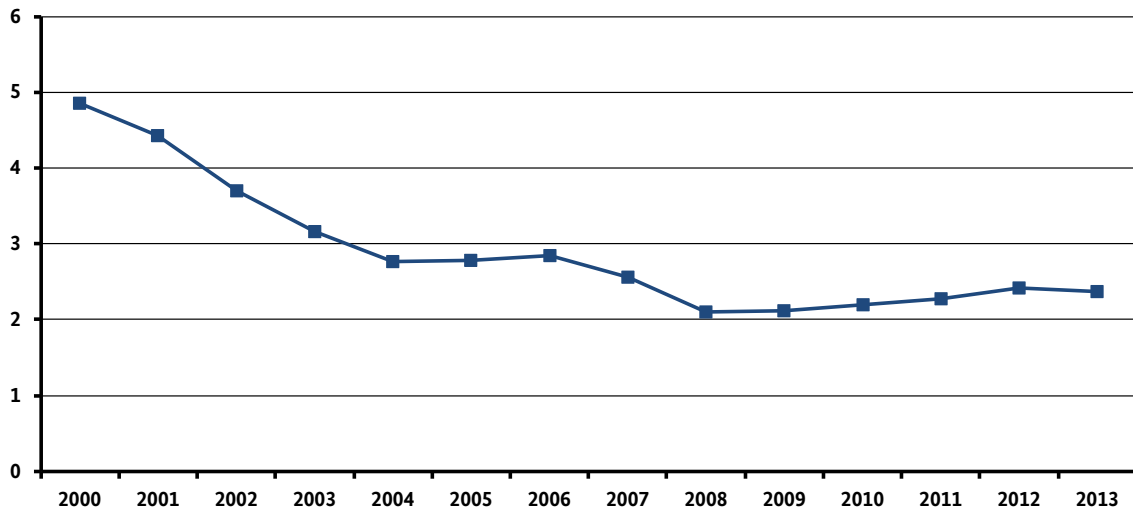
Regarding the number of naturalisations it has to be kept in mind that between 2000 and 2012 approximately 460,200 children of foreign parents have by law automatically acquired German citizenship due to birth in Germany and hence naturalisation was not applicable in these cases (Worbs 2014: 79).

**Figure 1: Naturalisations of 1,000 persons, 2000-2013**



Source: StBA (2014b)

Figure 2: Tapped naturalisation rate in percent, 2000-2013



Source: StBA (2014b)

### 3.6.2 National developments

#### **Naturalisation and information campaigns regarding the revision of the obligation to opt**

Several Federal States launched or continued naturalisation campaigns in 2014 aimed at encouraging foreign nationals meeting the legal requirements for obtaining German citizenship to apply for naturalisation. This includes the Senate of Berlin's "Your City. Your Country. Your Passport" campaign,<sup>35</sup> the "German Language. German Diversity. German Passport" campaign in Baden-Württemberg,<sup>36</sup> the "Say Yes to Naturalisation" initiative in Rhineland-Palatinate,<sup>37</sup> and the "I Say Yes to Naturalisation" campaign in North Rhine-Westphalia.<sup>38</sup> The "Hamburg. My Port. Germany. My Home" campaign continues in Hamburg: Since 2011, the mayor has been sending letters to all 137,000 persons over the age of 16 who are potentially eligible

in order to raise their interest in naturalisation.<sup>39</sup> Federal states in eastern Germany have also become active in this area, such as Saxony-Anhalt with its "Your Choice. Your Home." campaign.<sup>40</sup>

The Federal Commissioner for Migration, Refugees and Integration also launched an online information campaign on 15 December 2014 on the revision of the requirement to choose one nationality. This information campaign seeks to inform concerned people and their relatives under the motto "One Life. Two Passports".<sup>41</sup>

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

The BVerwG decided on 5 June 2014 that past failure to acquire German language skills does not constitute an obstacle to naturalisation. The ruling resulted from the case of a 75-year-old Iranian national who repea-

35 Cf. <http://einbuengerung-jetzt.de> (18 December 2014).

36 Cf. <http://www.mein-deutscher-pass.de/startseite.html> (18 December 2014).

37 Cf. <http://www.einbuengerung.rlp.de/> (18 December 2014).

38 Cf. <http://www.integration.nrw.de/Einbuengerung/index.php> (18 December 2014).

39 Cf. [http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Themendossiers/Tagung-Deutscher-werden-2012/20120702-tagung-einbuengerung-7-celikkol-kersten.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Themendossiers/Tagung-Deutscher-werden-2012/20120702-tagung-einbuengerung-7-celikkol-kersten.pdf?__blob=publicationFile) (4 December 2014).

40 Cf. <http://www.einbuengerung.sachsen-anhalt.de/> (18 December 2014).

41 Cf. <http://www.bundesregierung.de/Content/DE/Artikel/IB/Artikel/Staatsangehoerigkeitskampagne/2014-12-16-kampagne-heimat-oder-herkunft.html;jsessionid=7536DF729BE47A32FFB05230E151A70C.s2t2> (18 December 2014).

tedly failed the naturalisation test due to poor German language skills. It was found that the woman suffered from 70% disability; an official examination revealed that the plaintiff's health and age made her unable to attend an educational establishment. The BVerwG found that pursuant to § 10 section 6 StAG the requirements under § 10 section 1 sentence 1 numbers 6 and 7 StAG (sufficient knowledge of the German language) do not apply "if the foreign national cannot fulfil these at the time of ruling on the naturalisation application due to disability, health, or age. Whether or not the foreign national could have acquired the necessary knowledge at an earlier point in time is irrelevant."<sup>42</sup>

In another decision on that same day, the BVerwG found that a juvenile conviction must be taken into consideration during the naturalisation process even if the juvenile court later ordered the record expunged. The case was filed by a 31-year-old Turkish applicant for naturalisation. While the expunging meant that the registry office was no longer allowed to inform the citizenship office of the conviction, a material ban on exploitation will only take effect once the conviction is deleted from the registry, which in this instance will occur in 2017 as long as the plaintiff receives no other convictions. However, a conviction also has to be taken into consideration "if the citizenship office gained knowledge of it through legal means other than the Federal Central Register (in this case, by pulling the foreign national file)".<sup>43</sup>

### 3.6.3 Developments referring to the EU

As part of the legal revision of the obligation to opt for one nationality (see Section 2.2), since 20 December 2014, those affected by this regulation who have citizenship in an EU Member State or Switzerland are generally exempt from having to choose between this citizenship and German citizenship. It is no longer necessary to apply for approval to retain prior citizenship, harmonising this regulation with existing regulations on naturalisation. EU citizens, regardless of whether they obtained German citizenship on the

principle of *jus soli* or through naturalisation, are generally permitted to retain their other citizenship.

At the same time, this legal revision has given rise to various opinions on whether or not the criteria for "raised in Germany" and thus being exempt from having to choose one nationality conforms to EU law in the case of possessing citizenship in Germany and a third country, specifically the criterion of the eight-year habitual residence in Germany, which critics consider a restriction on the freedom of movement. The Federal Government does not share this view (Deutscher Bundestag 2014p).

## 3.7 Management of migration and mobility

### 3.7.1 Border control

#### 3.7.1.1 Background and general context

Since the stationary border controls between Germany, Poland, and the Czech Republic were dismantled on 21 December 2007, and those between Germany and Switzerland on 18 December 2008, the BPOL now only exercises external border controls at international airports and seaports.

Also after the abolition of border controls, exercising police authority is expressly permitted by the Schengen Border Code at borders inside the Schengen Area in order to combat cross-border crime. Immigration controls are also conducted by the BPOL along the German federal highway and rail systems, in trains, and at seaports as random checks and based on precise situation reports. Border protection includes prohibiting and preventing illegal entry, combating cross-border people smuggling, and other cross-border crime.

External borders are controlled based on the regulations of the Schengen Border Code. Modern document scanning and verification equipment, which facilitates efficient verification of a document's authenticity based on optical and digital features, is in use in Germany. The use of biometric procedures in border checks, specifically when verifying the identity of document holders, will play an increasingly important role in the future (visa control, e-Passport control,

42 Cf. <http://www.bverwg.de/entscheidungen/entscheidung.php?ent=050614U10C2.14.0> (19 December 2014).

43 Cf. <http://www.bverwg.de/entscheidungen/entscheidung.php?ent=050614U10C4.14.0> (19 December 2014).

automated border control systems). German diplomatic missions and the BPOL in particular are involved in the national implementation of the European VIS (Parusel/Schneider 2012).

### 3.7.1.2 National developments

#### **Expansion of EasyPASS border control system**

By the end of 2014, a total of 74 automated border control lanes (EasyPASS) were opened at the airports of Munich, Frankfurt am Main, Düsseldorf, and Hamburg. During this period, over 2 million passengers used the EasyPASS control system. By end of 2015, a total of 140 of these eGates will have been opened in the airports of Munich, Frankfurt am Main, Düsseldorf, Hamburg, Berlin-Tegel, and Cologne-Bonn. EasyPASS is based on the photograph in passports and optionally in German identification cards.

#### **Cooperation with third countries to secure borders**

In the time of globalisation, national security can no longer be exclusively guaranteed within national borders, it also requires close international (border) police cooperation. The BPOL cooperates with the proper border protection or aviation security agencies of the other EU Member States as well as third countries as needed. As part of its own exterritorialization strategy, the BPOL's cooperation with third countries to police borders is an important part of integrated border management for controlling the external borders of the EU. In addition to personnel deployments, it includes assisting in building capacities for border controls.

This essentially includes training assistance as part of both specific bilateral measures and EU-funded projects, such as EU-Twinning or EU-TAIEX projects. The purpose of these measures – and with them tangible added value for the BPOL – is to improve cooperation with foreign (border) police forces while taking into account key aspects relevant to migration. Ultimately, their purpose is to help execute border policing duties at the external borders of the EU more efficiently and make it easier to successfully combat illegal migration (including irregular intra-EU migration) and international people smuggling. In addition, the Member

States are strengthening the border policing structures that are crucial to the BPOL in their efforts to police the border.

As part of a training and equipment assistance programme, a total of 71 training and 14 equipment assistance measures were focused in Southeastern and Eastern Europe, the Arabian Peninsula, and North Africa in 2014.

## 3.7.2 FRONTEX

### 3.7.2.1 Background and general context

#### **European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)**

Taking into account national competencies, FRONTEX coordinates the operational cooperation of the EU Member States at the external borders of the EU, supports the Member States as a “service provider” for training national border police officers for the purpose of standardisation, produces risk analyses, and provides the Member States with technical and operational support, specifically through joint operations or other services (“EUROSUR” information network, research and development, studies/recommended courses of action, etc.).

Critical to this work is the strict observance of basic and human rights, specifically legal provisions pertaining to refugees. Since 2013, the agency's independent Fundamental Rights Officer and the Consultation Forum on Fundamental Rights have been tasked with ensuring that fundamental rights are preserved in all FRONTEX activities. The basis for this is an amendment to Regulation (EU) number 1168/2011/EU in 2011 adding established, critical reporting, monitoring, and operation evaluations to produce recommended courses of action for operations and training or, if necessary, consequences such as the suspension or termination of joint operations.

FRONTEX is highly dedicated to ensuring that all proper national authorities respect these standards.

### 3.7.2.2 Developments referring to the EU

#### ***Involvement in FRONTEX operations***

In 2014, Germany sent BPOL officers to participate in operations coordinated by FRONTEX for a total of approximately 5,000 working days. The focuses were Operation Poseidon Land near the land border between Bulgaria and Turkey, as well as Focal Point operations at external land and air borders of the EU.

#### ***EUROSUR***

Since October 2014, the BPOL has been connected to the EUROSUR border monitoring system, which networks “national control centres” in the EU Member States, Iceland, Switzerland, and Liechtenstein with one another. Data is gathered at FRONTEX headquarters, allowing information on border issues to be exchanged practically in real-time.

# 4 Irregular migration

## 4.1 Background and general context

Illegal migration movements in Germany are managed by using preventive and migration control measures, such as during the visa process and securing external borders, measures promoting returns/to enforce an order to leave by deportation or removal, but also pragmatic responses to the situation of those residing illegally but who cannot be forced to leave.<sup>44</sup> This includes issuing residence titles to those with exceptional leave to remain as well as facilitating access to education and health services for irregular migrants (Schneider 2012b).

Illegal entry and illegal residence are crimes that are generally punishable by fine or imprisonment. Aiding and abetting any illegal entry/residence in exchange for financial gain or the promise of financial gain, or repeatedly, or on behalf of multiple foreign nationals is also punishable by law. However, this does not pertain to aid provided for humanitarian reasons. Smuggling conducted by commercial or criminal organisations, or resulting in the death of the person being smuggled, is considered a criminal act (§ 97 AufenthG) punishable by imprisonment of not less than one year for smuggling through a criminal organisation, and not less than three years if the smuggling results in death. Those who become involved as a result of their profession or community work (specifically pharmacists, physicians, midwives, nurses, psychiatrists, pastors, teachers, and social workers) are generally not considered accessory to the abovementioned crimes, provided their actions were objectively limited to fulfilling their legal/recognised duties (Number 95.1.4 AVwV).

Illegal staying migrants also include those with exceptional leave to remain (§ 60a AufenthG), since they do not have a residence permit and are generally required to leave but cannot be deported for practical or legal

reasons. Exceptional leave to remain certifies that deportation is suspended for the time being. However, 24a section 1 AufenthG established in 2011 allows well-integrated youths with only exceptional leave to remain to receive a residence permit under certain conditions, such as not having made any false statements regarding identity or nationality. The foreigners authorities have a measure of discretion in granting residence to “well-integrated” youths if the applicant’s identity is unclear.

External controls (e.g., on the visa process and external border controls, see Section 3.7), as well as a system of internal controls on residence permits are part of the German system for managing migration and preventing irregular migration (Deutscher Bundestag 2011). One of the core requirements for issuing visas by a German diplomatic mission is the willingness of applicants to return to their countries of origin before the visa expires. Additionally, there are control mechanisms that run through exchanging data, inspecting workplaces, cooperating closely with other authorities, and requiring public offices to report relevant information.

At the national level, special importance is placed on the Joint Analysis and Strategy Centre for Illegal Immigration (GASIM), which gathers and analyses information provided by the participating authorities<sup>45</sup> relating to general and organized crime, in particular smuggling of irregular migrants, illegal employment and the misuse of social benefits (BMI 2014m). The BPOL obtains information abroad by using border police liaison officers and enlisting document and visa experts in countries of origin/transit for migrants who entered illegally. The same applies to liaison staff and liaison officers from the BAMF in selected EU Member

<sup>44</sup> A detailed outline of measures taken by Germany to prevent irregular migration can be found in Schneider 2012b and BAMF/EMN 2012: 45ff.

<sup>45</sup> The following authorities are some of those involved in GASIM: the BPOL, Federal Criminal Police Office, the BAMF, the Illegal Employment Financial Control Section (Finanzkontrolle Schwarzarbeit – FKS) of the Federal Customs Administration, Federal Intelligence Service, Federal Office for the Protection of the Constitution and the Foreign Office.



States and third-countries. Another component of gaining knowledge is the cooperation with FRONTEX and the European Police Office (Europol) to develop or transmit periodic and/or topic-specific joint evaluation products.

The BPOL, the border police authorities of the Federal States of Bavaria and Hamburg, and the Federal Customs Administration recorded a total of 32,533 individuals entering Germany illegally in 2013 (25,670 in 2012), 4,498 individuals (4,417) have been removed (Kohls 2014: 17), and 3,856 individuals (3,829) have been refused entry (cf. Section 5.2.2; also Grote 2014b: 24).

## 4.2 National developments

### ***Residence permits for those with exceptional leave to remain***

On 3 December 2014, the Federal Government submitted a bill to redefine the right of residence and the termination of residence.<sup>46</sup> This will introduce a regulation on the right of residence that is not based on a reference date. It will also establish § 25b AufenthG. “Hereafter a residence permit will typically only be issued if the foreign national has resided in the German Federal Territory with exceptional leave to remain, or on a residence title for specific purposes or a residence permit for eight/six consecutive years, if he/she can demonstrate sufficient German verbal language skills, and any children of school age who are attending school. Furthermore, the foreign national must avow themselves of the democratic constitutional structure based on the principle of liberty. The foreign national must secure a primarily independent means of subsistence through employment or, based on previous schooling, training, income, and family situation, must be expected to be able to secure a means of subsistence in terms of § 2 section 3 AufenthG. Exceptional leave to remain will generally be granted for periods of three to six months. A residence permit under § 25b AufenthG would be issued for two years and could, again if the appropriate conditions are met, be extended in accordance with the general rules” (BMI 2014j: 8).

46 The Federal Government introduced the bill on 06.03.2015 to the German Bundestag (cf. Deutscher Bundestag 2015b). The results of the law-making process will be dealt with in 2015 in the policy report of 2015.

### ***Labour market easements for those with exceptional leave to remain***

The BeschV was revised in 2014 to make it easier for those with exceptional leave to remain to find work. They may now seek employment after three months with the consent of the BA (§ 32 section 1 BeschV). The consent of the BA is now no longer required for the following occupational groups:

- University graduates in areas with a labour shortage who meet the requirements for an EU Blue Card, or
- Skilled persons who have recognised graduated training for an occupation with a labour shortage according to the BA white-list or who have begun the process of having their qualifications recognised.

The priority review is also no longer required for those who have been residing in Germany for 15 consecutive months legally, with an exceptional leave to remain, or with a preliminary entitlement to remain in the country (§ 32 BeschV). However, employment is generally prohibited for individuals who have entered the German Federal Territory in order to request social benefits, or effect the prevention or are responsible for the obstacles for their deportation (§ 33 BeschV).

### ***Asylum seekers going underground***

In 2014, a total of 238,676 asylum seekers in the Federal Territory were allocated to initial reception centres in the Federal States after applying for asylum. The initial reception centre is assigned using the EASY system (initial allocation of asylum seekers) and the asylum application must be submitted to the BAMF branch office assigned to that initial reception centre (Müller 2013). However, in 2013 a total of 17,470 individuals failed to appear at their initial reception centre and instead went underground after applying for asylum. This number is not indicative of those residing in Germany irregularly, since it is likely that for some of those who went underground, Germany is a transit country to another EU Member State, and after initially being detected in Germany, they used the EASY allocation phase to reach their actual destination country (however, see also Scholz 2013).

### ***Forged and falsified border crossing documents***

From January to October 2014, the BPOL discovered 3,285 individuals with forged or falsified border



crossing documents (3,296 in the same period in 2013). These individuals primarily came from crisis regions, such as Somalia, Syria, Eritrea, and Afghanistan (cf. also physical and technological document verification at the BAMF, Chapter 6.1.2).

### ***Anonymous health insurance cards for irregular migrants***

An anonymous medical certification is designed to enable irregular migrants to receive medical treatment in the Federal States without having to apply for one from the proper social welfare provider as it was previously the case. These companies are required in such instances to report the illegal migrant to the foreigners authority, which could result in the deportation of that individual. This is why illegal migrants avoid or put off getting often necessary medical treatment, which, according to the German Medical Association (BÄK) can lead “to illnesses being aggravated or becoming chronic” (BÄK 2013).

Due to this, the State Government of Lower Saxony run by the SPD and Bündnis 90/Die Grünen started plans in the middle of 2014 for a pilot project to introduce the anonymous medical certificate card in Göttingen, which were supported by the CDU and FDP opposition parties (HAZ 2014).

The coalition of DIE LINKE, the SPD, and Bündnis 90/Die Grünen governing in Thuringia until the end of 2014 included in their coalition agreement that it would also work “to introduce anonymous health insurance cards for those without papers as part of a pilot project” (DIE LINKE et al. 2014: 26).

### ***Reductions in asylum seekers benefits due to lack of affidavit***

Following a ruling by the Federal Social Court (BSG), entitlements under the Asylum Seekers' Benefits Act (AsylbLG) could not be reduced solely because individuals required to depart refused to sign an affidavit at the diplomatic mission of their country of origin stating their willingness to return to their countries of origin. The ruling came as a result of a Malian national residing in Germany with exceptional leave to remain who was requested to go to the diplomatic mission of Mali to obtain her passport and refused to sign an affidavit that she would voluntarily return to her country of origin. The diplomatic missions of Mali only provide travel documents if such an affidavit is signed. Since

she refused to sign the affidavit, her asylum seekers' benefits were reduced, which the court held to be against the law, since no one can be forced to submit what is in fact a voluntary declaration (BSG, ruling of 30 October 2014, B 7 AY 7).

# 5 Return migration

## 5.1 Background and general context

Return policy is an effective and well-established control instrument in migration policy. Return policy includes policy issues relating to voluntary return/onward migration, reintegration, repatriation, readmission by country of origin (for the aspects of reintegration related to policy development, see Chapter 9), and measures for forceful return (e.g. refusal of entry, removal, deportation, and transfer under Dublin regulations). Voluntary departure and voluntary return take precedence over forced return, as set forth both in national law (incl. AufenthG) and in various EU directives and regulations (e.g. Directive 2008/115/EC on return).

### **Voluntary return**

Germany launched the REAG programme funded by the Federal Government and the Federal States in 1979, and expanded it to include GARP<sup>47</sup> in 1989, for voluntary return/onward migration. In addition to paying travel costs, the REAG/GARP programme offers travel and start-up assistance for reintegration. The amount of assistance and a list of countries of origin significant to German migration policy are set annually by the BMI and the Federal States with consideration to current political developments. Those entitled to benefits under § 1 AsylbLG, those with recognised refugee status, other foreign nationals who are allowed to stay under international law or on humanitarian or political grounds, and victims of forced prostitution or human trafficking can apply for voluntary return/onward migration benefits. Nationals from “safe third countries”<sup>48</sup> and European third countries, i.e., non-EU Member States, from which the Federal Territory can

be entered without a visa and whose nationals entered Germany after being exempted from the visa requirement<sup>49</sup>, are only eligible for travel costs but not for start-up assistance (IOM 2014: 1). This does not apply to victims of human trafficking, who can also receive support under the REAG/GARP programme if they are from EU Member States or EU third countries with no visa requirement. In addition, each person is eligible for assistance through REAG/GARP only once.

In addition, there are a large number of customised projects intended to take into account special circumstances in some return countries. Collaborations with local partner organisations are designed to assist returnees with their professional and social reintegration. As such, joint European measures and projects in the area of return are gaining momentum. Transnational projects on the joint promotion of reintegration in the return country (e.g. ERIN – European Reintegration Instrument Network, see below, or the NGO-run ERSO project – European Reintegration Support Organisations) or to network the proper offices (e.g., since 2013: CSI – Common Support Initiative) were and continue to be important steps toward a standardised procedure.

In addition to measures supporting voluntary return, there are a number of ways for the proper authorities to enforce the required departure or deny entry. These include removal from the border area, deportation, and transfer under the Dublin procedure. The authorities also have various enforcement measures, such as detention pending deportation or alternatives to detention pending deportation (cf. in detail Grote 2014b).

47 REAG: Reintegration and Emigration Programme for Asylum-Seekers in Germany; GARP: Government Assisted Repatriation Programme; see also Schneider/Kreienbrink (2009).

48 “Safe third country” refers to the EU Member States, as well as Norway and Switzerland (§ 26a section 2 in conjunction with Annex 1 to § 26a AsylVfG).

49 “This applies specifically to nationals from the Former Yugoslav Republic of Macedonia, Montenegro, and Serbia (visa-free entry since 19 December 2009), as well as Bosnia and Herzegovina, and Albania (visa-free entry since 15 December 2010) – vWEB states (visa-free countries of the Western Balkans)” (IOM 2014: 1).

### **Refusal of entry, removal, deportation, and transfer**

Border control authorities can refuse entry into Germany at the border if a third-country national is not in possession of valid or required border crossing documents or of the appropriate residence title and if there is the suspicion of an attempt at illegal entry (§ 14 AufenthG). If this suspicion is confirmed, it results in refusal of entry in accordance with § 15 AufenthG – and consequently in measures terminating the residence (Hailbronner 2014: marginal note 1088; Dienelt 2011: marginal notes 2 and 3).

Termination of residence can be enforced in a number of instances and take the form of removal, deportation, or transfer. Unlike refusal of entry, removal and deportation are predicated on the fact that the individual who is not entitled to stay has already entered Germany and is discovered in connection with the illegal entry (§ 57 section 1 AufenthG). However, removal is only an option if the illegal entry occurred within a 30-kilometre corridor along the border to an EU Member State and if it can be carried out immediately after entry. If an individual has already entered and been residing for a longer period of time without a valid residence title, for instance, because it has expired, that individual is generally required to depart (§ 50 section 1 AufenthG). The foreign national must depart from “the Federal Territory immediately or, if a deadline for departure has been set, by the end of that deadline”, provided that no application for asylum has been filed upon discovery (§ 50 section 2 AufenthG).<sup>50</sup> If that individual fails to depart, a deadline for departure was not set or has elapsed and voluntary departure is not ensured, “or it is necessary to ensure departure for reasons of public safety and order”, the individual is deported (§ 58 section 1 sentence 1 AufenthG). The Federal States are largely responsible for enforcing a (mandatory) obligation to depart. In addition, the BPOL are responsible for the return under § 71 section 3 number 1 d AufenthG.

50 “The individual required to depart must generally be given enough time to ‘voluntarily’ leave the Federal Republic of Germany and be able to prepare for departure (cf. Dienelt 2011: marginal note 12). A requirement to depart is usually accompanied by a deportation warning from the foreigners authorities that sets a deadline for departure of 7 to 30 days (§ 59 AufenthG)” (Grote 2014b: 17).

The Federal Government has signed readmission agreements with different countries of origin specifying the obligation to readmit several nationals. Furthermore, the agreements signed in recent years typically include a requirement, under certain conditions, to admit and transfer those required to depart who are not nationals of one of the respective contracting parties (third-country nationals and stateless persons) in accordance with current EU standards. The EU is also signing more readmission agreements between its Member States and countries of origin.<sup>51</sup>

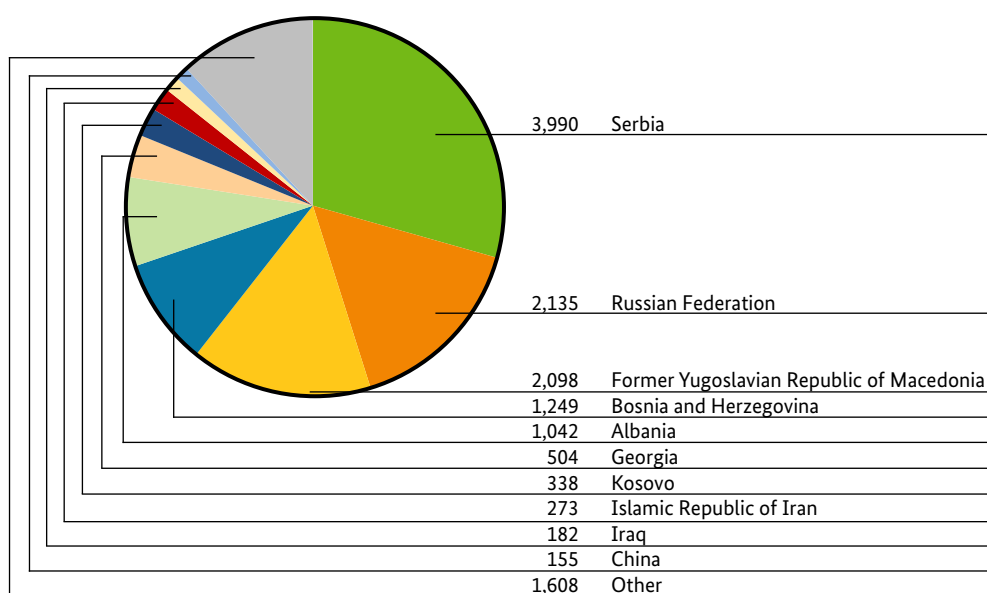
## **5.2 National developments**

### **5.2.1 Voluntary return**

#### **REAG/GARP return funding**

A total of 13,574 approvals to fund voluntary return through the REAG/GARP programme were issued in 2014; of those, 8,563 were for rejected asylum seekers. Compared with the previous year, this is an increase of about 31% (10,375 funding approvals in 2013). Figure 3 shows that the majority of approvals were for nationals of Serbia (absolute: 3,990, i.e., approx. 29% of all approvals) and the Russian Federation (2,135, approx. 16%). Other important returnee groups were nationals from the Former Yugoslavian Republic of Macedonia (2,098: 15%), Bosnia and Herzegovina (1,249: 9%), and Albania (1,042: 8%).

51 A list of all readmission agreements can be found on the website of the BMI: [http://www.bmi.bund.de/Shared-Docs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/RueckkehrFluechtlinge.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/Shared-Docs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/RueckkehrFluechtlinge.pdf?__blob=publicationFile) (8 January 2015).

**Figure 3: REAG/GARP funding approvals for 2014**

Source: IOM Germany 2015

**National return programme**

The basic REAG/GARP programme offers assistance for a number of return countries. Some destination countries receive additional reintegration assistance for reasons relevant to migration policy. The “URA 2” (Albanian for “bridge”) project in Kosovo started in 2009 and was also continued in 2014. The project helps Kosovars returning voluntarily or involuntarily from Germany to find a place to live, receive medical treatment, receive vocational training, and start up a business (BAMF 2014i). URA 2 only receives national funding through the cooperation between the Federal Government and the Federal States of Baden-Württemberg, Mecklenburg-Vorpommern, Lower Saxony, North Rhine-Westphalia, Saxony, Saxony-Anhalt, and Thuringia.

“Integplan” is a network between “Micado Migration GmbH” (NGO) and the Federal States of Baden-Württemberg, Bavaria, Bremen, Hesse, Lower Saxony, North Rhine-Westphalia, and Saxony-Anhalt. The main goals of this network are to provide qualified information for return consultation offices, cooperate with organisations in third countries, and provide customised support to returnees. This project receives primarily European and national funding.

In addition, voluntary returnees to the autonomous Republic of Kurdistan (Northern Iraq) receive special

funding with the support of a contracting partner (IOM) that takes into account the special circumstances in a crisis region. Local workers from the IOM accompany returnees as they start over. Returnees to this region specifically require social and medical care, as well as reintegration into the local (prospering) labour market. This project was started in 2012 and has already helped several returnees and their families to start over. It will therefore be continued until at least 2016.

The “Integrated Return Planning for Vietnam” also continued in Berlin in 2014 under the IOM, allowing 19 Vietnamese nationals returning voluntarily to receive up to €2,000 in non-cash benefits to help with reintegration, in addition to benefits from the REAG/GARP programme (cf. IOM 2013). Until the end of 2014, half of the programme’s financing came from the European Return Fund (Asylum, Migration and Integration Fund [AMIF] as of 2015) and the Senate Department for the Interior and Sports. The number of vacancies will be increased to 30 for 2015.

**Transnational return and reintegration programme**

Germany also participated in 2014 in the transnational return and reintegration programme called ERIN (European Reintegration Instrument Network) run by six European partner states (Belgium, Germany, Finland,

France, Netherlands, United Kingdom, and Norway as “non-EU state”). The two-year project will be primarily funded by the European Commission (COM) and started on 1 June 2014.

Since June 2014, a special line in the COM budget (specific actions) has been reserved for harmonizing the promotion of return in the EU. The goal is to get numerous Member States to commit to joint return measures to promote willingness to depart while also allowing actual reintegration with few hurdles. The role model for this effort is the ERIN project, where returnees receive active support on getting a new start by means of a contracting partner. The Federal Republic of Germany has already submitted a general statement of participation.

### **Franco-German cooperation**

The Franco-German RACOB (Return Assistance in Armenia) project, originally started as a pilot project on 1 November 2012 and planned for two years, was extended to 31 December 2014. This project focuses on reintegration into the labour market and assistance in starting a business by utilising the reintegration infrastructure in Armenia that has been tested for years by the “Office Français de l’Immigration et de l’Intégration” (OFII) for returnees from Germany, as well (BAMF 2014a).

## **5.2.2 Forced return**

### **Statistics**

In 2014, Germany carried out 10,884 deportations, 2,967 removals, and 3,612 refusals of entry (cf. previous years in Table 1).

### **Redefinition of the right of residence and the termination of residence**

On 3 December 2014, the Federal Government passed a bill on redefining the right of residence and the

termination of residence<sup>52</sup> which also included numerous amendments pertaining to the enforcement of forced return for foreign nationals with an enforceable obligation to leave (BMI 2014k). The amendments include options for determining the identity of foreign nationals. According to the bill, it will be possible in the future “to scan a foreign national’s data storage medium”, whereby “a legal basis for requesting necessary access data from telecommunications providers [will be] enshrined in law”. Furthermore, the “temporary detention pending deportation” (§ 62 section 2 sentence 2 AufenthaltG) will be replaced by a “departure custody” of at most four days when deportation has been scheduled and is imminent. This will be enforced in the transit area of an airport or at a lodging from which departure is possible (BMI 2014k: 16-17). The bill also sets forth objective criteria “that could give reason to suspect that the foreign national facing deportation/transfer may abscond” (see Section 5.3.2).

### **Deportations to Syria suspended**

Back in 2011, the Federal States suspended deportations on the recommendation of the Federal Ministry for the Interior due to the humanitarian hardships expected in the country. Deportations to Syria have been suspended throughout 2014.

### **Suspended deportations in individual Federal States in Winter 2014-2015**

As in previous years, the Ministers for the Interior of Schleswig-Holstein (SPD) and Thuringia (DIE LINKE) decided to suspend deportations for the winter of 2014-2015 at the beginning of December 2014. This suspension in both Federal States applies to nationals from Afghanistan, Albania, Armenia, Azerbaijan, Iraq, Iran, Kosovo, the Former Yugoslavian Republic of Mac-

52 The Federal Government submitted the bill to the German Bundestag on 06.03.2015 (cf. Deutscher Bundestag 2015b). The results of the legislative process will be included in the 2015 Policy Report.

**Table 1: Number of enforced deportations, expulsions, and refoulements (2011-2014)**

	2011	2012	2013	2014
<b>Deportations</b>	7,917	7,651	10,198	10,884
<b>Removals</b>	5,281	4,417	4,498	2,967
<b>Refusals of entry</b>	3,378	3,829	3,856	3,612

Source: German Bundestag 2012b, 2013d, 2014r, 2015a

edonia, Russian Federation, Serbia, Turkey, Bosnia and Herzegovina, Montenegro, Pakistan, and Ukraine who are required to depart, but does not apply to nationals of these countries who have become offenders. In Bremen, where during the past years deportations to Balkan states have also been suspended, the Senator of the Interior Mäurer (SPD) did not announce an official suspension of deportation for the winter of 2014-2015. However, no one would be forced to leave the country until the end of March 2015 (radiobremen 2014).

### 5.3 Developments referring to the EU

#### 5.3.1 Voluntary return, mobility partnerships, and readmission agreements

##### **Asylum, Migration and Integration Fund (AMIF)**

On 1 January 2014, the AMIF replaced the three SOLID funds<sup>53</sup> that have been in place since 2007: the European Refugee Fund (ERF), the European Integration Fund (EIF), and the European Return Fund (RF). AMIF funding focuses on return projects. In this area, “the focus will continue to be placed on voluntary return and, more than before, on reintegration in the country of origin. Germany will also continue transnational projects together with other EU Member States, such as ERIN” (BAMF 2015c). The maximum funded project duration is 36 months, and projects will generally be co-financed up to 75% by the EU, whereby the minimum amount of funding per project and year is €100,000.

##### **Mobility partnerships**

On 3 March 2014, the EU and Tunisia (COM 2014a), and on 9 October 2014, the EU and Jordan (COM 2014b) created mobility partnerships.<sup>54</sup> “Mobility partnerships are part of EU migration policy, whose guidelines derived from the Global Approach to Migration and Mobility (GAMM) programme of 2005. In cooperation with migrants’ countries of origin, legal migration will be optimised and irregular migration counteracted to the parties’ mutual benefit, while preserving protection for refugees” (Hitz 2014: 2). The current agree-

ments with Tunisia and Jordan thus include plans to facilitate the obtaining of a visa for Tunisian nationals (COM 2014c). In reference to measures relevant to the return policy, agreements to readmit migrants entering the EU illegally through Tunisia and Jordan (COM 2014c) and more efficient measures for reintegrating Tunisians and Jordanians in their countries of origin are planned. For Morocco, for example, the latter means the promotion of qualified returnees to be able to become self-employed (BAMF 2014b: 3).

##### **EU readmission agreements and bilateral implementation protocol for EU readmission agreement**

An EU readmission agreement with Armenia took effect on 1 January 2014, requiring both the EU Member States and Armenia to readmit their nationals required to depart. The latter also includes third-country nationals and stateless persons residing illegally who entered the national territory through the other contracting party’s territory. The bilateral implementation protocol for the EU readmission agreement with Bosnia and Herzegovina (of 18 September 2007) was signed on 15 January 2014, establishing the general legal, technical, and operational conditions for both readmission and transit procedures.<sup>55</sup>

##### **Re-entry ban**

The ECJ ruled on 19 September 2013 (C-297/12) on the interpretation of Article 11 section 2 Directive 2008/115. The ECJ found the previously valid German practice of imposing unlimited entry bans under § 11 AufenthG to be unlawful after decisions on return which are usually temporarily limited only upon request. The effects of an entry ban under immigration law may generally only be maintained for more than five years if the individual in question currently presents a serious danger to public safety or order, or to national security. The ECJ’s ruling is also retroactive. In order to implement this ruling, all old cases of indefinite entry bans under immigration law must be

53 SOLID: Solidarity and Management of Migration Flows.

54 The EU has mobility partnerships with Cape Verde (2008), Moldavia (2008), Georgia (2009), Armenia (2011), Azerbaijan (2013), and Morocco (2013), whereby Germany is a participant in all except Cape Verde and Azerbaijan.

55 Announcement of the implementation protocol of Germany and Bosnia and Herzegovina for the agreement of 18 September 2007 between the European Community and Bosnia and Herzegovina on the readmission of persons residing illegally (BGBl II no. 5 of 21.02.2014, 156).

reviewed (cf. Kohls 2014: 14).<sup>56</sup> The bill on redefining the right of residence and the termination of residence (see above) plans to officially limit the duration of re-entry bans together with the decision to terminate residence.

### 5.3.2 Forced return

#### ***EU Return Directive and accommodations for detainees awaiting deportation***

On 17 July 2014, the ECJ ruled that even a federally organised Member State such as Germany could not cite the lack of special detention facilities in part of its territory as grounds for keeping third-country nationals awaiting deportation in ordinary correctional facilities as long as a special detention facility exists in the Member State as a whole (ECJ C-473/13, ECJ C-514/13, and ECJ C-474/13). Not even keeping detainees awaiting deportation separate from other inmates in the same correctional facility is sufficient to meet this requirement. This ruling is based on the introduction to Directive 2008/115/EC, according to which “imprisonment generally takes place in special detention facilities. If a Member State does not have special detention facilities and is required to keep third-country nationals in detention pending deportation in ordinary correctional facilities, then they must be separated from the other inmates” (Article 16, section 1 Directive 2008/115/EC). Until the ECJ’s ruling, detainees awaiting deportation in some Federal States were kept in separate wings of correctional facilities reserved for detainees awaiting detention. Other Federal States, however, had special detention facilities. Some Federal States had anticipated the ECJ’s ruling and reorganised its detention scheme beforehand, established partnerships with other Federal States, or constructed special detention facilities (in detail Grote 2014b: 33ff.). After the ECJ ruling, all other German Federal States ceased using separate wings of correctional facilities for detention pending deportation; some detainees were transferred to special detention facilities in other German Federal States (cf. Hessischer Landtag 2014: 2; Brandes 2014). Some

Federal States are also planning to establish special detention facilities (cf. Flüchtlingsrat Baden-Württemberg 2014).

The ECJ also found “that the principle of separation even applies if the third-country national in question consents to being kept in an ordinary correctional facility, for the Directive requires the separation of detainees awaiting deportation from ordinary inmates without exception” (Die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2014: 465).

<sup>56</sup> There are a total of over 500,000 entry bans, the vast majority of these are old cases. “There is no plan to contact and notify those affected that indefinite expulsions/entry bans will be officially terminated or no longer valid due to a lack of contact information” (Kohls 2014: 14).



# 6 International protection and asylum

## 6.1 National asylum system

### 6.1.1 Background and general context

Residence on humanitarian or political grounds, or due to international law, is quantitatively amongst the most significant purposes of residence in Germany. The requirements for admitting foreign nationals suffering from political persecution as well as others seeking protection are set forth in Article 16a GG, in §§ 22-25 and 60 AufenthG and in the AsylVfG. The BAMF decides on whether or not to approve asylum applications. For the duration of the asylum procedure, asylum seekers receive a preliminary entitlement to remain in the country (§ 55 AsylVfG). However, as long as the asylum seeker is required to live in a reception centre, the BAMF is responsible for issuing the certificate confirming permission to stay (§ 63 section 3 AsylVfG). Afterwards, the foreigners authority of the district in which the asylum seeker is required to live is responsible for issuing the certificate confirming permission to stay (§ 63 section 3 AsylVfG).

Since 2005, the admission of asylum seekers and those seeking protection has been strongly influenced by EU regulations and the implementation of EU directives into German law. Following the enactment of the German Immigration Act on 1 January 2005, which already introduced prominent changes in verifying refugee status by including non-state persecution, the implementation of the EU Directive 2003/9/EC on residence standards, the amended Qualification Directive

2011/95/EU and the Procedure Directive 2005/85/EC into German law has been a major step towards creating a Common European Asylum System (CEAS).

Despite EU-wide standardisation in the area of asylum, a series of forms of guaranteeing protection continues to exist in Germany (asylum under Article 16a GG, humanitarian reception campaigns, temporary residence, national deportation bans) that are granted on a national legal basis alone. Even if the right to asylum under Article 16a GG has partially lost its relevance due to the increasing internationalisation, it is still a fundamental right enshrined in the German Constitution. These national forms of protection generally do not conflict with the European protection system, rather they complement it (Parusel 2010).

Since 1953, more than 3.5 million people have applied for asylum in Germany, of those more than 2.5 million since 1990 (BAMF 2014a: 8). The highest number of applications was in 1992 (438,191), followed by a sharp decrease in applications for asylum. After the all-time low of 19,165 first-time applicants in 2007, the number has been increasing. A total of 173,070 first-time applications were submitted in 2014, which meant an increase of 57.9% in comparison to the previous year (109,580). A total of 202,815 first-time and subsequent applications for asylum were submitted in 2014. This amounts to an increase of 59.7% in comparison to the previous year (2013: 126.995 applications for asylum, Source: Eurostat).



## 6.1.2 National developments

### Development in the number of asylum applications

Table 2: First-time asylum applications in 2013 and 2014, main countries of origin

	2013		2014		First-time applications for asylum, changes to the previous year in percentage	First-time applications for asylum, changes to the previous year, absolute figures
	First-time applications for asylum	Total applications for asylum	First-time applications for asylum	Total applications for asylum		
<b>Total</b>	109,580	126,995	173,070	202,815	57.9%	63,490
<b>Syria</b>	11,850	12,855	39,330	41,100	231.9%	27,480
<b>Serbia</b>	11,460	18,000	17,170	27,145	49.8%	5,710
<b>Eritrea</b>	3,615	3,640	13,200	13,255	265.1%	9,585
<b>Afghanistan</b>	7,735	8,240	9,115	9,675	17.8%	1,380
<b>Albania</b>	1,245	1,295	7,865	8,110	531.7%	6,620
<b>Kosovo</b>	3,395	4,425	6,910	8,920	103.5%	3,515
<b>Bosnia and Herzegovina</b>	3,325	4,845	5,705	8,475	71.6%	2,380
<b>Former Yugoslavian Republic of Macedonia</b>	6,210	9,415	5,615	8,905	-9.6%	-595
<b>Somalia</b>	3,785	3,875	5,530	5,685	46.1%	1,745
<b>Iraq</b>	3,960	4,195	5,345	9,495	35.0%	1,385

Source: Eurostat. The order is based on the 10 countries of origin with the highest figures in 2014.

In 2014, the BAMF received 173,070 first-time asylum applications, 63,490 more than in 2013 (+57.9%). The number of asylum seekers has increased the seventh year in succession. As Table 2 shows, the increase originates primarily from the main countries of origin of Syria (+27,480 first-time asylum applications, +231.9%), Eritrea (+9,582 first-time asylum applications, +265.1%), Albania (+6,620 first-time applications, +531.7%), and Serbia (+5,710 first-time applications, +49.8%), whereby the highest percentage increase came from asylum seekers from Albania, Eritrea, and Syria. Only the number of first-time asylum applications from Macedonian nationals has decreased (-9.6%).

The main countries of origin of asylum seekers in 2014 were Syria, Serbia, Eritrea, Afghanistan, Albania, Kosovo, Bosnia and Herzegovina, the Former Yugoslavian Republic of Macedonia, Somalia, and Iraq (BAMF 2015a).

The overall protection rate increased markedly from 26.4% in 2013 to 41.6% in 2014.<sup>57</sup> Both the absolute number of those receiving protection status and the percentage of asylum seekers eligible for protection rose compared to last year: 33,310 persons were either eligible for asylum under Article 16a GG or recognised as refugees under the Geneva Convention relating to the status of refugees (10,915 in 2013). Subsidiary protection was granted to 5,175 persons (7,005 in 2013), and national deportation bans were established in 2,075 cases (2,205 in 2013).

The countries of origin with the highest protection rate amongst asylum seekers in 2014 were Syria (93.6%), Iraq (87.3%), and Eritrea (85.7%). The majority of those coming from Syria, Iraq, and Afghanistan

<sup>57</sup> The data on granting protection were taken from Eurostat figures in order to ensure EU-wide comparability. The Eurostat statistics included the recognition of eligibility for asylum under Article 16a GG as well as the recognition of refugee status under the Geneva Convention relating to the status of refugees as a form of granting protection. The figures on granting protection entail decisions on first-time applications for asylum and on subsequent applications.

received refugee protection under the Geneva Convention, while subsidiary protection played only a subordinate role. Owing to the civil war in Syria that has been escalating since January 2012, the BAMF has been generally granting refugee protection to asylum seekers from Syria. Of the 25,490 decisions made on nationals from Syria, 20,505 of these were considered eligible for asylum or refugee status in terms of the Geneva Convention relating to the status of refugees, while 3,245 persons were granted subsidiary protection. National deportation bans were established for another 105 persons from Syria.

### ***Asylum law reform/safe countries of origin***

On 6 November 2014, Bosnia and Herzegovina, Serbia, and the Former Yugoslavian Republic of Macedonia have been declared safe countries of origin in accordance with § 29a AsylVfG in addition to Senegal and Ghana (see Section 2.2 and BMI 2014e). This means applications for asylum from nationals of these countries are generally rejected as being manifestly unfounded, as long as the applicant's testimony or the evidence presented by the applicant does not provide grounds to suspect political persecution in the country of origin. If an application for asylum is rejected as manifestly unfounded, the departure deadline is only one week (§ 36 section 1 AsylVfG) instead of the typical 30 days (§ 38 section 1 AsylVfG). If the application for asylum is rejected as manifestly unfounded, the time-limit for bringing an action is one week; it has no suspensory effect. Applications for suspending the deportation until the decision of the administrative court have to be filed within a week (§ 36 section 3 AsylVfG). The rejection as manifestly unfounded also establishes a ban in accordance with § 10 section 3 sentence 2 AufenthG, meaning the applicant cannot be issued any other residence title, unless there is a legal claim for issuance, such as for family reunification, or if a national deportation ban has been established. It is believed that classifying these states as safe countries of origin will reduce the asylum procedure for nationals of these states by 10 minutes on average (Bundesrat 2014d: 3). Beyond the legal revisions, the asylum applications of nationals from these Western Balkan states were given priority at the BAMF over those from nationals of other countries.

### ***Easements for asylum seekers***

The Act to Classify Other States and Safe Countries of Origin and on Facilitating Labour Market Access for

Asylum Seekers and Foreign Nationals with Exceptional Leave to Remain dated 31 October 2014 reduced the waiting period for asylum seekers taking up employment from nine months to three, and for those with exceptional leave to remain from one year to three months. Due to the Second Ordinance Amending the Employment Ordinance dated 6 November 2014, asylum seekers and those with exceptional leave to remain will receive the consent of the BA for employment without the priority review if the foreign national is working in an occupation with a labour shortage or an occupation requiring formal training, or wishes to gain practical experience in order to have foreign professional qualifications recognised, or if the foreign national has resided legally in Germany for at least 15 months (see also Section 4.2).

The restriction on the freedom of movement of asylum seekers and foreign nationals with exceptional leave to remain (residence requirement) has been limited to the first three months of residence by the Act to Improve the Legal Status of Asylum Seekers and Foreign Nationals with Exceptional Leave to Remain dated 23 December 2014, but can be ordered in the event of a criminal conviction, drug offence, or if tangible measures to terminate residence are imminent. A residence requirement can be issued when receiving social benefits.

The Act to Amend the Asylum Seekers' Benefits Act and the Social Court Act dated 10 December 2014 implemented the ruling of the Federal Constitutional Court (BVerfG) of 18 December 2012 to increase the cash benefits under the AsylbLG to an amount that would grant a humane level of subsistence, to adequately calculate these benefit rates on a traceable basis, and to update these regularly. The following items have also been regulated: the waiting period for switching to benefits in accordance with general social welfare has been reduced from 48 months to 15 months. Persons with a residence permit pursuant to § 25 section 4a and 4b AufenthG are no longer eligible for benefits under AsylbLG and will receive social benefits for job seekers and/or social welfare in the future; reductions in benefits due to behaviour will no longer be extended to family members. The core legal changes took effect on 1 March 2015 (transitional rules from the BVerfG on benefit rates still applied at the time of release). The AsylbLG was also amended so that the preference of non-cash benefits over cash benefits

would only apply for the duration of residence at an initial reception centre. After leaving the reception centre, the amount needed for subsistence would be provided in cash, unless circumstances require non-cash benefits or vouchers.

### **Zoning law reform to create new refugee accommodations**

In the face of a growing number of asylum seekers and the ensuing challenge of providing adequate accommodations, the Federal Cabinet has decided to reform zoning laws at the urging of the German Bundesrat to temporarily allow local governments to set up accommodations in commercial zones and undeveloped areas in order to avoid using tents (Deutscher Bundestag 2014q). The German Bundestag passed the Act on Zoning Law Measures to Facilitate the Accommodation of Refugees on 20 November 2014, which took effect on its day of promulgation, 26 November 2014 (BGBl. I 2014 number 53).

### **New BAMF branch office**

The BAMF opened a new branch office in Bramsche (Lower Saxony) in 2014 where a wide range of countries of origin is worked on.

### **BAMF hiring to manage increasing number of asylum seekers**

2014 the BAMF increased its staff by 300 employees (BAMF 2015d). The Federal Budget for 2015 was passed with funding for 350 additional positions at the BAMF in order to manage the increase in the number of asylum seekers (BMI 2014f).

### **Expedited asylum procedure for Syria and Iraq**

The BAMF is expediting the asylum procedure for asylum seekers from Syria, as well as Yazidis, Christians, and Mandaeans from Iraq seeking protection. A questionnaire is used to determine whether or not refugee status can be granted under § 24 section 1 sentence 4 AsylVfG without interviewing the applicant. This is possible if the asylum application is limited to international protection and no other EU Member State is responsible for conducting the asylum procedure (BAMF 2014d).

### **Residence requirement**

Since 29 January 2014 in Schleswig-Holstein and 19 February 2014 in Bremen, asylum seekers are al-

lowed to travel throughout the Federal Territory. Hamburg had already repealed the residence requirement that prohibited asylum seekers from leaving a certain area on 17 December 2013 (Wendel 2014: 9). The Amendment to the Asylum Procedure Act took effect on 1 January 2015 (see above) and completely lifts the residence requirement nationwide after three months of residence. However, a residence requirement can be issued when receiving social benefits.

### **Physical and technological document verification and speech and text analysis at the BAMF**

Physical and technological document verification can be used at the BAMF to verify the authenticity of documents submitted during the asylum procedure. In 2014, physical and technological document verification has been used to reject 770 cases, the majority of which were from Syria, Iraq, and Iran. Documents examined in the asylum procedure can also be so-called travel documents without which an asylum seeker could not enter Germany.

In addition, the BAMF can commission speech and text analysis if there are doubts regarding the claimed country of origin of an asylum seeker. This procedure is used to establish the geographic area, in which an asylum seeker has been socialized. In 2014, the BAMF commissioned 634 expertises, 68 of those for other agencies.

### **Sponsor liability for social benefits even with recognition**

The BVerwG ruled on 13 February 2014 that anyone who acts as a guarantor for an asylum seeker must pay for social benefits during the asylum procedure, even if refugee status is granted later on (BVerwG, 1 C 4.13).

### **Foreign language documents in court proceedings**

As found by the Administrative Court (VG) of Hamburg on 8 January 2014, foreign language documents used in court proceedings are not automatically inadmissible simply because they are not submitted in German. Instead the court has the option of ordering a translation. The document only becomes inadmissible if this translation is not submitted. This practice is regarded unproblematic if courts have translations furnished themselves in the event that the person in question may be unable to pay (VG Hamburg, ruling of 8 January 2014, 17 AE 4953/13).

### ***Revocation of asylum for family members on naturalisation or death of person granted asylum***

If an individual granted asylum is naturalised as a German citizen, it is possible for the asylum status of that individual's family members to be revoked if they themselves do not require asylum. This is possible, since naturalisation revokes the status of being eligible for asylum, and only the family members of someone eligible for asylum may be granted asylum (Hessian Higher Administrative Court [VGH], ruling of 3 April 2014, 6 A 588/13.A). This also applies for recognising refugee status (Bell 2014: 7). If an individual eligible for asylum passes away, that individual's family members also lose family asylum status (Higher Administrative Court [OVG] Saarlouis, ruling of 18 September 2014, 2 A 231/14).

### ***Official clarification and determination of facts***

The BVerwG rules on 13 February 2014 (10 C 6.13) that the authorities and the competent court are required to attempt to clarify the country of origin of an asylum seeker while determining the facts of the case, even if the asylum seeker refuses to cooperate in establishing identity. Only if the country of origin cannot be determined due to the lack of cooperation, this fact can be included when considering the evidence (BAMF 2014c, 4). If there is tangible indication that a foreign national has already been recognised as a refugee by another state or has received international subsidiary protection, the court must also officially determine the extent, even if the cooperation of foreign authorities is necessary (BVerwG, ruling of 18 February 2015, 1 B 2.15.).

### ***Departure restrictions as persecution***

Departure restrictions in Serbia (see BAMF/EMN 2014) have been considered by the Administrative Court in Stuttgart as an act of persecution in terms of the Geneva Convention relating to the status of refugees (VG Stuttgart, ruling of 25 March 2014, A 11 K 5036/13). However, it is the opinion of the BAMF that the provisions of § 350a Serbian Penal Code are not directed at asylum seekers, rather at supporters facilitating or organising departure (Heindel 2014b). The VG Sigmaringen held a similar opinion in its ruling of 23 April 2014 (A 1 K 1148/13). The Higher Administrative Court Baden-Württemberg has since agreed to review whether or not the opinion of the VG Stuttgart is tenable (VGH Baden-Württemberg, e.g., ruling of 2 July 2014, A 6 S 891/14).

The VG Münster considers the constitutionality of classifying Serbia as a safe country of origin problematic and has therefore ordered an extensive hearing of evidence (ruling of 27 November 2014, 4 L 867/14.A). This view is currently not held by any other administrative court (VG Berlin, ruling of 4 December 2014, VG 7 L 596.14 A; VG Schwerin, ruling of 26 January 2015, 5 B 116/15 As).

### ***Refugee protection for impending forced marriage***

The VG Frankfurt am Main rules (7 April 2014, 7 K 4431/13.FA) that female applicants have a claim for recognition as refugees if they are facing a forced marriage in the country of origin and the state is unable to protect them. This is a form of non-state persecution (§ 3 section 1 sentence 1 numbers 1 and § 3c number 1 AsylVfG).

### ***The “Oranienplatz” compromise is legally binding***

The VG Berlin ruled (VG Berlin, 4 November 2014, 24 L 293.14) that the compromise negotiated during the refugee protests at the Oranienplatz square in Berlin between protesters and the Senate of Berlin and signed in March 2014 is legally binding (for background, see Section 2.2). Accordingly, the Federal State of Berlin is responsible for reviewing all avenues for granting residence in Germany in each case and to refrain from distributing these asylum seekers to other Federal States.

### ***Pilot project on integrating asylum seekers into the labour market***

The “Everyone has Potential – Early Labour Market Integration for Asylum Seekers” pilot project was started at the end of 2013 in preparation for the implementation of the policy goals of the coalition agreement, which allows asylum seekers early access to the labour market even during the procedure, and reduces the employment ban from nine months to three. The Amendment on the employment ban for asylum seekers and refugees took effect at the end of 2014. As part of the pilot project, the new general legal conditions are being put into practice at six pilot sites (three additional sites since 2015). Under the “early intervention” principle, asylum seekers should be accepted into placement structures and accordingly have their qualification profile included in specific support measures before the asylum procedure is even over and a residence title is possibly issued. This means the waiting period for access to the labour market can

be used for preparation: analysis of the potential of asylum seekers, recognition of qualifications, etc.

The pilot project is being run by the BA (general management), the BAMF, and by the right of residence networks co-financed through the federal “XENOS - Labour Market Support for Those Eligible for Residence and Refugees” programme funded by the ESF. The pilot project is attached to the BMAS.

The BAMF establishes contact with the asylum seekers and provides an ESF-BAMF language course for each site. Based on a profile of academic and professional qualifications, the BA is responsible for selecting participants and for their integration into the labour market. The requirement for participating in the pilot project is a prognosis of longer-term residence so that employment promotion measures and placement services under SGB III can be included. This prognosis pertains to countries of origin with above-average protection rates and low return figures. Persons in the Dublin procedure (see Chapter 6.1.3), on the other hand, are excluded from the project.

### 6.1.3 Developments referring to the EU

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

Numerous court rulings in 2014 focused on the transfer of asylum seekers to other Member States under the Dublin III Regulation and the issue of the extent to which the deficiencies of that Member State’s asylum system speak against the transfer. In the case of Bulgaria, the VGH Baden-Württemberg found that there are neither systemic deficiencies in the reception conditions nor in the asylum procedure that would invalidate a transfer (VGH Baden-Württemberg, ruling of 10 November 2014, A 11 S 1778/14).

In regard to Italy, every higher administrative court that has addressed the issue has rejected the obligation of invoking the sovereignty clause due to systemic deficiencies in the asylum system or admission conditions (Bavarian VGH, ruling of 28 February 2014, 13a B 13.30295; the Higher Administrative Court (OVG) Lüneburg, ruling of 27 May 2014, 2 LA 308/13; OVG North Rhine-Westphalia, ruling of 6 May 2014, 9 A 233/13.A). According to the Bavarian VGH, this at least applies for non-vulnerable groups or individuals. The VGH has again agreed to hear the appeal for families

with small children (Bavarian VGH, ruling of 16 July 2014, 13a ZB 14.50007).

However, the European Court of Human Rights (ECHR) has set up high hurdles for returning families with small children. In its ruling of 4 November 2014 (number 29217/12, *Tarakhel v. Switzerland*) it decided that prior to transfer the transferring Member State must acquire assurance from the accepting Member State that there are sufficient conditions for admitting the individual in question, and specifically that the family unit will be preserved and accommodations provided that are appropriate for children. In its ruling of 21 October 2014 (number 16643/09), the ECHR heard the case of 32 Afghan nationals, two Sudanese nationals, and one Eritrean national who illegally entered Italy through Greece and were immediately expelled back to Greece without the possibility of appeal. In four of the cases, the ECHR ruled that Art. 13 and Art. 3, European Convention on Human Rights (ECHR), were violated. The immediate return at the Port of Ancona constituted a collective and arbitrary expulsion. Greece was ordered to compensate the claimants.

The Federal Minister of the Interior had already ordered the suspension of transfers to Greece until 12 January 2015 in a decree dated 16 December 2013 and ordered the BAMF to exercise the sovereignty clause and conduct the necessary asylum procedures.

The BVerfG also addressed transfers to other Member States in 2014, ruling that the BAMF and not the local foreigners authority was responsible for reviewing domestic obstacles to deportation when transferring both individuals recognised in other Member States as being eligible for protection and those whose asylum procedure must be conducted in another Member State under the Dublin III Regulation. In that same ruling, the court – as the ECHR did soon after – also found that the BAMF must ensure that the family unit is preserved before transferring families with small children up to the age of three to Italy, and also ensure that these families receive secure accommodations (BVerfG, ruling dated 17 September 2014, 2 BvR 1795/14).

On 6 June 2014, the BVerwG confirmed that asylum seekers may only oppose transfer to another Member State if the asylum procedures and admission con-

ditions there show systemic deficiencies. Whether inhumane or degrading treatment has occurred in individual instances is immaterial, even if the asylum seekers themselves were affected (BVerwG, ruling of 6 June 2014, 10 B 35.14).

Germany transferred 4,772 persons to other states in 2014 under the Dublin Regulation, the majority of whom originated from Poland (1,218), Belgium (844), Italy (782), France (374), and Switzerland (292). Germany made 35,115 transfer requests to other Member States in 2014, while the number of transfer requests from other Member States to Germany was 5,091.

### **Dublin III Regulation and detention pending transfer**

In its rulings of 26 June 2014 and 23 July 2014 (V ZB 31/14), the Federal Court of Justice (Bundesgerichtshof – BGH) found that the detention of third-country nationals for the purpose of transfer under the Dublin Regulation on the current national legal basis (§ 62 section 3 sentence 1 number 5 AufenthG) is unlawful. The Dublin III Regulation (EU) number 604/2013 took effect on 19 July 2013 and has been in force in the EU Member States since 1 January 2014. Article 28 of the Regulation specifies the reasons and deadlines, according to which detention is in general only possible if there is a significant risk of absconding. Article 2 letter n of the Dublin III Regulation defines the term “risk of absconding” as “the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer procedure may abscond”. In Germany, these regulations have been implemented in § 62 section 3 sentence 1 number 5 AufenthG. However, the BGH decided that this standard does not establish objective criteria for suspecting a risk of absconding – unlike § 62 section 3 sentence 1 numbers 2 and 3 AufenthG, based on which detention continues to be possible. After the BGH’s ruling, individuals detained under this standard were officially released by the detention court. On 3 December 2014, the Federal Cabinet then included a definition for “risk of absconding” in terms of the Dublin III Regulation in a bill to redefine the right of residence and termination of residence that will presumably take effect in 2015 (BMI 2014l, cf. also Grote 2014b: 20). The corresponding legal regulation is included in the amended § 62 section 3 sentence 1

number 5 with regard to the added sections 14 and 15 in § 2 AufenthG, that define the tangible indications for a risk of absconding.

### **Invalidity of application on the granting of international protection abroad**

The BVerwG ruled on 17 July 2014 that another recognition procedure in Germany is not permitted if the applicant has already been granted refugee status or subsidiary international protection in terms of the EU Directive 2001/95/EU in another Member State (BVerwG 10 C 7.13). Determining national deportation bans is also not permitted due to the lack of need for legal protection. In its ruling back on 13 February 2014 (10 C 6.13), the BVerwG found that the BAMF may forego reviewing the application and halt the procedure if it can be determined that the applicant has already been granted protection in another Member State (cf. Heindel 2014a).

## **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 headquartered in Malta. It was established under Regulation (EU) number 439/2010 of 19 May 2010. According to the Regulation, the primary duties of EASO are:

- Contributing to the improved implementation of the CEAS, including the external dimension of the CEAS
- Strengthening the practical cooperation on asylum issues between EU Member States
- Supporting the Member States whose asylum and admission systems are heavily burdened either with operational measures and/or by coordinating support

Apart from the assistance in the operational field, the EASO also coordinates the multilateral components of the intra-European relocation programme with which EU countries admit refugees from those Member States facing a particularly large influx of asylum seekers.



## 6.2.2 Developments referring to the EU

In 2014, EASO focused on the following tasks under its annual work programme:

- Supporting the Member States in the implementation of the new EU asylum package with training, practical cooperation, country of origin (COI) and quality reports
- Continuing to develop the EASO early warning and prevention system
- Providing operational support as part of Phase II of the Operating Plan for Greece and providing special support to Italy.

In general, EASO also addressed the topics “External Dimension of the Common European Asylum System (CEAS)”, the continuation of the Asylum Support Team (AST) support services for Bulgaria, and AST support services for Cyprus, in addition to these focal points in 2014. Support Services for Italy and Greece continued.

Germany provides staff for various AST profiles. As part of the support measures conducted in 2014, the BAMF sent staff on AST missions to Italy and Bulgaria.

BAMF personnel were also involved in activities for the European Training System as part of EASO, acting across three missions as trainers for international colleagues and working to develop two new training modules. Moreover, the BAMF personnel participated in training themselves.

Conversely, training specifically for new BAMF employees began in 2014 with the help of the “Inclusion” and “Evidence Assessment” ETC core modules translated into German; the translation of the “Interview Technics” module is still pending.

In addition, two BAMF employees have been assigned to EASO as national experts. One of these employees is responsible for coordinating the support plans for Greece and Cyprus, while the other is tasked with the administration of information on countries of origin.

## 6.3 Cooperation with third countries, including resettlement

### 6.3.1 Background and general context

On 9 December 2011, the IMK advocated that Germany participates permanently in the admission and resettlement of refugees from third countries in particular need of protection in the interest of continuing to develop and improve refugee protection (resettlement). Refugees are typically resettled in cooperation with the UNHCR, the IOM, the appropriate national agencies in the initial countries of refuge, and the local German diplomatic mission, all with the financial participation of the EU Commission. The BMI issues the relevant admission ordinances in cooperation with the Federal States.

### 6.3.2 National developments

#### **Resettlement**

As part of its participation in the resettlement process, Germany admitted 207 refugees from Syria (third-country nationals) and 114 refugees from Indonesia in 2014. These were Afghan, Ethiopian, Chinese, Iraqi, Palestinian, Somali, Sudanese, and Sri Lankan refugees, some of whom came from refugee camps. Back in December 2013, the IMK advocated continued German participation in the resettlement programme and to broaden its scope. Starting in 2015, the programme will admit 500 persons per year; the programme itself will continue indefinitely.

#### **Expansion of humanitarian admission programme for refugees from Syria**

At its meeting in the spring of 2014, the IMK decided to add another 10,000 places to the humanitarian admission programme for refugees from Syria started in May 2013 and expanded in December 2013, bringing the total number of places up to 20,000. The refugees will receive a residence permit under § 23 section 2 AufenthaltG initially limited to two years. Around 17,000 refugees had received their admission notice by the end of 2014.



In addition to this programme, every Federal State with the exception of Bavaria has established its own admission programme for Syrian refugees under which Syrians already living in Germany can retrieve relatives. However, this programme requires that Syrians already living in Germany undertake to bear the living costs for their relatives themselves.<sup>58</sup> In June on occasion of the IMK, the ministers of the interior of the Federal States and the Federal Minister of the Interior decided to simplify the process by excluding medical costs from the affidavit and instead covering these by the state budget (BMI 2014b).

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<sup>58</sup> Financing can also be provided by third parties who are not family members.

# 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 and/or better living conditions. Some lose their family members, others are separated from their parents while fleeing, and still others are sent to Europe by their family.

The various measures and procedures under immigration, asylum, and social law that are used in conjunction with the entry, reception, and possible return of UMs come with special requirements due to national and international regulations on protecting children and adolescents. Once taken into care, a “clearing procedure” plays an important role, and is used to determine the individual need for youth welfare measures and examines whether or not the unaccompanied person that was taken into care has relatives in Germany or another EU Member State, and whether or not an application for asylum would be worthwhile. So far, the clearing procedure has been handled differently by each Federal State where available. The asylum procedure, on the other hand, follows uniform criteria. At the BAMF, select case officers are trained as special case officers for working with UMs to ensure that the UMs’ hearings are less formal than those for adults. They are also obliged to be particularly sensitive in addressing the needs of minors (Müller 2014).

In Germany, the term “unaccompanied minor” refers to persons under the age of 18 who have been separated from both parents and who are not attended by another adult in charge of the care of the minor. However, unaccompanied minors, who apply for asylum or temporary protection against deportation at

a foreigners authority, are currently considered to have legal and procedural capacity not at 18, but as early as 16 under § 12 section 1 AsylVfG, and/or § 80 section 1 AufenthG.<sup>59</sup> This means that 16- and 17-year-olds can currently take legally effective actions in procedural matters pertaining to asylum and immigration without a legal guardian (Müller 2014). It is predicted that the age of legal capacity in immigration and asylum procedures will be raised to 18 during this legislative period (CDU/CSU/SPD 2013: 77).

### 7.1.2 National developments

#### *Trend of asylum applications from unaccompanied minors*

After the number of applications submitted by UMs declined from 2002 (873 applications) to 2007 (180), it has been continually rising since 2008 (324). In 2014, the number of UMs applying for asylum in Germany totalled 4,399 (cf. Figure 4). This is an increase of 77.0% over the previous year (2,485 in 2013; see also Figure 4). The five main countries of origin in 2014 were Afghanistan (1,052 UMs, +52.2% over previous year), Eritrea (922 UMs, +568.1%), Syria (657 UMs, +128.9%), and Somalia (568 UMs, +60.5%).<sup>60</sup>

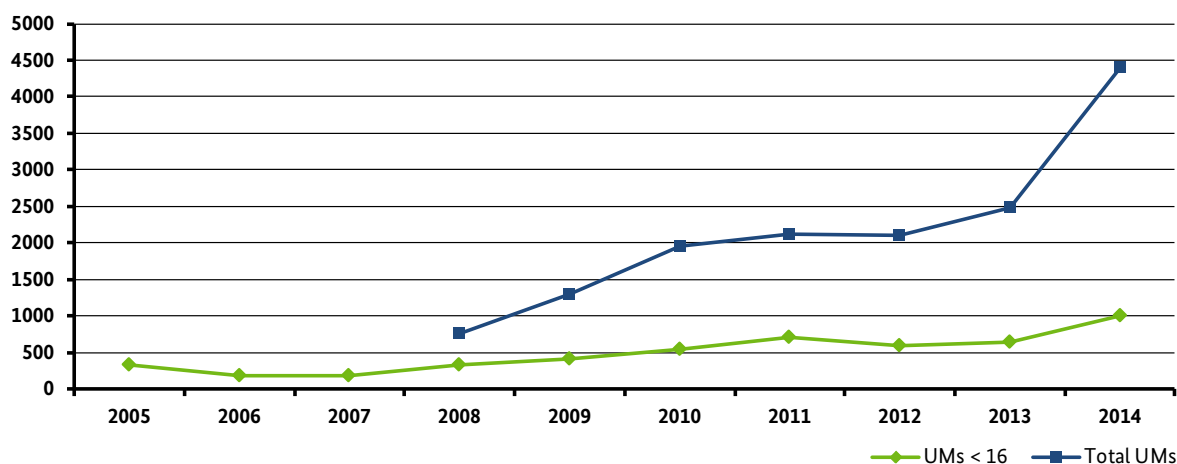
59 “Under this Act, foreign nationals of 16 years of age are capable of taking procedural actions, provided they are not considered legally incompetent under the German Civil Code or, having reached the age of maturity, would require assistance or be subject to the reservation of consent in this matter” (§ 12 section 1 AsylVfG).

60 Source: BAMF.

The overall protection rate for UMs (cf. Figure 5), i.e. the number of persons granted asylum, international protection (refugee and subsidiary protection), and determination of deportation bans in relation to the total number of decisions made in the given time period,

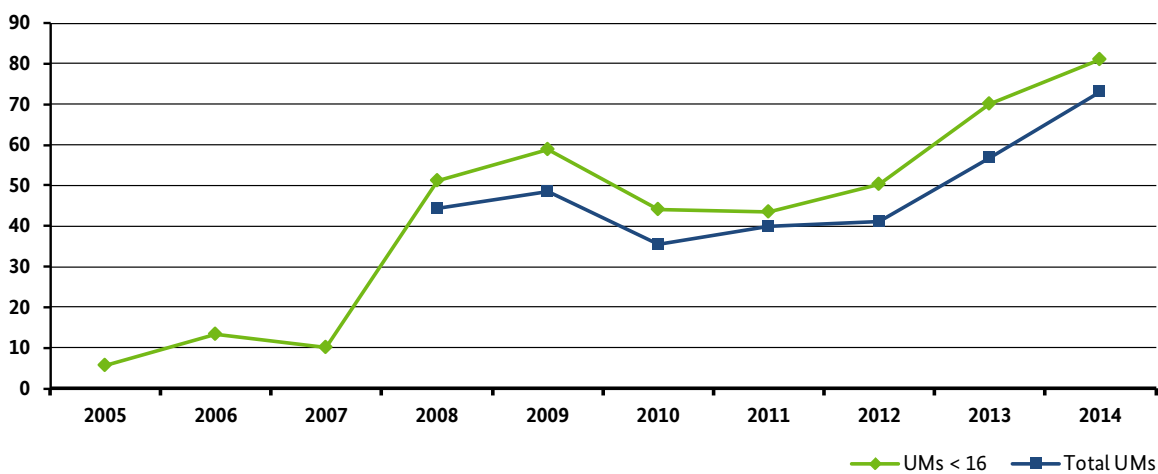
increased in 2014 to 73.1%. This high protection rate is primarily due to the large number of UMs coming from countries of origin whose nationals are generally in greater need of protection (e.g., AFG, SYR).

Figure 4: Unaccompanied minors, first-time applicants in persons



Source: BAMF (until the end of 2007, statistics for 16- and 17-year-old UMs were not recorded separately).

Figure 5: Overall protection rate in percent



Source: BAMF (until the end of 2007, statistics for 16- and 17-year-old UMs were not recorded separately).

### ***Push for nationwide allocation of unaccompanied minors***

Due to the increasing number of UMs coming to Germany, the Federal State of Bavaria proposed a motion in the German Bundesrat in September 2014 to allocate UMs across the Federal States in the percentages under the Königstein key (Bundesrat 2014a). Professional associations and non-governmental organisations criticised this plan, since it would contest the primacy of the well-being of the UMs (B-UMF 2014).<sup>61</sup>

## **7.2 Other vulnerable groups**

### **7.2.1 Background and general context**

Vulnerable groups with special needs of protection include minors, unaccompanied minors, ageing and handicapped people, pregnant women, single parents of minors, victims of human trafficking, those with serious physical impairments, those with mental disorders and those who have suffered torture, rape or other serious forms of psychological, physical, or sexual assault, such as victims of female genital mutilation.

Asylum seekers regularly report health problems during the asylum procedure. In these instances and if international protection has not been granted already, the BAMF checks whether return would pose a significant health risk, making a national deportation ban an issue for consideration.

BAMF employees themselves are not trained to diagnose illness or impairment. However, they are trained in how to deal with groups with special needs of protection in order to be able to recognise tangible indications of the presence of illness or impairment. Special case officers are also available for groups with special needs of protection. If the question of whether or not the applicant is fit for the asylum procedure or the decision on the application itself depends on whether or not the applicant has an illness or impairment, it may be necessary to commission a medical assessment.

### **7.2.2 National developments**

There are no relevant developments in 2014 in this policy area to report.

<sup>61</sup> Based on a legislative initiative in Hamburg and two decisions by the Ministerial Conference of the Federal States that took place on 24 February 2015, the BMFSFJ has proposed the basic points for an act on the nationwide allocation of UMs, starting with state-wide allocation and then, if necessary, nationwide allocation. This is designed primarily to relieve heavily burdened border regions and large cities. The new act is scheduled to take effect in the autumn of 2015 (cf. IGfH 2015: 4).

# 8 Actions against human trafficking

## 8.1 Background and general context

The German Penal Code (StGB) differentiates between the following human trafficking offences: human trafficking for sexual exploitation (§ 232 StGB), human trafficking for labour exploitation (§ 233 StGB), and supporting human trafficking (§ 233a StGB).

Under § 25 section 4a AufenthaltG a foreign national who has been the victim of human trafficking for sexual exploitation or labour exploitation, or of supporting human trafficking shall be granted a temporary residence title, even if there is an enforceable obligation to leave.

This requires that the temporary presence of the foreign national is considered appropriate for pursuing criminal proceedings, the foreign national severs all ties with those accused of having committed the crime, and declares a willingness to testify as a witness in the criminal proceedings due to the crime. This also applies to foreign nationals with an enforceable obligation to leave. This regulation implements the “EU Victim Protection Directive” of 29 April 2004 and serves to combat organised human trafficking. The period of validity of the residence permit issued for the first time is one year (§ 25 section 4a sentence 1 AufenthaltG). In addition, § 59 section 7 AufenthaltG grants victims of human trafficking a period of recovery and reflection during which no residence-related actions are taken, regardless of whether or not they actually come forward later on as a witness before the court (Hoffmann 2013).

In order to better coordinate the prevention of trafficking in women, Germany established a Federal Government and Federal States working group on trafficking in women in 1997 and broadened it into a Federal Government and Federal States working group on human trafficking in November 2012. The tasks of the working groups include “a continuous exchange of

information on the variegated activities in the Federal States as well as in national and international bodies, analysing the specific issues in combating human trafficking and the preparation of recommendations and if necessary carrying out joint activities to combat human trafficking”.<sup>62</sup>

In 2007, the BMFSFJ worked with “(t)he German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration” (KOK) funded by the Federal Government to develop nationally coordinated further education programmes for specialised consultation centres for victims of human trafficking for sexual exploitation. The programmes are directed at police officers, specialised consultation centres, the judiciary, customs, the Financial Control Unit against Illicit Employment (FSK), correctional facilities, and other authorities (BMFSFJ 2007).

The Victims Compensation Act has been in force in Germany since 1976 and was amended in 1993 and then most recently in 2009. Under this Act, victims of violence receive the same benefits as victims of war independently of any other welfare benefits. The BMAS published a brochure titled “Assistance for Victims of Violence”<sup>63</sup> as a handout for police officers and special victim support services so that, for instance, victims of human trafficking can quickly and clearly be informed about any compensation that is available.

The Federal Office for Families and Civil Responsibilities has been operating the “Violence against Women” helpline since 6 March 2013. Victims can call the number 08000 116 016 to receive free and, if desired,

<sup>62</sup> Cf. <http://www.bmfsfj.de/BMFSFJ/gleichstellung,-did=73008.html> (25 February 2014).

<sup>63</sup> Cf. [http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a719-hilfe-fuer-opfer-von-gewalttat-en-256.pdf?\\_\\_blob=publicationFile](http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a719-hilfe-fuer-opfer-von-gewalttat-en-256.pdf?__blob=publicationFile) (25 February 2014).

anonymous advice on all forms of violence against women, including trafficking in women, violence against prostitutes, and special contexts of violence, such as against female migrants. The helpline's 80 female specialists primarily refer victims to local consultation centres and shelters. The helpline is multilingual (interpreters for 15 languages), and a sign language service for the deaf and hearing impaired (BMFSFJ 2013b: 1).

## 8.2 National developments

### **Statistics**

Since 1999, the Federal Criminal Police Office (BKA) has been publishing the "Federal Situation Report" on human trafficking, which contains a condensed outline of the latest situation and development of human trafficking for sexual and human trafficking for labour exploitation.

In the 2013 reporting year, 425 investigations were closed, registering a total of 625 suspects of human trafficking for sexual exploitation. Compared to the previous year, this is a reduction of 13% in investigations and 19% in suspects. The number of officially reported victims of human trafficking for sexual exploitation also fell by around 11% compared to 2012, in addition to the 5% drop in the previous year. A total of 542 persons were identified as victims of sexual exploitation in 2013, most of whom were women (96%). Two-thirds of the victims had an Eastern European migration background, whereby the majority of non-Germans originated from Bulgaria (26.4%), Romania (23.1%), Hungary (6.1%), Poland (3.5%), and Nigeria (2.8%). Among the victims were 70 minors, whereby nine were under the age of 14. Seven of these nine victims under 14 were reported in Berlin. According to the BKA, this can be attributed to the fact "that Berlin has set up a special bureau for combatting this largely unreported offence" (BKA 2014).

In the area of human trafficking for labour exploitation (§ 233 StGB), 2012 saw 53 investigations closed, 42 more than the previous year (11). In 2013, a total of 23 suspects were investigated, 16 more than in the previous year (7). A total of 61 victims of human trafficking for labour exploitation were reported in 2013, 47 more than in the previous year (14). Most of these came from Romania. The BKA attributed the increase

in victims and suspects specifically to a multi-defendant case in Hessen: "It involved two defendants who ran a leaflet distributing business that almost exclusively used Afghan and Pakistani workers residing illegally in the Federal Territory to sort leaflets without having work permits" and who "forced them to work and live in degrading conditions under the threat of violence" (BKA 2014: 7).

### **Asylum procedure**

The BAMF has been using specially trained case officers for victims of human trafficking since 2014.

### **Issuance of residence titles**

On 3 December 2014, the Federal Government submitted a bill to redefine the right of residence and the termination of residence that also contained amendments to immigration law and easements for victims of human trafficking. § 25 section 4a sentence 1 AufenthaltG is supposed to be amended so that victims of human trafficking who wish to testify in court no longer simply "can", but "will" receive a residence permit. Amending this "can" to "will" also pertains to the extension of residence after criminal proceedings set forth in § 25 section 4a sentence 3 AufenthaltG (KOK 2014). The German Bundestag has yet to pass this bill.

### **Family reunification**

The revision of the right of residence and the termination of residence also includes an easement concerning family reunification for victims of human trafficking: "The inclusion of the reference to § 25 section 4a sentence 1 henceforth permits family reunification for victims of human trafficking during criminal proceedings under the requirements of § 29 section 3 sentence 1 (reunification only on humanitarian or higher grounds). In addition to improving protection for victims, it is designed to increase the willingness of victims to cooperate in criminal proceedings: not only will victims be less likely to be coerced by threats against family in the country of origin, the presence of immediate family will have a stabilising effect on the recovery of victims. Victims of human trafficking with a residence permit in accordance with § 25 section 4a sentence 3 i.e., once criminal proceedings have been concluded, are not subject to the additional requirements set forth in § 29 section 3. In these instances, family reunification is governed under the general rules in §§ 27 ff." (BMI 2014j: 30).

**Integration**

The bill to redefine the right of residence and the termination of residence also brought changes in regard to the integration of victims of human trafficking. Once it takes effect, those whose residence in accordance with § 25 section 4a sentence 3 AufenthG has been extended, are entitled to attend an integration course (§ 44 section 1 sentence 1 number 1c AufenthG-E).

**8.3 International developments**

Since November 2014, the BAMF project “Improvement of Structures in Asylum Procedures in Order to Combat Trafficking in Human Beings” has been addressed in the Roma/Lyons Group of the G7 states.<sup>64</sup> In this project, the current approaches by the G7 states dealing with victims of human trafficking in the asylum procedure are collected and, to the extent possible, compiled into a best practice approach. The final report is scheduled to be released in November 2015.

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<sup>64</sup> The G7 states include Germany, France, Italy, Japan, Canada, the United Kingdom, and the United States of America.

# 9 Migration and development

## 9.1 Background and general context

While the interaction between migration and development has long been a topic of scientific debate, discussions in Germany on strengthening the ties between migration and development policy have only been gaining greater traction since 2006/2007. The frames of reference are the Millennium Development Goals of the United Nations (UN), as well as the Global Approach to Migration and Mobility (GAMM) of the EU. In recent years, Germany's approach to migration and development policy has been broadened considerably in terms of topics. While topics such as "Cooperating with the Diaspora" or "Facilitating Money Transfers" were the focus at the beginning of the millennium, topics such as "Migration Policy Consultation for Partner States", "Promoting Private Industry through Migration", "Development-oriented Labour Mobility", "Climate Change and Migration", and "Land Development and Migration" have since received increased attention (Deutscher Bundestag 2014m: 3).

Nevertheless, very different goals and interests can be found in the areas of migration and development policy that cannot always be reconciled and thus require special coordination in order to resolve the conflicts between individual areas of policy and to contribute to greater coherence. For instance, major challenges come from the different objectives of two policy areas: while migration policy focuses predominantly on managing migration flows and thereby utilises targeted recruitment, development policy focuses on promoting structures in poorer countries (Baraulina et al. 2012).

The goal of improving the integration of both of these policy areas also increases the need for coordination amongst those involved. At the Federal Government level, these are the BMI and the Federal Ministry for Economic Cooperation and Development (BMZ), which is responsible for development policy. The implementing bodies and authorities from the two ministries play a major role at the operational level. For

the BMZ, these are the Gesellschaft für Internationale Zusammenarbeit (GIZ) and the Centre for International Migration and Development (CIM). The BAMF is the key player in implementing migration policy.

The "Returning Specialists" development programme and the "Migration and Development" sector project, which also includes the "Promoting Migrant Organisation Commitment to Development Policy" project, are primarily relevant to migration policy. Within the context of the "Returning Specialists" programme, the CIM promotes the return of (academically) qualified returnees to developing countries with financial support, placement offers, and a network of local consultants. 2013 saw 439 returning specialists receive financial support or consultation and services (GIZ 2014: 2). The "Promoting Migrant Organisation Commitment to Development Policy" project has allowed migrant organisations in Germany to apply for funding for development policy projects in their countries of origin since 2011. A total of 43 projects received funding by May 2014 – specifically for countries in Sub-Saharan Africa (Deutscher Bundestag 2014m: 4-5).

These are all in addition to the REAG/GARP programme, a humanitarian aid programme that promotes the voluntary return/onward migration of asylum seekers, offers start-up assistance, and helps control migration flows (see Chapter 5).

## 9.2 National developments

### *Negotiations on the Millennium Development Goals of the United Nations*

The eight Millennium Development Goals issued by the UN were supposed to be achieved by 2015. In ongoing negotiations for a "Post-2015 Agenda for Sustainable Development", the Federal Government issued a position paper on 3 December 2014 committing itself to the Security Council resolution 1325 on women, peace, and security, and any follow-up resolutions by the United Nations. Due to a growing number



of fragile states and regional crises, and the resulting flows of refugees, the Federal Government also continues to advocate combatting the causes of flight, and reintegrating refugees into their countries of origin. On the topic of “Peace and Security”, it also wishes to focus on international cooperation in the fight against organised crime, for instance in the area of combatting the smuggling and trafficking of human beings (Bundesregierung 2014c: 12).

#### **Greater inclusion of aspects of migration policy in development cooperation**

According to the Federal Government and the coalition parties, aspects of migration policy are supposed to be increasingly anchored in development cooperation (CDU/CSU/SPD 2013: 109; Deutscher Bundestag 2014n). In order to ensure better coordination between departments engaged in managing migration, the “International Migration” working group of Secretaries of State, chaired by the AA and the BMI, was assembled on 15 October 2014 with a representative from the BMZ and the Commissioner of the Federal Government for Migration, Refugees and Integration. A sub-working group of this forum is dedicated to the topic “Migration and Development” (Deutscher Bundestag 2014n).

#### **Support for internally displaced persons**

Since November 2014, the GIZ has been running a project in Iraq to improve the living conditions of internally displaced persons and the local population in the Dohuk province. The project is scheduled to run until the end of June 2015 and has €27 million in funding.<sup>65</sup> Germany – also via the GIZ – is also involved in building housing for internally displaced persons in Ukraine in order to provide them with adequate shelter for the winter.<sup>66</sup>

### **9.3 Developments referring to the EU**

#### **Mobility partnerships**

Mobility partnerships between the European Union and third countries are part of the EU’s migration policy, whose guidelines were set forth in the GAMM in 2005. The GAMM focuses on improving the reintegration of migrants into their countries of origin “in order to effectively promote the development of the countries of origin” (Hitz 2014: 2). This is intended to effectively integrate migration and development policy. In Morocco, for example, qualified returnees are receiving support during the process of becoming self-employed. At the same time, these agreements are also intended to pave the way for easing visa requirements. Mobility partnerships have been concluded so far with Cape Verde (2008), Moldavia (2008), Georgia (2009), Armenia (2011), Azerbaijan (2013), and Morocco (2013). In 2014, agreements were signed with Tunisia (March) and Jordan (October). Germany is participating in all mobility partnerships except those with Cape Verde and Azerbaijan.

65 Cf. <https://www.giz.de/projektdaten/index.action#?region=2&countries=IQ,JO,SY,LB> (4 March 2015).

66 Cf. <http://www.giz.de/de/mediathek/28837.html> (4 March 2015).

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# Abbreviations

AA	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 – sub-group of IMK (Arbeitsgruppe Rückführung [Unterarbeitsgruppe der IMK])
ASMK	Conference of Ministers and/or Senators for Labour and Social Affairs of the German Federal States (Konferenz der Ministerinnen und Minister bzw. Senatorinnen und Senatoren für Arbeit und Soziales der Länder)
AsylbLG	Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz)
AsylVfG	Asylum Procedure Act (Asylverfahrensgesetz)
AsylZBV	Ordinance on Determining Asylum Jurisdiction (Asylzuständigkeitsbestimmungsverordnung)
AST	Asylum Support Teams (Asyl-Unterstützungsteam)
AufenthG	Residence Act – Law on the residence, the gainful employment and the integration of foreigners in the German Federal Territory (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet [Aufenthaltsgesetz])
AufenthV	Residence Ordinance (Aufenthaltsverordnung)
AVwV	Administrative Regulation to the Residence Act (Allgemeine Verwaltungsvorschrift)
AZR	Central Register of Foreign Nationals (Ausländerzentralregister)
AZRG	Central Register of Foreign Nationals Act (Gesetz über das Ausländerzentralregister)
BA	Federal Employment Agency (Bundesagentur für Arbeit)
BÄK	German Medical Association (Bundesärztekammer)
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 Police Act (Bundespolizeigesetz)
BVA	Federal Office of Administration (Bundesverwaltungsamt)

BQFG	Recognition Act (Berufsqualifikationsfeststellungsgesetz)
BVerwG	Federal Administrative Court (Bundesverwaltungsgericht)
BVFG	Federal Expellee and Refugee Act – Law on the Affairs of the Expellees and Refugees (Gesetz über die Angelegenheiten der Vertriebenen und Flüchtlinge [Bundesvertriebenen- und Flüchtlingsgesetz])
BVFGÄndG	Act to Amend the Federal Expellee and Refugee Act (Änderungsgesetz zum Bundesvertriebenen- und Flüchtlingsgesetz)
COI	Country of Origin
CDU	Christian Democratic Union (German Political Party)
CEAS	Common European Asylum System
CEFR	Common European Framework of Reference for Languages
COM	European Commission
CSU	Christian Social Union (German Political Party)
DAV	Data Reconciliation Procedure (Datenabgleichverfahren)
DIK	German Islam Conference (Deutsche Islam Konferenz)
DPA	German Press Agency (Deutsche Presse-Agentur)
DVAsyl	Asylum Procedure Implementation Ordinance (Asyldurchführungsverordnung)
EAC	European Asylum Curriculum
EASO	European Asylum Support Office
EFF	European Refugee Fund (Europäischer Flüchtlingsfonds)
EC	European Community
EinbTestV	Ordinance on Naturalisation Tests (Einbürgerungstestverordnung)
EMN	European Migration Network
ESF	European Social Fund
EU	European Union
ECJ	European Court of Justice
Eurostat	Statistical Office of the European Communities
FDP	Free Democratic Party
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GAMM	Global Approach to Migration and Mobility/Global Approach to Migration Topics
GASIM	Joint Analysis and Strategy Centre for Illegal Immigration
GG	Basic Law (Grundgesetz für die Bundesrepublik Deutschland)
GMBL	Joint Ministerial Gazette (Gemeinsamens Ministerialblatt)
IMK	Permanent Conference of Ministers and Senators for the Interior of the Federal States (Ständige Konferenz der Innenminister und -senatoren der Länder)
IntMK	Conference of Ministers and Senators responsible for Integration in the Federal States (Konferenz der für Integration zuständigen Ministerinnen und Minister, Senatorinnen und Senatoren der Länder)
IntV	Integration Course Ordinance (Integrationskursverordnung)
IOM	International Organisation for Migration
KOK	Nationwide Activist Coordination Group Combating Trafficking in Women and Violence Against Women in the Migration Process (Bundesweiter Koordinationskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess)
MBE	Migration Consultation for Adult Immigrants (Migrationsberatung für erwachsene Zuwanderer)
NAP-I	National Action Plan on Integration
NIP	National Integration Plan

OFII	L'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/ Government Assisted Repatriation Programme
SIS	Schengen Information System
SGB	Social Code (Sozialgesetzbuch)
SPD	Social Democratic Party (Sozialdemokratische Partei Deutschlands – German Political Party)
SPE	Stability Pact for South Eastern Europe
StAG	Nationality Act (Staatsangehörigkeitsgesetz)
StBA	Federal Statistical Office (Statistisches Bundesamt)
StGB	Penal Code (Strafgesetzbuch)
UM	Unaccompanied minor (Unbegleitete Minderjährige)
UMF	Unaccompanied minor refugee (Unbegleitete minderjährige Flüchtlinge)
UNHCR	United Nations High Commissioner for Refugees
URA	Temporary return and reintegration project with the Republic of Kosovo
VG	Administrative Court (Verwaltungsgericht)
VIS	Visa Information System
ZAV	International Placement Services of the Federal Employment Agency (Zentrale Auslands- und Fachvermittlung der Bundesagentur für Arbeit)
ZuwG	Immigration Act – The 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)

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