INTRODUCTION

One defining feature of the year 2004 in Germany was the discussion concerning a new Zuwanderungsgesetz\(^1\), which did not come into force until January 1, 2005. No significant alterations took place during the run-up to this legislative procedure.

A. MIGRATION ISSUES

In general terms, the retrogressive tendency in immigration was continued during the year 2004.

1) Analysis and interpretation of the migration statistics

Note that asylum applicants should not be counted, as far as possible, as new migrants. However, once they have received a status and settle in the country, they can be counted in the stock of legal migrants. The immigration flow (for family, work, study) should not include the asylum-seekers flow.

It is not possible to draw a distinction between the individual categories of immigration when the statistics relating to persons entering Germany are studied. For this reason, those applying for asylum cannot be identified separately. Since asylum-seekers are subject to registration, they are included in the statistics relating to persons entering Germany.

a) Migration Flows

How did migration flows in your Member State change compared to the previous years, from 2002 onwards? Please explain the reasons for changes. Did the migration trends observed in this field reflect immigration policies at the time?

In the year 2003, in comparison with the year 2002, the number of foreign nationals and Germans entering Germany dropped by 8.7% to just below 769,000. In the year 2004, however, there was once again a slight increase in these figures, which rose above 780,000 (+1.5%).

The immigration rate (the number of immigrants per thousand residents) reached its highest value in the year 2001, peaking at 10.7. In the year 2003, a significantly lower rate of 9.3 immigrants per thousand residents was documented, while in the year 2004 this value rose back up somewhat, to 9.5.

\(^{1}\) German Immigration Act
Around four-fifths of all persons entering or leaving the country were in possession of a foreign passport. As regards immigrants who held German nationality, the majority of these were ethnic Germans.

The principal countries of origin for the year 2004 were: Poland, the Russian Federation, Turkey, the USA, Kazakhstan, Romania, Italy and Serbia and Montenegro. Immigration from these countries can be broken down into three primary types of entry into Germany: immigration by ethnic Germans (from the Russian Federation and Kazakhstan), the reunification of migrant families (from Turkey, Serbia and Montenegro) and temporary migration for employment purposes (Poland).

It should not be forgotten that there is also emigration across the German borders, both by Germans and by foreign nationals, in considerable quantities.

The number of persons leaving Germany climbed from 606,000 in the year 2001 to almost 700,000 in the year 2004 (a rise of 14.9%). Admittedly, significantly higher emigration figures had already been documented during the 1990s (in excess of 815,000 in the year 1993, for example).

The emigration rate rose from 7.4 emigrants per thousand residents in the year 2001 to 8.5 per thousand in the year 2004. These high emigration figures also constitute an indication of the fact that in many cases, the migration processes involved are in fact temporary ones.

The principal target countries for emigration during the year 2004 were: Poland, Turkey, Italy, the United States and Serbia and Montenegro. One striking element here is the fact that the numbers of persons entering the country from Poland, from Serbia and Montenegro, from Turkey and from the United States are also matched by very high numbers of persons leaving the country. This too constitutes an indication of a very high level of temporary migration within Germany.

If the past four years (2001-2004) are taken into account, it emerges that there has been an average surplus of migration amounting to approximately 180,000 persons annually. In this respect it should be observed that the since the year 2001, the positive balance has fallen significantly, from 273,000 cases to less than 83,000. Thus we see that overall, in excess of 3.3 million persons migrated to Germany between 2001 to 2004, while almost 2.6 million left the country.

It is not possible to determine a direct correlation between the sinking immigration figures between the years 2001 and 2003 and the slight increase in the figures in the year 2004, on the one hand, and on the other the political changes during the period in question, which were few and were not far-reaching. Equally, it is not possible to provide an answer here to the question of whether the opportunities for visa-free entry into Germany for the purpose of short-term visits on the part of nationals from Bulgaria and Romania (see below) has in fact caused more persons from these countries of origin to enter the country. Since these persons
are only entitled to enter the country for the purpose of a short-term visit, they are not, as a general rule, entered into the immigration statistics.

b) Population by Citizenship in 2004

What were the largest groups\(^2\) (by citizenship) of third country nationals in 2004? If significant changes occurred in reference to the size of particular groups of third country nationals in 2004, what were the underlying causes of these changes (e.g. legal, political, economical, other)?

Preliminary remark: On no account should the data relating to migration – that is to say, the figures for immigration and emigration – be equated with the number of foreign nationals living in Germany. The number of foreign nationals living in Germany might be considered as “stock figures” declared at a certain point in time (e.g. on the 31\(^{st}\) of December in any given year), while in contrast, the figures for immigration and emigration are related to a period (e.g. one given year) and thus represent what might be considered “flow figures”. The “stock figure” of foreign nationals is not merely the result of the actual migration (i.e. immigration and emigration) associated with a country: the size of this figure is also influenced by the following factors:

- Births of foreign nationals within Germany (the so-called second and third generations of migrants, who have never actually migrated themselves),
- The number of deaths of foreign nationals within Germany, and
- Cases of naturalisation.

It should also be borne in mind that ethnic Germans, who as a general rule are in possession of the German nationality, are in consequence thereof not foreign nationals and are therefore not registered as such; nevertheless there can be no doubt that these persons too should be designated as migrants. International comparisons that aim to establish a comparison between migrant populations on the basis of the numbers of foreign nationals are, particularly on account of the differences in the national regulations in respect of the relevant laws relating to nationality and to immigration, exceptionally problematic.

Since the middle of the previous decade, the number of foreign nationals in Germany has to a large extent remained constant. At the beginning of the year 2001, according to the Central Register of Foreign Nationals, the number of foreign nationals in Germany amounted to a total of 7.297 million, while at the beginning of the year 2004 this total was 7.335 million. The total proportion of the country’s population made up of foreign nationals thus remained constant during these years, at 8.9% – which means that every eleventh person living in Germany is not in possession of a German passport.

\(^2\) Normally up to and including at least the 10 largest groups is sufficient. More can be provided if you consider relevant, e.g. a particular interest in a particular group at EU-level.
At the same time, the distribution of nationalities amongst the foreign nationals living in Germany altered only to an insignificant degree between the years 2001 and 2004. Approximately one quarter (1.8 million) are nationals of EU member states (EU-15, excluding Germans). This means that the overwhelming majority of foreign nationals in the country are nationals from third country states (5.5 million). With the accession to the European Union of ten further states during the course of the year 2004 (on May 01, 2004), the number of nationals of EU member states increased to more than 2.3 million (31.8%).

At the beginning of the year 2004, according to the Central Register of Foreign Nationals, by far the largest group of foreign nationals (25.6%) was made up of Turkish nationals, of whom there were almost 1.9 million. This was followed by Serbia and Montenegro, who accounted for a 7.7% proportion, the overall population from this territory being 568,000. Figures recorded in respect of nationalities from all the other third party states amount to less than 5% apiece (third place being occupied by the EU member state Poland, with 327,000 persons amounting to a proportion of 4.5%). In this respect the observation should be made that in terms of countries of origin, the structuring of the population of foreign nationals in Germany exhibits considerable diversity.

If we take a comparison in detail over four years (i.e. between the beginnings of the years 2001 and 2004 respectively), the following striking alterations become apparent:
- Russian Federation: + 58,000
- Ukraine: +37,000
- Croatia: +20,000

Together with
Turkey: -121,000
Iran: -26,432

The above increases can above all be attributed to increases in immigration from the states in question. The decreases in the stock of Turkish and Iranian nationals in Germany are the result of naturalisations.

Thus, the stagnation in the numbers of foreign nationals in Germany, despite slight increases in the actual migration figures, is most particularly a consequence of the introduction of a new Law of Naturalisation in the year 2000. In addition to the facilitation of the opportunities for the naturalisation of immigrants, the “territorial principle” of “jus soli” was strengthened significantly in respect of the children of foreign nationals who were born in Germany.

c) Residence Permits: annual total positive decisions 2004
How did the total number of positive decisions for residence permits (or other authorisations to reside) change in comparison to the previous year? Please explain the reasons for this (legal, political, administrative changes, etc.).
It is the opinion of the Federal Office for Migration and Refugees as German NCP that no use should be made of the file entitled “Annual total number of residence permits issued according to the main categories for migration”. There are no figures available in respect of the year 2004 that stand up to detailed scrutiny. It is not possible to offset the individual partial quantities of immigration (the reunification of families, immigration for the purpose of study, the taking up of employment, sundry other factors) on the basis of a variety of sources, as has been demonstrated over many long years of experience on the part both of the Federal Statistical Office and of the present author (Dr. Harald Lederer).

2) Contextual interpretations (legal, political and international factors)

a) What have been the main trends and most important developments in the area of migration policy in your Member State since the previous year (political stance; new or amended laws, procedural changes, etc.?) Please give a short overview.

No new laws or statutory regulations have been implemented in Germany in respect of migration during the year 2004. The new Immigration Act was discussed in the political arena, and passed by Parliament, but came into force not until January 1st, 2005.

b) What were the existing categories of admission or non-admission in 2004?

In the year 2004, immigration to Germany fell into the following principal categories:
- Migration within the EU of citizens of the European Union
- The subsequent migration of spouses and of family members of nationals of third party states
- Ethnic Germans from the former Soviet Union
- Jewish immigrants from the former Soviet Union
- Asylum-seekers
- Contract and seasonal workers, together with sundry other migrant workers (including specialist IT personnel)
- Foreign students
- Returning Germans

Persons who do not fall under the appropriate legislation relating to the immigration groups named above do not have any right to remain within Germany on a long-term basis.

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3 Please explain briefly new or amended immigration laws, and the areas they cover.
4 Please describe modifications to immigration procedure, including changes in application stages and agencies responsible. Include changes that are the result of both administrative and legal developments.
5 This refers to the categories which might be used in your Member State for the admission or non-admission of migrants. Examples for admission are family reunification, work, study; and, for non-admission, examples are false documents, known criminal activities, potential threat to national security. Please list the categories used in your Member State or, if none, state this also.
c) Could you identify European / international factors explaining certain changes/continuity regarding migration in your Member State in comparison to the previous year?

The developments depicted here of the overall migration pattern to and from Germany during the period of time under review in this report cannot be attributed to single European or international factors. This is demonstrated by the fact that the size and structural composition of the stock of foreign nationals in Germany have barely changed. It is possible that the retrogressive trend in persons entering Germany and the increasing trend in persons leaving the country are, first and foremost, an expression of the economic development of Germany during the years 2001 to 2004 and of the state of the labour market during that period.

Any statement here as to whether the expansion of the EU on May 01, 2004 has had any influence upon the magnitude of migration, and if so to what extent, must necessarily be subject to certain reservations, since Germany will not be opening its employment market to the accession states until after the expiration of the transitional period. This does not affect the existing programme in respect of seasonal and contract workers. (see Section D).

B. ASYLUM ISSUES

A characteristic feature of the year 2004 was a further decrease in figures relating to asylum in Germany.

1) Analysis and interpretation of the asylum statistics

a) Please describe trends in first-time asylum applications in 2004 compared to the previous year. Are these trends related to legislative or administrative developments/ changes?

Since the mid-1990s, the number of applications for asylum within Germany has – with the exception of one year, 2001 – been sharply in decline. During the year 2004, 35,607 first-time applications for asylum were lodged. In comparison with the previous year (50,563), this constitutes a decrease of 29.6 percent, while in comparison with the year 2001 this figure was down by 59.7 percent.

The majority of first-time applications for asylum were lodged by persons from Turkey (2004: 4,148), followed by persons from Serbia and Montenegro (3,855) and from the Russian Federation (2,757). However, the apportionment of asylum-seekers in terms of countries of origin has changed dramatically. For example, at the beginning of the 1990s, the figures were dominated by such countries of origin as Romania and Bulgaria. Of considerable interest in this context is the proportion of “other countries” (= all countries with the exception of the Top Ten countries) among the overall total of persons making first-time applications for asylum: in the year 1992, this proportion was still as low as 24.4%. During
recent years it has risen sharply, and in the year 2004 it amounted to 44.4%. By now, a large proportion of these refugees comes from a large number of countries of origin, and this is also the case in the overall field of immigration in general; the domination of individual countries of origin is declining.

More than two thirds (67.8%) of all persons making first-time applications for asylum were male; during the year 2004, the proportion who were women came to just 32.2%. Most frequently, first-time applications for asylum were lodged by persons falling into the age range of 18-to-35-year-olds (56.2%). The proportion of minor persons comes to approximately one third (30.1%). In this respect it is striking that within this particular age group, female asylum-seekers were over-represented: 36.9% of all female applicants for asylum were under 18 years of age, while the corresponding proportion of men was only 26.9%. From a quantitative perspective, the number of first-time applicants for asylum having an age of over 60 is not of significance (1.9%).

In the year 2004, 636 unaccompanied minor asylum-seekers were counted in Germany, with almost two-thirds of these being male (62.4%). In this respect it should be observed that in Germany – because of the legal situation – only persons who have not yet reached their sixteenth birthday can be counted as unaccompanied minors.

b) What is the total number of first and final positive decisions in 2004, disaggregated by the citizenship of the person concerned? Please explain changes in the total number of positive decisions in comparison to the previous year.

In the year 2004, the number of positive decisions in accordance with Article 16a of the Grundgesetz\(^6\) and asylum for families, in accordance with § 51, Paragraph 1 of the Ausländergesetz\(^7\) and in accordance with § 53 of the Ausländergesetz amounted to a total of 4.9% of all decisions reached. Over the years 2001, 2002 and 2003, this proportion of persons who were accorded protection amounted respectively to 24.4%, 6.2% and 5.0%. Negative decisions in the first instance amounted to 62.3%, while almost one third of all proceedings (32.8%) were concluded in some other fashion. The high proportion of positive decisions during the year 2001 (24.4%) was first and foremost the result of a large number of positive decisions in respect of which the countries of origin were Afghanistan and Iraq. The political circumstances in Iraq in the year 2002 had implications in terms of decisions in asylum procedures. On account of the situation in Afghanistan as a country of origin, the Federal Office discontinued its decision-making activities as of November 2001; the logical consequence of this was therefore a reduction in the proportion of positive decisions during the following years. The numbers relating to admissions, and to the reversal of decisions for admission by the administrative courts, cannot be shown for the year 2004.

If distinctions are drawn between positive decisions following admission in accordance with the Geneva Convention Relating to the Status of Refugees (admission in accordance with Article 16 a of the Grundgesetz and asylum for families, and in accordance with § 51,

\(^6\) = German Basic Constitutional Law
\(^7\) = German Aliens Act
Paragraph 1 of the Ausländergesetz) and subsidiary protection (decisions in accordance with § 53 of the Ausländergesetz), it emerges that above all, decisions in recognition of status as refugees were pronounced by the Federal Office; 68.2% of all positive decisions were in relation to decisions in accordance with Article 16 of the Grundgesetz and § 51, Paragraph 1 of the Ausländergesetz. In contrast to this, in 31.8% of all cases in which a positive decision was reached, subsidiary protection (an obstacle to deportation in accordance with § 53 of the Ausländergesetz) was granted.

In the year 2004, the largest absolute figure of positive decisions in accordance with the Geneva Convention Relating to the Status of Refugees (in accordance with Article 16 a of the Grundgesetz and asylum for families, and in accordance with § 51, Paragraph 1 of the Ausländergesetz) was in respect of Turkey as a country of origin (600), followed by the Russian Federation (550). In the field of subsidiary protection, the largest number of positive decisions were pronounced in relation to Afghanistan as a country of origin (289).

Among the TOP 5 countries of origin, Afghanistan (12.1%) and the Russian Federation (18.2%) account for the highest percentual share of positive decisions (in accordance with Article 16 a of the Grundgesetz and asylum for families, and in accordance with § 51, Paragraph 1 of the Ausländergesetz). In respect of Turkey, this proportion of persons who were accorded protection amounts to 8.1%, which is above the general average of 4.9%. It is not possible to establish any further relationships between political measures on the one hand and the number of applicants for asylum and/or the decisions taken on the other.

c) When compared with the previous year, can you observe changes in the statuses regularly granted to particular citizenship groups? How do you explain these changes or continuity?

There has been no significant change in the according of protection during the year 2004. One exception to this is the Russian Federation. In respect of this country of origin, the proportion of persons who were accorded protection rose from 9.4% in 2003 to 18.2%. These changes in the proportion of persons accorded protection are, first and foremost, a consequence of the political and social circumstances within these countries of origin. In Germany, there were no legal or administrative changes in respect of practice relating to the recognition of asylum status over the year 2004.
2) Contextual interpretations (legal, political and international factors)

a) New or amended laws effective in 2004
   Please describe shortly new or amended laws on asylum and relevant case law effective in 2004. Have there been important changes in comparison with the previous year?

In the year 2004 no legal changes were documented in the field of German asylum law. The corresponding political discussions were centered around the new Zuwanderungsgesetz\(^8\), which did not come into effect until the beginning of 2005. There were, in addition, no leading legal decisions by the courts of law of relevance to the field of asylum over the year 2004.

b) Procedural changes effective in 2004
   Please explain shortly administrative or legal changes in the application, decision, or appeals process in contribution to numerical changes. Have there been important changes in comparison with the previous year?

Setting aside the short-term discontinuation of decision-making activities in respect of Liberia as a country of origin, there were no changes in the field of enforcement or in that of procedure.

c) Can you identify European / international factors explaining certain changes regarding asylum trends in 2004 in your Member State? Has the situation changed in comparison with the previous year?

In principle, it is possible to cite the following determining factors (determinants) in respect of the magnitude of the access of asylum-seekers to Germany:
- the decision-making practice of the courts,
- the further options for remaining within Germany,
- the decision-making practice of other target countries (within Europe),
- the opportunities for employment, both legal and illegal, within Germany,
- the existing chains of migration and social networks, and
- the situations within the respective countries of origin (inter-ethnic tensions and expulsions, political and religious persecution, wars and civil wars, environmental destruction and natural catastrophes and economic crises).

It is not possible to draw up a causal correlation between the factors that lead to migration and their possible effects on the figures relating to access for asylum purposes.

It is not possible to state here whether the expansion of the EU on May 01, 2004 has had any influence upon the magnitude of immigration for asylum purposes, and if so to what extent.

\(^8\) = Immigration Act
C. ILLEGAL ENTRY

It is completely impossible to draw conclusions from the data presented below relating to the extent of illegal migration. The quantity of persons coming to Germany illegally and remaining there illegally can only be determined to a highly inadequate degree. In this respect there are four fundamental problems:

1. It is apart of the fundamental nature of the phenomenon of illegality that the affected persons avoid being recorded by state organs and therefore, as far as possible, also avoid being recorded in statistics. Therefore, on the one hand, foreign nationals residing illegally within Germany are not included in the local population registers. Any registration of such parties would lead directly to their being expelled and/or deported from the country, since remaining illegally and entering the country illegally are both elements of an offence. On the other hand, persons who do not have the right to remain behave in such a manner as to conceal their illegal residence from all the official state bodies at all costs.

2. The phenomenon of illegal migration cannot be viewed without also contemplating the problem of illegal employment by foreign nationals, because the motivations for taking up employment illegally are among the principal reasons for illegal immigration. Determined by the variations in demand within the markets for part-time employment, countless such stays are only of a limited duration. To a considerable extent, a “coming and going” with a certain seasonal character is therefore prevalent. In particular, those fields within which persons remaining in the country illegally will most commonly find employment – the agricultural sector, the construction industry, tourism – experience considerable fluctuations in the demand for labour over the course of the year. Therefore, if for example the number of illegal persons is measured at a point in time at which many short-term, seasonally-determined entries into the country have taken place (around harvest-time in summer, for example), then numbers suggesting a comparatively large migrant population will be produced in comparison to those produced if the appraisal had taken place after the majority of the persons in question had left the country once again (in winter, for example, a time when there is only a low requirement for labour within the construction industry and the agricultural sector).

3. If, when carrying out these appraisals, one orientates oneself towards the numbers recorded by the state authorities for public order and investigation, then as a matter of principle it should be taken into consideration that such figures record only the portion of these persons who have been discovered by these authorities – and that what remains unknown in the meantime is the so-called “dark area” of illegality. Official statistics – such as for example the criminal statistics held by the police, the statistics recorded by the Federal Police (formerly German Border Police) and by the Federal Office of Employment – relate only to the so-called “bright area” – that is to say, those that have been discovered and established. The amount that the police statistics are able to tell us is, therefore, limited by the fact that it is not possible to record an undetermined proportion of the infringements in these
statistics. Only the most limited of conclusions, if at all, can be drawn concerning the “dark figure”, and thus the overall number of persons remaining illegally within the country, from the recorded “bright area” (that is to say, the number of cases that have actually been discovered). Therefore, even if there is a rise in the number of those who are recorded, it is not necessarily possible to conclude from this that the overall extent of the migration phenomenon has also increased. Such a rise could, for example, be attributable to improved investigative procedures and techniques (such as the introduction of infrared cameras at borders).

4. Illegal migration is a phenomenon that is actually a composite of single and, in part, extremely diverse social phenomena. There are considerable differences as regards the respective background contexts for the migration, the motivations for migration and the lifestyles of the respective groups (such as persons who have remained illegally after being contract workers, prostitutes who are resident illegally, applicants for asylum who have gone into hiding, the illegal reunification of families); 16 specific types of this nature can be identified in respect of Germany. There is, therefore, no “typical” model of illegal migration, as a result of which these migrants do not represent any homogeneous section of the population. Thus this broad and complex spectrum of illegal circumstances renders it difficult to ascertain the extent of illegal migration on a quantitative level to any substantial degree.

1) Analysis and interpretation of statistics

a) Please describe developments/trends pertaining to the number of refused aliens in 2004 in comparison to the previous year. Have there been changes in the main countries of citizenship of refused aliens since the previous year? If possible, give reasons for these changes/continuity.

The number of persons who, according to the statements of the Federal Police (formerly German Border Police), have been refused entry into Germany, has been decreasing continuously since 1997. During the period under review, namely 2001 to 2004, this trend has been confirmed, the numbers having dropped from 51,054 persons in the year 2001 to 30,155 in the year 2004 (-40.9%). In comparison to the numbers from the previous year (42,072), this

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9 This includes, for letters a) to c): information on the number of refused aliens; their citizenship; the difficulties in return of migrants; and special arrangements with certain countries of origin or transit regarding return and deportation.

10 Defined as "Persons not covered by Community law who are refused entry at the border owing to (a) a lack of, or counterfeit/falsified, border documents; (b) an existing entry or residence prohibition; (c) other grounds for refusal." The 'other grounds for refusal' must have a link with the immigration status of the person. Thus, a refusal because a car is not roadworthy should not be counted here.

11 In case your Member State does not collect data on refused aliens, we kindly ask you to send us your enforcement statistics, even if they are not directly comparable.
last figure represents a decrease of 28.3%. These figures relate to the refusal of entry in order to prevent the unauthorised entry of a foreign national already at the border, in accordance with § 60 of the Ausländergesetz\(^{12}\):

\textit{AuslG § 60 Refusal of entry}

(1) A foreigner wishing to enter the Federal territory unlawfully shall be refused entry at the border.

(2) A foreigner may be refused entry at the border if

1. a reason for expulsion exists,
2. there is a well-founded suspicion that the foreigner does not intend to stay in the country for the stated purpose.

(3) A foreigner who is exempted from the requirement for a residence title for the purpose of a temporary stay in the Federal territory may be refused entry if he or she does not fulfil the requirements for a residence title. (…)

\(^{12}\) = German Aliens Act
According to the statements provided by the Federal Police, the persons who were most frequently refused entry in the years 2004 were 4,042 who were of Polish nationality; this amounts to a share of 13.4% of all cases in which entry was refused (2001: 23.6%; 2002: 27.9%; 2003: 33.6%). This figure saw a decrease in the numbers of Poles, both in absolute and in relative values. Second place was taken by Swiss nationals, with 3,585 persons being refused entry (2001: 11.8%; 2002: 10.4%; 2003: 10.1%; 2004: 11.9%). In this respect it must be presumed that reasons for the refusal of entry related to the legalities of residence play a subordinate role. There is no differentiation within these Federal Police statistics in terms of the reasons for the refusal of entry. The third most frequent group of persons who were rejected at German borders (3,585) is made up of citizens from Serbia and Montenegro (2001: 11.3%; 2002: 10.6%; 2003: 10.4%; 2004: 11.5%).

b) Please describe developments/trends pertaining to the number of apprehended aliens in 2004 comparison to the previous year. Have there been changes in the main countries of citizenship of apprehended aliens in 2004? If possible, give reasons for these changes/continuity.

The Federal Police statistics presented here are related primarily to the apprehension of persons at the so-called “Green Borders”. In fact, most apprehensions of persons residing within the country illegally are carried out not by the Federal Police but by the police forces of the German federal states. These numbers of persons apprehended are entered into the crime statistics drawn up by the police, which are not itemised within the template. In these crime statistics, the nature of the residence of all foreign nationals who are suspected of a crime are recorded and displayed, and persons who do not have a valid residence title are displayed under the category of “illegals”. The number of non-German persons apprehended by the police forces of the Federal Republic and of the federal states and found to be residing illegally within the country (the so-called “bright area”) therefore represents a minimum estimate of the illegally resident population of Germany. Thus, in the year 2004, a total of 81,040 persons illegally resident in the country was registered in Germany by all the police forces. As in the previous years, this constituted a reduction in the numbers of 15.8% as compared with the year 2004 (96,197 persons). However, the “dark area” – that is to say, the number of persons who are living illegally within Germany without ever having been apprehended, remains unknown.

Equally, the statistics for apprehensions by the Federal Police as presented in the Excel document, which include to a substantial extent apprehensions at the German borders, demonstrate a clear and continuous decrease since the end of the 1990s. In comparison with the year 2003, the figure dropped by 14.9% to 22,558 in the year 2004. In this respect the three most common groups of nationalities were:

- Ukrainians, with 3,321 apprehensions (making up 14.7% of all apprehensions),
- Turks, with 2,484 apprehensions (11.0%), and
- Russians, with 2,393 (10.6%).

13 In case your country does not collect data on apprehensions, please provide your Enforcement Statistics, even if they are not directly comparable.
c) **Please describe developments/trends pertaining to the number of aliens removed in 2004 in comparison to the previous year.** Have there been changes in the main countries of citizenship of removed aliens? If possible, explain the underlying factors for these changes/continuity.

The number of so-called “forced returns” (Rückführungen) is composed of the numbers for “deportations” (Abschiebungen) and “removals” (Zurückschiebungen) carried out by the Federal Police. Both factual circumstances have their own different causes: thus, deportation is related to the compulsory execution of the obligation to leave the country of a foreign national, mostly one who has been living in Germany for a long time (§ 49 of the Ausländergesetz\(^{14}\)). The reasons for such an obligation to leave the country are many and varied: for example, if the individual constitutes a danger to public safety, or if his or her residence status has been extinguished (§§ 42-47 of the Ausländergesetz). On the other hand, when an individual is removed, this will be a measure taken to terminate the stay of a foreign national who has travelled into the country without authorisation, said measure being carried out within six months of said individual’s entry into the country (§ 61 of the Ausländergesetz); there is, therefore, a direct connection between this removal and an illegal entry. For this reason, it is not possible to draw direct conclusions in respect of the magnitude of illegal migration or of other migration-related phenomena from these figures.

In the year 2004, the number of forced returns decreased by 11.3% as compared to the previous year, down to 26,807, thus bearing out the trend seen in recent years. The principal nationalities affected in the year 2004 were Turkey (14.0%), Serbia and Montenegro (11.2%) and the Ukraine (8.8%).

d) **In cases of refused, apprehended, and removed aliens in 2004, are these from the same countries in all categories, or are particular citizenship groups more common in a particular category?** If possible, explain the underlying causes.

It is striking that both in cases where the applicant has been rejected, and in cases of apprehension at the border or forced return, persons from Serbia and Montenegro, the Ukraine and Turkey are among the most common respective groups of nationalities.

In this context it should be mentioned, that in Germany until December 31, 2004 lived 332,441 foreigners with the obligation to leave the country registered in the Central Aliens Register, this circle of persons had no residence status.

Remark: The data of persons with the obligation to leave the country until December 31, 2004 were calculated in a different way than today. At that time the figure of persons with the obligation to leave the country was made up of different components: persons with isolated deportation measures (without tolerated stay) plus the figure of the persons with tolerated stay. Section 223 of the Federal Office for Migration and Refugees had found out, that not all

\(^{14}\) German Aliens Act
these persons with tolerated stay also are registered with an expulsion or deportation measure. As a result persons with the obligation to leave the country are defined as persons with an expulsion or deportation measure, having a tolerated stay or not.

2) Contextual interpretations (legal, political and international factors)

a) New or amended laws influencing irregular immigration in 2004
   Please explain the most important changes in policies regarding refusal of entry or return from the previous year.

There have been no legal changes in Germany in these fields in the year 2004.

b) Procedural changes influencing irregular immigration in 2004
   Please describe modifications to the procedure in cases of identified illegal entry, illegal residence and return since the previous year. Include changes that are the result of both administrative and legal developments.

Equally, we are not aware of any alterations in the field of the implementation of existing laws and regulations. Deportations to Kosovo were at times discontinued.

c) Can you identify European / international factors explaining certain changes/continuity regarding illegal entry in 2004 in your Member State?

It is not possible to identify any specific international factors in respect of the decrease in numbers. Equally, it is not possible to state here whether the expansion of the EU on May 01, 2004 has had any influence upon the magnitude of illegal migration, and if so to what extent.
D. **OPTIONAL: OTHER DATA AND INFORMATION AVAILABLE**

The presentation and analysis of the data categories mentioned below are optional. EMN members are, however, strongly encouraged to present any available and relevant national statistics in respect to migration and asylum on the following topics:

- Migration based on bi- and multilateral arrangements: seasonal labour, labour migration in combination with training.
- Fertility/ Mortality rates of third country nationals

The data should ideally contain information about Country of Origin (on the basis of nationality, not country of birth), gender and age, as well as being presented in total numbers and percentages. The source(s) of the data should be quoted.

About the following area special national statistics are available:

Migration based on bi- and multilateral arrangements: labour migration

In Germany, on account of specific demand in certain sectors of the labour market over the course of the past few years, a system of diverse forms of migration for employment purposes has developed. In addition to the two forms of migration for employment purposes outlined below, there are further possible forms that a working stay in the country can take – however, up to the end of the year 2004 these were not of any particular quantitative significance. These programmes are not restricted by the transitional periods as regards the free movement of labour connected with the expansion of the EU on May 01, 2004. The information concerning this range of topics is taken from the statistics of the Federal Office of Employment.

1) **Seasonal workers**

In the fields of agriculture and of the hotel and catering industry, most particularly, a temporary demand for labour is to be satisfied by means of providing short-term work permits (for a maximum of three months per calendar year) for employees from the Central European and Eastern European states.

The number of placements of seasonal workers of this nature has been constantly on the increase since the year 1994 (which saw 137,819 cases), and in the year 2004 this amounted to 333,690 cases. Over the years 2001 to 2004, the major portion of these seasonal workers came from Poland; in the year 2004, the proportion of Poles among all seasonal workers amounted to 85.6%.

2) **Contract workers**

On account of the bilateral agreements between the German government and those of several Central European and Eastern European states, foreign employees can work in Germany for a limited period of time (in general, two years). A large proportion of these so-called “contract workers” is employed within the construction sector.
In the year 2004, the average figure for contract workers in Germany amounted to 34,211, which was significantly down on the figure for previous years. Meanwhile, over the years 2001 to 2004, Poland accounted for almost half of the total of contract workers.