

# Visa Policy as Migration channel

The impact of visa policy on  
migration control

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

Bernd Parusel  
Jan Schneider



**Note:**

Statements made in this study are neither binding for state institutions nor non-state institutions, inside or outside the Federal Republic of Germany. Statements with regard to visa policy do not necessarily reflect the policy of the Federal Government. The description of processes and practices in the procedure of granting visas does not claim to be exhaustive. Entitlements of being granted a visa cannot be derived from this study, neither can claims for official action or legal positions.

## Executive summary

Visa policy and visa practices are key elements for the migration management of nation states. They supplement the basic legal requirements for lawful entry and residence as well as border control measures. Visa policy and visa practices serve as control mechanisms when it comes to regulating the entry of foreigners into the national territory. Thus, they are also instruments of security policy. Visa policy defines entry requirements with regard to those foreign nationals who – beyond their passport – require a visa, and defines the general conditions for issuing a visa as well as the special conditions governing short stay and long stay visas. Within the EU, visa policy is a tool of which the EU and the Member States avail themselves in an attempt to control the mobility of third country nationals prior to their entry into the country, i.e. extra-territorially.

### **Extent of issuing visas**

The quantitative significance of visa policy is underlined by the total number of more than 12.5 Million visas issued by the countries forming the Schengen area in 2010. With more than 11.5 Million visas (87.7%) the majority was issued as so-called Schengen-Visas or Type C visas for short-term stays which do not serve purposes of immigration. More than one Million (8.1%) were national visas for long-term stays, so-called Type D visas. A total of 1,755,104 of the visas issued within in the Schengen area were issued in Germany; 91.4 per cent thereof were Type C visas (absolute 1,603,758) and 8.1 per cent were D-visas (142,749).

### **Links between issuing visas and immigration?**

So far, migration research has been unable to determine the actual impact of visa policy not only on short-term mobility (e.g., for tourism, business or private visits) but also on actual immigration in terms of long-term stays. Examples can be found for situations in which visa liberalisation for the nationals of certain countries has not significantly impacted the immigration flows from these countries. On the other hand, the recent introduction of a visa-free regime for nationals of the Western Balkan States has been followed by a significant increase of entries by applicants for asylum.

### **Important distinction between different types of visas**

To distinguish between short-stay visas (including “Type C visas”) and long-stay visas (“Type D visas”) is essential when examining the potential controlling effect of visa policy for migration. Type C visas are issued for business trips, tourism, visits of family members or for attending sports or cultural events and the like, thus generally for short-term stays. In this context, a central category in the visa procedure is undertaking a risk assessment and checking the applicants’ required readiness to return.

Type D visas are issued for purposes like employment, education and family reunification, mostly based on a long-term perspective for residence. In addition, both Type C and Type D visas can be issued – under special circumstances – for humanitarian reasons.

The statistics analysed for the purpose of the present study reveal a correlation between the issuance of Type D visas for nationals of certain countries and the migration flow from there, albeit to different extents, depending on the specific circumstances. On the other hand, in line with the aim of the Schengen states to facilitate and control the short-term mobility under equal conditions, there is no evidence that Type C visas affect factual immigration to Germany.

### **Europeanisation of visa policy**

For short-stay visas (Type C visas) and airport transit visas (Type A visas) only very limited scope remains for national visa regulations. Visa policy is one of the EU's justice and home affairs policy fields in which 'communitarisation' is quite advanced. Both the visa procedures and the categorisation of third-countries subject to visa requirements or waivers to enter the European Union for short-term stays are determined by the relevant EU Regulations. The EU is also competent for determining the visa fees, the documents to be submitted with a visa application and the rights of applicants in case their application is rejected.

### **Visa policy as an instrument of migration management**

Other than Type C visas, national visas for long stays (Type D) are subject to national law. EU law, however, provides that national visas entitle their holders also to short stays in other Schengen countries. In Germany the granting of national visas is governed by German residence law. The study illustrates that, in quantitative terms, the implications of visa policy with regard to aspects of security and control in the management of migration for long-term residence or permanent settlement have tended to diminish. During the last decade the number of Type D visas issued per annum fell from just under 400,000 in 2001 to 142,749 in 2010. This can be seen mainly as a consequence of EU enlargement, as most of the immigrants to Germany come from other EU Member States. Immigration statistics reveal that in 2010 only around 40.8 per cent of immigration occurred from countries that were not EU Member States and thus they were generally affected by visa policy measures. However, this percentage also includes nationals from quantitatively significant countries of origin who are exempted from the visa requirements not only for short-term stays but also for long-term stays, such as the United States or Japan. At the same time it may not be forgotten, though, that the majority of third country nationals are still subject to visa requirements, if they plan to reside in Germany for longer periods, among them nationals of countries of origin which are extremely relevant for immigration to Germany in quantitative terms. Therefore, visa policy is an important instrument to control and manage immigration from these countries.

Visa policy generally aims both at allowing or promoting legal mobility and at guarding against and preventing the illegal entry and residence of foreign nationals. Several elements of visa policy are vital for these two objectives: Visa facilitation agreements might be considered, beyond the general legal framework for residence of foreign nationals, as one option to promote legal travel; they can provide rules for reduced visa fees, faster processing of applications or more favourable conditions for so-called "bona fide" applicants. To prevent illegal migration it is of overriding importance to verify the applicants' willingness to return, to involve the security authorities in the visa procedure and to ensure mutual information of the EU Member States' missions abroad under the Visa Information System (VIS) which has just been put into operation.

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# Abbreviations

BA	Federal Employment Agency (Bundesagentur für Arbeit)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BT-Drs.	Document/Printed Matter of the Federal Parliament (Bundestags-Drucksache)
EMN	European Migration Network
ENP	European Neighbourhood Policy
EC	European Community
EU	European Union
ECJ	European Court of Justice
EEA	European Economic Area
CCI	Common Consular Instructions
IOM	International Organisation for Migration
NATO	North Atlantic Treaty Organization
SBC	Schengen Borders Code
SIS	Schengen Information System
VIS	Visa Information System

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# 1 Introduction\*

As a manifestation of its sovereignty a state controls, defines and restricts the access of foreign nationals to its territory.<sup>1</sup> The most common tools used by states for this purpose are laid down in the regulations governing immigration and residence, including the legal requirements for legal entry and residence as well as corresponding practices, the implementation of identity checks at the external borders and within the country, but also visa policy. In its visa policy – the key topic of the present study – a state determines who requires a visa in addition to his/her passport to enter the country, which conditions the applicant has to meet to be eligible for a visa and whether such visa will entitle the applicant only to a short or transit stay in the territory or alternatively to a long stay such as for employment or family reunification. In addition to its role as an extraterritorial control and management element for the mobility and immigration of foreign nationals, visa policy also serves as an instrument to enhance security. Therefore, visa policy is an important component of domestic policy. In the European Union’s general treaties visa policy, as one part of migration policy, is assigned to the “area of freedom, security and justice”.<sup>2</sup> From a foreign policy point of view visa policy is also seen as an element in relations to third countries (see IOM 2009: 33-35; Ryan 2010: 3-4).<sup>3</sup>

Research in social sciences and law has so far been unable to clearly establish to which extent visa practises affect not only short-term mobility, but also migration for the purpose of taking up permanent residence in another country, i.e. their effect on immigration; there is hardly any empirical research on impacts of changes in visa policies (see Mau/Brabant 2011: 5). But whether or not a certain country’s national requires a visa to enter and reside in a certain other country might be of considerable relevance in some situations: visa-free travel – one might assume – will facilitate mobility and thus migration, at least indirectly. Conversely, a visa requirement may hamper cross-border movement. When a visa requirement applies the pre-entry phase of visa application and issuance might have a deterring effect.

Yet, definite empirical proof for such a connection is still lacking. Because the European Union lifted the visa requirement for nationals from Serbia, Montenegro and Macedonia in December 2009 the number of asylum applications by nationals from some of these Western Balkan countries sharply increased temporarily in several EU Member States (see Schumann 2010: 25).<sup>4</sup> The figures for Germany as country of destination show that only about 50 applications by asylum-seekers from Serbia, Montenegro, and Macedonia were recorded in October 2009, i.e. before the visa requirement was lifted, while in October 2010

\* The authors wish to thank Bianca Goepel for her editorial contributions to this study during her internship at the BAMF.

1 To exercise control over who may cross its borders and who may not is among the decisive indicators for a state’s sovereignty and territoriality, see Lavenex 2001: 9.

2 Art. 77 (2) (a) and Art. 79 (2) (a), Consolidated Version of the Treaty on the Functioning of the European Union.

3 For the role of visa policy in foreign relations see section 2.

4 In addition to Germany, also Sweden and Belgium recorded a strong increase in the number of asylum-seekers from Serbia and Macedonia, while other EU Member States were less affected or not at all, see ESI 2011: 3 and 10 et seq.

the number soared to 1,875.<sup>5</sup> It is not possible to value short-term migration on the basis of asylum applications in terms of general immigration: Because of rather low protection rates applicants are often obliged to return to their countries of origin. However, these inflows indicate a dwindling significance of the visa as an immediate means to safeguard security. Former visa liberalisations provide no evidence that they open up a direct “migration channel”. For example, the progressive (as of 1990) lifting of visa requirements for nationals from the former Czech Republic, Hungary (both in 1990), Poland (1991), the Baltic countries (1999), Bulgaria (2001), and Romania (2002) hardly impacted German immigration figures (see Parusel 2012).<sup>6</sup>

Since a number of uncertainties as well as a need for further research on the potential relationships between visa issuance and long-term immigration and short-term mobility remain, the European Migration Network (EMN) resolved to prepare a study on “Visa policy as a migration channel” in 2011. Based on country reports from the different EMN contact points, the purpose of this project is to determine, in how far visa policy, besides its central function of safeguarding internal security, also contributes to the management and control of migration flows. In line with the objectives of the EMN<sup>7</sup> the results of the study shall serve to inform policymakers, researchers and the interested national and European public about the potential contribution of visa policy to promoting legal (desirable) migration while preventing irregular migration. Furthermore, the study will explore the effects of the common EU visa policy on the Member States’ national visa policies as well as of EU instruments, such as visa facilitation agreements or the recent Community Code on Visas<sup>8</sup>, on administrative practice. The present study is the German contribution to this comparative project.

Following the explanation of the methodology, the material and the data resources used for the study in Chapter 1, Chapter 2 will describe the political and legal framework for issuing visas. Special attention will be given to the high level of Europeanisation of visa policy and the need to clearly distinguish between short-stay (Schengen) visas and long-stay visas (national visas). Chapter 3 discusses the practical implementation of visa policy and its organisation along the various stages of the visa process (application, examination of the application, entry and stay/residence and subsequent exit). Specific case studies for Russia and Serbia are presented in Chapter 4 to illustrate the implementation of European and German visa policy. Thus, an attempt is made to explore any potential links between the visas issued and migration by analysing the statistical data for these countries (specifically visa and migration statistics). Chapter 5 deals with the influence of EU law and common activities at EU level on Germany’s national visa policy. The data section (Chapter 6) provides further statistics-based insights into potential links between visa policy and entries of third country nationals. Chapter 7 presents the conclusions from the foregoing analysis and outlines the areas where further research might be needed.

5 Since November 2010 the number of applications by asylum-seekers from Serbia, Montenegro, and Macedonia have again noticeably declined – merely 350 were recorded in April 2011, see Eurostat, according to our database query on 11 August 2011.

6 See also immigration statistics 2010 in BMI/BAMF 2010: 232 et seq (in German).

7 Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (2008/381/EC).

8 Regulation 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

## 1.1 Methodology

### Resources

The descriptive sections covering the general framework for visa policy and the practices of issuing visas primarily draw from the respective legal bases. In the light of the high degree of harmonisation and communitarisation in this policy field within the EU this includes both national legislation and European legislation. The most relevant of these are the German Residence Act and the General Administrative Regulation relating to the Residence Act issued by the German Federal Ministry of the Interior on 26 October 2009, the Visa Code and further EU regulations in the field of visa policy. These foundations in national and European law have been extensively analysed and commented in the literature on legal research in Germany, therefore this literature is another important resource for the present study, notably Marx (2008), Kluth et al. (2008), Welte (2010), Storr et al. (2008) and Blechinger/Weißflog (2010). To explain the visa procedure the “Handbook for the Processing of Visa Applications and the Modification of Issued Visas”<sup>9</sup> published by the EU Commission to support the implementation of the EU Visa Code, the information on the German Federal Foreign Office’s website on visa regulations<sup>10</sup> and the General Administrative Regulation for the Residence Act mentioned above, were used.

### Data sources

The Federal Foreign Office regularly publishes gross annual statistics on the number and types of visas issued by the German diplomatic missions abroad.<sup>11</sup> Since 2010, further data are available to the public on the EU Commission’s website together with the visa statistics of the other Member States.<sup>12</sup> The Statistical Office of the EU, Eurostat, is not yet collecting or publishing any statistics related to visas.

Beyond the published data, surveys for individual countries (e.g. for the case studies on the Russian Federation and Serbia) were required for the purposes of the study as well as a quantitative analysis of the ten most relevant missions abroad, respectively of the states, in which Germany has missions, for the period 2001 to 2010.

All of the Federal Foreign Office’s statistics relate to the missions that process visa applications. These data, however, do not permit a statistical analysis by the applicants’ nationalities. Thus, they do not reveal whether applications processed by a certain mission have been filed by nationals of the mission’s host country or by nationals of another country staying in the mission’s host country at the time.<sup>13</sup> Nevertheless the Federal Foreign Office’s statistics are the standard data source for monitoring the quantitative development of visa issuance.

9 Commission decision of 19.3.2010 establishing the Handbook for the Processing of Visa Applications and the Modification of Issued Visas, C(2010) 1620 final.

10 See [http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Visabestimmungen\\_node.html](http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Visabestimmungen_node.html), downloaded on 27 April 2011 (in German).

11 See [http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/Visabestimmungen\\_node.html](http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/Visabestimmungen_node.html)[http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Visabestimmungen\\_node.html#doc480844bodyText10](http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Visabestimmungen_node.html#doc480844bodyText10) (Visa statistics), downloaded on 24 August 2011.

12 See [http://ec.europa.eu/home-affairs/policies/borders/borders\\_visa\\_en.htm](http://ec.europa.eu/home-affairs/policies/borders/borders_visa_en.htm).

13 Nor can these data be desegregated by the applicants’ age or gender.

Generally, a supplementary analysis of the visa database of the Central Register of Foreigners would allow for a more detailed evaluation than the analysis of the Federal Foreign Office's data. However, the two sources are not directly comparable. It is also important to note that a foreign national's data file must be deleted from the Central Register of Foreigners visa database after a maximum of five years. Thus, time lines compiled on the basis of the Central Register of Foreigners visa data are limited to a maximum of five years. This is why a discussion of the data from the visa database of the Central Register of Foreigners was omitted in this study.

Another source of statistics on German visa policy are the printed papers of the German Bundestag (lower chamber of parliament).<sup>14</sup> This source was consulted, among other things, to analyse the visa applications that were withdrawn or rejected.

Other sources were the publications of the Federal Statistical Office on entries of third country nationals to Germany (by nationalities or countries of origin) and the BAMF's statistics on asylum applications. Further, the data from the publicly available Eurostat database<sup>15</sup> were queried, specifically regarding the data on the rejection of foreign nationals at the German external borders that is discussed in Chapter 6.2 and the determination of migrants who entered or are residing in Germany illegally.<sup>16</sup>

## 1.2 Definitions

### Visa

The term visa (pl. visas) is of Latin origin meaning "paper that has been seen". German law sees a visa as a temporary residence title issued prior to entry into the country.<sup>17</sup>

### Types of visas

Currently the Member States of the European Union generally distinguish two types of visas: firstly, there is a visa for short stays of up to three months (so-called Schengen visas) and, secondly, there are visas for longer-term stays (so-called national visas). A national visa is an authorisation to stay longer than three months which is granted according to national law. The same provisions that govern the granting of a residence permit, a settlement permit or an EC long-term residence permit (sec. 6 (4) sent 2 Residence Act) also govern the issuance of visas. The visa authorities must examine whether the special requirements for the respective purpose of the long-term stay are actually met (e.g. university studies, family reunification etc.).

Schengen visas may be issued for transit or for visits of no longer than the allowed three months from the day of first entry within any six month period. Visas have a maxi-

<sup>14</sup> For example in 2011 a minor interpellation was made in Parliament and comprehensive data on the single year and multiple year visas issued in 2010 as well as on the number of visas processed and granted (including the rejection rates) were published in its response; see BT-Drs. 17/6225 of 15 June 2011.

<sup>15</sup> [http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search\\_database](http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database)

<sup>16</sup> As a rule, Eurostat data are to be used for all EMN studies whenever possible, as these are collected according to the same criteria throughout the EU and thus warrant a maximum comparability of the findings across the EU. But as Eurostat does not yet include any visa data its database was of limited use for the purposes of this study.

<sup>17</sup> See e.g. section 3 (3) of the Aliens Act which was replaced by the Residence Act on 1 January 2005.

imum period of validity<sup>18</sup> of five years and may be issued for one, two or multiple entries. The eligibility criteria for such visas are primarily determined by EU law.<sup>19</sup> The same applies to airport transit visa that entitle to travel through the transit areas of the Schengen members' international airports.

The EMN Glossary of terms relating to Asylum and Migration defines "visa" as follows:

"The authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:

(i) 'long-stay visa' means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;

(ii) 'short-stay visa' means the authorisation or decision of a Member State required for entry for an intended stay in that State or in several Member States for a period whose total duration does not exceed three months;

(iii) 'transit visa' means the authorisation or decision of a Member State for entry for transit through the territory of that Member State or several Member States, except for transit at an airport;

(iv) 'airport transit visa' means the authorisation or decision allowing a third-country national specifically subject to this requirement to pass through the transit zone of an airport, without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of an international flight. (EMN 2010: 163)."

When the EU Visa Code became effective<sup>20</sup> the category (iii) visa, the transit visa, was abolished. Therefore it is now preferable to use the definitions according to the Visa Code referring exclusively to short-stay visas.

### **Schengen visa**

The EU Visa Code defines a visa as

"an authorisation issued by a Member State with a view to:

(a) transit through or an intended stay in the territory of the Member States of a duration of no more than three months in any six-month period from the date of first entry in the territory of the Member States;

(b) transit through the international transit areas of airports of the Member States".<sup>21</sup>

### **Visas for longer-term stays (national visas)**

According to art. 18 of the Convention Implementing the Schengen Agreement longer-term visas (national visas) are

<sup>18</sup> A visa's "period of validity" is the period during which the holder may use the visa issued.

<sup>19</sup> In the absence of provisions under EU law it is complemented by the national aliens law see BT-Drs. 15/5975, p. 54.

<sup>20</sup> Regulation 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

<sup>21</sup> Art. 2 (2) Regulation (EC) no. 810/2009.

“national visas issued by one of the Contracting Parties in accordance with its national law. Such visas shall enable their holders to transit through the territories of the other Contracting Parties in order to reach the territory of the Contracting Party which issued the visa, unless they fail to fulfil the entry conditions referred to in Article 5 (1) (a), (d) and (e) or they are on the national list of alerts of the Contracting Party through the territory of which they seek to transit.”<sup>22</sup>

### **Visa requirement**

Not all third-country nationals are required to possess a visa when entering the EU. On 15 March 2001 the Council adopted Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders (“negative list”) and those whose nationals are exempt from that requirement (“positive list”) (see section 3.1). The Regulation has been revised several times since it became effective. On 11 January 2011 the nationals of a total of 43 countries and territories, among them the US, Japan, and Canada, were exempted from the visa requirement. The visa requirement applied to nationals from a total of 125 countries and territories and certain groups of persons from British overseas territories.<sup>23</sup> It must be noted, though, that the entry of third-country nationals without visa requirements all relate to stays of no more than three months stay within a six month period.

### **Third-country nationals**

Consistent with the remit of EMN and with previous EMN studies, the analyses contained herein will focus on the mobility or migration of third-country nationals. According to art. 2 of the Visa Code third-country nationals are persons who are not citizens of the Union within the meaning of art. 17 (1) of the EC-Treaty (since December 1, 2009: Art. 20 (1), Treaty of the Functioning of the European Union); consequently anybody holding the nationality of a EU Member States is a citizen of the Union. Citizenship of the Union is complementary to the national citizenship, but is no substitute for it.

### **Immigration (entries)**

The EMN’s common specifications for the implementation of the present study asked for a comparison of visa figures with factual immigration figures and to describe the developments over time with regard to particular countries of origin, or foreign nationals respectively.

So far, the official entry and exit statistics served as basis for the migration figures used in Germany. According to Federal and State registration laws, persons who change residence across German borders are required to register (or sign off, respectively) with the responsible municipal registration office. Only members of foreign military staff and

22 Official Journal of the European Communities, L 239 of 22 September 2000, pp. 19-62, here p. 23. Section 5(1) a), d) and e) stipulates the following entry conditions: the aliens must possess a valid document or documents authorising them to cross the border; the aliens shall not be persons for whom an alert has been issued for the purposes of refusing entry; the aliens shall not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties.

23 Status quo after Regulation (EC) No 1211/2010 of the European Parliament and of the Council of 15 December 2010 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement became effective.

diplomatic as well as consular missions and their family members are exempted from this compulsory registration. Thus, for the immigration statistics it is of no relevance whether an immigrant enters as student, ethnic German immigrant or in the context of family reunification. Asylum seekers are also part of the numbers of entries, although their residence may be short-termed only. Likewise, a preliminary limitation of stay is fixed for seasonal workers. Nonetheless, they are also part of the immigration statistic if they take a short-term residence in Germany. Thus, the total number of entries to Germany is not associated with information on the length of stay, nor the type of residence permit issued. The key criterion for the German immigration statistic is registration and deregistration at the place of residence. This implies that persons who enter or exit the Federal Republic of Germany for several times in a given a year are likely to be counted several times for the annual statistics.

These migration statistics are used to depict the scope of immigration to Germany, however, it is not connected to the statistics on issued visas for long-term stays (Type D visa). Only a subset of those registered in the immigration statistics are also part of the visa statistics. A number of other factors play a role, while these cannot be exactly quantified or controlled: For instance, people seeking protection generally enter without any visa (i.e. illegally), or with a short-term visa (Type C visa) before applying for asylum in Germany. Nationals of particular third countries may enter without a visa even for long-term stays (see chapter 3.2.1). Furthermore, even in cases where a visa is required, there is under special circumstances the possibility to apply for a residence permit after entry, for example with a view to family reunification (see BMI 2011: 23; BMI/BAMF 2011: 130). On the other hand, there is a dark figure of unknown cases concerning applied for, and issued, visas, which afterwards are not appropriated for entry.

It needs to be noted that, in contrast to the definitions suggested in the European Union's Statistics Regulation,<sup>24</sup> the term "migrant" (persons who change their place of residence across borders) in Germany does not automatically imply a long-term or permanent stay. What follows is that the 2001-2010 migration statistics used in Chapter 4 and 6 of this study cannot be readily compared with the immigration statistics of other Member States. 2009 is the first year for which comparable immigration figures on the basis of the EU Statistics Regulation exist. If these figures had been used for this study, however, it would not have been possible to produce a time series comparisons.<sup>25</sup>

24 The regulation draws from the definition of the United Nations. According to this, "immigration" is defined as "action by which a person establishes his or her usual residence in the territory of a Member State for a period that is, or is expected to be, of at least 12 months, having previously been usually resident in another State or in a third country". Similarly, "emigration" means "the action by which a person, having previously been usually resident in the territory of a member State, ceases to have his or her usual residence in that Member State for a period that is, or is expected to be, of at least 12 months"; see art. 2 para. 1b) and c) Regulation (EC) No 862/2007.

25 In line with the requirements of the EU Statistic Regulation, the Federal Statistical Office has provided 2009-figures to Eurostat which respect the criterion of at least one year residence (respectively absence) for the first time. Figures for Germany are calculated with the help of an estimation procedure in due consideration of figures from the Central Register of Foreigners (see Mundil/Grobecker 2011).

## 2 Policy and legal framework for the granting of visas

From the perspective of immigration and residence law the purpose of visa policy is to control and manage the access of foreign nationals to the territory of the Federal Republic of Germany. Here it is incumbent upon the German missions abroad to determine outside of the German territory whether a foreign national subject to a visa requirement should be granted access to Germany. The visa requirement shall prevent the need to terminate an illegal status *ex post facto*.<sup>26</sup> Any foreign national subject to a visa requirement who entered the territory without such visa has entered illegally and is thus enforceably required to leave the country.<sup>27</sup> The visa obligation therefore has a central function in terms of security policy. This security perspective is also important for the European level: Within the European Union, the common regulations for granting short-term visas are part of the domestic policy field; the competent entity within the European Commission is the Directorate General Home Affairs.

Besides migration- and security-oriented policy perspectives, aspects of economic and foreign policy may also be of relevance in some instances. Friendly relations between countries may affect the policies governing migration or mobility, for example when a mutual waiver of the visa requirement is agreed (on the principle of reciprocity see section 4.2). The lifting or facilitation of the visa requirement may also have (mostly unintended) impact on specific categories of migration such as asylum migration (see the case study on Serbia in section 4.2). Conversely, from an international relations perspective, also the deterioration of the relations between two nations may negatively influence their visa policies.

Already in the sixties, at the time the Recruitment Agreement was signed and the first German law on foreigners was prepared, foreign policy considerations considerably influenced the formulation of the rules allowing foreign nationals access and residence (see Schönwälder 2001). The specific link between visa policy or visa practices and foreign policy became a focus of discussion especially in the early 2000s when the former Federal Government was striving for a more liberal and globally-minded foreign policy and therefore instructed all missions abroad to make better use of their discretion in favour of visa applicants when examining their willingness to return (for this see section 3.3.1).<sup>28</sup>

Also at the level of the European Union visa policy issues are not treated independent of foreign policy considerations. The Community, for instance, attempts to realize its vision of closer relations with its neighbouring countries in the form of the European Neighbourhood Policy (ENP). The ENP was developed in the context of the EU enlargement in 2004 and encompasses the third countries directly bordering on the EU. Its objective is to prevent

26 See BT-Drs. 15/5975, p. 54.

27 Sec. 14 (1), no. 2 Residence Act or sec. 50 (1), sec. 58 (2) no. 1 Residence Act; also see Welte (2010: 1).

28 See the whole of resolution recommendations and report of the Second Committee of Inquiry under section 44 of the Basic Law ("Visa Inquiry Committee"), BT-Drs. 15/5975 of 2 September 2005 (in German).

the emergence of a new dividing line between those neighbours and the enlarged EU by strengthening their prosperity, stability, and security. For this purpose the EU and each of the partners negotiate and agree action plans guided by an agenda of political and economic reforms. Some of these bilateral action plans also cover issues like “migration and development”.

In a Communication of May 2011 the European Commission proposed a new approach to the ENP that stresses aspects of migration and visa policy. Saying: “Likewise, managed movement of people is positive for the entire neighbourhood, facilitating the mobility of students, workers and tourists, while discouraging irregular migration and human trafficking.”<sup>29</sup> To enhance mobility between the ENP partners and the Community the Commission proposes to pursue the process of visa facilitation for certain ENP countries and visa liberalisation for those most advanced, to develop existing or establish new mobility partnerships and to call upon Member States to make full use of the opportunities offered by the EU Visa Code.<sup>30</sup>

At the Community level the European Commission is engaged in negotiations on future visa liberalisation with some of the countries with which agreements on visa facilitation have already been signed (“visa dialogues”; see section 2.2).

There are a number of additional documents that highlight the special significance of visa policy for the foreign relations of the EU and its Member States. On 1 June 2007 the visa facilitation agreement between the EU and Russia entered into force. This agreement provides that the issuance of visas should be made easier “to facilitate people-to-people contacts as an important condition for a steady development of economic, humanitarian, cultural, scientific and other ties”.<sup>31</sup> In a reply to a question by parliament on the EU’s visa policy towards the countries of the Western Balkans the German Federal Government mentioned the objective of liberalising visa policy between the EU and Kosovo to support Kosovo’s European perspective “on its road towards the European Union”.<sup>32</sup>

Finally, visa policy can also be subjected to economic and commercial interests. To guarantee a maximum of freedom of movement for persons, goods and services between states all stakeholders (multinational corporate groups, industry associations, governments) will usually advocate a facilitation or possibly even the abolition of the visa regime.<sup>33</sup>

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29 Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “A new response to a changing Neighbourhood” COM (2011) 303 final, Brussels 25 May 2011, p. 2.

30 *ibid.*, p. 12.

31 See Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation, published in the Official Journal of the European Communities, L 129 of 17 May 2007, pp. 27-34, here p. 27.

32 BT-Drs. 17/2754 of 16 August 2010, p. 4.

33 See, for instance, the statements of the Committee on Eastern European Economic Relations of German Industry that represents the interest of German companies doing business in Eastern and South-eastern Europe; Policy paper “Routes to visa-free travel”, edited by the Committee on Eastern European Economic Relations of German Industry, Berlin, July 2011.

## 2.1 National policy and the framework of residence law

Under section 4 para. 1, sentence 1 of the Residence Act foreigners generally require a residence title in order to enter and reside on German territory. A visa is one of four possible types of residence titles. The others are the (limited) residence permit, the (indefinite) settlement permit and the EC long-term residence permit. Among these the visa is the only residence title that is always issued prior to the entry into Germany. Under sec. 71 para. 2 Residence Act the responsibility for issuing visas rests with the diplomatic missions authorised by the Federal Foreign Office for matters relating to passports and visas (embassies and consulates general). The German diplomatic missions or by proxy those of other Schengen States are responsible for issuing Schengen visas. A Schengen visa may exceptionally also be issued by the border authorities (sec. 14 para. 2 Residence Act and Art. 35 and 36 of the Visa Code).

With the Amsterdam Treaty of 2 October 1997 the Member States transferred extensive legislative competences in the field of visas, immigration, and asylum policy to the European Union. Communitisation has made considerable progress especially with regard to visa policy. The EU Visa Regulation 539/2001 cited in the section on “Definitions” above, specifies uniformly which third-country nationals need visas to enter the Schengen area. The so-called Visa Code lays down the conditions and modalities of granting visas for short stays, airport transits and transit travel.<sup>34</sup> The Schengen Borders Code (SBC) legislates the crossing of the EU’s external borders and the entry requirements for third-country nationals.<sup>35</sup> These provisions do neither apply to citizens of the Union or of the European Economic Area<sup>36</sup> nor to Swiss nationals. Since EU Regulations are “directly effective” these legal instruments become fully binding in each Member State without requiring any transposal into national law.<sup>37</sup> Thus by now the control of visa policy for short-term stays of up to three months within a half year mainly rests with the Community and not with the individual Member States anymore. The relevant German legislation on the issuance of visas, such as the Residence Act and the Residence Ordinance, make reference to Community law.

Under the Schengen rules three types of visas exist in the entire Schengen area, to wit

- Airport Transit visas (Type A)
- Short-stay visas (for envisaged stays of not more than three months in a six month period, Type C)
- National visas for longer stays (Type D).

The Type A visa entitles to airport transit through the transit areas of the Schengen members’ international airports.

<sup>34</sup> Regulation 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code). By now the Visa Code has replaced the Common Consular Instructions (CGI) and all other visa policy regulations; see synopsis of Regulation (EC) no. 810/2009 in Annex XIII.

<sup>35</sup> Regulation (EC) no. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

<sup>36</sup> In addition to the EU Member States the EEA includes Norway, Iceland and Liechtenstein.

<sup>37</sup> See Wessels (2008): 196.

The so-called “Schengen visa” (Type C) is granted for visits for purposes such as tourism, business and family reunions or the attendance of certain sports or cultural events. If the visa’s only purpose is to transit a Schengen state it is additionally marked “transit”. A Schengen visa will generally be valid for the entire Schengen area. Schengen visas are granted according to the provisions of European Community law; all national regulatory powers have ceased in this field.

The national visa (Type D), however, is under the jurisdiction of the individual Member States, but also entitles the holder to stay up to three months in any of the other Member States. Both the law and the practices for issuing national visas (for long stays) which are beyond the control of Community law differ in each Member State and less than half of them do have any provisions at all to grant long-stay visas.<sup>38</sup> In these countries national visas issued to third-country nationals prior to entering the country are a prerequisite for subsequently obtaining a residence permit (after entry). Thus the visa is some kind of “provisional residence title”. Therefore this type of long-stay visas is also referred to as “immigration visas” (IOM 2009: 34). Other Member States, however, can dispense with national visas, because their missions abroad are also competent for issuing residence permits. This makes the conversion of a national visa (issued by the mission abroad) into a residence permit (issued by the authorities within the national territory) or into any other form of residence title unnecessary. In yet another group of states no long-term residence titles are required, because the visa issued abroad continues to be valid as a residence title without any need to convert it into another form of residence title, such as a residence permit (see IOM 2009: 35-36).

In Germany section 6 para. 4 sentence 2 Residence Act provides that Type D visas are subject to the provisions applying for residence permits, settlement permits and EC long-term residence permits; thus they serve immigration-related purposes such as family reunification, employment or education. Generally, an entitlement to residence must be obtained in the form of a visa prior to entering the country (see Blechinger/Weißflog 2010: 1). During the visa process the satisfaction of the specific requirements for the respective purpose of the visit are examined. Thus the ground for any immigration, also with regard to the individual purpose of residence, may already be laid during the visa process (see Welte 2010: 21). The maximum duration of a national visa is one year. For any subsequent stay the foreigners authorities will issue a residence permit, if the requirements are met (see General Administrative Regulation for the Residence Act, 6.4.2.1).

## 2.2 Agreements with third countries

Decisions on requiring visas to enter the EU from certain third-country nationals and on the administrative procedures for issuing them include an important political element as they may impact mobility, cross-border contacts and commerce. The key criterion is whether a third country is listed as one of the states whose citizens require visas or whether the visa requirement is waived (see 1.2, “Visa requirement in the section on “Definitions”). Other aspects and regulations that come into play are: Visa facilitation agreements be-

<sup>38</sup> These include Belgium, the Czech Republic, France, Germany, Greece, Italy, Portugal, Romania, and Slovenia; see IOM 2009: 34.

tween the EU and third countries, the level of the fees for obtaining a visa, exemption from the visa requirement for certain groups of persons, the option to reintroduce the visa obligation in case of insufficient reciprocity,<sup>39</sup> the duration of the process and other issues (see Peers 2011: 287).

### **Visa facilitation agreements**

So-called visa facilitation agreements are among the instruments to promote mobility between third countries and the EU. Based on the principle of reciprocity the agreements set out rules for simplifying and accelerating the issuing of visas. The EU's first agreement of this kind was the one signed with Russia on 25 May 2006 in Sochi. The agreement entered into force on 1 June 2007 and covers specific categories of travellers, including the members of official delegations,<sup>40</sup> businessmen, lorry and coach drivers, members of train, refrigerator and locomotive crews in international trains, journalists, participants in research, cultural or artistic activities, pupils, undergraduates, postgraduates and accompanying teachers. These groups have less stringent requirements for the documentation that must accompany the visa application and may receive multiple entry visas with a validity of up to five years. Certain categories of applicants are fully exempted from the visa fees, others enjoy a reduced fee of EUR 35 (normally EUR 60). Furthermore, the agreement provides for a faster processing of the visa applications.

The EU's other visa facilitation agreements include similar provisions on a reduction or waiver of visa fees, limited processing times, conditions for granting multiple entry visas or simplifications for proving the purpose of travel for certain groups and the a visa-waiver for holders of diplomatic passports. Such agreements were signed with Ukraine, the Western Balkans (except for Croatia)<sup>41</sup> and the Republic of Moldova (see Peers 2011: 290) and became effective on 1 January 2008.<sup>42</sup> Another agreement was signed with Georgia on 17 June 2010 and entered into force on 1 March 2011. Readmission agreements were negotiated simultaneously with each of these agreements. A readmission agreement makes it easier to return third-country nationals staying abroad illegally to their country of origin. Each of the contracting parties commits to reaccepting its own nationals that have been staying in or crossed the borders to the other country illegally without further formalities (see Schneider/Kreienbrink 2010: 42-43, 56).

Frequently so-called "visa dialogues" precede the conclusion of such visa waiver agreements for the nationals of specific countries by the EU. These dialogues are talks between the European Commission and government representatives of the respective third country that are generally guided by roadmaps listing the criteria for achieving visa liberalisation for the country in question.<sup>43</sup> Alternatively the talks deal with separate thematic

39 "Reciprocity" means that a third country whose nationals have been exempted from the visa requirement will in turn exempt citizens of the Union from such requirement (principle of reciprocity). A response to insufficient reciprocity has already been addressed in Council Regulation (EC) No 539/2001 of 15 March 2001 on the visa requirements and revised by Council Regulation (EC) No 851/2005 of 2 June 2005 (see section on "reciprocity" below).

40 Anybody attending a meeting, conference, negotiation, exchange programme or event organized by an intergovernmental organisation in response to an official invitation addressed to a Member State, the European Union or the Russian Federation.

41 The former Yugoslav republic Macedonia, Serbia, Montenegro, Bosnia and Herzegovina and Albania. Croatian citizens have always been exempted from visa requirements.

42 See Commission decision of 19 March 2010 establishing the handbook for the processing of visa applications and the modification of issued visas, C (2010) 1620 final, p. 19.

43 Currently the Commission is engaged in visa dialogues with the Russian Federation, Ukraine, and Moldova.

sections. The roadmaps describe the different phases along this process that will be triggered according to the progress made by the subject country. Such criteria might relate to security of documents, irregular migration, public security, and external relations.<sup>44</sup> The EU's existing visa facilitation agreements are binding for all Member States with the exception of Denmark, the UK, and Ireland.

### **Lifting the visa requirement**

Effective as of 19 December 2009 the visa requirement for citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia for stays of less than 90 days per six month period in the Schengen area was lifted for the holders of biometric passports. Roughly one year later, on 15 December 2010, visa-free travel was also allowed for the citizens of Albania and Bosnia and Herzegovina for stays of less than 90 days in the Schengen area, again this applies only to the holders of biometric passports.<sup>45</sup> Thus, these visa facilitation agreements were preparatory steps towards the lifting of the visa requirement for the Western Balkans. Since 11 January 2011 holders of passports issued in Taiwan do not require visas anymore for tourist or business travel to the signatory states of the Schengen Agreement.<sup>46</sup>

The EU Commission sees a consistent visa policy towards third-country nationals as an important element of a pro-active mobility policy. Next to the dialogues and the general objective of visa liberalisation the protection of public security is an aspect of overriding importance of any visa policy. According to the Commission the EU should have at its disposal appropriate tools to promptly remedy any problems that might be arising in the future as a consequence of a visa-waiver in the form of irregular migration or large-scale abuse. For this purpose the Commission proposed modifications in the law to allow a temporary re-introduction of the visa requirement for third-country nationals under certain conditions.<sup>47</sup>

### **Reciprocity**

The EU Visa Regulation No 539/2001 included the first mechanism of reciprocity. If a third country reintroduces the visa requirement for the citizens of an EU Member State the EU would automatically re-introduce the visa obligation for the citizens of such third country – following corresponding information of the affected Member State to the Council and the Commission. However, this procedure proved to be unsuitable and was never applied. The mechanism was revised by Council Regulation (EC) No 851/2005 of 2 June 2005 which substituted a dialogue for the automatic response. The dialogue consists of several levels of escalation mainly aiming at the re-establishment of the visa-waiver. The EU Commission is to initiate negotiations with any third country that does not observe the principle of reciprocity. The Commission will then inform the Council of the results of the negotiations and may propose the introduction of the visa requirement for the third country.

Since the introduction of the new system the Commission has been regularly publish-

44 See Response by the Minister of State Ms Cornelia Pieper, BT-Drs. 17/702, p. 6.

45 Citizens without biometric passports are still subject to the visa requirement and the visa facilitation agreements described above.

46 See Regulation (EU) No 1211/2010 of the European Parliament and of the Council of 15 December 2010.

47 See "Communication on Migration", Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions of 4 May 2011, COM (2011) 248 final, Brussels, p. 12.

ing reports on violations of the reciprocity principle. A report published on 5 November 2010, for instance, stated that Canada continues to uphold the visa requirement for nationals from Bulgaria, the Czech Republic and Romania. Contrary to the principle of reciprocity the US requires visas for nationals of Bulgaria, Poland, Romania and Cyprus.<sup>48</sup>

### 2.3 Recent changes to visa policy and legislation within the context of a common EU dimension

A major element of the common visa policy is the definition of the “Community Acquis” of legislation, in particular by consolidating and developing existing legislation such as the relevant provisions of the Convention Implementing the Schengen Agreement<sup>49</sup> of 1990 and the Common Consular Instructions (CCI).<sup>50</sup> The “Hague Programme on strengthening freedom, security and justice in the European Union” adopted by the European Council in November 2004 stressed that the common visa policy needs to be developed as one element of a “multi-layer system”. The system should facilitate legitimate travel and tackle illegal immigration through further harmonisation of national legislation and of handling practices at local consular missions.<sup>51</sup>

#### Visa Code

As an outcome of the aims defined in the Hague Programme the so-called Visa Code entered into force on 5 October 2009 which has to be applied by the Schengen States since 5 April 2010.<sup>52</sup> The Visa Code’s major impact was that it replaced or suspended former legislation, specifically articles 9 to 17 of the earlier “Convention Implementing the Schengen Agreement” concerning “short-stay visas” and all of the Common Consular Instructions. Further the Visa Code changed some of the visa categories valid in Germany and in the Schengen area. Details of the major changes brought about by the Visa Code:

- Visas Types B (transit visa) and D+C (so-called “hybrid visas”) have been abolished. In future, transit visas are granted as Type C visas with the specification “transit”. After 5 April 2010 the “hybrid visas” became obsolete, because national Type D visas also entitled to short stays throughout the Schengen area.
- Since 5 April 2011 rejections must be reasoned and include advice on legal recourse.
- As of the same date the Schengen states must offer legal remedies against a rejection of their application to visa applicants. Heretofore German law had already included general legal remedies against the denial of a visa. However, these did not apply to the denial of a tourist visa or a visa issued at the border under sec. 83 (1) of the Residence Act.<sup>53</sup>

48 European Commission, Sixth report on certain third countries’ maintenance of visa requirements in breach of the principle of reciprocity, COM (2010) 620 final, 5 November 2010, Brussels, pp. 7-10.

49 Official Journal of the European Communities, L 239 of 22 September 2000, pp. 19-62.

50 Official Journal of the European Communities, C 326 of 22 December 2005, pp. 1-149.

51 See Hague Programme on strengthening freedom, security and justice in the European Union, in: Official Journal of the European Communities, C 53 of 3 March 2005, pp. 1-14, here p. 7.

52 With the exception of some procedural rules which became effective one year later on 5 April 2011 (see below).

53 On 26 November 2011 the Act on the Transposal of EU Directives on Residence Law and on the Adjustment of National Regulations according to the Visa Code entered into force (Federal Law Gazette I, p. 2258). This act limits the exclusion of legal recourse for visa denials at the border under the Residence Act to national visas (new sec. 83 (1) Residence Act).

- The requirement for airport transit visas was further harmonised by the entry into force of the Visa Code.
- The application process was facilitated because it became simpler to issue annual or multi-annual visas and because – after the Visa Information System<sup>54</sup> becomes operational – the requirement to submit the application personally at the visa posts was lifted.<sup>55</sup>

### **EU Visa Code Handbook**

The Handbook for the Processing of Visa Applications and the Modification of Issued Visas<sup>56</sup> shall assist with the implementation of art. 52 of the Visa Code. Accordingly, the Commission shall give guidance for the practical application of the Visa Code Regulation in line with the regular procedures for the exercise of the implementing powers conferred on it.<sup>57</sup> In addition to practical instructions the handbook includes best practices and recommendations for the examination of visa applications, their decision and the modification of visas already issued. The handbook deals with issuing short-stay visas (so-called Schengen visas), visas with territorial restrictions, limiting the holder's stay to one or several Member States<sup>58</sup> and visas for airport transit, entitling the holder to travel through the international transit zone of one or several airports of the Member States. The Visa Code Handbook is provided to the national authorities responsible for processing the visa applications by the Member States. Furthermore the handbook is to be used in the training of the staff responsible for processing visa applications.<sup>59</sup>

### **Adjustment of national law to the EU Visa Code**

The provisions of Regulation (EC) 810/2009 ("Visa Code", see section 3) took direct effect in Germany on 5 April 2010. The Act on the Transposal of EU Directives on Residence Law and on the Adjustment of National Regulations according to the Visa Code of 22 November 2011<sup>60</sup> implied selected adjustments of the Residence Act and the Residence Ordinance with regard to the Visa Code. The adjustment act merely includes references to the Visa Code and editorial changes or deletions to avoid apparent contradictions, because the amendment process generally dispenses with declaratory repetitions of the content of directly applicable regulations. Further the definitions in the Residence Act that are related to EU visa law are adapted to the new regulations under the Visa Code, such as the categorisation of the different types of visas (abolition of a visa for transit and airport transit visas as a separate category; see above), the fees for the different visas and their extensions.

## **2.4 Recent changes relating to national visas (Type D)**

As mentioned in section 2.1, national visas are issued according to the purpose of stay for all types of residence titles (residence permit, settlement permit, EC long-term

<sup>54</sup> See section 5.

<sup>55</sup> See BT-Drs. 17/2250 of 8 July 2010, pp. 2-3.

<sup>56</sup> Commission decision of 19 March 2010 establishing the handbook for the processing of visa applications and the modification of issued visas ("EU Visa Code Handbook"), C(2010) 1620 final, Brussels.

<sup>57</sup> See Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

<sup>58</sup> See section 3.1.2.

<sup>59</sup> See art. 2, Decision "EU Visa Code Handbook", see footnote 56, p. 5.

<sup>60</sup> Federal Law Gazette I, p. 2258.

residence permit), therefore any change in the legal provisions on residence titles and on the purposes of stay will affect the policy for issuing Type D visas. In this respect the most consequential legal change in recent years was the entry into force of the Immigration Act in January 2005. It forms the core of German immigration law and seeks to enable and manage immigration with due regard to the capacities for admission and integration and the interests of the Federal Republic of Germany in terms of its economy and labour market.<sup>61</sup> The Residence Act, which entered into force as part of the Immigration Act, is the main legal instrument to regulate the entry into and residence in Germany of third-country nationals. Just as some other relevant legislation, such as the Employment Ordinance, it has been amended several times in recent years. For example on 1 January 2009 access to the labour market was made easier for university graduates from third countries (for this see Parusel/Schneider 2010: 30). At the same time the conditions for residence permits for the purpose of becoming self-employed were eased and the minimum income threshold for settlement permits for highly skilled specialists and executives intending to move to Germany were lowered (see *ibid.* 32-33).

The Residence Act provides for four main purposes of stays by immigrants from third countries: education (Part 3 Residence Act), economic activity (Part 4), residence under international law or on humanitarian or political grounds (Part 5) and residence for family reasons (Part 6). In addition to these categories there are a number of special residence rights (Part 7). These different parts of the Act detail the grounds and conditions that have to be satisfied by third-country nationals to obtain a residence title. Consequently these reasons and conditions also apply for granting national visas.

In view of the complexity of residence law and the large number of different purposes of stay it would go beyond the scope of this study to describe the different conditions to be met by the applicants for each of these purposes. By way of example, one provision requires a visa application for education proof must be furnished of the applicant's ability to provide for his/her livelihood and of his/her admission to an educational institution.<sup>62</sup> When a national visa is applied for to take up an economic activity the authorities will check already during the processing whether the intended employment requires the consent of the Federal Employment Agency. If such consent is required, but withheld, the visa application must be rejected. As a rule, any third country national who receives a national visa must apply for a long-term residence title with the responsible foreigners authorities after entering the country. Since the visa is already one type of residence title this is formally considered as an application for extension (see Marx 2008: 60).

<sup>61</sup> See sec. 1 (1) sentence 2 Residence Act. Also see Parusel/Schneider 2010: 26.

<sup>62</sup> Visas for foreign university students are issued in a fast-track procedure. Although an educational visa generally requires the express consent of the foreigners authority competent at the intended future place of residence, the consent is deemed as having been given, if this authority does not raise any objections with the diplomatic mission where the visa was applied for within a time-limit of three weeks and two working days (silence procedure) and the visa will be issued forthwith. No consent is required under certain conditions (see BMI/BAMF 2011: 58).

## 3 Organisation and practical implementation of visa policy

Just as in the analyses of the legislative framework of visa policy, a distinction between short-stay Schengen visas and long-stay visas must be made when discussing the organisation and practical implementation of visa policy.

To guarantee the uniform implementation of the EU Visa Code that has been fully effective as of 5 April 2010 for Schengen visas, the EU Commission published the “Handbook for the Processing of Visa Applications and the Modification of Issued Visas” referenced above in section 2.3<sup>63</sup> It includes practical instructions, best practices and recommendations for the examination of visa applications, their decision and the modification of visas already issued. The following survey depicts the stages of the visa procedure and primarily covers the issuing of short-stay visas (section 3.1). It mainly relies on this handbook, the Visa Code proper as well as the visa requirements published on the Federal Foreign Office’s website and the General Administrative Regulation for the Residence Act of 26 October 2009. The differing conditions and procedural steps when applying or granting Type A visas for airport transit are not covered in detail.

Implementation and organisation of the procedure for national visas for longer term stays are subject to national legislation, although the holders of such visas are entitled to move freely within the entire EU area (see section 3.2.1). Since the purpose of the national visa issuing procedure is the control of legal migration, its requirements are further explained in section 3.2 (“Procedure for long-stay visas”).

Section 3.3 deals with the visa procedure for the purpose of preventing irregular migration. As this visa policy objective relates both to Schengen visas and to long-stay national visas both categories of visas are covered in this section.

Annex II (Chart 11) illustrates the visa procedure in a diagram.

63 Commission decision of 19 March 2010 establishing the handbook for the processing of visa applications and the modification of issued visas, C (2010) 1620 final.

### 3.1 Stages of the visa procedure according to the Visa Code and implementation in Germany

#### Visa requirements and exceptions

The EU Visa Regulation No 539/2001 (Annex I) referenced above, lists all third countries whose nationals require a visa to enter the territory of the EU Member States and to stay there for a maximum of three months (90 days) in a six month period (180 days). However, certain groups of persons are exempted for the visa requirements under Community law (Art. 1 (2) Council Regulation (EC) No 539/2001) although they are nationals of countries to which the visa requirement otherwise applies. These are:

- Third-country nationals holding a residence title issued by another Member State;<sup>64</sup>
- Third-country nationals holding a local border traffic permit pursuant to the rules governing local border traffic;<sup>65</sup>
- Pupils who are nationals of a third country subject to the visa requirement residing in a EU Member State, when participating in a school excursion accompanied by a teacher from that school;
- Persons having refugee status and stateless persons residing in a Member State and other persons without nationality of any country who are holding a travel document issued by the Member State of their residence;
- Certain categories of family members of EU or Swiss citizens, who are exempted from the visa requirements.

Under art. 4 of the EU Visa Regulation every Member State is entitled to exempt certain groups of persons from third countries normally subject to the visa requirement from these, such as the holders of diplomatic passports, official duty passports and other official passports, civilian sea and air crews, flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident, the holders of laissez-passer issued by some intergovernmental organisations to their officials, members of the armed forces, members of the armed forces travelling on NATO or Partnership for Peace business<sup>66</sup> or recognised refugees and stateless persons residing in a third country not subject to the visa requirement, if this third country has issued them with travel documentation. In addi-

64 Third-country nationals holding a residence title issued by another Member State are generally not exempted from the visa requirement, but their residence title is deemed as equal to a uniform visa.

65 "Local border traffic" is defined in art. 3 of Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention as "the regular crossing of an external land border by border residents in order to stay in a border area, for example for social, cultural or substantiated economic reasons, or for family reasons".

66 The Partnership for Peace is an association for military cooperation of NATO and 23 European and Asian states who are not members of NATO.

tion, according to a judgment of the European Court of Justice particular groups of service providers who are Turkish citizens are to be exempted from the visa requirement.<sup>67</sup>

Annex II of Council Regulation No 539/2001 (Annex I) (EU Visa Regulation) lists all third countries whose nationals do not require a visa to enter the EU and to reside there for a maximum of three months in a six month period. Here again, exceptions are possible for persons intending to engage in employment during their residence.

Annex IV of the Visa Code lists the countries whose nationals must hold a (Type A) visa for crossing the transit zones in the international airports located within the Member States' territory.

### **Local and general competence for issuing visas**

Under sec. 71 (2) Residence Act the embassies and consulates general (diplomatic missions of the Federal Republic of Germany) are responsible for issuing visas outside of Germany. There is a visa post in each of these embassies and consulates. Local competence rests with the mission in whose jurisdiction the applicant has his or her habitual abode or residence.

Competence for the subject matter rests with the mission of the Schengen state in whose territory the sole or main destination of the applicant is located. The main destination is the place where the applicant intends to spend most time or which is connected to the travel's main purpose. If it is impossible to determine a main destination the consulate of the Member State will be responsible across whose border the applicant intends to enter the territory of the EU.<sup>68</sup>

One of the underlying principles of the Visa Code is that all Member States should – as a long term perspective – be present or represented for the purposes of issuing visas in all third countries whose nationals are subject to a visa requirement. Member States are, however, not obliged to accept visa applications that they are not competent to examine and

67 On 12 September 1963 the then European Economic Community entered into an Association Agreement with Turkey designed to strengthen commerce and economic relations, by progressively establishing a customs union and ultimately facilitating Turkey's accession to the Community. Based on an additional protocol adopted in 1970 and resolutions taken in 1976 and 1980 the contracting parties agreed on rules for the access of Turkish workers to the labour markets of the Member States of the current EU. The "standstill clause" agreed upon in art. 41 (1) of the additional protocol commits the contracting parties not to create any new obstacles to exercising the freedom of establishment and the free movement of services. The standstill clauses 'freezes' the legal status valid at the time the additional protocol entered into force (1 January 1973). The favourability principle applies: changes in the legal situation that are favourable for the person concerned are admissible and can be claimed, while in case of unfavourable changes the person concerned can invoke the more favourable legal situation at the time the standstill clause came into effect. On 1 January 1973, certain exceptions from the general visa requirement were in place for Turkish nationals. These exceptions were discontinued only in 1980. Following the "Soysal"-Judgement of the ECJ (Case C-228/06), the "standstill clause" of art. 41 (1) of the additional protocol prohibits the introduction of new restrictions for the delivery of services. Following this decision, particular groups of persons (among others mobile workers, assemblers, artists, researchers, athletes) may enter Germany without a visa for up to two months in order to deliver services (freedom to provide services). The questions, whether entry and residence are also allowed in order to receive services is legally disputed. It has been brought to the ECJ in a preliminary ruling procedure, which at the time (January 2012) had not been concluded ("Demirkan", Case C-221/11). The key question is whether Turkish nationals may benefit from visa-free entry and stay in Germany when they intend to (passively) utilise services, e.g. as tourists. According to the Federal Government's position, the associational law does not ask for an extension of the lifting the visa requirement for Turkish nationals for short stays.

68 See C(2010) 1620 final, pp. 25-26.

decide when the competent Member State is not present or represented. For humanitarian reasons and with the consent of the competent Member State another Member State may agree to exceptionally accept and examine such applications in individual cases in the absence of the otherwise competent Member State.<sup>69</sup>

### **Representations**

Following art. 8 (5) of the EU Visa Code Member States lacking their own consulate in a third country shall endeavour to conclude representation arrangements with Member States that have consulates in that country. In these cases so-called “Representation Agreements” are made between the Member States concerned, in which a Member State may agree to represent another for the examination of visa applications and the issuing of visas. A Member State may also have limited representation of another that relates only to accepting the applications and collecting the biometric identifiers. The Representation Agreement may also cover the provision of premises and staff or payments by the represented Member States.

### **Visa fees**

Since 14 May 2008 the visa fee for all visa types is EUR 60. The fees are laid down in art. 16 (1) of the Visa Code. The fee for children aged between 6 and 12 is EUR 35; lower rates were agreed in the visa facilitation agreements (see section 2.2).

Children under the age of six are exempted from the visa fee. Further exemptions apply for school pupils, students, postgraduate students and accompanying teachers who undertake stays for the purpose of study or educational training; researchers from third countries and representatives of non-profit organisations aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations. Following art. 16 (6) the visa fee to be charged may be waived or reduced in individual cases, when it serves to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy and other areas of vital public interest or for humanitarian reasons.<sup>70</sup>

## **3.1.1 Visa application**

### **Application form**

Generally, the visa application must be submitted together with all required documentation to the competent mission by the applicant in person. The application form is available free of charge from the responsible mission in the local language. The forms can also be downloaded from the mission’s or the Federal Foreign Office’s websites. There is a form to apply for a Schengen visa which corresponds to the sample in Annex I of the Visa Code. Another form must be used to apply for a national visa (on the basic regulations for granting visas for long-term stays see chapter 3.2.1).

<sup>69</sup> See C(2010) 1620 final, p. 29.

<sup>70</sup> External service providers may charge an additional service fee, however, no more than half of the rate of the regular fee of EUR 60. The services that may be provided are defined in art. 43 of the Visa Code (for details see section 3.1.2).

### **Modalities for lodging an application**

Under art. 9 of the Visa Code applications may be lodged no more than three months before the start of the intended visit. Applicants may be required to obtain an appointment for the lodging of an application. As a rule the appointment takes place within two weeks from the date it was requested. In justified cases of urgency an earlier appointment may be given. Applications may be lodged at the consulate by the applicant or by accredited commercial intermediaries.

The requirement for personal lodging of the visa application may be waived when the applicant is known to the mission for his integrity and reliability, which is to be assumed in case of the lawful use of previous visas. The EU Commission handbook for processing visa applications refers to “bona fide” applicants in this context.<sup>71</sup> In the administrative practice in Germany the term “reliable persons” is used.<sup>72</sup> The competent mission may also waive the requirement to present documents regarding the purpose of the journey, accommodation and the possession of sufficient means of subsistence for such applicants. The EU Commission’s Visa Handbook states that the bona-fide status for issuing Schengen visas should be determined on an individual basis; high income or assets, employment in a certain company or membership of a certain organisation do not automatically imply a “bona fide” status.<sup>73</sup>

If an official German cultural institution, a chamber of commerce abroad, an office of a delegate of German industry or a representation of German industry directed by a German is located within the mission’s jurisdiction information on such applicants may be sought from these and subsequently considered in the decision on the applicant’s bona-fide status.

### **Required documentation**

The applicant must submit the following documents when lodging his or her application:

- an application form;
- a travel document valid for at least three months after the intended date of departure from the territory of the Member States or, in the case of several visits, after the last intended date of departure from the territory of the Member States,<sup>74</sup> containing at least two blank pages and issued within the previous 10 years;
- a photograph in accordance with certain standards (see art. 10 (3) lit c of the Visa Code).

71 C (2010) 1620 final, p. 60.

72 General Administrative Regulation for the Residence Act, 6.2.

73 See C (2010) 1620 final, p. 60.

74 In justified cases of emergency, this obligation may be waived.

Further, the applicant must allow the collection of his/her fingerprints under art. 13 of the Visa Code, where applicable, and he/she must pay the visa fee. As a rule, the applicant must produce proof of possession of adequate and valid travel medical insurance. The following supporting documents must be submitted:

- documents indicating the purpose of the journey;
- documents in relation to accommodation, or proof of sufficient means to cover his/her accommodation;
- documents indicating that the applicant possesses sufficient means of subsistence both for the duration of the intended stay and for the return to his/her country of origin or residence, or for the transit to a third country into which he/she is certain to be admitted, or that he/she is in a position to acquire such means lawfully,
- information enabling an assessment of the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for (for this also see "Assessment of the willingness to return" in section 3.3.1).

Member States may require applicants to present proof of sponsorship (by a person in the country of destination) and/or of private accommodation. Under the German regulations the visa can be made subject to a third person committing to pay for the cost of travel or the foreign national's living expenses for a certain period. The declaration of commitment must be made in writing ("Declaration of commitment", see sections 66-68 Residence Act).

Exemptions from these obligations to provide proof may be granted for "bona-fide applicants" (see above).<sup>75</sup>

### **3.1.2 Examination of and decision on the application by the mission**

#### **Verification of the mission's competence**

After an application has been lodged the consulate will verify whether it is competent to examine and decide on it. If the consulate is not competent, it shall, without delay, return the application form and any documents submitted by the applicant, reimburse the visa fee, and indicate the competent consulate.

#### **Verification of the admissibility of the application**

The competent consulate verifies, whether the application has been lodged within the period prescribed, whether the necessary documentation is included, whether the biometric data of the applicant have been collected and the visa fee has been paid. If these conditions have been fulfilled, the application shall be admissible. The mission abroad cre-

<sup>75</sup> Different documentation is required for an application for a Type A visa (airport transit), see art. 14 (2) of the Visa Code.

ates an application file in the visa information system (VIS) and further examines the application.<sup>76</sup>

By way of derogation, an application that does not meet the requirements may be considered admissible on humanitarian grounds or for reasons of national interest (see art. 19 (4) of the Visa Code).

#### **Verification of entry conditions and “risk assessment”**

Under art. 21 of the Visa Code it shall be ascertained in the examination of an application for a uniform visa, whether the applicant fulfils the entry conditions set out in art. 5 (1) (a), (c), (d) and (e) of the SBC. Particular consideration shall be given to assessing whether the applicant presents a risk of illegal immigration or a risk to the security of the Member States and whether the applicant intends to leave the territory of the Member States before the expiry of the visa applied for (for this “assessment of the willingness to return” also see section 3.3.1).

The VIS is queried for each application. Member States shall ensure that full use is made of all search criteria pursuant to art. 15 of the VIS Regulation in order to avoid false rejections and identifications.

While checking whether the applicant fulfils the entry conditions, the consulate shall verify:

- that the travel document presented is not false, counterfeit or forged;
- the applicant’s justification for the purpose and conditions of the intended stay, and that he/she has sufficient means of subsistence or is in a position to acquire such means lawfully;
- whether the applicant is a person for whom an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry;
- that the applicant is not considered to be a threat to public policy, internal security or public health or to the international relations of any of the Member States, in particular that no alert has been issued in Member States’ national databases for the purpose of refusing entry;
- that the applicant is in possession of adequate and valid travel medical insurance, where applicable.

Further the consulate shall, where applicable, verify the length of previous and intended stays in order to verify that the applicant has not exceeded the maximum duration of any authorised stay in the territory of the Member States, irrespective of possible stays

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<sup>76</sup> For VIS, see section 5; the VIS started to become operational in October 2011.

authorised under a national long-stay visa or a residence permit issued by another Member State.

The means of subsistence for the intended stay shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed. Proof of sponsorship in the form of a declaration of commitment by a third party (in the country of destination) and/or private accommodation may also constitute evidence of sufficient means of subsistence.<sup>77</sup>

The examination of an application shall be based notably on the authenticity and reliability of the documents submitted and on the veracity and reliability of the statements made by the applicant. During the examination of an application, consulates may in justified cases call the applicant for an interview and request additional documents.<sup>78</sup>

### **Special provisions regarding employment in Germany**

The visa shall describe the purpose of the visit as specifically as possible. When granting or extending a Schengen visa certain conditions may be stipulated (see General Administrative Regulation for the Residence Act, 6.1.6). Sec. 4 (2) sentence 2 Residence Act providing that every residence title, i.e. including a visa, must indicate whether the pursuit of an economic activity is permitted, applies for German Schengen visas. Any such permit entered on the visa is exclusively valid in Germany and not in the other Schengen states. In the same way, any such permission entered by another Schengen state is not valid in Germany.<sup>79</sup>

### **Consultation**

The consultations provided for in the Visa Code shall address the Member States' security concerns. Under art. 22 of the Visa Code a Member State may require the central authorities of other Member States to consult its central authorities during the examination of applications lodged by nationals of specific third countries or by specific categories of such nationals.<sup>80</sup> The authorities consulted shall reply definitely within seven calendar days after being consulted. The absence of a reply within this deadline shall mean that there are no grounds for objecting to issuing of the visa.

Member States shall notify the Commission of the introduction or withdrawal of any requirement of prior consultation before it becomes applicable. This information shall also be given within local Schengen cooperation mechanisms in the consular jurisdiction concerned. To the extent the Visa Information System (VIS) becomes operational such prior consultations shall be carried out through the VIS.

<sup>77</sup> In the examination of an application for an airport transit visa special criteria according to art. 21 (6) of the Visa Code apply.

<sup>78</sup> According to art. 21 (9), a previous visa refusal does not lead to an automatic refusal of a new application. A new application will be assessed on the basis of all available information.

<sup>79</sup> An economic activity as defined in section 2 (2) may, however, also be exercised in Germany without special permission of the German authorities on the basis of a Schengen visa issued by another Schengen state, if such economic activity is not considered employment under section 16 of the Ordinance on the admission of foreigners for the purpose of taking up employment, or if such economic activity is exercised as self-employment (see section 18 (2) Residence Ordinance).

<sup>80</sup> Such consultation shall not apply to applications for airport transit visas.

Under German law the Schengen consultation rules are complemented and transposed by further national consultation requirements under sec. 73 (1) of the Residence Act.

The consultation procedure also serves the goal to avoid entry and stay of foreigners who may constitute a threat to Germany's internal security (cf. BMI 2011: 185). If a visa application is filed by a member of a certain group of persons or a national of a state subject to consultation, the data which is collected on the applicant and the inviting person, if any, by a German diplomatic mission abroad in the course of the visa procedure may be transferred via the Federal Foreign Office to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Office for the purpose of ascertaining any grounds for refusal pursuant to Section 5 (4) Residence Act (national security) or in order to investigate any other security reservations. If the security authorities have reservations the visa application must be rejected.

### **Processing time**

As a rule, the missions need between two and ten days to process a short-stay visa.<sup>81</sup> The processing of an application for a long-stay visa or one entitling to an economic activity may take several weeks or months, especially if other authorities need to be involved such as the foreigners authorities of the place where the applicant intends to stay in Germany or if the Federal Employment Agency needs to be consulted via the foreigners authorities. This would be the case if the basis for the stay is to take up an economic activity and the Agency's approval is required.

Sections 31 to 37 of the Residence Ordinance provide for the approval of the foreigners authorities to a visa, for this see section 3.2.

### **Period of validity of a visa, the length of the authorised stay and number of entries**

A visa's "period of validity" is the period during which the holder may use the visa issued. According to art. 24 of the Visa Code, the period may not exceed five years. Generally, a visa shall be issued for the period that corresponds to the information provided by the applicant. The period of validity should include an additional 15 days to provide the visa holder with certain flexibility, e.g. when his/her return is delayed by unforeseen circumstances while he/she is staying in one of the Schengen states. The period of validity of any visa granted must, however, respect the period of validity of the travel document, i.e. the travel document must be valid for at least another three months after the planned exit from the territory of the Member States. Thus the visa issued may not be valid for a longer period.

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<sup>81</sup> Following art. 23 of the Visa Code applications shall be decided on within 15 calendar days of the date of the lodging of an application. That period may be extended up to a maximum of 30 calendar days in individual cases, notably when further scrutiny of the application is needed or – in cases of representation – where the authorities of the represented Member State will be consulted. Exceptionally, when additional documentation is needed in specific cases, the period may be extended up to a maximum of 60 calendar days.

The “length of the authorised stay” refers to the actual number of days the visa holder may stay within the territory of the Member States during the visa’s period of validity. For Schengen visas this maximum is 90 days within any six-month period. The authorised stay shall generally correspond to the intended purpose of the stay or transit.

A Schengen visa may be issued for one, two or multiple entries. The applicant shall indicate the requested number of entries on the application form. The consulate of the respective Member State examining the application will decide how many entries shall be granted. For instance, if the applicant wants to travel at a certain time to attend a certain event, only one entry should be approved. If a visa is granted for multiple entries for a period between six months and five years (e.g. if the applicant must travel frequently) each authorised stay will always be limited to three months in a six-month period.<sup>82</sup>

Multiple-entry visas (which also entitle to transit) will be issued if the applicant proves his/her integrity and reliability or justifies why he/she must travel frequently and/or regularly for employment or family reasons and proves the need to do so. The Commission’s Visa Handbook describes many examples such as business persons, seafarers or state officials regularly travelling to the Member States on official visits.<sup>83</sup>

#### **Visas with limited territorial validity**

In certain exceptional cases so-called “visas with limited territorial validity” may be issued under art. 25 of the Visa Code. As a rule these are valid only for the territory of the Member State issuing the visa. They will be issued when a Member State considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations, although

- certain entry conditions laid down in the SBC have not been fulfilled,
- a consulted Member State objects to the issuing of a uniform visa, or
- a visa is issued for reasons of urgency and therefore no prior consultation in accordance with art. 22 of the Visa Code has been carried out.

A visa with limited territorial validity will also be issued when, for reasons deemed justified by the consulate, a new visa is issued for a stay during the same six-month period to an applicant who, over this six-month period, has already used a uniform visa or a visa with limited territorial validity allowing for a stay of three months.

<sup>82</sup> Visas allowing for multiple entries may also be issued with a shorter validity than six months.

<sup>83</sup> See C (2010) 1620 final, pp. 83-84.

### **Refusal, annulment or revocation of a visa**

One reason for refusing a visa is the presentation of a false, counterfeit or forged travel document by the applicant or if he fails to justify the purpose and conditions of the intended stay.<sup>84</sup> The applicant shall be notified in writing of any decision on refusal and the reasons on which it is based. Applicants who have been refused a visa have the right to appeal.

If it subsequently turns out that the requirements for issuing a visa had not been met at the time the visa was granted, it will be annulled. If it turns out that the requirements for issuing a visa are not met anymore, it will be revoked. A visa may also be revoked at the request of the visa holder.

### **Discretionary powers of the mission**

Once the requirements for issuing a visa described under the heading “verification of entry conditions and risk assessment” (art. 21 Visa Code) have been met, the mission shall decide on whether the visa should be issued or not, and if it is to be granted for which periods of validity and stay and for how many entries. In examining the facts, the mission may exercise some discretion, particularly with regard to considering facts that have not been verified pursuant to the criteria under the SBC. The mission may also evaluate potentially conflicting interests of the Federal Republic of Germany or other Schengen partners in specific cases that would speak against issuing the visa. One consideration might be whether this foreign national’s stay might negatively affect or endanger the interests of the Federal Republic of Germany. Higher level political considerations might play a role in this context.

### **Cooperation with external service providers**

Art. 43 of the Visa Code permits Member States to have their consulates outsource certain activities that are part of the visa procedure to external service providers. An agreement must be made with the service provider that satisfies certain criteria, e.g. regarding data protection and anti-corruption measures. Such service providers may make available information about the visa procedure, inform applicants about the documentation required, schedule appointments for the consulate, receive applications, collect data and pass them on to the consulate, collect fees and receive travel documents and return them upon completion of the procedure.

Art. 43 (1) of the Visa Code provides that Member States shall endeavour to cooperate with an external service provider together with one or more Member States. The Federal Foreign Office plans to have consulates make more intensive use of such cooperation with external service providers.

### **3.1.3 Entry and stay/residence**

Art. 30 of the Visa Code provides that mere possession of a uniform visa or a visa with limited territorial validity shall not confer an automatic right of entry to the Member States. According to sec. 13 Residence Act entry into (and exit from) German territory is permissible

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<sup>84</sup> For this see art. 32 of the Visa Code.

only at the approved border crossing points and within the stipulated traffic hours, in the absence of any exceptions. Foreigners are obliged to carry a recognised and valid passport and to submit to the police control of cross-border traffic. The entry is unlawful if the foreign national does not possess a required passport or passport substitute, a residence title (e.g. a visa) or is not permitted to enter German territory. All other conditions for entry in particular those under art. 5 of the SBC (see section 3.1.2) must be met – as already for the previous visa procedure.

If entry is refused the reasons for the refusal will be stated on a standard form.<sup>85</sup> Such a decision is made with immediate effect by an authority competent under national law, e.g. by the Federal Police (see General Administrative Regulation for the Residence Act, 13.3.2.2.1).

The authorities charged with carrying out the controls, such as the Federal Police, may issue exceptional visas and passport substitute documentation. An exceptional visa may be issued in the form of a national visa or a Schengen visa. However, an exceptional visa may only be issued in the presence of unforeseeable, urgent reasons for entry which prevented the applicant from applying for a visa with a diplomatic or consular mission ahead of time (see General Administrative Regulation for the Residence Act, 14.2.1.2).<sup>86</sup> In 2010 the Federal Police issued a total of 23,107 exceptional visas while there had been 24,013 in 2009.<sup>87</sup>

#### 3.1.4 Exit

All visas generally have a certain period of validity. The admissible maximum length of stay under the visa and other comments on the number of entries are entered on the so-called visa sticker.<sup>88</sup> The visa holder must leave the territory for which the visa is applicable until midnight of the date indicated. As a rule his/her exit is documented by the authorities charged with carrying out the police control of cross-border traffic with an exit stamp in the passport that bears the visa. Once the number of recorded exits corresponds to the total number of entries granted the visa becomes invalid, even, if the authorised duration for the stay has not been fully used.

Visas may be extended only in exceptional cases, for instance, if the competent authority of the Member State considers that a visa holder has provided proof of force majeure or humanitarian reasons preventing him/her from leaving the territory in due time. One example in point would be the closure of airspace due to a natural disaster. The period of validity may also be extended for grave personal reasons such as a sudden serious illness (see art. 33 of the Visa Code).

<sup>85</sup> The standard form is contained in Annex V Part B of the Schengen Borders Code.

<sup>86</sup> General Administrative Regulation for the Residence Act nos. 14.2.1.1 to 14.2.1.5 detail further requirements that have to be met for issuing a uniform exceptional visa and exceptions therefrom.

<sup>87</sup> See BT-Drs. 17/6225 of 15 June 2011, p. 6.

<sup>88</sup> On the nature of the visa sticker and the entries to be made, see Annex VII of the Visa Code and Regulation (EC) No 1683/95.

### 3.2 Visa issuance for long-term stays (Type D visas)

#### 3.2.1 Foundations for and special aspects of the issuance of visas for long-term stays

The issuance of a national visa (Type D) is governed by national law; in Germany it is directly linked to the four main purposes of the stay as defined in the Residence Act, i.e. education, economic activity, residence under international law or on humanitarian or political grounds and residence for family reasons, and the facts on which these purposes are conditional (see section 2.4). The conditions that have to be met for granting a visa will be examined by the competent mission abroad which must generally involve the foreigners authorities that will be competent in Germany (see below). One of the essential criteria for eligibility for a Type D visa for education purposes is, for instance, the applicant's admission to an educational establishment (see sec. 16 (1) sentence 3 Residence Act). If the visa is for the purpose of the subsequent immigration of the spouse of a third-country national the applicant must always be able to communicate in the German language at least on a basic level (see sec. 30 (1) no. 2 Residence Act) This can be evidenced in suitable form e.g. by submitting a certificate issued by the Goethe Institut that the language test level 1 "Start Deutsch 1" has been successfully completed. However, language skills can also be proved by the applicant when he or she applies for the visa with the German mission. In this case a staff member of the embassy or consulate will verify the language skills in a personal interview held in German.<sup>89</sup>

In addition to the facts relating to the respective purpose of stay further general requirements must be met, which are mostly the same or similar to the requirements for Schengen visas. These general requirements for standard issuance of a visa include the obligation to have a passport, secured livelihood, proof of identity and nationality and the absence of grounds for deportation.

Discretionary decisions are made when the applicant is not entitled to the residence title, e.g. when applying for a national visa to take up employment. From the perspective of the legislators there is a general public interest in a controlled management of the entry into and the stay in Germany.<sup>90</sup> Public interest is negatively impacted in particular when an applicant intends to use a visa for another purpose of stay than the one applied for (e.g. to take up illegal employment) or to use a visa not designed to entitle him/her to a permanent stay for in fact staying permanently. Thus the applicant's willingness to return to his/her country of origin and his/her ability to do so must be examined on a case by case basis, if the law provides that no permanent, but merely a temporary stay may be granted; e.g. for au-

<sup>89</sup> In the relevant literature a scenario has been discussed where the language skills required to receive a visa for the subsequent immigration of a spouse are to be acquired in a language course in Germany while holding a Schengen visa – for instance, because the acquisition of sufficient language skills abroad is unrealistic or because the person concerned expects to acquire the language faster when attending a course in Germany and practicing the language in German-speaking surroundings. In such cases it is often difficult for foreign nationals from third countries that require a visa, including for short stays, to establish their willingness to return with sufficient plausibility to the missions abroad and therefore a visitor visa is refused because of the migration risk assessment (also see "Assessment of the willingness to return" section 3.3.1) (Gutmann 2010; Lübke 2009). Also see the statement of the Federal Government on providing proof of language skills in countries in which the language certificate "Start Deutsch 1" is currently not available (BT-Drs. 17/3090 of 24 September 2010, p. 30 et seq.).

<sup>90</sup> Clause 5.1.3.2.1 of the General Administrative Regulation for the Residence Act gives the example of a public interest in 'preventing' that a foreign national 'will grow up residing permanently in Germany under circumstances not admitted by the law'.

pairs or contract workers, in contrast to applications for the purpose of family reunification (established on a lasting basis).

As a rule, no national visa may be granted unless these general requirements are met. Derogations are possible, if one of the following exceptions applies:

- when a special provision stipulates that the visa is to be issued because an exemption from the standard requirements must be or can be granted;
- a residence title is granted for humanitarian or political reasons, or reasons based on international law;
- the case at hand is a very exceptional individual case that warrants an exemption.<sup>91</sup>

#### **Visa exemption for the nationals of certain countries**

In principle also citizens of countries who may enter the EU without a Schengen visa under European law require a national visa for a long-term stay. However, under German law the nationals of certain countries are exempted from the visa requirement. This applies to the citizens of Australia, Israel, Japan, Canada, South Korea, New Zealand and the USA who may enter German territory and stay there without a visa; including for stays that are not short-term, but long-term. Besides, nationals of Andorra, Honduras, Monaco and San Marino are privileged as well, provided they do not intend to take up an occupational activity in Germany which will be regarded as an employment within the meaning of the Residence Act. A required residence title needs to be applied for within three months (sec. 41 Residence Ordinance).

#### **Involvement of the foreigners authorities**

Generally a national visa is subject to the consent of the competent foreigners authorities at the location of the intended stay in Germany. The consent procedure shall make all stakeholders including the domestic authorities fully aware of the facts of the case, as the foreigners authorities will have to decide on the long-term residence or settlement permit after the foreigner's arrival in Germany. This will facilitate a uniform assessment of the merits of the application. Such consent to the visa approval is an internal administrative process and is neither actionable nor voidable on its own. No visa may be issued without the required consent. All decisions on granting national visas should generally be consensual. If no consensus can be reached in exceptional cases the consulate may reject the visa application on its own authority despite the foreigners authorities' consent (see General Administrative Regulation for the Residence Act, 6.4.3.2).

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<sup>91</sup> A case is an exceptional individual case justifying an exemption from the standard requirements when insisting on the standard facts would be unsuitable, grossly unreasonable or not expedient in the light of their very spirit and purpose, see clause 5.0.2 of the General Administrative Regulation for the Residence Act.

### **Validity of national visas**

Unless otherwise justified by extraordinary circumstances national visas are issued for a period of validity of three months. Subject to the requirements being met, a residence permit shall be issued for any subsequent periods of stay, i.e. the holder of a national visa will report to the locally competent foreigners authority after entering Germany and during the period of validity of his or her visa. The authority will then decide on the future residence status. In coordination with the competent foreigners authority the consulates may in special cases issue the visa for a shorter period and subject to certain conditions, e.g. an obligation to report to the foreigners authority immediately after entering the country (see General Administrative Regulation for the Residence Act, clauses 6.4.2.1 and 6.4.2.2). Sections 32 to 37 Residence Ordinance define exceptions from the consent procedure (also see Maor 2005). Researchers or students, for instance, are exempted as well as persons staying as part of their job under bilateral agreements (e.g. contract workers; see section 4.2.3).

### **Territorial validity**

Generally the Type D national visa is valid for the territory of the issuing Schengen Member State. However, since 5 April 2010 the holder of a Type D visa is entitled to also enter other Member States for three months during a six-month period, if he or she complies with the entry requirements under EU visa law and is not on the national list of alerts of the Member State through which he or she intends to travel.<sup>92</sup> Thus free movement for three months in a six-month period is now possible with a national visa ("type D visa") and a valid travel document throughout the Schengen area.

### **Economic activity**

With the Immigration Act that became effective on 1 January 2005 Germany created the legal basis for immigration that promotes the country's economic and labour-market policy interests (also see section 2.4). The Residence Act and the Employment Ordinance open up several opportunities for the stay of third-country nationals in Germany for economic activity, some permanent, some temporary, such as for seasonal workers from abroad, contract workers, university graduates and specialists, highly skilled individuals, researchers and self-employed persons (see Parusel/Schneider 2010: 24-32).

When visa applications are lodged for the purpose of taking up an economic activity the receiving consulate will consult the foreigners authority competent at the place where the foreigner intends to take residence. The latter will in turn involve the Federal Employment Agency (BA). The BA's consent is subject to several general conditions: proof must be established that there will be no negative impact on the labour market and that no German workers or such of equal status (e.g. citizens of the Member States of the EU or the European Economic Area) are available for this employment. A general statement that placing foreign applicants is justified under labour-market and integration policy aspects can also be made for individual occupational groups or industry sectors. Further, there must be safeguards that the foreign national will not be employed at more unfavourable conditions

<sup>92</sup> See art. 21(2a) Schengen Convention. This amendment was made by Regulation 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, OJ L 85, p. 1-4, here p. 3.

than comparable German labour. Thus the decision on granting a visa for residence and taking up an economic activity is arrived at after an internal administrative consultation process (“one-stop government”, see Parusel/Schneider 2010: 27). Exceptions apply for certain groups of migrants for reasons of employment, such as highly skilled workers for which the BA must not be consulted.

### **Visas granted for urgent humanitarian or political reasons, or reasons based on international law**

The principal of territorial asylum applies in Germany. Thus, humanitarian protection can only be extended to persons who are either staying within German territory or are present at the German borders. There is no advance effect of asylum law by which Germany would be obliged to allow a future application for asylum on German territory by issuing a visa. Thus the missions abroad must generally reject requests for asylum or protection already on the ground.

Only in very exceptional cases can a residence be granted in accordance with international law or on urgent humanitarian grounds (“admission from abroad”) according to sec. 22 Residence Act (sentence 1) or to uphold the political interests of the Federal Republic of Germany (sentence 2). Grounds related to international law according to sentence 1 apply, if Germany’s obligation to accept certain foreign nationals follows from a binding international agreement such as agreements on the acceptance of war refugees or on burden-sharing with other receiving countries.<sup>93</sup> An acceptance for urgent humanitarian reasons (according to sentence 1) presupposes that this individual’s emergency situation is special compared to that of other individuals in a similar situation, i.e. it relates to one individual’s fate, that it requires urgent action and justifies his/her acceptance. In certain individual cases the acceptance of a person seeking protection may be a humanitarian imperative (see General Administrative Regulation for the Residence Act, clauses 22.1.1.2 and Parusel 2010: 24 et seq.).

Acceptance of a foreigner to uphold the political interests of the Federal Republic of Germany (sentence 2) applies, if the Federal Government declares its interest in his/her admission. The authorities authorized to take such a decision have ample discretion in specifying such political interests; which may be related to internal or to foreign policy. Political decisions on an acceptance under sec. 22, sentence 2 of the Residence Act rests with the Federal Ministry of the Interior. Examples for such decisions might be the acceptance of prominent opposition members or anti-government activists, individual refugees from overtaxed host countries or individuals that the German security authorities would like to see protected (see Parusel 2010: 25).

In terms of numbers the admissions under sec. 22 Residence Act have been of minor significance in recent years. 40 foreign nationals were issued residence permits under sec. 22 Residence Act in 2008 and 47 in 2009.<sup>94</sup> In 2010 the Federal Ministry of the Interior in

<sup>93</sup> At the time of writing this report no such agreements were in effect.

<sup>94</sup> Residence permits granted under sec. 22 Residence Act in 2008 and 2009 and entry in the same year, the figures are the totals until 31 December of the respective year, source: Central Register of Foreigners according to Federal Ministry of the Interior/BAMF 2011: 123.

agreement with the Federal Foreign Office and the Interior Ministers of the Federal States decided to admit 50 Iranians in need of protection who had fled Iran to Germany under sec. 22 sentence 2 of the Residence Act. They were selected in cooperation with the UNHCR, mostly in Turkey.<sup>95</sup>

Certain requirements such as proof of adequate accommodation or the capacity to provide for oneself can be waived for the admission of persons joining family members who have been recognized as asylum-seekers or refugees in Germany. This may facilitate the visa process for subsequently immigrating dependents.

### **Special requirements for issuing national visas to Jewish immigrants**

No consent of the competent foreigners authority is required for the approval of visas for Jewish immigrants from the former Soviet Union who are accepted under sec. 23 (2) Residence Act “to uphold the political interests of the Federal Republic of Germany” (also see section 4.1.2). The acceptance process for Jewish immigrants is based on an approval for admission (Aufnahmezusage) issued by the Federal Office for Migration and Refugees. Any conditions specified in such approval will be included in the visa. An approval for admission simplifies the visa process: in addition to the period of validity and any conditions for expiry the missions will only ensure that the approval for admission is not obviously unlawful.

### **3.2.2 Facilitation of legal immigration by visa policy: success factors**

The many tasks of the German missions abroad also include that of informing the population in their host countries of the opportunities for legal migration and access to the German labour market, especially for skilled experts. For this purpose the missions establish contacts with authorities and institutions in the host countries (such as universities). It is difficult to measure the contribution of such information and cooperation efforts to the increase in legal migration. Adjusting the visa fees and fast-track processing of applications are options for facilitating legal migration as part of the visa process.<sup>96</sup>

To facilitate the entry and stay of researchers and students that receive funding from German public entities or have been invited by German universities and research institutions, they are exempted from the consent requirement by the foreigners authorities; the visa may be directly issued by the consulate. On occasion of recent legislation to adjust German law to the EU Visa Code, this form of process acceleration has been extended (see section 2.3): Since 26 November 2011 this exemption also applied for researchers who have

<sup>95</sup> See BAMF/EMN 2011a: 50.

<sup>96</sup> On its website the German embassy in Belgrade publishes information on the average processing time for applications for national visas. The average processing time for visas for spouses or children that want to join a family member in Germany or for the purpose of a marriage in Germany is three months, visas for au-pair stays take two months, visas for taking up an economic activity take between eight and twelve weeks. The visas for contract workers are generally processed in only four working days; the same is true for all types of Schengen visas. The minimum processing time for visas for the purpose of attending university or a language courses is three weeks and two days. The embassy stresses that in each of these cases it is possible that processing will take longer, see <http://www.belgrad.diplo.de> (Visa Requirements), accessed on 11 August 2011. In view of the short processing time of visa applications for contract workers it is interesting to note that the number of contract workers from Serbia in Germany has significantly increased in recent years. In 2001 103 contract workers from Serbia and Montenegro came to Germany. In 2005 the number was 450, in 2009 1,136 and in 2010 1,530 (Source: Federal Employment Agency). Thus the short average processing time might be considered a success factor.

signed an acceptance agreement with a German research institution and for scholars holding a EU funded scholarship.<sup>97</sup>

The groups in the German parliament are currently trying to decide how the practical application of German visa policy may at the same time serve its objectives of promoting exchanges among civil society, of meeting the demand for skilled labour, of attracting investment and business without enhancing the risk of irregular migration.<sup>98</sup> The Council for the Review of Legal Norms (which is supposed to support the Federal Government in implementing measures to streamline bureaucracy and for better governance) was among the parties who pointed out that entry visas for foreign experts could be issued much faster without any changes in law being required. Just by scanning the documents and transmitting them electronically and by optimizing the reference process the visa process could be significantly sped up. A study listed 35 proposals for the simplification of the visa process.<sup>99</sup>

### 3.3 Visa procedures for the purpose of preventing irregular migration

#### 3.3.1 Prevention of irregular migration during the visa issuing and monitoring process

With reference to the Hague Programme of 2004 (see section 2.3) the EU Visa Code again stresses that the development of the common visa policy shall also contribute to fighting illegal immigration and to facilitate proper assessment of migratory and/or security risks. One central element for this is the assessment of the willingness to return during the visa process that has already been mentioned above.

The General Administrative Regulation for the Residence Act (6.1.3.1) provides that the applicant's willingness to return after the purpose of the stay has been fulfilled must be verified in each case as "a constituent requirement for entry into the country". Indications of an insufficient willingness to return are facts relating to the personality of the applicant which may suggest that he/she is not sufficiently 'rooted' in the country of origin or an incidence of non-compliance on earlier occasions when he/she had been obliged to leave the country ("overstaying"). To establish the strength of the applicant's "roots" in his/her country of origin his/her family, social and economic situation and ties will usually be considered. The decisive point is that the applicant puts forward a tangible and credible return incentive in his/her home country and provides sufficient evidence thereof. Generally the credibility of the applicant should be assessed in a personal interview. The decision will be based on all known circumstances of the individual case with due consideration of the situation in the country of origin.<sup>100</sup>

In practice this means that for instance in the case of applications for medical treatment in Germany the first test will be whether the applicant has sufficient means to pay for

97 See Federal Law Gazette (BGBl.) I No. 59, pp. 2258 et seqq.

98 For this see public hearing "The practice of granting visas applied by the missions of the Federal Republic of Germany abroad" of the Committee on Foreign Affairs of the German Bundestag on Wednesday, 28 September 2011 (in German).

99 See "Improving the entry process. Project report on improving the process for admitting skilled labour and executives from third countries", advance publication in September 2011, edited by the Federal Statistical Office on behalf of the Council for the Review of Legal Norms, Wiesbaden (in German).

100 See BT-Drs. 17/2550 of 8 July 2010, pp. 6-7.

any such treatment (which he/she will usually have to pay for personally). If the willingness to return cannot be established the visa application must be rejected, because the requirements are not met.

### **Establishment of a visa alert database**

For some time already there have been discussions on making more intensive use of the information on individuals collected during the visa process for migration management and making it available to several authorities. Already in 2001 the Independent Commission on "Immigration" proposed to systematically save visa data and copies of identification and travel documents in a visa database which should be directly accessible by the foreigners authorities. One purpose would be to support the determination of identity and nationality to facilitate the return of foreigners who are required to leave the country (UK ZU 2001: 155 et seq.). Foreigners authorities, diplomatic missions, ministries and some parliamentary groups in the Bundestag have repeatedly called for legislation allowing to set up databases of sponsors or alerts; however, multiple initiatives on such legislation have been postponed, mainly because of concerns related to data protection.<sup>101</sup>

Accordingly, Germany does not yet have any comprehensive database on individuals who have a record of unlawful behaviour in connection with visa applications or of offences under the laws on legal entry; only some missions have compiled their own alert databases to prevent visa abuse. Although the missions are required to maintain a computerized visa database holding the basic data on the applicants and the visas, these are not primarily used for controls and the data records must be deleted one year after the last visa issued to a particular individual has expired (see sec. 69 Residence Ordinance). The separate visa database included in the Central Register of Foreigners that is maintained by the BAMF (as the registration authority) includes only the designations of the forged or counterfeit documents that were submitted in the visa process whenever forgeries are detected (see sec. 29 Act on the Central Register of Foreigners).

When considering the purpose of databases to prevent visa abuse one needs to distinguish between databases on sponsors and for alerts.<sup>102</sup> The sponsor database would hold the data of those who made a written declaration of commitment (*Verpflichtungserklärung*) for a third person, these persons must not necessarily be identical with the inviting party. The main purpose of the sponsor database is the spotting of so-called 'mass sponsors' that give rise to the suspicion that they are making declarations of commitment for a large number of visa applicants for commercial reasons. The alert database, in contrast, would hold the data of individuals who tried to obtain visas under false pretences. This might be the applicant who obtained or attempted to obtain a visa by presenting forged or counterfeit documents. On the other hand it might be someone who made or attempted to make abusive declarations of commitment. Thus the sponsor database will list all sponsors, while the alert database will only include data on those who intentionally made wrong statements in a commitment declaration.

101 See BT-Drs. 15/5975 of 2 September 2005, p. 60 et seq.

102 For this and the discussion below see BT-Drs. 15/5975 of 2 September 2005, p. 60.

Already the governing parties of the 16th legislative term had planned to set up an “alert database of all diplomatic missions and foreigners authorities which the security authorities are authorized to query” to prevent visa abuse and illegal entries.<sup>103</sup> In their coalition agreement of 29 October 2009 the member parties of the current Federal Government contemplated the creation of a central visa alert database “in particular to support the German visa issuing authorities and to accelerate the overall procedure.”<sup>104</sup> The Federal Government therefore defined several key elements on 13 April 2011 and shortly thereafter submitted draft legislation for setting up a visa alert database. The act was promulgated in the Federal Law Gazette on 29 December 2011.<sup>105</sup> Thus, the Federal Office of Administration will set up a central alert database mainly for the purpose of preventing visa abuse and illegal entries. It shall contain alert files on individuals who have been finally sentenced to a fine or imprisonment for certain offences relevant for the visa procedure.<sup>106</sup>

A new organisational unit will be set up at the Federal Office of Administration to match visa application data to certain data from the anti-terrorist database. One aspect is to provide feedback to the foreigners authorities on any information indicating that persons related to terrorism intend to enter Germany, specifically, if these are nationals or groups that require a visa, although their visa applications must not be examined by the security authorities as part of the consultation process.

### **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. 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>107</sup>

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.<sup>108</sup> Requests for checks on sponsors that have not yet been categorized as

103 See “Migration and Population” 3/2009, p. 1 (in German).

104 “Growth. Education. Cohesion. Coalition agreement between CDU, CSU and FDP” of 29 October 2009, p. 79.

105 Federal Ministry of the Interior: “Federal Government lays down key elements for a law on a visa alert database”, press release of 13 April 2011 (in German); Draft legislation for setting up a visa alert database and amendment of the Residence Act, BR-Drs 318/11 of 27 May 2011 and BT-Drs. 17/6643 of 20 July 2011; Federal Law Gazette I, p. 3037 et seq.

106 These include violations of the Residence Act, of the Act to Combat Illegal Employment or crimes related to smuggling or trafficking adults or children as well as serious drug-related crimes.

107 See BT-Drs. 17/6223 of 16 June 2011, p. 8.

108 The funding of the cost for travelling and the visit is one of the basic requirements for granting a visa next to the plausibility of the purpose of the stay and the willingness to return. Generally each applicant is free to provide proof of sufficient funding for the travel and the visit to the mission himself/herself. If he/she is unable to do so a third person may formally commit to assuming all of the cost related to the stay in Germany, this is usually declared at the foreigners authorities or exceptionally at the mission (“sponsor”). The declaration of commitment qualifies as evidence that the visa holder’s stay in Germany is fully financed. Such declaration of commitment shall ensure that no public funds will be necessary to pay for the visa holder while he/she is in Germany, see BT-Drs. 17/2550 of 8 July 2010, p. 7.

mass-sponsors, but nevertheless seem suspicious to the missions can also be directed to the Visa Information Centre and the Federal Criminal Police Office.

### 3.3.2 Prevention of irregular migration through other measures during the visa process

The collection of biometric data is currently tested in a pilot project (at the German Consulate General in Lagos/ Nigeria) for applications of national visas independently of the introduction of the EU's Visa Information System which shall provide standard processing of biometric data after the end of 2011 (see section 5).<sup>109</sup>

Germany's missions closely collaborate with the foreigners authorities competent in Germany to examine the satisfaction of the eligibility criteria for granting a residence title for a spouse's subsequent immigration. The most important criterion during this examination is the assessment of the spouses' intention to actually live together as a family<sup>110</sup> in Germany (to prevent bogus marriages). If in a specific case there are indications that the partners have no intention to establish a marital community, further investigation may be warranted to determine whether it is in fact a bogus marriage.<sup>111</sup> When specific suspicious circumstances came to light, both spouses can be interviewed simultaneously, either by the foreigners authority in Germany or by the consulate processing the application, to arrive at a well-founded decision.

### 3.3.3 Preventing irregular migration by visa policy: success factors

As explained above, visa policy includes many opportunities to act on perceivable risks of irregular migration and to deny visas in this situation. The verification of the applicant's willingness to return and the collection of information on the methods used to obtain visas under false pretences seem most important in this context. It must be added that the missions are observing and evaluating all developments of security relevance in the host country that might impact the population's attitude towards migration in general or of certain individuals or groups that might pose a security risk for the Federal Republic of Germany or the Schengen states. The missions use their contacts to the host country's authorities and institutions (e.g. government departments, police) for this purpose.

Some measures taken after the visa has been issued may also provide information on a potential visa abuse. For example, based on his experience and exercising his discretion an official may require a visa applicant to report to the embassy by telephone after his/her return from Germany or another Schengen state when granting a visa. The absence of the call provides information that will help to reduce the risk of illegal immigration or of over-staying in the future.

109 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.

110 A marital community or cohabitation is assumed, if the spouses "obviously are living together or intent to live together in a permanent relationship characterized by close ties and mutual support", where such relationship "is more intensive than that between friends who have merely met by coincidence" (General Administrative Regulation for the Residence Act, 27.1a.1.1.0).

111 For instance, as a general practice the German embassy in Moscow includes an interview with the spouse when a visa for subsequent immigration is applied for. The questions during the interview are designed to reveal information that points to a bogus marriage.

# 4 Co-operation with third countries: Case studies

## 4.1 Case study 1: Germany - Russian Federation

### 4.1.1 Rationale for selecting the Russian Federation for the case study

The Russian Federation was selected for the case study because of its overriding importance for immigration to Germany. With regard to immigration from countries under the visa requirement, in 2010 the Russian Federation played a very important role with 16,063 immigrants, only outranked by Turkey with 27,564 and China with 16,248 immigrants.<sup>112</sup> In addition, the Russian Federation is an important country regarding the issuance of visa: The German missions in the Russian Federation issued a total of 361,746 visas in 2010, including 11,575 Type D visas for long-term stay and 350,002 Type C visas for short-term travel or tourist purposes, which makes the country the most important among all countries of origin.<sup>113</sup>

In addition to the Russian Federation's quantitative significance the following considerations are relevant in the light of the EMN study's objectives:

- The Russian Federation is an important country of origin for several types of migration to Germany, namely immigration to take up an economic activity, immigration of highly skilled workers, migration of students and the immigration of asylum-seekers. In addition, there are special migration provisions for ethnic German resettlers and Jewish immigrants.
- In December 2003 the governments of the Federal Republic of Germany and the Russian Federation signed a bilateral agreement on facilitating travel between both countries.<sup>114</sup>
- In May 2006 the EU agreed on a visa facilitation agreement with the Russian Federation which entered into force on 1 June 2007 (see section 2.2).

In addition, it is justified to say that of all EU Member States Germany has the closest relations to the Russian Federation in economics, society, culture as well as within the context of geo-strategy and security policy (Timmins 2011). The special nature of these relations is most obvious in industry and trade. Among the EU Member States Germany is making by far the largest foreign investments in the Russian Federation, 4,500 German companies are doing business on the Russian market and the bilateral volume of trade amounts to about EUR 50bn annually; at the same time Germany is increasingly dependent on Russian energy supplies and is currently sourcing between 35 and 50 per cent of its natural gas and about

112 As regards the general difficulties on statistics on immigration, see section 1.2.

113 China is second with 200,156 visas issued (185,991 Type C Visas and 14,053 Type D Visas) and India third with 105,500 visas issued (94,648 Type C visa and 10,093 Type D visa).

114 German Federal Law Gazette 2004, II no. 4 of 16 February 2004.

35 per cent of its oil demand from the Russian Federation (see *ibid.*: 190). The viability or further simplification of cross border travel is deemed imperative for these relations.<sup>115</sup>

But better mobility is not only important because of the growing volume of business and commerce. Tourism is increasingly gaining significance in the German-Russian relations. Both German and Russian travel operators advocate the facilitation of tourist travel by more customer-friendly practices in the visa procedure.<sup>116</sup>

The number of overnight visitors from the Russian Federation in Germany is currently increasing both in relative and in absolute terms. In the winter season 2008/2009 German hotels and similar accommodations recorded 218,902 arrivals from the Russian Federation who stayed for 578,588 nights; one year later the number had already jumped to 247,047 (631,247 nights) and in the six months of the 2010 summer season to 315,654 (783,918 nights). Based on these figures visitors from the Russian Federation currently account for about two per cent of all overnight visitors from abroad.<sup>117</sup>

#### 4.1.2 Migration between the Russian Federation and Germany: Historical overview

The flow of migration between Russia and Germany cannot be precisely quantified for the period prior to the collapse of the Soviet Union in 1991, because the migration data for the different Soviet republics (the Russian Socialist Federative Soviet Republic was the territorial predecessors of what is today the Russian Federation) were not published separately. During the Cold War era hardly any international migration was possible from the Soviet Union, because an exit visa was required for travelling abroad. Also the possibilities for foreigners to enter and stay in the USSR were very restricted (e.g. for educational reasons).

The migration relations between Germany and Russia date very far back into history. Already in the 18th century Tsar Peter I and even more intensively Tsaritsa Catherine II were keen on pushing the agricultural development of hitherto sparsely populated rural areas by attracting settlers from abroad – a scheme that has been called an early form of international migration management (Ivakhnyuk 2009: 4). In 1762 Catherine II issued a manifesto inviting foreigners to settle within the territory of the empire. Immigrants enjoyed a number of privileges and indirect taxation directed the immigration flows to the less populous areas near the river Volga. At the time of the first Russian census in 1897 there were almost 1.2 million German settlers in Russia (Brandes 2007: 514). In the years between the two World Wars several thousands of Germans, mainly craftsmen, skilled workers, and miners, who became employed in Russian factories and Ukrainian mines, emigrated to Russia.<sup>118</sup> These settlers

115 See policy paper “Routes to visa-free travel” edited by the Committee on Eastern European Economic Relations of German Industry, Berlin, July 2011, p. 5.

116 See e.g. Spiegel Online of 27 July 2007; Moskovski Komsomolez of 23 June 2011.

117 See Federal Statistical Office, Special Series 6, volume 7.1 (domestic trade, hospitality industry, tourism. Results of the monthly surveys in tourism), editions for the winter half-year 2008/2009 to the summer half-year 2010, table 1.2 for both (in German).

118 However, the majority of those Germans who have been migrating to Russia since the 1920s returned to Germany before 1936 (Žuravlev 2007).

and their descendants were the main source for the later (re)migration of ethnic Germans (Russlanddeutsche or Aussiedler) from the Soviet Union where they suffered from repression and relocation during WW II, as well as for the second wave of ethnic German resettlers (Spätaussiedler) and their families beginning in the 1990s (see below).

But there were also several waves of migration from Russia to Germany. An early example for a bilateral regime of migration control is the visa requirement for immigrants from Russia to the German Empire which applied from 1879 to 1894 (Ryan 2010: 4). The three waves of Russian emigration that occurred in the 20th century were closely related to wars, conflicts and persecution and affected Germany to a considerable extent (see Žuravlev 2007). The first wave consisted of large parts of the elite of pre-revolutionary Russia that went abroad after 1917. During WW II Soviet citizens were deported to the territory of the German Reich by the German occupational forces; many of them did not return to Russia after the end of the war. Members of the civil rights and anti-government movements who left the Soviet Union between the sixties and the eighties and were accepted by countries in the west are regarded as the third emigration wave.

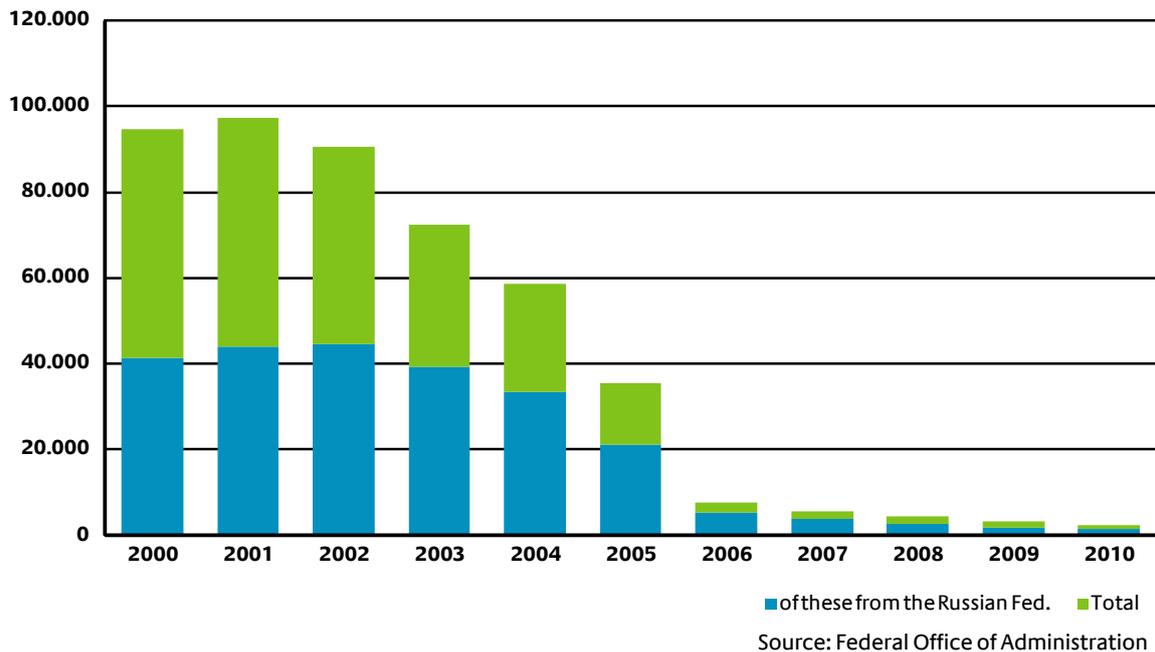
Today there are many different kinds of migration from the Russian Federation. Among the immigrants are Spätaussiedler and their families as well as Jews, asylum-seekers, labour migrants, university students, and family members of Russians already living in Germany. The Russian Federation is also an important transit country for migrants from other CIS countries, the former Soviet Union or from Asian countries (see Williams/Akto- prak 2010: 18).

#### **Displaced Germans, Aussiedler, Spätaussiedler and non-German family members**

The largest group of immigrants from Russia during the Cold War era were ethnic Germans. Most of them came to Western Germany where they were categorized as expelled persons, refugees or 'Aussiedler' (repatriates/resettlers) on the basis of the Federal Expellees Act (Bundesvertriebenengesetz). The Federal Expellees Act is no instrument of migration management, but an effort to cope with the consequences of WW II. A first strong influx occurred directly after the end of WW II; while the number of German Aussiedler remained at a relatively low level between 1950 and 1987 (see Fassmann/Münz 2000: 50 et seq.). At the time of the Perestroika liberalisation when travel became easier another increase of entries of ethnic German immigrants was recorded in the Federal Republic of Germany. Between 1951 and 1988 approx. 1.6 million ethnic Germans immigrated to Western Germany from the Soviet Union (see Bade 2000: 412). Especially from 1988/89 on, the number of ethnic German repatriates multiplied due to political change. As early as 1989, 200.000 immigrants of German ethnicity and their relatives moved to the Federal Republic (47.572 of them from the Soviet Union, the vast majority from Poland); followed by over 350.000 in 1989 (89,134 from USSR) and peaking with 397,073 in 1990 (147,950 of them from the USSR). While general influx declined over the following years due to, among other reasons, political measures to manage the flow, the number of ethnic German repatriates from former USSR countries continued to rise; from over 147,000 in 1990 to 195,576 in 1992 and over 200.000 annually for the period between 1993 and 1995. In 1992, a reorganisation of conditions for immigration brought with it a change in terminology that replaced the term "Aussiedler" by "Spätaussiedler" which also required applicants from non-former USSR countries to substantiate

their being or formerly having been subject to discrimination due to their German ethnicity (see BMI/BAMF 2001: 50). In case of ethnic German residents of the former Soviet Union, discrimination as a result of the Second World War is considered refutable. It became possible to precisely record the migration flows from the Russian Federation by clearly distinguishing the numbers of immigrants from each of the former Soviet Union member states. Based on these records about 700,000 Spätaussiedler came to Germany between 1992 and 2009; the numbers dropped significantly after 2006 (see Chart 1 and BMI/BAMF 2011: 56).

**Chart 1: Immigration of (Spät-) Aussiedler and their family members from the (former) Soviet Union, 2000-2010**



The population statistics usually record immigrated (Spät-)Aussiedler as Germans. When the Spätaussiedler enter Germany they hold an admission notice (Aufnahmebescheid) or a notice that they will be considered as family members (Einbeziehungsbescheid), but are not yet German citizens. Therefore the general requirements under the Residence Act apply: prior to entering the country a residence title/visa must be issued and there is no special process for this type of visas. Visa applications by Spätaussiedler holding an admission notice according to the Federal Expellees Act do not require the consent of the German foreigners authorities (sec. 33 Residence Ordinance). Thus the German mission is the only one to examine the entitlement to an entry visa. As part of the application process the successful completion of a language test is required or alternatively an interview in German or a dialect of the ethnic Germans in Russia that deals with simple situations of daily life. The purpose of this is to establish that the applicant has sufficient knowledge of German language before he or she travels to Germany, because otherwise the admission notice would become ineffective.<sup>119</sup> Next to family members who are spouses or direct descendants of

<sup>119</sup> See Federal Office of Administration, "Informationen für Personen, die einen Aufnahme-/ Einbeziehungsbescheid erhalten haben" at [http://www.bva.bund.de/eln\\_092/nn\\_376890/DE/Aufgaben/Abt\\_\\_III/Spaetaussiedler/AntraegeMerkblaetter/InfowennABSerhalten.html?\\_\\_nnn=true](http://www.bva.bund.de/eln_092/nn_376890/DE/Aufgaben/Abt__III/Spaetaussiedler/AntraegeMerkblaetter/InfowennABSerhalten.html?__nnn=true) (downloaded on 26 August 2011) and BMI/BAMF 2011: 50 et seq.

Spätaussiedler and as such eligible for German citizenship, there are other family members entering the country who are not included in the admission notice. In recent years their percentage ranged between 5 per cent and 15 per cent.<sup>120</sup> Most of the foreign nationals who immigrated as such family members can subsequently acquire German nationality by naturalisation.

Family members entitled to subsequent immigration receive a 90 day national visa from the mission to enter the country together with the Spätaussiedler. No consent from the foreigners authorities is required for issuing the visa; but once in Germany the visa must be transferred into a residence permit for joining family members by the competent foreigners authorities within its period of validity (see BMI/BAMF 2011: 52).

### **Migration for humanitarian or political reasons, or reasons based on international law**

Since 1990 the percentage of asylum-seekers from the Russian Federation among all asylum-seekers in Germany has remained relatively low. A total of 30,880 Russian nationals sought protection in Germany between 1995 and 2010 (3% of all first-time applications during this period). The numbers were highest in 2001 and 2002 with 4,523 and 4,058 applications resp. Since 2000 the statistics distinguish the asylum-seekers from the Russian Federation also by ethnicity. These statistics indicate a relatively high proportion of Chechen asylum-seekers, the percentage ranges between 36.3 per cent (2000) and 49.8 per cent (2004) (BMI/BAMF 2011: 110). The most recent figures show that 45.9 per cent (2009) or 42.8 per cent (2010) first-time applications were made by Chechens. An analysis of the asylum-seekers from the Russian Federation by religion indicates a majority of Muslims. In 2009, 71.5 per cent of the asylum-seekers were Muslims (2008: 69.3%).

### **Admission of Jewish immigrants**

Just as the liberalisation of travelling requirements in Eastern Europe at the beginning of the 1990s had accelerated the exit of ethnic Germans, it also increased the influx of Jewish migrants to Germany, especially from the Soviet Union and its successor states. The emigration was mainly triggered by the economic crisis and anti-Semitism in Russia. The terms for the immigration of Jews to the GDR had been very generous already in 1990. At the time the GDR was on the verge of collapsing, but these regulations were adopted by the unified Germany. In 1991 the heads of government of the Federation and the Federal States adopted a resolution to treat Jewish immigrants according to the 1980 Act on the Admission of Refugees in the Framework of Humanitarian Relief which meant simplified entry applications as part of the visa process and eligibility for indefinite permits for residence and employment. Eligible are persons who are themselves of "Jewish nationality" or who have at least one Jewish parent (the religious affiliation of Jews was entered as "nationality" in the identification documents of the Soviet Union and its successor states). By the time the Act on the Admission of Refugees in the Framework of Humanitarian Relief became ineffective in 2005 about 200,000 Jewish immigrants had come to Germany under this regime (see Haug/Wolf 2006: 70).

<sup>120</sup> See Federal Statistical Office, Statistical Yearbook 2010, Wiesbaden 2011, p. 53.

Since then the immigration of Jews from the former Soviet Union (with the exception of the Baltic States) is governed by sec. 23 (2) of the Residence Act. The Act provides that the Federal Ministry of the Interior may, in consultation with the supreme Land authorities, order certain categories of foreigners to be granted approval for admission by the Federal Office for Migration and Refugees. Once the BAMF has issued an admission notice the visa must be issued; the missions will then only verify that the notice is not obviously unlawful. According to a resolution by the Conference of the Interior Ministers, since 24 May 2007, Jewish immigrants must prove during the visa application process that they can pay for their livelihood themselves and that they have basic knowledge of the German language. After this revision of the rules the numbers of Jewish immigrants that had been shrinking since 2004 already decreased even further (see Schneider 2009: 30, 35, 45).

### **Immigration for the purpose of education, economic activity and family reunification**

Immigration of Russian nationals for other purposes (especially economic activity, family reunification and education) has slightly fallen since the early 2000s. The numbers of students from the Russian Federation enrolled in German universities have remained relatively constant in recent years. In the 2009/2010 winter term students of Russian descent were the third strongest group (12,652) of foreign students in Germany, only outnumbered by Chinese and Turkish nationals (5.2% of all foreign students). When considering only the non-nationals who acquired their higher education entrance qualifications outside Germany (Bildungsausländer) and came to Germany only to attend university, Russian nationals constitute the second largest group: 9,754 of the 181,249 Bildungsausländer (5.4%) come from the Russian Federation.<sup>121</sup> The numbers of first semester students from Russia (as well as from most other Central and Eastern European States) have significantly gone up after 1999; the Russian student population in Germany is characterized by a disproportionately high number of women (see BMI/BAMF 2011: 62 et seq.).

Most of the Russian nationals who are in Germany for employment purposes are skilled or low-skilled immigrants. According to the data of the Central Register of Foreigners 1,535 workers of Russian nationality immigrated in 2009 which was slightly less than in the previous years (2008: 1,802; 2007: 1,827). Highly-qualified or self-employed persons account for less than 5 per cent each (see Parusel/Schneider 2010: 107 et seq.). The immigration ground of family reunification is more significant in numbers, but also declining. While 4,771 Russian nationals came to Germany in 2006, their number had fallen to 3,084 by 2009 (-35%, see BMI/BAMF 2011: 286).

### **Residency by nationals from the Russian Federation**

At the end of the year 2010, 191,270 Russian nationals were residing in Germany according to the Central Register of Foreigners. Over half of them (104,129) had an indefinite residence title, 47,583 (24.9%) a (limited) residence title as family members, 8,341 (4.4%) were in education and 4,654 (2.4%) working. 5,230 persons (2.7%) received residence permits for

<sup>121</sup> Federal Statistical Office, Special Series 11, volume 4.1, 2009/2010 university winter term, p. 55.

humanitarian or political reasons, or reasons based on international law. 1,517 (0.8%) had a permission to reside during an on-going asylum procedure and 2,864 (1.5%) were staying in Germany based on a temporary suspension of deportation.<sup>122</sup>

### 4.1.3 Agreements between Germany and the Russian Federation

#### Visa facilitation agreement

On 10 December 2003 the German government and the government of the Russian Federation signed a bilateral agreement on the facilitation of travel between the countries by nationals of the Federal Republic of Germany and of the Russian Federation. Within the scope of existing law visa facilitations were agreed for the following categories of travellers: participants in government programmes for cultural exchange and cultural exchange programmes between German and Russian twin cities; creative artists when travelling in their capacity as such; participants in international sports events; scientists; participants in youth and school exchange programmes; university students and postgraduates; teachers of German and Russian; businessmen; persons holding public office at the national, regional or federal levels; staff of consulates and diplomatic missions; members of official delegations; persons that need to travel for urgent personal reasons; disaster and humanitarian relief workers; staff for medical and nursing institutions. Depending on the traveller category these facilitations relate to the duration of the visa, its transfer into a residence permit, reduction or waiver of fees, multiple entries and speed of processing.<sup>123</sup> Since 1 January 2007 these regulations have been supplemented by the Visa Facilitation Agreement the EU signed with the Russian Federation in May 2006 (see section 2.2). Therefore, only those parts of the bilateral German-Russian agreement are applicable that are not covered by the EU Visa Facilitation agreement.

#### EU Readmission Agreement

Simultaneously to the Visa Facilitation Agreement the European Community also made a Readmission Agreement with the Russian Federation. Therefore a bilateral “Protocol of Implementation between the Governments of the Federal Republic of Germany and the Russian Federation for the Implementation of the Agreement between the European Community and the Russian Federation on Readmissions of 25 May 2006” was signed on 19 July 2011.

#### Youth exchange agreements

In December 2004 the governments of the Federal Republic of Germany and the Russian Federation made an agreement on cooperation in youth policy,<sup>124</sup> that refers directly to the German-Russian visa facilitation agreement. In the agreement on youth exchange Germany and the Russian Federation commit to support in every way the promotion of mutual relationships and friendly relations between the youth of both countries by encounters, meetings and more intense cooperation on the basis of reciprocity. The agreement also provides that both countries will establish national coordination offices for its execution. One of the tasks of these offices is to support youth exchange organisations and institutions

122 Federal Statistical Office, Special Series 1, volume 2, p. 78 et seq.

123 For details see art. 2-14 of the Visa Facilitation Agreement, see footnote 114.

124 Agreement between the Governments of the Federal Republic of Germany and the Russian Federation on youth-policy cooperation of 21 December 2004.

with the application of visas. The Deutsch-Russischer Jugendaustausch gGmbH located in Hamburg has been acting as the German coordination office since February 2006 and cooperates closely with its Russian counterpart.<sup>125</sup>

### **Other bilateral agreements**

Further German-Russian agreements impacting bilateral travel relate to cooperation and partnership in the educational and cultural fields<sup>126</sup> and language teaching for German and Russian in the respective other country.<sup>127</sup>

The Agreement on Cultural Cooperation represents the legal basis for the cultural relations between the two states. Among other things the agreement provides for the placement and deployment of teachers, lecturers, and advisors, the participation of teachers and students in educational events in the other country as well as for the exchange of scientists, teachers, postgraduates, pupils and students, education experts, university administrators, trainers and apprentices. The contracting states commit to award scholarships for initial and further training or research for study-related stays in the partner country and to use their best efforts to “facilitate obtaining residence permits and the general conditions for staying in the host country” (art. 5 of the agreement).

In the agreement on language teaching both governments state that they support the “acquisition of language skills and of suitable communication skills for the users’ respective vocational and private needs in the language of the other contracting party by a maximum number of population groups, foremost by students in schools and universities”. This shall be achieved by exchanges of qualified experts, scientists and educationalists, of students learning German or Russian respectively to improve their training as well as of teachers for study visits, advanced training and research projects. Further the agreement promotes the organisation of summer language courses for skilled workers and young people and the intensification and development of direct partnerships including an exchange element.

#### **4.1.4 Further projects and activities**

Germany and the Russian Federation are cooperating in certain aspects of migration and border controls. One part of the bilateral assistance for training and equipment was, for instance, the agreement of cooperation between the border police in the form of training courses and seminars and equipment to discover forged or counterfeit documents. Furthermore the working levels sometimes meet to exchange experience.

125 See German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, press release no. 191/2007 of 14 May 2007.

126 Agreement between the Governments of the Federal Republic of Germany and the Russian Federation on Promoting Cultural Cooperation of 16 December 1992 (Entry into force on 8 July 1993), German Federal Law Gazette II, 1993, p. 1256-1258.

127 Agreement between the Governments of the Federal Republic of Germany and the Russian Federation on the Teaching of German Language in the Russian Federation and of the Russian Language in the Federal Republic of Germany of 9 October 2003.

### 4.1.5 Statistics

The entry of Russian nationals to Germany has substantially decreased between 2003 and 2010. While there still were 31,776 immigrants/entries in 2003, the number was merely 16,063 in 2010 (see Table 1). When analysing the volume of immigration not by nationality, but by country of origin the reduction is striking as well (31,009 immigrants in 2003, 15,320 in 2010).<sup>128</sup> Over the reporting period Germany also recorded a falling of the number of asylum-seekers (first-time applications) from the Russian Federation. While there had been 3,383 first-time applications in 2003, there were only 772 in 2007. After 2007 a slight increase was recorded.

**Table 1: Russian Federation - no. of visas issued, no. of entries and applications for asylum 2003-2010\***

	2003	2004	2005	2006	2007	2008	2009	2010
<b>Visas processed (total)</b>	403,029	374,968	358,872	354,966	399,363	436,558	367,850	390,242
<b>Visas issued (total)</b>	381,001	359,889	346,666	342,575	370,215	398,435	339,170	361,746
<b>Visas issued (only Type C)</b>	325,137	310,167	309,711	323,576	338,023	384,628	326,994	350,002
<b>Visas issued (only Type D)</b>	53,280	47,493	34,773	16,838	14,571	12,506	11,381	11,575
<b>No of entries (by country of origin)</b>	31,009	27,663	22,392	16,425	14,960	14,316	14,880	15,320
<b>No of entries (by nationality)</b>	31,776	28,464	23,078	17,081	15,770	15,052	15,652	16,063
<b>First asylum applications</b>	3,383	2,757	1,719	1,040	772	792	936	1,199

Source: Federal Foreign Office / Federal Statistical Office / BAMF

\* In contrast to the figures for the other years the total number of processed visas in 2005 does not include the rejected Type D visas.

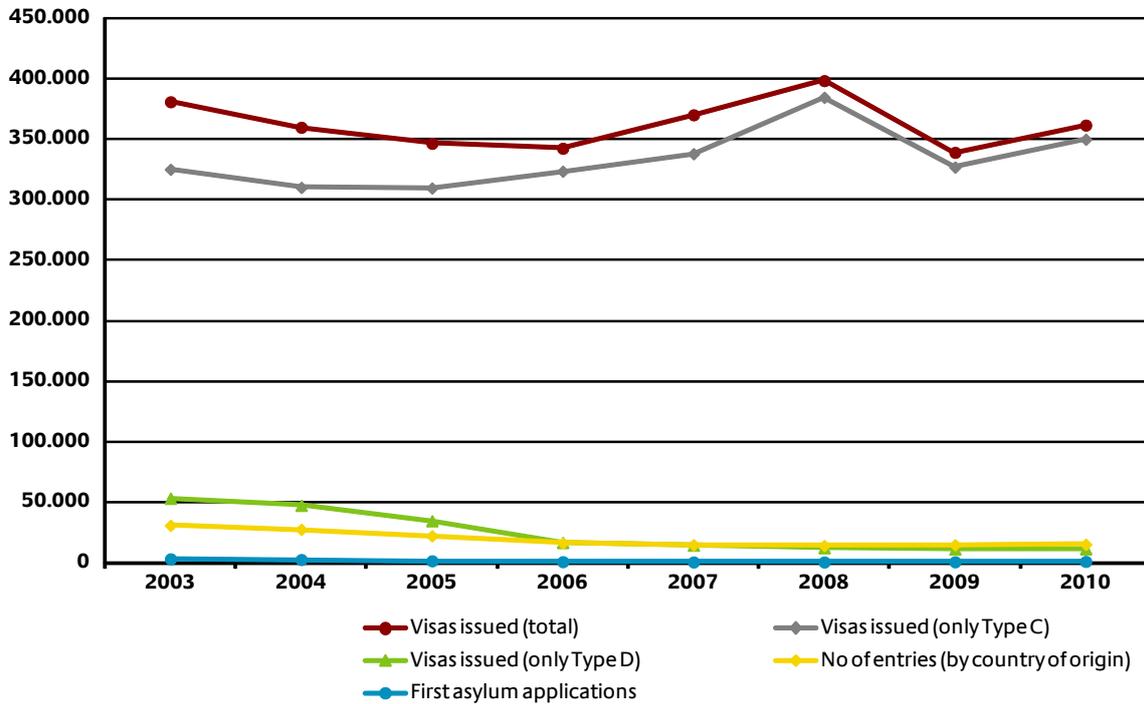
Chart 2 illustrates the decrease in entries correlates roughly to the decrease in the number of Type D visas issued during the period of observation.

However, considering the overall number of Type C visas issued for short-time travel, that constitute the vast majority (96.7% in 2010), visa policy does not seem to affect registered immigration. Although between 2006 and 2008 the number of Type C visas issued increased significantly, influx of migrants remained static. As has been noted previously, a variety of factors affects immigration figures (see 1.2). In general, however, these figures indicate that Type C visas serve their purpose and do not provide a channel for migration. The possibility remains, that the increase in 2007 was related to the entry into force of the visa facilitation agreement between the EU and the Russian Federation (see section 4.1.3). The decline of visas issued in 2009 might be caused by global economic crises, which had a strong impact on the Russian economy as well. The growth in tourism (see section 4.1.1) is accompanied by an increase in issued Type C visas between 2009 and 2010.

Evidently, the statistics on the granting of visas is co-determined by a number of factors, the impact of which may not be measured separately.

<sup>128</sup> The figures by countries of origin relate to the entries from the Russian Federation which may be Russian citizens or other nationals, but not German citizens.

**Chart 2: Russian Federation - no. of visas issued, no. of entries and first applications for asylum 2003-2010**



Source: Federal Foreign Office / Federal Statistical Office / Federal Office for Migration and Refugees (compiled by the authors)

## 4.2 Case study 2: Germany - Serbia

### 4.2.1 Rationale for the selection of Serbia for the case study

Other than the Russian Federation's selection for the case study, Serbia is not selected for the country's quantitative importance regarding the numbers of visas issued and the number of migrants to Germany. In fact, recent changes in visa policy concerning Serbia and other states of the West Balkans play a decisive role.

From 2009 to 2010 immigration of Serbian nationals to Germany has more than doubled from 7,024 to 16,666. This development puts Serbia in eighth place regarding the number of migrants by nationality among countries not under the visa obligation. In 2009 the German embassy in Belgrade issued 40,524 Type C visas and 2,722 Type D visas and thus Serbia is ranking third among the ten most important third countries by numbers of visas issued by German missions. But these dimensions do not even come close to the numbers handled by the missions in Moscow, Kiev, Minsk, Istanbul or Beijing. In 2010 the number of visas processed in Belgrade dropped drastically against the previous year, because as of 19 December 2009 Serbians were allowed to enter the Schengen states without a visa when holding a biometrical passport. Consequently the Belgrade embassy only issued 4,671 visas in 2010.<sup>129</sup>

<sup>129</sup> After the visa requirement had been lifted for Serbian nationals most of these probably went to nationals of other states who require a visa and were staying in Serbia, unless they were Type D visas. The lifting of the visa requirement for the Schengen states does not affect the need to have a Type D visa for a longer stay.

But the lifting of the visa requirement was precisely the reason for selecting Serbia for the present case study. It is very interesting to observe the quantitative development of registered entries of Serbian nationals to Germany in this case, because the visa requirement was abolished towards the end of 2009 and prior thereto a visa facilitation agreement had been in place since 2008. Thus Serbia is a good example to analyse whether the facilitation and ultimately the abolition of the visa requirement had a short-term impact on immigration and if so, which.

#### **4.2.2 Migration between Serbia and Germany: Historical overview Serbian employees during the recruitment period and associated family migration**

An essential link between Serbia and Germany in regards of migration movement can be traced back to the migration of so-called “guest workers”. Labour shortages in Germany and correlating economic stagnation in their home country encouraged many citizens of the Socialist Federal Republic of Yugoslavia during the 1960s and 1970s to emigrate in search of employment (see Dragisic 2010). In total, more than half a million people used the bilateral recruitment since its signing in 1968 to find temporary employment in Germany. About a third of them came from former Serbia. Since the recruitment stop in 1973, roughly a quarter of the labour migrants with Yugoslavian citizenship returned to their countries of origin (see GTZ 2007: 15). The number of jobholders from socialist Yugoslavia in Germany declined by 40 per cent between 1972 and 1984 (see Fassmann/Münz 2000: 69). Yet due to family reunification, the flow of migration between Serbia and Germany did not cease; while since the end of the 1980s, immigration to Germany saw another increase.

#### **Collapse and consolidation of the state territory**

The violent collapse of the multiethnic state of Yugoslavia in the early nineties marked the beginning of a long series of armed conflicts that changed the territory of the state of Serbia and the line of the borders several times as different peoples or ethnic groups were seeking autonomy from the centralized state. Therefore it has to this date remained difficult to record exact statistics on the migration of persons who are clearly of Serbian descent: the Federal Republic of Yugoslavia (also “rump Yugoslavia”) of 1992 and the Confederation of Serbia and Montenegro between 2003 and 2006 were home to several ethnic groups including Serbs, Montenegrins, and Kosovars. Individuals figuring in the statistics as Yugoslavian or Serbian-Montenegrin nationals based on old identity documentation, are not necessarily nationals of today’s Serb Republic which only emerged after the independence of the former partial state Montenegro (2006) and of the former Serbian province Kosovo (2008).

Further it is important to note that the term “Serbian” does not necessarily coincide with a person’s ethnicity. Also Albanians and Roma are living in Serbia, these are groups who figure prominently among the immigrants who come for humanitarian reasons (e.g. asylum-based immigration) and therefore the BAMF started in 1995 to disaggregate the asylum-seekers from Serbia by ethnic groups for the statistics.

### **Migration for humanitarian or political reasons, or reasons based on international law**

The collapse of Yugoslavia in the early nineties and the wars in the Western Balkans fuelled the number of asylum-seekers in Germany (see Fassmann/Münz 2000: 70). The number of asylum-seekers (first-time applications) from “rump Yugoslavia”, i.e. Serbia and Montenegro, peaked in 1992 at 115,395. In addition, there were several hundreds of thousands of refugees from Bosnia and Herzegovina. Many of the latter were given temporary shelter without first having to go through regular asylum proceedings (see Beauftragte für Migration, Flüchtlinge und Integration 2006: 40). By 1998 many of them had returned or had been repatriated.

Most of the asylum-seekers from Serbia and Montenegro between 1995 and 1999 were of Albanian ethnicity. This does not include another 14,796 persons from Kosovo who had been evacuated from Macedonia during the last violent episode in 1999 and thereafter accepted in Germany as displaced civil war refugees as an act of humanitarian relief. Already three years later most of them had returned voluntarily, while a small number had to be returned forcefully. After 2000 the number of asylum applications by the ethnic Roma minority started to increase, these have been shown separately in the statistics since 1999. In 2009 their applications accounted for 66.8 per cent of all Serbian applications (see BMI/BAMF 2011: 109). Overall, the number of Serbian asylum-seekers has progressively diminished since 1992, the lowest number ever were 581 applications by asylum-seekers of Serbian origin in 2009 (see BMI/BAMF 2011: 276 et seq.), however, in 2010 the number of Serbian asylum-seekers soared again; the BAMF recorded 4,978 first asylum applications. These were mainly issued by the members the Roma and Ashkali minorities. The increase is generally linked to the lifting of the visa requirement in December 2009 and the ensuing ease of travelling to the EU for Serbian nationals. Not only Germany, but also other EU Member States, saw the numbers of Serbian asylum-seekers rise (see Schumann 2010: 25).<sup>130</sup> According to a Council resolution regarding the waiving of the visa requirement for Albania and Bosnia and Herzegovina, the EU Commission established a monitoring mechanism to consistently observe the future effects of visa-free travel for the Western Balkan countries and the political action taken there.<sup>131</sup>

130 For instance, first asylum applications by Serbian nationals in Sweden increased significantly as well (2009: 565; 2010: 6,210) as they did in Belgium (2009: 735; 2010: 1.890) (Source: Eurostat). ESI (2011) analysed why the increase after lifting the visa requirement was so strong particularly in Germany, Belgium Sweden. The authors conclude that the reason is the relatively long duration of the asylum procedure in these countries, a period during which the asylum-seekers get housing, clothing, food, medical care and free schooling for their children. This is an attractive perspective for the destitute members of the Roma minority in Serbia and Macedonia, even though their applications will be rejected and they will have to return home to their countries of origin. The EU Member States with faster processing times are much less affected by higher numbers of asylum-seekers. To prevent a further influx of asylum-seekers from Serbia and Macedonia the authors suggest faster processing of applications and cutting or abolishing assistance for voluntary return. Both of these measures have already been adopted in Germany in 2010. However, one should not question the visa-free status for the Western Balkan countries, because overall it had more advantages than disadvantages, see ESI 2011: 30 et seq.

131 See Commission Staff Working Paper on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC (2011) 695 final.

The previously noted increase of entries from Serbia in 2010 is closely related to figures on asylum applications. Yet these figures do not imply an increase in long-term immigration. Though the overall statistics on newly arrived immigrants automatically include asylum seekers (see section 1.2), there is a very low probability of positive decisions.<sup>132</sup>

### **Immigration and residence by Serbian nationals**

An assessment of the net migration by Serbian nationals, i.e. the totals of immigration and emigration of these to/from Germany, shows a negative migration balance for 2008; almost 1,600 less people immigrated than emigrated (5,396 entries and 7,019 exits). In 2009, 7,024 exits and 7,730 entries were recorded; a slightly positive balance (see BMI/BAMF 2011: 28). Unlike previous years, in 2010 net migration of 5,984 Serbian nationals could be noted: while 16,666 Serbian nationals immigrated to Germany, merely 10,682 people departed (see section 4.2.5).

At the end of the year 2010, 179,048 Serbian nationals were residing in Germany according to the Central Register of Foreigners. Another 93,013 individuals still had the nationality of former Serbia and Montenegro. Yet another 108,797 are nationals of the Republic of Kosovo and 12,390 were Montenegrins. Therefore all in all almost 400,000 people are living in Germany that can be associated with one of the successor states of the state of Serbia and Montenegro that became defunct in 2006 (between 1992 and 2003: Federal Republic of Yugoslavia).

Almost half of the Serbian nationals in Germany (86,580 individuals) have an indefinite residence title, 30,085 (16.8%) a residence permit for family reasons (of limited duration). Only a minor group (654 individuals or 0.4%) were in Germany for educational reasons; 2,486 (1.4%) had a residence permit for employment. In contrast thereto 21,683 persons (12.1%) had residence permits for humanitarian or political reasons, or reasons based on international law. 2,863 (1.6%) had a permission to reside during an on-going asylum procedure and 7,965 (4.4%) were residing in Germany based on a temporary suspension order of deportation.<sup>133</sup>

### **4.2.3 Agreements between Germany and Serbia**

#### **Readmission agreement**

On 16 September 2002 the government of what was then the Federal Republic of Yugoslavia and of the Federal Republic of Germany signed a bilateral Return and Readmission Agreement.<sup>134</sup> On 1 April 2003 the agreement became effective for the Federal Republic of Yugoslavia's successor state, which was identical in territory and for the purposes of public law, the Confederation of Serbia and Montenegro, with the exception of the Autonomous

132 Apparently, in 2010 the protection rate of decisions on asylum applications of Serbian nationals was below one per cent (see BAMF 2011: 52). Approximately two thirds of the Kosovar nationals obliged to leave Germany are members of the Roma minority (see Policy Report 2010 of the German NCP of the European Migration Network (EMN), Federal Office for Migration and Refugees, p. 40).

133 Federal Statistical Office, Special Series 1, volume 2, 2010, p. 78 et seq.

134 Agreement between the government of the Federal Republic of Germany and the government of the Federal Republic of Yugoslavia on the return and admission of persons staying in the territory of the other state who do not comply with the requirements for entry and residence of 16 September; see publication of 30 October 2002, German Federal Law Gazette II No. 41 of 5 November 2002, p. 2762.

Republic of Kosovo under UN administration.<sup>135</sup> After June 2006 the agreement continued to be applied for the separate independent states of Montenegro and Serbia, except for Kosovo which then formed a part of the territory of the Serb Republic. Since 2007 there have been additional Readmission Agreements between the EU and Montenegro and the Serb Republic resp., both of which became effective on 1 January 2008.<sup>136</sup> For the agreement with Serbia an “Implementation Protocol between the government of the Federal Republic of Germany and the government of the Republic of Serbia for the Agreement between the European Community and the Republic of Serbia on the readmission of individuals staying unlawfully” was signed on 29 March 2011. This agreement entailed, among other things, provisions regarding designated border crossing points as well as the competent authorities for conducting readmissions.

On 14 April 2010 the Federal Republic of Germany and the Republic of Kosovo, which became independent in 2008, concluded a separate readmission agreement which went into force on 1 September 2010.<sup>137</sup>

#### **Agreement on contract workers**

An agreement on the employment of contract workers also dates back to the times of the Federal Republic of Yugoslavia, it has been applied since July 2001 and continues to apply for the successor states Montenegro and Serbia. Under such contract worker agreements companies of the partner states of the Federal Republic of Germany may deploy workers to Germany for a limited period (as a rule for no more than two years) and in cooperation with a German company (see Parusel/Schneider 2010: 42 et seq.). In this case a contract worker card substitutes the consent to issuing a residence title. The card is applied for with the Federal Employment Agency (Zentrale Auslands- und Fachvermittlung in Stuttgart; ZAV) where the names of the foreign and the German companies and the work to be performed for a certain trade have to be specified and further documents submitted. However, a visa is still required to enter the country. The German missions in Podgorica or Belgrade will issue the visa when the contract worker card (ZAV’s consent to the residence title) is submitted, which replaces the approval by a German foreigners authority pursuant to sec. 35 (1) Residence Ordinance. Prior to the visa’s expiry a residence permit must be applied for with the competent foreigners authority in Germany.<sup>138</sup>

By virtue of this agreement a growing number of Serbian and Montenegrin nationals have worked in Germany as contract workers. Their numbers have almost tripled in the course of the last five years. In 2005 the number of contract workers was 450, in 2009 there were 1,136 and in 2010 1,530 (see also footnote 96).

135 The German government and the United Nations Interim Administration in Kosovo (UNMIK) concluded several Memoranda of Understanding about the readmission of irregular migrants from the Autonomous Province of Kosovo formally belonging to the Serb Republic and under UN-Administration from 1999 until independence in 2008 according to UN Security Council Resolution 1244/99.

136 OJ of the European Union L 334 of 19 December 2007, p. 26-64.

137 German Federal Law Gazette 2010, II no. 9 of 29 April 2010.

138 See “Employment of foreign workers from countries outside the European Union in the Federal Republic of Germany under work contracts. Requirements, admission procedure”, Information leaflet 16 (status: May 2011), Federal Employment Agency, Nuremberg (in German).

### **Social security agreement**

In addition to the above Germany also signed social security agreements with both Serbia and Montenegro. These agreements are relevant when benefits under pension schemes or statutory accident insurance have to be transferred, e.g. for returning workers of Serbian or Montenegrin nationality or when Germans move abroad. These agreements also cover the benefits for contract workers for illness or occupational accidents.

### **Partnerships and agreements in economic and commercial relations and tax policy**

The Federal Republic of Germany and the Serb Republic are important partners in several sectors of industry. Related to the overall volume of trade Germany is Serbia's most important commercial partner – ahead of Russia and Italy; the exchange of goods between Serbia and Germany consists of about EUR 1.3bn in imports by Serbia and exports in the order of EUR 760 million in 2010.<sup>139</sup> The bilateral economic relations date back to agreements made in 1952 and 1969. Further foundations for the trade relations are Regulations of the Council of the European Union from 2000 and a Council of Europe Regulation of the same year plus special measures introducing the trade preferences related to the Stability Pact (see section 4.2.4). An agreement between the then Socialist Federal Republic of Yugoslavia and the Federal Republic of Germany on avoiding double taxation of incomes<sup>140</sup> entered into force on 1 January 1989 and is fully effective nowadays for the bilateral relations with the Serb Republic and Montenegro.<sup>141</sup>

#### **4.2.4 Further projects and activities**

##### **Political relations and development projects**

Within the scope of a common European policy to strengthen Serbia's stability by economic and political reforms and thus its rapprochement to the EU, Germany is assisting the Serb Republic by running several projects of the "Pact for Stability and Growth in South-eastern Europe" (since February 2008: "Regional Cooperation Council"). The projects are funded by the Federal Foreign Office and usually executed by Serbian NGOs with the aim to support the democratic forces' efforts at reform and to promote the rapprochement to the EU, specifically in the fields of legal and administrative reforms, democratisation and reforms in the police, the army, and the media; another project focus are minority and human rights issues.<sup>142</sup> The EU granted Serbia the status of a "potential accession candidate"; on 22 December 2009 Serbia applied to join the EU. On 14 June 2010 the EU Member States initiated the ratification of the Stability and Association Agreement made in 2008. Within the scope of the Commission's annual review of the progress made in the accession process

139 Source: Statistics Office of the Republic of Serbia, quoted from the Serbian Chamber of Economics at <http://www.pks.rs/Default.aspx?tabid=3097> (downloaded on 24 August 2011).

140 Agreement between Federal Republic of Germany and the Socialist Federal Republic of Yugoslavia on avoiding double taxation of incomes and assets of 26 March 1987, German Federal Law Gazette II no. 29 of 8 September 1988, p. 745-760, entered into force on 1 January 1989 and remains fully effective in the current bilateral relations with the Serb Republic and Montenegro.

141 Exchange of notes: Agreement between the government of the Federal Republic of Germany and the government of Montenegro on the continuation of the effectiveness of the bilateral agreement made between the Federal Republic of Germany and the Socialist Federal Republic of Yugoslavia, resp. the Republic of Serbia and Montenegro of 31 March 2011.

142 See [http://www.auswaertiges-amt.de/DE/Aussenpolitik/Laender/Laenderinfos/Serbien/Bilateral\\_node.html](http://www.auswaertiges-amt.de/DE/Aussenpolitik/Laender/Laenderinfos/Serbien/Bilateral_node.html) (downloaded on 24 August 2011).

of the West Balkan countries, Turkey and Iceland, it published an assessment about Serbia's readiness for opening negotiations on EU membership. According to this report, the Commission noted substantial progress about Serbia normalizing her relations with Kosovo, which is according to the "Stabilisation and Association Process" one of the crucial preconditions for launching negotiations on accession.<sup>143</sup>

Since 2000 Germany has provided about EUR 1.1bn for bilateral development work with Serbia. The support shall help Serbia in its approximation to the EU, strengthen its market economy, democracy, and ecology as well as cross-border regional cooperation. The cooperation focuses on improving public infrastructure, economic development, municipal government assisting young people, e.g. by youth exchange projects.<sup>144</sup>

### **Visa policy and border police cooperation**

Against the background of rising numbers of asylum-seekers from Serbia in 2010 (see above) the Serbian government announced several measures to limit the abuse of visa liberalisation and to safeguard the achieved freedom to travel, which were implemented in 2011. These include the establishment of an inter-ministerial commission for monitoring visa liberalisation, combating document forgery, control of travel agencies and police action against human traffickers, enhanced border controls at the borders with Hungary and Croatia, media campaigns, improved cooperation with transit countries and efforts for improving the situation of the minorities. During talks with the Deputy Prime Minister and Interior Minister of Serbia Ivica Dačić in Belgrade at the end of March 2011 the Parliamentary State Secretary in the Federal Ministry of the Interior Ole Schröder said that the Federal Government welcomed Serbia's initiatives to prevent the abuse of the visa waiver; Germany will continue to suitably support Serbia in its efforts in the future. During the visit a document testing device for the border police was presented as part of the equipment aid.<sup>145</sup>

Just as for the Russian Federation (see section 4.1.4) the practical cooperation between the border police of Germany and Serbia includes bilateral training in the form of courses and seminars, and equipment aid for recognizing forged and counterfeit documents.

143 See Communication from the Commission to the European Parliament and the Council, Commission Opinion on Serbia's application for membership of the European Union, COM (2011) 668 final, 12 October 2011, p. 12.

144 See footnote 142.

145 "Parl. State Sec. Schröder visits Serbia", Release by the Federal Ministry of the Interior of 28 March 2011 (in German). ([http://www.bmi.bund.de/SharedDocs/Kurzmeldungen/DE/2011/03/PStS\\_Belgrad.html?nn=366856](http://www.bmi.bund.de/SharedDocs/Kurzmeldungen/DE/2011/03/PStS_Belgrad.html?nn=366856); downloaded on 16 August 2011).

#### 4.2.5 Statistics

As shown by Table 2 the number of visas issued by the German missions in Belgrade (Serbia) and Pristina (Kosovo) has fallen since 2008.<sup>146</sup> While 33,178 visas (all types) were issued in 2010, the number in 2007 had still amounted to 75,529, i.e. a reduction by 56.1 per cent. The drastic decline from 2009 to 2010 is probably due to the lifting of the visa requirement for Serbian nationals that became effective at the end of 2009. Only a minor part of the reduction relates to Type D visas, i.e. those for longer stays that are governed by national law. Also the number of Type D visas issued decreased between 2007 and 2010, but merely by 3.4 per cent. To make the data more comparable and the table easier to read, no distinction is made between Serbia and the Republic of Kosovo in Table 2, despite Kosovo's independence in 2008. Annex I includes a detailed table that specifies each of the data.

**Table 2: Serbia (incl. Montenegro and Kosovo) - no. of visas issued and no. of entries, 2003-2010\***

	2003	2004	2005	2006	2007	2008	2009	2010
<b>Visas processed (all types, incl. Kosovo)</b>	97,228	96,349	80,553	83,755	94,398	89,529	71,526	<b>30,086</b>
<b>Visas issued (all types, incl. Kosovo)</b>	87,979	77,995	62,836	70,582	75,529	72,389	57,635	<b>33,178</b>
<b>Visas issued (only Type V, incl. Kosovo)</b>	-	66,553	52,716	56,040	68,485	63,796	50,841	<b>15,241</b>
<b>Visas issued (only Type D, incl. Kosovo)</b>	19,956	11,604	9,373	7,678	6,516	6,684	6,495	<b>6,292</b>
<b>Entries by country of origin</b>	21,754	20,628	16,963	14,654	10,824	8,977	14,395	<b>25,044</b>
<b>Entries by nationality</b>	22,751	21,691	17,514	15,204	12,382	12,786	14,835	<b>16,666</b>
<b>First asylum applications</b>	4,909	3,855	5,522	3,237	1,996	1,645	2,038	<b>6,651</b>

Source: Federal Foreign Office / Federal Statistical Office / BAMF

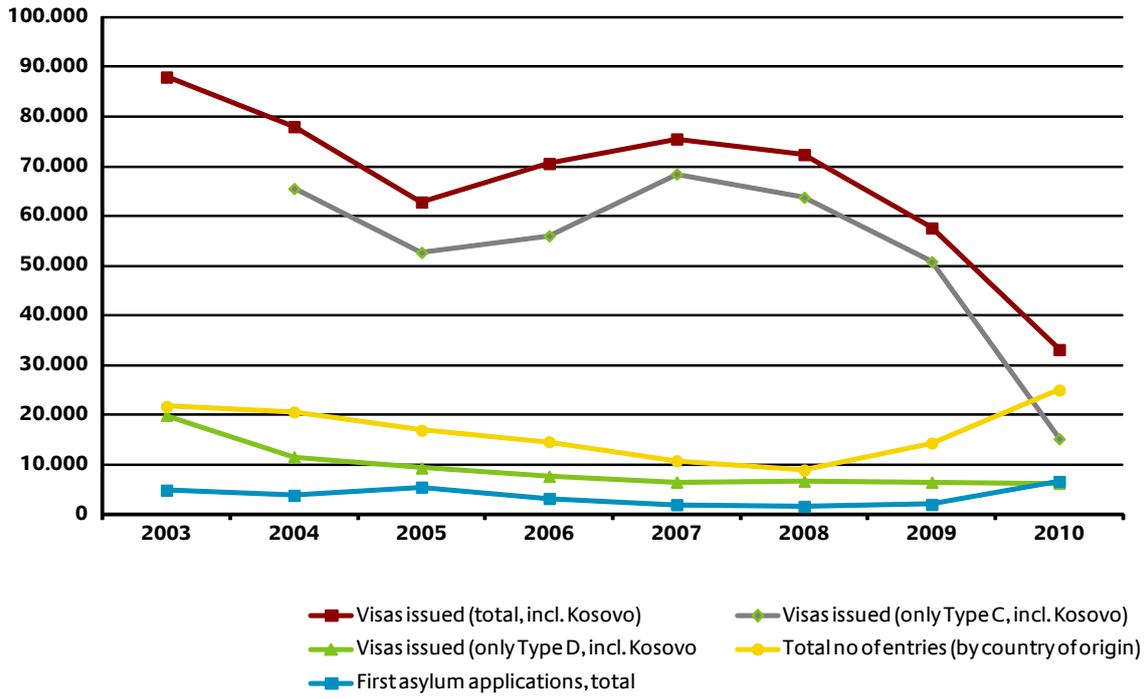
\* The number of visas issued in 2010 is higher than the number of visas processed, because a relatively high number of visas with geographical restrictions were issued during this year. These are recorded in the processing statistics, but not in those relating to the visas issued.

A comparison of the number of registered entries from Serbia and Kosovo (entries by country of origin) from 2003 (21,754) to 2008 (8,977) also indicates a reduction. In 2009 the number of entries went up by 60.3 per cent against the previous year, and in 2010 yet again by another 74.0 per cent against 2009. At least part of this strong increase will be due to the lifting of the visa requirement for Serbian nationals at the end of 2009. The numbers tripled in 2010 compared to 2009 (see also BAMF/EMN 2011a: 41).<sup>147</sup> It should, however, be considered that migration from Serbia to Germany already intensified in 2009, i.e. before the liberalisation of the visa policy (19 December 2009) could take effect. As Chart 3 illustrates, the migration flows between Germany and Serbia became more dynamic.

146 By the end of 2010 these were the only two German missions that remained for issuing visas to nationals of the former Federal Republic of Yugoslavia (Serbia and Montenegro). The visa unit of the German embassy in Podgorica became responsible for accepting visa applications from applicants residing in Montenegro only in March 2011.

147 When looking only on the first asylum applications by individuals from Serbia, the number is more than eight-fold higher in 2010 than in 2009 (581 first-time applications in 2009; 4,978 in 2010).

Chart 3: Serbia - no. of visas issued and no. of entries, 2003-2010



Source: Federal Foreign Office / Federal Statistical Office BAMF (compiled by the authors)

## 5 Effects of EU policy and legislation on German visa policy

As already evidenced by the explanations of the visa process in chapter 3, visa policy is characterized by a high level of communitarisation for short-stay visas. The political control of visa policy rests mainly within the competence of the EU. Scope for national policies mainly exists for long-stay visas. The EU Commission is advocating a common visa policy for well managed mobility while maintaining security. In its “Communication on migration” of May 2011 the Commission discusses the potential development of communitarisation. It describes visa policy as an “influential instrument for a forward-looking policy on mobility”. As such the right balance between enhanced mobility of so-called “bona fide travellers” and the risks of irregular migration and threats to public policy and security should always be ensured. Whether this balance has been struck should be verified via a post-visa liberalisation monitoring mechanism.

The consequences of visa liberalisation for third countries need to be examined closely. According to the Commission the EU should have at its disposal appropriate tools to promptly remedy any problems that might be arising as a consequence of a visa waiver in the form of irregular migration, large-scale abuse or threats to security. To this end, the Commission has proposed a modification of the Visa Regulation to establish a safeguard clause that would allow, under certain conditions, for the temporary re-introduction of the visa requirement for citizens of a third country. At the same time one would need to be aware that the EU must remain open to cultural, economic and trade exchanges, for the sake of enhancing its role as a “global player”, and to effectively promote the interests of its business community, the academic sector and cultural stakeholders. Furthermore coherence would be needed between visa policy and other EU policies, such as trade and research policies.<sup>148</sup>

Among the Communication’s specific proposals is the one to issue more multiple entry visas with a long period of validity to frequent travellers. The Member States are “reluctant” to issue multi-year visas despite the fact that the travellers’ reliability is fully proven. The Commission also advocates improved accessibility of consular services and extending the cooperation between Member States on short stay Schengen visas to long stay visas.<sup>149</sup> In addition, the Commission emphasises the strategic value of facilitated mobility of third-

148 See COM (2011) 248 final, p. 12. It was, however, not decided 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. See Council of the European Union, Note from the Presidency to the Council / Mixed Committee at ministerial level, Dok.-Nr. 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); see also Press Release 3135th Council meeting Justice and Home Affairs, Doc. No. 18498/11, 13-14 December 2011, Brussels.

149 COM (2011) 248 final, p. 12.

country nationals across the external borders and therefore it has further developed the Global Approach to Migration to a “Global Approach to Migration and Mobility”.<sup>150</sup>

The Stockholm Programme also enumerates several potential developments and activities. The European Council suggests special programmes for the intensification of regional consular cooperation. The EU Commission and the Member States are invited to consider voluntarily setting up common application centres.<sup>151</sup> In justified cases the signing of further visa facilitation agreements with third countries is envisaged. To enter into a new development phase of common visa policy a study should examine the possibilities of creating a common European issuing mechanism for short-term visas. The study could, amongst other things, examine to what degree an assessment of individual risk could supplement the presumption of risk associated with the applicant’s nationality.<sup>152</sup>

### **Start of operations of the Visa Information System (VIS)**

The VIS shall improve the implementation of the common visa policy, consular cooperation and consultation processes between the central visa authorities by facilitating the exchange of data on visa applications and related decisions between Member States. One of its purposes is to simplify the application process for a visa, to prevent “visa shopping”<sup>153</sup> and to avert risks for the internal security of the Member States. The VIS is based on Council Decision of 8 June 2004 establishing the Visa Information System (VIS) (2004/512/EC) and Regulation (EC) no. 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation). The start of operation, first in North Africa, was 11 October 2011.<sup>154</sup>

For the gradual regional roll-out that is planned the consulates in North Africa (Algeria, Egypt, Libya, Mauritania, Morocco, and Tunisia) will be the first ones to enter their applications for Schengen visas into the system. Next will be those in the Middle East (Israel, Jordan, Lebanon, and Syria) followed by the Gulf region (Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, the UAE, and Yemen) and Afghanistan.<sup>155</sup> The European Commission will determine the later roll-out regions in coordination with the EU Member States. The Federal Ministry of the Interior has commissioned the Federal Office of Administration as the central authority to set up an infrastructure which will permit the German consulates to

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

151 Related thereto the Commission announced a Communication on programmes for regional consular cooperation for 2011 that would also address the option to set up common application centres. In the longer term, cooperation between Member States on short stay Schengen visas could be extended to long stay visas; see “Communication on Migration”, see footnote 47, p. 11.

152 See Council of the European Union, Note of the Presidency for the Council/European Council, “The Stockholm Programme – An open and secure Europe serving and protecting the citizens”, 17024/09, Brussels, 2 December 2009, p. 58.

153 “Visa shopping” means that a series of applications is lodged with several Schengen states to finally obtain a visa from the authority with the lowest level of requirements.

154 See BT-Drs.17/6223 of 16 June 2011, p. 6; “Start des schengenweiten Visa-Informationssystem”, Press release of the Federal Ministry of Interior, 11 October 2011.

155 See Commission Decision 2010/49/EC of 30 November 2009 determining the first regions for the start of operations of the Visa Information System (VIS) (notified under document C (2009) 8542), OJ L 23 of 27 January 2010, p. 62-64.

use the VIS IT application. Under leadership of the Federal Ministry of the Interior a preparation team in the Federal Office of Administration is planning the national implementation of the VIS and controlling the related technical aspects; the work is also supported by the EU's External Borders Fund. At the EU level the Commission is annually reporting to the European Parliament on the progress and development of the VIS.<sup>156</sup>

The VIS shall also collect and process biometric data of the applicants for Schengen visa. As a consequence the application procedure for Schengen visas will be simplified; under the one-stop principle applicants will have to appear personally at the visa office to submit their application and to provide their biometric data only once every 59 months at one single authority. To prepare for the start-up of the VIS Germany is participating in the EU pilot project BIODEV II,<sup>157</sup> under the auspices of the European Commission. For this purpose biometric data (photos and fingerprints) of Schengen visa applicants were collected and evaluated in the German embassies in Damascus (Syria) and Ulan Bator (Mongolia). In the view of the Federal Government the experience gained with the system is positive.<sup>158</sup>

#### **Plans for a European entry-exit system**

The EU Commission has repeatedly mentioned the creation of an entry-exit system, mainly with a view to preventing illegal entries or the overstaying of visas.<sup>159</sup> In the long run such a system would allow collecting the data of all entries and exits of third-country nationals into and out of the EU thus providing complete information on all third-country nationals staying in the EU at a given time. In its 2008 Communication on preparing the next steps in border management the Commission envisaged the introduction of such a system mainly to recognize overstayers. An entry/exit system could apply to third country nationals admitted for a short stay (up to 3 months) recording the date and place of entry and the length of the authorised stay. The competent authorities would be alerted automatically, when the system identifies someone as overstayer. The Commission is hoping to achieve three objectives in this way: to enable national authorities to identify overstayers and to take the appropriate measures; to deter third-country nationals from overstaying; to analyse information on patterns of overstaying (e.g. travel route, fraudulent sponsors, country of origin and reasons for travelling) as well as data on migration flows and overstayers for visa policy purposes.<sup>160</sup>

156 Most recently see for the reporting year 2010 COM (2011) 346 final.

157 BIODEV II stands for "BIometrics Data Experimented in Visas" which grew out of a French initiative. Seven other Member States are participating (Austria, Belgium, France, Luxembourg, Portugal, Spain, and the UK) in addition to Germany.

158 See BT-Drs. 17/6225 of 16 June 2011, p. 4.

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

160 See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Preparing the next steps in border management in the European Union", COM (2008) 69 final of 13 February 2008, p. 8.

The action plan for implementing the Stockholm Programme<sup>161</sup> and the Commission Work Programme 2011 both include proposals for legislation to create an entry/exit system as part of an initiative for “intelligent border control systems”. It is said that one of the aims is to generate information that would help identify and apprehend irregular migrants (especially overstayers), thereby deterring irregular migration and contributing to maintaining security.<sup>162</sup> Further a legislative proposal to set up a Registered Traveller Programme (RTP) is contemplated to facilitate the crossing of EU external borders for frequent, pre-screened and pre-vetted third country travellers. In October 2011 the Commission presented another paper describing possible options and further procedures on this issue.<sup>163</sup>

According to the Act on Cooperation between the federal and state governments in matters concerning the European Union the Bundesrat (Second Chamber of Parliament representing the Federal States) has commented on the EU Communication on the Commission Work Programme 2011 and welcomed a legislative proposal on the collection of electronic data on the entries and exits of third-country nationals at the EU external borders. In the view of the Bundesrat this will support the fight against illegal residence and organized crime within the EU. The Bundesrat, however, suggests that personal data should only be collected in line with the generally accepted principles of data privacy and data security.<sup>164</sup>

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

162 See Annexes to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Commission Work Programme 2011” COM (2010) 623 final, vol II of 27 October 2010, p. 5 et seq.

163 Communication from the Commission to the European Parliament and the Council, Smart borders – Options and the way ahead, COM (2011) 680 final, Brussels, 25 October 2011.

164 See BR-Drs. 693/10 (resolution) of 10 February 2011, p. 7.

## 6 Effects of visa policy on immigration: Statistics

As mentioned above under the heading of “Data sources” the present study mainly relies on a compilation of the major visa-related figures for the years 2001 to 2010 provided by the Federal Foreign Office. These comprehensive data shall generally illustrate the dimensions of the German missions’ visa related work while at the same time describing the major countries of origin and trends (increase or decrease in visa applications). In a second step the visa data will be compared or matched with other statistics (e.g. entries of foreign nationals at the German borders, refusal of entry at the external borders, apprehension of individuals irregularly entering or irregularly staying in Germany). This shall provide additional insight beyond the country specific information from chapter 4 into whether or to which extent visa policy can be regarded as a “migration channel”.

The study’s results are nuanced. The following sections show that the developments of the number of Type D visas granted and of the number of entries of third country nationals to Germany are mostly running parallel. This comes as no surprise, because Type D visas are issued for extended stays and therefore they are usually later on converted into residence permits. Those countries, in which an increase in the numbers of visas issued can be noted, most often send an increasing number of immigrants to Germany as well. However, Type D visas issued for long-term stay form only one part of the overall migration flow of third country nationals which comprises also asylum seekers and visa-free travel (see also section 1.2). In addition, the data reveals that the number of Schengen visas (Type C visas) is largely independent of the direct development of immigration. Travellers holding Type C visas usually do not appear in the immigration statistics.

The charts and tables on the countries of origin in section 6.3 show that the number of Type C visas can fluctuate considerably over several years, while the development of longer-term immigration – and therefore also the number of issued Type D visas – is more consistent and continuous. The most important country of origin in terms of the total numbers of visas issued, which was the Russian Federation between 2003 and 2010, is not necessarily the country from which most immigration originates: in each of the years during this period this was Turkey. However, for most countries of origin the perceivable trends are not totally contrary either.

### **Shortcomings within the statistical data and challenges for their interpretation**

In general, it can be argued that an intensive flow of migration between a third country and Germany will coincide with a higher number of visas (for visits or tourism). In return, intensive travel might in the medium term also favour immigration. However, no specific cause and effect relationships can be established by the present study.

We should like to advise that a number of restrictions apply to the data used in the following statistics surveys and analyses.

- The Federal Foreign Office's visa statistics do not include nationality as a characteristic. This source only provides information on the extent to which the German missions abroad have processed and granted visa of different categories. It does not, however, indicate whether the applicant receiving the visa was a national of this or another country. Thus the Federal Foreign Office data do not allow any conclusions on the extent to which nationals of a certain country requiring a visa lodged their applications in another than their home country and on the applicants' response when no German mission is located in their country, i.e. to what extent they then apply to missions in neighbouring countries or to those of other EU Member States.
- The visa database of the Central Register of Foreigners (Central Register of Foreigners visa database) would allow an evaluation of visa decisions including the characteristic of nationality. However, no further interpretation of these data from the Central Register of Foreigners database was made, because the data of the Federal Foreign Office are considered to provide reliable statistics on visa issuance. Furthermore, the data set of the Central Register of Foreigners does not exactly match the one of the Federal Foreign Office. According to the Central Register of Foreigners the total number of visas is lower than according to the data provided by the Federal Foreign Office, in part this is due to different data acquisition methods.
- Overall, the availability of data has improved over the last years. For the study we wanted to cover the visa numbers over a ten year period (2001 to 2010) wherever possible to reveal longer-term developments and trends. The visa statistics for 2001 to 2005 are incomplete, however. While the number of visas issued during these years can be stated, there are no data on the numbers of visas applied for and rejected. Type C visas can be disaggregated by purposes of the visits (e.g. tourism, business, family visits, attending sports or cultural events) only after 2006.
- The statistics on entries of third country nationals to Germany supplied by the Federal Statistical Office can be analysed by nationalities or by countries of origin. For the purposes of the present study mainly the evaluation by countries of origin was used.<sup>165</sup> This has been done with reference to the statistics on issued visas, which was published by the Federal Foreign Office and which does not provide information about the applicants' nationality but the consulates where these applications were filed. This is the most reasonable approach for comparing the migration data of entries of foreign nationals and the Federal Foreign Office's visa data.
- Statistics on the number of illegal foreign nationals apprehended in Germany were downloaded from the Eurostat database to achieve maximum comparability with the other EU Member States' data. The limitation here is that the Eurostat

<sup>165</sup> The statistics by nationalities provide information about the number of migrants of a certain nationality, but not about the country from which they actually came. It is safe to assume that most third country nationals will be entering Germany directly from their home country. It is not possible, however to identify the percentage of those who already lived as foreigners in another country before moving to Germany.

data are not available for the years prior to 2008. The Eurostat data cannot be combined into a time series with the prior year data from national sources, like the German federal police and the state police. The Eurostat data are based on the crime statistics compiled by the police, while in Germany sometimes other sources and methods of data collection are used for the statistics on foreign nationals who illegally entered Germany or are staying unlawfully (see BAMF/EMN 2011b: 26 et seq.). Yet another proviso is that the Eurostat data on entry refusals and on the number of foreign nationals found to be staying unlawfully are published after rounding (rounded up or down to 5).

The following sections will first address the statistics on the number of visas issued (section 6.1). Next to a total overview of the visas issued from 2001 to 2010, the data for the individual visa types (C and D), on the purpose of the travel or visit, on the number of rejections of visa applications and on the most important countries of origin in terms of numbers are presented and discussed. Section 6.2 covers immigration statistics, data on the number of foreign nationals refused entry at the borders and on those who entered illegally and were apprehended in Germany. In section 6.3 the statistics on visas and immigration as a whole and for selected major countries of origin are compared, and related to the statistics on first applications for asylum, and an attempt is made to identify any trends or interdependencies based thereon.

## 6.1 Visa statistics

Table 3 and Chart 4 show that the total number of visas issued has significantly fallen between 2001 and 2010. The 2010 figure amounts to merely 63.8 per cent of the total for 2001. All of the visa types discussed here show such a decrease, the highest proportionate reduction concerned airport transit visas (Type A) at 76.4 per cent. Long stays (type D) decreased by 64.3 per cent and Schengen visas (type C) relatively moderately by 26.5 per cent.

This ten year trend is due to a general reduction in migration (see section 6.2), to the lifting of the visa requirement for several countries during the reporting period (e.g. Romania in 2002, Western Balkan states in 2009) and the EU enlargements in 2004 and 2007. However, the enlargements should have merely affected the number of type D visas, because already prior to accession the nationals of the candidate countries did not require visas for short stays in the Schengen area. Type D visas were, however, required for all longer stays such as for family reunification, economic activity or education on German territory.

Not only the missions abroad, but in exceptional cases also the authorities charged with carrying out the police control of cross-border traffic may issue visas at the borders at short notice (pursuant to sec. 14 (2) Residence Act or articles 35 and 36 of the Visa Code). In 2010 the Federal Police issued a total of 23,107 exceptional visas which is 3.8 per cent less than one year before (24,013). Over a longer period of observation the trend is pointing upward, though: comparable data are available for 2000 when only 17,176 of these visas were issued.<sup>166</sup>

<sup>166</sup> BT-Drs. 17/6225 of 15 June 2011, p. 6.

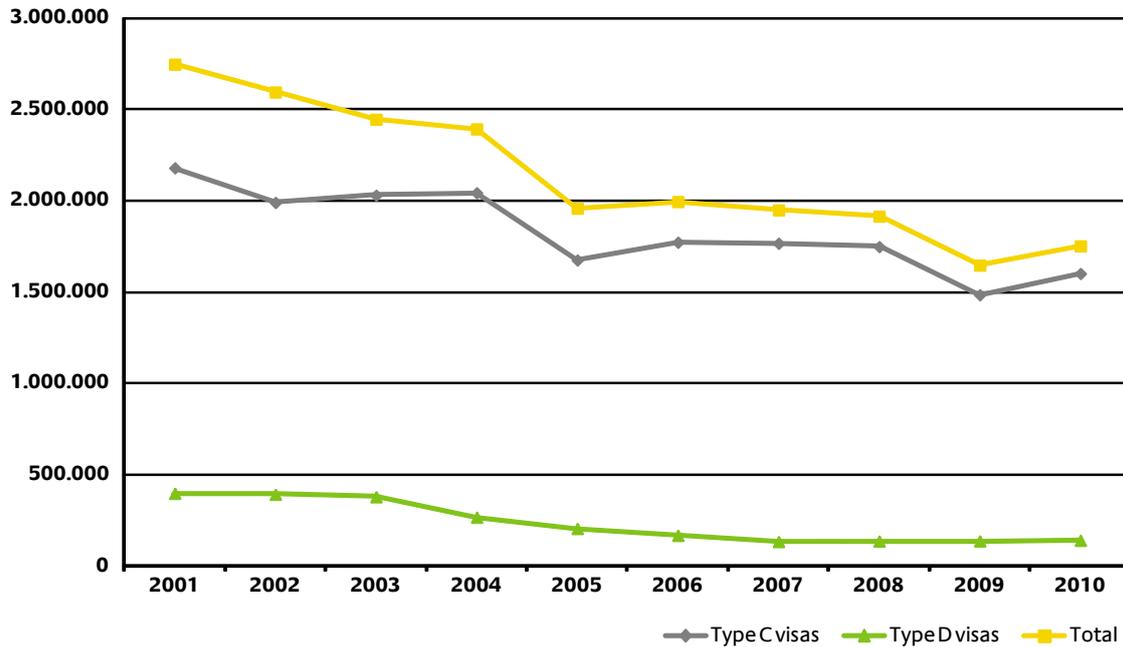
**Table 3: Total no. of visas issued, of visas applied for and negative ratio, 2001-2010\***

	Type-A	Type C-visas	Type D-visas	Total	Negative ratio	
2001	Issued	25,997	2,182,158	399,975	2,749,699	14.9%
	Applied for	:	:	:	3,232,626	
	Rejected	:	:	:	482,927	
2002	Issued	33,720	1,992,742	394,543	2,597,551	14.5%
	Applied for	:	:	:	3,037,473	
	Rejected	:	:	:	439,922	
2003	Issued	36,129	2,032,92	381,193	2,448,031	12.9%
	Applied for	:	:	:	2,810,096	
	Rejected	:	:	:	362,065	
2004	Issued	42,439	2,045,481	269,188	2,395,376	16.5%
	Applied for	:	:	:	2,869,390	
	Rejected	:	:	:	474,014	
2005	Issued	40,718	1,677,413	207,527	1,960,949	18.6%
	Applied for	:	:	241,557	2,407,940	
	Rejected	:	:	34,030	446,991	
2006	Issued	23,976	1,774,682	169,884	1,997,568	17.8%
	Applied for	25,133	1,973,127	202,663	2,430,790	
	Rejected	1,157	198,445	32,779	433,222	
2007	Issued	22,095	1,769,141	136,138	1,951,469	15.5%
	Applied for	23,247	1,943,674	169,058	2,308,528	
	Rejected	1,152	174,533	32,920	357,059	
2008	Issued	14,415	1,750,805	138,638	1,917,272	16.1%
	Applied for	15,240	1,912,492	168,682	2,284,798	
	Rejected	825	161,687	30,044	367,526	
2009	Issued	11,352	1,487,197	139,640	1,649,302	16.2%
	Applied for	12,057	1,634,706	168,220	1,968,03	
	Rejected	705	147,509	28,580	318,901	
2010	Issued	6,142	1,603,758	142,749	1,755,104	14.2%
	Applied for	6,821	1,732,160	168,747	2,044,990	
	Rejected	679	128,402	25,998	289,886	

Source: Federal Foreign Office

\* The total for rejected visas and the negative ratio both relate to visa applications which were rejected in writing after having been examined and to such which were already rejected at the time the application was lodged (e.g. because of formal defects).

Chart 4: Number of Type C and Type D visas issued, 2001-2010



Source: Federal Foreign Office (compiled by the authors)

#### Type C visas by purpose of stay

Type C visas are issued for short stays for several purposes. Of the total of 1,603,758 of these visas issued in 2010, 755,849 (approx. 47.1%) were for business travel, 406,697 (25.6%) to visit family members or friends and 318,498 (19.9%) for tourism or other reasons. Only a relatively minor part was for such purposes as attending cultural or sports events or medical treatment (see Table 4).

The data for 2010 are not directly comparable to those of the previous years, because the statistical recording methodology for the different Type C visa categories changed when the EU Visa Code entered into force. But still the trend for visas for business trips is pointing downward for the period 2006 to 2009. Less visas were also issued for tourism (and other purposes such as transit), especially in 2009. Similar to the developments in the Russian Federation, since 2008/2009 the declining economic situation caused by the global economic crisis has affected cross-border mobility in a negative way in several countries. Contrary to that, the number of visas issued to visit friends and family went up. Type C visas for cultural events and medical reasons increased as well.

**Table 4: Purpose of visit for Type C visas, 2006-2010**

	2006	2007	2008	2009	2010
<b>Business</b>	1,004,196	993,416	917,803	711,086	755,849
<b>Visiting family / friends</b>	338,513	365,108	408,354	409,538	406,697
<b>Tourism and other purposes</b>	342,602	313,850	324,622	257,792	318,498
<b>Cultural events</b>	54,988	58,767	60,588	62,496	67,331
<b>Medical reasons</b>	17,326	22,009	23,986	32,122	30,443
<b>Sports events</b>	12,859	11,886	12,371	11,438	12,669
<b>Official visits</b>	4,198	4,105	3,081	2,725	12,271
<b>Total</b>	<b>1,774,682</b>	<b>1,769,141</b>	<b>1,750,805</b>	<b>1,487,197</b>	<b>1,603,758</b>

Source: Federal Foreign Office

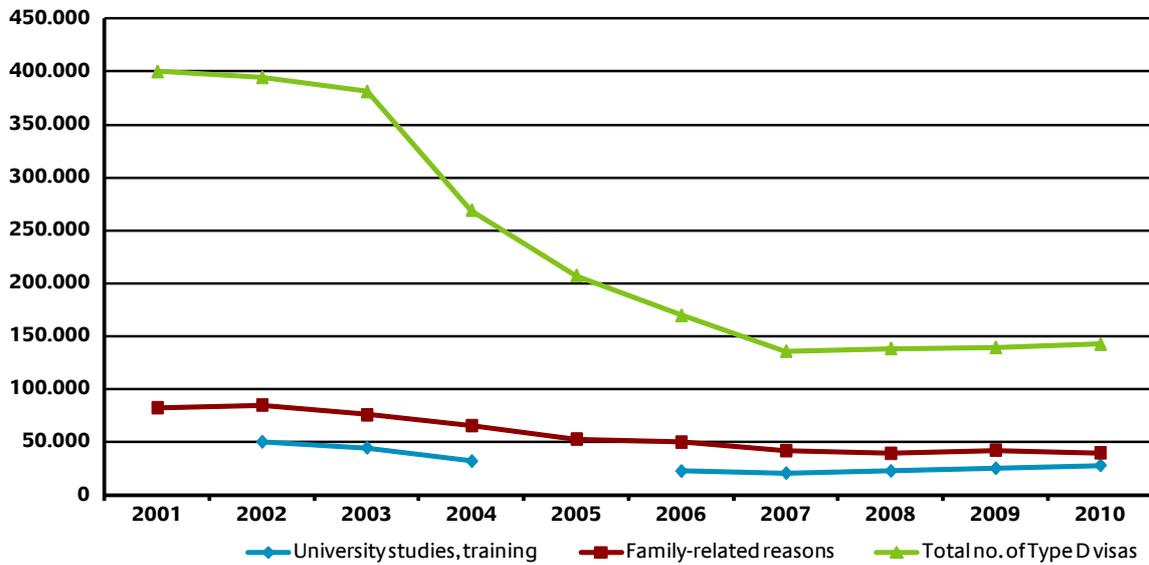
**Type D visas by purpose of visit**

Other than Type C visas, Type D visas are meant for long-term stays. However, the data cannot be fully broken down by purposes of the visits. There are separate statistics on the number of Type D visas issued for educational purposes (university studies and training) and for the subsequent immigration of spouses or other family members. All other categories, such as Type D visas for humanitarian grounds or employment, are only available as an aggregate category (see Table 5).

**Table 5: Total no. of Type D visas issued by purpose of visit, 2001-2010**

	Type D-visas Total	University studies, training	Family-related reasons	Other reasons (e.g. economic activity, humanitarian grounds, special residence titles)
<b>2001</b>	399,975	:	82,838	317,137
<b>2002</b>	394,543	50,585	85,305	258,653
<b>2003</b>	381,193	44,974	76,077	260,142
<b>2004</b>	269,188	32,324	65,935	170,929
<b>2005</b>	207,527	:	53,213	154,314
<b>2006</b>	169,884	22,988	50,300	96,596
<b>2007</b>	136,138	21,115	42,219	110,794
<b>2008</b>	138,638	23,105	39,717	75,816
<b>2009</b>	139,640	25,630	42,756	71,254
<b>2010</b>	142,749	28,440	40,210	74,099

Source: Federal Foreign Office

**Chart 5: Total no. of Type D visas issued by purpose of visit, 2001-2010**

Source: Federal Foreign Office (compiled by the authors)

Between 2002 and 2010 the number of Type D visas for educational purposes fell by 43.8 per cent, those for subsequent immigration of spouses or family members by 52.8 per cent. The overall decrease in the number of Type D visas issued was 63.8 per cent. Thus the reduction of visas for education and for family reasons was less pronounced than the overall decrease of long-stay visas.<sup>167</sup> This reduction was in part caused by the EU enlargement in 2004 and the substantial decrease in the number of Spätaussiedler from the former Soviet Union during the same period certainly had an impact as well (see section 4.1.2).

**Table 6: Number of Type C visas issued in the 10 major countries of origin (countries where the missions are located), 2001-2010\***

	2003	2004	2005	2006	2007	2008	2009	2010
<b>Russian Federation</b>	325,137	310,167	309,711	323,576	338,023	384,628	309,410	<b>330,437</b>
<b>China</b>	142,485	213,015	166,194	204,967	174,103	158,234	139,945	<b>185,991</b>
<b>Turkey</b>	147,876	175,128	152,467	127,771	147,357	139,253	109,879	<b>124,130</b>
<b>Ukraine</b>	116,417	99,603	97,058	108,767	111,521	111,994	95,074	<b>96,982</b>
<b>India</b>	62,757	49,960	81,584	91,909	100,698	95,859	75,802	<b>94,648</b>
<b>United Arab Emirates</b>	28,926	30,416	35,779	41,399	39,759	48,204	53,208	<b>68,757</b>
<b>Belarus</b>	98,266	86,301	76,688	76,282	82,423	84,119	69,497	<b>68,145</b>
<b>Taiwan</b>	52,258	58,286	60,087	67,150	56,928	51,251	37,142	<b>44,007</b>
<b>Iran</b>	39,558	45,950	36,998	36,911	38,027	41,891	41,493	<b>40,292</b>
<b>Thailand</b>	34,693	35,646	31,784	31,169	30,292	27,959	22,617	<b>30,430</b>

Source: Federal Foreign Office/EU Council Working Group Visa

\* Ranking of countries of origin by number of Type C visas issued in 2010.

<sup>167</sup> No data are available on the number of visas issued for education in 2001 and in 2005. Therefore the figures for 2001 and 2010 cannot be compared as in the previous example; alternatively the years 2002 and 2010 are used for this comparison.

Table 6 shows that the highest number of visas was issued by the German missions in the Russian Federation in each of the years between 2003 and 2010. After 2004 China ranks second among the “countries of origin” and since 2005 Turkey is third. In 2003 and 2004 Poland held the second resp. the third place, but as of 2005 it dropped out of the ten countries with the highest numbers because of becoming an EU member-state.

Throughout the reporting period the Russian Federation has been ahead of the second most important country of origin by a wide margin. In each of these years more than 300,000 Type C visas were issued. In 2008 the German missions in Russia (Kaliningrad, Moscow, Novosibirsk, Saint Petersburg, and Yekaterinburg) even issued more than 384,000 Type C visas. In 2010 about as many Type C visas were issued in Russia as in 2003 (see also the case study in section 4.1).

There were six countries that figured among the top ten countries of origin for issuance of Type C visas in each of the years between 2003 and 2010 next to the Russian Federation: China, Turkey, Ukraine, India, and Belarus.

The United Arab Emirates entered the top ten only in 2007. But the number of Type C visas issued by the missions in Dubai and Abu Dhabi is rising strongly. In 2010 (68,757 Type C visas) the volume exceeded that of 2007 (39,758) by 72.9 per cent. A comparison of 2007 and 2010 also indicates an upward trend for the visas issued by the missions in China.<sup>168</sup> The numbers for all the other countries figuring in the table are going down, including those for Turkey.

**Table 7: Number of Type D visas issued in the 10 major countries of origin (countries where the missions are located), 2003-2010\***

	2003	2004	2005	2006	2007	2008	2009	2010
<b>Turkey</b>	28,593	25,079	23,154	18,869	15,991	15,927	14,723	<b>14,285</b>
<b>China</b>	11,711	9,897	9,182	11,926	9,651	12,400	13,046	<b>14,053</b>
<b>Russian Federation</b>	53,282	47,493	32,233	16,838	14,571	12,506	11,381	<b>11,575</b>
<b>India</b>	5,866	6,032	7,213	7,460	8,059	9,260	8,939	<b>10,093</b>
<b>Philippines</b>	4,430	4,470	6,423	6,298	7,048	7,420	8,246	<b>7,752</b>
<b>Croatia</b>	7,272	5,007	5,440	5,233	5,651	5,761	6,062	<b>6,526</b>
<b>Ukraine</b>	19,755	15,241	10,476	6,664	6,850	5,732	5,675	<b>5,794</b>
<b>Bosnia and Herzegovina</b>	3,978	3,910	3,402	3,151	3,026	3,066	2,959	<b>3,963</b>
<b>Syria</b>	1,382	1,171	1,232	978	1,012	1,464	3,753	<b>3,775</b>
<b>Kosovo</b>	-	-	-	-	-	3,540	3,773	<b>3,585</b>

Source: Federal Foreign Office/EU Council Working Group Visa

\* Ranking of countries of origin by number of Type D visas issued in 2010.

168 There are five German missions in China: Beijing, Shanghai, Canton, Chengdu and Hong Kong.

Of the countries with the highest volumes of Type D visas in 2010 only four were among the top ten throughout the entire period for which reliable data are available, i.e. from 2003 to 2010: Turkey, China, the Russian Federation, and Ukraine (see Table 7; India entered the group in 2004; continuously rising in significance from 6,032 Type D visas in 2004 to 10,093 in 2010. The volume of Type D visas issued by the missions in China increased as well. For Turkey and in particular for the Russian Federation and Ukraine the numbers clearly fell over that period, which was very likely caused by the decrease immigration of ethnic German resettlers and of Jewish immigrants.

### Rejection of visa applications

The decisions on most of the applications for visas lodged with the German missions are positive. As shown in Table 8 the percentage of unsuccessful applications remained relatively constant from 2001 to 2010. In 2001 the negative ratio for all missions and for all visa types amounted to a total of 14.9 per cent. In 2010 the percentage was 14.2. The proportion of negative decisions was higher only in 2005 and 2006 at 18.6 per cent resp. 17.8 per cent.

For rejected visa applications one must distinguish between unsuccessful applications (negative statistics) and such that were denied because they did not comply with the requirements (rejection statistics). The negative statistics include both visa applications which were rejected in writing after having been examined and such which were already rejected at the time the application was lodged (e.g. because of formal defects or because the required documents were not submitted). Thus the negative ratio is clearly higher than the rejection rate.

**Table 8: Visas issued and rejected and rejection rates (all visa types)**

Year	Approved	Rejected	Rejection rate in per cent:
2000	2,607,012	167,038	6.0
2007	1,951,469	209,783	9.7
2008	1,917,72	193,171	9.2
2009	1,649,302	177,207	9.7
2010	1,755,104	155,280	8.1

Source: Federal Foreign Office (BT-Drs. 17/6225)

Table 8 shows that the rejection rate as such remained relatively stable between 9 per cent and 10 per cent from 2007 to 2009. However, in the reference year 2000 it had been merely 6 per cent. In 2010 the rejection rate sank by more than one percentage point, though. The approval and rejection rates differ according to visa type: the rejection rate for Type D visas (15.4%) clearly exceeded that for Type C visas (7.4%) and for Type A visas (10.0%) in 2010.

There are also sizable variations among the approval and rejection rates by countries of origin of the applicants or rather by the missions which received and processed the applications. The highest rejection rates can be found at missions in some African countries. Thus, every second application was denied by the mission in Conakry (Guinea) (765 of 1,537)

in 2010. Also in the embassies and consulates of other African countries such as Congo, Senegal, Nigeria, Ivory Coast, Angola, Mali, and Cameroon more than one third of all applications was denied. In terms of numbers the visa volume in Nigeria is most important among these. On the African continent only the missions in South Africa and Egypt handle more visa applications. The embassy in the Nigerian capital Abuja and the German Consulate General in Lagos examined a total of 19,631 visa applications, of these 1,123 in Abuja and 18,508 in Lagos. With 7,095 applications denied in Nigeria the rejection rate was about 36 per cent. There is only one non-African country (Afghanistan) among the ten countries with the highest rejection rates (see Table 9). It is also striking that – contrary to the general trend described above – the rejection rates for Schengen visas is much higher than that for the national visas. Examples are Senegal (44.4% for Type C visas; 28.7% for Type D visas) and Nigeria (37.8%; 26.4%) as well as Angola (37.3%; 19.4%) and Afghanistan (37.6%; 22.5%).

**Table 9: Visas granted and denied (10 countries with the highest rejection rates), 2010\***

Country	Total visas issued	Total number of rejections	rejections in per cent	Type C visas issued	Type C visas rejected	Rejections of Type C-visas in per cent	Type D visas issued	Type D visas rejected	Rejections of Type D-visas in per cent
Guinea	772	765	49.8	687	671	49.4	81	85	51.2
Congo	1,064	824	43.6	982	745	43.1	80	78	49.4
Senegal	2,026	1,518	42.8	1,773	1,415	44.4	253	102	28.7
Nigeria	12,536	7,095	36.1	11,050	6,711	37.8	668	239	26.4
Ivory Coast	913	527	36.6	803	465	36.7	110	60	35.3
Angola	2,315	1,313	36.2	2,185	1,300	37.3	29	7	19.4
Mali	646	364	36.0	581	345	37.3	65	18	21.7
Afghanistan	2,771	1,491	35.0	2,188	1,319	37.6	559	162	22.5
Cameroon	3,591	1,917	34.8	2,529	1,054	29.4	1,060	863	44.9
Sudan	1,825	870	32.3	1,535	741	32.6	154	64	29.4

Source: Federal Foreign Office (BT-Drs. 17/6225)

\* Relates only to third countries which are not members of the EU or the European Economic Area or whose nationals are not benefiting from a visa waiver under sec. 41 Residence Ordinance; the totals also include approvals and rejections of Type A and B visas.

In contrast thereto the visa refusal in other countries is very low (Table 10). For instance the German Institute in Taipei recorded only 155 rejections for 45,200 applications processed (0.3%) in 2010. In the German embassy in Doha/Qatar the rejection rate is almost as low (18,304 applications processed; 155 rejections; 0.5%). The top 10 countries with the lowest rejection rates include also the Russian Federation, the most significant country regarding the total of visas applied for and granted (see section 4.1): of the 373,895 applications processed in Moscow, St. Petersburg, Novosibirsk, Yekaterinburg, and Kaliningrad only 12,149 (3.3%) were denied. Within the depicted countries, the low overall refusal rate, however, is mainly due to the low percentage of rejected applications for Type C visas. In most countries, the refusal rate for national visas is much higher than the one for Type C visas: in the Russian Federation it was 13.5 per cent, in South Africa 11,0 per cent.

**Table 10: Visas granted and denied (10 countries with the lowest rejection rates), 2010\***

Country	Total visas issued	Total number of rejections	rejections in per cent	Type C visas issued	Type C visas rejected	Rejections of Type C-visas in per cent	Type D visas issued	Type D visas rejected	Rejections of Type D-visas in per cent
Taiwan	45,045	155	0.3	44,007	80	0.2	1,031	75	6.8
Qatar	18,207	97	0.5	18,070	95	0.5	41	0	0.0
Belarus	69,386	792	1.1	68,145	663	1.0	1,196	118	9.0
Oman	4,729	86	1.8	4,588	76	1.6	128	9	6.6
South Africa	30,873	577	1.8	30,209	499	1.6	633	78	11.0
Kuwait	20,522	435	2.1	20,328	424	2.0	108	10	8.5
Namibia	4,840	118	2.4	4,698	98	2.0	116	14	10.8
Singapore	3,931	106	2.6	3,194	69	2.1	724	37	4.9
Bahrain	6,900	189	2.7	6,838	186	2.7	39	3	7.1
Russian Federation	361,746	12,149	3.3	350,002	10,337	2.9	11,575	1,802	13.5

Source: Federal Foreign Office (BT-Drs. 17/6225)

- \* Relates only to third countries which are not members of the EU or the European Economic Area or whose nationals are not benefiting from a visa waiver under sec. 41 Residence Ordinance; the totals include also approvals and rejections of Type A and B visas.

The rejection rates of the missions in other high-volume countries of origin differ as well. The Consulates General in Istanbul and Izmir and in the embassy in Ankara processed a total of 161,642 visa applications in 2010. 138,518 of these were granted and 23,124 were denied. Thus the rejection rate for Turkey, the country with the highest volume of Type D visas, is 14.3 per cent. In China, however, the rejection rate amounted to merely 5.4 per cent, in Ukraine to 6.6 per cent, and in India to 5.5 per cent.

Statistics on the rejections of short-stay exceptional visas applied for at the borders have only been compiled since the Visa Code entered into force on 5 April 2011. From that date to the date of the Federal Government's response to a corresponding question in parliament in the summer of 2011 18,361 applications had been lodged 123 of which had been denied.<sup>169</sup>

## 6.2 Migration data

### Entries by countries of origin

As illustrated by Table 11, the number of foreign nationals entering Germany initially went down during the period of observation from 2001 to 2010, but in 2009 the trend reversed and the total in 2010 was only slightly lower than in 2001. According to the data provided by the Federal Statistical Office 683,529 foreign nationals came to Germany in 2010. In 2001 the number of migrants had been 685,259.

<sup>169</sup> BT-Drs.17/6225 of 15 June 2011, p. 6.

Throughout the period Turkey was the most significant country of origin, however, in 2010 the number of entries was less than half of that of 2001. Since 2007 the US is ranking second. In 2010 Serbia was in third place. The number of migrants from Serbia increased by more than 125 per cent in 2010 against 2009, probably as a result of the lifting of the visa requirement in December 2009 (also see section 4.2.5). The pattern for the Former Yugoslavian Republic of Macedonia as country of origin is similar and even more pronounced. The number of entries of migrants from Macedonia has more than tripled from 2009 to 2010. For both sending countries the increased number of entries comes along with a rise in applications for asylum, as applicants are included in the overalls statistics on arrivals (see 1.2), though their stay is most probably temporarily limited. In addition, from Serbia and Macedonia multiple entries account for a significant share of registered arrivals. In many cases, rejected and returned applicants re-enter Germany and file a second application for asylum. In the observation period migration from the country of origin China fell slightly, however, since 2007 the numbers are slowly moving up again.

An analysis of the other top 10 countries shows that the Russian Federation has lost some of its significance as country of origin overall, but despite a renewed increase in 2009 and 2010 the number of entries in 2010 was less than half of the number in 2001, 2002, and 2003. India and Afghanistan, in contrast, are moving to the fore. The number of migrants from Iraq fluctuated significantly over the observation period. Due to the political and human rights situation in Iraq the number of immigrants that had been going down before 2005 picked up again thereafter. The same is true for Afghanistan where the increase started in 2008 and was accompanied by a rising number of applications for asylum.

**Table 11: Entries of foreign nationals by countries of origin (Top 10), 2001-2010\***

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Turkey</b>	54,587	57,187	48,207	40,689	34,749	29,589	26,694	26,173	26,638	26,951
<b>United States</b>	17,435	16,688	15,547	16,049	16,002	16,341	17,495	18,621	18,716	19,295
<b>Serbia**</b>	28,349	25,501	21,442	20,366	16,706	10,794	10,201	8,640	7,834	17,670
<b>China</b>	19,951	18,297	15,801	12,941	11,844	12,941	13,573	14,185	14,966	15,849
<b>Russia</b>	36,554	35,816	31,009	27,663	22,392	16,425	14,960	14,316	14,880	15,320
<b>India</b>	8,790	8,999	8,804	8,652	7,865	8,911	9,367	10,767	11,122	12,218
<b>Croatia</b>	13,861	12,738	11,230	10,118	8,956	8,310	8,418	8,418	8,832	9,939
<b>Iraq</b>	18,111	12,466	5,916	2,953	3,025	3,390	4,962	8,505	11,987	8,840
<b>Macedonia</b>	5,421	3,913	3,620	3,227	2,578	2,463	2,307	2,260	2,311	7,498
<b>Afghanistan</b>	5,995	3,545	2,165	1,901	1,320	1,283	1,201	1,712	4,459	7,176
<b>Total (all countries of origin)</b>	<b>685,259</b>	<b>658,341</b>	<b>601,759</b>	<b>602,182</b>	<b>579,301</b>	<b>558,467</b>	<b>574,752</b>	<b>573,815</b>	<b>606,314</b>	<b>683,529</b>

Source: Federal Statistical Office

\* Ranking of major countries of origin in 2010 related to non-EU Member States. The figures include only immigrants who were not holding German nationality ("foreign nationals").

\*\* Up to and including 2006: Serbia and Montenegro, 2007 and 2008 Serbia (incl. Kosovo), 2009 and 2010: Serbia (excl. Kosovo).

The figures presented in Table 12 reveal the share of asylum seekers among the arrivals. The frequency of first applications for asylum of the ten most important nationalities is compared to the recognized number of arrivals from these countries.<sup>170</sup> It becomes apparent, that from countries of origin like Afghanistan, Iraq and Somalia applicants for asylum provide the overwhelming majority of new arrivals. However, the recognition rates differ according to the country of origin. For some nationalities, the changes of receiving the status as refugee or subsidiary protection remain in the one-digit margin (see BAMF 2011: 52).

**Table 12: First applications of asylums according to the ten most frequent nationalities, compared to entries in 2010**

	First asylum applications for asylum	Entries by countries of origin	Share of first applications for asylum among arrivals in per cent
Afghanistan	5,905	7,373	80.1
Iraq	5,555	9,152	60.7
Serbia	4,978	17,670	28.2
Iran	2,475	5,791	42.7
Former Yugoslav Republic of Macedonia	2,466	7,561	32.6
Somalia	2,235	2,418	92.4
Kosovo	1,614	6,822	23.7
Syria	1,490	3,647	40.9
Turkey	1,340	30,171	4.4
Russian Federation	1,199	18,671	6.4
<b>Total</b>	<b>29,257</b>	<b>109,276</b>	<b>26.8</b>

Source: BAMF / Federal Statistical Office

### Rejection at the borders

For an evaluation of the effectiveness of the measures of visa policy or border controls to prevent irregular entries it is helpful to examine the data available on the rejection of foreign nationals at the external borders of the Federal Republic of Germany. As shown in Table 13 the number of annual rejections or refusals of entry at the external borders has decreased considerably. While there had been more than 50,000 refusals in 2001, there were only 3,550 in 2010.

This reduction is probably due to several factors. One major factor certainly is the overall decline in immigration to Germany. Since 1993 the intensity of immigration to Germany has lost considerable momentum (see BMI/BAMF 2011: 17-19). Another factor is the enlargement of the EU in 2004 and 2007. Since 2004 the citizens of Germany's eastern neighbours generally enjoy the right of free movement and thus cannot normally be rejected at

<sup>170</sup> Though the statistics on arrival do not automatically include all applicants for asylum of a particular year, these statistics should as a general rule cover all applicants (see section 1.2).

the borders. At the time the EU was enlarged external border security was improved. Further it can be assumed that the methods used for controlling the external borders have also improved, thus making illegal crossings more difficult. Although it is true that more illegal entries into Germany were recorded in early 2008 directly after the control posts at the borders to Poland and the Czech Republic as well as other EU Member States were abolished on 21 December 2007, their number dropped again in the course of time. Today Germany does not have any land borders that are external borders of the EU. Thus rejections can only occur at international airports, seaports or on trains and therefore their numbers have gone down significantly.

**Table 13: Rejections (refusals of entry) at external borders, 2001-2010**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>No. of persons denied entry</b>	51,054	47,286	43,957	30,785	15,043	20,329	11,840	7,215	2,980	3,550

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

The figures on rejections compiled by the Federal Police and available from Eurostat can be analysed by nationality and the type of border where they occurred (land, sea or air). The largest number of rejections by nationality concerned Turks in 2009 (420) and 2010 (445). The second largest group in 2009 and 2010 were Russians and the third largest Chinese nationals (see Table 14). From 2008 (1,450 rejections) to 2010 (245 rejections) the number of affected Serbian nationals fell substantially. The only upward trend perceivable among the ten most important nationalities concerns the Philippines. It is striking that the three nationalities with the highest numbers in 2010 (Turkey, China, Russian Federation) coincide with the countries in which the German missions issue the highest number of visas, albeit due to the small numbers of rejected applications for the individual nationalities in relation to the number of issued visas it is not possible to draw any causal conclusions. Turkey, China and the Russian Federation meanwhile are not commonly found among the list of countries the sponsor a high refusal ratio regarding visa application (see Section 6.1). Although Turkey has a significantly higher refusal ratio denying national visa (Type D visa), comparing their ratio of 20,1 per cent to both that of the Russian Federation (13,5%) and China (8,4%) and therefore lies above the accumulated refusal ratio of all German diplomatic missions regarding Type D visa (15,4%).

The relatively high number of Nigerian nationals among those rejected (rank 6) calls attention, because Nigeria is only of minor importance regarding the number of visas issued by Germany. In 2010 Nigeria ranked 21st by number of visas processed by German missions. In the listing of the number of visas issued Nigeria is on 27th place. In 2010 the rejection rate for Type C visas of the German mission in Lagos (Nigeria) amounted to 38.9 per cent which is the fourth highest of all missions, after those in Conakry, Kinshasa and Dakar.<sup>171</sup>

171 See BT-Drs.17/6225 of 15 June 2011, p. 25 -30 also see section 6.1, "Rejection of visa applications" (in German).

**Table 14: Refusals at the external borders by nationality (Top 10, 2008-2010)\***

	2008	2009	2010
Turkey	980	420	445
China	405	260	335
Russia	295	265	275
Serbia	1,450	100	245
Ukraine	110	75	165
Nigeria	235	215	140
Macedonia	530	35	120
Philippines	60	35	110
India	125	90	100
Brazil	165	110	95
Other nationalities	2,860	1,375	1,520
<b>Rejections (all nationalities)</b>	<b>7,215</b>	<b>2,980</b>	<b>3,550</b>

Source: Eurostat (rounded figures).

\* Nationality ranking according to 2010 figures.

Eurostat also offers data on the reasons for the rejection which are helpful for the central topic of visa policy studied herein. In 2010 1,450 individuals were denied entry at the borders, because they were not in the possession of a valid visa or a valid residence title. In 2009 the number was 1,425 and in 2008 4,700. In 2010 90 people were denied entry for possessing a false, counterfeit or forged visa or residence title (2009: 60, 2008: 240). About 60 individuals were rejected, because they had already stayed for the maximum period allowed by their Schengen visas, i.e. had been staying for three months or more during a six months period in any of the Member States (2009: 20, 2008: 0). Thus it happens relatively rarely that entry is denied for exceeding the maximum duration of a legal visit. A much more frequent reason is the lack of a valid residence title (see Table 15).

**Table 15: Total number of refused individuals by reasons for refusal, 2001-2010**

	2008	2009	2010
No valid visa or residence title	4,700	1,425	1,450
Visa or residence title false, counterfeit or forged	240	60	90
Overstaying	0	20	60

Source: Eurostat (rounded figures).

### Discovery of illegal entry and illegal stay

Overall, the data on the number of apprehended migrants who had entered Germany illegally or were staying illegally show a downward trend. According to the data of the Federal Police a total of 19,416 foreign nationals who had entered illegally were found at the German borders in 2009. Ten years earlier their number had been almost twice as high. Also the number of suspects found in Germany for staying illegally recorded in the Police Crime Statistics has more than halved in the ten year period from 1999 to 2009. 2009, 46,132 individuals had been recorded (see BMI/BAMF 2011: 185, 188).

The Eurostat database does not reveal any clear trend for the period 2008 to 2010. The number of individuals found fluctuated between 53,695 in 2008 and 50,250 in 2010 (see Table 16).

**Table 16: Discoveries of illegal entry and illegal stay (apprehensions), 2008-2010**

	2008	2009	2010
<b>Number of individuals found</b>	53,695	49,555	50,250

Source: Eurostat (rounded figures).

**Table 17: Discoveries of illegal entry and illegal stay (apprehensions), by nationalities, 2008-2010\***

	2008	2009	2010
<b>Turkey</b>	6,675	5,610	5,565
<b>Afghanistan</b>	880	2,665	3,700
<b>Iraq</b>	4,715	4,530	3,060
<b>Serbia</b>	5,920	2,590	2,920
<b>Vietnam</b>	3,010	3,010	2,680
<b>Russian Federation</b>	2,415	2,085	2,125
<b>China</b>	2,565	2,285	1,975
<b>Kosovo</b>	:	1,605	1,935
<b>India</b>	1,420	1,615	1,615
<b>Iran</b>	1,090	1,205	1,605
<b>Other nationalities</b>	<b>25,005</b>	<b>22,355</b>	<b>22,970</b>
<b>Individuals found (total)</b>	<b>53,695</b>	<b>49,555</b>	<b>50,250</b>

Source: Eurostat (rounded figures).

\* Nationality ranking according to 2010 figures.

Turkish nationals were found most frequently to enter or stay illegally (5,565) (see Table 17), followed by nationals from Afghanistan and Iraq.

### 6.3 Visa issuance and migration

This section seeks to identify certain patterns or parallels in the potential links between the issuance of visas and the level of immigration/entries to Germany both overall and exemplified by China, Turkey, Ukraine, and India as countries of origin. The sample countries were selected, because from 2003 to 2010 they continuously ranked among the top ten by numbers of visas (both for Type D and Type C visas), next to the Russian Federation that has already been examined in the case study. The visa data are taken from the statistics of the Federal Foreign Office; the number of entries of third country nationals from the Federal Statistical Office records by countries of origin (excluding German nationals).

#### **Visa issuance and entries of third country nationals (overall)**

Table 18 and the corresponding chart 6 contain the aggregate numbers for cross-border entries of foreign nationals from all countries of origin to Germany. The number of en-

tries by citizens of EU Member States is shown separately. As discussed in section 6.2 above the overall number of entries has been going up since 2008. When separating the data for Union citizens from those for other nationalities it becomes obvious that the increase recorded in 2010 over 2009 is mainly due to more migration by EU citizens. The total number of entries went up by roughly 12.7 per cent from 2009 to 2010. Among these the number of EU citizens increased by 15.9 per cent and that of third-country nationals by 8.4 per cent. Overall EU citizens accounted for 59.2 per cent of migration in 2010. Thus it is obvious that only about 40.8 per cent of all migrations could potentially be affected by visa policy. When deducting not only the citizens from the EU Member States, but also those from other countries who are allowed to enter Germany even for long-term stay without a visa, such as the USA, the percentage of entries that could be affected by any visa policy measures further decreases.<sup>172</sup>

**Table 18: No. of Type C, Type D visas issued, no. of entries and no. of first applications for asylum (overall), 2003-2010\***

	2003	2004	2005	2006	2007	2008	2009	2010
<b>No. of non-German migrants</b>	601,759	602,182	579,301	558,467	574,752	573,815	606,314	683,529
<b>of these EU citizens*</b>	98,709	266,355	286,047	289,235	343,851	335,914	348,909	404,459
<b>No. of entries by non-Germans (excluding EU citizens*)</b>	503,050	335,827	293,254	269,232	230,901	237,901	257,405	279,070
<b>Type C visas</b>	2,032,192	2,045,481	1,677,413	1,774,682	1,769,141	1,750,805	1,487,197	1,603,758
<b>Type D visas</b>	381,193	269,188	207,527	169,884	136,138	138,638	139,640	142,749
<b>First applications for asylum</b>	50,563	35,607	28,914	21,029	19,164	22,085	27,649	41,332

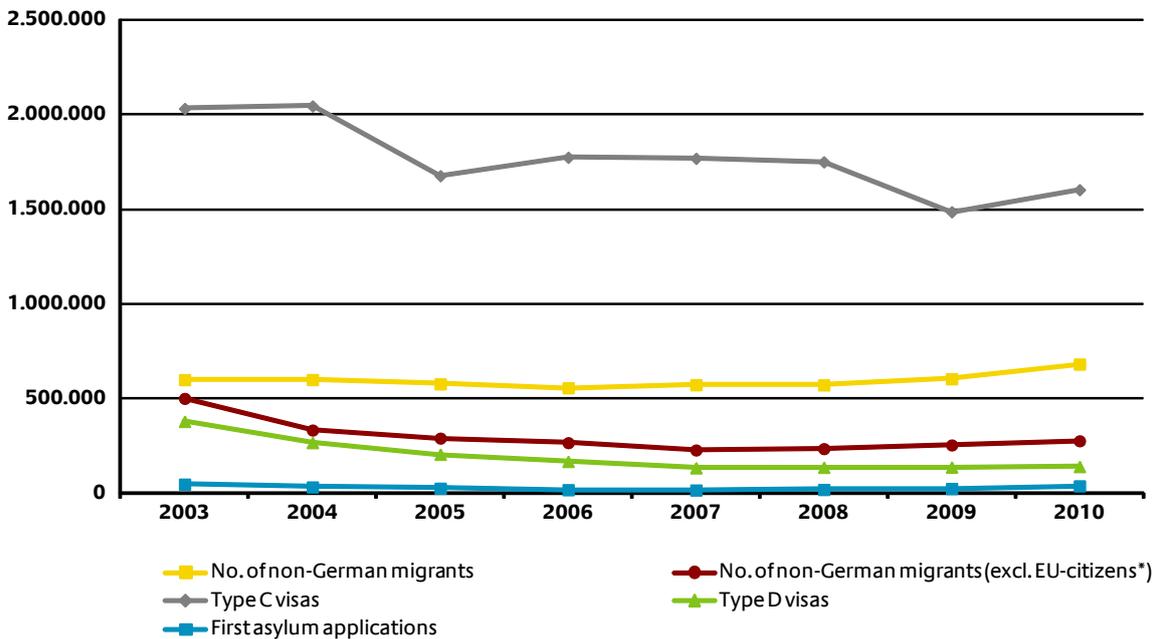
Sources: Federal Foreign Office, Federal Statistical Office, BAMF

\* 2003: EU-15 without German nationals, 2004-2006: EU-25 without German nationals, 2007-2009: EU-27 without German nationals.

Chart 6 shows that the volume of Type C visas issued during the observation period is declining. This development seems to be unrelated to the number of third country nationals entering Germany; for instance in 2006 the number of non-EU migrants dropped, while the number of Type C visas issued in the same year increased. On the other hand a natural link between the Type D visas issued and entries of third country nationals is perceivable as already observed in the case studies above. In recent years there seems to be a lesser degree of convergence, though: the number of Type D visas issued in 2010 exceeded that of 2009 slightly by 3,109, i.e. a 2.2 per cent increase. The number of non-EU nationals rose by 21,665 (+8.4%).

<sup>172</sup> After deducting immigration from the visa free countries USA (19,295 non-German immigrants in 2010), Croatia (9,939), Japan (5,354), Canada (2,982), Australia (2,459) and Israel (1,823) from the total of entries of third country nationals who arrived in 2010, the share of immigration on which visa policy can have an impact dwindles to 34.7 per cent (Source: Federal Statistical Office).

**Chart 6: No. of Type C, Type D visas issued, no. of entries and no. of first applications for asylum (overall), 2003-2010\***



\* 2003: EU-15 without German nationals, 2004-2006: EU-25 without German nationals, 2007-2009: EU-27 without German nationals.

Sources: Federal Foreign Office, Federal Statistical Office (compiled by the authors)

### China

The visa statistics for China vary considerably over the observation period (see Table 19). The lowest number of Type C visas was recorded in 2009 (139,945 Type C visas issued), the highest in 2004 (213,015). On the whole, neither an upward nor a downward trend can be seen for Type C visas in the long-term. The development of Type D visas seems to mark a slight upward trend: during the observation period the number peaked in 2010 and was lowest in 2005.

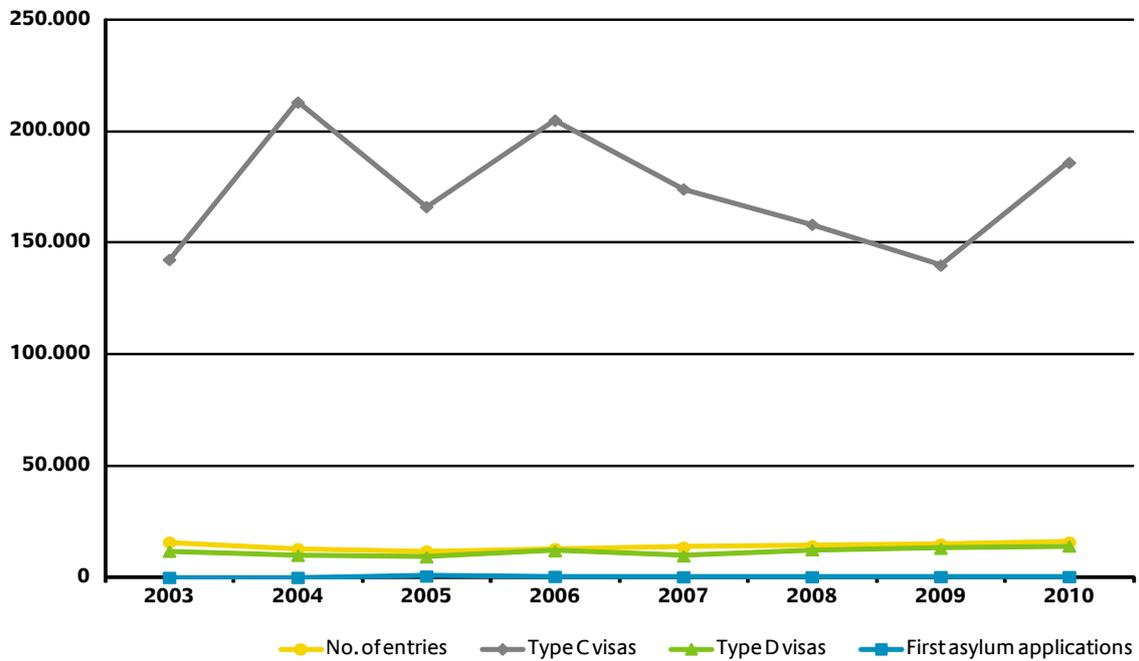
In each year during the period 2003 to 2010 the number of entries slightly exceeded the number of Type D visas issued by the German missions in China, but the curves run almost parallel: in 2003 the number of Chinese nationals entering Germany exceeded that of the Type D visas issued by 34.9 per cent, in 2007 by 40.6 per cent, in 2008 by approx. 14.4 per cent, in 2009 by approx. 14.7 per cent and in 2010 by approx. 12.8 per cent. Accordingly the numbers of Type D visas issued in China and of immigrants/Chinese nationals entering Germany seem to converge more over time.

In total, the number of Type C visas issued is almost completely independent of the number of Type D visas issued and of the number of entries. In 2004 a strong increase in Type C visas coincides with a clear reduction of Type D visas and of entries. Conversely the number of Type C visas dropped in 2008 and 2009, while that of Type D visas and of immigrants/Chinese nationals entering Germany went up, though only in a small scale.

**Table 19: No. of issued Type C visas, Type D visas, no. of entries and no. of first applications for asylum (China), 2003-2010**

	2003	2004	2005	2006	2007	2008	2009	2010
<b>No. of entries</b>	15,801	12,941	11,844	12,941	13,573	14,185	14,966	15,849
<b>Type C visas</b>	142,485	213,015	166,194	204,967	174,103	158,234	139,945	185,991
<b>Type D visas</b>	11,711	9,897	9,182	11,926	9,651	12,400	13,046	14,053
<b>First applications for asylum</b>	2,387	1,186	633	440	253	299	371	367

Sources: Federal Foreign Office, Federal Statistical Office, BAMF

**Chart 7: No. of issued Type C visas, Type D visas, no. of entries and no. of first applications for asylum (China), 2003-2010\***

Sources: Federal Foreign Office, Federal Statistical Office, BAMF (compiled by the authors)

### Turkey

A comparison of the data for China and those for Turkey as country of origin shows a much weaker correlation of the number of immigrants/entries from Turkey to Germany to the number of Type D visas issued (see Table 20 and Chart 8). In 2010, 88.7 per cent more migrants/entries came than Type D visas were issued. The decade-long sizeable and very dynamic flow of immigration from Turkey to Germany is much more independent from the issuance of Type D visas than in the case of China.

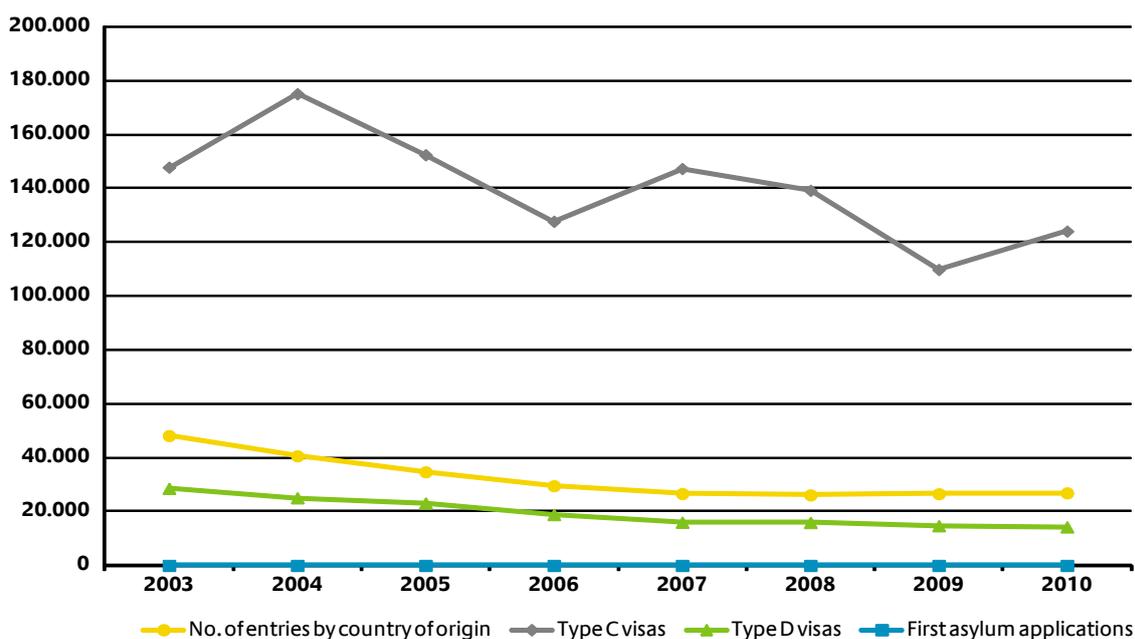
The number of Type C visas issued by the German missions in Turkey fluctuates much less over the years and tends to fall slightly overall. The number of Type D visas and of immigrants/entries is also falling, though the curve has flattened in the period 2008 to 2010.<sup>173</sup> After 2009 the number of migrants/entries from Turkey has even gone up again marginally.

**Table 20: No. of issued Type C visas, Type D visas, no. of entries, and no. of first applications for asylum (Turkey), 2003-2010**

	2003	2004	2005	2006	2007	2008	2009	2010
No. of entries	48,207	40,689	34,749	29,589	26,694	26,173	26,638	26,951
Type C visas	147,876	175,128	152,467	127,771	147,357	139,253	109,879	124,130
Type D visas	28,593	25,079	23,154	18,869	15,991	15,927	14,723	14,285
First applications for asylum	6,301	4,148	2,958	1,949	1,437	1,408	1,429	1,340

Sources: Federal Foreign Office, Federal Statistical Office, BAMF

**Chart 8: No. of issued Type C visas, Type D visas, no. of entries and no. of first applications for asylum (Turkey), 2003-2010\***



Sources: Federal Foreign Office, Federal Statistical Office (compiled by the authors)

<sup>173</sup> In all German missions throughout the world the number of visas issued for spouses intending to subsequently immigrate to join their partners has gone down sharply in the fourth quarter of 2007. This was caused by the introduction of the requirement to prove basic German language skills before a visa could be issued on 28 August 2007. For Turkey the figures fell from more than 2,000 visas issued in the first to third quarters of 2007 to 673 issued in the fourth quarter. It was not until the third quarter of 2008 that the figures were up to about the same level again. Thus a substantial part of the reduction in the number of Type D visas issued in Turkey after 2007 will relate to the lower number of visas issued for subsequently immigrating spouses (see BAMF/EMN 2011a: 24 et seq. and BT-Drs.17/3090 of 24 September 2010, p. 32).

## Ukraine

Both the number of visas issued by the only German mission in Ukraine in Kiev and the number of immigrants/entries from Ukraine are at a much lower level relative to the figures for China and Turkey. The number of Type C visas issued fluctuated between 95,074 in 2009 and 116,417 in 2003. The overall trend is slightly falling.

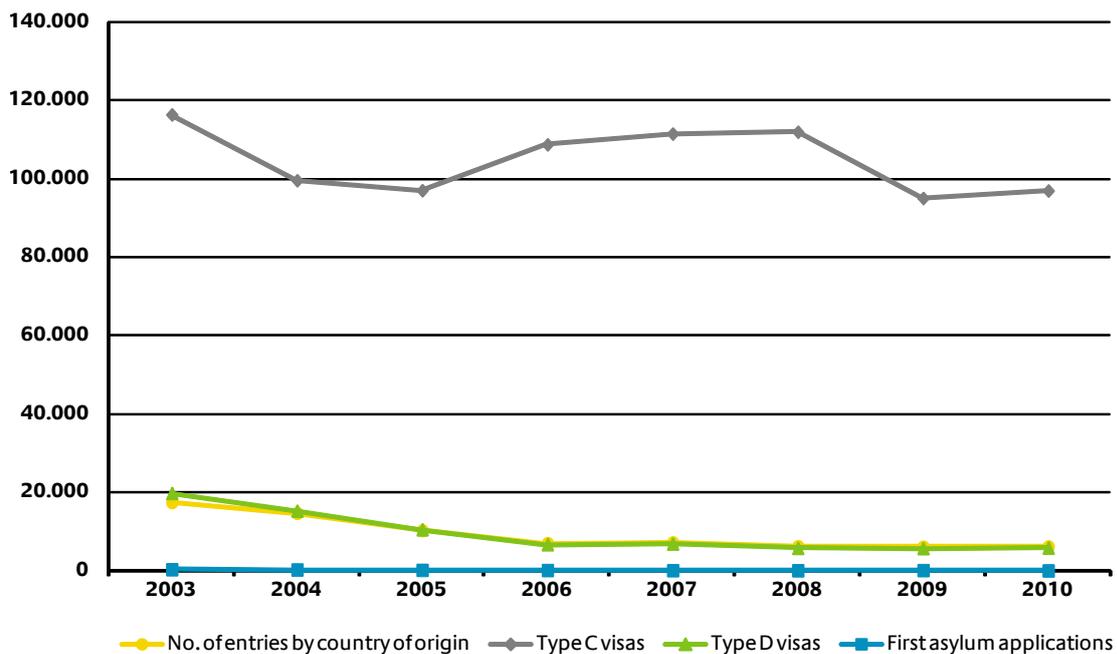
Up to and including 2005 the number of Type D visas issued exceeded the number of recorded immigrants/entries. Thereafter the number of migrants/entries was higher than the number of Type D visas issued, as for the other examples cited. Overall, the convergence of the numbers of Type D visas and of/entries is relatively strong, though. In 2010 there were only 6.1 per cent more immigrants/entries than Type D visas. It is striking that both the number of Type D visas and of migrants/entries follow a strong downward trend. In 2010 the number of immigrants/entries from Ukraine had fallen to one third of the number in 2003.

**Table 21: No. of issued Type C visas, Type D visas, no. of entries and no. of first applications for asylum (Ukraine), 2003-2010**

	2003	2004	2005	2006	2007	2008	2009	2010
No. of entries	17,441	14,676	10,268	6,994	7,174	6,208	6,081	6,149
Type C visas	116,417	99,603	97,058	108,767	111,521	111,994	95,074	96,982
Type D visas	19,755	15,241	10,476	6,664	6,850	5,732	5,675	5,794
First applications for asylum	299	231	132	99	62	37	66	62

Sources: Federal Foreign Office, Federal Statistical Office, BAMF

**Chart 9: No. of issued Type C visas, Type D visas, no. of entries and no. of first applications for asylum (Ukraine), 2003-2010\***



Sources: Federal Foreign Office, Federal Statistical Office, BAMF (compiled by the authors)

## India

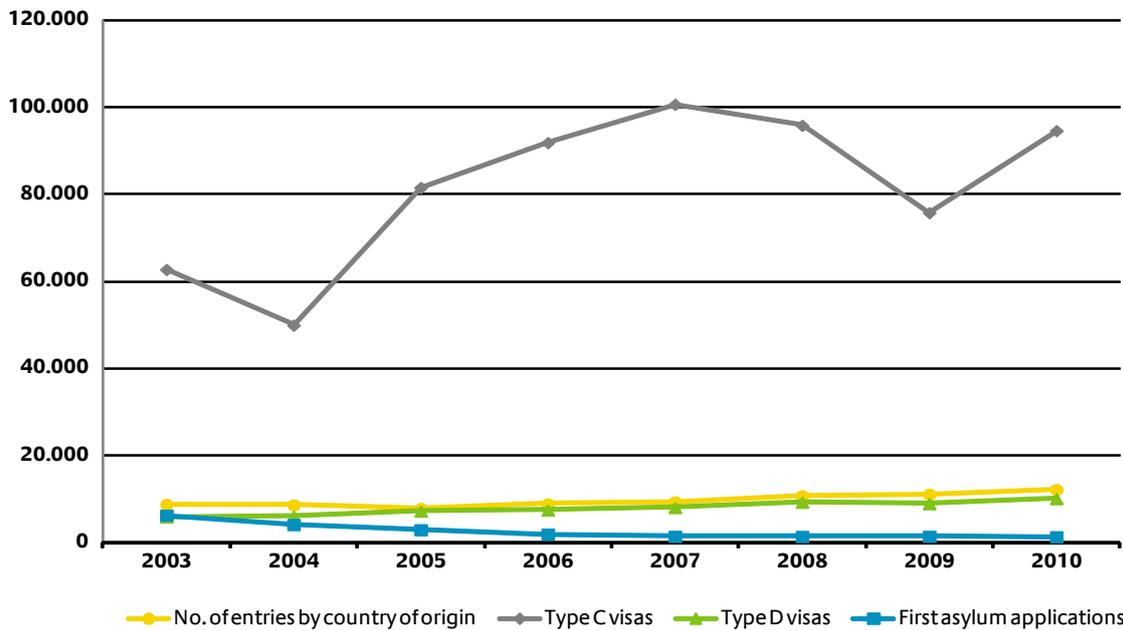
In the period from 2003 to 2010 India has gained substantial significance as country of origin for immigration to Germany. Since 2006 the number of immigrants/entries has increased every year. In 2010 38.8 per cent more migrants came/entries were registered than in 2003. Also the number of Type D visas has gone up constantly (a 72.1% increase in 2010 against 2003). Also more Type C visas are being applied for, these applications increased by 50.8 per cent, with temporary reductions in 2004, 2008 and 2009. Overall, the trend is clearly pointing upward. Thus India seems to become a more important partner country for Germany both for immigration and for short-term visits.

**Table 22: No. of issued Type C visas, Type D visas, no. of entries and no. of first applications for asylum (India), 2003-2010**

	2003	2004	2005	2006	2007	2008	2009	2010
<b>No. of entries</b>	8,804	8,652	7,865	8,911	9,367	10,767	11,122	12,218
<b>Type C visas</b>	62,757	49,960	81,584	91,909	100,698	95,859	75,802	94,648
<b>Type D visas</b>	5,866	6,032	7,213	7,460	8,059	9,260	8,939	10,093
<b>First applications for asylum</b>	1,736	1,118	557	512	413	485	681	810

Sources: Federal Foreign Office, Federal Statistical Office, BAMF

**Chart 10: No. of issued Type C visas, Type D visas, no. of entries and no. of first applications for asylum (India), 2003-2010\***



Sources: Federal Foreign Office, Federal Statistical Office, BAMF (compiled by the authors)

# 7 Conclusions

Visa policy is a major instrument for the national states and increasingly the European Union, as a uniform area for mobility without internal borders, to manage and control migration and travel flows. On the one hand the significance of visa policy results from the quantity of visas issued. On the other hand a substantial amount of legislation on visa procedures for admitting third-country nationals has evolved in the EU over a relatively short period of time. Whereas the competence for policy and issuance of Type D visas for long-term stay and immigration remains entirely with the nation states, with regard to short-stay visas regulatory powers which were formerly matters of national sovereignty were transferred to the Community, thus bringing about a relatively high degree of coherence. In this policy area the member states as well as the EU strive to further improve the control mechanisms, in order to facilitate mobility without neglecting the migration and security related issues and interests. Furthermore, from a foreign policy perspective, the Community's visa policy plays a decisive role to shape the political relations with third countries; such as negotiations on the rapprochement of neighbouring countries to the European Union, on international economic and trade relations and the dialogue on issues of migration and development in the different regions of the world.

## **Visa Policy as communitarised policy**

Starting from the cooperation under the Schengen agreements the bodies of the Community have developed a regulatory framework that covers all policy fields of controlled mobility, migration and border controls. There are far more regulations – the legal instrument with immediate legal effect – on visa policy than on other areas of migration policy, such as granting protection or controlling employment migration which have so far mainly been the subjects of directives. The core elements of visa policy are the Schengen Borders Code, the Visa Code, the Visa Regulation and the Regulation on the Visa Information System (VIS). On the basis of these legal acts the entry of third-country nationals to the Schengen area is now extensively monitored and controlled according to uniform criteria. This means more uniformity, transparency and legal security not only for the Member States, but also for the visa applicants – e.g. because written reasons must be given for rejecting an application since the Visa Code has been fully effective.

Once the VIS will be fully operational the applicants' personal data, including biometrical data and visa details will be available to the competent authorities throughout the EU for each short-stay visa issued, thus opening up options for further controls. Already today, the consultation procedure as provided by the Visa Code enables member states to have their interests and concerns taken into account by other member states processing visa applications. Consequently, security concerns are held dear in the process of examining visa applications for short-term stay within the Schengen area. The introduction of an entry-exit system is already under discussion as a potential future milestone to monitor mobility and migration flows at the European Union's external borders. In the long term this type of system would allow to know at any time whether a third country national who entered the Schengen area is still within the Member States and warn of a risk of irregular residence.

The European Commission has suggested further possibilities for cooperation. These proposals also relate to the establishment of common visa application centres or – with a longer term perspective – the extension of the Member States' cooperation on Schengen visas to long-stay visas that now fall within the national competence.

### **Visa Policy as Migration Channel: Statistical findings**

On the basis of available statistical data, the question whether or not visa policy is a migration channel, firstly, to prevent irregular migration and, secondly, to control and manage regular migration, cannot be answered definitely by the present study. Any consideration has to take into account the differences between the types of visa, in particular the communitarised Type C visas for short-term stay and the national Type D visa for long-term immigration. The synopsis of data on issued visas and immigration statistics illustrated that there is a close link between immigration to Germany and the issuing of Type D visas, which – based on the immigration law – serves the practical purpose of immigration. As a growing number of immigrants are EU citizens or nationals of countries not subject to visa requirements (anymore) an increasing share of overall immigration is no longer affected by the visa policy. However, for citizens of countries under the visa obligation, screening of visa applications and issuance of visas are crucial elements of external migration control. Cases in point are the Russian Federation, India, China and Turkey. Altogether 40.8 per cent of all entries relate to persons from countries of origin for which visa policy can have any effect at all and some of them such as the US have no visa requirement anyway.

It is more difficult to determine a correlation between the number of short-stay visas which are mainly used for business trips, visits or tourism (Type C visas) and recorded entries. For one, the sheer numbers of visas are much higher and secondly, no correlation of any statistical significance is perceivable. This means that immigration is not directly impacted by the short stays of nationals from countries that are subject to visa requirements. The volume of Type C visas also varies much more strongly and thus will depend on external factors or events beyond the control of visa policy. For instance, the downturn in the global economy caused by the economic crisis might be one of the factors contributing to the strong decrease in Type C visas in 2009 compared to 2008. But it seems that the crisis did not affect immigration. Therefore, the communitarised system for issuing Type C visas seems to fulfil its purpose of allowing short-term mobility for business, private and tourist visits after a pre-screening of the applicants' willingness to return to their home countries, thus preventing unauthorized entries and stay. As a matter of fact, the statistics on visas and entries, which are analysed in the present study, do not allow any inferences about the scope of visa-overstaying, i.e. the number of persons not leaving Germany after the duration of their visa expired. From data acquired from police apprehensions we can conclude that this phenomenon is currently not becoming more important in terms of numbers.

Even if no direct link between the number of Type C visas and registered immigration/entries can be established, it might very well be that lifting the visa requirement for the nationals of certain third countries makes a difference – at least in the short term – e.g. in the form of a higher number of first asylum applications. This is the lesson taught by the example of Serbia where the number of asylum-applications soared and immigration/entries increased in the year after the visa requirement was abolished. Not only can't the number of

overstayers be assessed statistically, but misuse of visas in general. Such confinements must be made – among others – to the number of persons who obtained their Type C visa through smugglers or facilitators. Neither is it known how many victims of human trafficking are brought to Germany with a Type C visa.

The rejection rates presented in the data section vary considerably between the German missions in different countries. This indicates that the visa procedure gives high priority to preventing irregular entries and that a different potential for irregular migration exists for different regions or countries. Within the scope of the present study it could not be established whether high or low rejection rates were the result of an intentional focus of certain missions or primarily of the push factors of a specific location.

Furthermore, the available sources do not show a clear correlation between visa denial and attempted illegal immigration. Especially third country nationals who are among the qualitatively most important immigration countries for Germany, are a predominant factor in regards of both, the number of rejections at external borders as well as the number of detected instances of illegal entry and illegal residence. On the other hand, two states from the list of the ten most important countries with the highest ratio of visa refusals can be found among the top ten list of rejections; as well as cases of unauthorized entry and illegal residence, respectively Afghanistan.

### **Promoting legal migration**

In the light of the widely discussed challenge posed by the lack of skilled labour in several sectors and the ensuing potential demand for skilled immigrant labour in Germany not only legislative changes play a role. Visa application procedures and the public relations work of the German missions abroad, to inform the citizens of third countries of legal immigration opportunities, are vital as well. Already now the missions are leveraging contacts with multiplier effects in universities, authorities, and organisations of their host countries to present Germany as an attractive location for skilled labour and interested students. Easy accessibility of the consular services in the visa posts plays a major role here, too.

Exploiting the latitude available within European and national visa policies to simplify the visa process may also positively affect Germany's development policy or external policy objectives. One example might be granting visas with longer validity, such as multiple entry Type C visas, to certain applicant groups to attract more travellers from the partner countries of the European Neighbourhood Policy to the Schengen area.

Such examples illustrate the opportunities for steering migration flows. Thus, besides its control and security related functions, the purpose of visa policy is also to act as a catalyst for migration flows that should be encouraged from the perspectives of labour market development, foreign policy, humanitarian obligations, economic cooperation and development.

### **Desiderata and starting points for future research**

Insights into the links between visa policy or visa practices and global migration flows that have a solid basis in social sciences remain rare. The present study describes the

legislation, the procedures and a major part of the statistics available and analysable, thus providing some basic findings. But still there is need for further research. As yet there are no empirical findings on the practices for issuing visas in the missions, such as interviews with visa officers or visa applicants. A country-specific approach with in-depth case studies seems particularly promising. These would, however, have to be much more detailed than the examples of Russia and Serbia provided above.

Any future research would require a much wider basis of data. For the purpose of scientific findings visa data specifying the applicants' nationality would be particularly useful which might be provided by an in-depth evaluation of the Central Register of Foreigners visa database. Such research might indicate the proportion of nationals from third countries other than the mission's host country that are applying at a certain mission in addition to the respective host country's citizens. Further it could be determined where nationals of a country with visa requirement in whose home country Germany has no mission apply for their visas.

It must be stressed that visa policy as a migration channel will remain a subject that merits research. More findings could help to improve the control of migration flows – both for preventing irregular migration and for the benefit of legal migration.

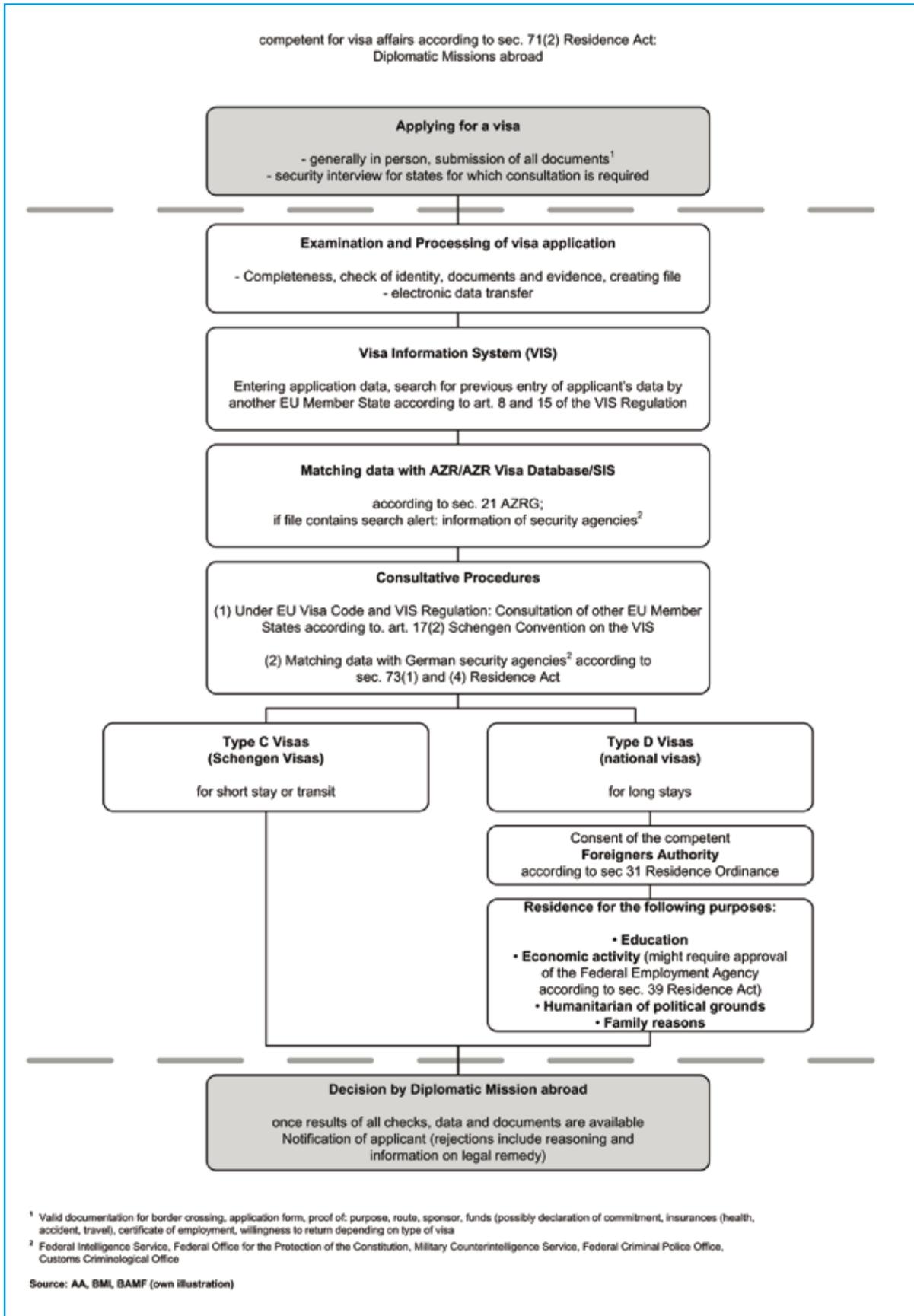
# Annex I: Detailed statistics for the case study on Serbia

**Table 23: Serbia (including Montenegro and Kosovo) - No. of visas issued, no. of entries and no. of first asylum applications, 2003-2010**

	2003	2004	2005	2006	2007	2008	2009	2010
Visas processed (total, Serbia and Montenegro)	97,228	96,349	80,553	83,755	94,398	65,385	47,617	5,931
Visas processed (total, Kosovo)						24,144	23,909	24,155
<b>Visas processed (total, incl. Kosovo)</b>	<b>97,228</b>	<b>96,349</b>	<b>80,553</b>	<b>83,755</b>	<b>94,398</b>	<b>89,529</b>	<b>71,526</b>	<b>30,086</b>
<b>Visas issued (total, incl. Kosovo)</b>	<b>87,979</b>	<b>77,995</b>	<b>62,836</b>	<b>70,582</b>	<b>75,529</b>	<b>72,389</b>	<b>57,635</b>	<b>33,178</b>
<b>Visas issued (only Type D, incl. Kosovo)</b>	<b>19,956</b>	<b>11,604</b>	<b>9,373</b>	<b>7,678</b>	<b>6,516</b>	<b>6,684</b>	<b>6,495</b>	<b>6,292</b>
<b>No. of entries from Serbia (by country of origin, foreign nationals)</b>	<b>21,442</b>	<b>20,366</b>	<b>16,706</b>	<b>10,794</b>	<b>10,201</b>	<b>8,640</b>	<b>7,834</b>	<b>17,670</b>
No. of entries from Montenegro (by country of origin, foreign nationals)				153	623	337	417	661
No. of entries from Kosovo (by country of origin, foreign nationals)							6,144	6,713
<b>Total no. of entries (by country of origin, foreign nationals)</b>	<b>21,754</b>	<b>20,628</b>	<b>16,963</b>	<b>14,654</b>	<b>10,824</b>	<b>8,977</b>	<b>14,395</b>	<b>25,044</b>
<b>No. of entries from Serbia (by nationality)</b>	<b>22,751</b>	<b>21,691</b>	<b>17,514</b>	<b>15,204</b>	<b>12,382</b>	<b>10,171</b>	<b>8,667</b>	
No. of entries from Montenegro (by nationality)					643	370	422	
No. of entries from Kosovo (by nationality)						2,615	6,168	
<b>Total no. of entries (by nationality)</b>	<b>22,751</b>	<b>21,691</b>	<b>17,514</b>	<b>15,204</b>	<b>13,025</b>	<b>13,156</b>	<b>15,257</b>	
First asylum applications by Serbian nationals	4,909	3,855	5,522	3,237	1,996	729	581	4,978
First asylum applications by Montenegrin nationals						37	57	59
First asylum applications by Kosovo nationals						879	1,400	1,614
<b>First asylum applications, total</b>	<b>4,909</b>	<b>3,855</b>	<b>5,522</b>	<b>3,237</b>	<b>1,996</b>	<b>1,645</b>	<b>2,038</b>	<b>6,651</b>

Source: Federal Foreign Office / Federal Statistical Office / BAMF

# Annex II: The visa procedure (scheme)



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