

# Practical Measures for Reducing Irregular Migration

Research Study in the Framework of the  
European Migration Network (EMN)

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## Executive Summary

Preventing and combating irregular migration has emerged as one of the major issues in European domestic policy since the end of the nineteen-nineties and particularly after the creation and expansion of the area of freedom, security and justice. In 2011 the debate on the management of irregular migration within the EU received new impetus from the migration flows triggered by the Arab Spring.

Against the background of the major significance of preventing and curbing irregular migration at Community level this EMN study seeks to provide an overview of the policy approaches, legislation, mechanisms and practical action the EU Member States have adopted to cope with the phenomenon of irregular migration. The study shall allow drawing conclusions on the effectiveness and reasonableness of the different measures and approaches used in the Member States. The conclusions may in turn serve as input for a future EU policy and a source for best practice models. The present study is the German contribution to this comparative EMN project. It provides a survey of the information and data currently available and at the same time points out several open issues which would merit further research.

### **Migration control policy**

Germany avails itself of a range of instruments to deal with the phenomenon of irregular migration. Foremost among them are the state authority's restrictive controls arising from the basic requirements of sovereignty, security and integrity of the state and the need to warrant the consistency of the legal order. Some initiatives are, however, not merely restrictive, but rather proactive to either prevent irregular migration altogether or to minimise the problems resulting from a continued irregular stay for the foreign nationals affected and for society at large.

The main elements of the German system of migration control are external controls (e.g. visa procedures and external border controls) and a network of internal control mechanisms in the form of residence and work permits. This set of controls is complemented by others in the form of data exchange, cooperation among authorities and mandatory notices by public bodies.

### **Europeanisation and international cooperation**

Operational practice has shown that the German border security system is relatively sophisticated. Thus it enables Germany to make useful contributions to European or international co-operative efforts. Since Germany does not have any land borders with third countries due to its geographic location the focus is on controls in international airports and sea ports.

The study generally confirms the trend towards “communitarisation” of the efforts to combat and manage irregular migration, a trend that is also prevalent in other fields of migration management. A number of legal acts of the European Union have been implemented which, both indirectly and directly, impact the legal and administrative-organisational system for the management of irregular migrants in Germany. German authorities are also extensively involved in European co-operations. Chief among these are the joint activities and operations of the EU border protection agency FRONTEX, participation in the EU Re-admission Agreements and mobility partnerships as well as in the network of border police liaison officers.

Furthermore Germany maintains direct bilateral contacts to third countries in the form of projects that are ultimately aiming at improving the return options for the nationals of these countries who are not (or not any more) entitled to stay. The analysis reveals that international and European cooperation efforts in the field of irregular migration have so far concentrated on the regulatory rather than on the social aspects.

### **Response to irregular residence in Germany**

In recent years increasing efforts have been made to alleviate the humanitarian problems associated with the illegal residence status within the existing legal order – such as making full use of any margin of discretion in individual cases to terminate the stay in a “regular” way when the legal situation offers no other option or to issue a residence title based on the options allowed under residence law. Some aspects of the legal or administrative practices have been amended to give irregular migrants staying in Germany more opportunities to exercise their fundamental rights such as accessing education and health care and having their wages paid out.

Legislators also made progress in curbing the phenomenon of repeated suspensions of removal and associated renewals of a temporary leave to remain (“chain toleration”; in German: “Kettenduldung”). This is shown by the significantly lower number of third-country nationals tolerated to stay in Germany on the basis of a “Duldung” (suspension of removal). For one, more residence permits (some 'on probation') have been issued in an effort to clear a backlog of cases and secondly, removal activities and return projects have been expanded.

### **Estimates on the size and composition of the irregular migrant population**

An estimate made for the purposes of the present study puts the figure of irregular migrants for 2010 at 100,000 to 400,000. The group of irregular migrants is very heterogeneous. Compared to the average migrant population younger age groups are overrepresented in this group. The data available to the police indicate that most of the clandestine irregular population is aged between 21 and 40 years, with marked differences for men and women. While men tend to be younger, an equal number of women tend to belong to each of the different age groups. In total about 36 percent of this group are women. The dominant nationalities among the irregular migrants can be categorised in three groups: Nationals from countries that have traditionally had migration relations to Germany, nationals of the world's most populous countries and nationals of countries that generate the world's strongest flows of refugees.

# Table of contents

	Executive Summary	5
	Abbreviations	10
	List of tables and charts	12
<b>1</b>	<b>Introduction</b>	<b>14</b>
	1.1 Objectives of the study	17
	1.2 Definitions	18
	1.3 Methodology	22
<b>2</b>	<b>Policy and legal framework in relation to irregular migration</b>	<b>25</b>
	2.1 National policy and legislation	25
	2.1.1 Migration policy approaches to managing irregularity	25
	2.1.2 The Residence Act: legislation with direct effect	26
	2.1.3 Legislation and policy areas with indirect effect	27
	2.2 Stakeholders and institutional framework	29
	2.2.1 Policy-makers, government and public authorities	30
	2.2.2 Stakeholders, informal actors, and other organisations	33
	2.2.3 Cooperation and interaction	34
<b>3</b>	<b>Measures and practices to reduce irregular migration</b>	<b>37</b>
	3.1 Proactive measures	37
	3.1.1 Information campaigns	37
	3.1.2 Improving the situation in the countries of origin and the options for legal migration	37
	3.1.3 The visa process and counselling of airlines	39
	3.1.4 Carrier sanctions	41
	3.1.5 Border police liaison officers	41
	3.2 Preventing illegal entry	42
	3.2.1 Border management	42
	3.2.2 Document inspection, analysis and risk assessment	43
	3.3 Detecting and controlling illegal residences	45
	3.3.1 Activities of the German Federal Police	46
	3.3.2 Activities of the police forces of the Laender	46
	3.3.3 Activities of the Federal Criminal Police Office	46
	3.3.4 Law enforcement activities by the customs authorities	47
	3.3.5 Activities and cooperation projects by other public authorities	47

<b>3.4</b>	<b>Pathways out of irregularity</b>	<b>50</b>
3.4.1	Return and removal	50
3.4.2	Temporary suspension of removal	52
3.4.3	Issuing a residence title	53
<b>4</b>	<b>Trans-national cooperation in preventing and reducing irregular migration</b>	<b>57</b>
<b>4.1</b>	<b>Cooperation Agreements</b>	<b>57</b>
<b>4.2</b>	<b>Other projects and forms of cooperation with countries</b>	<b>59</b>
<b>4.3</b>	<b>Cooperation with the EU or with international organisations</b>	<b>59</b>
<b>5</b>	<b>The Impact of EU Legislation and EU Policies on German Policy</b>	<b>63</b>
<b>5.1</b>	<b>Transposition of EU Law into national law</b>	<b>63</b>
<b>5.2</b>	<b>EU Agreements with Third Countries</b>	<b>66</b>
<b>5.3</b>	<b>European Return Fund</b>	<b>67</b>
<b>6</b>	<b>Data on the irregular migrant population: Statistics and current estimates</b>	<b>70</b>
<b>6.1</b>	<b>Eurostat data</b>	<b>71</b>
6.1.1	Third-country nationals found to be illegally present	71
6.1.2	Refusal of entry	72
6.1.3	Departure orders issued to third-country nationals	74
6.1.4	Third-country nationals who left Germany after receiving a departure order	75
6.1.5	Rejected asylum applications	76
6.1.6	Revocation and withdrawal of refugee status	78
<b>6.2</b>	<b>National data and estimates</b>	<b>79</b>
6.2.1	Estimates of the size and the composition of the irregular population 2005-2010	79
6.2.1.1	Demographic composition and nationalities	79
6.2.1.2	Estimated size of irregular population groups	81
6.2.2	Assumptions on inflows and outflows of irregular population groups	86
6.2.3	Employment of irregular migrants without work permits	86
6.2.4	Further national statistics in the context of irregular migration	87
6.2.5	Costs of actions to combat irregular migration	91

<b>7</b>	<b>Conclusions</b>	<b>94</b>
	Annex I: Germany's participation in FRONTEX operations in 2011	97
	Annex II: Survey of agreements with international police forces	98
	Annex III: Rejected asylum applications 2005 to 2010	99
	Sources and literature	100

# Abbreviations

ABG	Automated and Biometrics-Supported Border Controls
AFIS	Automatic Fingerprint Identification System
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BMI	Federal Ministry of the Interior (Bundesministerium des Innern)
BPOLG	Act on the German Federal Police (Gesetz über die Bundespolizei)
BT-Drs.	Document/Printed Matter of the Federal Parliament (Bundestags-Drucksache)
CCI	Common Consular Instructions
CIREFI	Center for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration
COM	European Commission
COSPOL	Comprehensive, Operational, Strategic Planning for the Police
CRATE	Centralised Records of Available Technical Equipment
EASO	European Asylum Support Office
EASY	IT system for the initial distribution of asylum-seekers
FRY	Former Republic of Yugoslavia
EC	European Community
EMN	European Migration Network
EPN	European Border Patrols Network
EU	European Union
ECJ	European Court of Justice
Eurodac	European Dactyloscopy – European fingerprint database
EUROPOL	European Police Office
Eurostat	Statistical Office of the European Union
EUROSUR	European External Border Surveillance System
EEA	European Economic Area
EEC	European Economic Community
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the EU Member States (Frontières extérieures)
GASiM	Joint Analysis and Strategy Centre for Illegal Migration (Gemeinsames Analyse- und Strategiezentrum illegale Migration)
ILO	International Labour Organisation
INPOL	Police Information System
INTERPOL	International Criminal Police Organisation
IOM	International Organisation for Migration
ISU	Federation Land Information System on Documents (Bund-Länder-Informationssystem Urkunden)
MITRAS	Migration, Traffic and Security
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
OSCE	Organisation for Security and Cooperation in Europe



RABIT	Rapid Border Intervention Teams
RAILPOL	European Network of Railway Police Forces
REAG/GARP	Reintegration and Emigration Programme for Asylum-Seekers in Germany/ Government Assisted Repatriation Programme
REGINE	European study “Practices in the Area of Regularisation of illegally staying third-country nationals in the Member States of the EU”
SIC	Convention Implementing the Schengen Agreement
SC	Social Code
SBC	Schengen Borders Code
SIS	Schengen Information System
UNHCR	United Nations High Commissioner for Refugees
VilA	Computerised System for the distribution of foreigners who have illegally entered the national territory
VIS	Visa Information System
VOIC	Vietnamese Organised Immigration Crime

## List of tables and charts

Chart 1:	Total number of persons who were refused entry, 2000-2010	73
Chart 2:	Estimate of minimum and maximum number of clandestine irregular migrants, 2005-2010	82
Chart 3:	Number of suspects whose residence status was “illegal” in selected police crime statistics categories	83
Chart 4:	Indicators for the development of irregular migration derived from the police crime statistics	84
Chart 5:	Non-German suspects charged with surreptitiously obtaining a residence title, 2005-2010	85
Chart 6:	Foreign nationals who entered illegally and were allocated by the ViLA system, 2005-2010	89
Chart 7:	Cost factors related to migration control incurred by different parties	92
Table 1:	Number of apprehended illegally present third-country nationals by nationalities, 2008-2010	72
Table 2:	Number of persons refused entry by nationalities, 2008-2010	73
Table 3:	Total number of persons refused entry by grounds for refusal, 2008-2010	74
Table 4:	Departure orders by nationalities, 2008-2010	75
Table 5:	Removals as a consequence of departure orders, 2008-2010	75
Table 6:	Total number of asylum cases decided, 2005-2010	76
Table 7:	Negative decisions at first instance by major nationalities, 2008-2010	76
Table 8:	Negative non-appealable decisions by major nationalities, 2008-2010	78
Table 9:	Revocation and withdrawal of first instance decisions to grant protection, 2008-2010	79

Table 10:	Number of registered unauthorised migrants granted suspension of removal as on Dec 31 of the respective year, 2006-2010	86
Table 11:	Non-appealable decisions of asylum applications, 2010	90
Table 12:	No. of persons whose residence was regularised (residence permit under sec 23a Residence Act), 2010	91
Table 13:	Number of rejections among non-appealable asylum decisions, 2005-2010	99

# 1 Introduction\*

Nation states control and restrict the access of foreign nationals to their territories as a manifestation of their sovereignty. In doing so the states' main purpose is to prevent irregular migration, to identify anybody staying illegally and to remove them from their territory either voluntarily or by returning them (see Koser 2005: 4, 10 et seq.; Peers 2011: 500). A state sees irregular migration as a threat both to internal security and to some extent to social peace. On the other hand, the credibility of the immigration system and the consistency of the legal order are seriously challenged, when the avoidance or violation of binding rules, such as those defining the requirements for foreign nationals to enter and stay in the country, are not adequately sanctioned (GCIM 2005: 32 et seqq). Thus the ability to define and manage immigration also depends on the ability to reduce and limit uncontrolled illegal immigration (see Federal Ministry of the Interior 2011: 11). Therefore when attempting to prevent irregular migration governments are not only intent on maintaining the state's internal security by exercising such controls, but also on maintaining their regulatory powers. State authority can be exercised by preventive controls at the borders and the return of foreign nationals staying illegally to directly protect the state's sovereignty. In addition thereto, state authority may also be manifested in long-term preventive policies on illegal migration. This might be a coordinated effort with other EU Member States such as proactive measures to tackle the causes for migration by closer cooperation with the countries of origin and transit (see Stange 2006).

## **Irregular migration and the communitarisation of EU policy**

As a consequence of European unification, in particular of the creation and development of the area of freedom, security and justice, some of the Member States' sovereign powers have been transferred to the level of the European Union; the 1999 Treaty of Amsterdam conferred extensive powers in the fields of asylum, legal and illegal immigration, visa policy, and external border controls to the EU. In line with the common entry requirements systematic controls are only exercised at the Schengen area's external borders since the abolition of the controls at the border crossing points within the Schengen area. In the course of "communitarisation" preventing and combating irregular migration has become a major issue of European internal policy. Next to the implementation of a Common European Asylum System by 2012 and the management of legal immigration, fighting irregular migration has become a priority task for the European Council and the Member States; a task that received particular impetus from the adoption of the European Pact on Immigration and Asylum in 2008 on initiative of the French Council Presidency.

At the same time, doubts have been voiced about the effectiveness of the different countering strategies and these voices did not only come from the different lobbies advocating the fundamental rights of irregular migrants. All in all, there was a call for the need

\* The author wishes to thank Theresia Heuking for her editorial contributions to this study during her internship at the BAMF.

to reconsider the migration controls currently exercised at the European and the national levels (Vogel/Cyrus 2008). Under the aspects of economic and labour market policies the practices to combat illegal migration adopted by almost all immigration countries proved to be hardly effective; the truth is that illegal employment of foreign labour is more or less quietly tolerated, because many of the host societies have a strong demand for “cheap labour employed outside the scope of valid market conditions and legal provisions” in several sectors of their labour markets (Straubhaar 2007: 9). Irrespective of the action taken by the national states and the Community the options for controls and prevention remain limited and therefore it is to be expected that a significant population of irregular third-country nationals is ‘here to stay’ in the literal sense (see Klos 2006). Cost-benefit considerations come into play as well.

Starting from the beginning of the 21st century attempts to gain mass entry across the Mediterranean illegally that were accompanied by tragic accidents attracted extensive media coverage each year in the summer period. It has been estimated that several hundred thousand Africans are entering the EU on several different routes each year (see Schmid 2010: 160 et seq.). Already very early in their debate on a common European strategy for combating and controlling illegal migration the EU bodies noted that the phenomenon does not only consist of illegal entries by land, sea or air and the related smuggling of humans, but also of a considerable number of ‘overstayers’, i.e. people who entered the EU legally with or without a visa, but then failed to leave after the end of their legal stay or – in the case of asylum-seekers – after their application had been finally denied, plus such who changed the original purpose of their visit.<sup>1</sup> The literature researching the dimensions of irregular migration and the parameters that determine how many migrants are residing in a certain country attributes just as much significance to this “status-related” element as to actual geographical displacements (Triandafyllidou 2010: 8; Düvell 2011: 288; Düvell/Vollmer 2011: 5 et seq).

In the wake and as a result of the Arab Spring several ten thousand migrants recently arrived in southern Europe across the sea, mostly from Libya, Tunisia, and Egypt. In November 2011 the European border agency FRONTEX announced that illegal migration into the Euro region had increased by 50 percent during the first three quarters of 2011 against the reference period in 2010; the authorities in the EU Member States had apprehended 112,844 persons who had entered illegally between January and September 2011.<sup>2</sup> Italy was most directly affected by the illegal entry of North Africans. For humanitarian reasons they often received a residence title valid for one to six months which enabled them to move on

1 See Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration, COM (2001) 672 final of 15 November 2001, Brussels; Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals COM (2006) 402 final of 19 July 2006, Brussels and the Comprehensive Plan to combat illegal immigration and trafficking of human beings in the EU of the Council of 27 February 2002, Council Doc 6621/1/02, Brussels.

2 “Greece measures Arab Spring immigration impact”, EurActiv.com of 22 November 2011 (downloaded on 05 December 2011).

to other countries in the Schengen area (Nascimbene/Di Pascale 2011).<sup>3</sup> Subsequently the European Council summit in June 2011 discussed the reform of the Schengen Agreement by introducing a safeguard clause to allow the exceptional reintroduction of internal border controls in a truly critical situation where a Member State is no longer able to comply with its obligations under the Schengen rules within the scope of the general decision-making competence at the level of the Union.<sup>4</sup> It was, however, not agreed to vest the Commission with the authority to decide on the reintroduction of border controls. The JHA Council of 13 December 2011 left the decision-making power based on the Schengen Borders Code with the Member State.<sup>5</sup>

### **Policy objectives and obligations of the Community**

Combating illegal immigration is one of the five basic obligations under the European Pact. The related strategies have been implemented since 2010, notably within the scope of the Stockholm Programme. Accordingly the Member States should ensure that foreign nationals staying illegally return or move to a transit country. The Member States specifically agreed on several principles and measures.<sup>6</sup> These include the following points:

- legalisation shall only take place in exceptional circumstances,
- readmission agreements shall be concluded with the countries in point, either at Community or at bilateral level,
- cooperation between Member States shall be expanded,
- cooperation with the countries of origin or transit shall be strengthened,
- incentive systems shall be devised to assist voluntary returns,
- by way of dissuasive and proportionate penalties rigorous action shall be taken against those who exploit illegal immigrants.

Further obligations under the Pact are the strengthening of the effectiveness of border controls, inter alia by introducing biometric visas in the Visa Information System,

3 In 2011 Germany accepted a quota of 153 refugees from North Africa that had fled Libya during the armed conflict and entered Malta across the Mediterranean as a sign of solidarity with Malta that had to bear the brunt of the exodus from North Africa because of its geographical location and was ill equipped to cope with this burden because of its small population (see "Aufnahme von nach Malta geflüchteten Nordafrikanern", press release no. 26/2011 of 29 November, Bundesamt für Migration und Flüchtlinge, Nürnberg).

4 See *ibid.*: 354 et seq. and Conclusions of the European Council (23/24 June 2011), doc. EUCO 23/11, Brussels, p. 8. Accordingly the European Commission submitted a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, providing that the reintroduction of the controls should be based on a resolution of the European Commission taken after consultation with the proposing Member State; See COM(2011) 560 final of 16 September 2011, Brussels.

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

6 For this and the following see European Council, "Pact on Immigration and Asylum" European Union, Note from the Presidency to the Council, doc. 13440/08 of 24 September 2008, Brussels, pp. 7 et seq.

showing solidarity in the sharing of responsibilities of the nation states to secure the EU external border (including by providing further resources to the border protection agency FRONTEX), improved cooperation with the countries of origin or transit and the development and deployment of modern technologies such as the electronic recording of entries and exits.

In 2010 the Council adopted a package of 29 measures for reinforcing the protection of the external borders and combating illegal immigration as specific action at the Community level. The measures include recommendations for extending the capacities of the European border protection agency FRONTEX, such as by more effective use of the mechanism for the creation of Rapid Border Intervention Teams (RABIT) for border security; for setting up an operational office for the eastern Mediterranean, for developing the European Patrols Network (EPN) at the southern and eastern maritime borders; for developing the European Surveillance System EUROSUR; and for cooperating with neighbouring third countries, e.g. for border surveillance as part of return projects.<sup>7</sup>

### 1.1 Objectives of the study

Against the background of the major significance of preventing and reducing irregular migration at the Community level, this EMN study seeks to provide an overview of the policy approaches, legislation, mechanisms and practical action the EU Member States adopted to cope with the phenomenon of irregular migration. In a synthesis report the study shall provide a basis for conclusions on the effectiveness and reasonableness of the different measures and approaches used in the Member States to serve as input for a future EU policy and as a source for best practice models. Thus the study shall primarily provide information for policy-makers and practitioners in the political and administrative circles of the Member States and the European institutions, but might also be of interest to researchers and the public.

The present sub-project of the comparative overall project explores the German legal framework and the practical approaches of policy-makers and administrators to the management of illegal immigration and the illegal residence of third-country nationals<sup>8</sup> and explains them in the context of the developments evolving in the European Union. The study addresses the proactive practices and measures of the German authorities to prevent irregular migration, to stop the illegal entry of third-country nationals at the borders, to identify and detain foreign nationals already staying illegally in Germany and to find possibilities to terminate irregularity under the applicable laws on legal residence. Return and

7 See Council Conclusions on 29 measures for reinforcing the protection of the external borders and combating illegal immigration of 24 February 2010, doc. 6435/10, Brussels.

8 In line with the tasks of the EMN and the methodology of earlier EMN studies the current study concentrates on irregular migrants who are third-country nationals. Pursuant to article 2 of the Visa Code a third-country national means any person who is not a citizen of the Union within the meaning of Article 17 (1) of the Treaty (since 1 December 2009: article 20 (1) of the Treaty on the Functioning of the European Union). Consequently anybody holding the nationality of an EU Member State is a citizen of the Union. Citizenship of the Union is complementary to the national citizenship, but is no substitute for it.

return assistance will only be touched upon, because these have already been addressed by earlier EMN studies.<sup>9</sup>

Thirdly the study focuses on Germany's European and transnational cooperation involvement in the field of irregular migration, an evaluation of the data on irregular migration currently available and the methods to collect or estimate data as well as the description of the impact of EU policies and legislation on national legislation, procedures and practices to prevent or curb irregular migration.

According to the study specifications agreed by the EMN, the study will not address victims of trafficking nor the Member States' practical measures to fight trafficking, although illegal entry, residence and employment may be the consequences of the organised crime of trafficking human beings.<sup>10</sup> Regarding the role of the visa procedure to prevent irregular migration only those aspects will be addressed that have not been treated in the study entitled "Visa Policy as Migration Channel" (Parusel/Schneider 2012).

## 1.2 Definitions

Foreign nationals staying in Germany without a valid residence title of whom the responsible authorities are not aware are usually referred to as "illegals" or "illegal aliens" in the public debate (Federal Ministry of the Interior 2011: 198), although German residence law does not specifically define illegality (see section 2.1). The phenomenon of illegal entry or residence has many different aspects. Lederer (2004: 167) identified 16 different ways in which someone could be illegally staying, all of which differ vastly regarding the migration histories, motives and living circumstances. Further different 'routes' can all lead to an illegal stay, each of these routes is closely connected to the legal background and society's perception in the respective countries (see Düvell 2011; Heckmann 2004: 1106). In recent years this triggered an intensive discussion of the politically correct terminology, because being described as an "illegal migrant" might be perceived as degrading; "irregular migration" or "uncontrolled" "or undocumented" migration as well as "sans papiers" were proposed as alternatives (Schönwälder et al. 2004: 6).

Also the Study Specifications stress that the term 'irregular' should always be used when referring to a person without valid residence permit, as specified in a resolution of the Council of Europe Parliamentary Assembly.<sup>11</sup> The term 'illegal' should only be used when referring to the status of migrants and "irregular" remains the preferred term here as well. The study specifically relates to the following groups of third-country nationals whose residence status is illegal:

9 See the studies "Return from Germany" (Kreienbrink et al. 2007) and "Return assistance in Germany" (Schneider/Kreienbrink 2010) as well as the European synthesis reports "Return Migration" (EMN/COM 2007) and "Programmes and Strategies in the EU Member States fostering Assisted Return to and Reintegration in Third Countries" (EMN 2011).

10 In Germany human trafficking for the purpose of sexual exploitation is not primarily a problem related to illegal entry or residence: Of the human trafficking victims discovered in Germany between 2008 and 2010 only 13 to 14 percent were staying illegally, because more than half of them had either German nationality or that of a Eastern European EU Member State (see BKA 2009, 2010, 2011). For a comprehensive treatment of human trafficking in Germany see Morehouse (2009) and Maihold (2011).

11 Resolution 1509 (2006), "Human rights of irregular migrants", Council of Europe Parliamentary Assembly of 27 June 2006.



- persons who entered Germany illegally (e.g. by human trafficking, using counterfeit papers or untruthfully stating the purpose of the journey);
- persons staying on in Germany after the expiration of their visa or of the maximum permissible length of stay for those not requiring visas (so-called overstayers);
- persons no longer complying with the requirements for their residence in Germany according to their visa or residence title;
- persons not leaving Germany despite a final negative decision of their asylum case;
- persons who went underground during or after their asylum procedure and have not left the territory of Germany or the Schengen area.

Reference can also be made to the so-called EU Return Directive when considering the status of the above groups under the aspects of residence law. The directive defines illegal stay as follows: “‘illegal stay’ means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State.”<sup>12</sup>

In line with this definition, essentially three population groups are distinguished in the present study that can be considered to be staying illegally within the meaning of the Return Directive:

- persons staying in the country underground (“clandestine migrants”);
- persons residing apparently legally in the country whose legal stay is based on false statements or identities (“pseudo-legal migrant”);
- persons without residence status who are known to the authorities (“registered unauthorised migrants”).

### **Clandestine irregular migrants**

Irregular migration is mostly associated with third-country nationals living in the country underground and in hiding from the responsible authorities and especially the police. In this context it is irrelevant whether their lives in hiding are the result of an illegal entry,<sup>13</sup> of staying on after expiration of the residence title (overstaying); of going underground after a negative decision on the extension of the residence title or its withdrawal.

12 Art. 3 (2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

13 Illegal entry is usually defined as the crossing of an international border without complying with the necessary requirements for legal entry into the receiving State. In EU context, this means the entry of a third-country national into an EU Member State which does not satisfy Article 5 of Schengen Border Code (Regulation (EC) No 562/2006).

For the purposes of this study they are referred to as “clandestine” irregular migrants. Synonymous terms used in other studies included “sans papier”, “shadow people”, “undocumented” or “illegal” migrants.<sup>14</sup>

### **Pseudo-legal migrants**

Immigrants who obtained their legally registered stay by intentionally making false statements or using a false identity are referred to as pseudo-legal migrants herein. When these facts are discovered criminal proceedings are initiated against these persons, their residence title is revoked and thus they are required to leave the country. However, as long as the authorities are not aware of the illegal behaviour they are treated in the same way as the migrants who obtained the same residence status on the basis of truthful statements and their genuine identities.

If tourists or other visitors from third countries who entered the Schengen area with a visa for short term stays (C visa) unlawfully take up employment they commit a criminal offence just as clandestine irregular migrants do (sec. 95 (1a) Residence Act). Their visa must be cancelled and they are therefore required to leave the country. These “working tourists” represent a special subcategory of pseudo-legal migrants.

### **Registered unauthorised migrants**

The present study refers to third-country nationals that are known to the authorities as being “required to leave the country”, but who are not or cannot be removed and do not leave voluntarily, as registered unauthorised migrants. Some members of this group have been granted a so-called “suspension of removal” (Duldung), temporarily tolerating their stay. The Duldung is an official certification stating that although the person is required to leave the country his or her removal is not possible for factual or legal reasons or will be suspended for a period of no longer than six months for humanitarian reasons, because of international law or to safeguard the political interests of the Federal Republic of Germany (see Parusel 2010: 35 et seq). Migrants required to leave the country who are staying in Germany on the basis of a Duldung are not committing a criminal offence.

Those registered unauthorised migrants are usually not included with the irregular migrants in the German political debate,<sup>15</sup> however, it seems reasonable to include this group in this case considering that the present EMN study is focusing on control.

14 In the open Schengen area the question remains whether the definition should include a clandestine irregular migrant who is discovered by the police in the border area immediately after crossing the border and then turned back into the neighbouring country right away. This person never lived within the territory, because he never succeeded in transferring his usual residence from another country to Germany, therefore no immigration to Germany occurred. In a European study such persons should not be included in the number of migrants staying illegally to avoid double-counting. The apprehensions by the police near the border and the number of persons turned back can, however, serve as an important indicator for the extent of irregular migration (see Chapter 6).

15 Migrants possessing a Duldung are, for instance, explicitly excluded from the relevant chapter of the Migration Report of the Federal Office for Migration and Refugees (see BMI/Federal Office for Migrants and Refugees 2011: 182). Also the national report for the EMN study “Illegally Resident Third-country nationals in EU Member States” (Sinn et al. 2006) does not include this group of registered unauthorised migrants.

### **Irregular stay and employment**

Further complications arise when attempting to clearly define employment issues, as “illegal status” often refers to a number of different phenomena. On the one hand, illegal employment can mean the employment of third-country nationals who are staying illegally in the country or, on the other hand, that of third-country nationals who possess a legal residence permit, albeit one that rules out employment, but they take up employment nevertheless.<sup>16</sup> Thus foreign nationals both with and without residence titles can engage in illegal employment. If these persons possess neither a residence nor a work permit this is also referred to as “dual illegality”.<sup>17</sup>

With respect to the employers, illegal employment is defined by the so-called Sanctions Directive.<sup>18</sup> The directive defines illegal employment as the employment of third-country nationals that have no lawful residence status.

### **Terminology in the field of irregular migration**

A variety of terms are used for instruments designed to contain or stop the phenomenon of irregular migration. Several Member States as well as European Union documents quite generally talk about “combatting”.<sup>19</sup> The present study seeks to use a more nuanced terminology which is also in line with the results of a related discussion within the EMN. To this end, the specific outcome that is envisaged by a certain instrument will be defined as precisely as possible, such as “preventing irregular migration”, “preventing illegal entry” or “termination of an illegal stay”. With regard to the key chapter of this study (Chapter 3), various phases of the process of irregular migration must be distinguished that can be delimited in space and time:<sup>20</sup>

Preventive early action generally starts before the migration process itself is initiated and wants to abolish the reasons for its initiation altogether or to create the infrastructure or conditions that will prevent any irregular migration from coming about. This includes attempts to improve the socio-economic situation in the countries of origin or to make the visa process safer (section 3.1);

- Preventive action mainly relates to preventing illegal entries at the borders. These include both the national borders of the Federal Republic of Germany and the external borders of the Schengen area (section 3.2);
- Apprehensions and controls aim at detecting illegal entries subsequently or to discover any illegal residence (section 3.3);

16 See definitions in the thesaurus of the International Labour Organisation (ILO) at <http://www.ilo.org//thesaurus/default/en.asp>.

17 The criminal liability for the illegal employment of foreign nationals is defined in section 404 of Social Code Book III and in the Act to Combat Illegal Employment (sections 10, 11 Act to Combat Illegal Employment).

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

19 See the wording of the objective of “combatting illegal immigration” in the fifth recital of the Visa Code, Regulation (EC) no 810/2009 of the European Parliament and of the Council of 13 July 2009 on a Community Visa Code as well as the section on “Combatting illegal immigration” European Pact on Immigration and Asylum.

20 See the distinction between urgent action at the borders or in the region adjacent to the borders or between “control policy” and “prevention policy” in Bast (2011: 49 et seqq).

- Action to terminate irregular migration relates to the process of dealing with third-country nationals that are required to leave the country, because their stay is irregular and who are known to the authorities, here as well, the ultimate purpose is to reduce the number of persons staying illegally to a minimum. Such actions include return projects and the suspension of removal as well as regularisation based on valid law (section 3.4).

### 1.3 Methodology

#### **Input material**

In line with the traditional EMN methodology the present study draws on a variety of sources. The legislative framework relating to irregular migration in Germany is described on the basis of the relevant legal bases which include both national and European legislation. Nationally, the major legal acts are the Residence Act (Residence Act) and the General Administrative Regulations on the Residence Act decreed by the Federal Ministry of the Interior on 26 October 2009 as well as corresponding regulations or decrees of the federal Laender, if applicable. The processes and debates in the German Parliament were likewise scrutinised for the purposes of the study. Further, legal research literature, specifically legal analyses and comments (such as Kluth et al. 2008, Marx 2008, Renner 2011) were used as input. The German contribution to the EMN study “Illegally Resident Third-Country Nationals in EU Member States: State Approaches Towards Them, Their Profile and Social Situation” of 2006 (Sinn et al. 2006; EMN 2007) served as yet another source, because some sections of the former study were adopted after revision and updating.

To prepare the subject matter of the study the Federal Office for Migration and Refugees, as the German national contact point, hosted an expert workshop in Nuremberg on 30 June 2011. The workshop was attended by representatives of the Federal Police, the Federal Criminal Police Office, several major foreigners authorities, experts from several units of the Federal Office for Migration and Refugees and external scientists. The workshop’s papers and results helped to plan, design and organise the study project and some were also considered in the study’s content. Both the German Federal Police and the Federal Criminal Police Office contributed a substantial amount of content and figures that were likewise considered.

#### **Data sources**

Statistics on the irregular migrant population are generally a difficult matter. It is still true that it is difficult to find out about the size and composition of the population that is staying in Germany illegally (stock); neither do the available statistics capture the exact number of incoming and outgoing irregular migrants (flow). It is in the nature of the matter that official statistics have little information to offer, because people living underground usually are not (anymore) in contact with the authorities. Thus data are only available for certain groups of people. Official statistics that were compiled as a result of controls may serve as indicators for certain trends characterising the phenomenon of illegal residence status. These ‘control-related’ data permit some statements about the exposed ‘recorded crime’ of irregular migration. However, it is hardly possible to draw any conclusions on the unrecorded crime.

Thus researchers depend on certain indicators as guidelines and mostly on estimates that are qualified by the scientific methodology used and well documented (see Jandl 2011). The use of other types of estimates would entail the risk that these figures gain an independent life of their own by being quoted repeatedly without any verification of the method they were derived with (see Lederer 2004: 181 et seq). Very diverse methods have hitherto been used to assess the stocks and flows of the number of foreign nationals illegally staying in any EU Member State. Thus not all of the published figures are of the same quality (see Vogel et al. 2011). Further there is a risk of becoming instrumentalised by politics, e.g. when certain measures are pushed by “playing numbers games” (Vollmer 2011).

As a rule, whenever possible Eurostat data are to be used for all EMN studies, because these are collected according to the same criteria throughout the EU and thus warrant a maximum comparability of the findings across the EU. This principle is also applied in the present study: the key indicators for the existence and the scope of irregular migration were downloaded from the Eurostat database. They included data on the number of illegally staying third-country nationals that were apprehended, the number that was turned back when attempting to enter illegally, and on the number of people that were ordered to leave the country because they were staying illegally. This was complemented by national data where available. To date there are hardly any sound methodological estimates for determining the size of the population staying illegally and its composition. Therefore an expert report was commissioned for the purposes of the study. This expert opinion was to build largely on the findings of the completed, and as yet unique, European research project “Irregular Migration: Counting the Uncountable. Data and Trends across Europe” (CLANDESTINO)<sup>21</sup> and to continue the data analyses and estimates for Germany compiled for earlier years. Thus thanks to these tested methods and more precise official data it was possible for the first time to present estimates on the stocks of the irregular population by nationalities for 2010 in this study (for details see Chapter 6.2.1).

### **Structure of the study**

Following this introduction, Chapter 2 outlines the policies, the legal and organisational framework that are relevant for irregular migration in Germany. The study’s core chapter 3 is dedicated to the different approaches and practices used in the management of irregular migration. The description follows the different phases of the process, highlighting the implementation and organisation of official policies against the background of specific goals and the respective actors.

Chapter 4 deals with the different cooperative efforts to prevent or reduce irregular migration to which Germany is party – both within the European Community and with third countries or international organisations. Some of this cooperation is based on binding agreements or treaties, some on networks and dialogue forums. The impact of Community policy and legislation on the management of irregular migration in Germany is discussed

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21 See the projects website at <http://clandestino.eliamep.gr/> and the database on the research findings at <http://irregular-migration.hwwi.de/>.

in Chapter 5. The focus here is on the changes in national law, in the organisation and execution of policies as a result of European legislation, agreements, financing tools or partnerships.

The data section in Chapter 6 presents comprehensive and current findings for numerous statistics related to irregular migration in Germany. In addition, estimates of the size of the population staying illegally in Germany are presented and evaluated; these estimates are based on an expert opinion and have a sound scientific basis. Chapter 7 presents the conclusions from the foregoing analysis and outlines the areas in which further research might be needed.

## 2 Policy and legal framework in relation to irregular migration

### 2.1 National policy and legislation

#### 2.1.1 Migration policy approaches to managing irregularity

One of the determining factors for the German policies, legislation and administrative practices related to irregular migration is the European overall approach to migration issues; this approach aims at creating a cross-sectional strategy to arrive at a consistent management of migration in which the various players cooperate. Thus the ability to consistently plan and control legal immigration largely depends on whether the states succeed in reducing and restricting irregular migration (see Federal Ministry of the Interior 2011).

Two major positions emerged from the several years of public debate on how to deal with third-country nationals staying illegally in Germany (some already for prolonged periods): on the one hand the “regulatory” position mainly maintained by the Federal Ministry of the Interior and the Interior Ministries of the federal Laender, on the other the “human rights” position of the civil society representatives (churches, welfare associations, relief organisations). The regulatory view holds that illegal immigration is first and foremost a violation of the law. Related thereto is the view that people staying illegally pose a risk for public security and order and are a considerable burden on the state’s purse (see Sinn et al. 2006: 31). The Federal Ministry of the Interior holds that preventing illegal entry and stay is indispensable as it is the duty of the government to establish the consistency of the legal order while respecting international standards on human rights. Otherwise such illegal stays would become entrenched and undermine immigration control (Cyrus 2004: 38 et seq). The advocates of the human rights position argue that it is not solely the migrants staying illegally that are responsible for this condition, rather the problem was exacerbated by demand and support from German society. Asserting the consistency of the legal order went beyond the possibilities of the law made by the state and therefore the state had to strike a balance between the consistency of the law and doing justice to the individual (German Bishops’ Conference 2001: 41).

Against this background Germany deals with illegal migration by taking preventive and migration control measures such as issuing visas and securing its external borders by promoting the return of those obliged to leave or forcefully returning them in the form of removals and refusals of entry, but also by responding pragmatically to the circumstances of persons staying illegally who cannot comply with their duty to leave to the benefit of those concerned.

### 2.1.2 The Residence Act: legislation with direct effect

Under national law foreign nationals may only enter or stay in the Federal territory if they are in possession of a recognised and valid passport or passport substitute.<sup>22</sup> Further, foreigners require a residence title to enter and stay, unless otherwise provided for by the law of the European Union or a statutory instrument and except where a right of residence exists as a result of the Agreement to Establish an Association between the EEC and Turkey. The residence titles are granted in the form of a visa (section 6), a residence permit (section 7), a settlement permit (section 9) or an EC long-term residence permit (section 9a Residence Act). Any foreign national entering without the required documentation or after having been banned from re-entry (Einreiseverbot) under sec. 11 (1) Residence Act is entering illegally (sec. 14 (1) Residence Act). The stay in the Federal territory of foreign nationals not complying with the requirements for lawful entry is likewise unlawful. The foreign national's residence also becomes unlawful, if the conditions for granting entry are no longer complied with.<sup>23</sup> In these cases the foreign national is obliged to leave the Federal territory (sec. 50 (1) Residence Act).

Unlawful entry or residence are criminal offences to be punished by a fine or imprisonment. An unauthorised stay becomes a criminal offence only at the time that the obligation to leave the country becomes viable and executable.<sup>24</sup> Anybody who incites others to illegally enter or stay or aids and abets such acts for his or her actual or promised financial benefit or repeatedly acts for the benefit of several foreign nationals is likewise liable to criminal prosecution. If foreign nationals are smuggled for gain and as organised bands or if the smuggling results in their death this is a criminal offence (sec 97 Residence Act) which is punishable by imprisonment for a term of between one and three years. Persons acting in their professional or socially accepted volunteer capacities (such as pharmacists, physicians, midwives, nursing staff, psychiatrists, pastors, teachers, social workers) and limiting their actions to objectively complying with their legally defined or recognised duties related to such occupation or office are not considered to be aiding or abetting the above criminal offences (Vor 95.1.4 General Administrative Regulation on the Residence Act).

Foreign nationals who entered the country illegally without applying for asylum and who, upon their illegal entry being established, cannot be placed in custody pending removal and deported or expelled directly from custody are to be allocated to the Federal Laender (Sec 15a Residence Act). The Federal Office for Migration and Refugees is responsible for their allocation, however, this rule is merely relevant for the allocation of the cost (see Groß 2006: 44; also see section 6.2.4).

22 They must not be in the possession of a passport when they are exempt from the passport obligation by virtue of a statutory instrument (sec. 3 (1) Residence Act). In justified isolated cases, the Federal Ministry of the Interior may permit exemptions from the passport obligation (sec. 3 (2) Residence Act).

23 Further, a residence title may expire for lapse of time, occurrence of an invalidating condition, cancellation or revocation, expulsion or when leaving the country for a reason that intrinsically is not temporary (see sec. 51 (1) ResA).

24 Here one must distinguish between situations in which the departure becomes enforceable by virtue of the law or only once the underlying administrative action becomes enforceable.



### 2.1.3 Legislation and policy areas with indirect effect

Irregular migration affects a number of other policy areas and their regulations beyond the law on foreigners and their residence, such as education, health and social policy.<sup>25</sup> Problems in this context arise, because the rights under these laws are often not claimed for fear of discovery, if the irregular migrant were to turn to an authority or public body.

On principle, irregular migrants enjoy all general fundamental and human rights as enshrined in international law, the documents of the United Nations or the International Labour Organisation (ILO) (see Taran 2004). This is especially true for the so-called 'popular rights' (e.g. the right to life, liberty, personal safety, equality before the law, right to due process) as guaranteed in the 1948 Universal Declaration of Human Rights. Most of these rights are bindingly guaranteed by the 1966 international Pacts on Civil and Political Rights or on Economic, Social, and Cultural Rights to which the Federal Republic of Germany is party. These justiciable rights are also guaranteed by the constitution of the Federal Republic of Germany of 1949 (for details see Sinn et al. 2006: 28 et seq).

Below we shall outline central aspects relevant for the treatment of irregular migrants in these three legal and policy fields which have been widely debated in Germany in recent years as well as the related changes.

#### Health care

As a rule, irregular migrants in dependent employment are members of the statutory health insurance scheme, although they will usually not claim their rights for fear of discovery (see BMI 2007: 22). Even, if they are not dependently employed all foreign nationals subject to an enforceable obligation to leave have access to basic care pursuant to sec. 1 (1) no. 5 of the Asylum Seekers Benefits Act, i.e. the responsible welfare authorities must guarantee medical or dental treatment of acute illnesses and pain; also expectant mothers and women in childbirth must receive assistance (sec. 4 Asylum Seekers Benefits Act). This means that the health care offered must go beyond mere emergency care. However, in practice regular hospital treatment is often impeded by the notification obligation the hospital has under residence law, i.e. it must forward information on anybody requiring anonymous funding. For any scheduled surgery (in contrast to emergency assistance) the funding must be applied for with the Welfare Authorities in advance, but the Welfare Authorities must notify the foreigners authorities (see FRA 2011: 16; DIMR 2008: 10 et seq). Further reasons why irregular migrants often do not make full use of the medical care they are entitled to is the high cost of treatment which they must advance until it is refunded, the lack of information and the largely intransparent processes (see PICUM 2010: 13 et seq).

The General Administrative Regulation on the Residence Act effective as of 31 October 2009 already provided that irregular migrants could receive treatment in hospitals without fearing discovery in future. Sec 87 (2) Residence Act stipulates the public authorities' obligations to notify the foreigners authorities, e.g. when a public body (such as the Welfare Of-

25 In this study these cannot be addressed in detail, though; for the comprehensive treatment of the situation of foreign nationals without residence rights under labour and social law see Will (2008).

fic) learns about the residence of a foreign national without residence title or suspension of removal. Sec 88 (2) Residence Act in conjunction with sec. 203 German Criminal Code limits the obligation to notification to the extent that the personal data a public body learns about e.g. from a doctor or pharmacist, may not be forwarded to the foreigners authorities in line with privacy regulations. This does not apply for foreign nationals that are a threat to public health or abusing drugs.

In no. 88.2.4.0 the General Administrative Regulation on the Residence Act provides that the transmission of private data which certain occupational groups disclose to public bodies is not admissible, with the specified exceptions. The law on medical secrecy includes the confidential treatment of any information the doctor learns about in exercising his occupation or related thereto (no. 88.2.4.3 of the General Administrative Regulation on the Residence Act). The provision states in no. 88.2.3 that for this reason also the “administrative staff in public hospitals responsible for accounting” had to be included in the group of persons defined in sec. 203 (1) of the Criminal Code (physicians, dentists, pharmacists or practitioners of another health care profession).

The personal data of foreign nationals staying illegally known to doctors and disclosed to the Welfare Offices in the billing process may not be passed on anymore (“extended privacy protection”).

#### **Access to education for the children of irregular migrants**

Under the German constitution the regulations on access to schools and compulsory schooling lie within the competence of the Federal Laender. They adopted regional acts on the right and the duty to attend school. Most Federal Laender do not have any clear rules on the access to schools of children staying illegally and the legal frameworks are very diverse.<sup>26</sup> Already in the coalition agreement the current Federal Government had committed to amending the rules on compulsory notification under residence law for the public bodies to enable also children of irregular migrants to attend school. A comparative study commissioned by the Expert Council of German Foundations for Integration and Migration on the practises in the different Federal Laender showed that it mainly depends on the registration process for a school whether or not irregular migrants can in fact gain access to the school system. It was recommended that the legal situation should be clarified at the Federal level (see Vogel/Abner 2010: 26). Civil society organisations such as the German Human Rights Institute advocated the improvement of the educational situation of the children of irregular migrants and submitted recommendations to German policy-makers (see Cremer 2009).

As part of the so-called second Act to Implement Residence- and Asylum-Related Directives of the European Union (also see section 5.1) sec. 87 (1) and (2) of the Residence Act was amended to the effect that also schools and other educational institutions are exempted from these notification duties.<sup>27</sup> This shall enable the children of third-country nationals who are residing illegally in Germany to attend school or other educational institutions

26 See “Humanität und Staatsräson auf Kollisionskurs: Der Schulzugang von Kindern irregulärer Zuwanderer”, Results of a study commissioned by Stiftung Mercator, SVR-Info April 2010, p. 5 and Sinn et al 2006: 101 et seqq.

27 See Federal Law Gazette I no. 59 of 25. November 2011, p. 2258.

without any notification of the police or the foreigners authorities of their irregular status. It was a decision that entailed the weighing up of different rights in favour of the right to education of children and young people which is in this case given priority over the general social interest in enforcing residence law (Basse et al. 2011: 367).

### **Economic activity**

Controlling the labour market (see sections 2.2.1, 3.3.4) is among the most effective tools to make employment less attractive for those who are irregular migrants for economic motives, but especially in the nineties it became very clear that different players are supporting or tolerating the presence of illegal labour, especially on large-scale construction sites (see Stobbe 2004: 97 et seq). An employment relationship with a de facto claim to a wage is usually established when a paid occupation is taken up, irrespective of whether the foreign national's residence title permits such employment. Also irregular migrants can sue for their wages in court, if their payment is withheld. An action in a labour court does not depend on the residence status (see BMI 2007: 25), because the principles of the factual employment relationship are applicable and these represent a quasi-contractual wage claim governed by the agreements made for the illegal employment. Next to the claim to wages there are also such to vacation or reimbursement therefore and to payment during illness (Will 2008: 161). Although most irregular migrants that have not received the wages they are entitled to, shy away from bringing action because of the risk of being discovered as a consequence of the authority's notification obligations, every now and then some illegally employed workers actually do succeed in court (see Cyrus 2004: 70).

The European Union has identified the actual or expected earning opportunities as an important incentive for illegal entries. And as a response thereto the European Commission submitted a draft directive in May 2007 on European-wide rules for the punishment of employers employing irregular migrants from third countries without registration (see Vogel/Cyrus 2008). Meanwhile the so-called Sanction Directive has been adopted and transposed into national law (see Chapter 5).

## **2.2 Stakeholders and institutional framework**

Preventing or reducing irregular migration relates mainly to security and control policies and falls within the domain of interior affairs. Thus it is mainly the interior ministries of the Federation and the Laender and their subordinate authorities that hold executive powers. The legislative power defines the legal and policy framework (see section 2.1). Again, the competence is split between the national and the regional levels. The majority of the matters regulated under foreigners law or immigration law lie within the legislative competence of the Federation (see Schneider 2009: 12 et seq). At the levels below federal law foreigners' policy is implemented by ordinances, administrative regulations and ministerial decrees.

While there are many other institutions, associations, NGOs and networks in Germany whose work relates to migrants without legal residence status, their activities are mainly supportive, advisory, medical, charitable or in the field of advocacy (on this subject see Sinn et al. 2006: 168-195).

The major stakeholders and institutions and their primary or core activities related to the prevention of irregular migration are briefly described below; the details of these activities are covered in Chapter 3.

### 2.2.1 Policy-makers, government and public authorities

#### **The Federal Ministry of the Interior**

Within the Federal government the Federal Ministry of the Interior (Bundesministerium des Innern) has the lead in matters of public safety, immigration and the related European harmonisation efforts. All policies on irregular migration aim at preventing illegal entries and enforcing the obligation to leave the country, where voluntary return is preferred over forced removal. The Federal Ministry of the Interior is responsible for external (e.g. by visa policy or controls at the external borders) and internal controls (e.g. at airports, in trains and by issuing residence titles) as well as for the cooperation projects with third countries, such as signing so-called readmission agreements (bilaterally or at EU-level) that lay down the technical details to enable states to honour their obligation under international law to readmit their own nationals.<sup>28</sup>

The Federal Ministry of the Interior is the supreme federal authority and thus exercises disciplinary and technical supervision of all subordinate authorities, including the Federal Office for Migration and Refugees, the German Federal Police, and the Federal Criminal Police Office (see below).

#### **The Federal Office for Migration and Refugees**

The Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge – BAMF) is the competence centre for migration, integration and asylum and as such has a great variety of duties. The Office processes all asylum procedures in Germany as well as the Dublin Procedures to determine the Member State responsible for the asylum procedure. Further, it determines the refugee status under the Geneva Refugee Convention and so-called home-country related impediments to removal according to the Qualification Directive and the European Convention on Human Rights. Legally defined exclusions (e.g. serious crimes, violations of international law, risk of terrorism) must be considered in the examination and decision of asylum cases. This requires the Federal Office to engage in investigations of its own in close cooperation with the law enforcement agencies at the Federal and Länder levels.

The Federal Office for Migration and Refugees is the registration authority managing the Central Register of Foreigners. The Central Register of Foreigners is a nationwide database holding the personal data of foreign individuals who have stayed or are staying in Germany as well as the nature of the residence title and the purpose of the stay. The register consists of a general database and a visa database. These data allow to determine how many people are staying in Germany without a valid or provisional residence title and are thus obliged to leave the country and how many have been granted a suspension of removal.

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28 For this see the list of agreements on the Federal Ministry of the Interior website at [http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/RueckkehrFluechtlinge.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/RueckkehrFluechtlinge.pdf?__blob=publicationFile) and sections 4.1 and 5.2.

Also the Federal Office for Migration and Refugees' role as "central allocation agency" for the distribution of the illegal entrants to the different Federal Laender until a decision has been made on suspending removal or granting a residence title in their cases (sec 15a Residence Act), is directly connected to irregular migration. In this capacity the Federal Office for Migration and Refugees is acting on behalf of the Federal Ministry of the Interior to allocate the foreign nationals who entered the country illegally without applying for asylum and who, upon their illegal entry being established, cannot be placed in custody pending removal and deported or expelled directly from custody.<sup>29</sup> Yet another task is the administration of the statistics on the so-called travellers' 'atrophy': These statistics include the cases of asylum-seekers by nationalities who were allocated to another Federal Land after their first contact with a reception centre, but did not report either to the institution they were allocated to or to the responsible Federal Office for Migration and Refugees branch office, but rather went "underground".

Moreover, the Federal Office for Migration and Refugees engages significantly in the area of return assistance by offering a number of programmes to promote the return to and the reintegration in third countries (see Schneider/Kreienbrink 2010).

### **The German Federal Police**

The German Federal Police (Bundespolizei) secures the borders on land, at sea and in the air to impede the illegal entry of foreign nationals, smuggling offences, and human trafficking. In practice this means the controls of cross-border traffic within the scope of law in the form of checking border crossing papers and authorisations, organising border searches and warding off danger. The duties of the German Federal Police are defined in the Act on the German Federal Police and several other laws such as the Residence Act and the Asylum Procedure Act. Under residence law the Federal Police is competent for the denial of entry, the removal and removal of foreign nationals without valid visa or residence title and in certain cases the revocation of a visa and the consequences thereof under foreigners law.

The Federal Police's border surveillance activities are not only exercised directly at or nearby the state borders, i.e. the border zone that extends 30 km into the territory at land borders and 50 km at sea borders,<sup>30</sup> but also within the country at airports, seaports and in the federal railway installations ("Railway Police", see sec. 3 BPOLG).

The German Federal Police coordinates the accompanied returns of illegally residing third-country nationals by plane in close cooperation with other authorities, notably with the foreigners authorities (on this see Kreienbrink 2006: 59-68).

29 See Entscheiderbrief 6/2011, Year 18, Bundesamt für Migration und Flüchtlinge, Nürnberg, p. 5.

30 By decree of the Federal Ministry of the Interior and with the consent of the Bundesrat the sea border zone can be extended from 50 km to a maximum of 80 km, if this is required to monitor the German coastal borders.

### **Federal Criminal Police Office**

The Federal Criminal Police Office (Bundeskriminalamt – BKA) was established to coordinate crime control nationally and internationally as the central information and intelligence agency for law enforcement. The Federal Criminal Police Office is the German central agency for INTERPOL, EUROPOL and the Schengen Information System (SIS). The Federal Criminal Police Office saves and manages all available information about crimes and offenders nationally and compiles nationwide statistics (“police crime statistics”) based on the crime statistics of the Land Offices of Criminal Investigation (see below). The Federal Criminal Police Office receives, centrally collects and evaluates all important notifications on criminals involved with human smuggling as well.

The Federal Criminal Police Office has further competences and operative tasks related to irregular migration, such as managing the “Automatic Fingerprint Identification System (AFIS)” to support the Federal Office for Migration and Refugees with the evaluation of the finger prints of asylum-seekers. The Federal Criminal Police Office has extensive expertise in the field of document protection and is an intermediary and verification instance in the data exchange with the EU-wide Eurodac system. The information database for wanted persons INPOL (“police information system”) includes all orders for expulsion or removal/refusal of entry of foreign nationals that have been ordered as well as information on stolen or lost documents and can be accessed by the Land law enforcement authorities. There are also separate databases for this purpose, including the Federation Land Information System on Documents (Bund-Länder-Informationssystem Urkunden – ISU). ISU collects, compiles and disseminates information on genuine and counterfeit documents (such as identification papers and stamp moulds).

### **Customs authorities – Finanzkontrolle Schwarzarbeit (Financial Control Section of the Federal Customs Administration)**

The Financial Control Section (Finanzkontrolle Schwarzarbeit) is an operative unit of the Federal Customs Administration located with the main customs offices. Financial Control Section is targeting undeclared and illegal employment in general. The technical supervision for the customs administration, and therefore also for Financial Control Section, is exercised by the Federal Ministry of Finance.

Further authorities are included in the cooperative effort to combat undeclared employment such as the tax authorities, the Federal Employment Agency, the statutory pension, health, and occupational accident insurance funds, social security funds, the foreigners authorities as well as other security agencies and the police, e.g. within the scope of the Joint Analysis and Strategy Centre for Illegal Migration (see section 2.2.3).

### **Federal Office of Administration**

Since 2005 the Federal Office of Administration (Bundesverwaltungsamt) has been the registration authority for a database on found documents. The database contains information on foreign identity documents of third-country nationals requiring a visa which have been found in Germany. Any authority in Germany that obtains such a document must forward it to the Federal Office of Administration within seven days. The found documents

database shall help to establish the identity or nationality of foreigners staying in Germany undocumented in order to facilitate their later return (see Renner 2011: 781). The Federal Office of Administration will match the content of the database to any data as requested by several other authorities, such as the Federal Office for Migration and Refugees, the German Federal Police or law enforcement agencies.

### **Ministries of the Interior of the Laender and foreigners authorities**

The Ministries of the Interior of the Laender are responsible for the affairs relating to foreign nationals and thus for the foreigners authorities which are the operational bodies. Within the framework of the Federal laws and regulations they may decree ordinances and administrative regulations for the implementation of the policy on foreigners at the Laender level on behalf of the respective Laender governments.

With regard to third-country nationals staying illegally the local foreigners authorities are responsible for the procedures required under the law on foreigners, on residence and passports – in particular obtaining identification papers to substitute the passport, if they do not have one. They are also responsible for ordering and executing removals. The Federal Laender may appoint specific foreigners authorities to specialise in particular tasks, e.g. entrust one central authority with organising all removals in this Land. Some tasks were centralised with the German Federal Police such as obtaining passports for repatriations from certain states.

### **The police authorities of the Federal Laender**

The Laender police are not only the enforcement agencies for general criminal law and some aspects of public law, but also for some aspects of the law on foreigners. They are generally responsible for averting dangers to public safety and order and for controlling foreign nationals within the national territory (Westphal/Stoppa 2007: 106). Specifically this entails determining identity, securing identity data, removal and termination of stay. These tasks are executed in joint or concurrent competence with the foreigners authorities and the Federal Police (for this see Schneider 2009: 21).

The Laender Criminal Police Offices are an integral part of the police forces of the Laender. They engage in central tasks related to averting or prosecuting major criminal cases. In the field of organised crime they investigate in cases of smuggling and trafficking of humans. As the Laender Criminal Police Offices are central bodies they are the interfaces between the Federal Laender's police forces and the Federal Criminal Police Office.

### **2.2.2 Stakeholders, informal actors, and other organisations**

Informal actors and other organisations are not explicitly working to prevent and reduce irregular migration in terms of combatting it. Several organisations support and advice irregular migrants to enable them to claim their social rights. These organisations include the Deutsche Caritasverband, the Diakonische Werk, the Jesuit Refugee Service, the Ökumenische Bundesarbeitsgemeinschaft (BAG) Asyl in der Kirche, the Deutsche Paritätische Wohlfahrtsverband, Pro Asyl, different refugee councils, Malteser Hilfsdienst and the offices for medical care for refugees. Also trade unions – pioneered by the services union

ver.di – started to support irregular migrants in asserting their labour rights that are generally independent of their residence status. This support is e.g. offered in newly established advisory centres (see Schneider 2009: 77).

However, in certain situations the programmes and actions of different actors may also help to prevent the formation of irregular migration flows or to reduce the number of third-country nationals who are staying in Germany illegally. E.g. if a trade union succeeded in helping irregular migrants to actually receive the wages that were due to them, this opens up new perspectives for these migrants and their families in their home countries and returning there becomes more attractive.

### **International Organisation for Migration**

In addition to the global tasks of the International Organisation for Migration (IOM) it also acts as the operational partner for the Federation and the Laender to implement voluntary return projects (for this see Schneider/Kreienbrink 2010 and section 3.4.1). IOM Germany is currently working on two projects to combat human trafficking:

- In June 2011 IOM, UNHCR, and the Federal Office for Migration have joined forces in a one-year project to sustainably improve the structure of the German asylum procedure with regard to human trafficking.<sup>31</sup>
- The project “Berliner Bündnis gegen Menschenhandel zum Zweck der Arbeitsausbeutung” (Berlin Alliance against human trafficking for forced labour) wants to raise the awareness of organisations, institutions and occupational groups that might come into contact with (potential) victims of trafficking for forced labour. The project’s target groups are advisory centres for migration, labour, and health, migrants organisations, trade unions and several public authorities.

### **2.2.3 Cooperation and interaction**

As explained above the authorities involved with the prevention and reduction of irregular migration often cooperate closely within the scope of the law on foreigners.<sup>32</sup> Further cooperation and interaction in this field takes place in special forums and bodies.

### **Joint Analysis and Strategy Centre for Illegal Migration (Gemeinsames Analyse- und Strategiezentrum illegale Migration)**

The Joint Analysis and Strategy Centre for Illegal Migration (GASiM) is an inter-institutional information and cooperation centre to intensify cooperation in the fight against illegal migration and related criminal offences.<sup>33</sup>

31 See IOM information at [http://www.iom.int/germany/de/projects\\_ct\\_BBGM.htm](http://www.iom.int/germany/de/projects_ct_BBGM.htm) (downloaded on 13 December 2011).

32 For this see e.g. the cooperation between the German Federal Police and the visa offices in the form of document and visa advisors; see section 3.1.3 and footnote 43.

33 For details on the organisation, task and working methods of GASiM please refer to the statements of the Federal Government in BT-Drs. 17/6720 of 2 August 2011; BT-Drs. 16/11636 of 21 January 2009; BT-Drs. 16/8482 of 11 March 2008 and BT-Drs. 16/2432 of 23 August 2006.



The authorities represented in the GASiM (the Federal Criminal Police Office, the Federal Police, Federal Office for Migration and Refugees, the Federal Intelligence Service, Financial Control Section as well as the Foreign Office and the Federal Office for the Protection of the Constitution for certain aspects) deliver different work products covering the current aspects of illegal migration as it affects Germany. These work products are made available to the Federal Government, in particular the Federal Ministry of the Interior, and via the cooperation agencies also to the bodies which require it at the Federal or Laender levels. GASiM itself does not engage in any operations to combat illegal migration. But the results of its work can be applied in the operations of other authorities.

The heart of the cooperation is a fast exchange of information and the comprehensive analysis of all available relevant data and findings to facilitate a holistic approach. The German Federal Police represents the GASiM externally and is responsible for the design and publication of all GASiM work products on Extrapol, the security forces' intranet platform. The Federal Office for Migration and Refugees has the lead in the establishment of Infopol, a secure and encrypted information platform to advise the foreigners authorities and bring them up to date.

#### **Return Task Force**

There are a number of task forces of the Federation and the Laender on issues of residence law. The Return Task Force addresses enforcement issues related to returning third-country nationals required to leave the country, which usually fall within the competence of the Laender. The task force is a cooperation of the responsible organisational units of the Federal and Laender Interior Ministeries and other authorities. The Return Task Force is a sub-group formed by the Conference of the Ministers of the Interior.

#### **Hardship Commissions**

Pursuant to sec 23a (1) Residence Act the supreme Land authority may in a case of hardship and on petition from a Hardship Commission order a residence permit to be issued to a foreigner who is enforceably required to leave the Federal territory. This is possible when no residence permit can be issued or extended under the law, but urgent humanitarian or personal reasons justify the foreigner's presence in Germany. The supreme Land authority may also be guided by political interests in such a discretionary decision. The purpose of this option is to find humanitarian solutions for individual cases. To ascertain whether a case qualifies as a hardship case not only the humanitarian or personal grounds are examined, but also the migrant's length of residence in Germany and the degree of economic and social integration achieved. On the basis of the Hardship Commission's petition the supreme Land authority will resolve, whether or not to instruct the responsible foreigners authorities to issue a residence permit to this third-country national (see Parusel 2010: 28 et seq and section 3.4.3).

All Federal Laender have availed themselves of the statutory right to decree an ordinance establishing a Hardship Commission. The Commissions only take up issues on their own authority; neither the person concerned nor third parties can bring a certain case before the Commission. The Commissions' membership is not stipulated and varies between the Laender, i.e. some members may not hold a public office or mandate, such as the repre-

sentatives of the churches, of charities or local authority associations, refugee associations or the Land's integration commissioners (see Renner 2011: 468; Storr et al. 2008: 191).

**Alliances between the government and the social partners to prevent clandestine employment**

In their efforts to combat clandestine employment the Custom's Authorities include employers' associations and the trade unions in action groups against clandestine and illegal employment in close cooperation with the Federal Ministry of Finance. Currently there are five such alliances in the sectors most affected by clandestine employment.<sup>34</sup>

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34 Alliance against clandestine and illegal employment in the painting and decorating trade, Alliance against clandestine and illegal employment in the construction industry, Alliance against clandestine and illegal employment in the haulage, transport and logistics trade, Alliance against clandestine and illegal employment in the meat processing industry, Alliance against clandestine and illegal employment in the building cleaning trade ([www.bundesfinanzministerium.de](http://www.bundesfinanzministerium.de)).

# 3 Measures and practices to reduce irregular migration

## 3.1 Proactive measures

### 3.1.1 Information campaigns

Several European countries launched information campaigns to prevent irregular migration flows. They are designed to inform potential migrants in their home countries about the risks of irregular migration and the consequences of illegal residence in the envisaged target country in the hope that this information will induce them to decide against migrating.<sup>35</sup>

Similar approaches have been discussed at the level of the European Union in recent years, in particular the Commission championed the launch of tailor-made information campaigns.<sup>36</sup>

So far Germany has not undertaken any campaigns to raise the awareness of the population in countries of origin with the main objective of preventing illegal entries and illegal residence in Germany.

### 3.1.2 Improving the situation in the countries of origin and the options for legal migration

The Global Commission on International Migration set up by the United Nations recommended already in its 2005 report that border control policies should only represent one aspect of a long-term approach to the issue of irregular migration that addresses the socio-economic, governance and human rights deficits that prompt people to leave their own country. Further, that states should help to eliminate the conditions inducing irregular migration by providing additional opportunities for regular migration (GCIM 2005: 37). Thus, in the wider sense, very different migration and development policies could be seen as contributing to curbing illegal entries from such countries; either by generally improving the living conditions or prospects of the population in economically, socially and politically disadvantaged societies or by enhancing their transnational mobility. In terms of migration management this is discussed as impacting the “push factors” for migration to “pre-empt emigration” (see Bast 2011: 49).

35 It is controversial how meaningful such campaigns are. UNHCR criticized the possible effect of such information campaigns “as a form of deterrence to refugee flight”, therefore it should be strictly limited to those situations where the great majority of people who are leaving a country are demonstrably not in need of international protection; see “Towards a common European migration management policy” UNHCR observations on the European Commission Communication on a Community Immigration Policy, COM (2000) 757 final, Geneva November 2001.

36 See e.g. COM (2001) 672 final, see footnote 1, p. 17 and the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on “Circular migration and mobility partnerships between the European Union and third countries” of 16 May 2007, COM (2007) 248 final, Brussels, p. 4.

The European Union recognised the need for a consistent and comprehensive migration policy e.g. in its “The Global Approach to Migration” adopted in 2005 and recently enlarged to “The Global Approach to Migration and Mobility”.<sup>37</sup> It identifies four equally important pillars of migration policy that are interrelated as the communication stresses:

- organising and facilitating legal migration and mobility
- preventing and reducing irregular migration and trafficking in human beings
- promoting international protection and enhancing the external dimension of asylum policy
- maximising the development impact of migration and mobility.

For Germany’s national policies mainly three themes are relevant for affecting the root causes of irregular migration in this sense by suitable programmes:

#### **Migration and development**

- Just as at the European level, migration and development have also been discussed in a new light in Germany in recent years (see BMI/BAMF 2010: 230 et seqq; Baraulina/Hilber 2012; SVR 2011: 207 et seqq). All action taken by the Federation, the Länder and the local governments are usually related to one of three aspects of this issue: the importance of the migrants’ remittances to their home countries for the latter’s development, the development policy potential of migration movements for knowledge transfer and innovations, and the role of immigrant communities forming and maintaining networks with their countries of origin (Diaspora-Engagement; see Haase/Müller 2012).

#### **Special programmes providing for migration and mobility**

- Contract and guest workers in certain sectors may work in Germany for a defined period under bilateral agreements. Such governmental agreements have been signed mainly with the countries in Central and Eastern Europe which have meanwhile joined the EU and with some third countries (Bosnia and Herzegovina, Croatia, Serbia incl. Montenegro and Kosovo, Macedonia, Turkey, Albania, Russian Federation). Since December 2007 EU mobility partnerships have been initiated as one major instrument under the global approach. These are political agreements that include incentives for third countries in particular in the fields of legal migration and development, however, these are subject to cooperation commitments for the protection of refugees and the fight against illegal migration. Germany participates actively in the mobility partnerships with the Republics of Moldova and Georgia. These mobility partnerships facilitate so-called “outward mobility” to promote legal migration (also see section 5.2). In the light of recent develop-

37 “The Global Approach to Migration and Mobility”, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2011) 743 final of 18 November 2011, Brussels.

ments in northern Africa the European Commission suggested the initiation of dialogues on partnerships for migration, mobility and security with Tunisia, Morocco, and Egypt.<sup>38</sup>

### **Assisting with voluntary return and reintegration**

- Several programmes at the national, Land and local levels attempt to support different target groups of returning third-country nationals in getting started and ultimately reintegrating sustainably in their home countries, some of them are run by independent or international organisations (see full coverage for this in Schneider/Kreienbrink 2010). These programmes include projects that are part of the mobility partnerships mentioned above. One example to which Germany contributes in the form of vocational and social reintegration schemes is the project “Targeted Initiative Georgia – Support reintegration of Georgian returning migrants and the implementation of the EU-Georgia Readmission agreement” (see BAMF/EMN 2011: 38f).

### **3.1.3 The visa process and counselling of airlines**

Germany, as well as the other EU Member States, attributes great importance to the visa process for preventing irregular migration. As a rule, the German foreigners authorities will only issue residence or settlement permits to third-country nationals who have entered the country with the proper visa (unless they come from a country for which a visa waiver applies) and have provided the data on which issuance depends already at the time they applied for the visa (see Federal Ministry of the Interior 2011: 121). While the visa process had originally been devised merely for the purpose of controlling access at the border it has meanwhile become instrumental for the enforcement of residence law and migration control (Bast 2011: 39 et seq). Under section 71 (2) of the Residence Act the embassies and consulates general of the Federal Republic of Germany are responsible for issuing visas. Therefore the missions abroad are an initial control for illegal migration, because these controls and checks are aimed against those attempting to obtain a visa under false pretences and with false data (see Parusel/Schneider 2012).

The EU Visa Code that applies to the process for issuing visas for short term stays (Schengen visa) for all of the EU, stresses that the evolution of the common visa policy is specifically aimed at contributing to combatting irregular immigration and a reasonable assessment of migration and security risks. A core element to determine during the visa process is the applicant’s intention to return to prevent him from staying illegally once the visa has expired. The administrative rules for the implementation of the Residence Act provide for such a check. Accordingly, the applicant’s intention to return after the purpose of the stay must be verified in each individual case as “a constituent requirement for entry into the country”.<sup>39</sup>

38 See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “A dialogue for migration, mobility and security with the Southern Mediterranean countries”, COM (2011) 292 final of 24 May 2011, Brussels.

39 Administrative Regulation on the Residence Act no. 6.1.3.1.

### **Visa alert database**

At the initiative of the Federal Government the German Parliament resolved in November 2011 to set up an alert database to prevent visa abuse and illegal entries, in particular to stop smuggling and trafficking of humans.<sup>40</sup> Accordingly the Federal Office of Administration will set up a central alert database to prevent visa abuse and illegal entries. After the Act on the Establishment of a Visa Alert Database will have become effective in mid-2013 the database shall contain alert files on individuals who have been finally sentenced to a fine or imprisonment for certain offences relevant for the visa procedure. The German Visa Alert database complements the EU's Visa Information System (VIS) that has been operational since October 2011 (see Parusel/Schneider 2012: 78 et seq).

Already now the authorities can access a number of national databases and registers such as the Federal Central Criminal Register, the Central Register of Foreigners, the anti-terrorism databases and the Central Trade and Industry Register, to prevent that visas are issued to undesirable persons. Independently of the EU's VIS which intends to regularly process biometrical data in the Schengen visa procedure, Germany is currently testing the collection of biometrical data also for national visas in a pilot project with the Consulate General in Lagos (Nigeria).<sup>41</sup>

### **Visa Information Centre**

In March 2008 a "Visa Information Centre" was set up at the headquarters of the Federal Police in Potsdam for the purpose of investigating the phenomenon of obtaining visas under false pretences. The findings are forwarded to the Federal Foreign Office, the German missions, the Federal Police's officers abroad and its offices in Germany. The missions can also turn to the "Visa Information Centre" and the Federal Criminal Police Office when they come across so-called "mass sponsors" during the processing of visa applications, i.e. companies or individuals that very frequently make declarations of commitment to provide the applicant with proof that he/she has sufficient means to pay for the stay in Germany. Requests for checks on sponsors that have not yet been categorised as mass-sponsors, but nevertheless seem suspicious to the missions can also be directed to the Visa Information Centre and the Federal Criminal Police Office. A total of 1,686 cases were discovered in 2010 that warranted a reasonable suspicion that a residence title had been obtained unlawfully (sec 95 (2) no 2 Residence Act).<sup>42</sup>

### **Document and visa advisors**

The German Federal Police also possesses a special network of document and visa advisors. These advisors are part of the missions and mostly work in countries that have overriding importance as sources for irregular migration. Their role is to update the visa staff on the latest security-relevant findings in irregular migration for them to consider in

40 See BT-Pl.Pr. 17/146 of 1 December 2011, pp. 17469/17470A.

41 See BT-Drs. 17/6225 of 15 June 2011, p. 4; At the time the present study was completed no project results were available yet.

42 See BT-Drs. 17-6223 16. June 2011, p. 8.

the processing of visa applications.<sup>43</sup> In addition thereto the Federal Police's advisors abroad have mainly three tasks:

- advising airlines on transporting passengers at local airport check-ins for flights to Germany;
- advising and supporting the German missions' visa offices by examining the documents submitted by the applicants;
- training the visa offices' staff, including those of missions of other EU Member States, airline staff and local border authorities in recognising counterfeit or false documents and regarding the entry requirements for the Schengen area.

#### 3.1.4 Carrier sanctions

Under section 63 of the Residence Act carriers may only transport foreigners into the Federal territory if they are in possession of the required passport and residence title. The headquarters of the Federal Police, as the body designated by the Federal Ministry of the Interior, may, in consultation with the Federal Ministry of Transport, Building and Urban Affairs, enjoin a transport contractor from transporting foreigners to the Federal territory contrary to this provision and threaten a fine in case of violation. The fine against the carrier is no less than 1,000 Euros and no more than 5,000 Euros for each foreigner transported culpably and unlawfully. At this time the provisions of section 63 Residence Act are only applied in air traffic and implemented in several stages. The airport police stations register each case of unlawful air transport in the Federal Police's statistics. At first the German Federal Police issues a warning to an airline that calls attention to itself by a high number of unlawful transports. If the figures remain alarming or even increase a restraining order is issued in a second step, at this time without threatening to impose a fine. The imposition of a fine is threatened in the next steps, increasing the amount by 500 Euros each time. In serious cases the restraining order may already threaten the imposition of the fine.

In 2010 restraining orders had been issued against 15 airlines, ten of them were threatened with the imposition of a fine. The total volume of the sanctions amounted to more than 1.5 million Euros.

#### 3.1.5 Border police liaison officers

The German Federal Police Border has been deploying border police liaison officers since 1992. Currently 24 liaison officers are working in 23 countries, mostly in Europe. In some locations they are also accredited for neighbouring countries. The main objective of the deployment of the border police liaison officers is to warrant cross-border security in the EU and with certain third countries that are important countries of origin or of transit

<sup>43</sup> The document and visa advisors of the German Federal Police have been deployed based on an agreement between the Foreign Office and the Federal Ministry of the Interior. Their assignments are determined by the Federal Police after an assessment of the situation under the migration and border surveillance aspects and coordinated between the Foreign Office and the Federal Ministry of the Interior within the scope of available financial and human resources; The Foreign Office assigns the liaison officers to the missions in agreement with the Federal Ministry of the Interior (see BMI/Federal Office for Migrants and Refugees 2011: 191).

for uncontrolled migration. The officers of the German Federal Police have the following functions:

- collecting, evaluating and analysing information on the border policing situation in the respective country and the exchange of information with the local authorities;
- advising and supporting the responsible local offices in all technical matters that fall within the competence of the Federal Police;
- advising and informing German and other country's missions on measures to prevent unlawful entries into Germany.

In 2004 legislation was adopted on the cooperation of the border police liaison officers of the Schengen states (see section 4.3).

## 3.2 Preventing illegal entry

### 3.2.1 Border management

Border management includes the prevention of illegal entries by foreign nationals, combatting cross-border smuggling crime and other offences related to cross-border crime, such as human trafficking, illegal transfer of motor vehicles, drug and document fraud crime.

Because people enjoy the right of free movement border management is not only in the interest of the Member State whose external border is controlled, but in the interest of all Member States. Under the Community's binding border regime<sup>44</sup> such measures shall contribute to combatting irregular immigration and human trafficking, to preventing any risks for internal security, public order or health or the international relations of the Member States. They shall be executed professionally and respectfully and be commensurate to their goals. Since the beginning of the nineties sizable investments have been made in border management resources and the staffing of the Federal Border Police in Germany as well as in other European countries to enable them to take joint action against illegal border crossings and smuggling (for the different forms of cooperation also see section 4.3). The technical equipment for surveillance was upgraded, e.g. in the form of infrared, night vision, thermal imaging and CO2 detection equipment (Minthe 2002: 20; Dietrich 1998: 17).

Since 21 December 2007 when stationary border controls between Germany, Poland, and the Czech Republic were abolished (and later on 18 December 2008 to Switzerland) the Federal Police's stationary identity checks became restricted to the German international airports. Stationary controls are not regularly made at the land borders anymore, thus the refusal of any foreign nationals intending to enter can only be practised at the airports. According to section 15 of the Residence Act entry can only be refused prior to the individual's

44 Regulation (EC) no 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).



entry. The German Federal and Laender Police compensate for the abolished land border controls by checking identities in the border regions as required by the situation. The Federal Police also checks travellers' residence status on the premises of the federal railways, the trains and sea ports.

The Federal Police has developed an integrated border management concept that builds on the European Union's efforts in this field to perform its many duties related to the border. The German concept is designed as a "four pillar model" consisting of the pre-emptive strategy ("pre-entry"), external border controls, compensatory measures in the country, and police cooperation.

### **Controlling cross-border traffic at the external border**

Under the Schengen Borders Code (SBC) anybody entering or leaving a country is subject to a minimum check (art. 7 (2) SBC) in order to establish his or her identity on the basis of the presentation of the travel documents. The check consists of a rapid and straightforward verification of the validity of the document and of the presence of signs of falsification or counterfeiting. The minimum check is the rule for persons enjoying the Community right of free movement.

Third-country nationals are subject to thorough checks on entry and exit (art. 7 (3) SBC) which comprise verification of the conditions governing entry laid down in article 5 (1); the same type of check applies upon exit.

### **Refusal of entry**

A third-country national who does not fulfil all the entry conditions shall be refused entry to the territories of the Member States under art. 13 SBC. Any third-country national found to have been refused entry to the territory of another state who does not comply with the requirements for entering Germany is to be returned to his country of origin (the state where the foreign national had his usual residence). Statistics on the number of entries refused are included in section 6.1.2).

Since Germany can now only refuse entry at the air and sea borders, all airlines and shipping enterprises are obliged to transport such a third-country national they took to Germany back. If such transport is not immediately possible, e.g. because the foreign national's identity cannot be clearly established or the first available flight will not be until a few days later, the Federal Police will apply for a warrant of arrest to ensure the enforcement of the refusal of entry. No arrest will be applied for, as an exception, if the respective airport has a transit zone where the persons to be returned can stay until their return flight takes off.

## **3.2.2 Document inspection, analysis and risk assessment**

### **Use of special technologies for controls and surveillance**

The German Federal Police is currently employing two different (semi-) automatic biometric border control systems: the "Automatisierte biometriegestützte Grenzkontrolle (Automated and Biometrics-Supported Border Controls – ABG)" and the "EasyPASS" system. While the ABG is a "registered travellers programme", EasyPASS largely replaces the man-

ual (traditional) checking of EU citizens without the requirement of previous registration. The biometric characteristic for ABG is the iris of the eye and for easyPASS the facial image electronically saved in the passport (ePass). Further, the German missions abroad and (via the Federal Ministry of the Interior) the Federal Police are involved with the national implementation of the European Visa Information Systems (VIS) (for this see Parusel/Schneider 2012).

### **EasyPASS**

- EasyPASS checks the identity of EU/EEA and Swiss citizens by face recognition with the ePass. The traveller positions his passport on a reading device and simultaneously the document is checked for its authenticity, the police search databases are queried and the photo is read out. After this initial check an automatic barrier will open and a camera will match the image from the passport to the live scan of the traveller's face. The barrier will be released if the check did not lead to any objections. The main advantage of EasyPASS is the standardisation of the identity check by making it automatic which provides enhanced security. Human errors by the border guards, e.g. because they are tired or distracted, can be avoided. At the same time less personnel is required at the international airports.

### **Automated and Biometrics-Supported Border Controls (ABG)**

- The Federal Police is currently piloting the Automated and Biometrics-Supported Border Controls system that is limited to registered travellers and mainly targets frequent travellers. An interested participant must first register with an enrolment centre. The image of the traveller's iris is captured during registration and will be used to check his identity in future border controls. Similar to the EasyPASS system the traveller puts his passport on the device reader at the entry to the ABG system. The passport data are read out and if the traveller is registered he is admitted to the control lock, upon entering the lock the traveller's iris is matched to the image that was saved in the database at the time of registration for precise identification.

### **Identifying counterfeit documents**

Document-related offences for identity fraud figure very importantly in irregular migration. Fraudulent documents are usually only discovered during active controls. The Federal Police officers are assisted by stationary and mobile inspection devices as well as by automated document reading and inspection systems.

When a check gives rise to an initial suspicion the police take precautionary measures to recover all physical evidence, conserve material evidence and avoid misleading traces (e.g. by wearing disposable gloves and masks) until the document will be subjected to a forensic analysis. The forged document is then processed and analysed further in a three-phased physical technical document examination (first control line, specialised regional test lab, central test lab).

### **Intelligence gathering and evaluation by the Federal Police**

Police intelligence on irregular migration – beyond the immediate assessment of a situation – is systematically evaluated and analysed as well as included in all medium- and

long-term planning to enhance efficiency. The core competence for such analyses is combined in the Federal Police's system for intelligence-led policing. This approach comprises the analysis of external threats and internal risks as well as forecasts based on strategic and operative evaluations. Such analyses are essential for modern policing and are expected to sustainably improve performance at all levels of the Federal Police.

Risk profiles, for instance, are indispensable for the efficiency of practical controls at the airports to target the high-risk groups. The profiling includes questioning about the destination and accommodation and paying attention to physiognomy, clothing and baggage (to match the means of transport) of the traveller. Unusual or unsuitable combinations of garments and shoes (e.g. wearing sandals with a suit for an alleged short business trip) or presenting a hotel reservation that can be cancelled, might be indicative of an attempt to gain illegal entry.<sup>45</sup> Flight connections that are illogical might be suspicious too. Here the IT-based Passenger Name Record that traces the route travelled by a certain passenger by plane is extremely helpful.

#### **Cooperation for risk analyses**

Since the Federal Police is the German authority responsible for the surveillance of cross-border movements of persons it is also the cooperation partner for FRONTEX and other international organisations (see section 4.3). Joint evaluations are produced in cooperation with FRONTEX' Risk Analysis Unit.

As one of the goals for future cooperation the Federal Police envisages the improvement of the efficiency of FRONTEX operations and to use the findings of the analyses to a greater extent also within Germany. There seems to be much potential for improvement when basing future risk assessments related to specific events on an up-to-date and holistic assessment of the situation of migration in Europe and to derive the corresponding conclusions and prognoses.

### **3.3 Detecting and controlling illegal residences**

Over the last decades the policy-makers responsible for internal policy have become convinced that despite all efforts to prevent illegal entries by perfecting the controls at the physical borders, these will remain insufficient to manage and control migration, most importantly to avoid irregular migration altogether. The rapid development of modern technology has played a considerable part here. On the one hand, this meant that migration policy became more international and that priority was given to the cooperation with the countries of origin and the international community. On the other hand, attention became focused on what is happening inside the country, e.g. by using technology to apprehend and identify persons already staying there (internal migration control by in-country control measures; see Broeders 2009).

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45 Reported by the Federal Police at a workshop of experts on 30 June 2011.

### 3.3.1 Activities of the German Federal Police

#### Compensatory measures within the national territory along the borders (street searches)

The Federal Police is authorised to check identities and search persons without any justification or specific suspicions in a 30 km wide zone along the territorial borders (sec. 23 (1) no. 3 and sec. 44 (2) Act on the Federal Police). Persons may be questioned, if facts indicate that they may provide relevant information to enable the police to perform certain of its duties such as preventing illegal entries (sec. 22 Act on the Federal Police).<sup>46</sup>

#### Situation-based controls at railway stations and airports

Identity checks depending on the situation and independent of suspicions may continue within the national territory. This is, however, conditional on a formally founded assumption that the person to be checked has recently crossed an external border. Therefore the Federal Police has the powers to control transit routes, railway stations and airports. These controls are mainly performed at main cross-border roads and cross-border rail links.

These powers are compensatory for the abolition of internal border controls and subject to the provisions of section 21 SBC. As such they must be based on situation-related information and experience with irregular migration when performed on railway or airport premises. They may not be systematic but must be based on spot-checks. Their intensity and frequency may not have an effect equivalent to border checks. If warranted by specific information passengers of national flights may exceptionally be submitted to spot-checks directly upon leaving an aircraft.

In 2010 these situation-related controls detected 5,689 illegal entries at German airports; most of these flights came from Greece, Italy, and Spain.

### 3.3.2 Activities of the police forces of the Laender

Beyond the border areas, transit routes and railway stations the police authorities of the Federal Laender patrol the hinterland and check identities. Whenever checking anybody's identity the police must also verify his or her residence status. The general law on public safety and order of some Federal Laender provides for certain additional control powers.

### 3.3.3 Activities of the Federal Criminal Police Office

The Federal Criminal Police Office is not directly involved in border management operations, but it operates the central search computer on which the INPOL<sup>47</sup> and SIS systems are running. The data are queried and controlled on request; the Federal Police, the police of the Laender and the customs authorities are entitled to make queries and to receive information (the full range of duties of the Federal Criminal Police is described in section 2.2.1).

46 Such measures take full account of article 21 of Regulation (EC) no. 562/2006 (Schengen Borders Code), i.e. they are not occasioned simply by the fact that the border was crossed. They are not carried out systematically but as spot-checks on the basis of situation reports and of general police information and experience.

47 An interconnected police information system covering all federal Laender and holding the data of all offences and offenders that are of interest beyond the local or regional level.

### 3.3.4 Law enforcement activities by the customs authorities

Illegal employment is generally considered as detrimental for society, because it destroys jobs and deprives the social security funds of revenue (see Sinn et al. 2006: 79). All of the players involved (usually employers, customers, workers, service providers, craftsmen and consumers) are considered criminal offenders that need to be sanctioned (Cyrus 2004: 67). The customs authorities' unit 'Financial Control Section' is discovering and prosecuting illegal employment (see section 2.2.1). In the context of irregular migration this unit checks compliance with the foreign nationals' obligation to have a work permit and a residence title authorising them to engage in such employment. The unit's initiatives against clandestine and illegal employment are based on the Act to Combat Illegal Employment. However, the activities relating to foreign nationals focus on their occupation or employment rather than on their residence status. Thus the checks and sanctions of the 'Financial Control Section' unit do not yield any statistics that can be directly applied. Although the unit has the same powers as the law enforcement authorities within the scope of its own investigations, its results are not included in the Federal Criminal Police Office's crime statistics, unless suspects are handed over to the police of the Laender for "illegal residence".

### 3.3.5 Activities and cooperation projects by other public authorities

The German control system to discover third-country nationals staying illegally in Germany is largely the result of the exchange of information between different authorities. In essence, it is the by-product of the regular cross-checks during general administrative processes that has been adapted for the purpose of in-country controls. The main pillar of the system is the provision on mandatory notification in section 87 of the Residence Act. Accordingly public bodies are obliged to provide relevant information (as defined in sec. 86, 1st sentence of the Residence Act) such as the actual or usual residence to the foreigners authorities on request (section 87 (1) of the Residence Act). Notification can also be made to the police who in turn will inform the foreigners authorities. Under the General Administrative Regulation on the Residence Act such public bodies are not only the criminal prosecution and regulatory authorities, courts, and population registers, but also educational institutions, employment offices, youth welfare and welfare offices (for details see no. 87.1.1.1 General Administrative Regulation on the Residence Act). An indirect consequence hereof is that whenever irregular migrants come into contact with a public authority they must expect the discovery of their illegal residence which will forthwith lead to their arrest and removal. The impact is most noticeable when access to the services offered by the welfare state, to education and to housing are concerned (for this see the reforms described in section 2.1.3 and Sinn et al. 2006: 78-90).

### **Attempts by the foreigners authorities and the missions abroad to prevent marriages of convenience and false paternity declarations**

As a general rule, foreign nationals may be granted permission to reside in Germany with other members of their family who are entitled to stay in compliance with article 6 of the Constitution to protect marriage and family. Therefore marriage to a German partner or a non-German who holds a long-term residence title may be a form of legalisation. Following Cantzler (2004: 14 et seq) some smugglers also include the arrangement of a marriage (of convenience) with the services they offer to allow the smuggled foreigner to obtain a residence title. A formally effectively contracted marriage by itself does not entitle

to the subsequent immigration of spouses or to a residence title for third-country nationals. Rather this is always conditional on the actual existence of a conjugal community which will be assumed, if the spouses are obviously living together or intend to live together in a permanent relationship characterised by close ties and mutual support. The Residence Act clearly states: "The subsequent immigration of dependents shall not be permitted, if it is established that the marriage has been entered into or kinship established solely for the purpose of enabling the subsequently immigrating persons to enter and stay in the Federal territory" (sec. 27 (1a) no. 1 Residence Act). Pursuant to sec. 95 (2) no. 2 of the Residence Act actions which constitute a marriage of convenience (using false information and documents procured in this manner for the purposes of deceit in legal matters) are punishable with up to three years' imprisonment or a fine.

Within the scope of the visa procedure the missions are authorised to look for any indications that at least one of the spouses does not intend to establish a conjugal community in specific cases. For this purpose they cooperate with the responsible foreigners authorities in Germany. The examination involves questioning of both spouses on how they met, how the wedding was or will be celebrated and what they are planning for their future lives in Germany together. The spouses' privacy is not subject to questioning. The General Administrative Regulation on the Residence Act provide the specifications and recommendations for this verification process building on a EU Council Resolution among other things.<sup>48</sup> Under constitutional law there are, however, limits to the investigations the foreigners authorities may make (see Göbel-Zimmermann 2006: 84 et seqq). The General Administrative Regulation on the Residence Act enumerates circumstances that support the intention of establishing a conjugal community, e.g. sharing an apartment or the fact that the spouses have known each other for some time. Likewise they cite indications for the absence of such an intention, e.g. that the spouses do not share a common language or have never met before the wedding.

Germany issues around 30,000 visas for the subsequent immigration of spouses every year (for this see BMI/BAMF 2012: 112 et seqq) and only a very minor part thereof gave rise to suspicions inducing a special verification of the absence of a marriage of convenience beyond the statutory requirements for issuance of a visa. Some of the larger foreigners authorities have established working groups with specialised staff for this purpose. An example is the authority in Munich whose working group deals with approx. 150 to 200 cases annually in which suspicions trigger special investigations before granting a residence title for a marriage. As a result of these investigations which concentrate on those cases that suggest systematic abuse about 30 times per year a foreigner's stay must be terminated (organised crime; possibly related to the criminal offence of forced marriage). The Munich foreigners authority maintains that this had a preventive effect, because meanwhile less attempts at abuse were recorded.<sup>49</sup> Marriages of convenience with spouses from third countries have already been complicated by the introduction of the language requirement (sec. 30 (1) no. 2 Residence Act).

48 Council Resolution 97/C.382/01 of 4 December 1997 on measures to be adopted on the combating of marriages of convenience, Official Journal C 382, 16/12/1997.

49 Reported by the Munich foreigners authority at a workshop of experts on 30 June 2011.

During these investigations the spouses are usually interviewed separately by the consulate processing the application abroad and by the responsible foreigners authority in Germany. A similar verification can be made by the foreigners authority when an extension of the residence title for family reasons is applied for or at a later time when the spouse that immigrated later claims an independent entitlement to residence. Experts report that some investigations are triggered by information laid or suspicions voiced by neighbours or someone else in the suspect's environment; further input can come from police intelligence of which the foreigners authority is notified. A key test is whether there is a joint residence; under certain circumstances a search warrant can be applied for.

There are many variations of the phenomenon of false paternity declarations. The most frequent variant is the acknowledgment of paternity by a German national for the child of an unmarried foreign woman. It is generally possible to legalise the residence status, if paternity is acknowledged before a notary at the time a child is born out of wedlock. When paternity is acknowledged care and custody for the child must be acknowledged as well. On the basis of such an acknowledgment the parent that had been obliged to leave the country will become entitled to stay; according to the principle of parentage of German nationality law the child will become a German national (sec. 28 (1) no. 3 Residence Act in conjunction with sec. 4 (1) Nationality Act). This applies irrespective of whether the parent entered illegally and without a visa. Since the relevant point is care and custody it does not matter whether the father is the biological or the social father. The acknowledgment would only constitute an abuse if no real father-child relationship would subsequently be established in the form of a family living together.

A false acknowledgment of paternity has the purpose of procuring a right to residence for the mother although it is not based on a natural paternity or any other kind of father-child relationship. The Ministries of the Interior of the Laender compiled statistics on the number of residence titles that were issued because of the acknowledgment of a paternity for the benefit of unmarried foreign mothers of German children who were obliged to leave the country at the time of such acknowledgment for the years 2003 and 2004. These statistics recorded 1,694 such titles issued during twelve months. Although the number does not indicate how often this constituted a violation of the law on parent and child (i.e. because neither a biological nor a social relationship existed between father and child), the Federal Government and the Conference of the Ministers of the Interior consider this to be a rather wide scope for potentially false declarations of paternity.<sup>50</sup>

The registry offices play an important role for detecting false declarations of paternity, because they must establish the identity of anybody claiming to be the child's father upon registration of the birth. Under the fundamental rights of the protection of marriage and family and in particular the parents' right to care and custody of their children (art. 6 (2) of the German Constitution) the acknowledgment of paternity is subject to civil law according to the Civil Code (sections 159ff Civil Code). Both the natural-biological father and the legal or social father can claim the fundamental right of the protection of the family (for details see Göbel-Zimmermann 2006: 87 et seqq).

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50 See BT-Drs. 16/3291, pp. 2, 11.

On 1 June 2008 a law complementing the law on challenging paternity entered into force in Germany.<sup>51</sup> Under this act the public authorities may challenge an acknowledgment of paternity, if it is neither based on a social-family relationship nor on biological paternity. There are three scenarios that would result not only in unlawful consequences under nationality or residence law, but also in unlawful receipt of social security benefits.<sup>52</sup> The act adds the possibility that a public authority may challenge an acknowledgment of paternity to the provisions defined for such a challenge in the Civil Code, however, only under very specific circumstances (see Schneider/Parusel 2009: 16 et seq). According to information provided by major foreigners authorities these procedures are only rarely successful in practice because the authorities cannot insist on a paternity test for biological paternity. Furthermore, no consolidated findings or statistics are available as yet, because the competences for challenging procedures are organised very differently in the Laender.

### 3.4 Pathways out of irregularity

Comparative studies have shown that the approaches, legal frameworks, and interests in ending irregularity of the Member States of the European Union vary considerably (see e.g. EMN 2007; Baldwin-Edwards/Kraler 2009). Also current surveys indicate that especially the EU members around the Mediterranean that have borne the brunt of illegal immigration in recent years, pursue very different policies towards the third-country nationals that are staying in their countries illegally (see Riedel 2011). In addition to promoting voluntary returns and executing forced repatriations almost all EU Member States have adopted provisions in their foreigners laws – of various types and scope – that could be termed ‘regularisation’ in the widest sense (see Baldwin-Edwards/Kraler 2008; Kraler 2011).<sup>53</sup> Although persons residing illegally in Germany may in individual cases obtain a residence title under the provisions of residence law, the efforts of the Interior Ministers of the Laender and the work of the foreigners authorities are primarily directed at terminating the stay of irregular migrants either by their return or by traveling to another country; legalisations are generally not provided for in Germany (Breyer 2011: 224).<sup>54</sup>

#### 3.4.1 Return and removal

A foreigner is generally obliged to leave the Federal territory if he or she does not possess or no longer possesses a necessary residence title. The residence title may expire for a number of reasons, including the expiry of its period of validity or its revocation (sections 50, 51 Residence Act). It is generally preferred that the third-country nationals leave the country voluntarily, because this is the more humane and cost-efficient form of return (see Schneider/Kreienbrink 2010: 47). If the foreign national does not comply with his or her obligation to leave Germany, he or she may be forcibly removed. The foreigners authorities are responsible for examining the circumstances, issuing the relevant administrative notices

51 Act Complementing the Law on Challenging Paternity of 13 March 2008 (Federal Law Gazette I, p. 313) (in German).

52 For details see the reasoning for the law in BT-Drs. 16/3291, pp. 10 et seq.

53 The comparative EU study REGINE (Practices in the Area of Regularisation of Illegally Staying Third-country nationals in the Member States of the EU) defines regularization as “any state procedure by which third-country nationals who are illegally residing, or who are otherwise in breach of national immigration rules in their current country of residence, are granted a legal status.” (Baldwin-Edwards/Kraler 2008: 9). In the view of the German Federal Government the statutory regulation governing old cases (sec. 104a Residence Act; see section 3.4.3) cannot be deemed to be a legalisation, because it is not about registering persons who went underground.

54 However, also see section 3.4.3 on regulations on the right to stay and old cases.



and organising the removal if required. The responsible foreigners authorities may only execute a removal if the obligation to leave the country is “enforceable”, i.e. after the expiration of the time-limits for appealing the departure order and for a voluntary departure (for the transposal of the so-called EU Return Directive see section 5.1). The obligation to leave the country is enforceable for those foreigners who have entered the Federal territory unlawfully or whose visa has expired, while a residence permit has not been applied for.

### **Voluntary departure and assisted return**

Since 1979 Germany has been running the REAG/GARP programme (“Reintegration and Emigration Programme for Asylum-Seekers in Germany”/ “Government Assisted Repatriation Programme”) to encourage voluntary returns. It mainly targets rejected asylum-seekers and offers free travel as well as travel and start-up subsidies for the reintegration of nationals from countries that have special significance for Germany’s migration policy. The amounts of money granted for start-up depend on the countries of origin. The Federal Ministry of the Interior and the Federal Laender revise the subsidies and the list of countries of origin with migration policy significance annually with due consideration of current political developments.

After a revision of the programme also persons staying illegally became entitled to the benefits, provided that they reported to the authorities and the foreigners authority issued a border crossing certificate for them (Sachverständigenrat 2004: 356). In this situation it was at the discretion of the foreigners authority whether it issued a border crossing certificate or had the foreign national removed. The crux of the unauthorised migrant matter is, however, that the authorities must by law institute criminal proceedings for violation of the Residence Act, even when a voluntary departure is intended (see Schneider/Kreienbrink 2010: 66).

Next to REAG/GARP return assistance is offered by several Federal Laender to which irregular migrants are also entitled (see *ibid*: 65 et seqq).

### **Removal**

Notice of intention to deport a foreigner is given in writing. The notices specifies a period allowed for voluntary departure and the state to which he or she is to be removed (sections 58, 59 Residence Act; for “decisions on expulsion under the EU Return Directive”, see section 5.1). The legal remedies described above also apply for the notice of the intention to deport. Persons required to leave the country may be placed in custody by judicial order (sec. 62 Residence Act). The Residence Act also provides for the expulsion of foreign nationals in certain situations; once the obligation to depart becomes enforceable this may also lead to a removal (see Schneider 2009: 61).

Depending on the case at hand, the central foreigners authorities, the Federation’s Coordination Office for Returns with the Federal Police, and/or the police of the Laender are involved in the removal process. If the deportee is in custody, also the Laender administrations for home or legal affairs are concerned and if the deportee is to be accompanied the Federal Police as well. As a rule, the police forces of the Laender do not accompany deportees abroad. Both expulsion and removal automatically give rise to a re-entry ban which may be limited in time on application (sec. 11 Residence Act). An expulsion order is

not dependant on the legitimacy of the foreign national's stay in the Federal territory. Also anybody who is enforceably obliged to leave and continues to stay illegally may be expelled to prevent him from re-entering after first leaving voluntarily without an application for limiting the duration of the re-entry ban (see sec. 11 (1) 1st sentence). Foreign nationals whose whereabouts are unknown (i.e. those who went underground) may be expelled. In these cases the expulsion order will be served publicly once the responsible authority has exhausted all means to establish the whereabouts of the foreigner (no Vor 53.2 General Administrative Regulation on the Residence Act). He or she will be included in the police's investigative materials relating to wanted persons in order to determine his or her whereabouts and to apprehend him or her (sec. 50 (7) Residence Act).

In most cases the responsible foreigners authority is the *dominus litis*. Depending on the Federal Land, other institutions might be responsible, such as the Central Foreigners Authority. To prevent persons from absconding the notice of intention to remove may be issued without stating a date, no notice may be given at all or the foreign national may be placed in custody (for details see Kreienbrink 2006: 74 et seqq).

The problem with forcible removals is not the lack of legal provisions, but rather the multitude of practical impediments that appear in various forms (see Hailbronner 2005: 408 et seq). For one, some of the migrants required to leave are not willing to do so and refuse to cooperate with the authorities. Further complications are lodging of appeals, sudden illness, unavailability of transport, lack of funding or organisational difficulties. Secondly, the cooperation with some of the diplomatic or consular representations of the deportees' countries of origin is difficult, e.g. to establish the persons' identity, to obtain passports or substitute passports or the general willingness of the countries of origin to re-admit their own nationals (see Kreienbrink 2006: 58 et seq).<sup>55</sup> The Federal Police coordinates the acquisition of substitute passports for Vietnam and 13 African countries centrally.

### 3.4.2 Temporary suspension of removal

The Ministers of the Interior of the Federal Laender may order the suspension of removal for a certain period for certain groups of foreign nationals who are required to leave ("Duldung"). Such a moratorium which suspends the removal may be ordered for a maximum of six months in accordance with international law, on humanitarian grounds or in order to uphold the political interests of the Federal Republic of Germany. After this period the groups of foreign nationals concerned may be issued residence permits with the approval of the Federal Ministry of the Interior (sections 60a (1), 23 (1) Residence Act). The supreme Land authority may determine personal or objective criteria for the persons to be affected by the suspension (e.g. belonging to specific ethnic groups, alternatively there may be reasons for excluding certain persons such as a criminal record).

The removal of the individual foreign national must be suspended and a certificate attesting this must be issued ("Duldung"), as long as removal is impossible for factual or

55 During the workshop for the preparation of the present study on 30 June 2011 representatives of the Federal Police reported that these difficulties arose mainly with Turkey, Vietnam, and China.

legal reasons and no residence permit has been issued. Such legal or factual reasons may be a ban on removals to a specific country or grounds for non-enforcement, inability to travel for medical reasons, unavailability or disruption of routes of transport, permanent impossibility to obtain passports or substitute passports or to execute the removal without them. The removal may also be suspended if the public prosecutor's office or the criminal court considers the individual's temporary presence to be appropriate in connection with criminal proceedings relating to a criminal offence, because it would be more difficult to investigate the facts of the case without his or her information. Furthermore suspension of removal may be granted or extended at discretion if the foreign national's continued presence in the Federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests (sec. 60a (2) Residence Act). In this situation a permit for temporary residence (see below) may usually be granted.

The suspension of removal as such does not entitle to reside in the country, rather the obligation to leave the country forthwith continues to apply. Thus persons who have been granted a suspension of removal belong to the group of irregular migrants as defined for the purposes of this study although they are known to the authorities (see sections 1.2 and 6.2.1.2). One purpose of the suspension of removal is to prevent the foreign national from committing a criminal offence by staying in the country despite the continued obligation to leave (see Parusel 2010: 35 et seqq). The foreigners authorities are responsible for reviewing the viability of a removal and for issuing the certificate on the suspension of removal.

### 3.4.3 Issuing a residence title

The German Residence Act includes several provisions for granting residence in accordance with international law, on humanitarian or political grounds. These provisions are not part of EU Community law and may also be applied to third-country nationals that are staying in Germany illegally. The most relevant types of such residence entitlements are briefly outlined below (for a detailed review see Parusel 2010).

#### **Provisions governing the right to stay (Bleiberechtsregelung)**

Under sec. 23 (1) Residence Act the supreme Land authorities may order a residence permit to be granted to foreigners from specific states or to certain groups of foreigners defined by other means (such as ethnicity or religion), in accordance with international law, on humanitarian grounds or in order to uphold the political interests of the Federal Republic of Germany. This provision may also apply to persons who are already physically present in Germany, but not authorised to stay. In practice, most of these orders take the form of the implementation of so-called "resolutions on the right to stay" adopted by the Standing Conference of the Interior Ministers of the Laender in the Federal Republic of Germany. These resolutions are policy agreements of the supreme Land authorities with the participation of the Federal Ministry of the Interior. For such a resolution to become effective it must be transposed by ministerial decree into the law of each of the Federal Laender. In this way several groups of foreigners have been regularised, mostly in the early 1990ies (for this see Cyrus/Vogel 2005: 22 et seq.). As a predecessor to the statutory regulation of old cases the Standing Conference adopted the last of these resolutions on the right to stay for unauthorised foreign nationals who have integrated well into the German economy and society in November 2006.

### **Regulation of old cases (Altfallregelung)**

In the context of the Act to Implement Residence- and Asylum-Related Directives of the European Union of 19 August 2007 (“EU Directives Implementation Act”) a regulation of old cases limited in time was introduced for migrants whose removal had been suspended for a long period and who had made an effort to integrate into German society (sec. 104a Residence Act). The purpose of this regulation was to provide such migrants with a permanent perspective for their future lives in this country. The granting of the residence permit under this regulation was subject to the migrant’s continuous residence in the Federal territory for at least eight or (if living together with one or several minor children as a family unit) for at least six years on 1 July 2007, either legally or by virtue of the removal having been suspended, having adequate knowledge of the spoken German language and not having a criminal record. This regulation of old cases is not an across-the-board regularisation, but rather meant to be applied to individual cases under very specific conditions. The residence title was limited to a maximum of two years and was only extended when there was proof that the applicant would be able to earn his or her living independently in future (“probationary residence permit”). At the same time this regulation established a legal basis for the independent right to residence of integrated children, whose parents did not comply with the requirements for the regulation of old cases and left Germany; however, only, if their care and custody was ensured (section 104b Residence Act).

In December 2009 the Standing Conference of the Ministers of the Interior extended the regulation of old cases by another two years (for a comprehensive treatment of the regulation of old cases see Renner 2011: 1349 et seqq). No further extension was decided at the end of 2011 because of the general possibility to extend the probationary residence permits granted under the regulation of old cases (if the prognosis for integration was positive and evidence provided that efforts are made to provide for one’s livelihood by employment).<sup>56</sup>

In November 2010 the Interior Ministers of the Laender adopted a special regulation for young people whose removals had been suspended. Accordingly, young people and adolescents will receive a certain residence perspective in their own right subject to certain conditions (most importantly having successfully completed school and vocational training) and if their integration to date warrants that they will become part of the German society. The parents of these young people may also be vested with a right to residence, if they have made sufficient integration efforts and can ensure the livelihood of the family predominantly on their own (see BAMF/EMN 2011: 36). The legislation governing this option was the so-called Act to Combat Forced Marriages that became effective in July 2011;<sup>57</sup> under section 25a Residence Act young people and adolescents whose removal has been suspended for many years, who attend or have successfully completed school and whose prognosis for integration is positive, may now receive a residence permit.

<sup>56</sup> See collection of the resolutions of the 193th meeting of the Standing Conference of the Interior Ministers of the Laender made available for publication, meeting of 8 and 9 December 2011 in Wiesbaden, p. 28 (in German).

<sup>57</sup> Act to combat forced marriages and to better protect the victims of forced marriages and to amend further provisions governing residence and asylum law, Federal Law Gazette I., no 30 June 2011, p. 1266 (in German).

### **Special rules for cases of hardship**

Pursuant to section 23a Residence Act the supreme Land authority may in a case of hardship and on petition from a Hardship Commission order a residence permit to be issued to a foreigner who is enforceably required to leave the Federal territory (also see section 2.2.3). This option applies, if there is no other alternative to grant or extend a residence permit under any other statutory regulation. This rule wants to open up an option for a humanitarian solution in individual cases in which the strict application of residence law would be unreasonable. Thus the intention here is to exercise “clemency.” The special rules for cases of hardship cannot be taken to court, are strictly humanitarian and “extra-judicial” in contrast to all other provisions of the Residence Act (Kluth/Hund/Maaßen 2008: 253).

A multi-stage procedure governs the cases of hardship. At first the Hardship Commission established by a Land government must petition to the supreme Land authority or any other Land authority established by ordinance. The establishment of a Hardship Commission by that Land government is prerequisite just as the fact that the migrant’s removal has been suspended (see Breyer 2011: 223). There is no legal obligation to consider a case. The supreme Land authority will decide on the basis of the petition whether or not it will order a residence permit to be issued for the foreign national. Once this has been ordered the responsible foreigners authority will issue a residence permit to the foreign national.

### **„Monitoring” of residence titles by the foreigners authorities**

As specified by the so-called electronic residence title regulation of the EU<sup>58</sup> (introduction of an electronic residence title) all such residence titles for third-country nationals shall forthwith be issued as stand-alone documents with biometric identifiers (two fingerprints and a photo). An act entered into force in September 2011 transposing the technical standards specified in the Regulation as safeguards against counterfeiting and falsification into German law. At the same time the quality and speed of data exchange in relation to the management of foreign nationals is to be improved to permit the definition of uniform standards for an electronic data exchange.

On the occasion of the introduction of electronic residence titles the foreigners authorities are also upgrading their internal administrative processes (e.g. adopting electronic appointment management, automated lists on the expiry of residence titles issued). Although the administrative input is more complex as a whole, the new system permits the timely notification of foreign nationals whose residence documents is about to expire; the notification includes an appointment date for extending the existing permit or for applying for a new one as well as information on the documents to be submitted. So far residence titles could usually be extended or issued during a single visit at the foreigners authority, while two visits are required now. Since the production of an electronic residence title at the Bundesdruckerei (Federal Printing Office) takes up to four weeks the monitoring systems should schedule the appointments sufficiently in advance.

58 Council Regulation (EC) No 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals (29.4.2008); Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals.

### The “Munich Model”

There are a few advisory schemes for illegal foreign nationals at the local level which do not jeopardise the law. The City of Munich that is the responsible local authority for the enforcement of the law on foreigners, has developed a holistic model for managing irregular migrants; the “Munich Model” includes health care and access to education as well as possible pathways out of irregularity (see Landeshauptstadt München 2010). In order to honour the principle of mandatory prosecution while advising clandestine migrants on the options available to them, the foreigners authority started a number of activities to encourage them to “quit illegality”. The model consists of a coordinated approach by different units within the municipal administration and by NGOs to make constructive use of any discretion the law governing foreigners’ residence offers to public authorities under the aspects of humanitarian assistance and human rights and to counsel the migrants accordingly. The “resurfacing” of irregular migrants is to be rewarded by issuing a suspension of removal or a probationary residence permit whenever possible.

The model’s central aspect is the provision of anonymous counselling for individuals to advise them on the pathways out of illegality open to them. In practice this means that a lobby organisation or a certain initiative contacts the foreigners authority as a mediator on behalf of the clandestine migrant and describes the facts of his or her case in detail. On the basis thereof the authority will examine the viability of his or her staying in Germany (e.g. with a suspension of removal or a residence title) or of voluntarily leaving Germany. All contacts within the foreigners authority are senior staff. If the authorities see no prospect for a continuation of the stay, the foreign national is informed accordingly and may either remain irregular or decide to turn himself in (see Anderson 2010: 55). If he or she “resurfaces” all options offered by the law on residence will be closely examined.

The City of Munich thinks that the model proved to be a success: although the number of cases submitted to the foreigners authority every year was quite modest (about two dozen) about two thirds of them could be brought to a positive end for the migrants concerned on the basis of the law; e.g. by issuing a suspension of removal normally for a period of three months before and after the delivery date as confirmed by a physician or in case of serious illnesses that do not permit any travel. These cases quite frequently involved the imminent birth of a child that might also result in an entitlement to residence for the previously unentitled parent.<sup>59</sup> When a man wants to shed his illegal status under the model by claiming paternity for a child the authorities require a biological paternity test as a “trust building” measure.<sup>60</sup>

59 Final report “Wir haben Sie nicht vergessen...” (We did not forget you...) to implement the resolution “Dass Sie uns nicht vergessen...” (You shall not forget us...) Menschen in der Illegalität in München” General Assembly of 12 May 2004, Meeting document no. 08-14 / V 04868, Landeshauptstadt München, Sozialreferat, Amt für Wohnen und Migration, Stelle für interkulturelle Arbeit, p. 12.

60 Reported by the representative of the Munich foreigners authority at a workshop of experts on 30 June 2011.

# 4 Trans-national cooperation in preventing and reducing irregular migration

## 4.1 Cooperation Agreements

### Readmission agreements

Already long before the European Union started to make readmission agreements with third countries on behalf of the Community (see Billet 2010) Germany had such bilateral agreements with other countries, first of all its neighbours that are now EU members. The oldest of these agreements date back to 1954 and 1955 and were made with Denmark, Sweden, and Norway. The application of these agreements with European countries is an integral part of the combat against internal migration of third-country nationals that are staying illegally in Germany.

After the political changes in Eastern Europe and the Balkans Germany also signed readmission agreements with a number of countries from where a significant number of people enter Germany illegally. These include most of the successor states of the former Socialist Federative Republic of Yugoslavia, i.e. Bosnia and Herzegovina, Republic of Kosovo, Croatia, Macedonia, Serbia, and Montenegro. The agreements with Serbia and Montenegro consist of the readmission agreement signed with the Federal Republic of Yugoslavia which continues to apply by mutual agreement of both state parties, unless it is superseded by EU agreements. Also almost twenty years after the end of the war on the Balkans these agreements have not become obsolete, but are required to return war refugees and their spouses and descendants. After the visa requirement was lifted for Serbia and Montenegro they even experienced a revival for returning rejected asylum-seekers. Further readmission agreements have been made with Albania, Romania, and Bulgaria in the Balkans.

Germany maintains readmission agreements also with the Baltic countries Estonia, Latvia, and Lithuania, but their practical significance is limited. Of primary importance are the agreements with the Maghreb countries Algeria and Morocco and with Georgia, Armenia, Hong Kong, South Korea, and Vietnam. One feature of the readmission agreement with Vietnam is, for instance, that interview sessions for identifying assumed Vietnamese nationals are regularly held in Germany with experts from Vietnam. Usually collective return flights to Vietnam are organised quite soon after such sessions. The latest readmission agreement to enter into force was that with Syria in 2009.<sup>61</sup>

61 In view of the situation in Syria the Federal Ministry of the Interior recommended to the Laender in April 2011 to halt any further removals to Syria for the time being until the situation has settled. Therefore the Federal Office for Migration and Refugees has temporarily suspended any further decisions on asylum for applicants originating from Syria.

The more recent agreements are primarily designed to facilitate removals. The technical details mainly concern the procedures to determine nationality and to issue travelling documents. Such agreements routinely include clauses on the obligation to permit the entry and the transit of unauthorised migrants who are not nationals of the respective contracting partner (nationals of another country than the contracting parties and stateless persons) subject to certain conditions. Thus these agreements comply with the current standards for readmission agreements made between the EU and third countries. Currently about 30 bilateral readmission agreements between Germany and other countries are in force. In addition, Germany has also concluded transfer agreements (for forced returns) and transit/laissez-passer agreements (for voluntary returns). This enables foreign nationals without a transit visa to travel through or be escorted to the border of a contracting state for the purpose of return.<sup>62</sup>

### **Agreements with the police forces of the neighbouring countries**

The Federal Republic of Germany entered into agreements with the police forces of all its neighbours. These agreements also impact the combat against irregular migration, they lay down the rules for the cooperation of the authorities to allow the pursuit of fugitive criminals onto the territory of the neighbouring country (so-called hot pursuit). The powers of the ‘pursuing’ police officers are, however, restricted: once caught the criminals may only be stopped and must then be handed over to the police of the state on whose territory he was arrested. The use of firearms is only permissible in self-defence and not merely to prevent further flight. The distance to which the law enforcement agents may penetrate the foreign territory differs from one agreement to the next. Some of these agreements also provide for rules for observations on foreign territory. At this time nine of these agreements are in force (see Annex II).

### **The “Prüm Treaty”**

The so-called “Prüm Treaty” was signed by Belgium, Germany, Spain, France, the Netherlands, Luxembourg, and Austria in the town of Prüm/Eifel/Germany in 2005.<sup>63</sup> One of its objectives is the intensification of cross-border cooperation in particular to combat illegal migration. To this end the treaty provides for the automatic exchange of DNA, fingerprint, and motor vehicle registration data between the state parties. For motor vehicle registration data online access with full reading rights is granted to the systems of the participating states, but for DNA and dactylotype data only to an anonymous index databases. A query is answered automatically within minutes stating whether the partner system contains a hit for this profile. All other information, such as personal data, is then transmitted by way of international legal assistance. The treaty also provides for the deployment of document consultants to countries that are associated with illegal migration as countries of origin or transit; further it outlines the support and cooperation required for return activities.

62 The website of the Federal Ministry of the Interior with the following URL lists all agreements to facilitate the return of foreign nationals required to leave Germany to which Germany is a party [http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/RueckkehrFluechtlinge.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/RueckkehrFluechtlinge.pdf?__blob=publicationFile).

63 Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration.



When Council Decision 2008/615/JI entered into force<sup>64</sup> on 26 August 2008 the substance of the Prüm Treaty was integrated into EU legislation at Germany's initiative. The Prüm Council decision was transposed into national law by the "Act on the Transposal of Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime" which has been in force since 5 August 2009.

## 4.2 Other projects and forms of cooperation with countries

### Training and equipment assistance to police forces

Providing training and equipment assistance to police forces is a standard feature of the bilateral cooperation between the Federal Police and third countries or other EU Member States. Primarily these consist of extensive instructions, training, advisory courses and information visits or stages in Germany.

Examples for equipment aid were e.g. the funding of IT equipment for the Ukrainian authorities and of motor vehicles for the authorities of Belarus in 2010. The German Federal Police is also active within the Pact for Stability and Growth in South-eastern Europe. The focus is on the economic and social development, infrastructure and the environment, cooperation of the parliaments, in security matters, justice and home affairs, education and research. This included, for example, the funding of document verification equipment for the authorities in Serbia, Croatia and Montenegro. An increasing amount of assistance is also granted to African countries (see section 5.3).

### Bilateral cooperation in joint centres

In addition to its engagement in bilateral cooperation the Federal Police operates joint centres or contact offices with other EU Member States via the network of border police liaison officers (see section 3.1.5). Such joint centres for the cooperation of police and customs authorities were set up with Poland, the Czech Republic, France, Luxembourg, and Denmark; Contact and transfer offices staffed with representatives of the Federal Police exist in the border regions with Belgium, the Netherlands, Denmark, France, Poland, Austria, Italy, and Slovenia.

Furthermore the Federal Police is involved in three 18-month-long Community measures funded by the EU External Borders Fund together with the Dutch Immigration and Naturalisation Service and the Portuguese Immigration and Borders Service.

## 4.3 Cooperation with the EU or with international organisations

Regarding future measures to manage the multi-dimensional phenomenon of irregular migration the EU Presidency in the second half of 2011 stressed the priority of cooperation with the countries of origin and transit.<sup>65</sup> Such as: initiating or continuing negotiations with the North African countries bordering on the Mediterranean on mobility partnerships, the intensification of cooperation for border controls and removals, addressing the

64 Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (Council Decision Prüm).

65 "EU response to increased migration pressures", Council of the European Union, Revised Note from the Presidency, Document No. 18127/1/11 of 6 December 2011.

challenges posed by the countries in the sub-Sahara region, initiating talks with Turkey on the subjects of migration, security and mobility, focusing on the activities of organised criminal groups and improving and coordinating operations for border security and migration control. These various objectives are to be achieved by expanding the cooperation of FRONTEX with third countries, stressing the cooperation between FRONTEX and EUROPOL, and strengthening EASO and border management in Greece. Based on the Council's conclusions the European Commission for its part proposed the establishment of a European Surveillance System (EUROSUR). The system is designed to strengthen coordination within and among Member States, to prevent serious crime and to reduce the loss of lives at sea. Within the scope of EUROSUR the Member States' border control authorities should share operational information and cooperate with one another, with FRONTEX and with neighbouring countries. Each Member State with external borders on land or sea is to establish a national coordination centre for border surveillance exchanging information via a protected communication network with other national coordination centres and with FRONTEX.<sup>66</sup>

In the view of the Federal government the Maghreb countries are of particular significance for strengthening international cooperation in the field of security, because this is where a growing threat is perceived from terrorism, organised crime, and illegal migration. The EU commissioned a team of experts with German participation to prepare a needs analysis that will also examine what level of cooperation is desirable for border surveillance. Potential projects might aim at supporting the establishment of a border police.<sup>67</sup>

#### **Network of border management liaison officers**

Since 2004 a "network of immigration liaison officers in third countries" has been set up at European level.<sup>68</sup> The border police liaison officers of the Federal Police that are posted in third countries regularly participate in the cooperation networks of EU liaison officers envisaged by the Regulation, which are called by the acting Presidency of the Council at the time. Under the German Presidency in 2007 the establishment of a network of liaison officers in Turkey was initiated.

#### **Border Police cooperation with FRONTEX**

Germany provides the European Agency for the Management of Operational Cooperation at the External Borders of the European Union's Member States, FRONTEX, with several management and operational tools under CRATE (Centralised Records of Available Technical Equipment). The EU Border Management Agency organises and coordinates operations at the Schengen area's external borders. This takes the form of joint operations in border sections especially affected by irregular migration and of long-term measures at focal points. Member States that come under sudden and extraordinary pressure, i.e. by a

66 See Proposal for a Regulation of the European Parliament and of the Council on Establishing the European Border Surveillance System (EUROSUR), COM (2011) 873 final of 12 December 2011, Brussels.

67 See BT-Drs. 17/7587 4 November 2011.

68 Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network. The Regulation defines an "immigration liaison officer" as a representative of one of the Member States, posted abroad by the immigration service or other competent authorities in order to establish and maintain contacts with the authorities of the host country with a view to contributing to the prevention and combating of illegal immigration, the return of illegal immigrants and the management of legal migration.

large illegal influx of third-country nationals may apply for the deployment of Rapid Border Intervention Teams (RABIT) with FRONTEX. The first Member State to deploy a RABIT was Greece in the 4th quarter of 2010.

Germany participates in almost all of the agency's joint operations with officers of the Federal Police. For the Federal Police the focal points have priority for the deployment of "border management support officers abroad", because they provide a good opportunity to meet both national and bilateral interests. The specific scope of the involvement of Federal Police officers is determined on the basis of national situational analyses and FRONTEX risk assessments. German officers are posted at focal points of the EU external borders to step up border surveillance and management. The controls consist mostly in checking travellers and travel documents in line with the relevant Schengen regulations. Subject to the provisions in Regulation (EC) no. 2007/2004 in conjunction with Regulation (EC) no. 863/2007 the posted officers are vested with full executive powers and can therefore act in the same way as the national border guards of the state in which they are posted.

In 2010 the Federal Police assisted the Greek police to cope with the enormous influx of refugees across the Turkish-Greek land borders, at some times involving as many as 40 German officers. Since March 2010 the Federal Police has also been involved with the return project Attica at the Greek-Turkish borders. All in all, the Federal Police participated in 22 joint operations with 39 officers and at 33 focal points with 33 officers. During the RABIT operation in Greece 56 German Federal Police officers were deployed there. In 2011 the Federal Police participated in eleven joint operations led by FRONTEX (see list in Annex I).

Furthermore Germany is contributing via the Federal Police Training Academy that routinely participates in projects, training courses, seminars, and workshops organised by FRONTEX on border policing subjects. The objective always is to achieve a uniform standard of qualification and expertise among the Community officers working at the external borders as well as a uniform standard of the equipment used or recently developed. Thus the Federal Police Training Academy is an active contributor to all training offered by FRONTEX.

#### **Participation in collective returns organised by FRONTEX**

As the border agency is also responsible for returns it supports the organisation of collective returns and identifies best practices for obtaining the documentation required for the return to the home country and for executing the return trips. In recent years FRONTEX capability to perform its two core tasks has vastly improved and Germany is both supporting and using these services. In 2008 FRONTEX started not only to coordinate multinational return operations, but to also co-finance their execution (fully or in part). There have been significantly more of these operations recently, while in 2006 FRONTEX had been involved with the coordination of only one return flight with eight returnees, there were 32 flights with 1,622 returnees in 2009. In 2010 there were 39 charter flights with 1,971 returnees.

Germany is regularly organising flights and participating in many other flights as well. In 2010 Germany organised four flights (to the Republic of Kosovo and Georgia) and participated in another 16 flights. In collective return operations a total of 226 persons were

repatriated by Germany. The increased share of funding from the FRONTEX budget is advantageous for Germany, as it saves costs. The cooperation for organising flights is running very smoothly by now. The Federal Police attributes this also to a training programme for the officers involved called the “joint flight return standardised training”.

### **Operations MITRAS and HERMES**

Germany participated in the coordinated “MITRAS” (migration, traffic and security) operation to combat illegal migration during the Hungarian Presidency in the first half of 2011 together with over 20 other EU Member States. For one week these countries’ international border control guards, in the exercise of their regular duties, apprehended persons without valid residence status that crossed a Schengen border. Thus the Federal Police intensified its control activities and detected 346 persons who had entered illegally on the main transit routes (cross-border motorways, air and rail links). Overall, about 2,000 persons were discovered in all of the participating EU Member States.<sup>69</sup>

Already in week 41 of 2010 there had been a similar concerted European police effort, dubbed operation HERMES, that focused on controls along traffic routes. At the time all directorates of the Federal Police made focused searches in trains and at railway stations during regular duty. The Federal Police served as the central national contact and participated via the European network RAILPOL in the practical execution exercising its authority as railway police. A total of 142 persons who had entered illegally were detected during the operation and the generally known migration routes to and through Germany were reconfirmed.<sup>70</sup>

### **Cooperation projects against illegal immigrant smuggling**

The Federal Criminal Police Office cooperates closely with EUROPOL and INTERPOL and also is the national contact point for the latter. The Federal Criminal Police Office does not engage in any investigations of its own, but acts as a centre that evaluates the intelligence from the police forces of the Laender and provides feedback on situation reports and profiles. At the same time, the Federal Criminal Police Office is the clearing centre for all Laender for obtaining substitute passports. In this capacity the Federal Criminal Police Office is sometimes also supporting the German-speaking neighbouring countries. As part of its cooperation efforts liaison officers are posted with EUROPOL to participate in the coordination of cross-border operations and to improve the exchange of information.<sup>71</sup> In this context the COSPOL project VOIC (“Vietnamese Organised Immigration Crime”) designed to uncover the smuggling networks from Vietnam is of major importance.

69 See “Neue Kooperationen und Projekte europäischer Polizeien” (New cooperations and projects of European police forces), BT-Drs. 17/7018 of 20 September 2011, pp. 5et seqq, and information provided by the Federal Police during a workshop of experts on 30 June 2011.

70 See BT-Drs. 17/7018 (see footnote 69), p. 6 and “Final report on Joint Police Operation HERMES”, Council Document 17816/10 of 13 December 2010, Brussels.

71 The Federal Criminal Police Office stated (during the workshop of experts on 30 June 2011) that currently about 60 liaison officers are posted in approx. 50 locations.

# 5 The Impact of EU Legislation and EU Policies on German Policy

## 5.1 Transposition of EU Law into national law

### **Directive 2002/90/EG (“Definition Directive”)**

Already at the time the Residence Act was created as a consequence of the entry into force of the Immigration Act on 1 January 2005, most of the contents of both Council Directive of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence<sup>72</sup> and the accompanying framework decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence were transposed into German law. In fact, German criminal law is stricter than required by the EU, because in Germany promoting and enabling unauthorised residence is an offence, even if it is not done for financial gain, but repeatedly or for the benefit of several foreign nationals (Sachverständigenrat 2004: 362). The optional provision in the Directive, according to which Member States may decide not to impose sanctions “where the aim of the behaviour is to provide humanitarian assistance to the person concerned” (art. 1 (2) of the Directive) was not literally transposed into German law. However, the General Administrative Regulation on the Residence Act points out that persons acting in their professional or socially accepted volunteer capacities (such as pharmacists, physicians, midwives, nursing staff, psychiatrists, pastors, teachers, social workers) and who limit their actions to objectively complying with their legally defined or recognised duties related to such occupation or office are not considered to be abetting the above criminal offences (Rule 95.1.4 General Administrative Regulation on the Residence Act). The exemption from punishment in the case of a one-off act with the aim of providing humanitarian assistance may also be derived from sec. 96 (1) no. 1 Residence Act which defines pursuing financial gain as a constituent element of the criminal offence of facilitating illegal immigration.<sup>73</sup>

### **Directives 2001/40/EC and 2003/110/EC**

The Directive on the mutual recognition of expulsion decisions<sup>74</sup> was likewise transposed in the context of the Immigration Act. SIS alerts pursuant to art. 96 (3) SIC are observed by the responsible authorities in the visa process, at border and/or entry controls as well as in the process of issuing residence titles. The Directive on the recognition of expulsion decisions is observed just like the Directive on assistance in cases of transit for the purposes of removal by air,<sup>75</sup> and the Council Decisions on the compensation of financial imbal-

72 Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence.

73 The repeated offence or an offence for the benefit of two or more foreign nationals are, however, punishable irrespective of whether the offender derives financial gain from such offence (no. 96.1.1.2 Administrative Regulation on the Residence Act).

74 Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals.

75 Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air.

ances resulting from the application of the Directive on the mutual recognition of expulsion decisions<sup>76</sup> and on the organisation of joint flights.<sup>77</sup> The Residence Act was amended to implement the Transit Directive: a separate sec. 74a entitled “Durchbeförderung von Ausländern” (transit of foreigners) was added. However, due to the limited practicability of the Directive on the mutual recognition of expulsion decisions and the accompanying decision on the compensation of financial imbalances resulting from the application of the Directive these have had little relevance for the German administrative practice so far, other than for a few isolated cases (see Schneider/Kreienbrink 2010: 59).

### **Directive 2004/81/EC (“Victim Protection Directive”)**

The Directive on the residence permit issued to third-country nationals who are victims of trafficking<sup>78</sup> has been transposed by the adoption of the Act to Implement Residence- and Asylum-Related Directives of the European Union (“EU Directives Implementation Act”) on 14 June 2007. Pursuant to sec. 25 (4a) victims of trafficking may, even if subject to an enforceable requirement to leave, obtain a title for temporary residence – provided they declare their willingness to testify in the criminal proceedings for the offence. Sec. 50 (2a) Residence Act stipulates that for victims of trafficking a deadline for leaving the country shall be set which will allow such victim sufficient time to decide whether he or she is prepared to testify and may not be shorter than one month. The Victim Protection Directive offers national legislators a choice when implementing the Directive on whether to apply the Directive also to foreign nationals who are minors or to foreign nationals whose illegal entry had been facilitated. Germany exercised the first of these options, since the number of minor female victims is assumed to be significant in trafficking crimes. So far, legislators have not opted for the second possibility.

To better coordinate the fight against trafficking, in particular trafficking in women, Germany established a joint working group of the Federal Government and the Laender on trafficking in women (Bund-Länder-Arbeitsgruppe Frauenhandel). In 2009 the working group submitted a proposal for a framework decision to strengthen the combat against human trafficking. The proposal aims at raising European standards in a comprehensive and uniform way, improving the support for victims and stepping up the prosecution of offenders.<sup>79</sup>

76 Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals.

77 Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders.

78 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

79 See BT-Drs. 16/13804 of 20 July 2009, p. 2.

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

The Return Directive<sup>80</sup> was fully transposed into national law when the Second EU Directives Implementation Act (Act to Implement Residence-Related Directives of the European Union and for the Adaptation of National Legal Provisions to the EU Visa Codex) entered into force on 26 November 2011. The rule of the direct effectiveness of directives had been applied until the Act entered into force and as early as on 16 December 2010 the Federal Ministry of the Interior provided the Laender, which are responsible for implementing the Law on Foreigners, with guidelines on the principles for the direct application of the Directive after 24 December 2010 (deadline for transposal).

Under the Directive, Member States shall issue a return decision to any third-country national staying illegally on their territory (art. 6 (1)). Since there was no legal concept in German residence law that corresponded to a return decision, the implementation of the Directive resulted in changes. Thus wherever the obligation to leave is established by an administrative act within the logic of German law, such administrative act will be deemed to be the return decision for the purposes of the Directive; where the obligation to leave arises by virtue of the law the administrative act in the form of a written notice of the intention to deport (currently a directory provision in the Residence Act) shall be construed as return decision. Further important modifications resulting from the Directive concerned departure periods, re-entry bans and custody pending removal (in this context see Basse et al. 2011: 364 et seq).

### **Directive 2009/52/EC (“Sanctions Directive”)**

On 20 July 2009 the so-called Sanctions Directive<sup>81</sup> entered into force. The Sanctions Directive, too, was transposed into national law by the Second EU Directives Implementation Act (entering into force on 26 November 2011). Since most of the instruments and rules contained in the Sanctions Directive had already been provided for in German law, the related implementation effort remained relatively limited. German social law, for example, already provided for dissuasive and proportionate penalties against employers who employ, and therefore potentially exploit, illegal immigrants. Pursuant to the Social Code, such an act may be penalised with a fine of up to 500,000 Euros (sec. 404 Social Code III). However, a new provision was included according to which irregular migrants, who had been in illegal employment, may obtain a residence title provided they are willing to testify in court (in analogy to the Victim Protection Directive, see above) (sec. 25 (4b) Residence Act). Further amendments to German legislation as a result of the implementation of the Directive included a provision on the liability for the costs of removal in the context of sanctioned illegal employment, the creation of new types of charges in criminal law, or the obligation of the employer to pay the agreed remuneration to an illegal employee, including detailed regulations with regard to this legal entitlement, i.e. access to the labour courts (see Basse et al. 2011: 367).

80 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

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

### **Directive 2001/51/EC (Sanctions against carriers)**

Since the Law on Foreigners entered into force in 1965, German law had foreseen an obligation for carriers to return foreign nationals to their countries of origin, if they are denied entry at the border (see Dörig 2005). The Directive<sup>82</sup> supplements Community law provisions on the control obligations of carriers and corresponding sanctions, which may already be derived from the Convention Implementing the Schengen Agreement (SIC). The Directive was transposed into German law at the time the Immigration Act entered into force on 1 January 2005 (see section 3.1.4 for details). Art. 5 of the Directive specifies the options for sanctioning that are found in sec. 63 (3) of the Residence Act that specifies an administrative fine against the carrier of at least 1,000 Euros and no more than 5,000 Euros for each foreign national who is transported despite a restraining order.

## **5.2 EU Agreements with Third Countries**

### **Readmission Agreements**

Besides the bilateral Readmission Agreements described in Chapter 4, there are also Agreements at the level of the Community. The European Council has requested the Commission to enter into negotiations on the conclusion of Readmission Agreements with a total of 18 third countries so far. Agreements have already entered into force with 13 countries: Hong Kong (1 March 2004), Macao (1 June 2004), Sri Lanka (1 May 2005), Albania (1 May 2006), Russian Federation (1 June 2007), Montenegro, Macedonia, Serbia, Bosnia and Herzegovina, Ukraine and the Republic of Moldova (all 1 January 2008), Pakistan (1 December 2010) and Georgia (1 March 2011). Negotiations with Cape Verde have been concluded. However, negotiations with Morocco and Turkey are on-going. The negotiations with China and Algeria have not yet been initiated.

Although substantial evaluations are not available yet, the Federal Police reports from its operative practice that the EU Readmission Agreements are largely applied without major difficulties. This is especially true for those third countries that had previously been parties to bilateral Readmission Agreements (see section 4.1). However, it also turned out that cooperation did not markedly improve with those countries with which cooperation had been problematic already prior to the conclusion of a Community Agreement.<sup>83</sup>

### **Mobility partnerships**

In June 2008 the EU and several Member States (after the EU Commission had explored and negotiated with these countries to prepare the way) agreed mobility partnerships with the Republic of Moldova and Cape Verde. These partnerships are intended, among other things, to prevent and/or reduce irregular migration. 15 EU Member States, including Germany, participate in the partnership with the Republic of Moldova.<sup>84</sup> Four EU Member States participate in the partnership with Cape Verde.<sup>85</sup> On 30 November 2009 another mobility partnership was agreed with Georgia. Germany is among the 16 participat-

82 Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

83 Delegates of larger foreigners authorities confirmed this in the context of the workshop for the preparation of the present study on 30 June 2011.

84 Apart from Germany Bulgaria, France, Greece, Italy, Lithuania, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, Czech Republic, Hungary and Cyprus plan to join.

85 France, Luxembourg, Portugal and Spain.



ing EU Member States.<sup>86</sup> Germany also plans to participate in the planned mobility partnership with Armenia.

To promote legal migration (which may be closely related to a reduction in irregular migration) Germany facilitates so-called “outward mobility” in the context of these mobility partnerships: nationals of the Republic of Moldova and Georgia with a legal residence title in Germany may now leave Germany for more than the customary six months (i.e. for up to 24 months) without losing their residence title in Germany.<sup>87</sup> Furthermore, Germany will lend support in border management and border control, capacity building in the fields of migration, integration and asylum, as well as in the field of modern administrative practices. In the context of the projects for support and implementation of the EU’s mobility partnerships with Georgia, Germany participates in the project “Targeted Initiative Georgia – Support reintegration of Georgian returning migrants and the implementation of the EU-Georgia Readmission Agreement”. Apart from the implementation of the Readmission Agreement, the project focuses on the reintegration of up to 1,800 migrants.

### 5.3 European Return Fund

On 23 May 2007, the European Parliament and the Council of the European Union established the European Return Fund. The Fund is intended to support the efforts undertaken by Member States in improving all aspects of the management of return on the basis of the concept of integrated return management. Other specific objectives are enhancing cooperation between EU States and the promotion of an effective and uniform application of common return standards in accordance with the policy development in this area.<sup>88</sup> The Fund is to provide 676 million Euros for projects of Member States and NGOs for voluntary returns and forced repatriations. According to the current state of planning, this would mean that 40 million Euros would go to Germany. The responsible authority in Germany for the Return Fund was established within the Federal Office for Migration and Refugees.

In the funding periods 2008 and 2009 projects to reduce structural problems in the practical cooperation with individual countries of origin were submitted to and implemented by the Return Fund. These projects, all of which were closely related to combating irregular migration, focused on strengthening contacts and cooperation with the responsible border and immigration authorities of so-called problem states. It is hoped that this will make it easier, for example, to repatriate foreign nationals who are required to leave the country and to obtain return travel documents for the 13 African States and Vietnam, countries for which the Federal Police is responsible (also see section 3.4.1). These two projects were the only ones in the field of forced repatriation in which Germany was involved.

86 Also Belgium, Bulgaria, Denmark, Estonia, France, UK, Greece, Italy, Latvia, Lithuania, Netherlands, Poland, Romania, Czech Republic and Sweden.

87 For the significance of programmes in the fields of temporary and seasonal employment as well as the subject of circular migration, see Schneider/Parusel 2011, with comprehensive information on Germany.

88 Decision No. 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme ‘Solidarity and Management of Migration Flows’.

In the context of the European Return Fund's annual programme 2010, the Federal Police for the first time submitted a project jointly with some of the German Laender. The project concerns the continuation of the existing policy, namely to overcome the difficulties that exist with regard to individual problem states to obtain return travel documents and to repatriate foreign nationals who are required to leave the country by improving cooperation with their responsible border and immigration authorities. The project focuses on obtaining passports for ten states in West Africa. In 2010, the European Return Fund provided resources for delegation trips of the Federal Police that implements the project, to The Gambia, Benin, Liberia and Nigeria. In addition, Germany hosted delegations from Liberia, Benin, The Gambia and Sierra Leone for joint talks and hearings.

The Federal Police considers the project a success so far, since cooperation, e.g. with respect to obtaining passports or substitute passports, with states that used to be regarded as problem states could be improved to such an extent that they are no longer regarded as problematic. Within the scope of the project individual states received assistance for training and equipment. During the exchange with the immigration authorities of the target states it emerged that although they are generally ready to cooperate, they lack the equipment. Therefore material support for their local offices in the form of equipment or non-material support in the form of training is required. Hence the Federal Police sees the provision of material assistance in the form of equipment and of special education and training as an effective strategy to improve relations with states with whom cooperation is desired.

Also for 2011 and the subsequent years, projects to be funded by the Return Fund have been planned and some have already been applied for with the responsible authority.

#### **European External Borders Fund**

The European External Borders Fund was established in 2007 for the financial period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows' of the Directorate-General Home Affairs. The European External Borders Fund is administered by the responsible authorities in the Member States. The responsible authority for the European External Borders Fund in Germany is located with the Federal Police Central Office. For the annual programme 2010, Germany received 4.17%, and for 2011 4.32% of the EU resources available directly to Member States under the External Borders Fund.

Under the External Border Fund, actions and projects found necessary at the national level as well as additional projects in the context of border policing are entitled to co-financing. The competent authority has the task to draw up annual programmes consisting of projects that comply with the objectives of the External Borders Fund and generally run for two years and six months. Projects and actions involving the participation of Germany, such as, for example, the procurement of document reading and inspection devices, the procurement of equipment for helicopters at the European sea borders, the delegation of document and visa advisors as well as border police liaison officers, investments in the

development of the VIS<sup>89</sup> and SIS-II or the training of personnel in document examination techniques and equipment, generally contribute towards the objective of better managing migration flows.

However, at the time of writing none of the annual programmes had ended, and, therefore no implementation reports had been finalised by the European Commission. Thus no specific conclusions regarding the impact of the European External Borders Fund and its financial support in relation to the migration situation, or, in particular, with regard to preventing irregular migration, are possible at this time. A first official evaluation by the European Commission of the External Borders Fund for the annual programmes 2007-2010 will not be available until 31 October 2012.

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89 In the context of the EU Visa Information System, the Federal Ministry of the Interior has entrusted the Federal Office of Administration as central authority with building an infrastructure which enables German local offices to use the VIS application. Under the auspices of the Federal Ministry of the Interior, a task force at the Federal Office of Administration coordinates the planning work for a national implementation of the VIS and controls its technical implementation; the task force's work is directly supported by the EU's External Borders Fund.

## 6 Data on the irregular migrant population: Statistics and current estimates

Several studies have found that irregular migrants in Germany are a heterogeneous group with different backgrounds and motives. It is very difficult to quantify the phenomenon of illegal migration, for one, because of this complexity and secondly, because the group shies away from any contact with the authorities (Lederer 2004: 173). The size of the population stock whose stay is unauthorised depends on a number of factors, including moves into and out of the country, births and deaths, unauthorised stay after expiration of the residence title and obtaining a legal status. Marriage or applying for asylum may be considered options for legalising an illegal stay (see Marx 2008: 73 et seqq). Temporary illegal stays in Germany by migrants who are merely transiting the country to move to another European state must be considered as well. In view of the enormous variety of variables and the lack of information on the number of irregular migrants moving into and out of the country the quantification of this phenomenon is a real challenge (see: Lederer 2004: 223 et seq). But nevertheless a number of methodological approaches to arrive at approximate estimates for the size of the stock of irregular migrants have been developed and described in recent years (for this see Cyrus 2009; Jandl 2011). The validity and reliability of the estimates available in the different EU Member States are highly diverse depending on the basic data or information available for a defined geographic area (see Vogel/Kovacheva 2008).

During the first decade of the new millennium the scientific and political communities became convinced of the need to know more precisely how large the irregular population is, not least to put policy-making on a sounder basis. Acting according to a mandate for verification specified in the coalition agreement for the 16th legislative term the Federal Ministry of the Interior extensively examined the issue of “illegality under residence law”. This also included commissioning a group of researchers at the Federal Office for Migration and Refugees to examine and evaluate all data available in the field of illegal migration.<sup>90</sup> Although the time line can be analysed for some indicators, the overall conclusion in 2007 was that no reliable procedure to estimate the number of persons concerned had as yet been developed in Germany nor had anyone endeavoured to develop such a complex procedure.<sup>91</sup> One can assume that irregular migration has experienced a downward trend in Germany since 1998. At least this is what the year-over-year comparisons of the data on the number of detected illegal entries and illegal stays suggest, which are the main indicators available in the official statistics (see BMI/BAMF 2011: 182).

90 See *Illegal aufhältige Migranten in Deutschland. Datenlage, Rechtslage, Handlungsoptionen*, Report of the German Federal Ministry of the Interior on the mandate for examining “Illegal Status” laid down in the coalition agreement of 11 November 2005, chapter VIII 1.2, Berlin, February 2007 (BMI 2007) and Kreienbrink/Sinn 2006.

91 See Federal Ministry of the Interior report (see footnote 90), p. 18.

As stated above in section 1.3 of the Introduction Chapter the present chapter intends to present and assess the key indicators for the existence and the dimensions of irregular migration based on the figures available in the Eurostat database (section 6.1). A second aspect is the analysis of data and estimates of the stock of the irregular population in Germany and other relevant statistics. This part mainly relies on the findings of an expert opinion prepared for the purposes of the present study<sup>92</sup> (section 6.2). With reference to more precise official data for 2010 this also indicates the distribution by nationalities. The expert opinion's methodology is based on an estimation method developed by Vogel (2009) which was also used for the German section of the comparative EU-funded project CLANDESTINO (see Kovacheva/Vogel 2009; Vogel 2009; Vogel/Gelbrich 2010; Vogel/Kovacheva 2008).

## 6.1 Eurostat data

### 6.1.1 Third-country nationals found to be illegally present

The statistics available on Eurostat relate to persons whose illegal presence (as defined under the respective national immigration law) was discovered by the authorities of the Member States. This comprises persons who were found to have entered the country illegally (e.g. by evading border controls) or such who entered legally, but whose entitlement had expired (overstaying).

The Federal Police supplies the statistics on illegal foreign nationals in Germany which have been extracted from the Federal Criminal Police Office's crime statistics since 2008 (Polizeiliche Kriminalstatistik – PKS) to Eurostat.

According to the data available at Eurostat a total of 50,250 illegally present persons were apprehended in Germany in 2010 which was similar to the 2009 figure. As shown in Table 1 most of them were nationals of Turkey, Afghanistan, and Iraq. The number of persons illegally present originating from Afghanistan went up considerably and about quadrupled from 2008 to 2010.

92 The electronic version of the expert opinion of Dita Vogel and Manuel Aßner entitled "Umfang, Entwicklung und Struktur der irregulären Bevölkerung in Deutschland" (Vogel/Aßner 2011) completed in October 2011, is published on the website of the Federal Office for Migration and Refugees as an appendix to the present EMN study ([www.bamf.de](http://www.bamf.de)).

**Table 1: Number of apprehended illegally present third-country nationals by nationalities, 2008-2010**

	2008	2009	2010
<b>Total</b>	<b>53,695</b>	<b>49,555</b>	<b>50,250</b>
Turkey	6,675	5,610	5,565
Afghanistan	880	2,665	3,700
Iraq	4,715	4,530	3,060
Serbia	5,920	2,590	2,920
Vietnam	3,010	3,010	2,680
Russian Federation	2,415	2,085	2,125
China	2,565	2,285	1,975
Kosovo	:	1,605	1,935
India	1,420	1,615	1,615
Iran	1,090	1,205	1,605
<b>Other nationalities</b>	<b>24,970</b>	<b>22,340</b>	<b>23,050</b>

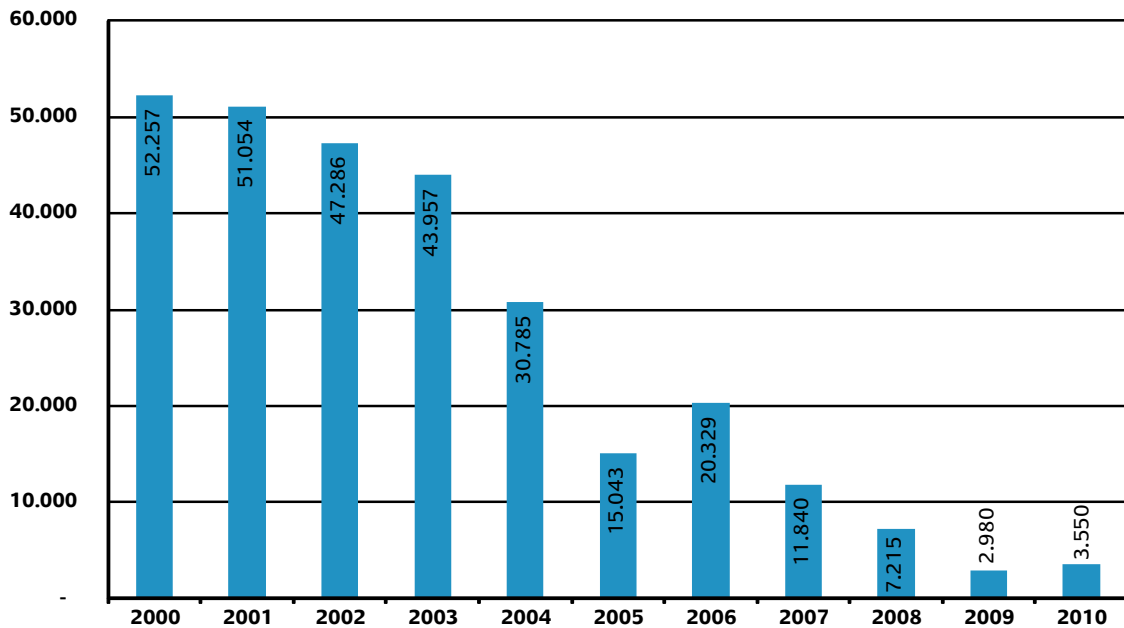
Source: Eurostat (rounded figures)

### 6.1.2 Refusal of entry

According to the statistics, the number of persons refused entry to Germany at the borders has been dropping almost continuously since 1997 (see Chart 1 for the period 2000 to 2010).<sup>93</sup> It declined from 52,257 in 2000 to 2,980 in 2009. A slightly higher number of refusals of entry were recorded in 2010 again. One of the reasons for the decrease over several years was probably the falling number of asylum-seekers entering the country. Further probable reasons are the EU enlargement, the accession to the Schengen area of Poland, the Czech Republic and Switzerland or rather the uncontrolled cross-border traffic related thereto, the intensification of border surveillance by Germany's neighbours to the east and of the controls and surveillance exercised by the Federal Police and the police forces of the neighbouring countries. Some of the reduction is also owed to the fact that totally different offences were recorded in the statistics, e.g. regarding customs offences, prior to 2008.

93 The refusal of entry is provided for in section 15 of the Residence Act: "A foreigner wishing to enter the Federal territory unlawfully shall be refused entry at the border". Furthermore any foreign national not complying with all of the entry conditions in article 5 of Regulation (EC) no 562/2006 (Schengen Borders Code) must always be refused entry.

Chart 1: Total number of persons who were refused entry, 2000-2010



Sources: 2000-2007: Federal Police/ CIREFI; 2008-2010: Eurostat (rounded figures)

Table 2: Number of persons refused entry by nationalities, 2008-2010\*

	2008	2009	2010
<b>Total</b>	<b>7,215</b>	<b>2,980</b>	<b>3,550</b>
Turkey	980	420	445
China	405	260	335
Russian Federation	295	265	275
Serbia	1,450	100	245
Ukraine	110	75	165
Nigeria	235	215	140
FRY Macedonia	530	35	120
Philippines	60	35	110
India	125	90	100
Brazil	165	110	95
Other nationalities	2,825	1,370	1,480

Source: Eurostat (rounded figures)

\* Nationality ranking for the top ten according to 2010 figures.

Most of the people who were refused entry at German borders in 2010 were nationals from Turkey, China, and the Russian Federation (see Table 2). Among these, Turkish nationals accounted for 12.5%, Chinese for 9.4%, and Russian nationals for 7.7%.

**Table 3: Total number of persons refused entry by grounds for refusal, 2008-2010**

	2008	2009	2010
<b>Total</b>	<b>7,215</b>	<b>2,980</b>	<b>3,550</b>
<b>No valid travel documents</b>	405	85	70
<b>False, counterfeit or forged travel documents</b>	325	145	160
<b>No valid visa or residence title</b>	4,700	1,425	1,450
<b>False, counterfeit or forged visa or residence title</b>	240	60	90
<b>Lack of documents required to prove purpose and conditions for the journey</b>	960	740	635
<b>Has already stayed on the Member State's territory for three months within a six month period</b>	–	20	60
<b>Lack of sufficient means for subsistence for the envisaged duration and circumstances of the stay or for returning to the country of origin or of transit</b>	70	40	85
<b>Alert issued in the Schengen Information System (SIS) or in a national system for refusal of entry</b>	410	320	620
<b>Poses a risk for public order, security or health or the international relations of one or several EU-Member States</b>	105	145	375

Source: Eurostat (rounded figures)

Table 3 lists the grounds why they were refused entry at the German borders as defined by the Schengen Borders Code. The border guards have a standard form on which they mark the grounds for refusal for each person refused.

As can be seen from the table almost half of these refusals at German external borders were related to the lack of a valid visa or residence title. The reduction in the number of refusals in 2009 against 2008 is reflected in the numbers for each of these grounds. After 2008 there is a clear increase, mainly among those for whom an alert has been entered in the Schengen Information System (SIS) or a national system for refusal of entry. The second largest group are those whom the authorities consider a risk for public order, security or health or the international relations of one or several EU-Member States.

### 6.1.3 Departure orders issued to third-country nationals

According to the Eurostat data a total of 19,190 third-country nationals received departure orders in 2010. In 2010 the three dominant nationalities among the group of persons whose departure had been ordered (see Table 4) were that of Serbia (12.6%), Turkey (7.3%), and Macedonia (6.9%).



**Table 4: Departure orders by nationalities, 2008-2010\***

	2008	2009	2010
<b>Total</b>	<b>11,985</b>	<b>14,595</b>	<b>19,190</b>
<b>Serbia</b>	1,465	1,260	2,410
<b>Turkey</b>	1,350	1,535	1,410
<b>FRY Macedonia</b>	200	240	1,320
<b>Vietnam</b>	995	1,250	1,090
<b>Republic of Kosovo</b>	:	610	1,035
<b>India</b>	345	535	830
<b>Iraq</b>	670	840	745
<b>Russia</b>	430	510	585
<b>Nigeria</b>	280	380	560
<b>Lebanon</b>	370	475	515
<b>Other nationalities</b>	5,850	6,955	8,665

Source: Eurostat (rounded figures)

\* Nationality ranking for the top ten according to 2010 figures.

#### 6.1.4 Third-country nationals who left Germany after receiving a departure order

In total 13,895 third-country nationals left Germany after receiving a departure order in 2010 (see Table 5) an increase by 16.8% against 2009.

In 2010 the three most important nationalities among the persons removed were those of Serbia (12.3%), Vietnam (7.8%) and Turkey (7.4%). These are the same three countries that already topped the list from 2006 to 2008 for the number of removed persons.<sup>94</sup>

**Table 5: Removals as a consequence of departure orders, 2008-2010\***

	2008	2009	2010
<b>Total</b>	<b>14,295</b>	<b>11,900</b>	<b>13,895</b>
<b>Serbia</b>	2,150	1,390	1,705
<b>Vietnam</b>	1,495	1,055	1,090
<b>Turkey</b>	1,505	1,040	1,030
<b>Republic of Kosovo</b>	:	665	855
<b>Georgia</b>	245	300	640
<b>India</b>	430	460	540
<b>Russian Federation</b>	585	490	520
<b>China</b>	305	270	470
<b>Algeria</b>	490	440	460
<b>FRY Macedonia</b>	240	180	420
<b>Other nationalities</b>	6,830	5,570	6,145

Source: Eurostat (rounded figures)

\* Nationality ranking for the top ten according to 2010 figures.

94 The figures on returns on the basis of an order to leave discussed herein are not a statistical subset of the figures on third country nationals which have been ordered to depart as presented in section 6.3.1. This is due to the fact that the relevant statistics for Germany in the Eurostat database are generated from different national databases (for the evaluation of the various databases in the area of enforcement of immigration legislation see Vogel/ABner 2011: 11ff.).

### 6.1.5 Rejected asylum applications

It is well known that asylum-seekers whose cases ended with negative decisions are another major group swelling the ranks of those residing illegally (Düvell/Vollmer 2011: 5). The statistics on rejected asylum applications are of interest to assess the potential size of the unauthorized migrant group, because there are always a number of third-country nationals who fail to leave the country after they lose their entitlement to stay during the proceedings. On the one hand, a multi-year comparison allows conclusions on the overall size of the irregular population and its potential changes. On the other hand, conclusions can be drawn for certain groups of nationalities who will most probably be represented among the group of irregular migrants.

**Table 6: Total number of asylum cases decided, 2005-2010**

	2005	2006	2007	2008	2009	2010
<b>Total</b>	<b>48,100</b>	<b>30,760</b>	<b>28,570</b>	<b>19,335</b>	<b>26,855</b>	<b>45,400</b>
<b>Positive decisions</b>	3,120	1,950	7,870	7,870	9,765	10,450
<b>Negative decisions*</b>	44,980	28,805	20,705	11,465	17,090	34,955

Source: Eurostat (rounded figures)

\* Decisions under the Dublin Procedure are counted as negative decisions in the Eurostat statistics, this is not the case for the national statistics on asylum.

**Table 7: Negative decisions at first instance by major nationalities, 2008-2010\***

	2008	2009	2010
<b>Total</b>	<b>11,465</b>	<b>17,090</b>	<b>34,955</b>
<b>Serbia</b>	1,350	665	4,800
<b>Iraq</b>	1,445	3,100	3,015
<b>Afghanistan</b>	195	645	2,775
<b>FRY Macedonia</b>	85	70	2,475
<b>Republic of Kosovo</b>	:	1,275	2,170
<b>Turkey</b>	1,075	1,410	1,645
<b>Syria</b>	460	690	1,620
<b>Iran</b>	505	525	1,285
<b>Russian Federation</b>	560	590	1,240
<b>Vietnam</b>	1,035	1,345	1,145
<b>Other nationalities</b>	4,795	6,825	12,840

Source: Eurostat (rounded figures)

\* Nationality ranking for the top ten according to 2010 figures. Eurostat includes decisions for formal reasons (formal settlements) (e.g. dismissal of cases for withdrawal of application or decisions under the Dublin Procedure) in its negative statistics.

In 2010 a total of 45,400 decisions on asylum applications were made at first instance in Germany. This figure is almost up to that of 2005 again, while it had clearly declined to 19,335 in 2008 in line with the reduction in the number of applications filed. 10,450 of the 45,400 decisions in 2010 were positive (23.0% of all first instance decisions), i.e. the applicants were granted refugee status or subsidiary protection. 34,955 decisions (77.0%) were

negative, i.e. the application was either rejected or the case was formally settled.<sup>95</sup> Basically not only rejections, but also formal settlements can potentially induce continued illegal residences, because these settlements include cases in which the applicants evade the authorities' controls after filing the application – either by returning, moving on or going underground.<sup>96</sup> However, the vast majority of these formal settlements are decisions under the Dublin procedure. The third-country nationals affected by Dublin decisions get a “second” chance for an asylum procedure in the Dublin country they are returned to and therefore they would not tend to go underground already in Germany.

Asylum-seekers can appeal negative decisions (at first instance) by the responsible authorities. In Germany those seeking protection can take recourse to the administrative courts to appeal a negative decision by the Federal Office for Migration and Refugees. 46.3% of these decisions were appealed in 2010 (see Federal Office for Migration and Refugees 2011: 59). Consequently almost half of the third-country nationals whose asylum applications were rejected are trying for a second chance and stay in contact with the authorities. There is no information on the number of persons who neither leave the country nor appeal after an initial negative decision. However, it stands to reason that only those third-country nationals whose applications have been finally rejected and who have no other resort will tend to go underground and become “illegal” in substantial numbers.

For this reason Eurostat offers statistics not only on the number of asylum applications and first instance decisions, but also on the number of final and non-appealable decisions by the higher instance courts. A general difficulty of these statistics is that they include only those final decisions that are handed down by courts or authorities in litigation or appeals on points of law or of fact, which is not the case for the Federal Office for Migration and Refugees' national statistics on non-appealable cases. Thus the Eurostat figures on final decisions are inherently different from those of the national statistics of non-appealable cases in Germany. The latter also include the decisions of Federal Office for Migration and Refugees as the responsible authority, which were either non-appealable or not appealed, i.e. non-appealable and final decisions at first instance. These national statistics on non-appealable cases are generally more informative, because they comprise all decisions in asylum cases that cannot take any recourse to the courts anymore. Therefore they are presented separately in section 6.2.4.

According to Eurostat, a total of 7,800 final decisions on appeal were made in Germany in 2010, 5,335 (68.4%) of these were rejections. In 2008 the number of rejections was 8,295 (75.0% of all final decisions on appeal) and in 2009 4,445 (65.9%). Table 8 shows that in 2010 by far the largest group of rejected applicants were Iraqi nationals, followed by Turkish

95 Most “formal settlements” are decisions under the “Dublin Procedure” (another Member State is responsible for the case), termination of the procedure after the application is withdrawn by the applicant, or, in the case of follow-up applications, another asylum procedure is denied. Eurostat does not distinguish between rejections and formal settlements. Both types of decisions are combined in the category “rejections”. The figures published in Germany that are based on the Federal Office for Migrants and Refugees business statistics are slightly higher than those of Eurostat, mainly because Federal Office for Migrants and Refugees subsequently adjusts or complements its monthly statistics, which is not done for the Eurostat figures. Further, Eurostat routinely rounds all figures to full 5 up or down.

96 For this also see the so-called travellers' atrophy statistics in section 6.2.4.

nationals. Of the nationalities for which this type of statistics is available eight belonged to the top 10 from 2008 to 2010: Iraq, Turkey, Russian Federation, Syria, Serbia, Iran, Nigeria, and Azerbaijan. The national statistics on non-appealable cases described above present another picture: e.g. Iraqi, Turkish, and Syrian nationals are not that dominant at all (see section 6.2.4).

**Table 8: Negative non-appealable decisions by major nationalities, 2008-2010\***

	2008	2009	2010
<b>Total</b>	<b>8,295</b>	<b>4,445</b>	<b>5,335</b>
<b>Iraq</b>	450	410	1,175
<b>Turkey</b>	1,065	535	535
<b>Russian Federation</b>	670	335	320
<b>Republic of Kosovo</b>	:	165	300
<b>Syria</b>	430	210	260
<b>Serbia</b>	1,095	315	215
<b>Iran</b>	535	315	195
<b>Nigeria</b>	265	135	175
<b>Azerbaijan</b>	280	125	150
<b>India</b>	95	80	135
<b>Other nationalities</b>	3,395	1,795	1,860

Source: Eurostat (rounded figures)

\* Nationality ranking for the top ten nationalities according to 2010 figures. Any discrepancy from the total after adding up the individual figures are due to the rounding of the latter by Eurostat.

The figures derived from the statistics on rejections are merely a potential quantity that by itself does not indicate whether and to which extent these asylum-seekers whose procedures have finally failed “go underground” or leave. Neither do they consider that in selected cases the asylum-seeker might stay on legally despite the final rejection of the asylum application under some other legal concept such as family or marriage.

### 6.1.6 Revocation and withdrawal of refugee status

Under German asylum law the recognition or entitlement to asylum and refugee status must be revoked if the conditions on which such recognition is based have ceased to exist (i.e. persecution in the country of origin) (section 73 Asylum Procedure Act). The status must be withdrawn if it has been granted on the basis of incorrect information or because essential facts were withheld (i.e. unlawful actions by the applicant). No more than three years after the decision becomes non-appealable, it must be examined for revocation or withdrawal.

In the majority of cases such revocation examinations do not actually lead to the revocation of the status (83.6% in 2010). A non-appealable revocation of the asylum or refugee status does not necessarily mean that the related residence title is forfeited or that residence is automatically terminated. Rather, the decision on the revocation of the residence title is at the discretion of the responsible foreigners authority, as is a decision on a subsequent limitation of the term of validity of the residence permit. This decision must consider

the foreign national's legitimate interest in a continued stay in Germany, in particular the degree to which he or she has been integrated into the economy and the society. The foreigners authorities usually only opt for a termination of the right to stay in cases of foreign nationals who have not been in Germany for a very long time, are on welfare, have a criminal record or otherwise pose a risk to public safety (Federal Ministry of the Interior/Federal Office for Migration and Refugees 2011: 118).

**Table 9: Revocation and withdrawal of first instance decisions to grant protection, 2008-2010**

	2008	2009	2010
<b>Total</b>	:	<b>4,810</b>	<b>2,535</b>
<b>Iraq</b>	895	2,345	1,530
<b>Turkey</b>	3,430	1,475	305
<b>Iran</b>	245	80	140
<b>Republic of Kosovo</b>	:	230	120
<b>Afghanistan</b>	210	85	65
<b>Serbia</b>	330	65	35
<b>Togo</b>	545	85	30
<b>Azerbaijan</b>	35	25	30
<b>Syria</b>	35	35	25
<b>Russian Federation</b>	55	55	20
<b>Other nationalities</b>	:	330	235

Source: Eurostat (rounded figures)

\* Nationality ranking for the top ten according to 2010 figures.

Eurostat has statistics on revocations and withdrawals for the first instance decisions and for the status finally granted. For the purposes of the present study the statistics on revocations and withdrawals can be no more than a theoretical indicator for the potential number of persons who (continue to) stay in Germany irregularly. It must be stressed that an unquantifiable share of migrants that lose refugee status is allowed to stay in the country on other legal grounds and that the number of persons who actually do go underground cannot be estimated. Therefore these statistics are neither helpful nor valid as indicators for the number of persons staying illegally.<sup>97</sup>

## 6.2 National data and estimates

### 6.2.1 Estimates of the size and the composition of the irregular population 2005-2010

#### 6.2.1.1 Demographic composition and nationalities

The younger age groups are even more dominant among irregular migrants than among the general population of regular migrants. The data available to the police suggest that most of the clandestine irregular population is aged between 21 and 40 years, with marked differences in the age distribution between males and females. While males tend

<sup>97</sup> According to Eurostat 2,535 first instance decisions granting protection were revoked or withdrawn in Germany in 2010. This is less than in the previous years. In 2009 4,810 decisions had been revoked and in 2008 even 6,345. The countries of origin of the persons affected were mostly Turkey and Iraq (see Table 9). The clear decline in the number of revocations is mainly caused by the more than 50% reduction in the number of decisions in revocation procedures from 2008 to 2010 (from 36,906 to 15,420).

to be younger, females are distributed more evenly over the different age groups. Therefore also the group aged 40-plus still has a substantial share of females. Proportionately there are less irregular female migrants than males, but the share of females is higher than would be assumed on the basis of statistics used as controls. The expertise prepared for this study estimates that 36 percent of the clandestine irregular migrants are female. This corresponds to the share that the Central Register of Foreigners indicates for persons whose temporary stay is tolerated based on a suspension of removal (see Vogel/Aßner 2011: 30 et seq)

The most important indicators suggest that the group of irregular migrants in Germany is a rather heterogeneous population group by countries of origin. An analysis of the most frequent nationalities based on different types of police data – apart from data on persons with a non-residence-law-related criminal record, there were also data of the Federal Police collected mainly on entering or leaving the country – shows that the ten most dominant nationalities only account for 50 to 60 percent of the total of those recorded (see Vogel/Aßner 2011), i.e. the range of countries of origin is large.<sup>98</sup>

Although police data do not render a clear picture, they provide some valuable pointers: the absolute size of the population of the country of origin seems to be relevant. China and India, with their populations of 1.3 billion and 1.2 billion respectively, are by far the most populous nations of the world.<sup>99</sup> Male Indians as well as male and female Chinese are among the first ten nationalities for illegal entry and illegal residence, but are not significant when it comes to non-residence-law related delinquency.

The Federal Police apprehends many more persons of a certain nationality on entry than in-country. There is no clear statistical trend for the gender distribution within the group of irregular migrants. India, for example, is only significant for males, while the opposite is true for Nigeria as country of origin.<sup>100</sup> Thai and Brazilian women only appear among the ten quantitatively most significant nationalities in Federal Police data for the offence “illegal residence”. More Turkish women are registered by the Federal Police for the offence “illegal residence” than for “illegal entry”. Both facts strongly suggest that women of these nationalities tend to stay on in Germany illegally after having entered the country legally.

The dominant nationalities of the third-country immigrants in Germany are also found among the irregular migrants. This is mostly true for Turks, but also for nationals of former Yugoslavia (Serbs, Kosovars), or of the Russian Federation and Vietnam. It is particularly striking that the number of Kosovar nationals among the first ten states is so high, even though the country’s population is relatively small. Persons from the successor states of the former Yugoslavia are overrepresented among the persons applying for asylum. Afghanistan, Iran and Iraq are large countries that contribute significantly to the worldwide refu-

98 In other countries the clandestine population tends to be concentrated on a limited number of nationalities or regions of origin, such as in the US, for example, where some 60 percent of irregular migrants are Mexican nationals and another 20 percent come from other Latin American countries (see Johnson/Hill 2011).

99 Estimates in the CIA World Factbook (as of July 2011).

100 In recent years massive organized human trafficking for the purpose of sexual exploitation in Europe has been tied to Nigeria as country of origin, with Germany as a significant destination (see BKA 2011: 11 et seq; Bohn 2011).

gee flows and who are represented as sizable minorities in Germany as well.

On the basis of these observations, the dominant nationalities among irregular migrants may be categorised in three groups:

- Nationals from countries with traditional migration relations to Germany, in particular Turkey, the successor states of Yugoslavia, the Russian Federation and Vietnam;
- Nationals of the world's most populous countries, particularly China and India;
- Nationals from countries that generate the world's strongest flows of refugees, especially Afghanistan, Iran and Iraq.

#### 6.2.1.2 Estimated size of irregular population groups

The following sections present estimates of the size of the irregular population based on the expertise prepared for this study (Vogel/Abner 2011). The groups are categorised according to the definitions described above (see section 1.2):

- clandestine migrants (unknown to the authorities, living in hiding);
- pseudo-legal migrants (registered stay, but obtained by intentionally making false statements or using a false identity, and/or counterfeit or false documents);
- Registered unauthorised migrants (known to the authorities as being “required to leave the country”, without regular residence title, some are persons who have been granted a suspension of removal).

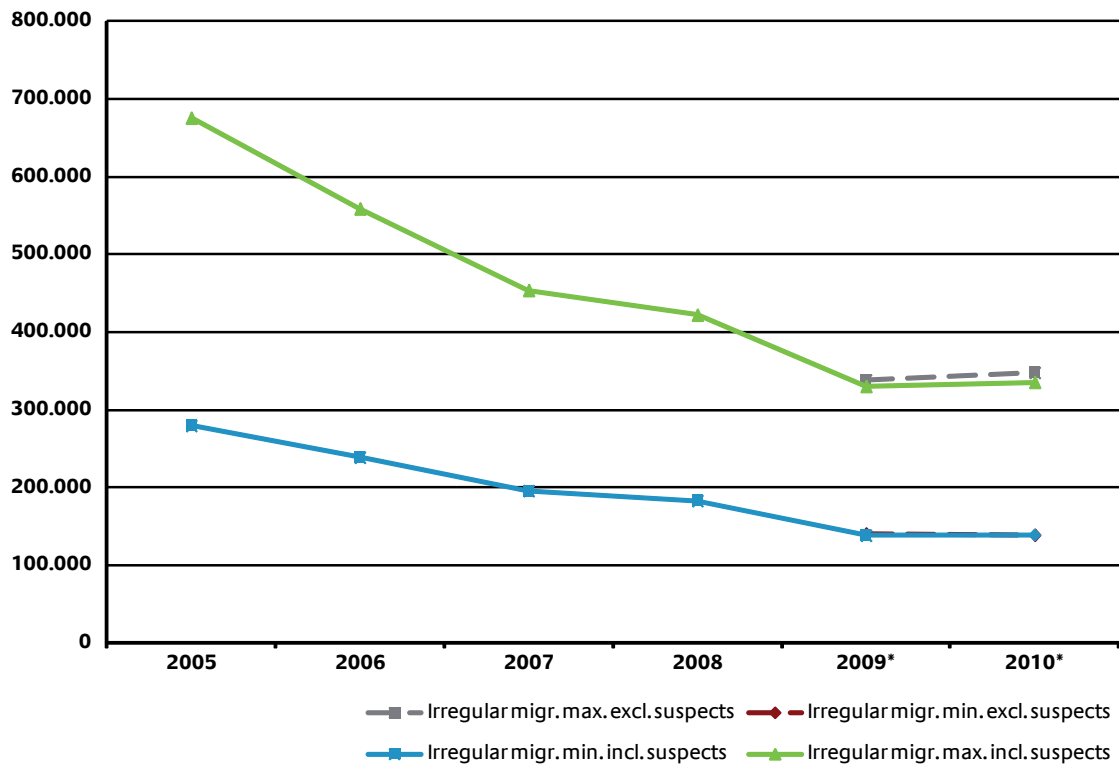
#### Clandestine irregular migrants

In order to arrive at plausible quantities when estimating the number of persons living in the country unknown to the authorities, the most practical approach seems to be to estimate the upper and lower limits. In doing so, we will apply the multiplier logic: a sub-population of the irregular migrants can be identified – e.g. from the data of police crime statistics. At the same time, there is a reference quantity for which official nationwide data are available (e.g. foreign population). By means of a simple multiplication of the proportional ratios of these groups the potential size of the irregular population can be extrapolated. The resulting figure may be interpreted as the lower limit, when considering as proven that irregular migrants are underrepresented in the statistics compared to the reference quantity. Vice versa, the figure calculated will represent the upper limit, when assuming that the irregular migrants are overrepresented.

The resulting “corridor” within which the actual number of clandestine migrants living in Germany is located with a high level of probability may be determined with the help

of several different data records on certain offences found in the Federal Criminal Police Office's crime statistics (police crime statistics) (see Vogel/Aßner 2011: 15 et seq; Vogel 2009: 6 et seq).<sup>101</sup>

**Chart 2: Estimate of minimum and maximum number of clandestine irregular migrants, 2005-2010**



Source: Federal Criminal Police Office, authors' calculations based on the police crime statistics (also see Vogel 2009; Vogel/Gelbrich 2010)

\* Double counting was eliminated in the police data after 2009. Double counting had resulted from the aggregation of the data from the different Laender (Echt-Tatverdächtigenzählung: ETZ). Thus for 2009 and 2010 both the adjusted and the unadjusted data are quoted, there is only very little difference, though.

Chart 2 shows the curves for both estimates, the upper limit and the lower limit estimate. A relatively consistent decline in irregular migrants can be observed for the years 2005 to 2009. As can be seen the corridor is narrowing during these four years. The estimated numbers remain more or less constant between 2009 and 2010. According to this estimate, the actual unknown size of the clandestine irregular population was between 140,000 and 340,000 in 2010. It is, however, impossible to decide whether it was closer to the

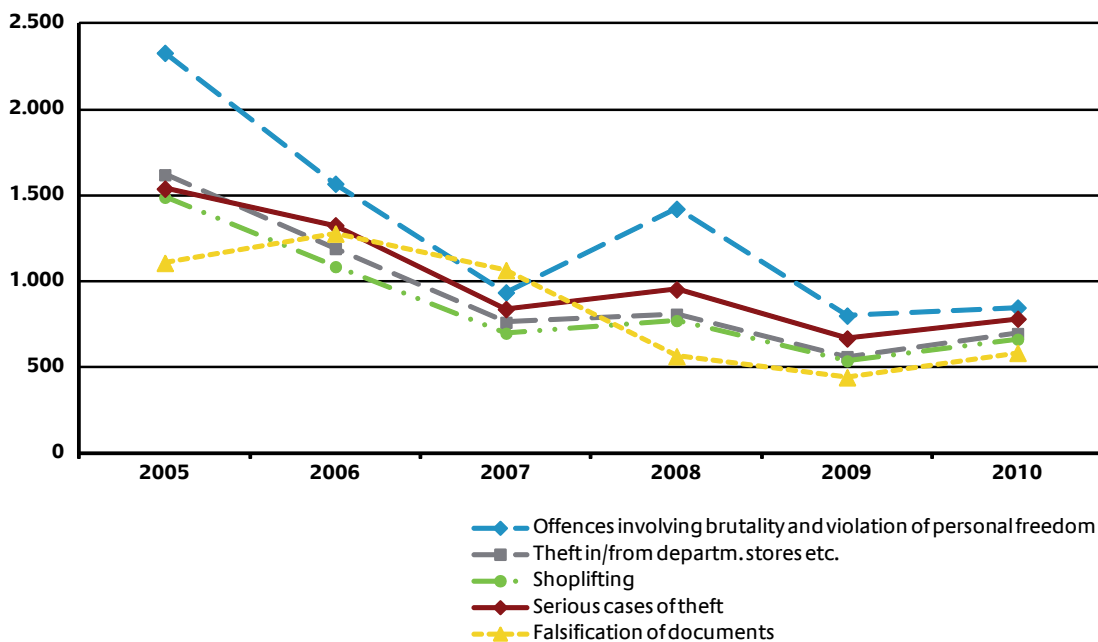
101 On the methodology: The proportion of suspects with the status "illegal" of all German (upper limit) or of non-German regular suspects (lower limit) is established based on the police crime statistics data and the irregular population is estimated by a simple multiplication with the corresponding population group ( $A/B \times D = C$ ). In doing so, the key assumption for the estimate of the upper limit is that irregular migrants are overrepresented in the police crime statistics compared to Germans. This is generally attributed to structural differences, which imply a higher propensity to crime and/or a higher likelihood of being apprehended by the police: Lower proportions of older people and children, higher proportions of irregular migrants in cities, higher proportions of people who do not conform to the typical stereotypes found in the German population. These structural differences are less marked when they are compared with the foreign population. This rests on the assumption that clandestine irregulars are underrepresented among suspects compared with the general population because of their behaviour. Qualitative studies suggest that clandestine irregular migrants avoid contact with the police and delinquency, because with each offence they run a higher risk of being additionally sanctioned by removal and expulsion.



upper or to the lower limit. Owing to newly available detailed police data, the underlying assumptions for the estimates could be validated much better. This suggests a lower validity of these estimates. However, alternative calculations confirmed the general trend. As a precautionary estimate, the assumption of 100,000 to 400,000 clandestine irregular migrants living in Germany seems well founded.<sup>102</sup>

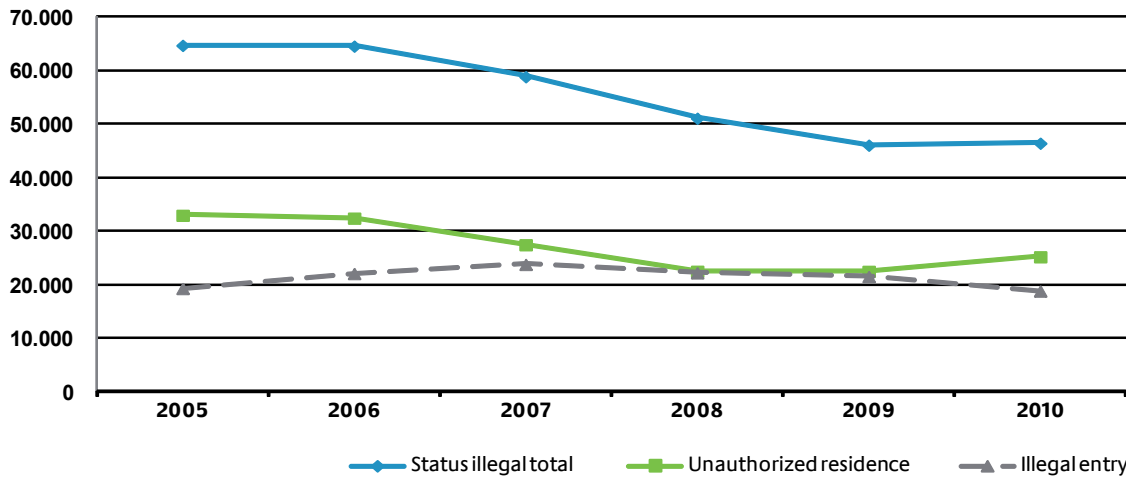
In order to represent the general downward trend, the development of selected offences in general crime (Chart 3) as well as the development of various indicators of illegal residence (Chart 4) in the police crime statistics may be used. In the period under review the trend points downwards and stabilises in 2010. The increase in the offence “illegal stay” while “illegal entries” are decreasing at the same time may be explained by the fact that Germany’s neighbours to the east became Schengen States in 2009. Thus that stationary border controls were replaced by identity checks in the 30-km border zone, the type and scope of which depend on the situation reports issued by the Federal Police.

**Chart 3: Number of suspects whose residence status was “illegal” in selected police crime statistics categories**



Source: Federal Criminal Police Office's police crime statistics 2005-2010, Table 61, 2009/2010 incl. adjusted suspect figures

<sup>102</sup> There is an alternative estimate which is based not on non-residence-law related delinquency in general but on fare evasion. This results in another corridor of 115,000 to 385,000 irregular migrants (see Vogel/Abner 2011: 19).

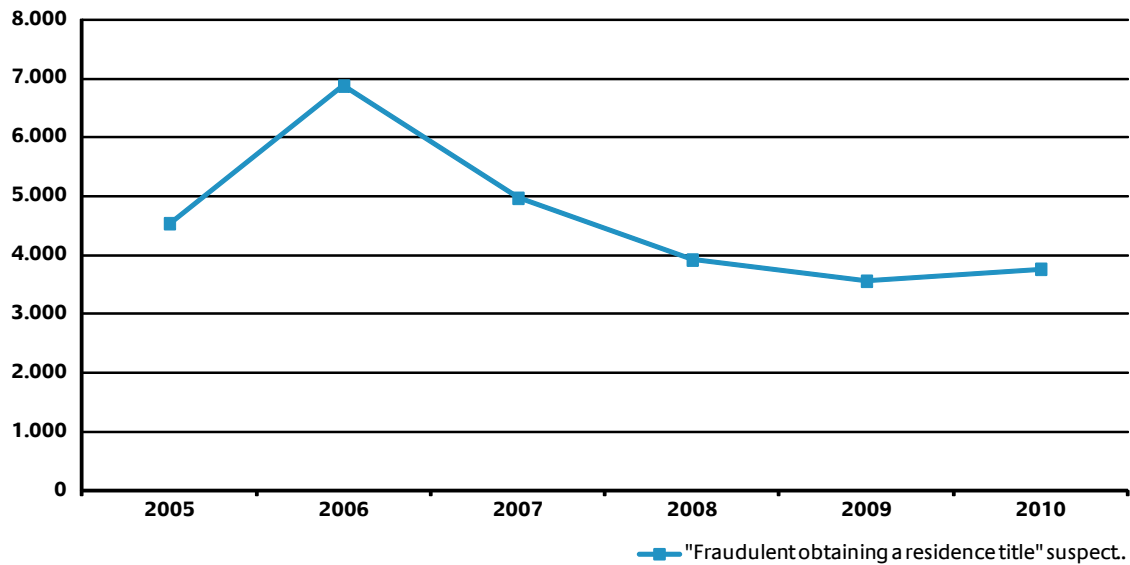
**Chart 4: Indicators for the development of irregular migration derived from the police crime statistics**

Source: Federal Criminal Police Office's police crime statistics 2005-2010, table 61, authors' presentation

### Pseudo-legal population

There are no estimates for the number of third-country nationals who are registered with the authorities and hold a regular residence title, but have obtained such title using false documents or false identities or by making false statements. At best, crime statistics can be used to derive some conclusions from the cases that have been detected and in which criminal investigations have been conducted. According to the Federal Criminal Police's crime statistics, a total of 4,554 suspects were registered in 2010 for having attempted to obtain a residence title using false data (pursuant to sec. 95 (2) no. 2 Residence Act). In some 83 percent of the cases (3,762 persons) the suspects were foreign nationals. 791 cases involved marriages of convenience and 992 were cases of other kinds of illegally trying to obtain a residence title or a settlement permit, or making use of such title in an illegal way.<sup>103</sup> In addition, cases of attempting to obtain a visa using false information in the context of marriages of convenience (750 persons), and other attempts of different kinds (2,043) have been investigated, although it is unknown whether these attempts have ultimately resulted in a person's illegal stay in Germany or not. Among the non-German suspects, the three most dominant groups were Turkish, Vietnamese and Kosovar nationals. Chart 5 shows the development of the number of non-German suspects, against whom prosecution was initiated for illegally attempting to obtain or use a residence title according to the police crime statistics. Apart from a marked increase in 2006, the development is in line with that of other indicators that decline over the same period, but this decline has come to a standstill in 2010.

<sup>103</sup> The proportion of "facilitators" who did not commit an offence in obtaining their own residence title cannot be determined. For the offence of "marriage of convenience", however, this proportion can be assumed to be relatively high, because in almost 39 percent of the cases the suspects were German nationals.

**Chart 5: Non-German suspects charged with surreptitiously obtaining a residence title, 2005-2010**

Source: Federal Criminal Police Office's police crime statistics 2005-2010, table 61, different years, authors' calculations for total of offences category 725300

### Registered unauthorised migrants

The number of persons who have been granted a suspension of removal has declined considerably over the last few years, particularly thanks to the regulation of old cases, which has allowed them to attain a regular status. While in 2006 there were still 175,000 persons whose removal had been suspended, this number had fallen to 87,000 by the end of 2010 (see Table 10).

The number of persons required to leave the country is determined from the aggregation of a number of different data records in the Central Register of Foreigners. Apart from persons who have been granted a suspension of removal, this includes, but is not limited to, prisoners, persons who have filed a follow-up application in asylum procedures and so far have only received a confirmation of receipt from the Federal Office for Migration and Refugees, and persons who have received a departure order setting a time limit for leaving the country. In the latter case they will receive a border certificate to be handed in when crossing the border as a proof of the actual departure. The number of registered unauthorised migrants can be determined when adding up the number of persons who have been granted a suspension of removal and other foreign nationals registered as required to leave the country (without suspension of removal). Thus, at the cut-off date 31 December 2010, a total of 118,118 third-country nationals required to leave the country were staying on German territory.

**Table 10: Number of registered unauthorised migrants granted suspension of removal as on Dec 31 of the respective year, 2006-2010\***

2006	174,980
2007	134,975
2008	104,945
2009	89,498
2010	87,247

Source: BAMF (Special evaluation of Centr. Reg. of Foreigners , status: 02.09.2011).

\* Some of the figures for the number of suspended removals of this special evaluation are higher than those previously published (see e.g. Federal Statistical Office, Fachserie 1 Reihe 2).

### 6.2.2 Assumptions on inflows and outflows of irregular population groups

The previous section estimated the stock of irregular migrants staying in Germany and showed how trends have changed between 2005 and 2010. While only a downward trend is perceivable on the surface, significant movements in different directions may have occurred in the background, not only physical movements (in the sense of actual migrations) across borders, but also shifts from one group to another, i.e. between irregular clandestine migrants, registered unauthorised migrants, asylum applicants and regular migrants. Thus three different dimensions of flows of irregular migrants may be distinguished by the parameters: “demographic”, “geographic” and “by status”. Demographic parameters are births and deaths. Geographic or border-related flow sizes may include the total of entries and departures of persons belonging to different groups of irregular migrants. Changes regarding status relate to the possibility of moving from an irregular residence status to a regular title. An outflow occurs, for example, where a migrant that has entered the country illegally obtains a temporary or a permanent residence permit as a result of an asylum application, or where a registered unauthorised migrant obtains a regular title, e.g. following a marriage. Inflows are the result of the loss of a regular residence title (e.g. expiry of a temporary residence title for purposes of pursuing an occupation, or the revocation of a person’s refugee status) and the corresponding relapse into an irregular status (see Cyrus 2009: 64 et seq).

### 6.2.3 Employment of irregular migrants without work permits

The phenomena informal economy and illegal employment have been under intense discussions in Germany for several years and have also been the object of political action, e.g. by establishing a dedicated unit with the customs authorities (see section 2.2.1). However, the illegal employment of irregular migrants only accounts for a small part of a much more comprehensive phenomenon. Because little is known so far about the benefit and effectiveness of the attempts to reduce undeclared employment, there are endeavours to evaluate the work of the Financial Control Section (see German Supreme Audit Institution, 2008). In the Federal Government’s opinion, the evaluation projects submitted so far suffered from methodological difficulties and were therefore regarded as unsuitable to actually quantifying the effectiveness of the Financial Control Section’s measures in reducing undeclared employment.<sup>104</sup> However, economists say that even stricter sanctions and the deployment of additional personnel to combat undeclared employment have not substantially reduced it over the last few years (Enste/Schneider 2006).

104 Eleventh report of the Federal Government on the impacts of the Act to Combat Illegal Employment, BT-Drs. 16/13768 of 3 July 2009, p. 15.

Only very limited data are available at this time. Although comprehensive checks at workplaces are conducted irrespective of specific suspicions and although all forms of illegal employment are prosecuted, among others through the Financial Control Section, hardly any sound inference of the number of persons with an illegal status that are employed and the number of legal migrants who are illegally employed is possible (see Junkert/Kreienbrink 2008: 15).

As far as is known the employment of irregular migrants outside private households is probably insignificant.<sup>105</sup> In 2010, the papers of a total of 510,425 persons were checked at workplaces, and 1,173 charges were brought for “illegal stay”, which were typically initiated on the basis of questioning persons involved. However, in the same year, a total of 10,010 proceedings for employment “without work permit” were concluded. It seems, therefore, that the illegal employment of migrants is highly significant for those who are staying in Germany legally or whose removal has been suspended, i.e. nationals of new EU Member States or third-country nationals whose removal has been suspended (see Vogler/ABner 2011: 27 et seq. for details).

#### 6.2.4 Further national statistics in the context of irregular migration

##### Travellers’ atrophy statistics

Federal Office for Migration and Refugees has jurisdiction for asylum procedures and this includes the so-called travellers’ atrophy statistics. These statistics cover asylum-seekers who, following their first registration never contact the reception centre responsible for their accommodation, nor the point of contact for the processing of their asylum application at the Federal Office for Migration and Refugees to which they were allocated. Instead they prefer not to undergo the asylum procedure in order to stay illegally or travel to the city or region of their choice. The statistics show these cases by nationalities and the “sending” initial reception centre of a Land, to which the person reported first and from which it was referred to another point of contact,<sup>106</sup> but then failed to report to contacted the (“receiving”) reception centre, and/or never filed an asylum application with the responsible Federal Office for Migration and Refugees branch. In 2010, 42,260 EASY allocations were made, 6.1 percent (2,595 persons) of these did not act as instructed. In 2010, Berlin was the (sending) reception centre with the by far highest incidence of travellers’ atrophy at 34 percent. It affected 24.3 percent of Berlin first reception centre contacts (3,633 persons). The number of Vietnamese nationals among these was particularly high. The atrophy of nationals from Bangladesh, Congo, Lebanon and the Russian Federation was disproportionately high, too.<sup>107</sup>

Thus, travellers’ atrophy statistics are more informative regarding the preferred places to stay of particular groups of third-country nationals than regarding the significance of “going underground” by nationality. There are sizable “communities” of foreign nationals

105 It is difficult to quantify irregular employment in private households since the Custom’s Office’s special unit has hardly any records on this and because there are no other systematic ways and means of discovering these employees.

106 With the help of the IT allocation system EASY (German Acronym for Erstverteilung von Asylbewerbern, initial allocation of asylum seekers), applicants are allocated to the Laender according to a specific quota scheme (see Schneider 2009: 36).

107 Entscheider-Brief. Informations-Schnelldienst, year 18, no. 6/2011, p. 1.

in Berlin that asylum seekers prefer to join while at the same time accepting that this inevitably means to become “illegal”. Travellers’ atrophy statistics suggest that these “communities” exist for nationals of Serbia, Iraq and the Former Yugoslav Republic of Macedonia in Dortmund, for nationals of Afghanistan in Hamburg and for nationals of Iraq in Munich.

### **Identity checks and questioning to prevent or stop illegal entries**

In order to frustrate any attempt to enter the Federal Territory illegally the Federal Police is authorised to stop persons to check their identities and question them without any specific suspicion in a 30 km wide zone along the territorial borders, as well as around and along the facilities of the German railways and on airport premises (sections 22 and 23 Federal Police Act). These identity checks serve to prevent and stop illegal entries into the German Federal Territory.

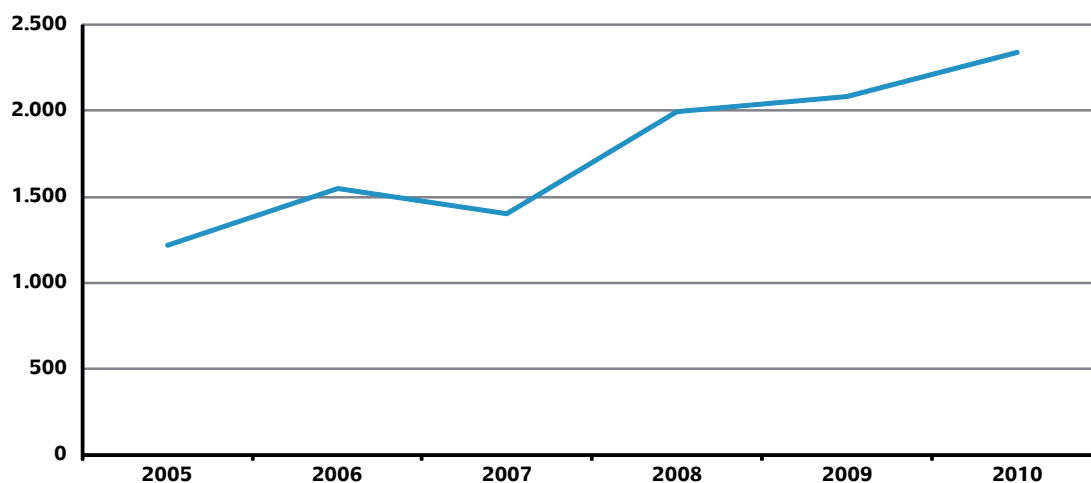
The number of cases in which an illegal entry to Germany has been prevented or stopped, or the number of cases in which people have been questioned and had their identities checked in order to prevent criminal offences (pursuant to sec. 22 (1a) and sec. 23 (1) no. 3 Federal Police Act) has consistently and considerably risen over the last few years; between 2005 and 2010 there was an overall increase of more than 277% from 1.09m to some 3.03m.<sup>108</sup> However, the statistics do not indicate the incidence of illegal entries of particular groups of migrants: on the one hand, during identity checks and questioning the subjects’ status under residence or asylum law are not recorded. On the other hand, the increases may be attributable to a general increase in mobility in the vicinity of national borders and/or to the Federal Police’s intensified control schedule.

### **Allocation of migrants that entered illegally**

Migrants that entered illegally are allocated with the ViLA system.<sup>109</sup> The system records persons staying illegally who contact the authorities without applying for asylum, and who, upon their illegal entry being established, were not placed in custody pending removal or deported or expelled. Since 2005 they have been allocated to the Laender in the same way as asylum seekers (sec. 15a Residence Act).

108 Calculation on the basis of BT-Drs. 17/6778, p. 2.

109 See Der Einzelentscheider-Brief 12/2005, p. 1. The system is operated by the Federal Office for Migrants and Refugees.

**Chart 6: Foreign nationals who entered illegally and were allocated by the ViIA system, 2005-2010**

Source: Federal Office for Migration and Refugees

The number of third-country nationals recorded and allocated by the system has increased constantly over the last few years (Chart 6). Serbia (i.e. Serbia and Montenegro), Bosnia and Herzegovina, Vietnam and Turkey counted among the ten most frequently recorded nationalities each year between 2005 and 2010. Ghana has been represented each year since 2006. In 2009 and 2010, Afghan and Iraqi nationals were among the top 10, too.

#### Statistics on non-appealable decisions

In addition to the statistics on the decision made in asylum procedures in accordance with the specifications for data submission to Eurostat, statistics on non-appealable decisions in asylum cases are maintained at the national level. Such final decisions include the decisions of the Federal Office for Migration and Refugees which were either non-appealable or not appealed, but also final court decisions. Generally these national statistics on non-appealable cases are considered to be more informative than to those of Eurostat both for first-instance decisions and “final” decisions that are handed down by courts or authorities as a result of litigation, or of appeals on points of law or of fact. However, statistics on non-appealable cases are no valid indicator for determining the prevalence of irregular residence. Persons whose status was revoked only form a theoretical potential (see sec. 6.1.5 in this context).

Statistics on non-appealable cases for 2010 suggest that at 15,049 half of the non-appealable decisions were rejections (Table 11). Another large share (together 8,612) were formal dismissals, cancellations or terminations of proceedings. Serbian (1,611) and Iraqi (1,320) nationals accounted for the highest absolute numbers of rejections, followed by Turkish, Kosovar, Vietnamese and Macedonian nationals, each of which accounted for slightly less than a thousand rejections. Another significant group were Indian nationals (837).

A multi-year comparison of non-appealable rejections between 2005 and 2010 (see Table 13 in Annex III) clearly shows that nationals of Serbia and Montenegro (including predecessor and successor states) form by far the most significant group in terms of numbers, followed by Turkish nationals. But also Iraqi and Russian nationals counted among the

ten most important nationalities each year for rejections. Indian nationals, who entered the top 10 in 2009 for the first time and remained there also in 2010, account for a growing numbers of rejections, whereas the number of rejections of Iranian and Afghan nationals has declined.

**Table 11: Non-appealable decisions of asylum applications, 2010**

Nationality	Total of decisions	Recognised as refugees	Refugee status granted	Subsidiary protection	Rejections	No further procedure	Case formally settled
Serbia	2,507	–	1	32	1,611	399	464
Iraq	5,877	28	3,404	211	1,320	578	336
Turkey	1,989	99	236	79	997	256	322
Republic of Kosovo	1,925	–	11	115	982	367	450
Vietnam	1,219	1	8	16	932	168	94
Macedonia	1,491	–	–	7	931	135	418
India	981	–	9	5	837	82	48
Russian Federation	1,346	8	277	111	531	137	282
Nigeria	762	–	15	56	505	50	136
Algeria	639	–	2	5	439	97	96
Lebanon	593	–	6	19	424	62	82
Syria	1,169	29	353	79	391	212	105
Azerbaijan	677	19	65	41	357	67	128
China	496	13	67	7	347	41	21
Pakistan	533	22	89	12	302	65	43
Afghanistan	2,987	23	677	1,771	293	32	191
Georgia	829	5	4	9	273	75	463
Iran	2,234	263	1,303	124	254	133	157
Ghana	284	–	1	11	188	26	58
Armenia	357	–	12	27	186	63	69
Others	6,753	227	1,390	583	2,949	601	1,003
<b>Total</b>	<b>35,648</b>	<b>737</b>	<b>7,930</b>	<b>3,320</b>	<b>15,049</b>	<b>3,646</b>	<b>4,966</b>

Source: Federal Office for Migration and Refugees

### Regularisation via hardship commissions

According to information given by the Federal Government, 5,455 foreign nationals were living in the Federal Republic of Germany as of 31 December 2010 whose residence permit had been issued pursuant to the hardship clause of sec. 23a Residence Act (see 3.4.3). Among these were mainly nationals of Turkey, as well as nationals of the successor states of the former Yugoslavia (table 12).



**Table 12: No. of persons whose residence was regularised (residence permit under sec 23a Residence Act), 2010**

Nationality	Number
Kosovo	747
Turkey	744
Serbia	510
Serbien (former)	340
Bosnia and Herzegovina	318
Serbia and Montenegro (former)	305
Yugoslavia (former)	195
Syria	186
Russian Federation	170
Armenia	167
Others	1,773
<b>Total</b>	<b>5,455</b>

Source: Federal Government (BT-doc. 17/4791)

### 6.2.5 Costs of actions to combat irregular migration

The ultimate objective of migration control and the monitoring of migration flows always is to allow for regular stays and to prevent or stop migrants from entering or staying illegally in the country. The holistic task of migration management is highly diverse and shared by a number of different actors in Germany (especially among the public authorities). However, in many areas it is inextricably linked to the performance of other sovereign tasks. Even mechanisms that clearly belong to the realm of control policy frequently take on multiple functions and are not in place merely because there is illegal migration, to prevent or reduce it. Thus even spending on border controls serves multiple other purposes, such as the reduction of smuggling or crime (see Schönwälder et al. 2004: 59). However, so far no attempt has been made to quantify the costs of preventing irregular migration. Since the prevention of irregular migration is embedded in other tasks, the share of migration control could be determined only by costly and laborious studies that scrutinise the work processes of the authorities involved. A comprehensive survey and evaluation would have to be preceded by very precise and plausible planning and design. However, this has not been envisaged by this study and would go well beyond its limits. An earlier EMN study found, however, that relative to other EU Member States Germany had the highest spending for security and control policy measures in the area of irregular migration (see EMN 2007: 31). For the Community as a whole it can be assumed that spending for migration control and prevention has clearly increased in recent years.

In the following, we shall briefly describe items to be potentially considered in any comprehensive analysis of the costs of combating irregular migration, based on the ideas presented in the expertise drawn up for this study (Vogel/Aßner 2011).

#### Potential cost items of a total cost calculation

A whole range of different dimensions would need to be considered in the design of a total cost analysis. Migration control measures may, for example, be distinguished by the point of intervention, such as: in the migrant's home country before his/her leaving, at the border, during the stay, or in the context of his/her return (Vogel 2000, p. 397). Measures

should be included that prevent an unlawful access to legality (e.g. passport controls when entering at the airport or questioning to prevent marriages of convenience), and also interventions exclusively dedicated to discovering illegality (e.g. identity checks by mobile forces of the border authorities or prosecution of traffickers and smugglers).

Thus the different actors incur all kinds of different material expenses that are difficult to quantify. The list (Chart 7) is by no means exhaustive. It concentrates on organisations mainly performing tasks related to migration control and such whose activities are particularly relevant to migration control. These costs are not only expenses for the public budgets, but are shifted to private persons and businesses by state regulation.

**Chart 7: Cost factors related to migration control incurred by different parties**

<p><b>European Union</b></p> <ul style="list-style-type: none"> <li>• Financial support to third countries during the negotiation of return agreements</li> <li>• Funding of Member States' activities by the External Borders Fund 2007-2013 (of these approx. € 84m for Germany)</li> <li>• FRONTEX</li> <li>• European agencies and monitoring institutions for control-oriented research and monitoring (EASO, EMN)</li> </ul> <p><b>Federation</b></p> <ul style="list-style-type: none"> <li>• Visa sections in the embassies (Federal Foreign Office)</li> <li>• German Federal Police (unless used for other activities of the Federal Police)</li> <li>• Federal Office for Migration and Refugees (unless working for integration policy)</li> <li>• Central Register of Foreigners</li> <li>• Common Analysis and Strategy Centre on Illegal Migration or the authorities cooperating therein</li> <li>• Financial Control of Undeclared Employment (to the extent aspects of residence law related to employment are concerned)</li> <li>•</li> </ul> <p><b>Laender and local governments</b></p> <ul style="list-style-type: none"> <li>• Police (when dealing with offences related to residence law)</li> <li>• Court system (when dealing with offences related to residence law)</li> <li>• Foreigners authorities</li> <li>• Expenses for custody awaiting removal</li> </ul> <p><b>Enterprises</b></p> <ul style="list-style-type: none"> <li>• Expenses for controls to avoid carrier sanctions</li> <li>• Expenses for controls to avoid employer sanctions</li> </ul> <p><b>Migrants</b></p> <ul style="list-style-type: none"> <li>• Visa fees</li> </ul>
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Source: Vogel/Aßner 2011

### Costs of individual activities

In fact, expenses actually or probably incurred due to individual activities that are explicitly or implicitly adopted with the aim of combating irregular migration may be quantified to some extent. The expected costs of setting up a central visa alert database (see section 3.1.3) for example, will, according to the Federal Government, amount to some 6.9m euros; the annual operating costs of the system will probably come close to 1m euros.<sup>110</sup> In some cases, cost items relating to the prevention or termination of irregular migration may be derived from the annual budget (e.g. item 0625, Federal Police Office) or may be con-

<sup>110</sup> See BT-Drs. 17/7994 of 30 November 2011.

cluded from corresponding information given by the Federal Government in the context of replies to parliamentary questions.<sup>111</sup>

However, this study prefers not to present the costs of such individual measures which may be found in public documents. For one, such a schedule of costs would remain cursory for the reasons stated above, since it is impossible to determine all of the relevant cost items. Secondly, it is often impossible to clearly identify the share of costs that actually served the specific aim of preventing or reducing irregular migration. And finally, compiling a list of all the measures that may be found in public documents would also exceed the limits of this study.

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<sup>111</sup> See for example the reports on costs for joint return flights in the context of FRONTEX actions on BT-Drs. 17/7288 of 10 October 2011, p. 4-6, or the information on the costs and their allocation in the area of removals on BT-Drs. 17/5460 of 12 April 2011, p. 31.

## 7 Conclusions

Germany applies a wide range of measures to deal with the phenomenon of irregular migration. These include restrictive controls by the state authority arising from the basic requirements of sovereignty, security and integrity of the state and the need to warrant the consistency of the legal order. Next to these there are, however, also measures striving for solutions to either proactively prevent irregular migration altogether or to minimise the problems resulting from a continued irregular stay for the affected foreign nationals and society at large. The following sections highlight a number of key issues and results from the study's different sections and put them into perspective.

### **Preventing and discovering irregular immigration by migration control policy**

The German system of migration control consists of external controls (e.g. visa procedures and external border controls) and a network of internal controls in the form of residence and work permits. These are complemented by controls in the form of data exchange, cooperation among authorities and mandatory notices by public bodies. It is safe to say that controls at the borders and in the country form a tightly meshed network, because they are relatively frequent, and cooperation and the exchange of data among the various players is relatively intensive. While controls are quite difficult to evaluate systematically and have as yet never been evaluated, the practical work of the German authorities charged with controlling cross-border movements of persons shows that Germany possesses a relatively sophisticated border surveillance and management system. Thus it can provide useful inputs at the European and international levels. Especially the Federal Office for Migration and Refugees and the German Federal Police participate in many projects both under the External Borders Fund and the Return Fund.

### **Size and composition of the irregular migrant population**

A data analysis performed for this study confirms that the number of irregular migrants living in Germany is frequently overestimated and has declined considerably after 2005. But updated estimates indicate that the decrease shown from 2005 to 2009 came to a standstill in 2010. Hitherto one was forced to rely on estimates, but meanwhile the first statistically useful detailed police data are available which allow a more reliable verification of the estimates. But still no more than a rough range for the probable number of irregular migrants in Germany can be given. An estimate made for the purposes of the present study puts the figure of irregular migrants for 2010 at 100,000 to 400,000.

The group of irregular migrants in Germany is very heterogeneous. Younger age groups are overrepresented compared to the average migrant population. The data available to the police indicate that most of the clandestine irregular population is aged between 21 and 40 years, with marked differences for men and women. While men tend to be younger, an equal number of women tend to belong to each of the different age groups. In total about 36 percent of this group are women. In contrast to other countries with signifi-

cant levels of immigration, the clandestine migrant population in Germany is not limited to a few selected countries, but quite heterogenous. The dominant nationalities among the irregular migrants can be categorised in three groups: Nationals from countries that have traditionally had migration relations with Germany, nationals of the world's most populous countries and nationals of the countries that generate the world's strongest flows of refugees.

### **Termination of irregular stay and improvement of the human rights situation**

In recent years more attempts have been made to solve the dilemma between the regulatory imperative to combat irregular migration and not to tolerate it in any event and the universal validity of human rights. Examples in point are the pragmatic attempts to ameliorate the humanitarian problems resulting from the illegal residence status within the possibilities of the law – see the “Munich Model” described above which tests individual cases for any discretionary margin available to legalise the stay and once the legal situation is irrefutable aims at a “regular” termination of the stay (e.g. by suspending removal during a transitional phase for medical reasons or to allow for a voluntary return); or to grant a residence title on the basis of the existing residence law. On the other hand, some aspects of the legal or administrative practices have been amended to give irregular migrants staying in Germany more opportunities to exercise their fundamental rights such as accessing education and medical care and having their wages paid out, a development that was favoured by an intensive public debate, the efforts of migrant advocacy groups and developments at the European level.

Legislators at the national and Land level also made much awaited progress in curbing the phenomenon of repeated renewals of temporary removal stays (“chain toleration”). This is shown by the significantly lower number of third-country nationals tolerated to stay in Germany with a residence title in the form of a “Duldung” (suspension of removal). For one, more residence permits (some ‘on probation’) have been issued in an effort to clear a backlog of cases. The persons who received a secure residence status in this way were mostly earning their own living and had favourable integration prognoses. Secondly, removal activities and return projects have been expanded.

### **Europeanisation and international cooperation**

The study confirms the trend towards the “communitarisation” of the efforts for combating and managing irregular migration, a trend that can also be observed in other fields of migration management. A number of legal acts of the European Union have been implemented which, both indirectly and directly, impact the legal and administrative-organisational system for the management of irregular migrants in Germany. German authorities are also extensively involved in European cooperation efforts. Chief among these are the joint activities and operations of the EU border protection agency FRONTEX, participation in the EU Readmission Agreements and mobility partnerships as well as in the network of border police liaison officers.

Furthermore Germany maintains direct bilateral contacts to third countries in the form of projects that are ultimately aiming at improving the return options for the nation-

als of these countries who are not (or not any more) entitled to stay. The most promising practical approach proved to be to cooperate as comprehensively as possible with these countries. They may become much more willing to cooperate when training and equipment support is offered from which their external border surveillance and security can directly benefit, while the terms for facilitating the issue of passports or substitute passports are negotiated in parallel.

The analysis reveals that international and European cooperation in the field of irregular migration has so far concentrated on the regulatory rather than on the social aspects.

### **The need for further research and evaluation**

The issue of irregular migration and the official approaches to managing it is an equation with many unknowns. This is not only true for the question whether and if so, how the number of third-country nationals staying within a country can be determined more precisely. The estimation methods and results presented herein have at least described a range that is plausible and can be reliably measured in the future as well. Above and beyond this, the measures actually taken give rise to a number of questions which research might be able to answer – albeit tentatively – in the next years.

A case in point is the effectiveness of controls and preventive actions which also the Study Specifications refer to. Such evaluations should include specific cost-benefit analyses. But light needs also to be shed on some basic assumptions in migration management: until now there is only very little empirical evidence on whether or not opening legal immigration options will actually effectively stem irregular migration flows. To make such options practically viable one would have to determine which qualitative and quantitative features such migration channels should have to arrive at a win-win situation (for example by permitting immigration also for lower skilled workers, or to selected sectors where there is a demand in the receiving state). Another open question is whether the alleged emigration prevention efforts are effectively avoiding what they are supposed to avoid (from information campaigns on the risks of irregular migration to projects related to local development).

## Annex I: Germany's participation in FRONTEX operations in 2011

### Air borders

Under the new operational concept "Pulsar Programme" FRONTEX initiates different types of joint Operations (JO) at the international airports within the Schengen area as required by the actual situations. The operations can take any of the following forms:

- JO "HUBBLE" 2011:  
Intensification of border controls at EU airports with air links to airline hubs in third countries.
- JO "METEOR" 2011:  
Short operations at one or two airports to combat special types of cross-border crime.
- JO "HAMMER" 2011:  
Airport operations for EU-wide data collection. As required focus regions can be determined, i.e. the operation can be restricted to certain Schengen states.
- JO AGELAUUS 2011:  
Operations at the EU airports to detect minors entering illegally.
- JO HYDRA 2011:  
Operations at the EU airports to combat irregular migration by Chinese nationals.

### Land borders

- JO JUPITER:  
Improvement of border surveillance along East European migration routes (Poland, Slovenia, Hungary, Romania to Ukraine and to the Republic of Moldova).
- JO NEPTUNE:  
Improvement of border surveillance along migration routes in the West Balkans (Slovenia, Hungary and Romania to Croatia and Serbia).
- JO Poseidon Land:  
Operations at the Turkish land borders to combat illegal migration – focus is on the Greek-Turkish external land border.

### Sea borders

- JO POSEIDON 2011:  
Multi-year programme for coordinated police operations in the Eastern Mediterranean (Greece).
- JO Hermes:  
Surveillance of the Italian sea borders to Tunisia/Algeria, extended by the surveillance of the sea between Sicily and Tunisia.
- JO Indalo:  
Surveillance of the Spanish sea borders to Morocco/Algeria.

## Annex II: Survey of agreements with international police forces

- Agreement between the Swiss Confederation and the Federal Republic of Germany concerning cross-border cooperation by the police forces and justice systems (Swiss-German Police Agreement) of 27 April 1999
- Agreement between the Federal Republic of Germany and the Kingdom of the Netherlands concerning cross-border cooperation by the police forces and in criminal matters of 2 March 2005
- Agreement between the governments of the Federal Republic of Germany and of the Kingdom of Belgium on cooperation by the police forces and customs administrations in the border areas of 27 March 2000
- Agreement between the Governments of the Federal Republic of Germany and the Kingdom of Denmark on police cooperation in the border areas of 21 March 2001
- Agreement between the Federal Minister of the Interior of the Federal Republic of Germany and the Ministry of Justice and the Minister of Public Authority of the Grand Duchy of Luxembourg on police cooperation in the border area between the Federal Republic of Germany and the Grand Duchy of Luxembourg of 24 October 1995
- Agreement between the Governments of the Federal Republic of Germany and the Republic of Poland on police and border guard cooperation in the border areas of 18 February 2002
- Agreement between the Governments of the Federal Republic of Germany and the Czech Republic on police and border guard cooperation in the border areas of 19 September 2000
- Agreement between the Governments of the Federal Republic of Germany and the French Republic on police and border guard cooperation in the border areas (Mondorf Agreement) of 9 October 1997
- Agreement between the Federal Republic of Germany and the Republic of Austria on cross-border cooperation for threat prevention and in criminal matters of 10 November and 19 December 2003

Source: German Federal Police (Status: 31/08/2011)



## Annex III: Rejected asylum applications 2005 to 2010

Table 13: Number of rejections among non-appealable asylum decisions, 2005-2010\*

2005		2006	
former Serbia and Montenegro	6,253	former Serbia and Montenegro	4,508
Turkey	4,589	Turkey	2,954
Iraq	3,277	Iraq	2,390
Afghanistan	2,087	Russian Federation	1,576
Russian Federation	1,943	Iran	1,117
Iran	1,590	Azerbaijan	1,054
Azerbaijan	1,383	Vietnam	1,035
Vietnam	1,290	Afghanistan	951
Nigeria	1,211	Nigeria	917
China	1,109	Syria	789
Others	14,867	Others	11,032
<b>Total</b>	<b>39,599</b>	<b>Total</b>	<b>28,323</b>
2007		2008	
former Serbia and Montenegro	2,868	former Serbia and Montenegro	1,141
Turkey	1,838	Turkey	1,063
Iraq	1,430	Vietnam	850
Vietnam	901	Russian Federation	701
Russian Federation	870	Syria	496
Iran	780	Iraq	457
Afghanistan	668	Iran	393
Syria	665	Nigeria	384
Lebanon	533	Lebanon	337
Azerbaijan	521	Afghanistan	323
Others	7,441	Others	4,604
<b>Total</b>	<b>18,515</b>	<b>Total</b>	<b>10,137</b>
2009		2010	
Vietnam	1,092	former Serbia and Montenegro	1,727
Turkey	846	Iraq	1,320
Iraq	695	Turkey	997
Republic of Kosovo	584	Republik Kosovo	982
former Serbia and Montenegro	507	Vietnam	932
India	457	Macedonia	931
Russian Federation	422	India	837
Lebanon	385	Russian Federation	531
Syria	315	Nigeria	505
Algeria	311	Algeria	439
Others	3,632	Others	5,848
<b>Total</b>	<b>9,039</b>	<b>Total</b>	<b>15,049</b>

Source: BAMF

\* Ten most relevant nationalities for each. To warrant the comparability of the data all nationalities referring to the state entities that have until now emerged from the Federal Republic of Yugoslavia that existed until 1992 (the Republics Serbia and Montenegro, also called "Rump Yugoslavia") have been combined in a single category entitled "former Serbia and Montenegro" in the tables for 2005 to 2008. These include the citizens of the Confederation of Serbia and Montenegro (existing between 4 February 2003 and 3 June 2006), of Montenegro (since 3 June 2006), of former Serbia (3 June 2006 to 17 February 2008) and of current Serbia and the Republic of Kosovo (both since 17 February 2008). The same applies to the tables for 2009 and 2010 with the exception of the nationals of the Republic of Kosovo who are shown separately.

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