



Immigration Countries: Germany in an International Comparison

2015 Annual Report

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Foreword



Rüdiger Frohn



Dr. Wilhelm Krull

The Expert Council of German Foundations on Integration and Migration (SVR) is entering a new operational phase with this sixth Annual Report. The solid foundations of the SVR are based on its successful work, the wide range of societal impulses which it sets on the basis of scientific expertise and the productive and collegial cooperation with the expert professors. These and other factors have prompted the supporting foundations to reaffirm their support for one of their most important common projects and to promise the Council members that they will continue to support the Expert Council's work for a further three years.

After the SVR pinpointed the achievements and existing deficits in the integration and migration policy in last year's Annual Report, this year's report looks beyond Germany's own 'backyard' and examines the policies employed by other countries. The Council members are not seeking to engage in a contest, but are instead searching for inspiration and innovations which might prove helpful in Germany's path towards becoming a modern country of immigration. The learning potential is at the forefront of this interesting reading material. The comparison also helps to ensure that Germany is on the right path and deepens the understanding of the specific nature of individual national contexts. One of the Annual Report's primary and most important findings – and one which remains surprising – is that, compared to other countries, the 'slumbering country of immigration' Germany no longer needs to feel ashamed of its policy responses to issues relating to migration and integration: the country's institutional framework now matches the standards of classic countries of immigration. Moreover, Germany is in many policy fields part of an international process of convergence, which is resulting in greater similarity between previously diverging policy approaches. This is nothing less than a pragmatic shift in the country's integration and migration policy and – leaving aside some relapses – a long overdue de-ideologisation and a re-orientation towards people's genuine needs and those of their immediate surroundings.

Out of all the policy fields compared in a highly informative fashion in this Annual Report, one is particularly dear to us as representatives of the foundations: refugee policy. The international comparison shows that Europe's (geographical and political) position and the resultant challenges are singular in the world. The continent has taken a large step towards the establishment of collective European refugee protection with the EU's common asylum and refugee policy. Yet our efforts are nowhere near enough. We should continue to strive to be the driving force behind, and the source of inspiration for, a coordinated and humane refugee policy. In Germany, we must make greater efforts to see refugees not as a 'burden' and a 'liability', but instead as a particularly vulnerable group of people and to make their stay in the country as pleasant as possible. In order to achieve this aim, we need to make efforts to convince people in all corners of the country of this and occasionally also engage in disputes and discussions with sections of the population.

We sincerely hope that the key messages contained in this Annual Report contribute to an objective, constructive and forward-looking debate and have an extensive societal impact. We would like to thank all the authors who have together gone to great lengths to compile this report and above all Professor Dr. Christine Langenfeld for her outstanding leadership and her highly impressive engagement for the SVR. In the name of all supporting foundations, we would also like to pay a great compliment to the new Managing Director, Dr. Cornelia Schu, for the smooth transition and the continuity which has helped to ensure the sustained high quality of all work.

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Chairman of the Board of Trustees
Essen, February 2015

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Hanover, February 2015

Preface

This sixth Annual Report of the Expert Council of German Foundations on Integration and Migration (SVR) has a broad focus and looks towards other European and non-European countries from a German perspective. It adopts the approach of 'learning from others' to consider the entire spectrum of challenges associated with issues relating to migration and integration. In so doing, it seeks to answer above all the following questions: what are the main aims informing the country's migration and integration policies and how successful are its attempts to achieve these aims when compared to other countries of immigration? The SVR thus takes a look at the situation in other countries, a well-established practice in public discourse, in order to evaluate and contextualise German integration and migration policy and asks: what can be learned under which circumstances – and what cannot be learned? The report thereby also examines the extent to which policies employed in one country with specific structural and societal conditions can be transferred to another.

The comparison with states regarded as taking an exemplary approach to migration and integration policy issues, such as Canada, Sweden or the Netherlands, comes to a somewhat surprising conclusion: in contrast to the widely held view, Germany now belongs in many policy areas to the group of countries which are widely regarded as having progressive migration and integration schemes. This is described in the ten chapters of the Annual Report, each of which focuses on a different element of migration (Section A) and integration (Section B) policy. Yet despite these positive findings, it would be a great error to assume that Germany can no longer learn anything in the fields of migration and integration. The migration and integration policy challenges faced by Germany remain enormous. However, the Annual Report also shows that Germany cannot simply make use of 'blueprints' developed in other countries when trying to deal with these challenges. The country must instead find its own path – which is agreed upon with other EU countries and is embedded into an overarching European strategy – which it must decisively and courageously follow. This Annual Report offers a number of recommendations for action for this purpose.

The Annual Reports have focused until now on alternating elements in the fields of migration and integration: the first Annual Report, which had the title "Immigration Society 2010" ("Einwanderungsgesellschaft 2010") employed a wide range of empirical sources to describe German integration and integration policy against a European background. The report was accompanied by the SVR Integration Barometer, a representative survey with which the views of both the migrant and the non-migrant population on integration and integration policy were assessed for the first time. The results of the Integration Barometer refuted the widely held view in the public arena that integration has failed.

The integration-based Annual Report from 2010 was followed by an Annual Report which examined more migration-related issues in 2011. The main focus of the report was on how German labour migration rules, which at the time were relatively restrictive, might be reformed in a way that was useful and consistent with European regulations. Large parts of the catalogue of reforms developed by the SVR at the time (e.g. the liberalisation of immigration rules for skilled migrants and enhancing the options of foreign graduates of German higher education institutions who wish to remain in the country) are now German policy.

The 2012 Annual Report, which was entitled "Integration in the Federal System: the Federal government, *Länder* and the role of the municipalities" ("Integration im föderalen System: Bund, Länder und die Rolle der Kommunen"), examined once again an integration issue. The report focused chiefly on the cooperation which exists between the different levels of state government – the Federal Government, the *Länder* and the municipalities – in the policy field of integration. The strengths and weaknesses of Germany's federal system were highlighted and suggestions were made about how central difficulties might be remedied. One of the key issues examined in the report was the integration policy options of the municipalities, i.e. the room to manoeuvre that the municipalities had in this field. The report clearly

demonstrated that the basic conditions for integration vary greatly from municipality to municipality – not least because of the respective economic and socio-demographic framework conditions.

The fourth Annual Report, published in 2013, is in many ways a ‘European Annual Report’: it examined a migrant group whose mostly marginal presence in public discourse in no way corresponds with their relevance for Germany as a country of immigration. EU citizens are not just responsible for around two-thirds of the greatly increased net immigration figures: due to their predominantly high skill levels they also make an important contribution to alleviating the shortage of skilled workers in some regions and branches of the German economy. The structure of migration flows to Germany has thus fundamentally changed. The main tasks for the future thus consist of firstly further enhancing people’s ability to move inside the Union and secondly reducing the still enormous social and economic asymmetries between different parts of the EU together with existing impediments, such as the difficulties recognising vocational credentials obtained abroad. Reforms of this nature are important as the freedom of movement enjoyed by people within the EU is still far from perfect.

In its fifth Annual Report, which was published in 2014, five years after the foundation of the SVR, the SVR looked back on a five-year period which had been full of migration and integration policy events. It concluded that Germany had been transformed into a modern country of immigration (epitomised by the German title of the report: “Wandel zum modernen Einwanderungsland” or literally ‘transformation into a modern country of immigration’). This particularly holds true for the field of migration policy, for which the SVR determined a “rapid policy shift”. The SVR came to a more ambivalent verdict as regards the area of integration policy. While opportunities had not been taken in some areas of integration policy, such as in education policy or as regards citizenship legislation, the Expert Council concluded that progress had been made in other areas. This is particularly true of the aim of equalising the institutional position of Islam as the third large religious community in Germany. The establishment of Islamic theology at German universities and the introduction of Islamic studies as a normal lesson in schools, which the German *Länder* have taken different models towards implementing, are particularly worthy of mention. However, many things must still be done in order to completely equalise the religion’s status. Both sides are addressed here and called upon to take action. On the one hand, the Islamic organisations must strive to form one or more Islamic religious communities with transparent structures and must also be more willing to reflect – also critically – on the role of religion in

general and Islam in particular in the secular world. On the other hand, the German political establishment must also endeavour to support the Muslim community in its entire diversity throughout this process. Alongside efforts to improve the institutional situation for Muslims, all types of xenophobia and hostility towards groups of people – such as in the form of Islamophobia and Anti-Semitism – as well as religious fundamentalism and political extremism must be resolutely combatted. The topicality of this subject has become particularly clear in the last six months. The Integration Barometer conducted for the 2014 Annual Report revealed that both migrants and the native population continued to hold more favourable views on immigration and issues related to immigration (i.e. the integration climate) than the media coverage would suggest. However, the survey found at the same time that experiences of discrimination and reservations towards certain groups are not isolated cases. These attitudes towards certain groups are – at least to a certain extent – problematic and must not be played down, but instead decisively combatted.

The newly published 2015 Annual Report, entitled “Immigration Countries: Germany in an International Comparison” (“Unter Einwanderungsländern: Deutschland im internationalen Vergleich”), takes a different perspective on immigration and migration issues in Germany for the first time. In this report, the country of immigration that is Germany is not by itself the main focus of the study; instead the migration and integration approaches taken by other countries of immigration are analytically compared (with continual reference to the migration and integration status quo in Germany). The first part of the Annual Report examines the management of immigration. The differing forms of immigration flows – labour, student, family and refugee migration – are here comparatively considered. The second part, which investigates integration policy, looks at the following overarching fields: education; migrants’ economic, social and political participation; specific integration-fostering measures; policies of belonging/affiliation; and anti-discrimination policies. The third part of the Annual Report subsequently presents and critically evaluates systems for comparing migration and integration and appropriate international comparative studies.

The international comparison provides ‘dual findings’: the comparison confirms on the one hand that Germany is a modern country of immigration, a conclusion at which the 2014 Annual Report had already arrived. On the other hand, the report clearly highlights alongside the (possibly hoped for) potential to ‘learn from others’ also the ‘boundaries of learning from others’. A number of different factors are responsible for this. The first of these relates to the convergence processes visible in some policy fields that have increasingly rendered the political

and legal framework conditions of immigration processes 'similar' and have also now reached Germany, e.g. in the field of integration measures for new immigrants or naturalisation policy. Secondly, differing, and often highly diverging historical, political, economic and cultural framework conditions exist in the respective countries of immigration which make it impossible to simply transfer policy from one country to another, examples being the field of family migration policy and – transferred to the level of the EU – the area of asylum and refugee policy. As a final point, Germany has taken significant steps in many policy areas in the last few years, from which other countries may now be able to profit, e.g. in the field of labour migration and student migration policy.

Although the Annual Report has revealed that there is a limit to what Germany can learn from other countries, this does not mean that Germany cannot learn anything from this multinational comparison. Germany's ability to simply take a best-practice approach towards learning, by which policy measures identified in other countries are transferred across to Germany, does indeed appear to be limited. Yet Germany can nevertheless learn a considerable amount about the interconnections and interdependencies existing between general political, cultural and social framework conditions on the one hand and about the room for manoeuvre which states possess when designing and implementing migration and integration policy on the other hand. The individual countries can reveal the different room to manoeuvre enjoyed by states in differing societal circumstances. Germany can also learn that a successful migration and integration policy includes much more than just liberal migration and integration laws which meet international standards: migration and integration policy goes beyond just passing laws and regulations. This policy field is – more than most others – highly emotionally charged; a core task for politicians is to explain decisions and contexts, to pass on correct information and to develop an identity as a country of immigration with the population. This necessitates a decisive political will, more energy and courage and finally an agreed strategy in order to actively shape this process.

Readers who are not holding a copy of the Annual Report for the first time and have supported the work of the SVR for a long time will notice that this is the first Annual Report which does not contain an Integration or Migration Barometer. There is a concrete reason for this: the SVR has decided to do without a Barometer in this year's report in order to be able to present the Integration Barometer in next year's Annual Report in a more extensive form and with some methodological alterations and improvements. In this context, the survey will be conducted not just by calling people on their landline number, but also on their mobile telephone. This is particularly important as the number of young people who

can only be contacted via mobile telephone is constantly increasing. In addition, the 2016 Barometer, which was employed as Regional Barometer between 2010 and 2014, will provide representative data for the entire country. However, the central focus of the Barometer remains unaltered despite these changes. The survey will continue to interview people with and without a migration background, as the integration climate in the country can only be measured by examining the views of all sections of society.

As in all previous Annual Reports, the 2015 version addresses wide sections of society: alongside the expert community of politicians, public authorities, organisations and academia, the report is also targeted at the media in their role as opinion makers and disseminators of information.

On behalf of all Council members, I would like to thank the foundations who support our work, represented by the Chairman of the Board of Trustees, the former State Secretary Rüdiger Frohn, for their trust in the success of this unique institution. This trust is for us an obligation to advance the work of the Expert Council with energy and engagement in the future and to continue and further build on the SVR's track record. From the foundations themselves, I would like to especially thank the Executive Director of the Stiftung Mercator, Winfried Kneip and the General Secretary of the Volkswagen Foundation, Dr. Wilhelm Krull, for their ongoing support.

I would like to thank the Managing Director of the SVR, Dr. Cornelia Schu, for her reliable work. She took on the baton of running the office in summer 2014. I would like to record my special thanks to Dr. Holger Kolb, the head of the Annual Report Unit, for the many good conversations and his motivation and dedication during the collective formulation and development of the Annual Report. His conceptual work played a pivotal role in this year's Annual Report, as it has in previous Annual Reports. I would also like to thank the Deputy Head of the Annual Report Unit, Martin Weinmann, and the researchers Marcus Engler, Simon Morris-Lange, Caroline Schultz and Alex Wittlif, who participated in the production of the Annual Report, as well as Dr. Esther Weizsäcker and Dr. Julia Herzog-Schmidt as freelance employees, Sabine Schwebel, who supported the editorial process, Dorothee Winden, the SVR's Communications Manager, and all other employees of the Berlin office, without whom the work of the SVR could not be a success.

I would like to thank the members of the Expert Council for the intensive and extremely collegial cooperation, without which a project of this nature would never be successful. A body consisting of highly skilled scientists from a wide spectrum of differing disciplines depends and thrives on the interdisciplinary discourse – which is at times not easy –, on trust in working together as a

team, on confidence in one's own discipline and openness to other disciplines and finally on the willingness to struggle to achieve collective results. This characterises the SVR in a unique and especially productive fashion. I would like to record my thanks to the Council members for the trust that they have invested in my management and the public representation of the Expert Council. All results of the Expert Council are admittedly collectively compiled; they are the result of intensive teamwork and also of one or other controversial debate. I would like to especially thank the members who are now leaving the Council, Prof. Dr. Yasemin Karakaşoğlu and Prof. Dr. Ursula Neumann, for their collegial and productive cooperation. Many thanks also go to the Deputy Chairman of the Council Prof. Dr. Ludger Pries for the pleasant and stimulating cooperation as well as to Prof. Dr. Heinz Faßmann, who was once again responsible for selecting the topics for this Annual Report and played a crucial role in its final editing. I would finally like to thank Prof. Dr. Daniel Thym and Dr. Ferruccio Pastore, who helped us with their expertise while this Annual Report was being compiled. The responsibility for the report lies with the entire Expert Council. The Managing Director is responsible for the final editing.

This Annual Report shows once again that Germany has caught up significantly in a political and conceptual

sense in many areas of migration management and in the promotion of integration and participation. However, this does not mean that the country can sit back on its laurels, as the analyses in this Annual Report have also highlighted clear deficits and other failings. It is particularly important that Germany defines and positions itself internationally as a country of immigration and also strives to convince its own population that this is the case. The current and controversial debate about Germany's future as a country of immigration, currently taking place in society as a whole and also more specifically among the academic community, makes one thing crystal clear: politicians must attach a high priority to the field of migration and integration in order to tackle the forthcoming challenges – in dialogue with the population – with confidence and decisiveness.



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on Integration and Migration (SVR)

Berlin, February 2015

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The Most Important Points at a Glance

Ten Core Messages

The 2015 Annual Report has a broad focus and examines a wide range of different issues: it adopts the approach of 'learning from others' to consider the entire spectrum of migration- and integration-related topics. In doing so, it seeks to answer two main questions: what are the main aims behind Germany's migration and integration policies and how successful is the country compared to other countries of immigration?

The international comparative study comes to a somewhat surprising conclusion, which challenges the widely accepted public discourse on migration and integration in the country. Germany has rapidly improved its migration management scheme in a political and conceptual sense and introduced a much greater range of measures aimed at easing migrant integration and social participation in the course of the last few years. With these reforms, the country has caught up with the group of immigration countries widely regarded as having progressive migration and integration schemes. This finding is all the more remarkable given that the study does not compare Germany with the 'stragglers' in integration and migration policy, but instead with states judged as being 'model pupils', such as Canada, Sweden or the Netherlands.

In this context, can Germany be complacent? This would be the wrong approach, as the Annual Report, which also reveals a number of deficits and failures in German migration and integration policy, makes clear. The following Core Messages thus mainly focus on areas in which policymakers are required to implement urgently needed reforms. At the same time, the Annual Report also makes clear that measures identified as best practice in other countries cannot be simply transferred into German policy without further thought. Germany needs to instead find its own path which considers the specific circumstances in the country and is guided by the principle of safeguarding the country's future (see Chapter C).

The first six Core Messages mainly concentrate on different areas of migration policy, whereas the final four pay more attention to integration policy.

1 Market Germany's progressive labour market policy in an adequate fashion

In the course of the last few years, and without drawing a great deal of attention to itself, Germany has developed and implemented a progressive, forward-looking migration policy (for nationals of third countries), which can easily hold its own with the Canadian immigration regime, which is generally regarded as being exemplary. With the introduction of Section 18c of the Residence Act, the large reduction in the minimum period of residence required from EU Blue Card holders wishing to obtain a permanent residence permit and most recently a further opening of the labour market for non-academic skilled migrants, the country has chosen to adopt a hybrid model of labour migrant policy. In this sense, Germany is – at least in a legal and institutional sense – well placed in the global competition to attract 'the best people'. However, this has still not been recognised in all quarters. It is not enough to develop and implement new migration and integration policy; the new measures also need to be made public and the world needs to be told that Germany is a modern country of immigration, whose doors are open to the world's talents. The country thus can and should continue to learn from the classical countries of immigration in terms of marketing its progressive and liberal migration provisions.

As practically all industrialised countries with stagnating or shrinking economies are keen to attract and retain suitably qualified migrants, the need to successfully market Germany to the world will acquire further importance in the future. The competition for qualified personnel will increase and migrants from European countries will no longer provide enough workers for the German labour market. Indeed, the changing demographic situation in Southern, Central and Eastern European EU countries means that these countries' importance as a source of labour for Germany will decline in the future. Germany must therefore also make efforts to convince non-EU nationals that they are welcome and required. A number of political actors, such as the Federal Ministry for Economic Affairs and Energy or the Federal Foreign

Office have consequently begun to take up the issue of the recruitment of skilled migrants within the context of their particular area of responsibility. In addition, the online platform www.make-it-in-germany.com is increasingly becoming an important first source of information for people considering migrating to Germany. However, these efforts are not sufficient. Germany requires an overarching national agenda on migration (see Core Message 2), which encompasses both the marketing and a longer-term strategy.

Besides aiming to attract migrants to come to or to remain in Germany, the new conceptual framework must also be explained to the German population and the benefits offered by a pro-active migration policy must be stressed. All political parties represented in the German Federal Parliament and the great majority of civil society actors support the new orientation of the country's migration and integration policy, and differ only as regards small details. This new approach is Germany's answer to a number of challenges facing the country. These include demographic, labour market and socio-political changes coupled with human rights and international law-based obligations. The new approach in migration policy must be explained and regularly substantiated as being a step forward for Germany and as being an unavoidable prerequisite for sustainable societal development in Germany, Europe and the rest of the world. Whereas policymakers sometimes modify legal provisions in order to bring them into line with societal changes which have long been accepted by much of the general public, the opposite is true as regards migration- and integration-related issues: while the political and legal framework has already been greatly modified in these policy areas, the support of sections of the population for these modifications must now be obtained. As the Pegida movement,¹ which emerged relatively suddenly in late 2014, has demonstrated, a more intensive and evidence-based discussion over the economic, cultural, political, social and legal changes together with the opportunities and challenges of migration must be held. German policymakers and politicians need to be active in this field.

(For further information and recommendations for action see Chapter A.1)

2 Develop a cross-departmental national agenda instead of implementing migration policy 'at a whim'

A number of improvements have been made to German integration and migration policy, most notably as

regards labour migration, in the last few years. Whilst these improvements mean that, in a legal sense, the country has no need to feel ashamed of its migration and integration policy, there is still no discernible 'common thread' running through the various integration and migration related measures. In this context, an overarching plan needs to be developed which encompasses the whole range of migration-related issues. This plan should conceive migration and integration policy as a cross-departmental and holistic task, deal with the issues at hand first and place party-political expediency on the back burner. Coordinated migration and integration policies should be implemented which commence at German embassies abroad and end in local communities. This goal can best be achieved by actively involving and integrating a number of different institutional actors into the process. These include the responsible ministries together with employers' associations and trade unions in their role as social partner organisations. They also include further and higher education institutions and research establishments; the German regions as responsible bodies for schools; and companies and organisations in civil society.

A practical and rapidly implementable first step would be the creation of an executive committee entrusted with overseeing the design and the structure of an overarching concept on migration and integration. In this committee, the individual areas of operation (such as labour and family migration, refugee and asylum seeker migration, foreign student migration and their stay in the country, recognition of vocational credentials obtained abroad, assistance granted to small and medium-sized companies to recruit and integrate migrants, etc.) would have to be clearly defined and implementation measures developed. In addition, expert working groups would have to be formed for each individual area of operation. These would then engage with specific and complex questions, such as the regulation and management of skilled labour migration.

To cite one example: an expert working group could examine the advantages and disadvantages of recruiting non-academic skilled workers for occupations in which a labour shortage exists, something which German migration law permits in some situations. In some specific occupational segments of the German labour market, migration appears at first sight to counteract an ascertained shortage of skilled labour without negatively impacting on the earning power or the employment chances of the local (non-immigrant) population. However, it is in practice extremely difficult to identify which occupations suffer from a shortage of skilled workers. Indeed, the absence of relevant data and the lack of

¹ Pegida is the abbreviation for Patriotic Europeans Against the Islamisation of the West (*Patriotische Europäer gegen die Islamisierung des Abendlandes*), a far-right movement formed in late 2014.

satisfactory (long-term) forecasts of labour market developments mean that it is almost impossible to identify occupations which are likely to suffer from a long-term shortage of skilled labour in the future with any degree of certainty. In addition, the factors occasioning a shortage of skilled workers in some occupational branches are also unclear. In this context, the following questions need to be discussed: are shortages of skilled labour caused by wage rigidity, the lack of mobility on the part of the local workforce or merely cyclical fluctuations in production? And, is migration, or the attempt to channel migrants into certain segments of the labour market, beneficial to Germany in a structural sense?

Complex questions such as these cannot be discussed in isolation. They can instead only be satisfactorily answered when embedded in an overarching strategy which considers societal and migration-related issues. A National Migration Action Plan (*Nationaler Aktionsplan Migration*, NAM) could represent a central element in the formulation of a strategy of this nature. An important step in this direction was the formation of the cross-departmental working group of state secretaries on international migration in autumn 2014. This group could and should build the nucleus of the above-mentioned process.

(For further information and recommendations for action see Chapters A.1, A.2., A.3, A.4)

3 Retain the Blue Card: sustained migration policy is also a task for the entire European Union

Classical countries of immigration, such as the USA, Canada and Australia, have undeniable advantages recruiting the best skilled migrants. They are perceived – not just because of the language – as being attractive destinations. Highly qualified and migration-willing people from countries such as India, Brazil, China or Vietnam are not sufficiently motivated by the existing European migration management systems – irrespective of their names and their individual peculiarities – to migrate to Germany, Austria or Sweden. One of the great advantages of the American Green Card is that it grants its holder access to a labour market that extends from the Atlantic to the Pacific Ocean and from Alaska to Florida.

The introduction of the Blue Card was in this context an important development, as it was intended to be a European answer to the legal migration opportunities offered by the giants of migrant-targeted labour market policy, such as the USA, Canada or Australia. It is therefore all the more regrettable that the Blue Card, though a success in Germany, has turned out to be a failure in the rest of the continent. More than nine-tenths of all Blue Cards issued in Europe herald from Germany. Other states, while having dutifully introduced the Blue Card, have continued

to prioritise their own recruitment instruments, thus placing the Blue Card on the back burner or completely ignoring it. This approach has undermined the intention behind the Blue Card to make the ‘immigration continent’ Europe more attractive for labour migrants.

In order to strengthen Europe’s position as a continent of immigration for highly qualified, internationally courted migrants, EU member states would be well advised to develop a plan for retaining the Blue Card. These countries should develop a common strategy which makes effective use of the existing European framework for migrant labour while simultaneously considering the specificities of each country’s labour market policy. Germany should continue to campaign for the Blue Card at the European level and should strive to convince other member states that a migration zone containing nearly 30 different regulations is opaque and unattractive.

(For further information and recommendations for action see Chapter A.1)

4 Highly qualified migrants are already here: keep foreigners who have studied in Germany in the country

The migration of foreign students is – put very simply – the perfect form of labour migration. This is because former students become graduates who are not just professionally qualified in a particular field, but have also already started to integrate into society. A country of immigration must make early efforts to retain young foreign talent. Germany has greatly improved both the legal and institutional situation of international students studying at German institutes of higher education and international students’ and graduates’ labour market access in the last few years. The comparison of the provisions governing former students’ entitlement to stay in certain selected countries contained in this report has illustrated that Germany is now one of the more liberal countries in this respect. Furthermore, many graduates actually want to stay.

However, no reliable data is available documenting the proportion of those graduates wishing to stay in Germany who successfully master the transition from university to the German labour market. The only certainty is that the legal changes implemented in the last few years are not sufficient to ensure that international students find a job matching their credentials following graduation. Foreign graduates in Germany – and also in other countries – thus report facing great challenges mastering the transition to the labour market. These challenges include language problems, the absence of personal and vocational networks and the reluctance of small and medium-sized firms to recruit applicants whose native tongue is not German. These entry barriers can

be reduced by providing both international students and prospective employers with more intensive guidance and by organising mentoring programmes. The results of pilot projects carried out in individual university regions offer first glimpses into the measures which positively influence labour market entry chances. Universities, companies, authorities, recruitment agencies (including job centres) and other regional actors are called upon to initiate a labour market entry programme for international students which pays special attention to the needs of skilled workers. To ensure the success of such a programme, however, further research needs to be conducted, concrete decisions taken and other issues clarified. In this context, who exactly should take responsibility for developing a labour market entry programme of this nature? And, who is to fund and commission the programme and which body should monitor its progress? Policymakers are called upon to take the lead here.

(For further information and recommendations for action see Chapter A.2)

5 Refugees and asylum seekers: reconcile Dublin and the principle of free choice

In no other aspect of the policy area 'migration and integration' are reforms as patently necessary as in the refugee and asylum system. Rising numbers of asylum seekers, together with daily images of refugee ships attempting to reach safe European ports, demand political action. Particularly the Dublin Regulation, one of the cornerstones of the Common European Asylum System (CEAS), is coming increasingly under pressure. This convention determines which country is responsible for processing asylum petitions. It obliges the country through which a refugee has first entered the EU (i.e. the country of first entry) to take responsibility for the refugee's asylum petition. Italy, in particular, is suspected of deliberately ignoring this principle and allowing refugees to migrate further north without having first verified their identity. It is widely speculated that the country has thus attempted to acquire indirect compensation for the costs incurred in sea rescue operations and in initial migrant reception, both of which the country entirely pays for through its own financial means. This inappropriate 'cold boycott' of the Dublin agreement highlights a structural problem in the Common European Asylum System: countries on the external border of the EU are saddled with most of the asylum-related tasks for which all EU countries are in theory responsible. These tasks include protecting the EU's external borders, carrying out sea rescue operations, processing and taking in refugees, ensuring refugees' material and physical welfare and processing their asylum petitions. At the same time, this and any other attempts

at undermining the Dublin system risk placing asylum and refugee policy once more in the hands of nationalists and thereby renationalising the entire process.

A proposed reform best known as 'free choice' is currently being discussed by opponents of the Dublin scheme. Under this system, the country in which a refugee first enters the EU would no longer be responsible for processing the refugee's asylum petition. Refugees would instead be granted the chance to freely select the country in which they wished to lodge their asylum petition.

The SVR suggests a course of action which would enable both the retention of the Dublin principle and its combination with the notion of free choice. It proposes leaving the initial reception of refugees, the processing of asylum claims and the repatriation of failed asylum seekers in the hands of the countries of first entry. However, the SVR recommends providing these countries with guaranteed financial and logistical assistance so that they are able to assume a significant part of the responsibility for protecting the EU's external borders, for rescuing migrants stranded at sea, for providing refugees with accommodation and for processing individual asylum petitions. In return, the countries of first entry would have to promise to strictly observe the standards laid down in the Common European Asylum System regarding accommodation and the asylum procedure. If this proposal proved to be successful and a similar percentage of asylum petitions were recognised in Southern European countries as in the rest of the continent, a further step could be undertaken: the acknowledgement of the right to freely select a place of residence *after* asylum cases have been concluded. This proposal is new and is not currently envisaged in the European asylum system. Recognised asylum seekers (i.e. people whose asylum petition has been granted) would have the chance to leave the country in which they first entered the EU and migrate to a country of their choice. Recognised asylum seekers would receive a Europe-wide mobility option and thus rights to which they are not currently entitled. This proposal is however contingent on countries adhering to the principles contained in the Dublin Regulation to a greater extent than is currently the case and keeping to the European standards regarding accommodation and the procedure for recognising asylum claims.

The proposed reform would have, if implemented, obvious advantages for member states. Southern European countries, which as 'countries of first entry' bear the bulk of the responsibility for the initial reception of refugees, would receive, on the one hand, financial and logistic assistance. On the other hand, they would have a guarantee that at least some of the recognised asylum seekers would migrate further to Northern and Western European countries and be granted residence in these countries. Northern European countries would admit an increased number of people who are entitled to asylum,

but fewer asylum seekers, seeing as at present Southern European countries export a part of the problem associated with refugees to the north of the continent. The reform would impact on Germany in two ways: whilst there would be fewer asylum applicants in the country, the number of recognised asylum seekers in the country would rise. The latter would also be granted immediate access to the labour market and hence the opportunity to earn their own living.

This solution might appear far-fetched. However, it has become clear in the last few months that the European Union has enormous problems dealing with asylum seekers and refugees, and that less short-term repairs, and more a large-scale reform of the European asylum system is required. This reform should contain measures aimed at combatting the factors obliging people to flee their home countries at the same time as enabling the creation of mobility programmes permitting legal and circular labour migration flows. Germany, as a European political and economic powerhouse, should lead the way in this process and take a far-sighted approach towards developing new strategies which are only implementable in the long and medium term.

(For further information and recommendations for action see Chapter A.4)

6 Family migration: do not follow the American example

While for many countries of immigration the influx of family members of migrants already present in the country (i.e. family migration) represents a central form of migration, the subject does not attract the same media and public interest as other migration flows, such as labour migration, asylum seekers and refugees. However, in social policy terms, family migration is highly relevant for three reasons. There is firstly a direct link between measures adopted to regulate family migration and labour migration on the one hand and the connected efforts to attract skilled foreign nationals on the other. Secondly, authorities are unable to steer family migration by controlling for the credentials of migrants; in this context, concerns over the influx of people who are only able to integrate into the German labour market to a limited extent and whose presence generates costs for the social state are always virulently present in the public discourse. Thirdly, the arrival of family members in the host country has a particularly strong integrative and personality-stabilising function for the individuals involved: the social support thus provided can strengthen the societal inclusion of migrants, enhance their sense of well-being and as a result contribute to their identification with host society.

The strategy employed by states to regulate family migration is highly dependent on the definition of 'family' employed by the appropriate state. So the USA, which adopts a much broader definition of the family than European countries of immigration and thus appears at first glance to take a more open approach towards this form of migration, shuts itself off by employing a quota-system with extremely long waiting times for potential migrants. This approach contrasts greatly with that employed in EU countries, which while employing a more 'narrow' definition of the family unit, attach considerable moral and legal importance to the right of individuals to be reunited with their families in the host country. A family reunification strategy based on quotas is not planned and would be incompatible with the European Directive on the Right to Family Reunification (2003/86/EC). Further to this, the analysis reveals that even Sweden, which is considered to be especially liberal in many areas of migration and integration policy, introduced measures in 2010 obliging prospective family migrants to provide evidence of minimum earnings and adequate accommodation in the host country.

In the context of demographic changes and an increasing paucity of skilled workers, migrants joining their families in Germany should be granted improved labour market prospects. Steps must be taken to ensure that family migrants also profit from the enhanced language learning infrastructure and are better able to juggle the demands of family and employment, so that women especially can gain access to the labour market. This process should be frequently monitored. It is also important to ensure that the requirement that third-country family migrants demonstrate basic German language skills positively impacts upon the integration process, and does not hinder migration flows. The newly established exceptional hardship clause, which allows people under certain circumstances to join their partners in Germany without demonstrating knowledge of the German language, is thus to be welcomed. Nevertheless, it should only be employed for people genuinely suffering extreme hardship.

(For further information and recommendations for action see Chapter A.3)

7 Education policy: prevent the development of an underclass and enable migrants' upward mobility

Germany insisted for too long that it was not a country of immigration. Political paradigms such as 'fostering migrants' willingness to return home' (*Rückkehrförderung*) or 'short-term migration' (*Migration auf Zeit*) prevented the implementation of integration measures that had long been introduced in other countries

of immigration. As a result, the country must now compensate for a lack of forward planning in the past. For many years, predominately low-qualified migrants were recruited for chiefly menial tasks which were often scorned by the local population, and the German school system (in contrast to, for example, the English, Swedish or Dutch systems) did not enable schoolchildren to progress up the educational ladder to the necessary extent. As a result, a new underclass of people from both immigrant and non-immigrant families has developed which is spatially manifest and socially consolidated. These precarious social milieus are multigenerational and are only rarely penetrated or broken up.

The education system is at the heart of state integration policy. The aforementioned vicious circle can only be broken if educational conditions are put in place that enable the upward mobility of young people with migration backgrounds. Further efforts are therefore urgently needed in this area: playschools must be recognised as educational establishments and the acquisition of German language skills must be promoted from an early age, in order that children – irrespective of their citizenship and migration background – are not disadvantaged when starting school. In addition, it is of utmost importance that complementary German language tuition becomes a standard feature in German schools. This is important so that children with migration backgrounds can continuously improve their German language proficiency – something indispensable (especially) in secondary and tertiary education – throughout their time at school. Trainee teachers and those already in employment should furthermore receive comprehensive intercultural training which equips them to deal with increasing linguistic, social and cultural diversity in schools. This is especially pertinent when it comes to dealing with students in the immediate classroom environment and when cooperating with fellow teachers and parents. School lessons and the entire school environment must be planned from an intercultural point of view. As a further measure, children and youths entering the country's school system after the official school entrance age (i.e. because they have previously lived in another country) should receive targeted German language support. It might also be worth considering allocating special funds to schools which are located in socially disadvantaged neighbourhoods and face especially large integrational challenges. The eligibility for this funding could be determined based on an index of social deprivation. This measure might contribute to improving the quality and attractiveness of these schools to such an extent that the ethnic and social mixture of the population has a beneficial impact on processes of school integration. Programmes of this nature should be implemented, but also made subject to a regular evaluation.

(For further information and recommendations for action see Chapter B.1)

8 Citizenship: modern societies shaped by immigration require a modern citizenship concept

The purportedly simplistic citizenship concepts of the 19th century are long out of date in a globalised world. In order to deal with the challenges posed by increased and increasing spatial mobility, states are attempting to find the right balance between *ius sanguinis* and *ius soli* in their citizenship legislations. As birthplace and later place of residence increasingly differ from one another and a sedentary way of life is less common than in the past, the SVR recommends adopting a new citizenship concept. This new concept should pay considerably more attention to immigrants' life situation as well as their actual links to their home countries and the host society than has been the case to date.

The SVR recommends a reform of German citizenship legislation consisting of various elements. The first two elements would be comparatively easy to implement: 1) a 'turbo-naturalisation' with reduced minimum residence times for well-integrated migrants and 2) a naturalisation campaign in which the state actively emphasises the benefits of naturalisation, gets in touch with people eligible for naturalisation and encourages them to naturalise. Somewhat more complex is 3), a model already publically advocated by the SVR in 2014. This reform seeks to provide countries of immigration with an adequate response to rising migration and mobility and is, as detailed in this Annual Report, already employed – at least when dealing with nationals living abroad – by some countries widely regarded as having progressive integration policies. This citizenship model would be able to break the dual-passport asymmetry currently contained in German citizenship law. Thus, while the current provisions usually confer dual citizenship on children of foreign citizens born and brought up in the country, they do not grant naturalisation candidates the same opportunity. The legal provisions could be modified without a general and unconditional acceptance of dual citizenship; the SVR had already rejected this option as a result of legal and democratic concerns before first advocating reform in 2014. The SVR recommends instead permitting naturalisation candidates to retain their initial citizenship(s) whilst simultaneously endeavouring to prevent this/these citizenship(s) from being passed on over multiple generations, something currently possible due to the principle of *ius sanguinis* contained in German citizenship legislation. The country should thus introduce a 'generational cut-off' (i.e. prevent people from a certain generation onwards from automatically acquiring the relevant foreign citizenship) in negotiation with the most important countries of origin. Both Germany and other countries such as Canada and Sweden already employ a 'generational cut-off' with respect to their own citizens living abroad. Germany should

consequently promote this mechanism, which the country already employs when dealing with its own citizens abroad, in negotiations with important countries of origin of migrants, and thus tailor its citizenship legislation to the needs and reality of the 'age of migration'.

Although citizenship legislation is entirely in the hands of the nation-states and the EU has no competences in this field, state policy on this issue does have a European dimension. This is because citizenship of the European Union and the associated entitlements which go with it are also acquired with the passport of an EU member state. Against this background, not just the 'citizenship for sale' policy pursued by Malta and Portugal, which has recently come to public attention, but also the extreme divergences between the naturalisation requirements in individual EU states should be viewed critically. Increased cooperation between EU states on this issue, perhaps in the form of countries agreeing to set their naturalisation requirements within agreed parameters, would be helpful here.

(For further information and recommendations for action see Chapter B.4)

9 Terminology: employ more sensitive terms and retain established statistical criteria

A detailed consideration of migrants' chances of societal participation and of their perceptions of belonging first became possible with the introduction of the category 'persons with a migration background' in the 2005 micro-census. The criticism of the new category formulated by both migrants and academics attests to the term's ambivalence. Indeed, the term has acquired a negative connotation among large sections of the German population and has gradually become a type of 'catch-all' term used to refer to all 'problematic population groups' and 'people in need of support'. However, in order to ascertain the extent to which certain migrant groups suffer from systematic discrimination, it is necessary to collate information about their migration status and that of their parents' generation. This is because measures aimed at managing diversity and enabling a greater proportion of the migrant population to participate in, and identify with German society can only be developed if these categories have first been measured and explicated.

The German category 'person with a migration background' has no genuine role models and has not been imitated in other countries. Whereas tendencies towards convergence can be observed in many other fields of migration and integration policy, and country-specific differences are gradually dissolving, large differences continue to exist in the terminology used (by states) to refer to migrants and migration-related issues. The two

most extreme positions are represented by the French republican tradition on the one hand and the Anglo-Saxon tradition on the other: whilst societal differences relevant for the migration discussion have scarcely been mentioned in French public discourse, an increasing amount of information about migration-related features and social groups is collected in Anglo-Saxon countries. The SVR does not regard either of these models as being a genuine option for Germany. Instead, it recommends retaining the category 'migration background' as a useful statistical category. In addition, the SVR also considers it to be of the utmost importance that inclusive, and not exclusive, terminologies and narratives are developed which highlight the role that migration has played in shaping German society. This migration narrative should thus critically examine the terminology employed in the public discourse to refer to migration- and integration-related issues in the past. In doing so, special attention should be paid to the 'guest worker' policies adopted in the second half of the 20th century. A positively charged migration narrative of this nature can help firstly to prevent the spread of nationalism, particularism and populist movements seeking to exclude minorities, and secondly to construct a society that is fit for future challenges and attractive to immigrants.

(For further information and recommendations for action see Chapters B.5, B.6)

10 Tenacity and patience: integration processes are inter-generational processes

While widely heard phrases such as 'rights and responsibilities' and 'integration is not a one-way street' may appear to be worn out due to their omnipresence in political discussions, the media and the public arena, they nevertheless draw attention to a crucial aspect of integration discourse: integration is not a special or clientele policy aimed merely at a small proportion of the population. Instead, both sections of society – the immigrant and the native populations – should be addressed and activated as part of the process of integration.

This strategy of granting migrants a series of rights on the one hand and expecting them to actively contribute to their societal integration on the other is currently employed in all European countries of immigration. This method seeks to provide individuals with the ability to be economically autonomous and free of state assistance (in short: self-determination). In order to achieve this 'liberal' aim, liberal states are also making use of predominately 'illiberal' methods, such as compelling migrants to attend language and integration courses and threatening to suspend welfare payments if they do not cooperate. Nevertheless, it is clear that the state must remain within the

fundamentally liberal coordinates which modern democratic countries have given themselves; i.e. the aim of state migration policy must not be to assimilate migrants, but instead to enable all parts of society to participate as equal members of a free and democratic community.

The combination of supporting and demanding is the common thread running through integration policy currently employed by European countries of immigration. This approach marks a transition from a period in which integration policy was shaped by illusions and technical master plans to one characterised by a process-oriented political pragmatism. However, such integration processes require time and are often cross-generational projects, and success is not immediately measurable. People who believe that migrants become 'Germans' – whatever one might understand under the term – in a few months or years have not learned anything from the history of migration and integration.

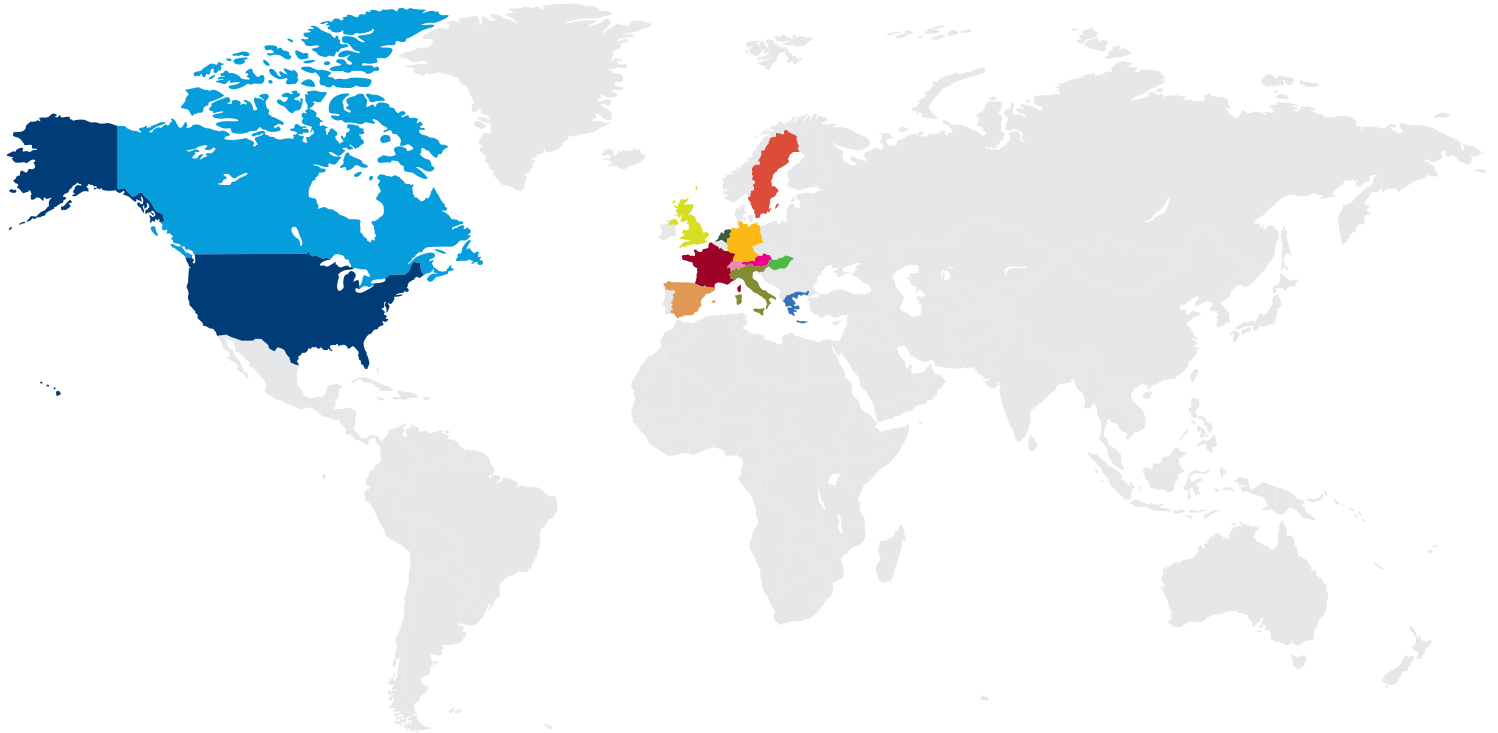
All immigration societies are characterised by increasing heterogeneity. They have to free themselves from the illusion that migrants are merely guests in the country,














and they have to accept – also in terms of the terminology they employ – that people whose families have lived in the host country for several generations are no longer migrants. With time, migrants gradually become Germans, although not as members of a community of ethnic descent, but as German residents who possess the same rights and duties as the autochthonous population and are committed to the country. While they will have heterogeneous ethnic backgrounds and possibly different skin colours, they all form part of this pluralistic society. Society has always been pluralistic, and modern society merely adopts an increasingly plural and differentiated form. This increasing plurality does not destabilise society as long as a solid foundation of generally binding values, together with a commitment to society, to the principle of mutual consent, the rule of law and to freedom and liberty are present. In a perfect situation, the constant struggle to achieve these goals can itself contribute towards generating social cohesion.

(For further information and recommendations for action see Chapters B.2, B.3, B.6)

Profiles of the Comparison Countries

The following pages give an overview of important background facts and indicators to the countries which are compared in the differing chapters of the Annual Report.



- | | |
|--|---|
|  Germany |  Italy |
|  Austria |  The Netherlands |
|  Canada |  Spain |
|  France |  Sweden |
|  Great Britain (United Kingdom) |  Switzerland |
|  Greece |  USA |
|  Hungary | |

Germany



Geography	
Area	357,050 km ²
Capital	Berlin
Politics and Administration	
Official language	German
Type of state and government	Federal parliamentary republic
Demography and Migration	
Population	81.9 million
Population density	231.3 inhabitants/km ²
Birth rate	1.4 children/woman
Middle age (median age)	45.1 years
Proportion of population born abroad	13.3 %
Asylum petitions	126,907
Immigrants (net) per 1,000 inhabitants	1.6
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	43,108
Unemployment (harmonised)	5.2 %
Human Development Index (HDI rank)	6 out of 187
Life satisfaction (Life Satisfaction Index)	7.0

Austria



Geography	
Area	83,871 km ²
Capital	Vienna
Politics and Administration	
Official language	German; regional: Slovenian, Croatian, Hungarian
Type of state and government	Federal parliamentary republic
Demography and Migration	
Population	8.4 million
Population density	102.8 inhabitants/km ²
Birth rate	1.4 children/woman
Middle age (median age)	42.4 years
Proportion of population born abroad	16.2 %
Asylum petitions	17,424
Immigrants (net) per 1,000 inhabitants	3.3
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	45,093
Unemployment (harmonised)	4.9 %
Human Development Index (HDI rank)	21 out of 187
Life satisfaction (Life Satisfaction Index)	7.5

See Chapters A.1, A.2, B.3

Canada



Geography	
Area	9,984,670 km ²
Capital	Ottawa
Politics and Administration	
Official language	English, French
Type of state and government	Federal constitutional monarchy
Demography and Migration	
Population	34.9 million
Population density	3.9 inhabitants/km ²
Birth rate	1.6 children/woman
Middle age (median age)	40.0 years
Proportion of population born abroad	19.8 %
Asylum petitions	10,299
Immigrants (net) per 1,000 inhabitants	7.4
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	42,748
Unemployment (harmonised)	7.0 %
Human Development Index (HDI rank)	8 out of 187
Life satisfaction (Life Satisfaction Index)	7.6

See Chapters A.1, A.2, A.4, B.2, B.4

France



Geography	
Area	543,965 km ²
Capital	Paris
Politics and Administration	
Official language	French
Type of state and government	Presidential constitutional republic
Demography and Migration	
Population	63.5 million
Population density	120.6 inhabitants/km ²
Birth rate	2.0 children/woman
Middle age (median age)	40.4 years
Proportion of population born abroad	11.9 %
Asylum petitions	100,682
Immigrants (net) per 1,000 inhabitants	0.7
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	37,556
Unemployment (harmonised)	10.3 %
Human Development Index (HDI rank)	20 out of 187
Life satisfaction (Life Satisfaction Index)	6.7

See Chapters B.2, B.5, B.6

Great Britain (United Kingdom)



Geography	
Area	243,820 km ²
Capital	London
Politics and Administration	
Official language	English, Welsh, Gaelic
Type of state and government	Parliamentary constitutional monarchy
Demography and Migration	
Population	63.7 million
Population density	264.9 inhabitants/km ²
Birth rate	1.9 children/woman
Middle age (median age)	40.1 years
Proportion of population born abroad	11.9 %
Asylum petitions	37,066
Immigrants (net) per 1,000 inhabitants	–
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	38,260
Unemployment (harmonised)	4.6 %
Human Development Index (HDI rank)	14 out of 187
Life satisfaction (Life Satisfaction Index)	6.9

See Chapters B.3, B.5, B.6

Greece



Geography	
Area	132,000 km ²
Capital	Athens
Politics and Administration	
Official language	New Greek
Type of state and government	Parliamentary constitutional republic
Demography and Migration	
Population	11.1 million
Population density	85.6 inhabitants/km ²
Birth rate	1.3 children/woman
Middle age (median age)	42.5 years
Proportion of population born abroad	6.6 %
Asylum petitions	14,334
Immigrants (net) per 1,000 inhabitants	–
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	25,586
Unemployment (harmonised)	27.5 %
Human Development Index (HDI rank)	29 out of 187
Life satisfaction (Life Satisfaction Index)	4.7

See Chapter A.4

Hungary



Geography	
Area	93,030 km ²
Capital	Budapest
Politics and Administration	
Official language	Hungarian
Type of state and government	Parliamentary constitutional republic
Demography and Migration	
Population	9.9 million
Population density	109.3 inhabitants/km ²
Birth rate	1.3 children/woman
Middle age (median age)	40.4 years
Proportion of population born abroad	4.3 %
Asylum petitions	18,825
Immigrants (net) per 1,000 inhabitants	1.4
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	23,336
Unemployment (harmonised)	10.2 %
Human Development Index (HDI rank)	43 out of 187
Life satisfaction (Life Satisfaction Index)	4.9

See Chapter B.5

Italy



Geography	
Area	301,277 km ²
Capital	Rome
Politics and Administration	
Official language	Italian
Type of state and government	Parliamentary constitutional republic
Demography and Migration	
Population	60.5 million
Population density	203.4 inhabitants/km ²
Birth rate	1.4 children/woman
Middle age (median age)	44.0 years
Proportion of population born abroad	9.4 %
Asylum petitions	27,771
Immigrants (net) per 1,000 inhabitants	–
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	35,041
Unemployment (harmonised)	12.2 %
Human Development Index (HDI rank)	26 out of 187
Life satisfaction (Life Satisfaction Index)	6.0

See Chapter A.4

The Netherlands



Geography	
Area	41,528 km ²
Capital	Amsterdam
Politics and Administration	
Official language	Dutch
Type of state and government	Parliamentary constitutional monarchy
Demography and Migration	
Population	16.8 million
Population density	498.9 inhabitants/km ²
Birth rate	1.7 children/woman
Middle age (median age)	41.5 years
Proportion of population born abroad	11.5 %
Asylum petitions	17,040
Immigrants (net) per 1,000 inhabitants	2.0
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	46,174
Unemployment (harmonised)	6.7 %
Human Development Index (HDI rank)	4 out of 187
Life satisfaction (Life Satisfaction Index)	7.4

See Chapters A.2, B.1, B.2, B.3, B.6

Spain



Geography	
Area	505,990 km ²
Capital	Madrid
Politics and Administration	
Official language	Spanish (Castellano); regional: Basque, Galician, Catalan, Valencian
Type of state and government	Parliamentary constitutional monarchy
Demography and Migration	
Population	46.8 million
Population density	93.5 inhabitants/km ²
Birth rate	1.3 children/woman
Middle age (median age)	41.0 years
Proportion of population born abroad	14.3 %
Asylum petitions	4,442
Immigrants (net) per 1,000 inhabitants	0.4
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	33,112
Unemployment (harmonised)	26.1 %
Human Development Index (HDI rank)	27 out of 187
Life satisfaction (Life Satisfaction Index)	6.2

See Chapter A.4

Sweden



Geography	
Area	449,696 km ²
Capital	Stockholm
Politics and Administration	
Official language	Swedish
Type of state and government	Parliamentary constitutional monarchy
Demography and Migration	
Population	9.5 million
Population density	23.5 inhabitants/km ²
Birth rate	1.9 children/woman
Middle age (median age)	40.9 years
Proportion of population born abroad	15.5 %
Asylum petitions	68,739
Immigrants (net) per 1,000 inhabitants	5.6
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	44,646
Unemployment (harmonised)	8.0 %
Human Development Index (HDI rank)	12 out of 187
Life satisfaction (Life Satisfaction Index)	7.4

See Chapters A.1, A.3, B.1, B.3, B.4

Switzerland



Geography	
Area	41,285 km ²
Capital	Bern
Politics and Administration	
Official language	German, French, Italian, Rhaeto-Romanic
Type of state and government	Federal democratic republic
Demography and Migration	
Population	8.0 million
Population density	204.5 inhabitants/km ²
Birth rate	1.5 children/woman
Middle age (median age)	41.9 years
Proportion of population born abroad	27.7 %
Asylum petitions	27,875
Immigrants (net) per 1,000 inhabitants	7.5
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	57,443
Unemployment (harmonised)	4.4 %
Human Development Index (HDI rank)	3 out of 187
Life satisfaction (Life Satisfaction Index)	7.8

See Chapter B.2

USA



Geography	
Area	9,826,630 km ²
Capital	Washington DC
Politics and Administration	
Official language	English
Type of state and government	Federal presidential constitutional republic
Demography and Migration	
Population	313.9 million
Population density	34.6 inhabitants/km ²
Birth rate	1.9 children/woman
Middle age (median age)	37.3 years
Proportion of population born abroad	13.0 %
Asylum petitions	66,101
Immigrants (net) per 1,000 inhabitants	2.3
Economy and Society	
Gross domestic product (GDP) (US dollars per capita)	52,985
Unemployment (harmonised)	7.4 %
Human Development Index (HDI rank)	5 out of 187
Life satisfaction (Life Satisfaction Index)	7.0

See Chapters A.2, A.3, B.6

Sources and notes on the country profiles

Sources:

- Area, Capital, Official language(s), Type of state and government, Population: Auswärtiges Amt 2014
- Population density (base year = 2013): World Bank 2014
- Birth rate (base year = 2012): OECD 2014g
- Middle age (median age) (base year = 2012): World Health Organization 2014
- Proportion of population born abroad (base year = 2012): OECD 2014c: 362f.
- Asylum petitions (base year = 2013): UNHCR 2014a
- Immigrants (net) per 1,000 inhabitants (average 2009–2012): OECD 2014c: 33
- Gross domestic product (GDP) (US dollars per capita) (base year = 2013): OECD 2014b
- Unemployment (harmonised) (base year = 2013): OECD 2014d
- Human Development Index (HDI rank) (base year = 2013): United Nations Development Programme 2014b
- Life satisfaction (Life Satisfaction Index): OECD 2014e

Notes:

The reference period is consistent with the latest data available for each country and category. Deviations from national statistics can result from diverging reference periods and definitions. For some countries, no details are available for certain indicators (–).

The harmonised unemployment rate is the number of unemployed persons as a percentage of the labour force (total of all economically inactive and economically active persons) (see OECD 2014f). The Human Development Index (HDI) is an index which measures the state of development of a country. It is composed of individual indexes measuring the life expectancy, education and spending power (see United Nations Development Programme 2014a). The Life Satisfaction Index measures the subjective perception of life satisfaction on a scale from 1 to 10. The average rate of life satisfaction among the residents of the OECD countries comes to 6.6 (see OECD 2014e).

For the sake of simplicity, the United Kingdom is described as Great Britain in the rest of the report.

A. An International Comparison of Immigration Policy

Almost all important industrialised countries of the Western world have become countries of immigration in the last few years and are attempting to manage immigration according to their national interests and international obligations. Three immigration categories are at the centre of migration management strategies: 1) immigrants who migrate for employment purposes, 2) immigrants who leave their countries of origin for family reunification purposes and 3) immigrants who flee from a situation of emergency in their countries of origin and search for refuge abroad. The international comparative analysis undertaken in part A of this Annual Report follows this differentiation in terms of immigrants' motives for migrating. Chapter A.1 examines differing political approaches in the field of labour migration policy. Chapter A.2 discusses an aspect which is strongly connected to labour migration: the options granted to foreign graduates of

domestic higher education institutions to remain in the respective country. Chapter A.3 compares and contrasts differing approaches taken to family migration policy. Chapter A.4 examines the area of refuge in another country and asylum, which has come to the centre of political attention in the last few years.

Germany is compared with other states in all these areas. The selection of the comparison countries is explained and justified at the beginning of each chapter. The basic question which this comparative analysis seeks to answer is: what can Germany learn from other countries in order to improve its migration policy or to present it in a more believable way? It is in Germany's own interest to seek an answer to this question. This form of critical reflection and possible improvement is a central task of the 2015 Annual Report.

Chapter A.1

Labour Migration

The OECD (2013b: 15) has recently declared that German labour migration policy is among the most liberal in the entire OECD. The SVR also concluded in its 2014 Annual Report that the country does not need to greatly reform its legal framework on labour migration. However, in face of the highly dynamic developments in this sector and the array of reforms adopted in other countries of immigration, it appears helpful to take a comparative look at the labour migration policies employed in other European and non-European countries.

With Canada, Sweden and Austria, three comparison countries have been chosen in this chapter which differ greatly in terms of immigration policy environment, worker recruitment history and political reputation: Canada has employed an immigration points system for many years in order to manage migration inflows, and is particularly for this reason regarded as the “lodestar in international discussions of immigration – a model and an inspiration for policymakers around the world seeking to recruit high-skilled migrants for the sake of national competitiveness” (Jacoby 2010: 3; see also Thränhardt 2014b: 3). Canada is also admired by many political actors in Germany, and scarcely a debate in the German Bundestag on labour migration policy goes by without parliamentarians’ attention being drawn to Canada, and the country’s points-based system being mentioned as an example of especially good practice.²

In contrast to Canada, the European comparison countries Austria and Sweden are required to adhere to EU regulations which were created in the Directive on the Entry and Residence of Highly Qualified Workers (EU Blue Card; 2009/50/EC). Analogous to Germany, Austria belonged for many years to the group of “reluctant countries of immigration” (Cornelius/Tsuda 2004: 25) and introduced the first measures aimed at actively managing immigration in the country’s own interest at a relatively late stage. Sweden, in contrast, is considered to be, in immigration policy terms, the ‘Canada of Europe’

as it has taken an active approach towards managing labour migration for a much longer period of time. However, both Sweden and Canada do not (just) pursue this policy for humanitarian reasons or because they take a liberal attitude towards labour migration per se. Instead, they seek to offset locational disadvantages which their neighbours (i.e. both neighbours with which they share borders and those slightly further afield) and “economic giant[s]” (USA, Germany, Great Britain) do not have (Shachar 2006: 129).

The country comparison in the following pages focuses on two main criteria which play an essential role in the design and organisation of labour migration policy.³ Chapter A.1.1 initially examines how countries design and shape the migration selection procedure (i.e. their ‘management techniques’). Chapter A.1.2 subsequently considers the basic question of whether labour migration is conceived more as the temporary migration of lower-skilled migrants, or more as the permanent immigration of highly skilled migrants.

A.1.1 ‘Management Techniques’: A Trend Towards Hybrid Models

In principle, three management policy strategies are available to countries of immigration: those which focus on 1) the labour contract, 2) occupational groups and 3) people (i.e. the human capital). While these strategies are not found in ‘pure’ form in any of the countries of immigration that actively recruit foreign workers, they can be used in a heuristic sense in order to compare the methods employed in different countries (analogous to the differing models of integration policy which are presented in Chapter B.2). The strategies contain fundamental differences as regards management philosophy and the organisation of the selection process, which is always necessary in the recruitment of labour migrants.

² See, for example, BT-Drs. 17/3862 and BT-Drs. 16/8492.

³ The framework for this chapter and sections thereof are based on Finotelli/Kolb (under review).

Employer-based or employment contract-based procedures have a long history in the Federal Republic of Germany. These strategies render a candidate's access to the labour market dependent on the possession of an employment contract; this is a necessary, if not always sufficient precondition.⁴ Prior to the introduction of Section 18c of the Residence Act (*Aufenthaltsgesetz*) in August 2012, the country's labour migration policy was intrinsically tied to the employment contract. Generally speaking, it was impossible to enter Germany as a labour migrant without first possessing an employment contract.

In occupation-based systems, the entitlement to migrate to a country is made conditional on the possession of skills needed to work in specific labour market sectors or occupations. This method privileges applicants who possess these skills, and does not necessarily require applicants to hold an employment contract prior to immigration. These strategies usually operate with lists of shortage occupations, i.e. occupations in which labour shortages exist.⁵ Political decision makers are faced with the problem of having to estimate in which professions there is likely to be a lack of skilled workers *ex ante*, i.e. before this shortage becomes apparent.

Human capital-driven or more generally people-driven schemes take a different approach. At least in their pure (theoretical) form, these schemes neither require applicants to prove that they have a concrete job offer nor do they limit successful applicants to any form of occupation or activity (see also Thym 2010: 84). These schemes always focus on the specific features of applicants. They assume that persons with certain characteristics will in most cases prove to be a benefit to the economy and integrate rapidly and without great difficulty into the labour market and other key areas of everyday society.

In this context, people's entitlement to migrate is often made conditional on the accumulation of a minimum point score in a points-based system which takes into account applicants' age, credentials, language skills, etc.⁶

A.1.1.1 Canada: From the Management of Human Capital to a Hybrid Model

Canada took a classical human capital-driven approach towards its labour migration policy for many years. Indeed, especially following the wide-scale immigration policy reform implemented as part of the Immigration and Refugee Protection Act (IRPA) which came into force in 2002, the country's labour migration was seen as a "human capital system in its purist form" (Berlin-Institut für Bevölkerung und Entwicklung 2012: 39, SVR's translation; see also Langenfeld/Waibel 2013 and Finotelli 2013).⁷ Applicants for the Federal Skilled Worker Program (FSWP)⁸ were awarded the most points for demonstrating academic credentials and language skills (English and French). With the implementation of the IRPA, the previous privileging of certain occupations was abolished. This method, which had attached more importance to concrete shortages in the labour market, was no longer deemed appropriate, especially given the sudden collapse of the IT industry.

A focus on human capital could thus be regarded as the common thread running through Canadian labour migration policy. Yet the country modified its migration management policy once more a few years ago. As part of this renewed modification, the concept of human capital, which had previously formed the core of the country's system, was abolished and access to the points system was restricted by the introduction of two preconditions

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- 4 The American H-1B visa, which is not examined in this chapter, can be regarded as the classic model among all employment contract-based methods. This has been for many years a central cornerstone of American labour migration policy.
 - 5 In Germany, the Federal Employment Agency (*Bundesagentur für Arbeit*) is responsible for compiling a whitelist of occupations in which there is a shortage of workers. With the new Employment Ordinance (*Beschäftigungsverordnung*) the immigration of non-academically trained people was possible for the first time. It should also be noted here that sector-specific and employer-based methods are often intertwined and/or mutually interdependent. In this context, third-country nationals wishing to work in a shortage occupation must first acquire an employment contract in the country. An example of this is the Green Card, which was introduced in Germany in 2000 and was incorporated into the Immigration Act in 2005: it applied to certain occupations and also required that applicants had already signed an employment contract.
 - 6 Free-market management schemes such as auctions or solution selling would also fall into the field of the management of human resources. These methods do not differ systematically from points-based systems, but rather differ from a technical perspective: while they also value human capital, the valuing process occurs on a decentralised basis through the receipt of a bid and/or the purchase transaction. Countries such as Malta and Portugal have recently been the subject of criticism due to their decision to grant foreign citizens long-term residence rights with a subsequent naturalisation option if they are prepared to spend a certain amount of money or to invest a minimum sum in the country (for further information, see the discussion in Shachar/Bauböck 2014). The 'purchasers' receive not just Maltese or Portuguese citizenship, but also simultaneously citizenship of the European Union with all its associated entitlements (see Chapter B.4).
 - 7 The so-called occupational lists, which rewarded people with skills in certain occupational fields, have a long tradition in the Canadian points system (the possession of skills in these fields was however never a prerequisite for participation in the scheme). The occupational lists were abolished as part of the IRPA reforms.
 - 8 In Canada, a series of regional recruitment programmes (Provincial Nominee Program) also exist. These programmes, which can be seen as a specific form of the Canadian worker recruitment scheme, allow the provinces to set their own priorities in the field of labour migration policy. These possibilities are, however, not investigated in this report.

which applicants must fulfil before their application is assessed in the points-based system. In this way, potential immigrants must now first prove that they have either work experience in a state-defined shortage occupation or a concrete job offer in Canada (known as ‘arranged employment’) before their application is submitted to the points-based system.⁹ With the decision to tie access to the points system to the fulfilment of the criteria of other instruments of migration management – i.e. either the contract-based or the occupation-driven systems – applicants were no longer just awarded points for demonstrating skills in a particular occupation or a certain economic sector. Instead, the fulfilment of one of these criteria was now a precondition for participation in the points system: new applicants who were not qualified in one of the state-defined shortage occupations and did not have a concrete job offer were excluded from the programme (Picot/Sweetman 2010: 20). One of the main motives for modifying the scheme was the desire to reduce the backlog of unprocessed applications which had built up over time and had resulted in individual applicants having to wait up to six years for a final decision on their applications (CIC 2010: 3). The reform was also intended to limit the misallocation of migrants to sections of the labour market for which they were not ideally qualified and to prevent migrants from being employed below their skills levels. Instead of a migration management strategy that was based exclusively on human capital-driven elements, Canada had thus chosen a method which combined elements of differing management principles (see Thym 2012: 10).

Whilst a new reform of the FSWP came into force in May 2013, this has had little effect on the fundamental principles of the Canadian migration management scheme.¹⁰ New applicants’ access to the points-based system continues to be made contingent on the fulfilment of the aforementioned preconditions. In addition, language skills are now considered more important: applicants who do not possess appropriate English or French skills are automatically excluded from the application process. In the past, they had been able to make up for this deficit. In addition, it can now be seen that a classical instrument

of employment contract-driven migration management is now employed to regulate access to the Canadian labour market via the arranged employment avenue: the so-called Labor Market Impact Assessment (LMIA). Analogous to the ‘priority check’ (*Vorrangprüfung*) that is well established in Germany, the Canadian authorities are now obliged to ensure that no suitably qualified Canadian or foreign applicant holding a permanent residence permit can be found for the position. The new FSWP is hence no longer a pure human capital- or people-driven system, but a mixed system, which regulates access to human capital or people-based migration management via employment contract- or sector-specific instruments of migration control.

A.1.1.2 Austria: Red-White-Red Card Instead of Blue Card

Austrian labour migration policy differs from Canadian policy not least due to its commitments as an EU member state: the country is bound to the EU framework conditions which the Union obliges all member states to adopt. These conditions are formulated in, inter alia, the Directive on the Entry and Residence of Highly Qualified Workers (2009/50/EC).¹¹ An analysis of Austrian labour migration policy must therefore consider the EU legal provisions and their implementation as well as policies whose regulation and organisation are still the prerogative of individual member states. Austria decided in 2011 not just to implement the Blue Card Directive, but also to establish the so-called Red-White-Red Card (RWR Card) (*Rot-Weiß-Rot-Karte*). The latter is a package of different immigration-related provisions.

The RWR Card does not just supplement the Blue Card, it practically reduces the latter’s relevance to that of enabling the legal employment in Austria of employees of large multinational organisations who are posted from one country to another (Kreuzhuber 2014: 18; see also EMN 2013: 27f.). Also, Austria has not used the powers of discretion contained in the Directive to implement the Blue Card in an open and liberal fashion. The country has thus, on the one hand, set relatively high minimum salary

⁹ At the last count, the Canadian government had identified more than 50 occupations as shortage occupations. These include both professions for which an academic qualification is necessary (doctors, engineers) as well as those requiring apprenticeships (mechanics and others).

¹⁰ Modifications which were introduced on 1 January 2015 as part of the so-called Express Entry Procedure could not be taken into account in this report due to the editorial deadline of the German Annual Report in January 2015. They will be discussed in an additional online publication in German (“Kurz und bündig”) and English (“SVR compact”, see <http://www.svr-migration.de/themen-kurz-buendig/>).

¹¹ Migration policy competences have in some areas been transferred from the level of the nation-state to that of the European Union in the last few years. As regards labour migration from non-EU countries, however, the EU’s attempts to harmonise policy have only had limited success to date. The Directive for Highly Qualified Employees (EU Blue Card) provides member states with merely a very rudimentary binding framework which is limited in scope – especially when compared to the field of refugee and family migration policy. This Directive thus allows European countries of immigration to set their own agendas (Eisele 2014: 290–293).

requirements for third-country nationals.¹² On the other hand, it also conducts a priority check before issuing the Blue Card. This is a measure which is neither stipulated nor explicitly prohibited in the Directive; Germany has chosen to do without this verification process.¹³ Austrian labour market policy thus concentrates on the RWR Card, which is the collective or “umbrella brand” given to a number of measures aimed at various different migrant groups (Faßmann 2013: 2, SVR’s translation). The measures incorporated in the RWR Card enable the following immigration and residence options:

(1) The residence permit issued for people searching for employment, which in Germany is legally anchored in Section 18c of the Residence Act (*Aufenthaltsgesetz*), is incorporated into the RWR Card in Austria and is labelled ‘especially highly qualified’. While Germany renders the allocation of a residence permit conditional on the fulfilment of merely two criteria (whether the applicant has a recognised academic qualification which is comparable to a German qualification and has sufficient funds for the period in which he or she is searching for work), an extensive points system also exists in Austria. Third-country nationals who meet the target of 70 points (from a total of 100) can migrate to Austria for six months in order to search for employment.¹⁴ Analogous to the introduction of Section 18c of the Residence Act in Germany, the rules contained in the RWR Card pertaining to the ‘especially highly qualified’ mark a paradigm shift in Austrian migration management policy: after more than 50 years of migration management based entirely on the needs of employers, an element of human capital-driven migration management has been introduced for the first time (Faßmann 2013: 11). The German residence permit issued for the purpose of finding employment, however, is somewhat more liberal than the

corresponding Austrian permit: the requisite qualifications are lower, are easier to prove, and migrants are not required to demonstrate they have accommodation in the country, as is the case in Austria. Potential labour migrants in Austria also have to provide evidence that they have health insurance and can sustain their own standard of living.

(2) A further policy measure contained in the RWR Card scheme is, in contrast, a classical employment contract-based instrument which contains a strong element focusing on specific occupational groups. This measure seeks to enable the controlled immigration of (academically and non-academically trained) skilled workers for sections of the Austrian economy suffering from a shortage of skilled labour. In order to take part in this programme, third-country nationals have to: 1) possess a concrete job offer, 2) have been trained/educated in an occupation which is deemed to be a shortage occupation¹⁵ and 3) obtain a minimum of 50 points (from a possible 75 points) in a points system which diverges slightly from the system employed for highly qualified migrants.¹⁶ Similar (employment contract-based) rules have existed in German law since summer 2012. Thus, the minimum salary threshold for the issuing of a Blue Card for certain (academic) shortage occupations was reduced in Section 19a[1] no. 2 of the Residence Act in conjunction with Article 2[2] of the Employment Ordinance (*Beschäftigungsverordnung*); a verification process does not now take place. As regards the non-academic field of employment, Article 6[2] no. 2 of the Employment Ordinance is relevant. This Article states that people with experience in shortage occupations for which vocational training is required can migrate to Germany without the authorities having to first check whether Germans (or people having the same legal status as Germans)

12 The minimum earnings threshold in Austria currently comes to a gross annual salary of 55,975.50 euros; this figure amounts to 47,600 euros in Germany. The large difference in the minimum salary requirements is due to Germany’s decision to make full use of states’ ability to vary the salary thresholds contained in the Directive (see Herzog-Schmidt 2014: 130). This has been criticised by some actors (such as Bremke 2012). Belgium (49,995 euros), Luxembourg (54,274 euros), Finland (56,004 euros) and the Netherlands (60,952 euros) all require third-country nationals to earn more than in Germany (values for 2013; EMN 2013: 15).

13 Alongside Germany, the Czech Republic, Spain, Finland, France, Latvia, the Netherlands and Portugal also do not conduct a verification process when issuing Blue Cards (COM [2014] 287 final: 7).

14 A maximum of 40 points are awarded for ‘special qualifications and abilities’ (i.e. academic qualification, the registration of a patent, the net salary earned in a position of authority in the previous year; 20 points can be awarded for work experience and 10 points for language skills in German or English. Candidates under 45 years of age are awarded points; the maximum score of 20 points are granted to candidates under 35 years of age. The successful completion of a course of study in Austria is rewarded with 10 points. The profile of the desired immigrants is thus clear: candidates should ideally be young, qualified, have work experience and have previously spent time in Austria.

15 Shortage occupations are currently: milling machinists, roofers, metal turners, welders, power engineers, technicians with a higher level of training for power engineering technology, data processing technicians, concrete workers, speciality and other tinsmiths, electrical installers, mechanical engineers, constructors of agricultural machinery and medical personnel (nurses, graduate nurses).

16 A total of 30 points can be awarded for applicants’ qualifications; work experience commensurate with the training received can be rewarded with a maximum of 10 points. Third-country nationals wishing to come to Austria as part of this programme are required to demonstrate more advanced language skills than people coming as ‘especially highly qualified’ migrants; these language skills can add up to 15 points. Points for age are granted to people up to the age of 40; the maximum score of 20 points is awarded to people younger than 30 years old.

are available for the job, providing that their vocational qualification is recognised as being equal to a domestic vocational qualification in the same field. The German Federal Cabinet furthermore decided to introduce a new Section (17a) into the Residence Act in December 2014. According to paragraph 1, third-country nationals who possess the necessary qualifications are granted a residence permit for a maximum period of 18 months in order to participate in a training programme and to take a subsequent test. Migrants successfully passing the test are able to have their foreign vocational qualifications officially recognised. Paragraph 4 states further that the third-country nationals involved in this scheme can stay in Germany for a twelve-month period following the conclusion of the recognition procedure in order to look for employment which is commensurate with their qualifications.¹⁷ Both Germany and Austria have thus moved away from a one-sided fixation on the recruitment of qualified workers holding further education degrees, an approach the SVR (2011: 78, SVR's translation) once criticised as being "academic arrogance", and have opened their labour markets for workers with differing qualification levels.

- (3) The regulations governing 'other key skilled workers' also belong to the field of employer and/or employment contract-based migration management. In contrast to the immigration options which the RWR Card scheme grants workers with skills in shortage occupations, the issuing of an employment contract – as *conditio sine qua non* – is not made conditional on belonging to a certain occupational sector. Instead, a classical instrument of employer-based migration management is employed with the 'priority check'. Applicants who have satisfied both this demand and can provide evidence that they will earn more than a (relatively low) minimum income threshold in Austria are granted access to the country if they score at least 50 points (from a maximum of 75 points) in a points-based system.¹⁸ These rules correspond with the immigration opportunities codified in Section 18 of the German Residence Act, which also require a 'priority check'. The German rules are, however, not designed to be combined with a points-based system as in Austria.

- (4) As a last point, the RWR Card also contains an instrument which is intended to enable foreign graduates of Austrian further education institutes to integrate into the country's labour market in a flexible and non-bureaucratic fashion. Chapter A.2 examines this issue in greater detail. It is sufficient to note here that Germany takes a considerably more liberal approach than Austria above all in terms of the maximum period it grants foreign graduates to search for employment in the country (18 months in Germany as opposed to just 6 months in Austria).

Liberal and extensive immigration channels, while by themselves not instrumental in the decision of highly qualified third-country nationals to migrate to a country, are a basic prerequisite in the competition to attract these migrants. In this respect, the Austrian RWR Card has an advantage over the German immigration regulations, which is less a result of the content of the Austrian regulations and more a consequence of the scheme's 'marketability': it is a linguistically attractive package containing a number of individual measures and has been quickly registered by third-country nationals considering migrating. The label 'Red-White-Red' has been deliberately chosen: it incorporates the colours of the Austrian national flag whilst at the same time alluding to the American Green Card. The RWR Card thus appears to be more inviting and more open than the linguistically challenging legal terminology found in Section 18c of the German Residence Act or in the Employment Ordinance. This is even though a comparison of immigration measures in both countries reveals that the German rules are if anything more open and more liberal than those in Austria.

It can thus be seen that Austria, Germany and also Canada share a certain similarity as regards their labour migration policy: all three countries have moved away from management approaches explicitly focusing on a portfolio of clearly defined principles to a hybrid approach which combines elements of different management instruments and principles. In this context, Germany's and Austria's migration management programmes may remain chiefly employment contract-based, but both countries are increasingly supplementing them with elements of human capital-based approaches. Canada, for its part, is gradually starting to mix elements of employment contract- or occupation group-based methods into

17 The new passage in Section 17a[4] complements the existing options available to foreign academics (Section 18c, Residence Act) and foreign graduates of German institutes of higher education (Section 16[4], Residence Act). In so doing, a consistent 'search trilogy' has been created. For more information on the introduction of Section 17a, Residence Act, see the Federal Government's Draft Law to Redefine the Right for Leave to Remain and the Termination of Residence (*Gesetzentwurf der Bundesregierung zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung*) from December 2014: http://www.bmi.bund.de/SharedDocs/Downloads/DE/Nachrichten/Kurzmeldungen/gesetzentwurf-bleiberecht.pdf?__blob=publicationFile, 23.01.2015.

18 The points systems for the groups described in 2) and 3) are designed in an identical fashion.

its traditional human capital-based approach to migration management when screening and selecting new migrants. The country is thus attempting to link its immigration scheme to the needs of the labour market to a greater extent than had previously been the case. The management principles of the different states are also becoming increasingly alike in this respect.

A.1.1.3 Sweden: Liberal Policy Open to Misuse

Sweden differs from the other comparison countries examined in this chapter in almost every aspect of labour market policy. The one similarity which Sweden shares with Austria is that both countries attach very little importance to the Blue Card, a European instrument which was designed and presented by the EU (that nonetheless considers the specificities of each member state).¹⁹ A “completely demand-driven system” (OECD 2013b: 178, SVR’s translation) was introduced in Sweden in December 2008 which falls into the classical domain of managing migration through the issuing of employment contracts (Parusel 2014: 18) and allocates Swedish employers the central role in the selection process.²⁰ The system does not contain human capital-driven elements.²¹ Whilst the procedure previously employed was also based on the employment contract, it envisaged a priority check and was limited to specialists and highly qualified migrants. In this context, the new Swedish way represents nothing less than a “U-turn” (Frödin 2014) or a “slight revolution” (Cerna 2009).²²

The philosophy currently informing labour migration policy in Sweden can thus be summed up as follows: foreign employees who have signed an employment contract with a Swedish employer are allowed to enter the country; the employment contract is an indispensable precondition. However, no further conditions are attached to this basic requirement, in great contrast to the approach taken by Germany and Austria, which often attach further conditions to the employment contract-based sections of their labour migration schemes. Such conditions can include sector-specific stipulations

or limitations to persons holding certain qualifications. A priority check is at least officially the first step in the Swedish recruitment and appointment procedure: Swedish employers must provide evidence that no employees from Sweden or other EU countries are available for the relevant position(s). However, this ‘priority check’ does not in reality represent a serious obstacle to worker recruitment from outside the EU: in order to demonstrate that no domestic workers are available for the position, it is sufficient to publicly advertise the position for ten days at the Swedish Employment Agency (*Arbetsförmedlingen*). The results of the ‘priority check’ are in addition not binding, even if the decision goes against the wishes of the employer. Thus, even if a similarly qualified candidate in Sweden is found, an employer can reject this candidate in favour of a third-country national personally selected by the employer (EMN 2014b: 33). The priority check is consequently reduced to a mere formality. The country’s Migration Agency (*Migrationsverket*) must subsequently grant its approval to the recruitment of the appropriate foreigner. As part of this formal approval procedure, the trade unions have the chance to give their view on the proposed conditions of employment, which must conform to the employment conditions enjoyed by Swedish employees.²³ They cannot prevent the recruitment of a foreign employee even when his or her envisaged conditions of employment deviate from those generally agreed for the relevant branch of the Swedish economy. The trade unions thus have a de facto right of consultation, but are not entitled to veto an appointment. The only option at their disposal is thus to apply pressure on employers publicly campaigning against a particular employer.

This extremely liberally designed employment contract-based system can be seen against the background of Swedish labour market and social policy. The effects of the country’s broadly liberal labour migration policy, the cornerstone of which is the employment contract, are softened by the incorporation of immigrant employees into the regular Swedish labour market agreements. This should especially help to assuage the ever-present fears of the traditionally strong Swedish trade unions that

19 The Blue Card is only relevant for large corporate groups in Austria. It plays no role at all in Sweden; it was only implemented there in 2013, i.e. two years later than originally planned. Whereas only two (!) Blue Cards were issued in Sweden in 2013, the country issued a total of 4,666 residence permits for highly skilled workers (i.e. according to national law) in the same year (COM [2014] 287 final).

20 It is highly problematic for the Swedish economy that the dangers of this model are not evenly spread among all sections of the country’s economy: the respective companies alone profit if the employment is successful, whereas the costs are socialised if the appointment fails, i.e. the taxpayer is saddled with the costs.

21 Only youths and young adults (18–30 years old) from Australia, Canada, New Zealand and South Korea can apply for a visa in order to search for a job in the country.

22 Frödin (2014: 11) explains this unusually radical policy change as arising from a “strange bedfellow coalition” between Green Party activists advocating immigration and ‘economic liberalist’ political actors, who also included the then governing Conservative party. These actors outvoted the Social Democrats, who were at that time in the opposition and are usually the dominant political power in Sweden and take a more critical stance to a liberalisation of immigration policy.

23 Salary conditions and conditions of employment should not deviate from the conditions negotiated for all workers in a particular economic branch. Also, a net monthly wage floor of 13,000 Swedish crowns (SEK) (1,408 euros) exists.

immigration might lead to pressure on wages and a consequent rise in unemployment. Immigration controls are thus replaced at least to a certain extent by a high level of regulations.

Yet this strategy, which Doornik (2007) describes as “open borders, close monitoring”, is coming in for increasing criticism – at least from some sections and branches of the economy. The Swedish Migration Agency, sections of the media and trade unions thus unanimously report that, in particular, newly formed immigrant-run companies, in which personnel costs are disproportionately high and the workforce is scarcely represented by the trade unions, are making use of these wide-ranging recruitment options. According to the reports, these companies have been recruiting primarily low-skilled foreigners for parts of the economy in which practically no labour shortage exists. Against this backdrop, there have been increased cases of immigrant workers undercutting the wage levels of non-migrants employed in the same branch, and the number of more general deviations from the employment standards laid down in the relevant labour agreements has accumulated (EMN 2013: 22). As a result, *Migrationsverket* has tightened controls in some branches of the Swedish economy in which a particularly high proportion of workers are immigrants (i.e. the cleaning industry, the hotel and catering industry, the service industry, the building industry, commerce, farming, forestry, temporary employment) since January 2012.²⁴ The government introduced further controls in August 2014 (so-called post-arrival checks), which are meant to ensure that firms do not break their commitments (Parusel 2014: 18f.; EMN 2014c: 3).²⁵

It is noticeable that Sweden has not implemented any migration policy measures specifically targeted at highly qualified workers, a group that is courted globally. Whilst Germany (exemplified by the liberal interpretation of the Blue Card Directive) and Austria (especially via the RWR Card) have not just established special programmes for the highly qualified, but have also intensively targeted this group of people, there is no public policy which aims to promote Sweden as a target country for highly qualified or qualified migrants (Parusel 2013: 18). The general employment contract-based rules are regarded as liberal and as having a wide enough scope that they could be used to recruit highly qualified third-country nationals if and when this becomes necessary.

While Sweden does not apply measures explicitly promoting the recruitment of the highly qualified, the recruitment of highly skilled migrants is nevertheless supported in Swedish tax law: 25 percent of the income of migrants earning more than a certain minimum sum remain tax free for the first three years of their stay in Sweden. A measure of this nature is not envisaged in Canada, Austria or in Germany (OECD 2011d: 138).²⁶ Sweden is thus reacting to the high tax burden placed on the production factor of ‘employment’ in Sweden, a factor which is a clear disadvantage in the global competition for highly qualified workers, by supplementing its immigration system with an element of taxation policy.

The last few pages have shown that Sweden has distanced itself from the trend towards hybrid models of migration management which can be observed not just in Canada, Austria and Germany, but also in other countries not examined here (for Spain, see: Finotelli 2013; for Australia, see: Papademetriou/Sumption 2011). By way of a summary, it can firstly be seen that Canada, which was previously a committed ‘country of human capital’, is endeavouring to intertwine labour migration more tightly with the needs of the labour market by introducing instruments of migration management that are based on employment contracts or occupational groups. Austria and Germany are, in contrast, coming from a different direction in migration management terms and are supplementing their traditional employment contract-based schemes with principles of human capital- or person-driven management. Sweden takes a completely different approach, and trusts its high labour market and socio-political standards to protect the country from wage pressures and rising unemployment from immigration. The country follows a *laissez-faire* approach towards immigration policy, as part of which the employment contract constitutes the only (or at least the most important of very few) immigration prerequisite(s).

A.1.2 The Temporal Components of Labour Migration Policy

Alongside the differing selection procedures implemented by countries of immigration, nation-states’ immigration policies can also be distinguished by examining the length of time which immigrants are envisaged to remain

24 Companies in these branches are now required to prove that they are able to pay their employees’ wages for the entire period of the employment contract. The same is true for newly founded firms.

25 These controls, which take the form of ‘spot checks’ and are carried out by the Swedish Migration Agency, have probably only a limited effect. This is because employees have scarcely any interest in helping the inspectors to unravel the labour conditions in their workplaces, which may or may not conform to the legal standards: they might not just lose their job, but also their residence permit if they cannot prove that they have obtained a new employment contract within four months of losing their job.

26 Similar rules do however exist in Belgium, Finland, France, Ireland, Luxembourg, Malta and the Netherlands (EMN 2013: 29).

in countries. The classical distinction between temporary migration, a concept which assumes that labour migrants will return to their home countries at the end of a legally regulated maximum residence period, and permanent immigration, i.e. the intended long-term settlement of migrants in the country of residence, provides a good starting point here for comparing state policies. In reality, most states' immigration policy consists of a mixture of these two immigration models in which the length of immigrants' residence entitlements varies according to the respective target group. This basic differentiation of immigrant policy based on length of stay is closely connected to the question about the qualifications that states require from (prospective) migrants, i.e. whether the state primarily recruits less-skilled migrants (in most cases for activities which the country's resident population does not deem attractive enough), or predominately targets highly skilled foreigners. The separation into temporary immigration on the one hand and permanent immigration (i.e. through legislation allowing for permanent immigrant settlement) on the other clearly does not do justice to the complexity of immigration policy. It can nevertheless help to illustrate the differences and similarities between the countries under consideration.

A.1.2.1 Short-term Migration: Temporary Programmes in Canada

According to Triadafilopoulos (2012: 94, SVR's translation), a central feature of Canadian labour migration policy is that "immigrants are already granted a permanent residence entitlement on entering the country". In the context of the heuristic distinction between countries with a clear preference for permanent immigration of labour migrants on the one hand and those which regard immigration as a temporary and reversible phenomenon on the other, Canada is generally seen as a prototypical 'country of permanent immigration', which expects foreign labour migrants in particular to permanently settle down in the country. Germany adopted for many years a diametrically opposite approach: it actively promoted the temporary immigration of foreign workers right up until the end of the 20th century, and granted immigrants scarcely any possibilities of acquiring a more secure residence status.²⁷

While Canada is generally regarded as favouring long-term immigration, programmes seeking to attract migrants for a limited period of time also have a long tradition in the country. A programme enabling the

recruitment of casual farm labourers and seasonal workers in the agricultural industry was initiated as early as 1966. In addition, the Foreign Domestic Movement Program was started in the early 1980s; this has continued to exist as the Live-in Caregiver Program right up until the present day. However, the cornerstone of Canadian temporary recruitment measures is the Temporary Foreign Worker Program (TFWP), which has existed since 1973 and does not give migrants the chance to obtain a permanent residence permit. The common denominator in these programmes is that they were always relatively unimportant for Canada's migration system in the past. Thus, with the notable exception of the FSWP as the institutional backbone of Canadian labour migration management, the programmes played only a minor role for many years.

In this context, it is very surprising that the TFWP has become transformed from a 'quiet side road' into a 'central artery' of Canadian labour migration policy in the last few years. A key factor in this development was the decision to ease and liberalise the recruitment procedure; a so-called Regional List of Occupations under Pressure (ROUP) was thus introduced which defined exemptions to the priority check which otherwise forms a mandatory part of the TFWP. The development was further facilitated by increasing the maximum time period which foreigners recruited as part of the TFWP were able to stay in Canada from one to two years (for details, see Finotelli 2013). Some of these liberalisations were reversed when the unemployment rate rose as a result of the national debt crisis in many Western countries.²⁸ Yet this did not influence the 'TFWP boom': the number of foreign labour migrants allocated a temporary work permit more than doubled between 1995 (86,491) and 2012 (213,573).²⁹ Against this backdrop, the annual number of temporary migrants coming to Canada is now gradually approaching that of people permanently immigrating to the country, a figure that has oscillated between 200,000 and 300,000 for many years (Worswick 2013:4).

The notion that Canada is a country which always regards immigration as an instrument of an overarching population policy strategy and tends to favour permanent immigration has gradually developed over a period of many decades. The increasingly diverse nature of Canadian labour migration policy has in this context resulted in considerable criticism being voiced by political actors and sections of the Canadian population (see for example Alboim/Cohl 2012). In particular, fears have been voiced that the greater focus on temporary immigration might

27 There were only a few, very strictly defined exceptions to this rule prior to the passing of the Immigration Act, which came into force in 2005.

28 An example of this was the TFWP moratorium for the food services sector which was imposed in April 2014.

29 This figure does not include the temporary work permits issued to foreign workers which are based on stipulations contained in the North American Free Trade Agreement and other bilateral agreements.

not just spark an increase in irregular migration, but could also foster the emergence of an 'ethnic underclass'. It is undeniably the case that Canada now increasingly differentiates between different forms of immigration – not just as regards permanent, but also in terms of temporary migration. In this way, it can be seen that the country has developed and is increasingly expanding a 'second pillar' of immigration policy.

A.1.2.2 The Austrian RWR Card Plus: No Shortcut to Permanent Residence

Germany and Austria have traditionally much in common in terms of their labour migration policy. They are countries of immigration which recruited large numbers of predominately lower-skilled 'guest workers' until the mid-1970s, when both halted recruitment almost simultaneously. Following the decision to halt recruitment, labour migration was strictly and restrictively regulated for many years, and was therefore a fringe phenomenon. A process of liberalisation gradually set in in Germany after the introduction of the Green Card in 2000, and has now lasted almost 15 years. In the wake of the transposition of the Directive on Highly Qualified Employees into German law in 2012 together with the newly created opportunities available to non-academically trained skilled workers wishing to come to the country, Germany has now clearly positioned itself – also in a legal sense – as a country of immigration (SVR 2014: 72–77).

In Austria, a discussion over the need to liberalise the country's migration management policy has also taken place, even though this did not commence until the end of the 2000s. The employer associations WKÖ (The Austrian Economic Chambers, *Wirtschaftskammer Österreich*) and IV (The Federation of Austrian Industries) developed a proposal in conjunction with the IOM (International Organization for Migration); this proposal resulted finally in the introduction of the RWR Card (Faßmann 2013: 6; Kreuzhuber 2014: 14). As a hybrid model, the RWR Card has not just widened and supplemented Austrian labour migration policy, which was previously exclusively employment contract-based, with principles of human capital-based or person-based management techniques. It has also granted labour migrants the chance to permanently settle in the country (see Chapter A.1.2). This

policy can be regarded as a further parallel to German labour migration policy.

Yet both countries differ considerably in the concrete design and organisation of this process of 'growing into' a permanent residence status. Austria does not privilege labour migrants who migrate to the country on the basis of the RWR Card with a more secure and longer legal residence entitlement. It merely grants them the chance to extend their initially limited residence entitlement conferred by the RWR Card stipulations through the so-called RWR Card plus scheme and to obtain an unrestricted right to remain after a five-year residence in the country, a measure consistent with the provisions contained in the country's permanent residence directive. In great contrast to Austria, Germany now offers immigrants who immigrated for employment purposes increased chances to consolidate their residence status in the country. It has done this by greatly reducing the minimum period of residence required in order to apply for permanent residence as part of the Blue Card (33 months, or 21 months instead of 60 months as stipulated in the EU Long-Term Residence Directive, 2003/109/EC).³⁰

A.1.2.3 Sweden: Permanent Residence after Four Years

Like Germany and Austria, Sweden renders the residence status of migrants who have come to the country for employment purposes conditional to the fulfilment of certain criteria. The country initially grants labour migrants a temporary residence permit. Migrants are generally immediately granted the chance to obtain permanent residence status after a predefined period of residence and economic activity in the country. Immigrants coming to Sweden for employment purposes usually receive a residence permit and a work permit for the duration of their employment contract. However, these permits are issued for a maximum period of two years. The foreign employees are bound to the original employer and to the job for the first two years of their stay. If they wish to take up a new position during this period, they must first apply for a new work permit. They are able to change employer without going through a process of applying for a new work permit after the first two years of their stay. Migrants wanting to change occupation³¹ inside the

30 In addition, initially temporary residence permits for third-country nationals who come to Germany for employment purposes but do not possess a Blue Card can also lead to the consolidation of the migrants' residence status, i.e. a permanent residence entitlement can always be issued if migrants fulfil certain residence requirements.

31 *Migrationsverket's* website provides the example of a fictitious third-country national who has been working for three years as an IT technician at the company *Datafirman AB*. The person is able to accept a job offer as an IT technician at the company *Data-Nisse* without having to apply for a new work permit. When the foreign employee is offered a management position at *Data-Nisse* six months later, he must submit an application for a new work permit, since the management position is a new occupation. This measure is meant to ensure that a verification process takes place (i.e. a 'priority check') in order to guarantee that no domestic applicant is available for the new position. As has already been shown, the mandatory public advertising of the position has, however, only a minimal effect in terms of managing migration.

first two years of their stay in the country must always submit an application for a new work permit, regardless of whether they wish to remain at the same company or work for a different employer. Swedish law stipulates that labour migrants enjoying unrestricted access to the Swedish labour market can be granted a permanent residence permit after a stay of at least 48 months in the country. Compared to the 60 months envisaged in the Long-Term Residence Directive and in contrast to Austria, Sweden thus provides migrants with a legal channel through which they can more quickly obtain permanent residence status. However, it is only moderate compared to the German Blue Card regulations, which – depending on the residence status of the relevant migrant – allow the five years residence period stipulated in the EU legislation to be reduced to two and a half years.

Similarities exist between the countries under examination as regards the extent to which they permit (highly skilled) foreign migrants to have their family members join them in the country of residence. Just as Austria and Germany allow ‘cardholders’ (RWR Card and Blue Card respectively) to send for their family members, so Sweden also permits family members to follow labour migrants to the country;³² these family members are furthermore granted access to the Swedish labour market. This factor plays a key role in the immigration decision especially for spouses and registered partners.

❗ **As with the technical implementation of labour migration policy, a gradual approximation between the comparison countries in terms of the intended duration of migrants’ residence can be observed.** On the one hand, Canada has moved away slightly from its previously very strong focus on permanent immigration by strengthening the TFWP. On the other hand, all three European countries of immigration examined in this chapter have supplemented their labour migration systems, which were previously almost exclusively geared towards temporary migration, with procedures enabling a tiered consolidation of migrants’ residence status and hence a gradual progression towards permanent resident status. Germany has gone further down this road than Austria and Sweden: people belonging to a certain group of labour migrants can in some cases obtain permanent residence status after just 21 months in the country. Sweden requires labour migrants to generally have spent 48 months in the country before according permanent residence and therefore only slightly reduces the minimum period of 60 months stipulated in EU law. Austria follows the provisions in the Long-Term Residence Directive. As a result, people holding a RWR Card plus only obtain an

entitlement to permanent residence after five years residence in the country.

A.1.3 (Few) Lessons for Germany, Lessons for Europe: Reactivate the Blue Card in a European Sense

In its 2014 Annual Report, the SVR gave German labour market policy a good mark and concluded that reforms were not necessary in the legal management of labour migration. An “Impact Study into the Legal Framework for Foreign Skilled Workers” (“Wirkungsanalyse des rechtlichen Rahmens für ausländische Fachkräfte”) commissioned by the Federal Ministry for Economic Affairs and Energy recently came to a similar conclusion (Brenning et al. 2014, SVR’s translation). The number of foreign highly skilled migrants coming to Germany has been rising since August 2012 (for details, see Griesbeck 2014). It cannot as yet be ascertained to what extent this increase is a direct result of these new political and legal framework conditions; it can at least be suspected that these changes are at least partially responsible for the increase in numbers (even though the role which these changes have played cannot be quantified).

❗ **A comparison of the German regulations with the framework conditions in Canada, Austria and Sweden confirms the theory that Germany can compete with other countries as regards its legal provisions in the field of labour migration.** With the introduction of Section 18c of the Residence Act and the large reduction in the minimum time period which Blue Card holders must reside in the country before being granted an entitlement to permanent residence status, the country has chosen a liberal hybrid model of labour migration policy, as many other countries of immigration have also done (Papademetriou/Sumption 2011). In this way, Germany has ended the era in which it was a “reluctant countr[y] of immigration” (Cornelius/Tsuda 2004: 25).

This migration policy shift appears to have been registered by the population in Germany. A nationally representative opinion poll carried out for this report finds that the majority of the population is aware that German migration law has been restructured to privilege highly skilled migrants and approves of these changes. Furthermore, around three-quarters of the people questioned hold the view that Germany is a very attractive or more attractive than unattractive country of immigration for highly skilled migrants. The population also regards the country as attractive for less-skilled migrants: around

32 However, German and Austrian policy differs on this issue with regard to one central point: in Germany, spouses of Blue Card holders are not required to demonstrate language skills prior to migrating to the country (see Chapter A.3). A similar exemption does not exist in Austria.

60 percent believe that the country is very attractive or more attractive than unattractive for less-skilled migrants (Chart 3 in Appendix I).³³

❗ **There is thus currently little that Germany needs to learn from other countries in the immediate legal field of labour migration management.** However, the legal regulations must be continuously augmented and updated. This is made clear by a bill put forward at the end of 2014 aimed at granting migrants a residence entitlement for the purpose of post-qualification if their foreign (vocational) qualification is only partly recognised in Germany. This new regulation will close a gap made apparent by the experiences resulting from the Federal Recognition Act for the Procedure to Assess Professional Qualifications (Recognition Act, *Anerkennungsgesetz*) from 2012. These experiences have shown that non-academic qualifications awarded abroad only partly meet the requirements of corresponding German vocational training programmes. A measure which allows foreigners to ‘top up’ on their knowledge and skills acquired abroad in Germany is a further step in the right direction, as it facilitates the labour market integration of the relevant skilled workers. Yet this addition to the Residence Act will not change the fact that the recognition procedure remains complex – even though it has been somewhat simplified by the provisions contained in the Recognition Act – and tends to hinder the immigration of non-academic skilled workers. This problem is, however, not a result of German migration legislation. It is instead the price which must be paid for the comparatively large significance attributed to the acquisition and possession of recognised certificates in the German labour market.

❗ **Despite these legal improvements, the marketing of German migration policy can still be criticised,** and has indeed been criticised by many actors, including the SVR (2014: 15). This is not to deny that numerous political actors that have been scarcely active in the field of migration policy until now, such as the Federal Ministry for Economic Affairs and Energy and the Federal Foreign Office, are now internally stressing the need to recruit skilled workers. The Federal Government’s online ‘Welcome to Germany’ platform (www.make-it-in-germany.com) is also increasingly becoming a central source of information for people interested in migrating to Germany. ❗ **Nevertheless, a communicative and**

content-based incorporation of labour migration policy in an overarching concept on migration and integration, such as in the form of a National Action Plan on Migration (Nationaler Aktionsplan Migration, NAM), as the SVR has proposed, is still absent. As attested to by the demonstrations organised by the so-called Pegida movement formed at the end of 2014, the systematic and pro-active provision of information and communication with all sections of German society must form part of this National Action Plan.

❗ **In the context of ‘learning from others’, the differing labour migration policy measures employed across Europe, which have been shown in the last few pages, are more relevant than the German authorities’ failure to adequately communicate the benefits of the country’s regulations.** The Blue Card was originally intended as the first step towards a distinct European labour migration policy and as part of an overarching strategy that was meant to strengthen Europe as an immigration continent. Nonetheless, more than 90 percent of all Blue Cards issued in 2013 were allocated to people migrating to Germany, a figure which by itself indicates that it still has to be fully accepted in most European countries.³⁴ The Blue Card was intended to signal a pan-European interest in the recruitment of highly skilled third-country nationals. In so doing, it was meant to increase the attractiveness of the entire continent in the global competition with competitors on the other side of the Atlantic and to be seen as a pioneer of a coordinated European recruitment policy (von Weizsäcker 2006).

Despite the limited enthusiasm which most member states have shown for the Blue Card, this instrument and the connected strategy should not be abandoned. Indeed, quite the opposite is true. It is a mistake to believe that the migration management systems existing in countries such as Germany, Austria or Sweden – irrespective of their names and their individual peculiarities – are sufficient to motivate highly skilled and migration-willing people from countries such as India, Brazil or China to come to the relevant European countries. The classic countries of immigration – the USA, Canada and Australia – have clear advantages in terms of their labour markets and their attractiveness. These derive from the size of the countries as well as their immigration policy reputations and the use of English as the de facto national language. ❗ **As a**

33 A total of 1,002 people aged 16 and over were randomly selected and telephonically interviewed as part of a representative opinion poll conducted for the 2015 Annual Report in September 2014 (Box 5 in Appendix I).

34 Not just Austria and Sweden, but also numerous other EU countries scarcely use the Blue Card. This is not just true for countries such as Greece, Spain and Portugal, which currently have considerable economic problems and consequently do not require an instrument which is used to recruit workers from outside the EU. In this context, a total of 437 Blue Cards were issued in France in 2013, and only 10 were issued in the Netherlands in the same year. Alongside Germany, Luxembourg appears to be the only country in which the Blue Card has any great relevance: over 300 Blue Cards were reported to have been allocated there. Given the size of the country, this is a respectable number. The figures are taken from an EMN ad-hoc query on the EU Blue Card Directive (EMN 2014a).

result, consideration should be given at the European level as to exactly how member states might find a common strategy towards implementing the Blue Card. This would also enable standards and procedures to be further harmonised and a certain solidarity and unity to be demonstrated towards other parts of the world. One of

the preconditions for arriving at a European compromise is that nation-states are granted a certain amount of room to manoeuvre and their respective labour market policy specificities are respected. However, the most important factor is that **📌 Europe has to establish itself as a common immigration region in an increasingly globalised world.**

Student and Graduate Migration

More than 4.5 million people are currently studying at higher education institutions outside their home countries (OECD 2014a: 451). From an economic point of view, these students are interesting in two respects. In countries levying tuition fees, they make a positive financial contribution to the finances of universities or other higher education institutions.³⁵ Institutions of higher education found in countries which do not charge tuition fees also profit from international students, as they are in most cases relatively young, active and willing to learn; in addition, their presence generates a more global perspective in research and teaching.

International students are, however, not just the focus of education policy. For some time now, they have also been the subject of labour market and economic policy debates. International graduates are increasingly seen as an obvious solution to the shortage of skilled personnel already observable in some branches and sectors of the German economy or expected in the future. Their age profile, education, language skills and familiarity with the country and its institutions make them appear to be 'ideal immigrants' (SVR 2011: 21).

Yet a rethink on this issue has only recently started to take place in Germany. International students were for many years obliged to leave the country after graduating. The authorities were especially fearful of engendering a brain drain by inviting students from developing countries to remain in the country as the end of their studies. As regards students from industrialised countries, the authorities hoped that academics educated in Germany would act as ambassadors for the country and would initiate economic cooperation projects between Germany and their countries of origin following their return home. Nowadays, the prevailing view is that graduates should be allowed to stay in the country. This view is influenced by the shortage of skilled personnel in the country and

the belief that graduates who have studied in Germany should also be employed in the country, seeing as their studies have been funded by the German taxpayer.

A 'culture of remaining' was established in Germany with the Green Card from 2000 and the Immigration Act from 2005, the latter of which also contains provisions on international graduates. This new policy envisages inviting foreign students to employ their skills in the German labour market and in so doing pay the German state back the money which it spent on their education. This initiative is now showing the first signs of success: Germany is nowadays not only one of the most popular destination countries in the world for international students (OECD 2014a: 451; DAAD/DZHW 2014b: 74), for many international graduates, the prospect of remaining in Germany now appears to have become an attractive one (Hanganu/Heß 2014: 49).

Nevertheless, many international graduates still have great difficulties mastering the transition from higher education to the labour market (Dömlung 2013; Arthur/Flynn 2013; SVR-Forschungsbereich/MPG 2012). In this respect, it is worth taking a 'look beyond one's own backyard' and briefly examining the situation in other countries, especially as many other countries began to court students and graduates as the 'skilled workers from tomorrow' at a much earlier stage than Germany. This holds true to varying degrees for the following countries: (1) The USA, which is the most popular destination country for foreign students in the world. Although tuition fees are comparatively expensive in the USA,³⁶ the majority of foreign students have wanted to study in the country for many decades. This holds particularly true for students from Asian countries of origin, which many countries of immigration are keen to attract (IIE 2013a). This is because the population in many Asian countries is comparatively young and

35 However, the amount charged in tuition fees also plays a role here. Fees of 500 euros per semester, which some German regions charged students until a few years ago, make just a small contribution to funding the German higher education system (Stifterverband für die deutsche Wissenschaft et al. 2008: 13).

36 However, huge differences exist in this regard between higher education institutions and between different higher education types (universities, colleges, etc.).

- there is a large demand for international educational qualifications and the willingness to pay for them.
- (2) Canada, the 'rising star' among the countries chosen by international students: the number of international students studying at Canadian universities has increased by almost 70 percent – more than in all other leading destination countries – since 2008. As in the neighbouring USA, students from Asia and the Middle East in particular are interested in studying at Canadian higher education institutions.³⁷
 - (3) The Netherlands was one of the first non-English speaking countries to decide to teach its postgraduate courses primarily in the English language. Like Canada, the country has also played witness to a large increase in the number of international students,³⁸ who, in contrast to Canada, mostly come from other EU countries. In the context of migration for study purposes, the Netherlands is particularly interesting as the total number of international students attending the country's universities did not notably decrease following the introduction of tuition fees in 2007.
 - (4) Austria, which has in structural terms a higher education system which most resembles the German system. The country (largely) forgoes charging tuition fees and offers comparatively few courses in English.

A.2.1 The Skills Potential of International Students in Different Countries

A shortage of skilled personnel affects all the countries analysed in this chapter. However, this worker shortage is more pronounced in some economic branches and regions than in others. So whilst none of the countries is suffering from an acute shortage of skilled personnel in all economic sectors, there is a strong demand for qualified personnel in the STEM fields of each country's economy.³⁹ (BMW 2014; BMASK 2014; CIC 2014d; SER 2013; U. S. Chamber of Commerce 2014). In this respect, it thus appears useful to classify international students according to their fields of study (Chart 1).

Besides revealing a general increase in the number of international students, Chart 1 also shows that a substantial proportion of them – between 20 and 43 percent – are studying natural sciences, engineering, computer science or another of the STEM subjects. The large proportion studying these subjects makes the group even more interesting from a labour market policy point of view. In order to access the potential of these highly qualified immigrants, measures need to be implemented that help students to gain a foothold in the relevant labour market (i.e. a 'transition management scheme') following graduation. This does not just mean putting legal framework conditions in place which enable students to more easily adjust their legal status from that of international students to that of foreign employees. It also requires employment agencies and other institutes responsible for placing people in work to be made aware of the varying needs of international students and the barriers which this group faces when attempting to gain a foothold in the labour market.⁴⁰

The first empirical findings from countries which have for many years made use of the labour market potential of international graduates suggest that it is risky to merely concentrate on one or a few countries of origin when recruiting international students. This approach renders the labour markets in countries of residence vulnerable to developments in students' home countries, which have a decisive impact on their decision to either migrate or remain in the home country, such as the unemployment rate of academics. In the Netherlands, for example, German nationals are the largest group of foreign students; yet a disproportionately low percentage of this group choose to stay in the country following graduation (24 % as compared to 43 % of all other international students) (CPB 2012: 23). In countries in which the internationalisation of higher education institutions is chiefly motivated by the desire to earn money by levying tuition fees, the problem is less students' inclination to remain in the country and more their (in)ability to integrate into the domestic labour market. More than a third of the international graduates who had remained in Australia at the start of the 21st century were unable to demonstrate

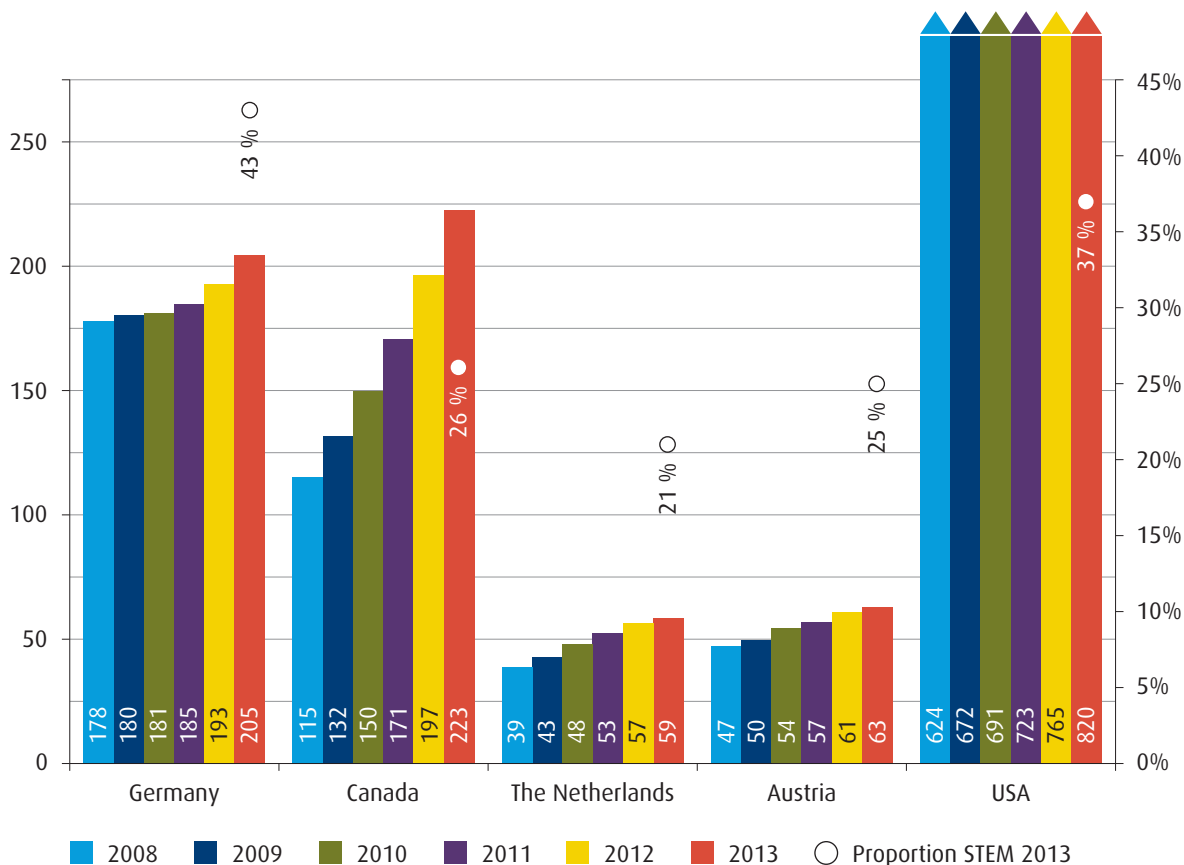
37 The large numbers of Chinese students who enrol on courses offered by the University of British Columbia (UBC) has at times even earned the university the nickname 'University of Better China' (Geißler 2003: 24).

38 The number of international students enrolled on courses at Dutch universities increased by 50.9 percent between 2008 and 2013 (nuffic 2014).

39 STEM is a collective term which stands for the academic disciplines of science, technology, engineering and mathematics.

40 A quarter of all international students in Canada and 16.9 percent of Canadian students are enrolled in a STEM discipline. The German data reveals that both male and female international students have a great interest in technical and natural science disciplines: almost 60 percent of male foreign students who did not attend school in Germany (i.e. *Bildungsausländer*) study STEM subjects, whereas almost half of all German students choose to study one of these disciplines. A disproportionately large percentage of foreign female students are also enrolled in STEM courses: 27.5 percent of international female students and only 22.9 percent of German female students study a STEM discipline. In Austria, there is little difference between the percentage of foreign students (excluding people who went to school in the country) and Austrian students studying STEM subjects: around a fifth of all students choose a STEM discipline (Statistics Canada 2014; DAAD/DZHW 2014a: 18; Statistik Austria 2014, calculation by SVR).

Chart 1 International students in Germany, Canada, the Netherlands, Austria and the USA, total numbers 2008-2013 (in thousands) and proportion of students studying STEM subjects, 2013 (in %)



Note: The proportion of students studying STEM subjects was calculated using national statistics on students' subject choice. The figures for students in Germany and Austria refer to non-domestic students (i.e. those who have not attended school in the relevant country). A small number of students may have been registered more than once in the Austrian statistics. The Dutch figures only include students seeking to complete a course of study ('diploma mobility'); the figures for Canada (universities and other postsecondary education institutes) and the USA refer merely to students holding a student residence permit.

Source: DAAD/DZHW 2014a; 2014b; CIC 2014a; 2014c; Statistics Canada 2014; nuffic 2014; Statistik Austria 2014; IIE 2013a; 2013b; SVR compilation, calculation and tabulation

adequate English skills (Birrel 2006; Marginson 2004: 206–208). Similar problems are becoming apparent in the United States, where the increase in the numbers of international students since 2010 is almost entirely a result of the recruitment of students from China and the Middle East. These students' tuition fees clearly make an important contribution to funding the American higher education system, but the students themselves face much greater problems coping with the challenges associated with a course of study than their fellow students from other countries and regions (Choudaha/Chang/Schulmann 2013: 13–15).

Under these circumstances, it is encouraging that international students in Germany come from a large array of different countries. German higher education

institutions have traditionally enjoyed an excellent reputation in countries such as Italy, Spain and Greece; the number of students coming from these countries has once again risen in the last few years, a trend which is at least partially a result of the economic problems which have blighted these countries. A large number of students have also traditionally come to Germany from Eastern Europe and particularly from Bulgaria, Poland, Russia and Ukraine. In addition, German higher education institutions have traditionally been held in high regard in countries such as Iran, and have increasingly acquired a positive reputation in other countries such as Bangladesh, India or Pakistan. However, only a limited number of citizens of the latter countries have as yet come to Germany for study purposes (see DAAD/DZHW 2014b).

A.2.2 Legal Framework Conditions for International Students' Right to Remain Following Graduation

The labour market potential of international students, many of whom study subjects that are in heavy demand in the labour market, and the policies employed aiming at unlocking this potential have been described in Chapter A.2.1 of this report. In this context, states must ask themselves which legal avenues are open to students who wish to remain in the country of residence after successfully completing a course of study. All countries examined in this chapter have – in some cases greatly – increased the range of legal possibilities open to international graduates who have studied in their countries in the last few years. However, sizeable differences exist between individual countries in terms of the concrete measures adopted to retain graduates in the country (Table A.1).

A.2.2.1 Optional Practical Training in the USA

The USA is the only of those countries analysed in this chapter that has not yet chosen to introduce a specific residence permit enabling former students to search for work following graduation. Instead, so-called Optional Practical Training (OPT) exists, which, in legal terms, is an extension of the student visa (F-1 visa). The version of OPT which can be issued immediately following the completion of a degree programme (known as post-completion OPT)⁴¹ permits foreign ex-students who have graduated from an American academic institution to work for up to twelve months in an occupation associated with their course of study. Graduates of STEM disciplines are able to extend OPT for a further 17 months. This is a measure that takes account of the disproportionate importance of STEM subjects in labour market policy.

The application process for OPT involves the institutes of higher education providing students with a letter of recommendation for the United States Citizenship and

Immigration Service (USCIS). Students do not need to provide evidence of a concrete job offer when submitting an application.⁴² OPT ends automatically after twelve months (after 29 months in the case of STEM graduates) or if a graduate has been out of work for more than 90 days (120 days in the case of STEM graduates).⁴³ At the end of OPT, international graduates able to demonstrate that they have been offered a job in the United States can apply for an employment visa (H-1B visa). However, only 65,000 of these H-1B employment visas are issued each fiscal year,⁴⁴ and new graduates compete with international skilled workers with work experience for the limited number of residence permits. In this respect, OPT only enables a very small number of international graduates of American academic institutions to gain access to the country's labour market.⁴⁵

A.2.2.2 The Canadian Post-Graduation Work Permit Program

America's neighbour Canada has chosen to go down a completely different path to that followed by the United States: international graduates of Canadian academic institutions can avail not just of a work permit for a period of up to 36 months, but also the chance to obtain permanent leave to remain in the country. As part of the Canadian Post-Graduation Work Permit Program (PGWPP), which, in contrast to the American OPT, is an official legal title, graduates are allowed to accept any form of employment for a certain time period (Table A.1).⁴⁶ The length of the work permit depends on the (standard) length of the course of study: graduates of a two-year master's programme can receive a residence permit for up to two years, whereas graduates of a four-year bachelor programme have an entitlement to a work permit for a maximum of 36 months. In order to receive a work permit, graduates must have completed a full-time course at a public Canadian higher education institution⁴⁷ and have submitted an application within 90 days of finishing the academic programme.⁴⁸ The generous maximum

41 In addition to the post-completion OPT, the so-called pre-completion OPT exists for students wishing to work during their course of study. The possibilities this opens up to international students are not examined in this report.

42 However, each day that passes between the completion of the degree programme and the acceptance of employment is regarded as unemployment. Participants in OPT are only allowed to be unemployed for a maximum of 90 days during the entire one-year duration of OPT.

43 Time spent working in an occupation which has no connection to a graduate's field of study is equated with unemployment.

44 This contingency is normally exhausted inside a few days (USCIS 2014).

45 An additional scheme provides a further option of obtaining an H-1B visa: 20,000 foreign nationals holding a master's degree or a PhD from an American academic institution are exempted from the quota system, regardless of whether or not they are participating in OPT. The employment visas are issued for the date on which the applications are submitted (USCIS 2014).

46 In order to participate in the PGWPP, the course of study must have a minimum duration of eight months.

47 Graduates from certain private higher education institutions accredited by the relevant provincial government can also apply for a work permit.

48 The Canadian authorities regard foreign students as having completed a course when they have achieved all the mandatory academic requirements. Graduates from courses taught in the French-speaking province of Quebec require in addition a letter of recommendation from the higher education institution confirming the length of the course. The minimum length of a course in this province is 900 hours, a figure which corresponds to an eight-month full-time course (CIC 2014b).

Table A.1 Legal channels through which international graduates can obtain leave to remain in selected comparison countries

	USA	Canada	The Netherlands	Austria	Germany
Legal title	Post-Completion Optional Practical Training (OPT)	Post-Graduation Work Permit Program (PGWPP)	Orientation year (<i>Zoekjaar afges-tudeerde</i>)	Residence visa for the purpose of searching for employment (<i>Aufenthaltsvisum zum Zweck der Arbeitsuche</i>)	Section 16[4], Residence Act
Maximum period of residence	12 months (for graduates of STEM disciplines up to 29 months)	Up to 36 months (depending on length of course of study)	12 months	6 months	18 months
Target group	All international graduates of American higher education institutions (no employment outside occupation which has been studied)	All international graduates of Canadian higher education institutions	All international graduates of Dutch higher education institutions	All international graduates of master's degree programmes and courses resulting in a diploma run by Austrian higher education institutions	All international graduates of German higher education institutions
Application period	Within 60 days of the end of the course programme	Within 90 days of the completion of the course	Within 4 weeks of the completion of the course (recommended)	Before the expiry of the student residence permit	At least four weeks before the expiry of the student residence permit
Maximum permitted working hours whilst searching for employment	Unlimited; max. 90 days unemployment permitted (120 days for STEM graduates)	Unlimited	Unlimited	Differing approaches are taken; the legal situation appears to be unclear	Unlimited
Additional privileges for international graduates	International graduates of master's degrees and people holding doctoral degrees are exempted from the quota system for employment permits (20,000 annual applications)	No restrictions as regards field of employment; this makes the receipt of a permanent residence permit easier	Low minimum salary requirement for employment permit	Applications for an employment permit (Red-White-Red Card) can be made in Austria; German language skills, work experience, etc. are not tested if salary is deemed adequate	Reduced waiting time for obtaining a permanent residence permit; simplified conditions for the self-employed

Source: SVR research and compilation

residence period of up to 36 months enables international graduates to gather the work experience which they require in order to apply for a permanent residence status. Graduates can apply for a permanent residence permit if they have been demonstratively employed on a full-time basis for at least a year in a position which is related to the course studied in Canada. As soon as graduates have completed the minimum period of employment and have proved their language skills (English or French) in a test, they are able to submit an application for permanent resident status to the Canadian immigration authority (CIC 2014e) as part of the so-called 'Canadian Experience Class' programme (CEC).⁴⁹ The PGWWP thus ties in relatively easily with Canada's human capital/person-driven migration management instruments (see Chapter A.1.1).

A.2.2.3 The Dutch Orientation Year

The Netherlands can be regarded – at least among continental European states – as one of the countries which first pioneered policy measures enabling international graduates to remain in the country of residence after finishing their studies.⁵⁰

The Dutch authorities introduced a residence permit in 2007 enabling international graduates to search for employment in the Netherlands for a year following graduation. This year is known as the 'orientation and search year' (*zoekjaar*). International graduates are able to work without restrictions in all sections of the Dutch economy in order to finance their search for employment during this twelve-month period.⁵¹ A similar measure is currently also employed in Germany. Foreign graduates of Dutch higher education institutions wishing to enter the country's labour market must have been offered a position in which they will earn more than a minimum income threshold set on a yearly basis by the Dutch immigration authority IND (*Immigratie- en Naturalisatiedienst*): a residence permit can be issued for employment purposes if graduates provide evidence that they have been offered a job with a net monthly salary of at least 2,127 euros (IND 2014). In contrast, skilled workers from non-EU

countries aged 30 and under who have not studied in the Netherlands must earn a minimum of 2,968 euros, and those over 30 must earn at least 4,048 euros in order to be issued with a residence permit. People applying for a Blue Card must provide evidence that they will earn a monthly salary of at least 4,743 euros (IND 2014);⁵² however, this instrument has not yet played a great role in the Dutch labour migration system (as is also the case in many other EU countries) (see Chapter A.1).

Large differences exist between Germany and the Netherlands as regards the conditions which graduates must fulfil in order to be granted access to the labour market. German authorities must check that the desired employment is "commensurate" with an applicant's qualification (Section 16[4], Residence Act, SVR's translation), although they do not require applicants to work in a field that is closely connected to the discipline studied (see Hailbronner 2014: 162–163). In the Netherlands, in contrast, the decision over the issuing of a residence permit is only made conditional on the applicant fulfilling the appropriate salary requirements. Regardless of the exact criteria regulating the integration of foreign graduates into the labour market, it can clearly be seen that both Germany and the Netherlands provide this group of people with a wide range of different options in this respect.

A.2.2.4 The Provisions of the RWR Card in Austria

International students have relatively few chances to remain in Austria following the completion of their studies. Graduates are only allowed to search for work during the relatively short period of six months following the conclusion of their course of study. International graduates have twice as long to search for work in the Netherlands, and have had three times as long in Germany since reforms were introduced as part of the implementation of the Blue Card. In addition, the authorities require longer to process applications for residence permits in Austria than in other countries. The time taken to process the application also counts towards the six months which foreign graduates are granted to search for work and thus effectively further reduces the time period which foreign

49 Modifications which were introduced on 1 January 2015 as part of the so-called Express Entry Procedure could not be taken into account in this report due to the editorial deadline of the German Annual Report in January 2015. They will be discussed in an additional online publication in German ("Kurz und bündig") and English ("SVR compact", see <http://www.svr-migration.de/themen-kurz-buendig/>).

50 The major difference between European comparison countries Germany, the Netherlands and Austria on the one hand and their North American competitors on the other is that a large proportion of the international students in the first three countries are EU citizens who enjoy freedom of movement inside the EU. These students can thus usually remain in the relevant EU country, and are generally not affected by national legal framework conditions. This report thus merely examines the policy measures implemented by states on the residence conditions of international graduates from outside the EU.

51 The orientation year ends exactly twelve months after the date stated in the certificate of graduation. The Dutch immigration authority IND consequently recommends that applications for a residence permit are submitted at the latest in the four weeks following the completion of the course of study.

52 Academic occupations and compulsory practical training for medical professionals which immediately follow the completion of the study programme are excluded from the minimum salary requirements.

graduates have in order to find employment (Faßmann 2013: 14). In contrast to other countries analysed in this chapter, international graduates of Austrian academic courses concluding with a diploma are only issued with a visa enabling them to search for employment if they have spent at least the second half of their course in the country; those who have studied for a master's degree must have been in the country for the entire duration of the course. Graduates with a bachelor's degree and people who have completed a doctorate have no entitlement at all to search for employment in Austria after finishing their degree/doctoral studies. A similar limitation does not exist in any of the comparison countries.

Graduates who, while being unable to find a position commensurate with their level of education, have nevertheless been offered a job paying a monthly net salary of at least 2,038.50 euros can apply for a RWR Card (see Chapter A.1) (BMASK 2014). Whilst this minimum salary threshold does not greatly differ from the equivalent Dutch threshold, it is above the empirically measurable average starting salary earned by recent Austrian graduates. To sum up, it can be seen that Austria tends to deal with labour migration in a more restrictive fashion than Germany and other European countries, although some reforms have been implemented as part of the RWR Card programme.⁵³

A.2.3 Emigration and Return Migration Despite Right to Remain: International Graduates' Stay Rates in 'Host Countries'

! The comparison of the rules governing international graduates' rights to remain in the selected countries has made clear that Germany now belongs to the more liberal countries in this respect (see Chapter A.2.2). The increasing desire of states to retain international graduates and convince them to integrate into their labour markets has prompted the establishment of more generous institutional and legal conditions facilitating graduates' labour market integration. This raises the question about what proportion of international students actually remain in the countries in which they have studied following graduation.

Initial findings on this subject were provided by an OECD comparative study in 2011; however, this survey did not include EU citizens who had studied in other EU member states. This analysis calculated the ratio of international students who applied for an additional, non-student residence permit in the country of residence in 2008 and 2009 (e.g. for employment purposes, but also for family reasons) to those who did not do this. The results reveal that the highest 'stay rate' is found in Canada (33 %), Germany and the Netherlands have an average 'stay rate' (26.3 % and 27.3 %) and Austria has the lowest rate of all analysed countries (17.4 %) (Table A.2).⁵⁴

However, these figures provide only a very rough indicator for the actual proportion of graduates remaining in the countries in which they have studied. This is because they do not include international students who are legally resident in a country on another (non-student specific) residence permit (i.e. for family reasons) whilst being simultaneously enrolled on a course of study. Students from EU countries resident in other member states of the Union are also not considered in the study, seeing as this group of students does not require a residence permit in order to study or work in their country of residence following graduation. The international comparison is therefore not free of problems and should thus merely be taken as a rough indicator for the success (or otherwise) of the differing policies aimed at retaining graduates in the countries in which they have studied.

The aforementioned difficulties in comparing the results of cross-country surveys on this issue make the small number of country-specific and regional studies even more important, seeing as the results are not influenced by the survey methods employed in differing countries. Nevertheless, large divergences still exist between the 'stay rates' calculated in the various country-specific studies on this issue. The proportion of international students remaining in Germany after graduation thus fluctuates between 23 and 56 percent depending on the survey consulted (Stifterverband für die Deutsche Wissenschaft/McKinsey & Company 2013: 74; Alichniewicz/Geis 2013: 1; Hanganu/Heß 2014: 49). This enormous variation can be explained by methodological differences between different country-specific surveys. These studies thus frequently employ different source material, collate and process information on international graduates (both those

53 The comparatively restrictive approach taken in Austria has given rise to a wider debate in the country about the possibilities which the RWR Card offers international graduates. On the one hand, the Interior Minister, the Foreign Minister and the Minister of Economic Affairs, all of whom are members of the Austrian people's party (*Österreichische Volkspartei*), favour taking a more generous approach towards the allocation of RWR Cards to international graduates. On the other hand, the Minister for Social Affairs as well as the trade unions reject this proposal and argue that some Austrian academics continue to suffer from unemployment.

54 The United States was not included in this study.

Table A.2 Proportion of international students adjusting their status and remaining in selected OECD countries, 2008 or 2009

Country	'Stay rate'
Canada	33.0 %
France	32.1 %
Czech Republic	31.4 %
Australia	30.1 %
The Netherlands	27.3 %
Germany	26.3 %
Great Britain	24.8 %
Norway	23.1 %
Finland	22.5 %
New Zealand	21.1 %
Japan	20.9 %
Ireland	20.7 %
Spain	19.0 %
Austria	17.4 %

Note: The results of EU countries only include data on students from outside the Union.

Source: OECD 2011a

who have left the country and those who have remained) in differing fashions and take diverging approaches towards EU citizens, who are sometimes included and sometimes excluded from their calculations.⁵⁵

Similar reservations also apply to studies carried out in the Netherlands: these studies, which employ official state statistics, reveal 'stay rates' of between 34 and 43 percent (CPB 2012: 23). The highest stay rate has been determined for the United States: from a total of 13,298 international doctorate students who completed their doctorates in 2006, 68 percent were still in the country in 2014 (Finn 2014: 2). However, it is unknown whether

a similarly high percentage of international graduates of bachelor's and master's degrees also remain in the country.

This inadequate data situation makes it difficult to satisfactorily determine exactly where Germany stands in comparison to other countries. In this context, further international comparative studies are necessary which consider country- and regional-specific factors (such as the effect which the freedom of movement enjoyed by EU students has on 'stay rates' in EU countries) and are thereby able to better compare the situation of international graduates in different countries of immigration.

❗ **All countries compared in this chapter have extended the legal possibilities for international graduates to remain in the country following the end of their studies.** The first national and international investigations aimed at ascertaining international graduates' intentions to remain in their respective 'host countries' and their actual actions in this respect (i.e. whether they stayed in the country of residence or not) provide two key findings. On the one hand, a large proportion of international graduates would indeed like to remain in the respective country of residence in order to gain employment experience (SVR-Forschungsbereich/MPG 2012). On the other hand, recent legal amendments do not by themselves ensure that international students can find work following graduation in an occupation that is commensurate with their skills. Graduates in all countries speak of the need to overcome major, for many ex-students seemingly unsurmountable, barriers in order to find employment following the conclusion of their studies (Arthur/Flynn 2013; SER 2013; Dömling 2013; Wadhwa et al. 2009). Frequently mentioned difficulties include language problems, the absence of personal and vocational networks and the reluctance of small and medium-sized firms to recruit applicants whose native tongue is not German.

It is currently unclear to what extent a more intensive guidance and mentoring of international students might be able to overcome the barriers preventing international graduates from gaining access to the labour market. Pilot programmes in some university regions⁵⁶ are currently

55 Whilst the OECD employed data from the Central Register of Foreign Nationals (*Ausländerzentralregister*, AZR) in order to calculate the 'stay rate' in Germany, other studies are based on the results of the microcensus (Alichiewicz/Geis 2013) or other data sources. In addition, the studies examine different time periods: the OECD study calculates the adjustment of residence status of international graduates over a two-year time period; the analysis of the microcensus conducted by Alichiewicz and Geis (2013) investigates the extent to which students who graduated between 2001 and 2010 remained in the country; and Hanganu and Heß (2014) calculate the 'stay rate' of everyone who held a student residence permit in Germany between 2005 and 2012.

56 The following are examples of these pilot projects: "Welcome. Keep Foreign Students in the Region" (*Willkommen – Ausländische Studenten in der Region halten*) organised by the International Placement Services (*Zentrale Auslands- und Fachvermittlung*, ZAV) and the working group from the city of Bremen entitled "Labour Market Access of International Graduates" (*Arbeitsmarktzugang internationaler HochschulabsolventInnen*) in which representatives of the Aliens Authority (*Ausländerbehörde*), the Employment Agency, trade and tradesmen's associations as well as the international offices and career centres of Bremen's higher education institutions exchange ideas about which measures might improve international graduates' access to the labour market (SVR's translation).

providing the first insights into how graduates seeking to enter the labour market can best be supported in this process. However, the degree to which the experiences of individual graduates can be transferred to other regions remains unclear. Equally unclear is the role that

universities, companies, authorities, recruitment agencies (including job centres) and other regional actors can play in developing structures which support international graduates to successfully make the transition from student life to the workforce.⁵⁷

57 The SVR is currently carrying out an international comparative study aimed at establishing how international graduates can best be supported in the transition to the labour market and the extent to which local actors are currently coming together in order to help international students gain a foothold in the labour market. The project is intended to be published in mid-2015. It is entitled: "Higher Education Institutions and the Study-to-Work Transition of International Students". For more information, see <http://www.svr-migration.de/en/research-unit/research-projects/>, 23.04.2015.

Family Migration

In contrast to labour migration (see Chapter A.1), the migration of refugees and asylum seekers (see Chapter A.4) and also currently the migration of students and graduates (see Chapter A.2), migration for the purposes of family reunification does not attract a great deal of public attention. This relative lack of interest in the issue does not just contrast greatly with the empirical relevance of this form of migration (SVR 2011: 97; 2014: 90; Box 1). Family reunification can also play an important role in a successful integration policy. Life in close-knit family surroundings enabled by family reunification can have a generally positive effect on immigrants' integration and can have a personality-stabilising function. In addition, the social support provided by the family can reduce stress, and the societal participation of people who migrate with or to their family is usually higher than migrants who immigrate alone and live by themselves in a foreign country (see Landale 1997).

From the point of view of migration policy, family reunification is also highly relevant for two reasons. On the one hand, the corresponding policy measures are tightly intertwined with labour migration policy and the frequently cited global competition for international skilled personnel, as specific family reunification rules may extend (or indeed tighten) the employment and legal residence opportunities open to spouses and partners of skilled personnel. On the other hand, family reunification policy is always accompanied by fears that people who are only able to integrate to a limited extent into the domestic labour market might immigrate and whose presence might generate increased social security expenditure (see also Staver 2013: 84).

It is therefore important to consider socio-economic framework conditions and the design of social security systems in any comparative analysis of the different approaches taken by states towards family migration. Countries with rudimentary or less well-developed systems of social security find it easier to grant a wider group of family members an entitlement to immigrate or to attach fewer conditions to their immigration than

countries with extensive and well-developed social security nets. Socio-economic aspects and welfare state provisions are not the only or even the most important determinants shaping state policy on family migration, but they must still be considered in country comparisons. Two countries have been chosen for a comparative analysis of family migration regulations in countries of immigration: firstly the USA, a country with a poorly developed welfare state system, and secondly Sweden, which has a very generous social security safety net. The analysis of the German and Swedish approaches focuses on migration to German/Swedish citizens and to third-country nationals.⁵⁸ Family migration to EU citizens resident in other EU countries is due to EU stipulations a "special category" (Thym 2014b: 3, SVR's translation; see also SVR 2013: 42f.; 2014: 90–94) and can also only be compared with difficulty with regulations in non-EU countries.

A.3.1 Broader Concept of Family and Quota System: Family Reunification in the USA

American family reunification policy fundamentally distinguishes between relatives of U. S. citizens and relatives of foreigners possessing a permanent residence entitlement. Whilst Germany and other EU countries generally limit family reunification to the nuclear family, i.e. to children and spouses, the United States bases its family reunification policy on a broader concept of family. Alongside the question about whether the sponsor (i.e. the person submitting a family reunification petition) is a U. S. or foreign citizen, the nature of the relationship between the potential migrants and the sponsor plays a decisive role in the U. S. system:

- (1) Immediate relatives of American citizens are granted absolute priority in the American family reunification system; there is no upper limit on the number allowed to immigrate.

58 For detailed information about the rights of third-country nationals in the field of family reunification see Eisele (2014: 283–290).

Box 1 Quantitative relevance of family migration in Germany, Sweden and the United States

In quantitative terms, family migration is the most important form of long-term immigration. While the number of people migrating to another country for purposes of family migration fell slightly (in absolute terms) between 2007 and 2011, it still accounted for 65 percent of all people migrating to OECD states, and 45 percent of those migrating to EU states (excluding people enjoying freedom of movement) in this time period.

The proportion of immigrants coming to Germany as family migrants has remained more or less constant in the last few years, although it has fallen considerably since 2000. Migration to family members in Germany remains the “most relevant long-term purpose of immigrants’ stay in the country, before employment and study” (SVR 2014: 60, SVR’s translation). Between a quarter and one-seventh of all third-country nationals migrating to Germany have been family migrants in the recent past (SVR 2014: 48, 60; OECD 2014c: 257).

After Sweden introduced new legislation obliging people sponsoring family migrants to provide evidence of a regular income and sufficient accommodation in 2010, the number of family migrants coming to Sweden for this purpose fell sharply below the 2009 figure in 2010 and 2011. However, this was only a temporary reduction, and more family migrants came to Sweden in 2012 and 2013 than had done so prior to the introduction of the new regulations (Migrationsverket 2014). The proportion of new migrants coming to the country for family reunification purposes remains almost twice as high as in Germany, and has accounted for between 30 and 40 percent of total immigration flows in the last few years (Parusel 2014: 20; OECD 2014c: 301). This is often the result of family members joining refugees in the country. As a further point, around two-thirds of all residence permits issued for family reunification purposes are granted as a result of the marital status of the petitioner: i.e. a third-country national is granted a residence permit due to marriage to a Swedish citizen or to a foreigner living in Sweden (Parusel 2009: 2).

Whilst the proportion of immigrants coming to the United States as family migrants has fallen slightly in the last few years, it remains considerably higher than in Germany and Sweden and accounts for around 70 percent of all newcomers (OECD 2014c: 309). However, it must be stressed that the regulations governing the immigration of family members to American citizens are much more generous than those regulating migration to long-term residence permit holders (see Chapter A.3.1). This is also born out in the statistics: two-thirds of all visas issued for the purposes of family reunification were conferred on immediate relatives – i.e. partners, parents and children – of American citizens (Department of Homeland Security 2013). A certain number of these people are ‘status adjusters’, i.e. people who were already resident in the country (Department of Homeland Security 2013). This is at least partially a result of American citizenship legislation, which automatically confers American citizenship on children of foreigners born in the United States via *ius soli*; the parents can later make use of their children’s U. S. citizenship in order to improve their own residence status. A similar situation is “true for Germany, where the increasing number of ‘*ius soli* children’ is resulting in entire families deriving their residence entitlement from the German citizenship of a small child” (Thym 2014b: 8, SVR’s translation). However, parents only have an entitlement to family reunification in the USA when their child (as the person sponsoring their family reunification claim) is at least 21 years of age. They can consequently only improve their status by acquiring a Green Card – their entitlement to which is derived from the right to family reunification – from this moment onwards (Thym 2014b: 8).

- (2) A quota system (the so-called Preference System) applies to all other close relatives of American citizens and of long-term permanent residents (so-called Lawful Permanent Residents, LPR).⁵⁹ This is an instrument of regulation that is not employed in family reunification rules in Europe (Thym 2014b: 11).
- (3) There are vastly differing waiting times, depending on the ‘priority group’ to which potential immigrants are allocated and their countries of origin.

⁵⁹ Whilst the U. S. family reunification system distinguishes between Immediate Relatives and Other Close Relatives of U. S. citizens, no such distinction is made between relatives of foreign citizens, who are all classified as Close Relatives. This category encompasses spouses as well as minors and unmarried adult children.

- (4) In addition, foreigners without permanent leave to remain in the USA are not – in contrast to foreigners with a similar status in Germany⁶⁰ – generally speaking given the chance to have family members follow them to the country, “something which is an extremely important restriction and particularly excludes lesser qualified employees from family reunification” (Thym 2014b: 7, SVR’s translation).

Whilst quotas have never been employed as a method of managing family reunification flows in Germany, they have been used for many years for this purpose in the United States. Conversely, sponsors in the United States are not required to demonstrate adequate living space, and immigrating spouses do not need to prove basic language skills, conditions which are often found in the family migration rules of European countries of immigration (including Germany).

A.3.1.1 Immigration to U. S. citizens: The Nuclear Family has Absolute Priority

Immediate Relatives of U. S. citizens are granted priority over all other prospective immigrants who are also able to obtain a Green Card (and thus a permanent residence entitlement) due to the presence of relatives in the country. Their immigration is not made subject to a quota-based system, and they can generally immigrate at any time. This category includes spouses,⁶¹ unmarried children (under 21 years of age)⁶² and parents (provided that the sponsor is older than 21 years of age). The latter group usually does not have a right to join their children in European countries.

In addition, the category of Other Close Family Members also exists in the USA; this includes unmarried and married children older than 21 years of age. These people also have the right to apply for family reunification to

an American citizen. Less immediate relatives such as the grandparents are, however, not allowed to apply for family reunification.

A quota system regulates the allocation of visas to Other Close Family Members seeking to join a relative in the United States. As part of this system, so-called preferences exist with differing waiting times.⁶³ The following rule of thumb applies here: the higher the preference category, the shorter the waiting time. Unmarried children from the age of 21 are granted First Preference (F1).⁶⁴ They are in a worse position than their younger siblings, who are deemed to be immediate relatives and consequently enjoy absolute priority in terms of family reunification. Nevertheless, they enjoy preference over married children from the age of 21 (Third Preference, F3).⁶⁵ The latter, for their part, have preference over siblings of the sponsor (Fourth Preference, F4), for whom an application can only be submitted when the sponsor is 21 years or older. The annual immigration quotas and the resulting waiting times can be found in the Visa Bulletin, which is published on a monthly basis; the waiting period is calculated according to the date on which a petition was lodged.⁶⁶ The quota system has resulted in a backlog of almost 4 million visa applications. In this respect, family reunification is one of the main reasons why the country’s immigration system is generally perceived as a “Broken Immigration System” (Thym 2014b: 15).⁶⁷

The broader concept of family and the smaller number of requirements placed on sponsors and immigrants exemplify the intrinsically more generous nature of American family migration policy. However, this apparent generosity is greatly qualified by the aforementioned waiting times. Particularly the theoretical entitlement of relatives not belonging to the nuclear family to immigrate (a right which does not exist in European countries of immigration) is at least partially devalued by waiting periods of

60 Migrants living in Germany must possess a settlement permit, an EU long-term residence permit, a residence permit or an EU Blue Card in order to have family members join them in the country (Section 29[1], no. 1, Residence Act).

61 The migration of spouses is conditional on the marriage being legally binding and not being a ‘sham marriage’. There is also no entitlement in German law for people to come to the country who are in a ‘sham’ or ‘forced’ marriage (Section 27[1a], Residence Act).

62 This also applies to stepchildren if the couple married before the child’s 18th birthday and for adopted children if these were adopted before their 15th birthday, have lived for at least two years with the parents and have been in their parents’ custody for at least two years.

63 In addition to the rules for immediate and other relatives, the American regulations also allow fiancé(e)s to be granted a 90-day U. S. visa in order to get married in the country (Fiancé[e] Visa K-1). They can apply for a permanent residence permit following the marriage ceremony. The visa can only be issued if both partners are lawfully permitted to get married and/or any previous marriages have been legally dissolved. They must also have seen each other at least once during the two-year period prior to the submission of the visa application. According to a ruling of the Supreme Court from June 2013, the same rules apply for same-sex partners and fiancé(e)s as for heterosexual spouses and fiancé(e)s (Supreme Court of the United States, *US v. Windsor et al.*, no. 12-307, 26.06.2013). Further to this, spouses and children of American citizens can remain in the United States while the Green Card application is being processed with a so-called K-Visa. Spouses of U. S. citizens receive a K-3 Visa, whereas their children receive a K-4 Visa.

64 Adopted children younger than 21 years of age who are not married can also fall under the category F1 in some circumstances.

65 The spouses of married children of a U. S citizen also receive a Green Card.

66 See <http://travel.state.gov/content/visas/english/law-and-policy/bulletin/2015/visa-bulletin-for-december-2014.html>, 23.01.2015.

67 See also <http://www.whitehouse.gov/issues/immigration>, 23.01.2015.

a decade and more. This is because it can be assumed that the interests and priorities of people initially keen on immigrating to the United States often change during this long waiting period, and they may no longer be interested in immigrating. In this context, people initially wanting to migrate may have completed a course of vocational training, accepted a new job or decided to start a family while waiting to be granted a visa.⁶⁸

Another fundamental difference exists between German and American family migration policy, which despite initially just affecting a small number of people is nevertheless relevant: foreigners' options to join minor children resident in the country of residence. In principle, only spouses/non-marital partners and minor children are able to migrate to Germany for family reunification purposes. However, one exception does exist: parents of minor children resident in Germany are permitted to immigrate in order to care for and to take custody of a child (Section 28[1] no. 3; Section 36[1], Residence Act). Furthermore, a new regulation introduced on 6 September 2013 now enables children of third-country nationals to obtain a residence permit in Germany if just one custodial parent possesses a German residence entitlement.⁶⁹ Whilst spouses and non-marital partners together with minor children are able to migrate (to citizens) in both countries, German legislation allows parents in some cases to join their children in the country if these possess German citizenship. In the United States, in contrast, the immigration of parents to minor children with U. S. citizenship is not permitted. Even if a child has automatically acquired American citizenship via birth in the United States, his or her parents can only obtain a family-based Green Card after the child's 21st birthday, as children can only file a petition for family migration after reaching the legal age of consent.

A.3.1.2 Immigration to Join Permanent Resident Holders: Quota-based Regulation

Just as Germany distinguishes between different groups of sponsoring persons (so-called *Stammberchtigte*)⁷⁰ when deciding on which family migrants can immigrate, so the USA also differentiates between foreign citizens with a permanent resident status and American citizens in its family reunification regulations (Table A.3).⁷¹ Spouses and unmarried children of Lawful Permanent Residents younger than 21 years of age are classified as F2A in the U. S. preference system – a sub-category of the preference category F2 (Second Preference). A total of 77 percent of all visas granted to family members of Lawful Permanent Residents are issued to persons in this group; the main focus of U. S. family migration is thus also here the nuclear family (Thym 2014b: 8). Unmarried children (including stepchildren and adopted children) of Green Card holders over 21 years of age are, in contrast, placed in a lower sub-category labelled F2B. Just 23 percent of all visas issued for the purpose of migration to Lawful Permanent Residents are allocated to this group of people. Both groups are, however, higher up the preference scale than married adult children (i.e. from the age of 21) of U. S. citizens (F3). The German rules only allow spouses/non-marital partners older than 18 years and minor children up to the age of 16 to join third-country nationals in the country (Sections 29, 30 and 32, Residence Act). Minor children fulfilling certain preconditions (language proficiency or the existence of a positive 'integration prognosis') can migrate until their 18th birthday (Section 32[2], Residence Act).⁷² All other family members can only migrate if this is necessary to prevent "particular extraordinary hardship" (Section 36,

68 There do not appear to be any statistics which reveal how many people accept a U. S. immigration visa when given the chance to obtain one.

69 These children can only migrate to Germany if the one parent remaining outside the country (provided that this parent is also entitled to custody) has given his or her express approval to the child's migration or a legally binding decision of a responsible body exists (see Section 32[3], Residence Act [new version]). This is nevertheless a significant relaxation in the regulations: the previous rules required both parents to possess residence or a settlement permit (see Section 32[1], no. 1a and 2, Residence Act, [old version]). Children of separated parents could previously only live together with a parent in Germany if this parent (permanently) possessed exclusive custody rights; it was not enough for the parent living outside the country to give his or her agreement without expressly transferring the exclusive custody rights to the other parent.

70 Due to EU legal stipulations, different rules apply for EU citizens residing in Germany than those for German citizens or third-country nationals residing in Germany. For a detailed account of the family reunification regulations in Germany, see SVR (2014: 90–94).

71 People who have entered the United States as refugees can apply for 'derivative' refugee status for their spouses and unmarried children under 21 years within two years of their admission to the country. This also applies to people who have been granted refugee status. The conferral of this status on spouses is conditional on the marriage having already existed when the relevant person entered the United States as a refugee or was officially granted refugee status. This status can only be conferred on those children who had already been conceived when the sponsor entered the United States or was granted refugee status. In addition, the child must have been single and not yet 21 years old before the relevant person lodged his or her first asylum petition or applied for refugee status.

72 Exceptions apply to children of Blue Card holders, people entitled to be granted asylum and people granted refugee status (i.e. recognised refugees) (Section 32[2], no. 2, Residence Act).

Table A.3 Possibilities and priority structures for family-sponsored immigration in the USA

Sponsor	Degree of kinship		Preference	Annual number of migrants	Waiting period		
U. S. Citizens	Immediate Relatives	Spouse	Absolute priority	–	–		
		Unmarried children under 21 years of age	Absolute priority	–	–		
		Parents (provided that sponsor is at least 21 years of age)	Absolute priority	–	–		
	Other Close Family Members	Unmarried children at least 21 years of age	F1 (First Preference)	23,400 visas	approx. 7.5 years		
		Married children at least 21 years of age	F3 (Third Preference)	23,400 visas	approx. 11.0 years		
		Siblings	F4 (Fourth Preference)	65,000 visas	approx. 12.8 years		
Lawful Permanent Residents (Green Card holders)	Close Family Members	Spouse	F2 (Second Preference)	F2A	114,200 visas	77 %	approx. 1.7 years
		Unmarried children under 21 years of age		F2A			approx. 1.7 years
		Unmarried children at least 21 years of age		F2B	23 %	approx. 6.8 years	

Source: Visa Bulletin for December 2014, SVR research and compilation

Residence Act).⁷³ In the United States, other relatives of Lawful Permanent Residents, such as married children, parents or siblings have no option of joining family members and acquiring a Green Card. In Germany, in contrast, a residence permit can at least be issued to the parents of a foreign child under the age of consent if no other custodial parent lives in the country (Section 36[1], Residence Act), and further family members can also come to the country “if necessary in order to avoid particular hardship” (Section 36[1], Residence Act).

A.3.2 Family Reunification Regulations in Sweden

In principle, Sweden grants foreign spouses, people living in civil partnerships or non-marital partners as well as children of the applicant or his partner under 18 years of age the opportunity to move to the country as family migrants. Family members are able to immigrate in order to join EU citizens, Swedish citizens and foreigners in possession of a permanent residence permit in the

⁷³ “Prevention of particular hardship” is an inexact legal term. According to the preliminary instructions issued by the Federal Ministry of the Interior on the Residence Act and the Act governing the Freedom of Movement/EU (published on 22.12.2004, SVR’s translation), “family cohabitation must be [...] the most suitable and necessary medium with which particular hardship can be avoided”. Situations are considered to warrant hardship cases in which a member of the family “is reliant on family help”, and this assistance can only be provided in German territory (such as the need for care as a result of illness, disability, long-term nursing care or mental illness). According to information provided by the Federal Foreign Office, figures have only been collected on the *total* number of visas issued since 2012, an approach consistent with Section 36[1-2] of the Residence Act. In this context, it is impossible to determine how often a visa is granted to prevent “particular hardship”. The visa statistics reveal that 147 ‘other family members’ migrated to Germany in 2012. This figure came to 943 people in 2013 and 696 people in 2014.

country.⁷⁴ A peculiarity inherent in the Swedish regulations is that non-marital partners are allowed to come to the country; in the USA and Germany, this option is only bestowed upon people living in civil unions.⁷⁵ However, people wishing to make use of this possibility must prove that they a) were already a couple in the home country, b) permanently lived together in a household or c) intend to do so in Sweden. The fulfilment of these prerequisites must be verified by providing a tenancy or purchase agreement, common insurance contracts or the like (Pascouau/Labayle 2011: 32–34).⁷⁶

Potential migrants are not required to demonstrate knowledge of the Swedish language before immigrating, in contrast to the practice employed in some other EU countries (Germany, the Netherlands, Denmark, Great Britain, Austria and France) (see Ruffer 2011: 937–940; Staver 2013: 83f.; Block/Bonjour 2013: 206–208; Bonjour 2014). Third-country nationals wishing to move to Germany in order to live with a resident spouse are generally required to prove German skills commensurate with level A1 of the Common European Framework of Reference for Languages before being admitted to the country; this means that they must be able to make themselves understood, at least in a simple fashion, in the German language (see SVR 2011: 98f.; 2014: 90f.).⁷⁷ The policy of making the immigration of family members conditional on their ability to demonstrate basic language skills is politically and legally a controversial one. Indeed, the European Court of Justice (ECJ) ruled in July 2014 that the corresponding regulation in the German Residence Act was a violation of the so-called Standstill Clause contained in the Association Agreement between the European Economic Community (EEC) and Turkey and was thus contrary to EU law (ECJ, judgement of 10.07.2014, C-138/13, *Dogan*). In contrast to its portrayal in the

media, this ruling does not generally prevent Germany from obliging third-country nationals to pass a language test before allowing them to join family members in the country. It merely states that the German rules, which automatically prevent family migrants unable to demonstrate basic German language skills from coming to the country, are too general and do not pay enough attention to the specificities of individual cases (see Thym 2014a; 2014d). Following this judgement, the Federal Foreign Office and the Federal Ministry of the Interior (Bundesministerium des Innern, BMI) agreed to issue a directive in order to implement this judgement on a preliminary basis. This directive stipulates that while “for the purposes of family migration to Turkish citizens covered by the provisions of the Association Agreement” German language skills must be proven prior to accessing German territory, “hardship factors should [nevertheless] be examined” in these cases in the future (BT-Drs. 18/2414, SVR’s translation). In addition, a visa may also occasionally be issued when “no evidence of basic German skills is provided” (BT-Drs. 18/2414, SVR’s translation). The German legislator could in a similar fashion make the obligation to demonstrate language skills ‘watertight’ by introducing a general clause for hardship cases which created “a clear legal framework enabling the relevant authorities to forgo a proof of language skills when this supposes a disproportionate strain” on applicants (SVR 2014: 92, SVR’s translation). Such a clause exists in Great Britain, for example.

Apart from the controversial requirement placed on spouses to demonstrate language skills, differences in family reunification also exist between Germany and Sweden as regards the rules governing the immigration of children. Both countries are in principle obliged to uphold the provisions contained in Article 4 of the

74 An application for a residence permit on the grounds of family reunification can be rejected if false information is provided, the relationship does not exist in the described fashion, the applicant represents a danger for public order or security, the couple have separated, polygamy is practised or – as in Germany – one member of the relationship is under 18 years old. If it is unclear whether a family relationship genuinely exists or the Swedish migration authority (*Migrationsverket*) doubts its authenticity, the people involved can voluntarily choose to have a DNA test carried out in order to prove that the parenthood exists. This test is free of charge for the people involved.

75 Great Britain is one of the other countries which employ similar rules on this issue. People living in a non-marital partnership are also permitted to migrate to Great Britain, provided both are at least 18 years old, have lived in a relationship similar to wedlock for at least two years and are not married to another person (see Thym 2014b).

76 Similarly to the U. S. regulations, a residence permit can also be issued in Sweden if a couple is planning to marry. In Sweden, a residence permit can also be issued to couples wishing to live together without getting married, under the proviso that they live in a serious relationship which can be considered to be stable and no specific reasons constitute an obstacle to the issuing of a residence permit. In cases of this nature, the authorities often seek to verify the length of the relationship and the knowledge which the couple have of each other (Pascouau/Labayle 2011: 34).

77 A1 is the lowest level of the Common European Framework of Reference for Languages. A person with language skills commensurate with level A1 can “understand and use familiar everyday expressions and very basic phrases aimed at the satisfaction of needs of a concrete type”, “can introduce him/herself and others and can ask and answer questions about personal details such as where he/she lives, people he/she knows and things he/she has”; in addition the relevant person can also “interact in a simple way provided the other person talks slowly and clearly and is prepared to help” (Goethe-Institut 2015). Various groups are exempted from the requirement to demonstrate German skills: EU citizens, who have made use of their ability to freely move within the EU and are subject to the law governing freedom of movement within the EU together with spouses of Blue Card holders or citizens of a number of countries (including the USA, Canada, Israel, Japan, Australia, New Zealand and South Korea) migrating for purposes of family reunification. These groups of people have enjoyed a privileged position in the German labour market for many years (see Section 30[1], no. 3, no. 4 and no. 5, Residence Act) (see also SVR 2014: 90f.).

Table A.4 Family reunification eligibility requirements in Germany, Sweden and the USA

Sponsor	Germany		Sweden		USA	
	Citizens	Foreigners	Citizens	Foreigners	Citizens	Foreigners
Spouse/civil partner	yes	yes	yes	yes	yes	yes
Unmarried minor children	yes	yes, under 16 years of age;	yes	yes	yes	yes
		at least 16 years of age u. c. c.				
Unmarried adult children	u. c. c.	u. c. c.	u. c. c.	u. c. c.	yes	yes
Married adult children	no	no	no	no	yes	no
Parents	u. c. c.	u. c. c.	u. c. c.	u. c. c.	yes	no
Siblings	no	no	no	no	yes	no
Partner in a non-marital relationship (cohabitation)	no	no	yes	yes	no	no

Colour code: green (yes) means that the person/group of individuals in the relevant country are entitled to come to the country as family migrants; yellow means that they are entitled to come to the country under certain circumstances (u. c. c.); and red (no) means that they are not entitled to come to the country.

Source: SVR research and compilation

Directive on the Right to Family Reunification (2003/86/EC), which enshrines children's entitlement to join their parents in an EU country. Yet these countries interpret this obligation differently: whilst children younger than 18 years have an unconditional right to family reunification in Sweden, children between 16 and 18 years of age have to enter Germany together with their parents (or with the sole custodial parent). They must otherwise fulfil certain preconditions intended to guarantee their rapid societal integration (the possession of German skills or the attestation of a 'positive integration prognosis' as a result of their previous education and living conditions, Section 32[2], Residence Act). The only exception to this general rule is made when family reunification is deemed necessary in order to prevent extreme hardship (Section 32[4], Residence Act).

Finally, other close relatives, such as unmarried children over 18 years of age or parents are also able to migrate to Sweden for family reunification purposes. These people can immigrate to Sweden if a relationship of dependency already existed between them in the country of origin (e.g. parents requiring a high level of personal individual care) and they lived in the same household (see Pascouau/Labayl 2011: 47). The corresponding German regulations are not fundamentally different: the Residence Act states that foreign parents of a

minor child can be granted a residence permit in order to care for the child (Sections 28, 36[1], Residence Act) and other dependents "in order to avoid particular hardship" (Section 36[2], Residence Act).

A.3.3 The Dual Relevance of Family Migration Policy

Table A.4 summarises under which conditions third-country nationals can join family members in the three countries compared. It makes clear that the United States' family reunification policy is targeted at a larger pool of people than the nuclear family-oriented European approach. However, only people related to American citizens, and not to foreign (non-American) citizens, can make use of these more extensive opportunities to come to the country. In addition, these options are undermined by the employment of immigration quotas and the resulting lengthy waiting times.

A.3.3.1 Family Migration Policy as 'Preventative Social Policy'

Whilst states take different approaches to defining which family members are allowed to migrate, all states have

the ability to tie family members' right to come to the country to the fulfilment of certain conditions. In addition to providing evidence of language skills prior to migration (which is required by the German, but not by the Swedish authorities), other 'standard requirements' include proof of income, accommodation and insurance coverage. The latter requirements must be fulfilled by the sponsoring person (Article 7[1] of the Directive on the Right to Family Reunification [2003/86/EC]). These stipulations are intended to prevent 'immigration into the social insurance system'. Against this background, it is somewhat surprising that the USA, which has only a very limited social insurance system, also makes such requirements from sponsors: the country requires sponsors to sign a declaration accepting financial responsibility for relatives seeking to migrate to the USA. In this Affidavit of Support, sponsoring persons must provide evidence that they earn at least 125 percent of the national poverty line that is relevant to them (see Thym 2014b: 9).⁷⁸

From a comparative point of view, the development in Sweden is especially instructive. Before 2010, scarcely any conditions were placed on immigrants and sponsors, even though, when compared internationally, the country offers one of the most comprehensive systems of social insurance against the main risks in life (such as illness, unemployment, age, invalidity, etc.) and in this regard is practically the antithesis to the USA. In 2010, sponsors of family reunification applicants were required for the first time to provide evidence of a regular income and sufficient accommodation for relatives wishing to immigrate.⁷⁹ These changes can be regarded as a caesura in Swedish family reunification policy. The number of residence permits issued to people migrating to Sweden for family reunification purposes fell slightly in the period directly following the introduction of these new requirements, from 37,710 in 2009 to 29,837 in 2010. However, this figure rose once again in the following period and in 2012 and 2013 (40,873 and 39,783 respectively) it was higher than before 2010 (Migrationsverket 2014; see also Pascouau/Labayle 2011: 104; Parusel 2014: 20f.).

With the introduction of measures obligating sponsors to prove evidence of minimum earnings, Sweden has

fallen in line with the European trend towards making family migration dependent on the fulfilment of specific conditions (see Pascouau/Labayle 2011: 76f.; Leerkes/Kulu-Glasgow 2011: 95; Ruffer 2011: 936; Block/Bonjour 2013: 205–208; Staver 2013: 72, 81f.). In contrast to Germany, sponsors in Sweden do not have to provide evidence that they have acquired sufficient healthcare protection for themselves and the immigrating family member(s). This difference is a direct result of the differing organisational principles and procedures of provision inherent in the social security systems. In the Swedish system, healthcare services (with the exception of patient contributions to the costs of medical appointments and medications) are exclusively taxation-funded and are granted to the entire population; it is thus not necessary to oblige sponsors to demonstrate that they have healthcare insurance.

A.3.3.2 Family Migration Policy as 'Location Policy'

Family reunification policy is, however, not just a form of 'preventative social policy' which aims to prevent 'immigration into the social security system'. **Together with labour migration regulations (see Chapter A.1), family migration policy is also a type of 'location policy'.** This is because family migration policy can be employed to attract international skilled personnel to a country by offering these migrants' relatives privileged family reunification conditions. Interviews carried out with highly qualified personnel have revealed the important role which these skilled employees attach to the immigration and employment opportunities for their family when deciding where they wish to live and work (Heß 2009: 58). The recent developments in Germany, which have seen not just an increase in the options available to labour migrants, but also an extension in the immigration and employment possibilities offered to their spouses, are thus only logical and appropriate. Spouses of Blue Card holders – who, in contrast to the situation in Austria, do not need to prove German language skills – have enjoyed unconditional access to the German labour market since August 2012. Third-country nationals in possession of a residence permit for family reunification

78 The poverty line is calculated according to household size. It currently corresponds to a monthly income of around 1,250 euros for two-person households and around 1,900 euros for four-person households (Thym 2014b: 9; see also Department of Homeland Security 2014). For more information on the Affidavit of Support see <http://www.uscis.gov/green-card/green-card-processes-and-procedures/affidavit-support>, 28.04.2015.

79 A number of exceptions to this general rule exist. Thus, recognised refugees sponsoring the immigration of family members or legal minors for whose parents an application for family reunification has been made are not made subject to these requirements. Furthermore, Swedish authorities enjoy certain discretionary powers, as applications for family reunification are not automatically rejected if the necessary level is not reached (i.e. the ability to finance one's own living costs). Swedish law thus provides the authorities with a certain amount of leeway as regards, for example, the extent to which sponsors draw a permanent income (Pascouau/Labayle 2011: 7783). In all three countries analysed here, the mandatory minimum income is considerably below that demanded by Great Britain, a country which is not subject to the stipulations contained in the Directive on the right to family reunification. The British authorities do not use the existence minimum, but instead the national average income as a base for calculating the income requirements which sponsors must fulfil. British legislation thereby requires people sponsoring the immigration of a partner to demonstrate an income of 144 percent, and those sponsoring the immigration of a partner and a child an income of 173 percent of the national average income (Thym 2014b: 9).

purposes were granted general access to the German labour market a year later; the new rules enable them to work in Germany irrespective of the status and the type of residence permit possessed by the sponsoring person (Section 27[5], Residence Act) (see SVR 2014: 93; BT-Drs. 17/13022: 30).⁸⁰

Family migration policy in Sweden also provides similar incentives for eagerly courted labour migrants: family members of migrants granted a residence permit in order to work in Sweden also receive a residence permit for an identical time period. The age limit for children of immigrating employees is also interpreted in a broader fashion than for other migrant children: unmarried children of these immigrants can themselves come to Sweden until they are 21 years old and children who are at least 21 years of age can also immigrate if they are financially dependent on a parent or a parent's partner. Both countries are thus in many respects going down the American road: in the United States, it is standard practice to award family migrants unlimited access to the American labour market with the Green Card.

A.3.4 Concept of Family and Income Requirements: Differences and Similarities

The central difference between the family migration policy of the USA on the one hand and Sweden and Germany on the other hand can be found in the instruments employed for this purpose: **the quota-based regulation in the USA can be juxtaposed with the case-by-case procedure used on the other side of the Atlantic**, as part of which a visa is usually issued if the – albeit diverging

– legally defined exigencies are fulfilled. The American family reunification rules may appear liberal, but the previously discussed consequences of the quota-based system show it in another light and not worthy of imitation. **While quota-based family migration systems of this nature undoubtedly have their advantages and disadvantages, Germany and other EU countries would in any case be unable to introduce such a scheme as it would be incompatible with European legal provisions** (including the Directive on the Right to Family Reunification [Directive 2003/86/EC], which should be interpreted with the guaranteed legal protection of the family in mind [Article 8, ECHR; Article 7, Charter of Fundamental Rights of the European Union]) (Thym 2014b: 16).

If the issue of differing 'family reunification systems' is left to one side, a tendency towards a convergence can be observed in some areas. A prime example of this is states' increasing inclination to oblige sponsors to provide evidence that they have a minimum income. The so-called Affidavit of Support, which requires sponsors to have an income which is at least 125 percent of the officially calculated poverty line, has been employed in the United States for decades. Even Sweden, a country which can be regarded as being particularly liberal in terms of migration and integration policy (see Chapters A.1, B.4), introduced measures requiring sponsors to provide evidence of minimum income and accommodation in 2010. In adopting this approach, Sweden is following a trend observable across Europe to regulate family reunification in a more stringent fashion (see, among others, SVR 2011). This is probably a result of the more intensive (and also informal) consultation over political options which is currently taking place, not least among EU countries.⁸¹

80 This new regulation has eliminated the absurd but eminently possible situation whereby very highly educated spouses received no access to the German labour market while Blue Card holders' partners were allowed to unconditionally work in the country, even if they had never completed a period of vocational or academic training (see SVR 2014: 91).

81 The European Migration Network can be regarded as the most important entity within which an internal European exchange of ideas about issues related to migration and integration is currently taking place. The transfer of national policies as well as the 'vertical' and 'horizontal' processes of Europeanisation (driven by member states or by actors engaged at a supranational level) are explored in Block/Bonjour (2013); Staver (2013); and Bonjour (2014).

Asylum and Refugee Migration

An extensive set of Directives and Regulations were adopted at EU level in 2013, measures which have laid the foundation for a Common European Asylum System (CEAS). This system is valid in the entire European Union (with the exception of the opt-out countries, Great Britain, Ireland and Denmark, for which the Regulations are merely relevant and binding). The CEAS establishes both EU-wide mandatory standards for asylum procedures and the circumstances under which people have an entitlement to international protection. In this context, the first part of this chapter does not compare a specific EU country with other European or non-European countries, but instead juxtaposes the European Union as a supranational entity with common regulations with Canada, a country which is often regarded as a political role model and a reference point for asylum and refugee policy (see, among others, Gieler 2003; Elrick 2013; Soennecken 2014).⁸² The second part of the chapter then looks at the differences between countries participating in the CEAS. The policies employed in the field of asylum and refugees in Spain, Italy and Greece are critically examined here. The findings show that despite the common legal framework and similar geographic and economic conditions across the EU large differences continue to exist in the policies adopted on the ground.

The wish to harmonise European asylum and refugee policy has been on the political agenda in Brussels for many years. With the passing of a set of Directives and Regulations in June 2013, the legal and institutional framework conditions were created for a CEAS. The content of the CEAS was described in some detail in SVR's

2014 Annual Report; Box 2 once again summarises its most important elements. The new rules mean that unified and legally binding rules now exist, particularly as regards standards for the asylum procedure and asylum decisions, and are valid throughout the Union. In terms of the housing and care of asylum seekers, the CEAS now obliges states to bring the benefits which they accord to refugees and asylum seekers⁸³ in line with the standards enjoyed by the general population in the respective member state.⁸⁴

A.4.1 Forms of Protection and Management Instruments: The CEAS and the Canadian Asylum System

Canada was renowned for its liberal refugee policy for many years. This approach was based on a fundamentally positive attitude towards immigration which is deeply anchored in Canadian society. This was epitomised by the very generous interpretation of the Geneva Convention by the Immigration and Refugee Board (IRB), the body responsible for the recognition of refugees (CRSR),⁸⁵ an approach which resulted in high rates of refugee recognition (Soennecken 2014: 110; 2013: 297). Yet as in many other countries, the terror attacks of 11 September 2001 caused a caesura in Canadian policy in this field: these events sparked a comprehensive and far-reaching modification of the country's refugee policy, which is nowadays more informed by the restrictive refugee protection measures employed by European states (Macklin 2013).

82 The United Nations High Commissioner for Refugees conferred the renowned Nansen Refugee Award on the 'people of Canada' in 1986 – the first and to date only time that this prize has been awarded to a 'people' – in order to recognise the country's exceptional engagement for the protection of refugees.

83 The term 'refugee' is used in the following pages to refer to people who as a result of a subjectively perceived situation of emergency leave their country of origin or the country in which they normally reside in order to seek refuge in another country whose citizenship they do not possess. The term 'people seeking refuge' is used synonymously. Pursuant to this definition, asylum seekers are refugees who have already lodged an asylum petition in the destination country.

84 Uniform standards across Europe are impossible to achieve, as large differences exist between the different countries as regards economic development and welfare provisions.

85 Canada has been a signatory to the Geneva Convention since 1951 and also signed the complementary New York Protocol in 1969. In the so-called Ward Judgement from 1993, the country followed the view of the UNHCR and acknowledged that the definition of refugees contained in the Geneva Convention also applies to people persecuted by non-state actors (Canada [Attorney General] v. Ward, [1993] 2 S. C. R. 689).

Box 2 The Common European Asylum System (CEAS)

At a legal and institutional level, the CEAS consists of two institutions, two Regulations and five Directives. Whilst Regulations take effect immediately, Directives must first be incorporated into national law by the member states.

The Institutions

The *European Asylum Support Office* (EASO), which was created in 2010, supports the asylum and immigration authorities (at the moment) primarily in Southern European member states and provides the employees of the relevant authorities with training and instruction sessions. It also compiles reports on the situation in the most important countries of origin of people who come to Europe as refugees and coordinates cooperation on issues relating to unaccompanied minors and on the protection afforded to victims of human trafficking.

The chief task of the European border control agency *Frontex*, which was established as far back as 2004, is to coordinate common operations undertaken by member states to defend the external borders of the EU. The main geographic focal point of its operations is the Mediterranean basin. In addition, Frontex provides the border surveillance authorities of EU member states with technical assistance and personnel, collects data and compiles reports about border crossings and border protection (Mungianu 2013).

The Regulations

The revised *Dublin-III Regulation* was approved and came into force in summer 2013. The central mechanism for determining responsibility has not changed: the country in which a refugee first enters EU territory is usually responsible for carrying out an asylum procedure. However, the Regulation extends the group of people for whom this principle is valid to people who have lodged an application for subsidiary protection. Furthermore, it specifies more precisely and extends the situations in which the Dublin principle does not have to be complied with. The *EURODAC Regulation* governs the structure and the mode of operation of the database in which fingerprints from asylum seekers and irregular immigrants are stored; it thus has a central importance for the functioning of the Dublin Regulation. The amended Regulation specifies, among other things, which authorities are entitled to have access to the database and extends the opportunities for doing so.

The Directives

The *Directive on Temporary Protection in the Event of a Mass Influx of Displaced Persons* has existed since 2001, but has yet to be employed. The Directive enables refugees to be granted a temporary residence status without having to go through an asylum procedure. Article 2d specifies that this Directive can be employed when there is a “mass influx” of people, a term which “means [the] arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme”.

The new version of the *Qualification Directive* from 2013 defines the status of refugees and beneficiaries of subsidiary protection. The recognition criteria are more generous than in the previous version of the Directive and recognised refugees also enjoy greater entitlements than was previously the case.

The revised *Reception Directive* of 26 June 2013 lays down minimum standards for the reception of asylum seekers and for the conditions in which they live. These standards are more precisely defined than in the previous version of this Directive.

The new *Asylum Procedures Directive* seeks to harmonise the diverging recognition and asylum appeal procedures in the member states. The Directive is mainly concerned with the length of, and access to, asylum procedures. The Directive also grants beneficiaries of subsidiary protection the same procedural rights as refugees accorded protection on grounds of the Geneva Refugee Convention (CRSR – this Convention is officially entitled the Convention relating to the Status of Refugees).

The *Return Directive* harmonises the standards and procedures for measures employed to end a refugee’s residence in a member state.

This process of alignment or harmonisation will be analysed with reference to two aspects. Forms of protection which are firmly established in both systems are first explored: on the one hand, the classical individual protection against persecution and/or against threats on life and limb via the asylum procedure, applications for which must normally be lodged in the country of residence, and, on the other hand, collective forms of protection, as part of which states declare themselves willing to accept a certain contingency of refugees belonging to a specific group of people from outside their territory. As a second step, the subchapter then examines instruments of asylum and refugee policy with which the responsibility for asylum procedure is determined – such as the Dublin principle in Europe – as well as the use of lists of so-called safe countries of origin.

A.4.1.1 CRSR, Resettlement, Temporary Protection

Canadian asylum policy is based on two forms of protection, whose provisions differ according to where protection has been petitioned: in Canada (inland protection) or outside the country (overseas protection). Three sub-groups of persons are provided with inland protection, i.e. through asylum procedures carried out in Canada:

- (1) People officially granted CRSR protective status;
- (2) Refugees who are granted the status of ‘persons in need of protection’ and receive subsidiary protection. These include refugees who, while having been denied protection by the provisions contained in the CRSR, cannot be returned to their countries of origin as they would be threatened there with torture, cruel treatment or death;
- (3) People who do not fall under the requirements to receive protection stipulated in points 1) and 2), but have been granted protection in a subsequent asylum procedure (the so-called Pre-Removal Risk Assessment).

The Canadian system of inland protection provides essentially the same form of protection as that offered by the CEAS, whose members have all signed the CRSR: in the asylum procedures, the CEAS also distinguishes between

protection afforded by the CRSR and subsidiary protection not covered by the provisions contained in this Convention.⁸⁶ The Canadian regulations stipulate that subsidiary protection should be granted where there is substantial reason to believe that a refugee is threatened with serious harm (e.g. a death sentence or execution, torture, inhumane or demeaning treatment or punishment, a genuine threat to the life or the physical inviolability of an individual) if the refugee returns to the country of origin. Whilst the CEAS makes reference here to the European Convention on Human Rights (Article 3 of the ECHR), the normative point of reference for Canada is the UN Convention against Torture. The Canadian and European systems thus have a similar definition of people in ‘need of protection’.⁸⁷ This similarity is due to the large overlap between the provisions in the European Convention on Human Rights (ECHR) and those contained in the UN Convention, together with the fact that both Canada and all EU countries are signatories to the CRSR.

The second relevant form of protection in Canada is ‘overseas protection’, which can be best described as “protection through acceptance abroad”. The so-called Refugee and Humanitarian Resettlement Programmes in particular fall into this category. Such programmes, which are intended to provide refugees with permanent protection in Canada, have existed since 1978 and are sponsored by either the state or by private civil society actors. The government bears the costs incurred in the relocation and settlement of the group of Government-Assisted Refugees, who are usually identified and selected by the UNHCR. Private and civil society organisations commit themselves to paying for the costs of the Privately Sponsored Refugees for the first year of their stay in Canada (Gnatzy 2001; CIC 2012).⁸⁸ The state-funded programme accepts only people recognised as refugees according to the provisions of the Geneva Refugee Convention, whereas the privately funded programme also accepts people who are in refugee-like situations.⁸⁹

Taken together, these two methods of resettlement are, empirically speaking, as relevant for Canada as the sum of all individual asylum applicants.⁹⁰ Resettlement programmes are in many ways more attractive for the

⁸⁶ Member states can also introduce or employ procedures which are not envisaged in the CEAS. In Germany, examples of such procedures are the entitlement to asylum according to Article 16a of the Basic Law and the national protection against deportation stipulated in Section 60[5] and [7], no. 1, Residence Act (in conjunction with Section 25[3], no. 1, Residence Act).

⁸⁷ This is commensurate with a requirement of the UNHCR, a body which regularly publishes recommendations regarding the interpretation of the CRSR (Gilbert 2013) and is continuously pushing for an international harmonisation of refugee legislation.

⁸⁸ A further method has existed since 2013: the so-called blended visa office-referred refugee stream, as part of which the state and private sponsors share the costs incurred in the reception of refugees.

⁸⁹ These include people residing outside their home country or country of residence and who “have been, and continue to be, seriously and personally affected by civil war or armed conflict, or have suffered massive violations of human rights” (quoted from: www.cic.gc.ca/ENGLISH/refugees/outside/index.asp, 23.01.2015).

⁹⁰ A total of 116,439 people who came to Canada as asylum seekers were granted refugee status in the country between 2003 and 2012. In the same time period, 111,472 people gained access to the country via the resettlement programmes (CIC 2012).

receiving countries than the provision of individual protection, as they can better influence the number and the profile of the refugees. Indeed, the Canadian government has made use of this possibility and has, among other things, placed a limit on the number of extremely ill persons (medical cases)⁹¹ permitted to come to the country and has excluded unaccompanied minors from the programme. One of the selection criteria for the Canadian resettlement programme is the extent to which refugees are capable of successfully integrating into society.⁹² **In addition, refugees migrating to Canada as part of the resettlement programme can immediately participate in, and be made subject to, integration measures**, given that it is already clear on their arrival in the country that they are likely to remain on a long-term basis. **If these integration measures are successful, the population's acceptance of the refugees' presence in the country may also rise** (see also Thränhardt 2014a: 180). **The main advantage that the resettlement programmes have for refugees over individual asylum procedures is that they can obtain asylum without having to partake in irregular and dangerous attempts to enter the country.** Moreover, the accepted refugees have the security of knowing that they are being granted protection and are consequently able to start planning their new life from the day of their arrival in the country and do not have to wait – possibly over a period of several years – for a final decision in an asylum process.

The EU – or better put the CEAS – differs from Canada in the field of resettlement in two ways: while an EU resettlement programme has existed since 2012, it is not part of the CEAS. It is instead based on a voluntary acceptance of refugees and is thus subject to the policy considerations of the member states; however, it is financially supported by the EU. In contrast to Canada, only a small number of people have been resettled in EU member states as part of the programmes established to

date – both in terms of absolute numbers and as a proportion of these countries' total humanitarian immigration.⁹³

A central feature of Canadian immigration policy, at least in the past, was that considerably more people migrated to Canada on a permanent than on a temporary basis (see also Chapter A.1). This is also true for the country's refugee and asylum policy: both people who are entitled to protection by the provisions contained in the Geneva Convention as well as so-called persons in need and refugees migrating to Canada via a resettlement procedure receive a permanent residence permit on their arrival in the country. However, the provisions contained in Bill C-31, which was passed in 2012, are increasingly resulting in people whose asylum petition has been rejected and who were not accorded protection in a subsequent procedure (i.e. the so-called pre-removal risk assessment) being exempted from this legal status. Refugees granted a permanent residence status do not predominate in the EU to such an extent. The concept employed by the Union is more one of a staggered consolidation of the residence status. This approach is enshrined in both primary and secondary law: a temporary residence permit is initially envisaged for all immigrant groups (even for Blue Card holders, see Chapter A.1). A permanent right to remain is only later conferred. According to the new Long Term Residence Directive, this status must be granted at the latest five years after a migrant's arrival in an EU member state (Thym 2010: 18–24).⁹⁴

Alongside the programmes in which refugees are granted a permanent residence status – or a temporary status with the option of later converting to a permanent residence status – temporary forms of protection which do not offer a chance of permanent residence exist in both the EU and in Canada. People can claim asylum as part of these programmes by merely drawing attention to dramatic situations in their countries of origin; in these

91 There is no cap on the number of these migrants who can be accepted as part of this programme, but instead a five-percent quota for the most important groups.

92 This is described in the following fashion in the UNHCR's handbook: "Normally, applicants must show potential to become self-sufficient and successfully established in Canada within a 3 to 5 year time frame. Factors such as education, presence of a support network (family or sponsor) in Canada, work experience and qualifications, ability to learn to speak English or French and other personal suitability factors such as resourcefulness will be taken into account by visa officers." (UNHCR 2014b: 5).

93 The Conference of the Interior Ministers of the German *Länder* (IMK) decided at the end of 2011 to provisionally initiate a programme aimed at the permanent resettlement of a small number of refugees. As part of this programme, which was to be partially funded by the European Commission, a total of 300 refugees were to be annually accepted from a UNHCR resettlement programme between 2012 and 2014. The Federal Government elected in autumn 2013 agreed to expand programmes of this nature and to continue them on a permanent basis. For 2015 the number has been raised to 500 refugees. EU member states took in a total of 5,120 refugees for resettlement purposes in 2013 (UNHCR 2014c). The Federal Government had already taken in some refugees from countries in which they had first sought refuge and resettled them in Germany prior to its formal participation in the UNHCR resettlement programme. In this context, the country took in 2,500 Iraqi refugees from Syria and Jordan on an ad hoc basis in 2009 and 2010.

94 Foreigners accorded 'international protection' by the Qualification Directive now fall into the area of application of the newly amended EU Long Term Residence Directive (2011/51/EU). This group of non-EU citizens were unable to obtain permanent residence status according to the previous version of this Directive. However, the allocation of a long-term residence permit is tied to a series of conditions which many refugees can in reality rarely fulfil; one of these conditions is that the foreigners involved must be able to earn their own living without state support.

cases an individual verification of the asylum claim does not take place.⁹⁵ A similar programme exists in Canada, as part of which the deportation of refugees is suspended if “a generalized risk to the entire civilian population” exists in the country to which they should be deported (e.g. as a result of an armed conflict or an environmental disaster) (Art. 230 I lit. A lit. c IRPR). This temporary protection mechanism is activated by a decree of the Canadian Minister of Public Safety. In a similar fashion, European states, while being unable to suspend deportations at the EU level, are able to do so at the level of the nation-state.

Moreover, the EU can also avail of the Directive on temporary protection in the event of a mass influx of displaced persons.⁹⁶ The European Council plays a key role here: on the Commission’s recommendation it can decide to provide a specific group of people with temporary protection and an appropriate residence status. The Council must also come to an agreement on the number of refugees to be accepted by each member state and how states overburdened by the presence of refugees should be supported. However, suggestions to employ the Directive have not as yet received the necessary qualified majority in the Council. Some governments (including the German government) have advocated activating the Directive in order to provide Syrian refugees with collective protection in a non-bureaucratic and swift fashion, instead of obliging these migrants to pass through individual asylum procedures. The decision not to employ the Directive until now is a result of the uncertainty about how the refugees thus accepted and the expenses incurred by their reception and presence should be shared across the EU (see: SVR-Forschungsbereich 2013a). That does not preclude nation-states from initiating their own temporary protection programmes and implementing them ‘unilaterally’. Indeed, Germany has organised temporary protective programmes for Syrian refugees and, as one of very few EU states, has taken in a larger quantity of Syrian refugees outside the regular asylum procedure.⁹⁷ The population supports Germany’s role as a pioneer in the reception of refugees from Syria. Thus, on the one hand, the population generally takes a more reserved view towards the reception of refugees, with only just under 44 percent “completely agreeing” or “more agreeing than disagreeing” that Germany should take in more refugees. On the other hand, however, a

considerably higher proportion of the population favours the reception of refugees from Syria: a majority of the interviewees (over 54 %) advocates a more generous policy towards the reception of this group of people (see Chart 4 in Appendix II).

Canada can act in a more direct and less complicated fashion than Europe in the field of temporary collective protection: the so-called moratorium option, which regulates situations of this nature, requires merely the decision of the responsible minister. This greater room for manoeuvre is a direct consequence of the much larger powers of discretion enjoyed by the Canadian executive.

A.4.1.2 Management Elements: Regulations Governing Responsibility and Safe Countries of Origin

It is well known that states’ ability to manage asylum and refugee flows are greatly (and increasingly) limited by human rights and international legal stipulations and a corresponding jurisprudence. This is true for both the EU and Canada. At the same time, both the EU member states and also Canada have implemented regulations determining which state is responsible for conducting individual asylum procedures. For the EU, the rules regulating the location in which asylum procedures should take place are especially relevant, as these determine which state is responsible for the asylum procedure. Another management mechanism also exists: the so-called safe country of origin lists. Asylum seekers from countries which are deemed to be safe are normally not considered to have an entitlement to protection, unless special circumstances are present which provide grounds for the assumption that they are nevertheless in need of protection (Engelmann 2014).

In the EU, the question as to which country is responsible for processing an asylum claim has been regulated since 1997 by the Dublin regime, which has meanwhile been reformed on a number of occasions. The Dublin regulations stipulate that the country through which a refugee has first entered EU territory (i.e. the country of first entry) is generally speaking responsible for processing the asylum claim. By clearly regulating which country is responsible for processing asylum claims, the Dublin system aims not just to prevent refugees from lodging asylum applications in various states (so-called asylum

95 The screening process here involves merely ensuring that the persons involved actually belong to the group defined as being in need of protection and determining if specific reasons for not conferring temporary protection exist. These include above all security-related issues or the participation in serious offences or war crimes.

96 The official title of the Directive is Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

97 To date, the Federal Government has organised and coordinated three programmes (so-called *Bundesprogramme*): in May 2013, December 2013 and June 2014. As part of the first and second programme respectively 5,000 refugees were received and a further 10,000 in the third. In addition, approximately 15,000 Syrian refugees have been granted protection by programmes organised by the German *Länder*.

shopping) (Bendel 2009: 7). It also seeks to stop the phenomenon of ‘refugees in orbit’, i.e. the situation in which all potential reception countries declare that they are not responsible for dealing with an asylum claim.

Whilst the Dublin system is relatively well known, a much smaller proportion of the public know that Canada has a similar system: after years of continuously failed negotiations with its southern (and only) neighbour the USA, the country finally concluded the Safe Third Country Agreement (STCA) in December 2002.⁹⁸ This agreement stipulates that asylum requests lodged by refugees who have crossed the United States in order to come to Canada are in most cases groundless. Canada is thus now in a similar situation to Germany, which is surrounded by countries belonging to the EU, as regards its geographical susceptibility to refugee flows. It is thus impossible – at least in a legal respect – for asylum seekers to gain access to Canadian territory by land, as there is no legal basis for processing asylum petitions lodged by people who come to the country overland. However, both the STCA and the Dublin Regulation contain a number of exemptions to this general rule, such as for family members or unaccompanied minors. EU states are also able to waive their right to return refugees to their country of first entry and to process the asylum claims themselves, even if they are not responsible for the case according to the Dublin stipulations.

In addition to this North American equivalent to the Dublin regime, which has been in place for more than ten years, Canada opted to adopt another instrument of refugee policy in summer 2010 that has also been employed in Europe for many years: the concept of safe countries of origin was introduced into Canadian law with the passing of the Balanced Refugee Reform Act (BRRRA). The Minister of Citizenship and Immigration identified a series of so-called Designated Countries of Origin (DCO). These are countries whose residents do not normally seek refuge in other countries, respect human rights and themselves confer state protection on refugees. Petitions lodged by people from these countries are verified in a fast-track asylum procedure;⁹⁹ the petitioners are also not given the chance to challenge the decision in the courts. The number of asylum petitions lodged in Canada

has fallen considerably since the introduction of this list of ‘safe countries’ (Alboim/Cohl 2012). Indeed, figures reveal that only half as many people petitioned asylum in 2013 (10,299) as in 2012 (20,223). The CEAS contains no comparable list of safe countries. The EU member states were unable to agree on a common list of safe countries of origin during the negotiations over the CEAS. Nonetheless, the new Asylum Procedures Directive (2013/32/EU) allows participating member states to continue to employ their own lists of safe countries of origin. In this context, Germany has for many years classified not just all EU member states, but also Senegal and Ghana as being safe countries of origin¹⁰⁰ (Section 29a[2], Asylum Procedure Act). Serbia, Macedonia and Bosnia-Herzegovina were added to the list of safe countries of origin in November 2014.¹⁰¹ However, it can scarcely be justified that a country of origin can be judged as safe by one EU country and as unsafe by another. ➡ **Against this background, the EU should renew its efforts to define a list of safe countries of origin of refugees that is valid for the entire European Union.**

A.4.1.3 Moving Closer to Europe: Departure From the Liberal Canadian Refugee Policy?

The comparison between the CEAS and Canada reveals a process of dual convergence which is taking place at staggered intervals. As the SVR (2014: 79-90) has already described in some detail, the entitlement to protection has been gradually extended in Europe (and now includes, for example, persecution by non-state actors and gender-specific persecution). A series of court rulings have prompted states to interpret the CRSR in a broader fashion (see, among others, Dreyer 2014). The refugee and asylum policy practised in Canada can be regarded as an important frame of reference for the extension of protection rights in Europe. However, the other side of this convergence process should also be allowed for: a number of more regulatory instruments (which already existed in Europe) have been incorporated into Canadian law – particularly since the terrorist attacks of 11 September 2001, and access to the Canadian asylum system thereby restricted (Macklin 2013; Table A.5).

98 Agreement between the Government of Canada and the Government of the United States of America for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries of 05.12.2002. The agreement came into effect on 29.12.2004.

99 The DCO include all EU countries except Bulgaria as well as Norway, San Marino, Monaco, Liechtenstein, Andorra, Iceland and Switzerland and Australia, Chile, Israel (except Gaza and the West Bank), Japan, Mexico, New Zealand, South Korea and the USA. The list has been gradually extended since 2010 by decrees issued by the responsible ministry.

100 Safe third states are defined in Article 16a[3] of the Basic Law as “states in which, on the basis of their laws, enforcement practices, and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists. It shall be presumed that a foreigner from such a state is not persecuted, unless he presents evidence justifying the conclusion that, contrary to this presumption, he is persecuted on political grounds.”

101 The three countries recently added to Germany’s list of safe countries of origin have long been classified as such in Austria. In addition to the other 27 EU member states, Austria considers the following countries to be safe countries of origin: Norway, Iceland, Liechtenstein, Switzerland, Canada, New Zealand, Australia, Serbia, Montenegro, Macedonia, Bosnia-Herzegovina and Kosovo.

Table A.5 Central forms of protection and refugee policy instruments in the CEAS and in Canada

	CEAS	Canada
Form of protection		
Protection offered within CEAS/Canada	<ul style="list-style-type: none"> - Individual asylum (in Germany) - Protection afforded by CRSR - Subsidiary protection 	<ul style="list-style-type: none"> - Persons with recognised CRSR protection status - Persons in Need - Protection accorded by Pre-Removal Risk Assessment
Protection offered outside CEAS/Canada	<ul style="list-style-type: none"> - Directive on temporary protection in the event of a mass influx of displaced persons - National temporary reception programmes - Non-compulsory EU resettlement programme 	<ul style="list-style-type: none"> - Refugee and Humanitarian Resettlement Programme - Government-Assisted Refugees - Privately Sponsored Refugees
Instruments of asylum and refugee policy		
Safe countries of origin	EU member states are entitled to define these countries	Designated Countries of Origin (DCO)
Regulations as to responsibility	Dublin regime	Safe Third Country Agreement (STCA) with the USA

Source: SVR research and compilation

This convergence process has taken place on a step-by-step basis: it started in 2001 with the Immigration and Refugee Protection Act (IRPA), a piece of legislation which, among other things, expanded Canada's ability to deport refugees. It continued in 2002 with the STCA, which, in a structural sense, is comparable to the Dublin system. The process reached its (provisional) zenith with the Balance Refugee Reform Act, which introduced a list of safe countries of origin (Designated Countries of Origin, DCO) and the so-called Bill C-31 from 2012, which prevents authorities from granting refugees the option of obtaining permanent residence status. These modifications suggest that it is indeed possible to speak of a "European turn in Canadian refugee policy" (Soenneken 2014).

Yet this transatlantic 'East-West' export of refugee policy management instruments and the convergence process thus signified should not obscure the fact that one central difference remains, which is ineluctably connected with the geography of Canada and Europe. Canada, on the one hand, is much less easily accessible than

the EU.¹⁰² This is because it has become almost impossible for refugees to reach since the introduction of the STCA, which prevents asylum seekers from taking the overland route to come to the country. The territory of the EU, on the other hand, can be reached relatively easily, not just by land, but also by boat – despite the tightening of the maritime border. The specific nature of Canada's refugee policy can only be understood against this background. The country is able to adopt a generous approach towards refugee reception, broadly interpret the CRSR and grant refugees the chance to acquire a permanent residence status, as its geography takes care of part of the work. Canada's refugee policy secures this autonomous position yet further by increasingly preferring resettlement procedures (in many cases to the detriment of classical asylum procedures), as it can thereby fix quotas and select refugees according to specific criteria. The recent reforms have strengthened the role of this selection process, which has been in any case an established part of Canadian refugee policy for many years. The Canadian government also publicly depicts the (more easily) manageable reception

¹⁰² In the almost hundred year period between 1914 and 2011 less than 3,000 refugees irregularly migrated to Canada by boat (Mecklin 2013). Legislation on irregular entry has been tightened in recent years after two boats which had set out from Thailand carrying a total of 538 Tamil refugees had landed in British Columbia in 2009 and 2010. The authorities have been able to detain refugees who have irregularly entered the country for an unlimited time period ever since Bill C-31 came into effect in 2012. This measure is explicitly intended to deter refugees from attempting to come to the country by boat. Canada has here consciously chosen to emulate the Australian model (Johnson 2010; Times Colonist 2012).

of refugees coming to the country via the resettlement procedure as being the standard form of refugee policy, especially when compared to the apparently unregulated influx of asylum seekers who first apply for protection when in Canadian territory.¹⁰³ This process goes so far that refugees entering the country individually and lodging asylum petitions in Canada are pejoratively described as ‘queue jumpers’ in the public discussion on the issue (see Alboim/Cohl 2012; Times Colonist 2012). In addition, the clear preference for resettlement has resulted in Canada “systematically closing its borders to asylum seekers” (Arbel/Brenner 2013: 1).

Due to its geographical position near a large number of conflict zones, Europe is more directly affected by refugees, and its borders, compared to Canada’s, are easier to overcome. It appears more universally restrictive when juxtaposed with the liberally selective Canada.¹⁰⁴ The ‘domestic procedure’ is the predominant form of protection offered, i.e. a claim lodged in EU territory. Resettlement programmes have not yet played a role in the CEAS and have played only a limited role in the EU member states. This is less a political decision and more a result of the easier access to EU territory than to that of Canada. It would be impossible to adopt the Canadian approach of selecting a large proportion of the refugee population before their arrival in European territory due to the universality of the EU refugee reception process. This approach, which is conditioned by the Union’s geographic location, is characterised by the conferral of standard entitlements on all refugees present in EU territory. This is the reason that refugee legislation is more restrictive here than in Canada, at least as regards the bestowal of permanent residence entitlements.

A.4.2 Common Standards, Different Policies? Implementation of the CEAS in EU Member States

The European asylum system was compared with the Canadian approach towards the protection of refugees in Chapter A.4.1. In order to illustrate the differing philosophies and operational rationales of the two large regions Europe and Canada, a uniform policy regarding refugees and asylum was ascribed to member states. While this assumption is a necessary simplification for the purposes

of an international comparison, it does not (yet) reflect the reality of refugee policy in Europe.

The following section thus aims to display the differing asylum and refugee policy realities in Europe (for a comprehensive account of this issue, see the last report from EASO 2014). This is done by examining the situation in Italy, Greece and (in a little less detail) Spain. On the one hand, as EU member states, these three countries are all subject to identical European legal framework conditions. On the other hand, they each have a long external EU border running through the Mediterranean Sea and as such are countries to which refugees first arrive when migrating to Europe. In addition, they are all affected (albeit to varying degrees) by the national debt crisis, high unemployment rates and slow economic growth. The following remarks are based to a large extent on the findings of a comparative analysis on this issue (Pastore/Roman 2014) which was commissioned by the SVR.

Italy and Greece in particular have come in for heavy criticism from courts, the general public and non-governmental organisations (NGOs) in the last few years. In the case of Greece, this has even resulted in the return of people who were first registered in the country before migrating to another EU country – an integral part of the Dublin regime – being suspended (ECtHR, judgement of 21.01.2011, *M.S.S. vs. Belgium*; see Moreno-Lax 2012). Greece has thus not participated in the Dublin system since 2011. The ECJ introduced the ‘systemic deficiencies’ verification category in its ruling of 21 December 2011 (ECJ, judgement of 21.12.2011, C-411/10 and C-493/10, *Secretary of State for the Home Department, M.E. and Others*) (Pelzer 2012; Lieven 2012). These deficiencies are considered to be present whenever a danger that refugees may be treated in an inhumane fashion as defined by Article 3 of the ECHR is determined.¹⁰⁵ While no systemic deficiencies have until now been determined for Italy, German administrative courts have in several cases placed a preliminary injunction against the return of individual asylum seekers to Italy. The European Court of Human Rights (ECtHR) also concluded in a ruling from 2014 (ECtHR, judgement of 04.11.2014, *Tarakhel v. Switzerland*) that while the deficiencies in the Italian reception system are grave, they are not of a systemic nature.

The approaches taken towards refugees and asylum seekers in Italy, Spain and Greece, countries with similar structural conditions, show in an exemplarily fashion

103 In contrast to many European governments, the government in Ottawa scarcely has to worry about being placed under pressure to justify its asylum policy to its own population due to rapidly rising numbers of asylum seekers.

104 This contrast between liberally selective and universally restrictive ‘countries of asylum’ is in many ways analogous to the contrast “rights vs. numbers” which Ruhs and Martin (2008) have described in the field of labour migration.

105 A controversial issue is how exactly the criterion of ‘systemic deficiencies’ is to be interpreted, or if it is too difficult to prove that deficiencies of this nature indeed exist. In this context, Lübke (2014: 105–111) argues that ‘systemic deficiencies’ can also refer to deficiencies in the asylum treatment received by individual asylum seekers.

that a genuine CEAS is not (yet) a political reality. This is despite the progress which has undoubtedly been made in the last few years and the agreement to harmonise asylum policy across the EU. The comparative analysis concentrates on four dimensions which can be aligned to different regulation areas of the CEAS while at the same time being vitally important for everyday asylum and refugee policy. These are (1) the seizure or the search and rescue of refugees (in the case of the comparison countries: from the Mediterranean Sea), (2) the ascertainment of their identity (screening) and reception, (3) the provision of food, accommodation, etc. and 4) the processing and recognition of asylum claims.

A.4.2.1 Border Control and Rescue Operations in the Mediterranean

In the field of migration policy, a well-established practice is to differentiate between two migration motives: on the one hand, people migrating to search for work, i.e. who wish to improve their living standards, and, on the other, migrants fleeing from persecution. For all countries, it must be assumed that migrants motivated by both of these factors use the same irregular sea routes over the Mediterranean to come to Europe (so-called mixed migration flows) (Angenendt 2014). The already difficult balancing act between legitimate border control and effective refugee protection is thus made even more difficult.

In order to portray the differing asylum and refugee policies used in the three comparison countries (and their developments over time), a binary differentiation is employed here as a form of heuristic tool. The text thus distinguishes between a *protection-based* policy approach, which attaches clear precedence to saving people's lives, and a *control-driven* policy which mainly focuses on protecting the external border.

Italy: From the Friendship Treaty to Mare Nostrum

Until 2011, Italy could without doubt be classified as a more control-based country that gave clear precedence to securing the external border and correspondingly attributed less importance to questions of rescuing refugees (from the sea). The period prior to the end of the last decade can be described here as the 'push-back era': whenever vessels were detected in the Mediterranean which were suspected of having irregular immigrants on board and were heading towards Italy, the migrants were immediately returned to Italy without being screened to determine whether they might have a legal entitlement to asylum. This occurred on the basis of a 'friendship and partnership treaty' with Libya (Paoletti/Pastore 2010; Klepp 2010). The ECtHR declared this practice unlawful in a spectacular and controversial ruling in 2012 (ECtHR, judgement of 23.02.2012, *Hirsi Jamaa* and others/Italy) and thereby extended the ECHR's scope of application to

ships sailing under the flag of ECHR signatory states in international waters. The fall of the Gaddafi regime in 2011 marked a turning point in Italian policy: a central (and in human rights terms clearly highly dubious) cooperation partner in the country's refugee policy ceased to exist. Italy subsequently moved away from its former control-based perspective. This policy shift was also a result of the tragic events off the coast of the Italian island of Lampedusa, where several hundred asylum seekers drowned in October 2013. These events drew public and political attention to Italian and European refugee policy and placed the Italian government under pressure to act. The most observable sign of this modified approach is the Operation Mare Nostrum, which was launched by the Italian government. As part of this operation, the Italian navy rescued refugees who were in distress in not just Italian, but also in international waters and detained people smugglers. In view of the over 150,000 refugees who were rescued by the Italian navy, this programme must without doubt be regarded as a success and as a great humanitarian accomplishment. However, critics argue with some justification that the extension of the maritime protection zone covered by the Italian navy has the unwanted side-effect of facilitating the work of people traffickers/smugglers. Critics bemoaned the fact that smugglers now only needed to bring boats heading towards Europe into international waters to be sure that their 'clients' would be 'taken over' by the Italian navy and brought to Italy.

Against the background of the number of lives which were undoubtedly saved by the Mare Nostrum programme, it is regrettable that the operation is/was clearly part of a political trade-off and was terminated at the end of 2014. Italy justified its decision to end the operation by citing the high costs of the operation, which came to ten million euros per month and were paid for in their entirety by the Italian exchequer. The country had indeed previously threatened to discontinue the programme if other EU countries did not start to make a contribution to its costs. For its part, the European Council is largely in agreement that a pan-European border control policy, financed by all member states, is necessary. However, the Council takes the view that a precondition for a common operation of this type is that the Italian government rigorously complies with the Eurodac and Dublin regulations. The EU Justice and Home Affairs Council resolved in late 2014 to implement Operation Triton, which was designed by the European Union's border control agency Frontex and commenced in November 2014. Yet this operation did not replace Mare Nostrum. This is because its area of operations was confined to the territorial waters of member states and with a monthly budget of just 2.6 million euros it has considerably less financial means than Mare Nostrum. It also follows a different objective: Triton's primary mandate is to secure the EU external border and

prevent irregular migration. After another refugee ship with several hundred people on board sank off the Libyan coast in April 2015, the EU Council decided to expand the Triton operation in terms of budget and deployed facilities but did not change its mandate.

Greece: Push-Backs as a Way of Combatting Irregular Migration?

Whilst Italy has moved from a primarily control-based to a more protection-driven policy, Greek policy has remained more or less constant and is only gradually showing signs of change. In this country, a control- and defence-based policy approach clearly predominates and search and rescue operations are only launched in exceptional circumstances. Whereas Italy has expanded the radius of its search and rescue operations to international waters, Greek operations remain limited to national waters.¹⁰⁶ A central element of the Greek border protection policy – which from a legal and political perspective is completely unacceptable – is the policy measure known as ‘push-backs’, which were also practised in Italy for a certain period of time. Numerous – also current – reports exist from NGOs, the media and UNHCR testifying to the Greek navy’s approach of pushing or towing ships back into Turkish waters (see *The Economist* 2014). These push-backs have resulted in the death of numerous migrants. This is partly caused by the tendency of refugees and people smugglers to try to avoid being returned to Turkish waters by destroying the boat and thus forcing the Greek navy to rescue them and transport them to the mainland. The European Commission has launched inquiries into whether Greek authorities are responsible for these push-backs; no results have been released to date.¹⁰⁷

Spain: Extraterritoriality of Border Control

Whilst the legally and politically unacceptable push-backs used to be a central element of the Italian border surveillance and control policy and still play this role in Greece, Spain appears not to have engaged in a similar policy measure. There are no reports suggesting that Spanish border protection authorities have deliberately pushed vessels out of their territorial waters. However, this is not a result of the traditional protection-based nature of Spanish refugee policy. The Spanish maritime border

protection policy, which was strongly protection-based until 2007, now focuses more on controlling the influx of refugees; it also limits itself to Spanish territorial waters, whereas it previously conducted search and rescue operations in international waters. However, another aspect, whose importance has already been shown in the comparison between the CEAS and the Canadian asylum system (see Chapter A.4.1), plays a decisive role in Spanish refugee policy: the ability of migrants to gain access to the territory of the planned country of destination or even to begin a journey towards this country – or put another way: the extent to which a state can make itself inaccessible to migrants. Asylum seekers are scarcely able to reach Canadian territorial waters, as they cannot (or only with exceptional difficulty) gain access to Canada by sea. Spain may be easily accessible from a geographic point of view, but it has made its territory practically inaccessible to refugees by concluding agreements with the most important countries of origin or transit countries of potential migrants: Mauretania, Morocco and Senegal. In doing so, it has ‘outsourced’ its border protection policy to these three African countries: these now perform the function that Libya had for Italy during the Gaddafi era. Refugees who wish to take the western route to come to Europe and in doing so automatically reach and cross Spanish territory are prevented from casting off from the coast of three African countries.¹⁰⁸ A similar cooperation model is employed in order to control the land border between the Spanish enclaves of Ceuta and Melilla and Morocco. In close cooperation with Moroccan authorities, fences and technologically equipped border protection facilities have been erected which seek to prevent irregular migrants from gaining access to Spanish territory.

A.4.2.2 Screening and Initial Reception

Whenever a refugee is rescued at sea or applies for asylum in a country’s territory, the proper asylum procedure begins with the screening process (i.e. the verification of the person’s identity) and the initial reception of the asylum seeker. From an asylum and refugee policy point of view, this phase is relevant in two respects. This screening process is vitally important for Southern European states, as it enables them to rapidly and definitively

106 Greece has a reliable cooperation partner in the form of Turkey. In the EU-Turkey readmission agreement, Turkey commits to accepting the re-admission of third-country nationals into its territory and in exchange receives improved visa conditions for its citizens seeking to gain access to EU territory. The country also receives financial and technical support for the training of its border police force and for the provision of necessary infrastructure.

107 See the Commission Staff Working Document on the Assessment of the Implementation of the Greek Action Plan on Asylum and Migration Management.

108 The strategy of transferring the ‘dirty work’ to the transit countries by ‘outsourcing’ the responsibility for protecting the border to third countries has come under a degree of pressure from two sides in the recent past. On the one hand, this practice, which is not unproblematic from a human rights point of view, has been increasingly criticised. On the other hand, transit states are increasingly following their own political agendas and are thus becoming less reliable as ‘refugee policy assistants’ (Baumann/Lorenz/Rosenow 2011: 274–275).

identify people requiring protection who have entered the country as part of so-called mixed migration flows. This is especially the case for people in need of special protection, such as minors and torture victims. In addition, in order that the Dublin regime, one of the main pillars of the European asylum system, can properly function, the screening process/identity verification process must be carried out in a reliable fashion in the country in which asylum seekers first enter the European Union. To this end, general information about the identity of the migrants (name, age, citizenship) together with other elements facilitating the rapid identification of refugees (fingerprints, photo, etc.) are collected for the Eurodac database. Screening interviews are also envisaged in order to gain information as to the country of origin, the route followed in order to come to the country, the planned country of destination and the factors prompting refugees to migrate.

Italy: Secret Boycott of the Dublin System?

Italy has been accused by some, especially Northern and Western EU countries (among them Germany) of carrying out at best unreliable and incomplete screening of people migrating to the country by sea. These countries allege that Italy frequently chooses not to take fingerprints from these migrants, so as to avoid being identified as the country through which migrants have first entered the EU if and when refugees migrate further to Germany or Sweden (Pastore/Roman 2014: 21–22). These migrants can thus not be returned to Italy due to the absence of verifiable information. Pastore and Roman (2014: 18–19) reveal in their report that several days do indeed go by between the reception of refugees and the initiation of the screening procedure. The Italian government counters that, given the large number of asylum seekers migrating to the country by sea, it is logistically impossible to ascertain the identity of migrants who have not yet disembarked from boats or have just arrived at an Italian port.

Statistical data reveals that a large gap does exist between the number of arrivals registered in Italy (January to August 2014: 108,000) and the number of asylum petitions lodged in the same period (36,000) (Pastore/Roman 2014: 20).¹⁰⁹ These diverging figures indicate that many migrants indeed use the period prior to the start of the screening procedure to migrate further to their chosen country of destination¹¹⁰ or to disappear into illegality.

Taken together, a range of factors seem to suggest that Italy is at the very least tolerating and probably to a certain extent actively encouraging refugees to continue their journey to other European countries without having their details first registered by the Italian authorities. This is particularly regrettable as the reception and identification of refugees is the crucial first part of the CEAS and is furthermore indispensable for the programme's correct functioning. The reference to the logistic challenges which the large immigrant numbers entail for the country appears to be more of an excuse or a pretext for the country's asylum policy measures. However, this issue does make a dilemma in the European asylum and refugee policy crystal clear: the EU – or more specifically the Northern and Western EU member states – make(s) a larger financial contribution (such as for programmes like Mare Nostrum) and/or a more general greater sharing of responsibility (e.g. by a quota-based distribution of refugees) conditional on Italy implementing the CEAS regulations more consistently. Italy, in contrast, reacts to allegations that it only half-heartedly adheres to the rules by highlighting the specific challenges resulting from its geographical position. The country's inadequate compliance with the Eurodac rules concerning the identification of migrants is seen by many in Italy as being a type of compensation for the large immigration flows and for the costs of the Mare Nostrum programme (Pastore/Roman 2014: 19–21). In any case, it can be seen that the country's inadequate fulfilment of the Eurodac rules is undermining the entire Dublin regime.

Greece: Prisons as Initial Accommodation Centres

The return of refugees to Greece as part of the Dublin regime has been suspended since 2011 due to serious (even systemic) deficiencies in the Greek asylum system. The question of identifying refugees and collecting information on their features, which is one of the central migration-related tasks facing the Italian authorities, is therefore in the case of Greece scarcely relevant for the successful functioning of the CEAS.

In terms of asylum policy, Greece has the unfortunate reputation of having had until very recently almost a complete lack of infrastructure for dealing with asylum seekers. The country did not have any initial accommodation centres for asylum seekers until 2011, when the main centre in Athens was opened. Additional regional initial accommodation centres in border regions have

¹⁰⁹ This difference is largest as regards Syrian refugees: from a total of 11,307 Syrians who entered the EU through Italy in 2013, only 695 (6 %) applied for asylum in the country (Pastore/Roman 2014: 20; see also UNHCR 2014a).

¹¹⁰ Many refugees who regard Italy as being merely a transit country en route to another state deliberately avoid having their identity determined in order to prevent being returned to Italy when lodging an asylum petition in another EU state. And, while Italy is able to use coercive methods to identify the identity of refugees, it must first obtain a court order.

existed since 2013. Mobile units, which operate in isolated regions and/or can swiftly operate depending on the situation in question, were introduced in 2013. The country's initial reception measures, while gradually improving, remain woefully inadequate; the accommodation provided by the Greek authorities is nowhere near sufficient. This lack of appropriate accommodation means that most refugee reception centres are still located in penitentiary institutions. The reality of the country's asylum system is encapsulated by the waiting times: refugees must wait up to a month in order to lodge an asylum petition and anything up to 18 months before a decision is made in their asylum procedures. However, the opening of a central initial accommodation authority has alleviated the situation somewhat. The extensive training and qualification programmes provided by Frontex and the EASO for employees of Greek authorities have also contributed to slightly improving the situation in the country.

Spain: Scarcely Any Refugees Equates to no Problems (I)?

The approach taken by the Spanish authorities towards the initial reception and screening of refugees differs greatly from that employed in Greece and Italy. This is largely due to the country's specific border protection and maritime search and rescue policy: the aforementioned bilateral agreements which the country has concluded with the most important countries of origin and transit countries mean that only very few asylum seekers and refugees are currently able to reach the Spanish mainland. No serious problems have thus been reported as regards the process of identifying refugees and collating information on other migration-related features for the purposes of the Eurodac database or in terms of the adherence to the minimum standards stipulated in the European guidelines. However, this is not the case for the Spanish enclaves of Ceuta and Melilla (not part of the Schengen Area), which can be reached by land. Reports about overcrowded reception centres and the resultant unsustainable conditions in terms of the initial care of refugees and their accommodation have accumulated in the recent past.

A.4.2.3 Care and Accommodation

Following the initial reception and identification of refugees, the assessment of their entitlement to asylum begins. Asylum seekers are provided with accommodation and their basic needs are provided for (food, medical care, psychological care, etc.) during this period. The so-called Reception Directive, an integral part of the CEAS which was passed at European level in summer 2013, has also laid down common conditions for the accommodation and care of asylum seekers across the Union.

Italy: Capacity Shortages and Poor Standards

In a legally controversial ruling from November 2014 (ECtHR, judgement of 04.11.2014 *Tarakhel v. Switzerland*), the ECtHR determined two things about the care and accommodation of asylum seekers in Italy. The court ruled that there is no inherent systemic deficiency in Italy akin to that in Greece, which has resulted in the return of refugees to the latter country being largely suspended. However, states wishing to return refugees to Italy in accordance with the Dublin Directive must first obtain confirmation from the Italian authorities that individual refugees will be treated in a humane fashion and provided with accommodation matching their needs. This is especially the case if particularly vulnerable people such as minor children are involved; the specific ECtHR judgement obliges Italy to provide refugee children with accommodation that is appropriate to their age and does not separate them from their parents. Irrespective of the legal consequences of this judgement, it does suggest that an infrastructure exists in Italy (in contrast to Greece) that guarantees refugees access to housing, food, medical care and other basic requirements which meet the standards demanded by the ECtHR. However, given the rising number of refugees in Europe and thus also in Italy, there is no guarantee that all refugees can make use of these structures.

The expert analysis conducted by Pastore and Roman (2014: 24–26) confirm this assessment: the large state reception centres currently have only 8,500 places and have been chronically overfilled for a long time. The same is true of housing provided by a second, 'overflow' reception system consisting of a stock of smaller reception units, which has existed since 2002. This system currently has around 13,000 places in its residences. However, in the face of the likely rise in the number of asylum seekers, the Italian government plans to increase this system's capacity to almost 20,000 places by 2016. Alongside the evident difficulties providing sufficient places in state reception centres, Italy is also having problems ensuring the quality of residence centres and the standard of care provided therein. These problems have prompted several different courts (including the German administrative court) to ban the transfer of refugees to Italy (see, among others, Thränhardt 2014a: 178). However, the Italian government is reacting to these difficulties and, together with the provinces and municipalities, has developed an action plan aimed at increasing the number of places in reception facilities at the same time as guaranteeing that the standards demanded in the Directive are comprehensively upheld.

Greece: Systemic Deficiencies, Catastrophic Conditions

A refugee reception and accommodation system meeting humanitarian standards was virtually non-existent in Greece for many years – a shortcoming which was a

violation of European law. To date, there has also been no great change in the practice of imprisoning asylum seekers for the length of the asylum procedure. Currently, asylum seekers occupy more than 10,000 prison places in the country (AIDA 2014: 74); from a human rights point of view this is unacceptable. The capacity of the Greek asylum system has slowly increased in the last few years. Thus, while just 160 places were offered before 2010, this figure has since increased to 1,160 places. Nevertheless, in light of the more than 50,000 registered asylum seekers in the country, this figure is still little more than ‘a drop in the ocean’. Even refugees with special needs of protection, such as children and unaccompanied minors, are not spared imprisonment. The ECtHR denounced Greece in 2013 for imprisoning a minor refugee for two months (ECtHR, judgement of 24.10.2013, *Husein vs. Greece*).

Greece adopted an action plan for the reform of its asylum system as early as 2010. As part of this plan, which was developed at the initiative of the EU, the country also committed itself to creating places of residence for refugees which meet the standards laid down in the Reception Directive. The EU monitors Greece’s compliance with the action plan and its progress on an annual basis. The intention is to double the 1,160 places currently available in the near future whilst at the same time ensuring that all asylum seekers have access to basic services such as legal support, psychological assistance and medical care.

Spain: Scarcely any Refugees Equates to no Problems (II)?

By outsourcing its border protection policy to African countries, a measure which is a central part of Spanish asylum and refugee policy and has been enabled by the conclusion of bilateral agreements with important countries of origin and transit countries, Spain is (or perhaps better: has become) largely irrelevant as a destination for asylum seekers and refugees. A total of just 16,240 asylum requests were lodged here between 2009 and 2013. By way of a comparison: more than ten times as many people petitioned asylum in Sweden, which has a much smaller population, and this figure was also considerably higher in Italy (106,950) and Greece (53,320). The residence situation of the small number of refugees in Spain and their access to other basic needs and services also appears to be free of problems. No capacity shortages have been reported, and there have been no complaints that the living conditions deviate from the minimum standards defined by the Reception Directive. However, this does not apply to the enclaves of Ceuta and Melilla: capacity shortages have been the order of the day here for a long time. There is also a striking imbalance between the north and the south of the country: the more wealthy regions of northern Spain, which have been less

affected by immigration flows, provide refugees with much better reception conditions than southern Spain and the metropolitan region of Madrid (Pastore/Roman 2014: 19–21).

A.4.2.4 Asylum Procedure and Provision of Protection

An important part of the CEAS package which was passed in summer 2013 is the Asylum Procedures Directive, with which EU-wide uniform standards for the asylum procedure were established. In addition, the Asylum Procedures Directive defines common norms for the recognition of refugees and for the refugee status. This measure is at least partly motivated by the desire to equalise the rates of recognition of asylum claims, which currently display large variations across EU states.

Italy: Complex Processes, Long Procedures

The Italian asylum procedure has two defining characteristics. Firstly, the procedure is carried out in a highly decentralised fashion; in addition to ten permanent asylum decision-making offices located in different parts of Italy, ten other ‘floating’ offices also exist which can be deployed depending on the number of refugees in the country. Asylum seekers are accorded the entitlement to an interpreter in the CEAS in order that they might be able to better express themselves in their native language (or in another language in which they are proficient). Italy complies with both this requirement and with the provision that asylum seekers in need of special protection are granted the opportunity to be accompanied by social workers, psychologists or doctors during the procedure. Secondly, however, it can be ascertained that the average asylum procedure takes considerably longer than the maximum time limit specified in Italian law. In this respect, Italian asylum legislation is very ambitious: it stipulates that asylum cases must be heard at the very latest 30 days after the submission of the asylum petition, and that the relevant commission must then issue a formal notification rejecting or accepting the petition three days after the asylum hearing. Italy is currently a long way from complying with these provisions. In reality, between six and ten months pass before an initial decision is taken (Pastore/Roman 2014: 30).

As regards the rate of asylum recognition, Italy is one of the European countries in which a relatively large number of asylum seekers are granted protection. The protection rates are almost twice as high as the EU average (Table A.6). This picture remains when recognition rates for specific countries of origin are compared. It must however be considered that while a large number of refugees gain access to Italian territory, comparatively few lodge an asylum petition. The high rates of protection are thus based on a relatively small base population. The asylum

Table A.6 Positive decisions and protection rates for selected countries of origin from asylum seekers in Greece, Italy, Spain and the EU28, 2013

	Afghanistan		Eritrea		Iraq		Syria		Total	
Greece	11 %	100	36 %	40	8 %	20	60 %	105	4 %	500
Italy	91 %	1,600	92 %	1,405	73 %	455	51 %	395	61 %	14,390
Spain	83 %	25	50 %	10	100 %	5	94 %	150	22 %	535
EU28	52 %	11,955	75 %	6,740	54 %	5,490	90 %	32,990	34 %	111,170

Source: Eurostat 2014d, SVR tabulation

petitions of Eritrean and Afghani refugees are almost never rejected. The recognition rate for Syrian refugees, which in Germany, for example, comes to almost 100 per cent, is conversely considerably below the EU average.

Greece: Improvement Via a New Procedure?

The totally inadequate Greek asylum procedure was replaced by a new procedure in June 2013. Asylum seekers had previously only been able to lodge their petition in the police headquarters in Athens.¹¹¹ In the previous system, people were furthermore only able to appeal against asylum decisions at one place: a board of appeals which was located at the police headquarters in Athens. This extreme centralisation of the asylum process and the associated inadequate personnel levels inevitably resulted in procedures lasting not months, but years. Many months often passed before an asylum application was even lodged with the Greek authorities.

In the wake of the aforementioned legislative reform there has been an independent asylum authority in Greece with nine regional branches since 2013.¹¹² Although the new system has only been in place for 18 months, the first signs of progress can already be seen. Thus, on the one hand, the agreed standards are respected to a greater degree (interpreters are employed and refugees receive support from external advisors such as lawyers, social care workers or psychologists). On the other hand, the previously grotesquely long length of the asylum procedure has been cut, with an average of 79 days now elapsing until a first-instance decision is made, and an average of 45 additional days passing until a second-instance decision is made (Pastore/Roman 2014: 31). The intensive training sessions that the personnel of the asylum authority have been receiving from skilled employees of the EASO and the UNHCR thus appear to be

showing the first signs of bearing fruit; the police officers who were responsible for carrying out the old procedure had, in contrast, not been specially prepared for the task.

The first indications of a slight improvement in the rate of refugee protection can also be discerned: as can be seen in Table A.6, the Greek recognition rate in 2013 was, in some cases dramatically, below the EU average. Preliminary figures for 2014 suggest that this figure is now approaching the average rate for the entire EU.

Spain: Low Numbers of Asylum Petitions and Recognition Rates

In Spain, a central authority in Madrid registers and carries out asylum procedures. Yet this does not operate in the entire country, but is instead only responsible for applications which are lodged in Madrid. Asylum petitions submitted outside the Spanish capital are – as in Greece prior to the reform of the country's asylum procedure – accepted and dealt with by the local police, whose officers have not been specially trained for the task. A representative from the UNHCR can be present during the asylum hearings envisaged as part of the procedure. An inter-ministerial commission decides on the asylum request; representatives of the UNHCR bureau in Madrid are by their own account regularly present and are able to comment on the relevant asylum procedure. And, while the interior ministry is not obligated to comply with the decision of the commission, it rarely deviates from the commission's verdict in practice.

As few asylum seekers reside in Spain – the reasons for which have been described above – it might be anticipated that the protection rates are relatively high in the country. Yet this is not the case: the Spanish protection rate (i.e. the average rate for refugees from all countries) is not just below that of Italy, but also considerably

¹¹¹ Petitions were also only accepted on Saturdays. This had occasioned long queues of petitioners to form from Tuesday onwards. The refugees camped out in front of the police headquarters (Pastore/Roman 2014: 30).

¹¹² Despite the decentralisation of the asylum procedure and increases in capacity, the Greek asylum authority in Athens remains overstretched. This is because the vast majority of asylum petitions (81 %) are submitted in the Greek capital (see Pastore/Roman 2014: 31).

below the European average. The high recognition rates for Iraqis and Syrians revealed in Table A.6 should also be interpreted with caution, as they are probably a result of the small numbers of asylum petitions lodged by people from these countries.

A.4.2.5 Common Legal Framework, Differing Policies: The CEAS as a System in the Making

Italy, Greece and Spain play a central role for asylum seekers both as ‘gatekeepers’ and as countries in which asylum seekers are first received and are first attended to. The comparison between these three countries makes two things clear. Europe is a long way away from a common implementation of the CEAS norms. Whilst the legal foundations for a common European asylum and refugee policy were decisively specified in summer 2013, the common standards are in reality still not fulfilled in a number of member states. A genuine common European asylum system is only just starting to be developed.¹¹³ Nevertheless, a glance at Italy and Greece in particular shows that the asylum standards and the mechanisms developed by the CEAS for their implementation and support are effective. The situation for asylum seekers has slightly improved in both countries (albeit in no way to a sufficient extent). The monitoring of refugee policy which has been instigated by the European Commission and the EASO in the last few years has probably helped at least to reduce the (occasionally serious) inadequacies existing in some national asylum systems. It must be continued at all costs and with great urgency.

A.4.3 Dublin Reform and Expansion of Collective Protection: Conclusions and Recommendations for the EU and Germany

The comparison between the CEAS and the Canadian system of refugee protection, together with the internal comparison between selected CEAS member states, allows two different groups of recommendations for action to be made. On the one hand, these recommendations aim at supplementing and consolidating the Dublin

mechanism, one of the central elements of the CEAS. On the other hand, they address the creation, extension and expansion of the protection procedures outside the CEAS.

A.4.3.1 A Mechanism of Burden-sharing: Dublin and Free Choice

As the analysis has shown, the Dublin principle, one of the central tenets of the European asylum system, is being undermined by the Italian asylum and refugee policy and is hence also coming under political pressure. Italy does not fulfil the required standards for the initial reception and housing of asylum seekers or for the subsequent verification process that determines whether individual refugees are entitled to protection according to the provisions of the CRSR. Whether this is strategically planned or not is irrelevant: Italy is endangering the Dublin concept, which can only function if all signatory states stick to the rules.

The SVR is sceptical of this form of ‘cold’ undermining or indeed any other attempt to reduce the scope of the Dublin mechanism. This is because this approach runs the risk of once again placing asylum and refugee policy in the hands of the nation-states. This would be a fatal signal that Brussels had (once gain) failed – and not just in terms of European policy. It would also not improve the current asylum and refugee policy situation in Europe, but in many ways would make this situation worse: if asylum seekers were able to freely choose in which country they wished to request asylum – this is currently being brought into the discussion as a possible alternative to the Dublin regime – this would lead to a completely uneven distribution of refugee flows and asylum requests in Europe. The already high numbers of asylum petitions lodged in states such as Sweden, the Netherlands, France or Germany would rise considerably, whilst scarcely any petitions would be lodged in other countries and regions, e.g. in Southern and Eastern Europe.¹¹⁴ The latter countries would have no motivation to improve their currently hopelessly inadequate asylum systems, and states in which high numbers of asylum claims are lodged would have a disincentive to improve or even to maintain the quality of their asylum standards. Indeed, some governments might attempt to make their countries less attractive for asylum seekers by lowering the

¹¹³ However, it must be considered that the revised versions of the Asylum Procedure and the Asylum Reception Directives were only passed in summer 2013 and that member states have until summer 2015 to implement them. If the member states implement these Directives on time, the CEAS should become from this moment onwards a political reality to a greater extent than has previously been the case.

¹¹⁴ Advocates of a ‘free choice’ model, according to which asylum seekers are able to freely choose the country which processes their asylum petitions, usually suggest a mechanism of financial compensation for countries with high numbers of asylum petitions. Yet this would be problematic for at least two reasons: it would firstly make financial transfers from poorer states in Southern and Eastern Europe to the wealthier states in Northern Europe necessary. The extent to which this would be realistic and politically enforceable is very questionable. Additionally, financial compensation is an insufficient answer to acceptance problems which might emerge within the populations due to the presence of rising numbers of asylum seekers.

standards of their asylum procedure and accommodation for refugees. While such an international ‘competition’ to offer the least generous terms to asylum seekers would be an unavoidable consequence of this renationalisation of asylum policy, it can under no circumstances be politically desired.

The SVR believes that the Dublin principle should remain valid, if only to prevent individual EU states from refusing to accept responsibility for processing asylum claims and to thus avoid creating a ‘refugees in orbit’ scenario.¹¹⁵ However, it should be complemented by a range of other suitable measures. ➔ **The recommendation is for a system of shared responsibility, which is flexible and impacts on the various phases of the CEAS (i.e. border control/maritime search and rescue operations, screening/initial reception, accommodation/asylum procedure, recognition/repatriation) in differing ways.** The main intention of this system would thus be to support states that are temporarily overburdened with refugees and to help to ensure that refugees are accepted by EU states – which Hatton (2012: 2) describes as a “public good” – and that the standards of their accommodation and care is enhanced where necessary.

Financial Support and Freedom of Movement: Dual Solution Consisting of Dublin and Free Choice

➔ **A member state that is particularly strongly affected by refugee migration or is having difficulties dealing with asylum-related issues would be granted financial and logistical assistance in the first three CEAS phases – i.e. border control/maritime search and rescue operations, screening/initial reception and accommodation/asylum procedure.** A member state unable to cope with the presence of refugees or asylum seekers would be able to submit an application for assistance as part of a mechanism which would first have to be agreed at the European level.¹¹⁶ The engagement of an EU state

in a particular situation associated with asylum/refugees – such as that of the Italian government in the case of *Mare Nostrum* – would thus be financially and logistically secured in the sense of European shared responsibility.

➔ **For the last CEAS phase – recognition/repatriation – another form of shared responsibility should be considered. The principle of freedom of choice, which critics of the Dublin regime always favour, would be employed here.** However, essential preconditions are that the minimum standards for the care and accommodation of asylum seekers and the asylum procedure are upheld and that the rates of recognition, which currently vary greatly between EU countries (Table A.6), converge. It is also important to ensure that states do not accept recognised asylum applicants en masse without critically examining the reasons why people flee their home countries. This option could be an attractive proposition for states, as it would open up the possibility that recognised refugees might soon migrate further to another EU member state. It must furthermore be guaranteed that the countries continue to observe their socio-political responsibility to provide political refugees with accommodation which meets the standards demanded by the EU Directives, both during the asylum procedure and after the conferral of refugee status. ➔ **The SVR subsequently recommends the following procedural principles, which should also contain some provisions for distributing the asylum burden between states,¹¹⁷ as basic tenets of a CEAS:**

(1) **The country of first entry should continue to be responsible for the reception of refugees and the asylum procedure.** The exceptions already contained in the Dublin III Regulation should also continue to be allowed for (see Maiani/Hruschka 2014). If countries regularly observe both the Dublin stipulations and the rules contained in the Eurodac Regulation, ‘Italian conditions’, i.e. low numbers of asylum petitions despite high migration flows, will soon be a thing

115 There are also currently cases of member states refusing to accept responsibility for processing asylum claims even though it can be clearly demonstrated that they are indeed responsible for processing the claims according to current law. However, this is largely due to the failure of some member states to employ the Dublin Regulation in the correct fashion. Nevertheless, a specific member state is – at the very latest following the expiry of the transport deadlines envisaged in the Dublin Regulation – in all cases responsible for each asylum seeker. The deadline is usually six months; it can however be extended to a maximum of 18 months.

116 This mechanism could take more or less the following shape: an EU member state overburdened with refugees/asylum seekers would be required to notify an appropriate EU body and provide evidence demonstrating that it is unable to deal with the situation without external assistance. The multi-factor model developed by the SVR’s Research Unit (SVR-Forschungsbereich 2013a) and published by the SVR (2014) could serve as an analytical frame for orientation purposes. If the said EU body approved the application, financial transfers and logistic relief assistance would commence. The introduction of a quota-based burden-sharing formula, which would take effect irrespective of whether or not a state was overburdened with refugees/asylum seekers, might also be conceivable. The EASO could play a leading part in the installation and implementation of a mechanism of this nature.

117 To date, the political community and the general public have seemed unsure about how a European burden-sharing measure in the field of asylum and refugee policy might look. Nevertheless, the notion that all European member states ought to at least in principle take their share of the responsibility in the field of asylum and refugee policy finds agreement in Germany: 8 out of 10 interviewees would like the German government to campaign more strongly for the establishment of a burden-sharing agreement in the area of asylum policy (Chart 5 in Appendix I). The idea of spending more development aid as a way of combatting the causes of refugee flows finds a similar rate of approval. In addition, while the majority of the interviewees also believe that a possible refugee policy option would be to improve the control of the EU’s external border, a much smaller proportion advocates this option than those favouring burden-sharing and development aid.

of the past. Other EU states not directly affected by the arrival of refugees in EU territory should however provide financial and logistical assistance whenever an EU state is overburdened with refugees; they should also provide support in other concrete situations (e.g. in the field of maritime search and rescue). In addition, it is important that the asylum procedure is concluded as quickly as possible, in order that the legal residence situation of the appropriate refugee can be clarified. This applies to both asylum procedures instigated by people who are patently in need of protection and to procedures instigated by people who are patently not in need of protection.¹¹⁸ A physical distribution of asylum seekers to the different EU member states is not advocated, as this would have several practical disadvantages: it would mean a further delay, which would only have negative repercussions for the migrants themselves, and a 'distribution bureaucracy' would have to be established.

- (2) ➡ **The countries initially receiving refugees should remain responsible for repatriating those asylum seekers who are not deemed entitled to protection.**¹¹⁹ These countries are also responsible for observing human rights standards when repatriating rejected asylum seekers. In order to combat the factors causing refugees to migrate discussed in Chapter A.4.3.2, repatriations should be – insofar as this is possible – combined with measures of development aid policy.
- (3) Whilst 1) and 2) are already integral parts of the CEAS, an additional option should be brought into the equation (3), which is not found in the current European asylum scheme and improves the rights of recognised refugees: provided that the countries in which asylum seekers first enter the EU fulfil the procedure and accommodation standards stipulated in the CEAS and adhere to the Dublin principle, ➡ **policymakers should consider conferring freedom of movement within the EU on recognised asylum applicants.** The principle of freedom of choice would thus be granted following the completion of the asylum procedure.

In this way, the distribution of the 'asylum burdens' would not just involve financial and logistical support, but would

also have a 'physical component' upon which the refugees themselves would decide: if their asylum application were approved in the country in which they entered the EU, refugees would subsequently be given the chance to move to a country of their choice (they could of course also choose to remain in the same country). This is currently not possible as EU member states do not recognise national humanitarian resident permits issued by other EU states.¹²⁰ The existing asymmetry in the reception, housing and asylum procedure of refugees, with standards normally lower in Southern European than in Northern European countries, would thus become smaller or the standards would completely converge following the conclusion of the process.

Winners Without Losers? The Consequences of the Dublin Regime and Free Choice

The new CEAS would hence continue to entrust the (genuine) countries of first entry with the implementation of the asylum procedure and the repatriation of rejected asylum seekers. However, it would at the same time provide states overburdened with refugees with financial and logistical assistance and grant freedom of movement inside the EU to recognised asylum applicants. Three arguments speak in favour of reforming the CEAS in this way. If these recommendations were implemented, both Southern European states, which play an important role as countries in which refugees first access EU territory, and countries without an external EU border, which, due to the previously described functional deficits in the Dublin system, currently process the lion's share of the asylum petitions, would be in a better position compared to the current unsatisfactory status quo. Moreover, there is also a genuine European/European policy argument for adopting the SVR's proposals, which is also based on the interests of the refugees themselves. These advantages are outlined in more detail below.

- (1) The prospect of financial and logistical assistance in the first CEAS phases and the chance that at least some of the recognised refugees might migrate further to other EU countries conveys a clear signal of European solidarity and 'burden-sharing' to the Southern European states, which are being pushed to their limits taking in and caring for refugees. They would not be left alone with the – collective

118 Instruments such as 'joint processing', as part of which several member states jointly participate in processing asylum claims, can also be useful for this purpose. The EASO is currently preparing a corresponding pilot project in Malta.

119 The retention of the regulation dictating that the country of first entry is in principle responsible for asylum seekers can also be justified by the greater ease with which refugees can be repatriated from these countries than from other states to which refugees have migrated after their arrival in Europe.

120 Recognised refugees and people enjoying subsidiary protection (as defined in the EU Qualification Directive) can acquire an EU permanent residence entitlement after five years' residence in the territory of the EU. The residence status is similar to that enjoyed by EU citizens, at least in the state which has conferred the permanent residence entitlement. The right to move to another member state (freedom of movement) can, however, still be limited or tied to certain conditions.

- European task – of protecting the EU external border, the maritime search and rescue operations (as in the case for Italy with *Mare Nostrum*), the housing and asylum procedure, but would instead receive financial and logistical support. The current practice, in which states do not adhere to the stipulations contained in the Dublin regime and turn a blind eye to the unregulated further migration of asylum seekers towards Northern Europe, would give way to one in which the refugees enjoyed freedom of movement following the conclusion of the asylum procedure. The current practice would thus be, in an asylum and refugee policy sense, re-regulated and ‘regularised’.
- (2) A reform consolidating the Dublin principle and at the same allowing recognised refugees freedom of movement following the successful conclusion of their asylum procedure would probably also be an attractive proposition for states which, while due to their geographical position are scarcely relevant as EU countries of first entry for third-country nationals searching for protection, nevertheless deal with large numbers of asylum seekers. This is a result of the aforementioned functional deficits in the Dublin regime in the countries initially taking in refugees and the consequent tendency of refugees to migrate further without being registered.¹²¹ It may be assumed that many refugees whose asylum requests were recognised in the Southern EU states would not stay in these countries, but would instead migrate further to the Northern EU countries. However, the mandatory strengthening of the Dublin principle in the Southern European countries would also lead to correspondingly fewer refugees asking for asylum in Northern European countries. The number of refugees would thus probably remain more or less the same, but the legal residence status of the refugees in the Northern EU countries would change: while there would be fewer asylum seekers whose asylum petitions were being processed, more recognised refugees would live in these countries (among them Germany) who would have immediate access to the labour market and thus the chance to financially support themselves.¹²² Refugees granted the opportunity to migrate to another EU state would probably also enjoy greater acceptance among the general public. An overall concept for a European refugee policy of this nature would also include collective reception procedures within the EU to a greater extent than is currently the case (see Chapter A.4.3.2). The usage of these procedures would probably also go hand in hand with a reduction in the number of individual asylum procedures processed by member states. Currently, a particularly large number of Syrian civil war refugees lodge individual asylum petitions, many of whom, in the SVR’s view, could be accepted as part of collective reception procedures.
- (3) As a final point, there are also European reasons for implementing the suggested reform of the CEAS: with the new Directives and Regulations, asylum and refugee policy has become almost entirely Europeanised. In terms of a consistent European legal and policy framework, it would perhaps be appropriate to allow people who have been recognised as refugees according to the common legal foundations of the European Union to freely move within the entire territory of the European Union. The European mobility rights accorded to recognised asylum seekers would then be consistent with the common European asylum policy, and recognised asylum seekers would enjoy considerably greater mobility options.

Quota Limitations and Waiting/Qualifying Periods: Possible Transitional Stipulations

It should not and cannot be denied that some justified reservations exist against the suggested conferral of freedom of movement within the EU on recognised asylum seekers. On the one hand, common standards in the accommodation and care of refugees are currently not observed in all parts of the Union; a considerably period of time will unfortunately pass before the CEAS becomes a legal and political reality. On the other hand, the fears that recognised refugees would be attracted by welfare state provisions must also be taken seriously: at the very least it cannot be ruled out that the highly diverging levels of social security provision, something which is unlikely to change greatly in the foreseeable future, would divert

121 Alongside Sweden and Austria, Germany also belongs to this group of countries. According to the Dublin regulations, Germany is only an option for a small number of refugees who come to the country in an aeroplane or for asylum seekers who are exempted from the Dublin principle stating that the country of first entry is responsible for asylum seekers (for more detail, see SVR 2014: 79–80). These exceptions include refugees not requiring a visa in order to gain access to the territory of the EU, for whose asylum petitions the destination country is responsible. Refugees from Balkan countries fall into this category.

122 With a model of this nature the reception costs might also be lower than in models which do not envisage freedom of movement, as it can be assumed that some of the recognised asylum seekers would choose to live with family members in their countries of choice. This could also be an important argument in favour of the societal acceptance of such a reform.

refugees towards countries with more comprehensive social security provisions.¹²³ ➔ **Against this background, two possible policy measures which might reduce the population's fears of the migration of a disproportionately large number of recognised asylum seekers could be considered:**

- (1) **Firstly, EU member states could – at least for a transitional period – be granted the chance to jointly set a cap on the number of recognised asylum seekers entitled to freedom of movement.** The advantage of a solution of this nature would be that possible destination countries of recognised asylum seekers would have a clear idea as to the maximum number of asylum seekers entitled to freedom of movement within the EU who might come to their country and as a result could communicate this to their populations. The disadvantage would be that it would automatically engender a type of 'lottery'; recognised asylum seekers' mobility chances would depend on date and hence perhaps on the exact week or month of the year in which the asylum decision is made.
- (2) The second option would be to separate the mobility entitlements of recognised refugees from their social state entitlements, at least in the first few months of residence in their selected country.¹²⁴ ➔ **In practice, this would mean the introduction of waiting or qualifying periods: recognised refugees who have migrated further to a country of their choice and are (still) unemployed would receive reduced social benefits for a limited period of time.** The influence of the welfare state as a 'pull magnet' could thus be minimised. However, there are considerable concerns over the constitutionality of such measures, especially in Germany.¹²⁵

A.4.3.2 Protection Outside the CEAS: Expand Collective Procedures and Create More Legal Immigration Channels

The comparison between the CEAS and the Canadian system of refugee protection contained in Chapter A.4.1 has made the two fundamental forms of humanitarian-based

migration policy clear. Broadly speaking, states can either wait until refugees come to them or they can themselves go to the regions which refugees are keen to leave. The first scenario draws attention to the classical individual-territorial asylum procedure, whereas the second describes extraterritorial programmes which often take the form of the collective reception of refugees. A variety of factors determine which of these two approaches prevails in a country's asylum and refugee policy. As is made clear in Chapter A.4.1, Canada's strong engagement in resettlement procedures can only be understood against the background of the steps which the country has taken in the last few years to exclude refugees who wish to take the individual-territorial route towards finding refuge.

Resettlement and the Directive on Temporary Protection in the Event of a Mass Influx of Displaced Persons

Whereas resettlement procedures now play an integral role in Canadian refugee policy, individual asylum procedures conducted in the territory of the respective nation-state will continue to play the main role in the CEAS in the foreseeable future, due to Europe's geographic position if nothing else. Nonetheless, the Syrian civil war and the large influx of refugees occasioned by the dramatic conditions in the country bring the need to supplement the CEAS with an extraterritorial element sharply into focus. By swiftly granting protection to a large number of asylum seekers who have not yet entered EU territory, extraterritorial protection would seek to spare refugee-seeking people fleeing from war-torn countries with abject standards of living from making the dangerous journey across the Mediterranean and subsequently having to go through the long and painstaking individual asylum procedure by swiftly granting protection to a large number of asylum seekers. It would not even be necessary to create a new legal foundation to enable this policy measure, as the Directive on temporary protection in the event of a mass influx of displaced persons allows a temporary and rapid reception of refugees in Europe at any time. In this context, it is even more regrettable that attempts to activate this Directive and to supplement the protection

123 It must, however, be taken into account that the decision of refugees who are recognised in EU territory to (further) migrate is under no circumstances only a consequence on the levels of social security provision offered by differing EU states. The influence of family relationships or other networks is probably at least as important as social benefits (Barthel/Neumayer 2015; Scholz 2013). The labour market situation also plays an important role.

124 Immigration advocates in the USA propagate such a policy measure, among other things under the motto "build a wall around the welfare state, not around the country" (Niskanen 2006). Clear parallels can be observed here with the discussions over so-called poverty migrants ('*Armutsmigranten*') who come from Romania and Bulgaria to Germany and other countries. The ECJ has recently established in a judgement (ECJ, judgement of 11.11.2014, C-333/13, *Dano*) that Germany can exclude foreigners from other EU countries from state benefits if the relevant people enter the country for the sole purpose of claiming social benefits (see Chapter B.3). The corresponding judgement is only helpful to a limited extent when it comes to the question of which mobility rights should be accorded to recognised asylum seekers. This is because, in contrast to EU citizens who can be required to return to their countries of origin if they unlawfully claim welfare benefits, recognised asylum seekers clearly do not have this option.

125 See here particularly the judgement of the Federal Constitutional Court on the Asylum Seekers Benefits Act from 2013, a ruling which has been examined in more detail by the SVR (2014: 83f.).

provided by the CEAS (such as that provided by the German government) have as yet failed due to the inability of the Council of the European Union to come to an agreement. One of the main reasons for this is that the question as to the distribution of refugees has still not been resolved. Particularly countries in which a large number of refugees are in individual protection procedures – or at least believe this to be the case – or are going through difficult economic conditions fear that they will have difficulties justifying new collective forms of protection to their populations.

In order to (among other things) increase the societal acceptance for programmes of this nature, it would be more important than ever to install the previously mentioned system of shared responsibility. This could dispel the fears of overburdened states that the allocation of refugees as part of the collective protection procedure could spell additional ‘burdens’ for the country. In addition, refugees accepted on a collective basis outside EU territory might conceivably be distributed according to a quota-based system. The share of refugees to be accepted by each member state could be determined with the help of a multi-factor model such as that developed by the SVR Research Unit (SVR-Forschungsbereich 2013a). The introduction of temporary programmes of this nature would also first necessitate a clarification of the question about how the refugees who are to find refuge in the EU as part of this framework programme should be selected. This requires the fulfilment of certain institutional and organisational prerequisites at European level which are currently not given. The UNHCR should definitely be included in the development and organisation of corresponding programmes.

The CEAS contains no EU-wide mandatory provisions for the resettlement procedures. The decision to adopt an extraterritorial reception programme is thus one which must be taken by the individual member states. Since 2012, Germany has participated in a resettlement programme managed by the UNHCR which aims to permanently take in refugees from countries in which refugees first seek refuge. The coalition parties for the 18th Federal legislative period aspire to further extend this refugee policy option (see CDU/CSU/SPD 2013: 77), a decision which the SVR very much welcomes. This would be an important agenda-setting step in the field of refugee policy, particularly given rising asylum seeker numbers.

➔ **Due to its political influence in Europe, Germany**

should adopt a pioneering role and, by implementing an active resettlement policy, seek to motivate other EU states that are also considering resettling refugees to their territory to adopt the same approach. As the refugee situation in the EU’s neighbouring regions will in all likelihood remain dramatic in the foreseeable future, the more passive and reactionary individual asylum process could be supplemented in a clever and meaningful way by adopting a more proactive and pressing approach towards resettlement programmes.

Expansion of Legal Migration Options for Labour Migrants

According to the expert view of Pastore and Roman (2014), the term ‘mixed migration flows’ mentioned in Chapter A.4.2 of this report (i.e. refugees who have petitioned asylum, recognised asylum seekers, economic migrants) best captures the reality of migration and refugee policy in Spain, Italy and Greece. It highlights the fact that, alongside politically persecuted refugees, large numbers of people are migrating to Europe who are not entitled to protection according to the CEAS. They lodge an asylum petition as no alternative options are available, or because they are unaware that other options exist which would enable them to remain in the country of residence. The situation does not appear to be fundamentally different in Germany. Indeed, as a study from Klingholz and Woellert (2014) shows, it must even be assumed that the share of academics among the mixed migration flows from Africa and the Middle East to Germany is almost double the proportion of academics among the German population. This has generated a discussion about whether asylum and labour migration might be combined. If it were established during an asylum procedure that refugees possessed skills that were required in the country, these refugees could be granted the chance to leave the asylum process.

The SVR argued against combining asylum and labour migration in this fashion in its last Annual Report, as this would inevitably lead to ‘utilitarianisation’ of the country’s refugee policy (i.e. it would result in the economic benefits of asylum seekers being placed before other factors).

➔ **The SVR advocates expanding the legal migration routes to Germany and Europe which migrants searching for employment and opportunities to earn an income are able to use.** Germany is already a long way down this path with Section 18c of the Residence Act;¹²⁶ the

126 This legislative passage was initially limited until mid-2016. In the SVR’s view, the Federal Government’s decision to remove the limitation on this immigration option, which from a legal point of view is eminently important, is an important step towards permanently strengthening Germany as a country of immigration for highly skilled third-country nationals. (See the Federal Government’s Draft Law to Redefine the Right for Leave to Remain and the Termination of Residence (*Gesetzentwurf der Bundesregierung zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung*) from December 2014: http://www.bmi.bund.de/SharedDocs/Downloads/DE/Nachrichten/Kurzmeldungen/gesetzentwurf-bleiberecht.pdf?__blob=publicationFile,10.05.2015).

main problem here is that the migration opportunities enabled by this legislation are not sufficiently known. ➔ **Furthermore, it would be desirable to open legal labour migration channels to non-academically qualified workers who are interested in coming to Germany to seek employment.** The decision of the Federal Government to grant non-academic, skilled workers from third countries holding a qualification that is judged not to meet the requirements of a corresponding German qualification to receive a residence permit in order to top up their qualifications¹²⁷ and subsequently search for work with Section 17 of the Residence Act is thus a welcome development (see Chapter A.1). As nation-states continue to be chiefly responsible for setting labour migration regulations and Brussels has scarcely any competences in this field, each nation-state has the task of expanding legal immigration avenues for migrants not suffering from political persecution. In granting non-persecuted foreigners access to their territory, states should clearly consider the concrete requirements of their labour markets, a step which would also help to take pressure off their respective asylum systems.

Yet the European Union also has the ability to open up new legal immigration avenues for third-country nationals. Corresponding programmes for selected countries of origin have been discussed and partially implemented at European level for some time now. These initiatives must be strengthened and expanded. So-called mobility partnerships can be particularly interesting for countries of origin which display a basic level of political stability and economic growth (Cali/Cantore 2010; de Haas 2010; Hunger 2003; Schneider/Parusel 2011). Mobility partnerships enable migrants from these countries to come to Europe in order to work for a limited time period before returning to the countries of origin (with the option of once again entering European territory). At the same time, in the context of thousands of refugees who do not survive the journey to Europe, it is important to more generally consider consolidating and expanding legal immigration avenues (also for immigrants who do not enter the country for economic reasons) (Baumann/Lorenz/Rosenow 2011; Basaran 2014). Long-term strategies – where possible coordinated at the European level – should be developed here. This is a task that cannot be tackled overnight and for which there are no easy solutions.

Tackle the Causes, Not the Symptoms

Whilst it is important to effectively deal with the symptoms, it must also not be forgotten that it is especially critical to effectively tackle the factors which push people into leaving their homes. The importance of state development policy should (also) be briefly mentioned in this context. Numerous empirical studies reveal that development in terms of economic growth and political stability does not initially curb migration, but instead even fosters and promotes it (Thränhardt 2005; Angenendt 2014). These development processes can only make a contribution in the medium term to gradually eliminating the factors prompting people to leave their homes. Policy measures which have the greatest influence on people's propensity to migrate are for most part found outside the immediate field of migration policy and can only be briefly touched on here. It is well known however that the EU inhibits the development potential of African states in particular by subsidising agricultural production and pursuing a protectionist trade policy in some branches (Bade 2011: 22). The EU should also take on a more proactive role as an actor in a preventative conflict management strategy.

Generate Acceptance Among the Local Population

In order for sustainable reforms in the fields of a) individual refugee protection and b) extraterritorial complementary collective protection procedures to be successful, a political balance must be maintained between providing refugees with the best possible protection on the one hand and societal acceptance of necessary reforms on the other. A policy carried out against the population is destined to failure. ⚠ **It is correspondingly important to understand that a permanent task for the political establishment involves providing the population with information and engaging in dialogue with the general public.** The framework concept for a European refugee policy recommended here prioritises the humanitarian protection of people who genuinely require protection. Asylum is not the correct avenue for people wishing to come to Europe out of economic necessity. The asylum procedure should provide protection in emergency situations and protect people from persecution and civil war; it is not an immigration channel. ⚠ **The success of the European refugee policy is also a touchstone for the European integration project in its entirety and for its acceptance among the population at large.**

127 It should also be checked if work experience obtained in the country of origin in the corresponding employment field cannot be recognised in lieu of formal qualifications.

B. An International Comparison of Integration Policy

The term integration policy normally refers to the portfolio of political measures with which the state enables people who have migrated from abroad and their offspring to participate in relevant areas of society. Integration measures can, generally speaking, be separated into special programmes targeted exclusively at immigrants on the one hand and measures from the more general, standard political structures on the other, which, while affecting both the immigrant and the non-immigrant population, are especially relevant for the latter group (also see SVR 2014: 138–160). Chapter B of this Annual Report examines and compares the differing policy measures aimed at promoting participation in different

countries. It consequently analyses both measures exclusively targeted at immigrants and more general measures which are relevant in terms of integration policy. ‘Classical measures’ from the general political structures are those employed in the field of education and further training, which are the subject of a comparative analysis in Chapter B.1, and labour market and social policy measures that aim to improve labour market integration, which are examined in Chapter B.3. Integration programmes for new immigrants (Chapter B.2), immigrants’ political participation (Chapter B.4), anti-discrimination policies (Chapter B.5) and policies of naming and belonging (Chapter B.6) belong more to the field of special measures.

Chapter **B.1**

Selected Education Policy Approaches

The SVR came to an ambivalent conclusion regarding German integration policy in its 2014 Annual Report. In this context, it regarded developments in the field of labour market and social policy, the equalising of the Islamic religion's status in the country with that of other religions, and the recognition of credentials acquired abroad as positive developments. The SVR came to a less positive verdict on German education policy. School ability tests such as PISA, PIRLS or TIMSS thus show that, on the one hand, the school performance of children and youths with a migration background¹²⁸ has slightly improved in the last few years. On the other hand, however, the German school system is still not adequately geared to the heterogeneous nature of today's schools, in which an increasingly large proportion of students have a migration background.¹²⁹ Education reforms enabling an increased permeability in the multi-tiered school system (academic tracking by student ability) are thus necessary, as are increasing the amount of individual coaching and fostering of individual students and improving teacher training in such a way that teachers are better able to deal with heterogeneous groups of students (SVR 2014: 156–159). Other concrete reform proposals include increasing cooperation with parents, improving the German language skills of students of all age cohorts and intensifying the pre-school education offering (Neumann 2012; Fischer 2012: 362; SVR-Forschungsbereich 2013b: 4). Recent research results show that the fostering of language skills should not be confined merely to language lessons and occasional supplementary 'booster lessons'. Instead, pupils should be offered language learning support in the context of normal school classes. In order for this method to produce positive results, prospective and

current teachers need to be specially qualified (Gogolin et al. 2011: 93–98).

The question about how to adequately deal with the problems arising from increasingly ethno-culturally diverse school populations is one to which both Germany and all other European countries of immigration need to find an answer. Some of these countries started to adapt their school systems to these challenges many years before Germany. In this respect, a brief glance at the approaches taken in other European countries is worthwhile in order to highlight the educational policies or the overarching institutional conditions in these countries. The immigration history of two of the selected countries, the Netherlands and Sweden, is very similar to that of Germany. And, while the immigration history of the third country, England, differs greatly from that of Germany, a brief examination of the situation in English schools can nevertheless provide illuminating insights for Germany. This is because English schools have a much longer tradition in dealing with groups of schoolchildren with differing linguistic and cultural backgrounds.¹³⁰

B.1.1 The Netherlands: High Level of Autonomy of Individual Schools

Like Germany, the immigration of foreign workers, who came to the country especially during the 1960s, has fundamentally influenced the immigration and integration discourse in the Netherlands. As in Germany, it was assumed for many years in the Netherlands that foreign labour migrants, who had been recruited as 'guest workers', would eventually return to their countries of origin.

128 Migration background (*Migrationshintergrund*) is a statistical category in the German microcensus, an annual household survey capturing 1 percent of the country's population. People with a migration background are those who have immigrated to Germany (after 1949), their descendants and the foreign population living in Germany.

129 It is important to note that school competences determined in the international comparative assessment studies provide merely one of several indicators for the success or failure of young people in education (van Ackeren/Klein 2014: 56–58). Social competences, such as the ability to work in a team and to deal with conflict situations, are just as important for the scholastic and vocational development of young people. These are developed both during and outside of school lessons (Goldenbaum 2012: 42).

130 Each of the constituent parts of Great Britain – England, Scotland, Wales and Northern Ireland – has its own individual school system. While similarities exist between these systems, they have different contents and structures.

And as in Germany, this proved to be an illusion.¹³¹ A large proportion of these people, initially recruited as temporary labour migrants, turned into permanent immigrants who settled in the Netherlands and whose families soon followed them to the country. From the point of view of Dutch education policies, it is important to note that a large proportion of the first immigrant generation were not proficient in the country's established language of communication (Dutch) and learnt the language after their arrival in the Netherlands. In contrast, these migrants chiefly communicated with their children in the language of their home country. School systems in both countries are thus challenged to find solutions to difficulties caused by increasing linguistic heterogeneity in schools: around a fifth of all primary schoolchildren in both countries speak little or no German or Dutch with their family.¹³² Against this background, the availability of a wide range of pre-school education opportunities cannot be understated.

The decision of the Dutch authorities to integrate early childhood educational programmes, which potentially enhance children's learning abilities, into state primary schools has positive effects for the children involved from the point of view of educational science. Around 98 percent of all four-year-olds in the Netherlands attend a primary school, where they are gradually – and usually playfully – introduced to letters, numbers and other basic elements of school education. In addition, children start school at five in the Netherlands and thus significantly earlier than in Germany (Onderwijsinspectie 2012: 6; UNESCO 2012a: 12). Local authorities also offer children from socially deprived backgrounds additional childcare aimed at preparing them for school (Eurydice 2014).

The Dutch Ministry of Education, Culture and Science has actively supported the development of early childhood support schemes since the mid-1990s (BMBF 2007: 203f.; UNESCO 2012a: 19). The Education Ministry has also developed education programmes specifically designed with the aim of assisting immigrant parents' efforts to assist their children in the learning processes. A good example is the so-called "Rucksack" programme, which was first developed in the Netherlands in the 1980s and is now also offered in Germany. This programme helps immigrant parents to support the linguistic and cognitive development of their children by providing them with targeted assistance and support (Schwaiger/Neumann 2010: 177f.). The better educational achievements of

children from immigrant families in the Netherlands as compared to Germany¹³³ can possibly be related to two important factors: firstly to the greater attention paid to educational content in the Dutch pre-school support programmes, and secondly to the earlier age at which children start school in the Netherlands (Vandell et al. 2010; Pianta et al. 2009).

The Dutch approach to dealing with the increasingly heterogeneous background of schoolchildren is also revealing. In contrast to Germany, the issue's importance for the Dutch education system was recognised at an early stage and appropriate reforms (such as in teacher training) and language support programmes were initiated. As early as the 1980s, the decision was taken to incorporate intercultural pedagogics as a compulsory element into the Dutch education curriculum in all parts of the country. This decision was taken in order to prepare students for life in a society shaped by multiculturalism. Since then, immigrant children have been assisted through a number of support programmes funded by the Federal Ministry of Education and Research (*Bundesministerium für Bildung und Forschung*) (BMBF 2007: 204).

The municipal support projects contained in the programme "Headstart" should be particularly highlighted. These projects promote the language acquisition of children who are just about to start school by actively incorporating their parents into the learning process and by accompanying the children during their first year at school. In contrast to most German projects, this programme was made permanent at an early stage, and municipal authorities and schools have been reliably able to access project funds since the end of the 1980s. The Dutch teacher training programme contains compulsory modules aimed at providing teachers with a range of competences for dealing with diversity and plurality in the classroom environment. Modules concentrating on multilingualism and Dutch as a second language are obligatory at all pedagogic universities (Onderwijscoöperatie 2004: 2). Similar modules are being increasingly introduced into teacher training courses at German universities, although, until a few years ago, just a fifth of all teacher training universities obliged their students to attend courses of this nature (Centrum für Hochschulentwicklung 2012).

A particular element of the Dutch school system deserves special attention: Dutch schools enjoy a high level of autonomy. This high level of autonomy entails both opportunities and risks for the educational

131 In addition, the Netherlands experienced significant (post)colonial immigration in the 1970s.

132 In the Netherlands, 22.2 percent of all primary schoolchildren speak Dutch only occasionally or never at home. This figure comes to 19.7 percent among primary schoolchildren in Germany. However, only about 1 to 2 percent of children in both countries never use the most frequently employed language of communication in the country of residence (i.e. German or Dutch) at home (Bos et al. 2012: 194).

133 A special evaluation of the Progress in International Reading Literacy Study (PIRLS) shows that the reading literacy competences of primary schoolchildren from immigrant families in Germany lags about a year behind children from non-immigrant homes (-32 reading points). This difference is not as large in the Netherlands (-21 reading points) (see Bos et al. 2012).

development of children from migration backgrounds. Dutch schools are able to make use of their greater leeway in matters of school curricula and school finances to cater for the different start conditions of schoolchildren in the school to a much greater extent than German schools. In addition, parents also use the free school selection to choose the most appropriate school for their offspring.¹³⁴ However, the greater freedom enjoyed by schools and parents simultaneously exacerbates the segregation of children and young people from migration backgrounds, something that worsens their educational chances (Ladd/Fiske/Ruijs 2010: 31; Baumert/Stanat/Watermann 2006: 134). This ambivalent situation is a direct result of the Dutch school system, in which the basic principle of the freedom of selection is deeply embedded and which somewhat contradictory incentives are set. This system grants state-run and privately run schools an identical entitlement to public funding and allows all schools to freely decide on subject matter. On the one hand, schools are required to fulfil the needs and requirements of children from a variety of different cultural and linguistic backgrounds by providing target group-specific courses and assistance. On the other, the combination of a diverse range of different schools¹³⁵ and free school selection increases the competition between schools. In this situation, the education programme offered by each individual school is often determined by the requirements and needs of non-immigrant families. This is especially apparent in their school selection pattern: a large proportion of non-immigrant families choose to send their children to schools with a small percentage of immigrant children, thereby further driving the segregation of the so-called 'black schools' (*zwarte scholen*) (Ladd/Fiske/Ruijs 2010: 14), which are attended mostly by immigrant children. The school authorities go to great lengths to improve the quality of these schools by carrying out regular inspections and by implementing policies of targeted desegregation;¹³⁶ nevertheless long-term studies

testify to the negative effect of this school segregation on the educational achievements of students (Luyten/Wolf 2011: 451–456; Ladd/Fiske/Ruijs 2010: 14).¹³⁷

B.1.2 Sweden: Fostering Language Acquisition and Teacher Training

The history of immigration to Sweden is also similar to that of immigration to Germany. In this context, both countries actively recruited labour migrants from Italy, Turkey and the former Yugoslavia in the 1960s, before this period of initial labour recruitment gave way to the immigration of relatives of the original migrants together with a rise in the influx of asylum seekers in the following three decades. Both countries have also witnessed the immigration of highly skilled EU migrants in the course of the last few years. However, despite these parallels, immigrant children in Sweden achieved considerably better results in reading than their counterparts in Germany until the middle of the last decade.¹³⁸ From a German perspective, the targeted promotion and fostering of the Swedish language skills of schoolchildren and their parents, a measure which has been employed for many years in the country, appears to be of particular interest.

In Sweden, in contrast to Germany, steps were taken at an early stage to adapt the school system to the increasingly heterogeneous school population. In order to provide children from migration backgrounds with targeted assistance when learning the Swedish language, the initially optional school subject "Swedish as a Second Language" (SSL) was made obligatory in all primary and secondary schools in 1995. Schools themselves are allowed to choose whether to implement the nationally uniform language objectives as part of separate SSL lessons¹³⁹ or in the context of targeted language education during normal Swedish lessons. SSL lessons are always taught by specially trained teachers. The aim

134 Dutch parents traditionally enrolled their children in schools whose religious affiliation corresponded to their own. However, with the increasing secularisation of Dutch society and the influx of migrants from other countries, other factors, such as the proportion of immigrant children attending a school, have come to take on more importance (Ladd/Fiske/Ruijs 2010: 14). In Germany, parents are only allowed to freely select a primary school in very few regions (*Länder*), such as in North-Rhine Westphalia and Saxony-Anhalt. In the rest of the country, the school authorities define the boundaries of each school district. Parents are generally able to freely select a secondary school (SVR-Forschungsbereich 2012: 4).

135 Alongside Montessori schools and other schools inspired by ideas of pedagogical reform, Christian schools and, since the 1980s, Islamic religious schools play a central role in the Dutch education system. Indeed, state schools are nowadays more the exception than the rule in the country.

136 School inspections involve the evaluation of both everyday proceedings and the teaching practices in schools. In addition, students' performance is measured using standardised tests and cross-sectional themes, such as the degree to which schools have adapted themselves and their lessons to the intercultural nature of Dutch society. Inspections are repeated at least every four years (Onderwijsinspectie 2006: 6; 2012: 12).

137 Luyten and de Wolf (2011) have shown that even the incorporation of students from other schools into segregated schools brings no improvement to students' performances – at least in the short term.

138 A special analysis of the results of the 2006 PISA study for literacy reveals that at this stage the reading ability of adolescents in Sweden from immigrant families was less than a year behind that of their non-immigrant counterparts (-28 reading points). This difference came to 1.5 years in Germany in the same year. The achievement levels of students from immigrant families in Germany improved in the following years, and the 2012 PISA results show a deficit of about one year in both countries.

139 Students attending these lessons are often exempt from normal Swedish lessons. Individual schools take diverging approaches towards dealing with this issue (Otterup 2012: 5).

of the targeted language assistance is to improve the Swedish skills of non-Swedish native speakers to the level employed by native speakers in regular Swedish lessons.¹⁴⁰ In addition to the Swedish language, schools are also required to teach native languages which are spoken by at least five students on a daily basis, provided that they can find suitably qualified teachers. The languages most frequently taught are Arabic, Bosnian and Serbo-Croatian (Otterup 2012: 6). Moreover, Sweden's schools have employed native language teachers for years with the aim of supporting immigrant children in subjects other than Swedish. Native language teachers can be employed in certain subjects generally taught in Swedish (e.g. physics) in order to help individual students to fully understand and comprehend the subject material. Whilst the rest of the class are instructed in Swedish, immigrant children are given additional support in their native tongue. In this way, they are able to simultaneously learn the subject matter being taught in the lesson and the relevant Swedish technical terminology (Otterup 2012: 5-8). However, it has still not been empirically proven that these and other forms of native language instruction actually result in an increase in student attainment¹⁴¹ (SVR 2010: 147).

The reform of the Swedish teacher training programme in 2001 marked an important step towards the institutionalisation of school lessons which recognise the normality of diversity in Swedish schools. The development of intercultural competences has since been a legally binding, integral part of teacher training programmes in the country. However, the approaches taken by different universities – which are responsible for teacher training in Sweden – vary considerably. Some have introduced compulsory modules on this theme and strive to actively recruit students with migration backgrounds as a way of increasing the number of teachers from ethnically diverse backgrounds.¹⁴² A similar development can also be observed in Germany. It should however be stressed that young people with migration backgrounds who have no qualification other than their own 'immigration biography' do not automatically possess greater intercultural competences than non-immigrant youngsters of a similar age. Nevertheless, it is doubtless the case that the presence of teachers with migration backgrounds in schools has the effect of increasing the

plurality and diversity of all sections of the school environment. Furthermore, these teachers often serve as role models for young immigrant children (Neumann/Karakaşoğlu 2011; Rotter 2013).

A further stand-out feature of Swedish integration and education policies is the very early introduction of Swedish language courses for former 'guest workers': these migrants have been entitled to free Swedish courses since the beginning of the 1970s.¹⁴³ These courses provide the framework within which new immigrants can better familiarise themselves with Swedish society and the Swedish education system (OECD 2010: 33). Children with migration backgrounds also benefit – albeit indirectly – from courses promoting the language skills of their parents. Similar schemes supporting the integration of the former 'guest workers' were lacking in Germany. This is one of the reasons why measures aimed at enabling the integration and participation of immigrants in both education and other parts of German society are currently necessary (Bade 2006: 32–35; SVR 2010: 20).

In structural terms, the single-track Swedish school system (i.e. children are not assigned to different schools according to ability) is especially worthy of mention. The latest study testifying to the success of immigrant children in the Swedish school system was the international comparative TIES study. These results demonstrate that a much smaller proportion of Stockholm's residents with a Turkish background¹⁴⁴ leave school with a qualification that only entitles them to work in the low-skill sector (9.8 %) than the corresponding population groups in Frankfurt or Berlin (29.4 %). At the same time, a higher proportion of this group leave school with a qualification entitling them to continue into tertiary education (33.4 %) than immigrants with a Turkish background in German cities (6.7 %) (Crul et al. 2012: 116–118). About six out of ten children who attend grammar schools choose to study. Moreover, students attending vocational courses can also acquire the right to study at university (Skloverket 2014; Utbildning-sinfo 2013). The German school system is completely different to the Swedish in terms of its approach to the streaming of students. So, whereas in Sweden children are not assigned to different schools, in Germany two-, three-, four- and five-track school systems exist which confuse even seasoned observers of German education policies (Neumann/Maaz/Becker 2013). However, not

140 On leaving school, students who have attended SSL lessons are not treated differently to those who have attended regular Swedish lessons, i.e. both lessons result in the entitlement to enter either vocational training or further education.

141 This is true for both knowledge of specific subject material and knowledge of the language used in normal school lessons (i.e. Swedish).

142 See <http://www.lararutbildningar.se/>, 23.01.2015

143 A proportion of these labour migrants, who migrated as 'guest workers', were even exempted from work in order to attend language courses (Westin 2006; Höhne 2013: 15).

144 The interviewees were 18 to 35-year-old residents of Berlin, Frankfurt or Stockholm who had been born in Germany or Sweden and had at least one parent who had been born in Turkey (i.e. members of the second immigrant generation). The results include both the qualifications which interviewees had already acquired and qualifications to which they were aspiring at the time of the interview (see Crul et al. 2012: 109).

just the extension of tracking, but also the permeability and flexibility of school systems, i.e. the extent to which students can change between different tracks, influences the educational chances of immigrant children. Further to this, the confusing and opaque nature of the German education system hinders many people, and especially new immigrants, from fully understanding the school system.

Sweden's recent experiences with increased school autonomy also provide much material for discussions on possible future changes in the country's school system, especially as regards the structure and shape of the school system. The reforms of the 1990s show that granting schools greater autonomy does not necessarily result in better student attainment. The Swedish reforms, like those implemented in England, sought to improve the quality of schools by giving individual schools greater autonomy, providing financial incentives, increasing parental choice and strengthening independently sponsored schools (i.e. 'free schools' founded by parents). However, these reforms have had a side effect: the large parental demand for places in 'free schools' (*friskolor*) has intensified the segregation of students with migration backgrounds. The increasing demand for these schools is reflected in their rising popularity: whilst in the mid-1990s just 10.9 percent of all grammar schools were in independent hands, this figure came to 38.7 percent in the 2012/2013 school year.¹⁴⁵ An attractive school profile, a professional approach towards students and parents as 'customers' and active marketing on the part of individual schools have helped to attract large numbers of well-informed parents who are also often greatly interested in education issues. These have made use of the freedom of choice increasingly granted by local authorities and have avoided schools with poor achievement records or with high proportions of children from immigrant families. In this way, the social segregation of immigrant children rose considerably in Stockholm between 1998 and 2001 following the decision of the local authority to no longer take the main place of residence into account when allocating children to schools (Söderström/Uusitalo 2005). Thus, whilst some aspects of the Swedish education system can undoubtedly help to stimulate the German debate, others must be regarded as undesirable given the previously mentioned tendencies towards ethno-social segregation.

B.1.3 England: The Opportunities and Risks of School Autonomy and the Monitoring of Attainment

As the largest colonial power in history and the motherland of the industrial revolution, Great Britain, and especially England, is a classical target country for immigrants from the Commonwealth and other countries. Whilst the proportion of children and young people with migration backgrounds is as high in England as in Germany, there are large differences between the immigrant populations of both countries. This is due to the more selective steering of immigration practised by the British government. Thus, people with migration backgrounds have the same socio-economic status as the non-immigrant population. This is equally true for people who have themselves migrated to England (first immigrant generation) and for English-born people whose parents had been both born outside the country (second immigrant generation). The socio-economic status of migrants in Germany, in contrast, differs considerably from that of the non-immigrant population, with immigrants in a considerably worse position (Gebhardt et al. 2013: 285). Moreover, a larger proportion of the immigrant population in England originates from countries in which the de facto national language (English) is one of the official languages.¹⁴⁶ Young immigrants thus often have previous knowledge of the English language when migrating to the country, a factor that is beneficial for their educational chances. Against this background, the measures implemented by the English authorities aimed at overcoming the educational challenges posed by immigrant children are of most interest for the German education system. This is an issue with which England has long been confronted due to its long history as a popular destination for immigrants. Two measures are especially worth mentioning: first the weighting of mainstream government funding based on a formula which considers the ethnic composition of individual schools (i.e. the amount of funding depends on schools' ethnic composition) and secondly the – positive and negative – experiences which Great Britain has made with school monitoring.

The English school system, in contrast to the German, has a long tradition of collating and systematically analysing statistical data on the socio-economic and ethnic

¹⁴⁵ See <http://www.ekonomifakta.se/sv/Fakta/Valfarden-i-privat-regi/Skolan-i-privat-regi/Antal-friskolor-i-Sverige/>, 23.01.2015.

¹⁴⁶ It thus comes as little surprise that 75.8 percent of young people in England with a migration background mostly speak English at home. In Germany, in contrast, just 65.8 percent of all children from immigrant families predominately speak German at home (Gebhardt et al. 2013: 284).

background of schoolchildren. As early as 1966, Section 11 of the Local Government Act made funding available to help meet the special needs of schools attended by a high proportion of immigrant children. This funding was mainly aimed at assisting members of ethnic minorities¹⁴⁷ with limited English skills (Heise 2010: 126; Tomlinson 2009: 163). The legislation granted additional personnel and funding to schools with an ethnically diverse student body, and provided for a fostering of the English skills of non-native speakers. This method of fostering immigrants' English skills, which concentrated on ethnic belonging and language usage,¹⁴⁸ was replaced in 1998 by the Ethnic Minority Achievement Grant (EMAG). The grant is allocated on a needs-based formula primarily to schools attended by a high proportion of children from socially disadvantaged backgrounds (BMBF 2007: 197). Schools located in socially deprived areas can thereby receive a more targeted form of assistance; however they must first plausibly lay out their requirements in an action plan. The extent to which the objectives contained in the action plan have been fulfilled is determined in a separate assessment procedure, the results of which influence the future allocation of funds. Student achievement has also been taken into account as a further factor in the decision on the allocation of EMAG-funds since 2001 (Heise 2010: 124f.). This type of funding, which is allocated to schools fulfilling certain prerequisites regarding the socio-economic and ethnic background of their students, has to date scarcely been employed in Germany: only Hamburg and Bremen have experience over a prolonged time period with a formula-based allocation of funds (SVR-Forschungsbereich 2013c: 50).

Like the Dutch and Swedish school systems, the comparatively high degree of autonomy granted to English schools in matters relating to school financing and school curricula harbours both opportunities and risks for students from migration backgrounds. On the one hand, English schools can use their large degree of autonomy to a) develop a clear profile and b) tailor individual lessons and school-based decisions to the needs and requirements of children attending their school. However, at the same time schools and parents have an incentive to create homogenous learning environments, something which – unintentionally – results in the increasing segregation of students from immigrant families. In this context, a study has shown that the majority of white families in the city of Birmingham travel a considerable distance in order to

prevent their children attending neighbourhood schools with a multi-ethnic student body (Johnston n.d.).

The quality of school education in England is appraised by the state-run Office for Standards in Education (Ofsted), which regularly evaluates the effectiveness of both state and private schools in the country. The extent to which schools pay sufficient attention to the linguistic, mental and social needs of their students in everyday school life is examined as part of this monitoring process (UNESCO 2012b: 5). Alongside examining school quality, school inspections are also able to ensure that diversity is fully incorporated into the school curriculum and into school lessons. The opportunities resulting from this process of accountability must, however, be seen in light of the difficulties which a combination of school autonomy and regular monitoring of student attainment pose for immigrant children. Critics thus complain that Ofsted's current monitoring system creates false incentives by rewarding schools for higher-than-average student attainment and punishing schools for lower-than-average test results (so-called high-stakes testing). The system thus encourages schools to invest more resources in an effort to attract 'better students' and correspondingly less in targeted assistance – at the expense of lower-achieving students, many of whom have a migration background (Bellmann/Weiss 2009: 290–292; Gomolla 2005: 203). The free school choice further intensifies segregation, as not just student attainment, which in England is generally openly published, but also the ethnic composition plays a role in the parental decision for or against a school (Fürstenau 2007: 18f.).

England's ambivalent experience with autonomy and the monitoring of student attainment make it clear that, on the one hand, the effects of government intervention in the education system have not yet been sufficiently examined. On the other hand, they confirm the conclusion that the 2014 SVR Annual Report came to in the case of Germany's schools: structural reforms by themselves are not enough to substantially reduce the attainment deficits of immigrant students (SVR 2014: 158f.). This is because school success, to a large extent, is the result of the quality of lessons and hence of the decisions and actions taken by individual teachers (Hattie 2008).

A number of modules have been introduced into English teacher training schemes aimed at preparing prospective teachers for dealing with heterogeneity in schools (Arthur/Cremin 2010: 290–302). Whilst in Germany

147 Ethnic minority groupings were identified with the help of an ethnic monitoring tool, which uses statistical data to establish membership of an ethnic group (for an international comparison of the description methodology, see Chapter B.6). The largest ethnic groups in England are Indians, Pakistanis, Africans and so-called Afro-Caribbean people (van Ackeren 2006: 65).

148 In focusing chiefly on the ethnic background and the language use of immigrants, this approach can be seen as an indicator for an anti-discriminatory self-understanding prevalent in the English education system.

future teachers are generally trained in two subjects, most trainee teachers in England specialise in just one subject. Also, many more avenues exist for entering the teaching profession in England than in Germany for prospective teachers who have not studied education as a first (bachelor's) degree. Trainee teachers in England, who have not studied education, can thus choose between a university-based teacher training programme and one which takes place in schools.¹⁴⁹ In both cases, government authorities carry out regular inspections to ensure that the national standards for teacher training are upheld (BMBF 2007: 239). As the teaching profession is very popular among England's students, only graduates with good or very good grades have a chance of obtaining one of the highly coveted places on a postgraduate teacher training course (Department for Education 2013: 3).¹⁵⁰ Applicants are often required to take part in a complex and time-consuming assessment procedure aimed at establishing which candidates are most suitable for a job in the teaching profession (BMBF 2007: 226). In this sense, the application procedure in England differs greatly from that employed by German higher education institutions.

As regards the degree of permeability in the education system, England's heterogeneous system provides a slightly ambivalent picture. Thus, the English system aims, on the one hand, to educate all children in schools of a similar quality without sorting children into different schools according to attainment. On the other hand, however, the wide range of school options available to parents, the selective admission procedure employed by the elite grammar schools and the streaming of children into different classes based on achievement – common practice in English secondary schools – suggest that success in the country's school system is determined more by parental decisions, and less by the merits of a permeable school system (Heise 2010: 88–92; van Ackeren/Klein 2014: 45). In this respect, the English school system has similarities to the German.

B.1.4 Experiences in Comparison Countries: Less a Blueprint, but Instead Impulses for Future Improvements in the Quality of Learning

📌 The brief summary of the approaches taken in the Netherlands, Sweden and England towards dealing with

increased diversity in schools has not revealed a one-size-fits-all solution or cure. However, it does provide some interesting starting points for discussions over possible educational reforms in the German *Bundesländer*:

- (3) The relevance of high-quality early childhood education for later educational success underscores the importance of **📌 reducing or completely eliminating access barriers and tightly intertwining the pre-school and primary education sectors**. The Dutch model, which encourages playful learning at the same time as gradually introducing children to educational elements, is interesting in this respect.
- (3) The language courses offered to new immigrants in Sweden are still worth highlighting. These courses, which have been taught since the 1970s, enable immigrant families to find their feet in Swedish society and the country's education system.
- (3) Trainee teachers and **📌 teachers** already in employment **📌 require special training in order to be able to deal with linguistic, social and cultural diversity in modern-day schools**. This has been the case in England for many years.

In Germany, the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* (*Kultusministerkonferenz*) published a series of recommendations for intercultural education in 2013 (KMK 2013). In these, it called on schools and educational authorities to fully consider the relevant social, linguistic and intellectual capabilities of groups of schoolchildren and to (further) train teachers to deal with heterogeneity in everyday school life. Whilst the first steps in this direction can already be seen in different parts of Germany (Karakaşoğlu/Gruhn/Wojciechowicz 2011: 19–25), this process has only just begun and remains a long way from completion. Despite these first signs of improvement, the results of an opinion poll conducted by the Mercator Institute for Language Training and German as a Second Language reveal that two-thirds of all German teachers do not feel sufficiently prepared to teach linguistic and culturally heterogeneous classes (Breker-Mrotzek et al. 2012: 6).

📌 A brief glance at other European countries clearly illustrates the problem of increasing student segregation, a development which has especially adverse impacts upon the educational chances of children with migration backgrounds (see Baumert/Stanat/Watermann 2006: 134). This pattern can also be observed in large German cities: almost 60 percent of all primary schoolchildren from immigrant families in

¹⁴⁹ Since 2001, a small group of schools have been designated as training schools. These schools receive further funding in order to develop innovative, practice-oriented teacher training programmes (BMBF 2007: 226).

¹⁵⁰ In Germany, initial studies suggest that students aiming to become teachers often perform worse at school than students following other career paths (Trautwein et al. 2006; Spinath/Ophuysen/Heise 2005).

these cities attend highly segregated primary schools in which more than 75 percent of the pupils have a migration background.¹⁵¹ As the results of Dutch long-term studies demonstrate, segregated schools are confronted with problems which they are unable to solve through their own efforts and with the personnel and material resources at their disposal (Luyten/Wolf 2011:

451–456). In order to improve the learning opportunities in these schools, the implementation of formula-based school funding linked to the needs of individual schools might be considered, such as that employed in England or in the German cities of Hamburg and Bremen. However, this form of funding would have to be regularly evaluated.

151 In comparison, this figure comes to only 8 percent among children without a migration background (SVR-Forschungsbereich 2013c: 8).

Integration Courses for Newcomers

With very few exceptions, all industrialised countries in the Western world have become countries of immigration in the last few decades. They regard immigration as an opportunity to mitigate the effects of demographic changes, i.e. to acquire population and human capital. However, immigration, and its associated societal consequences, is not automatically free of conflict. The integration of new immigrants requires a corresponding opening up of the society in the country. In this sense, integration is always a two-sided process which is closely linked to the distribution and redistribution of positions of social status in modern society. Policymakers can, and indeed do, make conscious efforts to support and manage this process. In this context, it is vital to determine exactly which political strategy is most likely to facilitate immigrants' participation in the central realms of society.

Germany does not belong to the 'pioneer countries' of immigrant integration: the country first implemented uniform and centrally coordinated integration measures as part of the Immigration Act (*Zuwanderungsgesetz*) which came into force in 2005 (this has been discussed in detail in the SVR's Annual Reports in 2010, 2013 and 2014). In many other countries of immigration, migrant integration has long been considered an important political issue. As a rule, states have chosen to instigate measures which correspond to one of two competing strategies: multiculturalism or republicanism. These provide, in a more or less idealistic form, the structural basis upon which political interventions in matters relating to the integration of recent migrants and their offspring are taken.

These two differing integration strategies are themselves based on antithetic concepts regarding the nature of the integration process and how it can be influenced. The aim of the first strategy, which can be best described here as 'recognising difference', is to enable immigrants to integrate into the society by making use of their membership of and affiliation to cultural and religious groupings. This method necessitates a very specifically defined integration concept and can be accompanied by ruptures and societal friction. In multiculturalism, the state not only acknowledges differences between immigrants and non-immigrants – be they socially constructed or genuine – but also retains and (in a financial and intangible

sense) actively promotes them. This strategy has become known as 'multicultural politics' and was defined in a Canadian context by Wright and Bloemraad (2012: 78) as "specific government policies designed to positively recognize diversity and help minorities maintain cultural and religious practices while integrating them into public life". A form of cultural relativism is thus an important constituent part of multiculturalism: certain societal values and lifestyles are considered to be inextricably connected to certain cultural contexts. Also, the extent to which these values and lifestyles can be generalised or transferred into other cultures is contested or at the very least questioned. Society thus consists of a number of different sub-groups, all of which exist alongside each other and engage in mutual cooperation provided that a common legal, political and symbolic framework is given.

The alternative model is based on assumptions that are the complete opposite of those contained in multiculturalism. This method can be labelled the 'strategy of indifference'. It focuses not on difference and the state-sponsored retention of difference, but instead on the promotion of equality (and thus literally of 'indifference'). States employing this strategy thus take an indifferent approach towards dealing with cultural and religious differences – phenomena which are recognised in multiculturalism. New immigrants are treated as potential citizens, whose cultural and religious specificities are not allowed for (and are under no circumstances actively promoted). They are instead required to adapt to life in their new country of residence. The state, for its part, treats all citizens equally, and ignores any pre-existing differences. Taken together, this approach seeks to guarantee immigrants' equal access to the central areas of everyday life in the country of residence. In this model, not just the "public support for collective rights of ethnic minorities" or "concession to ethnic groups' traditions" (Wihtol de Wenden 1999: 70), but merely the notion of registering ethnic minorities under a separate category is unthinkable. In contrast to culturally sensitive multiculturalism, this strategy is thus 'blind' to cultural or ethnic differences. It is generally described as 'republicanism' in the academic discussion (see, for example, Hollifield 2010 or Finotelli/Michalowski 2012). This approach is

thus intertwined with a form of cultural universalism that limits the practice of cultural difference, together with the exigencies resulting from difference, to the private sphere. The public space, in contrast, is deemed to be culturally neutral or at least universal in the sense that uniform standards apply there.

The ethnic nation-state model, which is also described as the ‘guest worker’ or segregation model and was prevalent for many years in Germany, is less a genuine alternative, and more the antithesis to models of integration: for many years in Germany naturalisation was thus only possible if strict conditions were met (see SVR 2014: 117) and no state infrastructure was present which might have eased the societal integration of ‘guest workers’. And, most especially, in refusing to abandon the credo that Germany was ‘not a country of immigration’, all political parties denied the reality that a permanent section of the country’s population had a migration background. Taken together, these factors demonstrate that the country’s immigration policy was aimed less at promoting integration in the sense of fostering equal participation and more at segregating the immigrant population from mainstream German society. This approach was also inspired by the illusion that the migrants would someday return to their countries of origin. The objective of German ‘immigration policy’ becomes crystal clear if the method employed for dealing with the children of ‘guest workers’ is briefly considered: whilst the resolutions published by the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* in the Federal Republic of Germany (KMK) did examine which methods might be most suitable for integrating these children into German schools during their stay in Germany, the fostering and retention of these children’s native language also played a key role until well into the 1970s. Thus a KMK resolution from 8 April 1976 (version from 26 October 1979) states clearly that “the aim is to enable foreign pupils to learn the German language and to successfully complete school as well as to retain and further improve their knowledge of their respective native language. The education measures shall also contribute to the social integration of the foreign pupils for *the duration of their stay in the Federal Republic of Germany* (italics by the SVR, SVR’s translation). In addition, the measures help pupils to retain their linguistic and cultural identity.” The aim of the latter was to retain the children’s “ability to

return home” (Langenfeld 2001: 35, SVR’s translation). Not just Germany, but also Austria and Switzerland are generally considered to have employed this model. It is important to stress here that notions of multiculturalism, such as those that have already been described in this chapter and were practised, for example, in the Netherlands, had no influence on this model.

This classification into basic integration models or methods of dealing with immigration has been discussed at great length in the literature (see by way of a summary: Finotelli/Michalowski 2012). However, these models should not be regarded as accurately describing the extent to which migrants are integrated in Western countries of immigration.¹⁵² Instead, divergent strategies are employed in different countries and strategies combining elements of different models also exist; furthermore, these strategies have continuously evolved over time. The classification into models can thus best be seen as an analytic template which can be employed in a heuristic sense in order to select countries for comparative studies. In order to gain informative insights into, and to ‘learn from’, immigration and integration policy employed in other countries which have witnessed migratory inflows, it is not sufficient to merely engage in a cross-country analysis of immigration and integration policy. Instead, it is necessary to compare and contrast the methods employed in countries which (have traditionally) take(n) divergent approaches towards dealing with these issues (i.e. to look at policy measures employed in countries regarded as having traditionally taken fundamentally different approaches towards these issues). This strategy is necessary as Germany has only relatively recently recognised integration as being a political challenge and thus may not have fully committed itself to a definitive integration philosophy.

Against this background, a comparative analysis of the integration programmes for new migrants in four different countries is undertaken in the following pages: two countries which are (or were) assigned to the multicultural model (Canada and the Netherlands), a republican country (France) and a country which has been criticised for its strategy of segregation or rotation (Switzerland). In order to avoid merely reproducing ideal types of integration policy, the contents of the respective programmes, together with their organisational structure and the groups addressed, will be considered.

152 As a result, the use of conceptual models in comparative migration research is seen in a critical light. Bauböck (1998) points to their ideal-typical nature; while admitting that they are useful for international comparisons, the author emphasises that country-specific conceptual models can only depict societal reality to a very limited extent (a similar argumentation is found in the works of Oswald/Schönwälder/Sonnenberger 2003 and Pettigrew 1998). Another criticism is that conceptual models are static and can scarcely capture changes in individual integration policies; the replacement of one model by another – which is possible in an empirical sense – is thus not considered (Thränhardt 1998; Bade/Bommes 2000): countries which adopt policies corresponding to model x are thus trapped on this path.

B.2.1 The Netherlands: From Multiculturalism to a Model for Europe?

At the centre of the integration strategy practised for many years in the Netherlands was the recognition of difference, something which was hoped would enable migrants to “use their own identity as a base for integrating” (Michalowski 2007: 10, SVR’s translation). In a political sense, this resulted in the state actively promoting the construction of an interethnic infrastructure which took the form of “ethnically constructed advisory committees for the government” as well as “state-funded migrant radio and television channels or the foundation of migrant schools” (Michalowski 2007: 10, SVR’s translation). The state wished to establish equality between the allochthonous and the autochthonous¹⁵³ populations (for a detailed explanation of the terminology see Chapter B.6) by explicitly recognising the cultural and religious differences existing between the immigrant and majority populations and by financially supporting the retention of cultural identities.¹⁵⁴ The route chosen in the Netherlands appears the most suitable for demonstrating the specificities of a multicultural integration strategy. This is because ethnic and cultural organisations and societies, themselves funded and ideologically supported by the Dutch state, acted as a type of “insurmountable mediation authority [...] between the individual and society” (Bade/Bommes 2004: 12, SVR’s translation) and as a central instrument of integration. Migrant integration thus followed the historically established pattern of the integration of minorities in the country. The concept of ‘pillarisation’ is the key metaphor here. This term describes a Dutch political strategy which gradually developed during the construction of the nation-state, the central element of which is religious or ideological affiliation. The state thus provided the infrastructure aimed at enabling minority groups (in the Netherlands these are Catholics, Protestants, Liberals and Socialists) to retain their cultural singularities and characteristics (Doomernik 2013: 86). In this context, it was in many ways to be expected that the country would resort to this well-known and tested mechanism in order to integrate the ‘new migrants’ who

came to the country from former Dutch colonies or were hired as ‘guest workers’. The country thus provided the new minorities with the basis for their own ‘pillar’ by funding the above-mentioned ethnic infrastructure. As a result, Dutch multiculturalism materialised into a de facto strategy of integration based on the division of people’s everyday life.

The approach taken by the Netherlands towards integrating migrants was regarded as exemplary for many years. However, it suffered a deep crisis at around the turn of the century, as it became clear that the Dutch model did not result in greater equality and increase the speed of integration, but instead occasioned more inequality and marginalisation – even when compared with the heavily criticised German antithesis. These findings were completely unexpected and came as a shock to the country (see Rath 1996; Entzinger 1998; Koopmans 2002; Böcker/Thranhardt 2003).¹⁵⁵ In addition, this model was unable to prevent the rise of far-right populist parties such as the *Liste Pim Fortuyn* or the ‘Party for Freedom’ founded by Geert Wilders. Indeed, the opposite has come to pass, as the failure of ‘multicultural’ attempts to integrate migrants by separating their life environment from that of the rest of the population has been frequently highlighted in the political discussion.

These developments prompted the Dutch government to radically alter its integration policy, and the Netherlands was thus the first country in Europe to introduce compulsory integration courses for new immigrants at the end of the 20th century: the Act governing the Civic Integration of Newcomers (*Wet Inburgering Nieuwkomers*, WIN), which obliged migrants to attend approx. 600 hours of language lessons and lessons on Dutch society, was passed following a long discussion in 1998.¹⁵⁶ Fines could be imposed or social benefits reduced if migrants did not cooperate, although these were not mandatory. The tuition fees of approx. 6,600 euros per participant were covered in their entirety by the Dutch state. However, this state subsidisation ended in 2002 – just four years after it had begun. The courses were instead completely privatised, and the participants were now required to pay the tuition fees themselves; in return

153 ‘*Autochtoons*’ (old Greek for ‘down to earth, native, long-established’) and ‘*allochtoons*’ (old Greek for ‘foreign’ or ‘outsider’) are the Dutch terms used to categorise people with a migration history.

154 Koopmans (2010) describes projects carried out by the Dutch public housing associations as an especially plastic example of the Dutch approach towards promoting difference. Care was taken in new buildings to ensure that toilet seats did not face Mecca; in addition the private and public spheres were divided, “de facto allowing the woman of the house to serve the men in the public part without being seen by them” (Koopmans 2010: 7).

155 This process was also influenced by the fact that the religious component of immigrant identity in many cases first became visible or relevant during their migration to the country. Thus by strengthening the religious component of immigrant identity, differences between the allochthonous and the autochthonous populations may well have been increased and cemented. In addition, whilst the religious affiliation of the Dutch immigrant population (Muslims from Morocco and Turkey) is relevant, it is not a guiding principle when considering cultural differences.

156 Students and temporary employees are exempted from attending these courses. In addition, citizens of other EU countries, the EEA, Switzerland and the USA who did not come to Germany in order to start a family or to join family members already in the country, are also not obliged to attend a course.

the element of compulsion was removed (Doomernik 2013: 91; Strik 2014: 263). The integration test, in which basic knowledge of the Dutch language and society are tested, remained in place. Indeed, certain migrant groups are required to complete this test in the country of origin.

The current Dutch integration policy thus consists of two parts: firstly a test to be completed in the country of origin, and secondly an examination to be taken if and when a migrant's legal status has changed or he or she has obtained a more consolidated residence situation. In principle, all prospective migrants between the age of consent and the retirement age who require a visa to come to the Netherlands are obliged to first complete the test in their home countries. Nevertheless, a number of exceptions exist, such as for Turkish citizens, university graduates, people already possessing an employment contract, au pairs or exchange programme participants, etc. The language test thus serves as a de facto way of managing family migration. Whilst the German integration requirements for family reunification passed in 2007 only require potential family migrants to demonstrate language skills commensurate with level A1 of the common European language framework (see Chapter A.3), the Dutch model envisages three tests. These examinations, which are elucidated in a little more depth below, are firstly a test of knowledge of Dutch society (*Kennis van de Nederlandse Samenleving*, KNS) and secondly a Dutch language test. The latter is itself made up of two elements: speaking – *Gesproken Nederlands* (TGN) and reading/textual understanding – *Geletterdheid en Begrijpend Lezen* (GBL).

(1) The questions in the KNS refer to a film (*Naar Nederland*) available in several languages¹⁵⁷ which prospective migrants receive as a DVD. The examinees are required to answer questions as part of a computer-based test taken in the Dutch embassy of the relevant home country. The questions are posed in Dutch and must be answered in the same language. The examinees must answer 30 from a total of 100 questions which appear on the screen. The film is controversial, as it shows images of naked women or homosexuals kissing which the officials and the filmmakers regard as being typical for the Netherlands (Doomernik 2013: 97).¹⁵⁸ Critics of this Dutch policy perceive – with a degree of justification – an attempt to culturally assimilate or even to coerce migrants into adopting the culture of the country of residence, something which is illegitimate in a liberal society. Others regard the test as a cheap attempt to reduce Dutch culture to such allegedly 'typical' features.

(2) The language test TGN is also computer-based. As part of this test, participants must demonstrate that they possess spoken Dutch skills commensurate with level A1 of the common European language framework.

(3) The reference level for the GBL, which measures reading and textual understanding, is also A1. In the test, which is once again computer-based, examinees must complete or complement sentences in Dutch and answer questions about a Dutch-language text.

Each section of the test can be repeated an unlimited number of times. However, for each renewed attempt a fee of 350 euros is incurred. In addition, slightly more than 100 euros must be paid for the preparatory material.

As well as the test conducted in migrants' home countries, which is especially targeted at people wishing to join relatives in the Netherlands, another assessment exists, which is taken in the Netherlands. This test is taken by immigrants who have not participated in a test in their home countries and are seeking to either change their official residence status or obtain a permanent residence permit in the Netherlands. The test consists of a number of different elements, which are briefly explained below.

(1) A series of short film sequences are shown as part of a computer-based test assessing migrants' knowledge of Dutch society (*Kennis van de Nederlandse Samenleving*, KNS), following which the participants must answer questions on the content of each sequence. The test takes 45 minutes and contains 43 questions, most of which are freely available to the public, meaning that the participants are able to well prepare themselves for the test.

(2) The examinees' ability to understand and express themselves in the Dutch language is assessed as part of a 15-minute spoken language test (*Gesproken-Nederlands-Test*). The participants must demonstrate A2 level knowledge in this test, which is conducted by telephone.

(3) Two other computer-based tests assess the examinees' ability to read and understand texts in Dutch. In both sections participants must answer questions about working life, the education system and everyday life in the Netherlands.

(4) Finally, the examinees' ability to express themselves in written Dutch is assessed. They are once again required to answer questions or complete tasks on issues relevant to everyday life. The participants are, for example, required to write an email for a friend's birthday or fill out a form for the job centre.

157 These are specifically: Chinese, Pashto, Thai, Dari, Portuguese, Turkish, English, Russian, Urdu, French, Spanish, Vietnamese, Indonesian, Somali, Kurdish (Kurmanji), standard Arabic, Moroccan Arabic, Rif Berber.

158 In order to enable people residing in countries where images of this nature are banned to properly prepare for the test, specially 'edited' versions of the film also exist.

The test can be taken at test centres located in five Dutch cities and can be repeated as often as desired. Immigrants are required to bear the costs of the tests; these currently amount to 250 euros for all test components.

In integration terms, the Netherlands is considered to be a model for Europe. This is due less to the specific nature of the country's integration *programmes*, which are relatively restrictive when compared to other countries. It is instead more a result of the decision of other European countries of immigration to imitate the Dutch model of compulsory integration programmes. The main aim of these courses is to improve immigrants' knowledge of the language of communication in the relevant country of residence. Germany is one of these countries which have followed the Netherlands' lead: compulsory integration courses, which take the form of German language courses in particular, were introduced as part of the 2005 Immigration Act (*Zuwanderungsgesetz*) (for details, see SVR 2010; 2012; 2013). An integration course usually comprises 660 lessons and contains a maximum of 960 lessons. Out of these, 600 or 900 lessons respectively are German language courses in which language skills up to level B1 are taught; the remaining 60 lessons constitute the so-called orientation course. In some circumstances, the consolidation of immigrants' residence status and their entitlement to social benefits are also contingent on the successful completion of an integration course. Nevertheless, **Germany has not gone down, and should not go down, the Dutch road of privatising integration courses and requiring the state to merely provide the infrastructure for tests.** The mixed funding model employed in Germany, which consists of state subsidisation and (small) financial contributions¹⁵⁹ from the participating migrants, has proved its worth.

B.2.2 Canada: 'Empathetic Multiculturalism'

The thoughts and theoretical viewpoints of Charles Taylor played a central role in the development of Canadian multiculturalism. In his work "The Politics of Recognition", Taylor stresses that the recognition of each individual by a cultural community is not just a courtesy owed to people (Taylor 1992: 26), but also the central precondition needed to develop an identity and self-confidence. In

Taylor's view, it can be derived from this premise that the state is obliged to provide cultural communities with a special degree of protection. This special protection was initially granted primarily to the French-Canadian minority in Quebec. Canadian multiculturalism was hence at first biculturalism. It was a reaction to ongoing tensions between Anglo- and French-Canadians and was therefore an "unintended side-effect of Quebecois separatism" (Geißler 2003: 22, SVR's translation); its emergence had initially little to do with migration. A Multiculturalism Act was passed in Canada in 1988 which is still in force today. It emphasises that multiculturalism is an "invaluable resource" for Canada's future and demands the recognition of the freedom of all people, so as "to preserve, enhance and share their cultural heritage" (Section 3[1]).

In Europe, due to the Dutch experience, multiculturalism has become largely¹⁶⁰ discredited as a political concept of enabling the social participation of immigrants, and European countries of immigration automatically distance themselves from it. In Canada, in contrast, multiculturalism continues to belong to the country's 'political DNA', something which also reflects a conscious attempt to distance itself from the USA with its notion of the melting pot. Canada still describes itself as the "Champion of Multiculturalism" (Schmidtke 2014: 78). The reasons for these transatlantic differences cannot be explained in any great detail here. However, Geißler's observation (2004: 291–292, SVR's translation) that "Canadian multiculturalism (represents) [...] a third way between the poles of assimilation and segmentation" and has, with reference to the "functional necessity of social cohesion", drawn boundaries to "the entitlement to sociocultural difference" is instructive. "Cultural and value relativism and divisive segmentation and segregation" could be avoided by "drawing strict boundaries to difference and distinctiveness". These boundaries are clearly defined in Canada. The principle of acknowledging difference does not only end when people fail to respect the constitution, the laws or the basic values of liberal-democratic states. Instead, this boundary is already reached if migrants fail to acquire sufficient knowledge of the spoken and written language of the country or withdraw into separate ethnic colonies without contact with the rest of the population. At this point, Canada goes – to cite the title of an influential book from David A. Hollinger

¹⁵⁹ The course participants are charged 1.20 euros for each lesson. A total of 792 euros are correspondingly charged for a standard version of the course. People who are in receipt of welfare benefits or who cannot afford the course due to their personal circumstances can be exempted from their contributions to the course fees.

¹⁶⁰ An exception was Sweden (probably at least for a short period of time), although the classical multicultural approach is also on the retreat here. See for example Ring (1998) and Bade/Bommes (2004).

(1995) – “Beyond Multiculturalism”:¹⁶¹ the multicultural approach employed in Canada does not just validate and protect the entitlement to socio-cultural difference, but also draws boundaries to this entitlement. In this respect, Canada’s approach differs greatly from that of the ‘multiculturally extreme’ Netherlands of the 1980s and 1990s, which aimed to facilitate integration by creating separate life environments for different ethnic groups, an approach followed in almost all sections of public life. It can be postulated at least that this difference is responsible for the greatly differing ‘careers’ which multiculturalism – understood here as a political concept – has taken in both countries.

Canada is regarded by many as a role model for its immigration and integration policy. German politicians are among those who like to travel there “in order to learn something from Canada in the realm of integration and immigration policy” (Bauder/Lenard/Straehle 2014: 2). However, the Canadian integration programmes targeted at new arrivals, which are at the heart of this chapter’s considerations, contain two special features which make them impossible to simply ‘import’ to Europe:

(1) Canada differs from other countries of immigration in the sense that English and French, two languages with a high ‘communication value’ (for an explanation of the term and the concept, see Esser 2006: 487–496) are established languages of communication in the country. As a result, a large proportion of the immigrant population speaks at least one of the two official languages. It is hence unnecessary to establish a national infrastructure to facilitate the acquisition of the languages spoken in the country and oblige immigrants to participate in the appropriate courses.¹⁶² In most European countries of immigration, in contrast, a much smaller percentage of the languages ‘imported’ by migrants are the same as those traditionally spoken in the country of residence. The immigrants are thus not, or are only to a very limited extent, able to make use of their native language competences in the labour market and in the education system. As knowledge of the official language(s) of communication is vitally

important for success in both aforementioned sections of the country’s society, language acquisition is allotted a correspondingly large priority in the national integration policy. This provides an explanation for the dominant role which language courses play in European integration programmes¹⁶³ and for the lack of importance granted to such programmes in Canada.

(2) Canada is generally regarded as a classical country of immigration. The title ‘classical’ emphasises that the selective, credential-based recruitment of migrants was considered an important part of the national population policy over a period of many years or decades. An important part of this immigration policy is the points-based recruitment system, which has been the backbone of Canadian migration management for almost half a century (Triadafilopoulos 2012). While the logic of this migration management system has changed considerably in the last few years (see Chapter A.1), its focus on highly qualified, ideally academically qualified skilled workers who possess skills which preferably exactly match the requirements of the Canadian labour market has remained. A consequence of this traditional immigration policy, which is mainly aimed at recruiting migrants whose presence is deemed beneficial for the country, is that the education level of citizens born abroad/foreigners living in the country is the highest of all OECD-countries (OECD 2008). In contrast, many European countries of immigration recruited predominately less-skilled migrants for their segmented labour markets from the 1950s to the 1970s. As a result, they now face integration policy challenges stemming from the mostly poorly qualified nature of their resident immigrant populations. On the one hand, due to changing immigration patterns, the traditional sizeable differences between the skill levels of migrants in traditional countries of immigration and those of migrants in European countries of immigration are diminishing. This is especially apparent in Germany, where the proportion of the immigrant population which is highly qualified and very highly qualified has risen rapidly in the last few

161 Hollinger (1995) argues in this book that defendants of cultural plurality in particular must overcome the cultural static found in classical multiculturalism and which shows itself in the widely held assumption that people have fixed and irreversible forms of identity. He advocates a new form of cosmopolitanism which is not justified on biological grounds, but is instead based to a much greater extent than at present on consent and common conviction.

162 Migrants wishing to apply for the Federal Skilled Worker Program (FSWP), which is generally known as the points system, have nevertheless become required to demonstrate proficiency in one of the two national languages (see Chapter A.1) in the last few years. Language skills are now considered so important that applicants who fulfil the preconditions for participation in the programme and have successfully completed the points check are later disqualified if they fail to provide evidence that they possess the language skills demanded in the FSWP. The more stringent selection based on language proficiency during the immigration process thus makes it less necessary to provide a state-wide infrastructure for language acquisition.

163 An integral part of integration courses in many countries of immigration are so-called orientation courses. The latter contain, however, fewer lessons and are less important for successful course completion. In Germany, nine-tenths of the integration courses are made up of language courses (see Chapter B.2.1 and SVR 2013: 135–140 for a comprehensive portrayal of German integration courses).

years (Brücker 2013).¹⁶⁴ On the other hand, however, the causal relationship between the education level of the first migrant generation and the educational attainments of their descendants mean that qualification differences remain for many years. In this context, the presence of immigrant children must be considered as a structural feature in cross-country analyses.

These differing linguistic and educational factors thus greatly influence immigrant integration. They provide an explanation for Canada's decision not to implement measures coercing immigrants into participating in integration courses and not to render the consolidation of immigrants' residence permits contingent on their attendance at bespoke courses. The country thus does not consider a stricter integration policy to be necessary. Nevertheless, the Canadian authorities have recently introduced some measures aimed at facilitating the integration of immigrants in the shape of the Canadian Immigrant Integration Program (CIIP) (initially introduced in 2007 as a pilot project, since 2010 a permanent programme). One of the central aims of this programme is to prepare would-be migrants for the exigencies of the Canadian labour market before migrating to the country.¹⁶⁵ To this end, the country runs courses in the countries of origin which are free of charge and completely voluntary for potential migrants. The CIIP contains three elements:

- 1) A one-day workshop during which potential migrants are informed about the specific nature of the Canadian labour market;
- 2) More personalised advice about the concrete steps to be taken in order to successfully gain a foothold in the Canadian labour market;
- 3) The presentation of a series of online search tools for finding employment in Canada and, where appropriate, the establishment of direct connections to Canadian employers.

B.2.3 France: Integration Policy and Republicanism

Whilst multicultural strategies predominately seek to promote immigrants' social participation and to acknowledge

and protect cultural identities as well as (where appropriate) differences, republican strategies employ a diametrically opposite approach: the key focus here is not on difference and its protection and promotion, but rather on indifference. The best example of a republican country of immigration is France. While multicultural countries seek to establish equality by bestowing special rights and group privileges on all members of society, France goes down a different road: it rejects all special rights and minority privileges and expects immigrants to adapt to the country's way of life. Republicanism as a state philosophy is conceived to be 'blind to colour and culture', and the country covers itself with the 'the veil of ignorance' described by John Rawls (see Bertossi 2007). A result of this strategy of indifference is that the entire French political spectrum (i.e. both Gaullists and Socialists) is united in its rejection of all symbols and accessories representing (religious) difference. The headscarf is not the only disputed symbol, but merely one that is especially apparent.¹⁶⁶ Freedom of religion, while recognised as being important and worthy of protection, is seen as less important than the republican values of freedom, equality and fraternity, and religion is seen as belonging to the private domain. The "marginalisation of religious and ethno-racial issues from public discourse" identifiable in France can be explained against this background (Pries 2013b: 195).¹⁶⁷

The French equivalent to affiliation to a particular ethno-cultural group, a concept which was/is central to Dutch and Canadian integration policy and received/receives official governmental recognition and support, is affiliation to the "*communauté des citoyens*" (Schnapper 1994). This envisages in essence a political affiliation in the sense of a "*plebiscite de tous les jours*" (Ernest Renan). The concept of *citoyenneté* is clearly distinguished from that of *nationalité*, which merely denotes the possession of citizenship rights. The former instead refers to the awareness of being a French citizen who actively works for the common good. In this respect, the French concept is not merely aimed at immigrants, but is rather a "concept for integrating the entire society" (Heckmann/Tomei 1997: 34, SVR's translation).¹⁶⁸ Integration policy thus exists as a type of *general* integration

164 This is mainly due to increased inflows of citizens of other EU member states. The share of highly qualified migrants among all third-country nationals who have migrated to Germany has however also showed an increase in the last few years. See most recently: Griesbeck (2014).

165 Programmes of this nature currently exist in the following countries: China, India, the Philippines, Great Britain, Bahrain, Bangladesh, Bhutan, Finland, Indonesia, Ireland, Japan, Kuwait, Malaysia, Nepal, Norway, Oman, Qatar, Saudi Arabia, Singapore, Sri Lanka, Sweden, the United Arab Emirates and Yemen.

166 In France, a law regulating the separation of state and church has existed since 1905 (*laïcité*). This law provides important institutional support for the republican blindness to ethnic, cultural and religious differences.

167 The strong emphasis placed on the concept of *laïcité* can also be regarded as a consequence of the presence of immigrants adhering to the Muslim faith. This model is not, however, unconditionally accepted in all parts. In this context, advocates of a strict republicanism as well as those sympathising with the introduction of multicultural elements or the recognition of difference can be found across the political spectrum.

168 This is accompanied by a centralist approach which has its roots in French history: regional identities are seen as posing as great a threat to the nation as the ethnic identities of immigrants.

policy which seeks to integrate the country's own (or future) citizens.¹⁶⁹ Programmes aimed at directly supporting ethnic minorities are regarded as being incompatible with the republican state philosophy and as being detrimental to social cohesion; the collection of separate statistical data on ethnic minorities is also seen in this light (see Chapter B.6).¹⁷⁰ The societal discrimination against immigrants and their offspring, which despite this state philosophy undeniably takes place, is not seen as a question of immigration policy, but is instead considered to be exclusively a matter for social policy. Thus, amongst other measures, targeted assistance is provided to certain city districts regarded as being particularly in need of support (Michalowski 2007; Wuhl 2008).¹⁷¹

The riots that took place in the suburbs of many French cities in 2005 are best understood as a reaction to the continuing social exclusion suffered by the descendants of immigrants, many of whom have largely grown up in these districts (see Kepel 1987). The riots brought a crisis afflicting France's 'colour blind' integration model that had been smouldering for many years to the attention of the wider public. As early as 1996, the *Conseil d'État*, an influential government body which acts as a legal advisor of the executive (and is also the country's Supreme Court), criticised in its Annual Report the abstract concept of equality inherent in the country's republican heritage and questioned whether this state ideology was able to adequately provide a solution to problems of discrimination in an ethnically diverse society (Bertossi 2007). The so-called 'welcome platforms' (*Plate-formes d'accueil*), which were created at the *Agence nationale de l'accueil des étrangers et des migrations* (ANAEM) in 1998, were a first cautious attempt to dilute the pure republican doctrine, seeing as they were exclusively directed at immigrants.¹⁷² These platforms were important as they initiated a more wide-ranging French integration programme that was exclusively targeted at recent arrivals.

A reception and integration contract (*Contrat d'accueil et d'intégration*, CAI) was piloted in a few French *départements* from 2003 onwards. The Immigration Act of 24 June 2006 rendered the CAI compulsory for all legal newcomers intending to permanently settle in France from 2007 onwards. The contract contains a two-page statement of intentions in which the French state promises to organise and fund language courses and the relevant

immigrant declares his or her willingness to participate in a course. The contract is generally signed for a twelve-month period; it can however be extended for another twelve months at the recommendation of the French Office for Immigration and Integration (*Office français de l'immigration et de l'intégration*, OFII), the body which has been chiefly responsible for French integration policies since 2009. An average of around 100,000 people a year have signed the contract since it became a compulsory element of French immigration and integration policy in 2007.

A relatively high proportion of the French immigrant population speaks French. Nonetheless, as in Germany and the Netherlands, language courses are at the heart of the French integration programme. In addition to language courses, the French state also organises an information day called *Vivre en France*, which lasts between one and six hours and is mainly aimed at providing immigrants with information regarding access to public services (healthcare, schools, employment, accommodation, childcare etc.). The short course *formation civique*,¹⁷³ which seeks to impart knowledge about the institutions and values of the French Republic and about the organisation and the *modus operandi* of the French state, is also offered. However, these courses are of negligible importance compared to the language courses.

New arrivals whose French skills are deemed to be inadequate in a prior language appraisal attend a French course after their arrival in the country. The aim is usually to equip immigrants with elementary language skills slightly below level A1 (described in France as A1.1) of the Common European Framework of Reference for Languages. Since 2012, immigrants who have attended secondary school in their home countries have been able to enrol on a more advanced language course (A1 or A2; *diplôme d'études en langue française*, DELF). The average course contains 270 lessons and thus has fewer contact hours than German integration courses, the standard variation of which consists of 660 lessons. Participants are not charged for attending the course. The course concludes with a test which comprises an oral (35 minutes) and a written (40 minutes) component.¹⁷⁴ Participants who successfully pass the exam receive the *diplôme initial de langue française* (DILF). In contrast to the entirely voluntary *plate-forme d'accueil*, the consolidation of the

169 Schools, the military and the working environment play a particularly important role as 'assimilation machines'.

170 See here the dispute between two French demographers over the question about whether separate categories should be introduced for ethnic minorities in the French census, which is discussed, among others, by Michalowski (2007: 39–40) and Pries (2013b: 192).

171 The share of *immigrés* or *étrangers* does not play, officially at least, a role in the identification of boroughs which are seen as being in need of assistance.

172 The *Plate-formes d'accueil* were, however, merely based on ministerial circulars and lacked a legal foundation.

173 In contrast to the German orientation courses or the courses on Dutch societal norms, a test is not envisaged here.

174 An average of more than 90 percent of course participants pass the exam at the first attempt. Whilst the first exam is free of charge, participants must pay for all further exams themselves.

residence permit is theoretically contingent on course participation.¹⁷⁵ However, this sanction is rarely employed in practice (Strik et al. 2010).

While the French measures aimed at integrating new arrivals differ from the Dutch and German measures in a number of ways, the basic idea is the same. The development of language skills is deemed especially important in France; in contrast only a few lessons focus on imparting basic knowledge of French society. The measures implemented in all three countries place considerable emphasis on improving the labour market integration of immigrant populations. The French developments are intriguing for two main reasons: firstly because the republican philosophy which has shaped the country for many years does not foresee any measures specifically targeted at immigrants and secondly because they correspond to a pattern observable in many Western countries which have witnessed large-scale migratory inflows in the last few years. This converging nature of immigration and integration policy measures, both in Europe and the classical countries of immigration outside Europe, cannot be overlooked.

B.2.4 Switzerland: Cantonal Autonomy and Integration Policy

The approach taken by Switzerland to issues of immigration and integration is revealing in the context of this study, as in many ways it shows a series of parallels to that of Germany. In a quantitative sense, the two countries belong to the most important countries of immigration in Western Europe (for Switzerland see D'Amato 2012; Carrel 2012; for Germany see most recently OECD

2014c) and both countries' long insistence that they were not countries of immigration contrasts sharply with societal reality. They have both also successfully integrated – at least in terms of their labour market participation – a large proportion of their resident migrant populations. This has prompted Mahning and Wimmer (1999; 2003) to speak of “integration without immigrant policy”. In addition, neither Switzerland nor Germany belonged to the countries which first pioneered integration courses for new arrivals. Nationwide integration courses were first initiated in Germany with the Immigration Act (*Zuwandungsgesetz*) in 2005; Switzerland created an initial legal framework¹⁷⁶ for the establishment of a nationwide integration policy and the provision of integration courses with the Federal Act on Foreign Nationals (*Bundesgesetz über die Ausländerinnen und Ausländer*, FNA) in 2008 (Carrel 2012; Tov 2014).

Yet these are the only structural parallels between the two countries. They thus take considerably divergent approaches towards integration programmes. Whilst German courses are funded, designed and organised by the Federal Government (i.e. without regional participation) – deviating from the usual division of tasks between federal and regional levels practised in the federal system – the Swiss Federal Act merely provides the Cantons with a legal framework for the implementation of said courses. It enables Cantons to not just design and implement integration courses as they see fit, it also allows them to freely decide whether they even wish to introduce such a programme.¹⁷⁷ A total of 12 out of 26 Cantons have, for example, implemented integration agreements – ‘mini-contracts’ signed by both Cantons and immigrants which have been enabled by the aforementioned Federal Act.¹⁷⁸

175 The contract envisages rejecting the extension of residence titles or refusing to issue permanent residence permits if immigrants are unwilling to take part in courses. However, the courses are not tied in with the social security system to such an extent that social benefits can be reduced, as is, for example, the case in Germany.

176 An integration Article was included for the first time in the revised version of the Federal Act concerning Residence and Settlement in 1999 (Section 25a). Credits could subsequently be allocated for integration projects, such as for language courses, by the Federal Commission on Migration (FCM), (D'Amato 2012; Wicker 2009).

177 The Swiss Federal Government made an attempt to render integration agreements compulsory – at least for some groups – throughout the entire country in 2012. It thus sought to close an ‘equality gap’, seeing as only some Cantons require newcomers to sign integration agreements. However, this proposal failed to find a majority. Decentralised decision making is particularly prevalent in all parts of Swiss immigration and integration policy. So there are, for example, large differences between the Cantons as regards naturalisation or voting rights for foreigners. It is hence difficult to speak of a uniform integration model in the country. There are also large differences as to the extent to which Cantons have enshrined integration policy in local constitutions and formal legislation (Wichmann et al. 2001: 62ff.). Some Cantons have incorporated measures aimed at promoting immigrant integration into their respective constitutions (e.g. Basel County, Basel City, Fribourg, Solothurn, Schwyz, Vaud), whereas others have passed their own integration law (e.g. Appenzel Inner Rhoden, Basel County, Basel City, Geneva, Neuchâtel) and yet others regulate questions related to immigration by enacting ordinances (Jura, Zug, Zurich). Considerable differences also exist in integration policies adopted at the municipal level, as local authorities possess wide-ranging freedom to make their own decisions.

178 The importance of the dividing line between the German- and French-speaking parts of Switzerland, a ‘boundary’ widely known as the ‘rösti divide’, becomes crystal clear here: none of the twelve Cantons which have made use of the possibility contained in Federal law are located in the French-speaking part of the country. Whether this is a result of the ‘French influence’ (according to Mantschall 2011; 2012 and others) or is due more to the differing rates of urbanisation and the proportion of the population which are immigrants need not detain us here long. Voluntary integration courses for new arrivals also exist in Cantons not employing integration agreements. These courses usually take the form of language and orientation courses and are thus similar to those organised in other Cantons (Kaya/Efionayi-Mäder/Schönenberger 2011).

These agreements are at the heart of the country's integration programmes. The Swiss authorities made no attempt, however, to make these agreements obligatory for all new arrivals, as is, for example, the case in highly centralised France (where almost all new migrants must sign these agreements). This decision was taken because of the "disproportional administrative outlay" (BfM 2007a, SVR's translation) that a general introduction of this nature would entail. Instead, the Federal Act identifies three target groups for the integration programmes: third-country nationals arriving as family migrants, long-term resident migrants who "risk not having their residence permits extended due to their behaviour" (SVR's translation) and migrants employed in religious, cultural or linguistically based care or teaching occupations which are oriented towards the countries of origin. However, the Federal Act merely *recommends* that these groups be made the target of integration programmes. Indeed, Cantons vary considerably in the extent to which they pay heed to these recommendations:¹⁷⁹ exactly half of all Cantons employing integration agreements as a policy instrument render them compulsory for migrants from all three aforementioned groups (among others Bern, Basel City and Basel County), whereas the other half only obligate relatives of migrants already in the country to do so. In some Cantons practically all (family) migrants are required to sign an agreement; in others this is made contingent on the outcome of a first interview (Wichmann et al. 2011). As a result, the number of agreements concluded differs greatly between the various Cantons (so whilst 16 agreements were concluded in the Canton of Bern in 2010, this figure came to 461 in the Canton of Solothurn in the same year). Just as Cantons take diverging approaches towards integration agreements, so they also follow different aims with their integration programmes (Wichmann et al. 2011). Tov et al. (2010) thus distinguish between three diverging approaches towards immigrant integration in the country: one focusing on 'duties', one focusing on 'rights' and finally one which focuses on both 'duties and rights' (Tov et al. 2010: 92-95; Tov 2012). The 'duty' approach involves rendering the extension of the residence permit contingent upon the fulfilment of the terms of the integration agreement. This approach is typically employed when dealing with long-time resident persons with integration deficits. The 'rights' approach consists predominately of counselling and accompanying new arrivals. The 'duties and rights' strategy unifies both approaches and thereby combines counselling with "gentle pressure" (Wichmann et al. 2011:

68, SVR's translation). It is also chiefly employed with new arrivals.

In terms of their design and content, the Cantonal programmes are roughly similar to those employed in other European countries of immigration. The cornerstone of these programmes is the language course. Successful participants should have acquired language skills commensurate with level A2 of the Common European Framework of Reference for Languages by the end of the course. The programmes also usually contain integration or 'civic education' courses. According to the Swiss Federal Office for Migration, these courses aim to help immigrants "to deal with everyday requirements and administrative formalities, to enable them to get to know Switzerland with its peculiarities and customs and to become familiar with the rules, rights and duties of the country's citizens, the legal equality of men and women, the health service etc." (BfM 2007, SVR's translation). The shape and design of the courses can also vary sharply between the different Cantons. A wide range of courses focusing on different issues are thus offered in the different Cantons: these can range from courses providing "general knowledge on the political, social and economic systems of Switzerland and the appropriate Canton" to "specific course(s) against domestic violence" (Tov et al. 2010: 80, SVR's translation).

In principle, the extension of a residence permit can be made contingent on the fulfilment of the terms of the integration agreement; however this legal option is scarcely used. More important in practice are the (positive) sanctions that allow the minimum residence period for the allocation of a permanent settlement to be halved from ten to five years if immigrants fulfil the conditions of the agreement (the so-called C authorisation). Swiss legislation does not envisage intertwining the requirements contained in the Residence Act with social legislation (as in Germany), something which would enable social benefits to be curbed if the terms of the agreement were not observed. However, some Cantons do reimburse course fees to immigrants who have successfully completed the language course (Tov 2014: 18).

B.2.5 Integration Courses and the Emergence of an Illiberal Liberalism in Europe

The previous sections have compared and contrasted the integration courses implemented by three European

¹⁷⁹ Migrants entitled to remain in Switzerland according to Swiss or international law cannot be compelled to sign an integration agreement, as the authorities cannot tie their stay to the fulfilment of conditions. Among this group of people are citizens of EU/EFTA states, migrants who are covered by the General Agreement on Trade in Services (GATS) and migrants covered by the Vienna Convention on Diplomatic Relations. These migrants are, however, generally made aware of existing language and integration courses if their participation in a course is deemed necessary.

countries of immigration with differing integration strategies in the last few years: the Netherlands as a former multicultural ‘pioneer nation’, its republican counterpart France, and Switzerland. While the latter’s ‘guest worker’ or ‘worker rotation’ approach never followed a specific ‘migration template’ or philosophy, the country nonetheless pursued the clear strategy of avoiding, or at least delaying the integration and settlement of migrants (a policy for which it was indeed criticised). **📌 A comparison of the integration policy developments of these countries reveals two things:**

- (1) **a dissolution of integration philosophies in the different countries which were previously seen as being stable;**
- (2) **a process of convergence between the countries** “with respect to the general direction and content of integration policy” (Joppke 2007: 1–2; see also Hansen 2012: 8) which has been described in most detail by Michalowski (2004; 2007) and Joppke (2007).

The common starting point for the developments in the Netherlands, France, Switzerland and indeed other countries is that “integration problems [...] [are perceived] as a symptom of a crisis of the welfare state” (Michalowski 2007: 59–68, SVR’s translation). As a consequence, the “relationship between welfare states and potential welfare recipients” is going through a process of redefinition (Bommes 2006: 63, SVR’s translation). As part of this process, integration programmes are being increasingly developed which allow for the specificities of the relevant countries. The provision of language tuition plays a central role in these courses. These programmes do not take the shape of “direct state intervention in the life of their migration populations” (Bommes 2006: 63, SVR’s translation), but are instead to be seen as integration-specific measures of more general labour market and social policy (see also Chapter B.3). Some authors have interpreted (and implicitly criticised) this type of integration policy as being a form of state-driven cultural assimilation.¹⁸⁰ However, their argument is unconvincing as the content taught in the courses, while (unavoidably) containing some cultural influences, is not imparted with the aim of assimilating participants into a culturally homogenous national community. The courses chiefly focus on teaching immigrants knowledge of the (de facto) national language, and the orientation courses concentrate almost entirely on imparting basic information on the institutions of a particular country and other relevant elements of daily life. Integration courses can thus hardly

be interpreted as being a rebirth of a state-led policy of cultural assimilation, a policy which in a normative sense could not be justified, or as the “rebirth of nationalism or racism” (as Joppke 2007: 14, correctly states). This does not mean that the discourse is completely devoid of assimilating momentum. Liberal-democratic countries of immigration must find a balance between the requisite task of teaching basic normative rules of social cohesion and rejecting any attempt at defining societal values as homogenous and portraying their adoption as obligatory.

The described convergence tendencies, which, despite numerous historical, political and cultural differences in Swiss, French Dutch – and German – integration policy programmes, can clearly be discerned, are based on a “heavy dose of economic instrumentalism” (Joppke 2007: 16). As the state’s ability to redistribute welfare state provisions diminishes during periods of strained state finances, new arrivals are encouraged and coerced into firstly acquiring new skills in order to avoid long periods of welfare dependency (Entzinger 2003: 76) and secondly into making greater efforts to participate in the labour market. The economic usefulness of the immigrant population for the country of residence, and not their cultural idiosyncrasies and affiliations, is thus increasingly coming to the forefront of state considerations, an approach which Offe (2011: 351, SVR’s translation) and others have criticised as one-sided “migration productivism”. As part of this new alignment of state policy, the (de facto) official language, the teaching of which is at the heart of the programmes, should not be regarded as the “centrepiece of national identity” (Oberndörfer 2006: 41, SVR’s translation). The language is instead generally seen in an objective fashion, and migrants’ acquisition of language skills is actively promoted in order to enable them to quickly find employment. It consequently appears likely that states will seek to complement the structural and conceptual recasting of their integration policy with efforts to reinvigorate their labour market and social policies (see Chapter B.3) (see, among others, Thym 2010: 301; Weinbach 2005; Bommes 2006; Groh/Weinbach 2005; Michalowski 2006; 2007; Joppke 2007). In this context, Hansen (2012: 2) makes a good point about the challenges facing many European states in the field of immigrant policy when observing that the “problem isn’t culture, it’s cash” and ascertaining the “centrality of employment in immigrant integration in Europe”. This dominance of economic thinking which is becoming apparent in integration policy, is not new to the immigration discourse, but instead

¹⁸⁰ In this context, Organ (2010: 69–70, SVR’s translation) speaks of a “strict rule of forced cultural assimilation” in reference to the introduction of integration and naturalisation tests in Germany. Yet the author’s opinion fails to greatly convince, especially when considered against the background of the comprehensive, international comparative study carried out by Michalowski (2011: 749–768). This is the case even though the Dutch film *Naar Nederland* can indeed be seen as an attempt to culturally assimilate immigrants.

represents a central line of continuity in immigration policy in Europe (see, among others, Oltmer/Kreienbrink/Sanz Dias 2012).

It is also apparent – and in face of the parallelisms in the political control and management principles logical and not unexpected – that policy measures aimed at assisting immigrants are becoming ever less visible and are being increasingly integrated into the normal structures of labour market and social policy (SVR 2014: 159f.)

Joppke (2007) has labelled this facet of a convergent integration policy,¹⁸¹ which has already been comprehensively described in the literature, as ‘illiberal liberalism’. This apparently paradoxical expression denotes states’ attempts to pursue liberal aims – such as economic autonomy, self-sufficiency and independence from welfare benefits – with illiberal methods. These include obliging migrants to attend integration courses and threatening to revoke government transfer payments if they do not cooperate. **❗ This combination of liberal objectives with illiberal methods seems at first glance somewhat paradox. However, it is currently the common thread running through the integration policies of practically all European countries of immigration. It thus marks a transition from a period in which integration policy was dominated by overarching theories and technical master plans to a version of political pragmatism with a ‘thin’ and a process-oriented foundation.**

B.2.6 Politics for the Mainstream Population? Reasons for European Convergence

In the face of the sizable normative and historical differences between the countries, the converging policies of integration seen in national programmes aiming to promote the social participation of newcomers raise questions as to who and/or what is responsible for these developments. As a result of the comprehensive and extensive literature on the subject, the subject of policy change (see, among others, Sabatier 1993; Hall 1993; Holzinger/Knill 2007) cannot be examined at any length here. This report limits itself to providing two theoretical approaches which might help to explain this convergence: an economic-functionalist approach and one more based on political-institutional factors.

The functionalist argument is based on the observation that the immigrant populations in European countries of immigration have similar structural features: most immigrants resident in European countries are generally poorly qualified and a relatively small proportion engages in labour market activity (see also Chapter B.3). At the same time, many countries also find themselves in a difficult financial situation in which they are required to reduce welfare state expenditure. Subsequently, many countries pursue integration policy as a means of reducing government expenditure. From a functionalist viewpoint, integration courses are thus primarily an investment, which will hopefully be amortised in the medium term due to reduced transfer payments to immigrants. The results of an integration panel conducted by the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) have indeed shown that the integration courses may well have the desired effect, i.e. that they improve the structural and social integration of immigrants. However, this effect has still not been definitively proven (see SVR 2014: 140–141; Lochner/Büttner/Schuller 2013). The described convergence process thus results, according to this theory, from pressing integration policy problems stemming from a more general “crisis of the welfare state” (Michalowski 2007: 59, SVR’s translation). This is something which was not necessarily expected given the diverging economic and political structures and traditions of immigration policy.

The second analytical approach is the concept of “World Polity” (so coined by John W. Meyer; see, among others, Meyer et al. 1997), which has been developed out of the social scientific theory of neo-institutionalism. The term ‘world polity’ encompasses research and theoretical positions which systematically relate the conduct and actions of organisations (and thus implicitly states) – understood here as collective actors – to societal institutions. This theoretical model assumes that organisations do not adopt a rationally efficient and effective approach towards achieving targets. Instead, perceived or assumed expectations of their social environment, a domain which itself contains and is greatly influenced by social institutions, are often at the root of their decision-making calculations (Mayer/Roman 1977; Scott 2001). The rationality often attributed to organisations is thus a myth. Organisations adapt to their environment as a result of external pressure, the wish to uphold professional norms or by

181 Canada has resisted the convergence tendencies seen in the European countries of immigration analysed in this chapter. The recently initiated ‘initial integration programmes’ for immigrants operate on a voluntary basis, and the reciprocal obligation which has become the norm in Europe and as accentuated by the ‘integration contracts’ employed in France and Switzerland would probably be all but unthinkable in the country. In the face of the vastly differing traditions of integration policy, the large divergence between the approaches employed in Europe and Canada is logical and to be expected. The focus of the Canadian programme on improving immigrants’ labour market integration can nonetheless be interpreted as being part of this multinational convergence process.

processes of imitation. Meyer et al. (1997) have further developed these basic ideas and have endeavoured to ascertain why certain institutions, such as state-run education systems, are widespread. In their view, the worldwide expansion of certain institutions is not necessarily a result of their universal efficiency. Other factors, such as imitation (e.g. because it is seen as progressive to have an army), the effectiveness of cross-border epistemic communities (such as neoliberal financial capital managers) or (quasi) external pressures (e.g. because countries wanting to become members of the United Nations are obliged to recognise human rights) are just as important. There is strong evidence that 'institutional learning' between nation-states in the field of immigration and integration is, to a large degree, the result of such isomorphic mechanisms. According to this theory, convergence tendencies are thus less a consequence of careful considerations as to the appropriateness of certain measures and the extent to which they might be successfully transferred into national policy. Instead, they are more a result of states' decision to – more or less uncritically – imitate measures employed in other countries in order to secure legitimacy on the international stage.

For the purposes of this study, it is not necessary to definitively decide between these two – in any case not mutually exclusive – theoretical frameworks. It is instead sufficient to note that **the considerable political attention currently being given to issues relating to immigration and integration and its concomitant echo in the public discourse suggest that the political-institutional explanation probably contains at least a similar amount of explanatory potential as the economic-functionalist argumentation.** It thus follows that

the integration programmes, as an expression of a certain political 'body language', also have the function of showing the population that the state is taking action in this policy field. These courses aim to demonstrate that, at a period in which political actors advocate increased immigration flows in the wake of demographic developments and immigration rules have been liberalised (see Chapter A.1), policymakers are not ignoring the challenges posed by increased immigration. **The integration programmes therefore serve, inter alia, as an instrument of legitimacy and vindication.** In addition, the processes of mutual learning and adaptation may also be a result of uncertainty on the part of policymakers in different European countries about the appropriate way of tackling questions of migration and diversity. **A political strategy of 'institutional learning' which takes the form of adopting programmes and instruments which have already been tested in other countries with similar socio-structural and political conditions will thus be attractive – even though their exact influence on integration processes remain unknown.** The hope of using integration and language courses in order to legitimise and 'sell' domestic policy to a population which has sceptical views on some aspects of immigration is not by itself sufficient justification for the courses' existence. It is nevertheless an important supplement to their main function of increasing the speed with which new arrivals learn the (de facto) official language of the country of residence. A faster acquisition of language skills will also have positive effects on migrants' labour market integration and thus enable increased participation in the cultural and social spheres of German society.

General Labour Market and Social Policy Measures

Following the comparison of integration programmes exclusively targeted at immigrants in Chapter B.2, this chapter examines general labour market and social policy measures. In many cases, these are probably more important for labour market integration than special programmes (see SVR 2014; Collett/Petrovic 2014). It is hardly necessary to explain just why it is so important that immigrants participate in the labour market: migrants who successfully gain a foothold in the labour market do not merely receive financial, but also social and cultural capital which facilitates their participation in other sections of society. The state regards successful labour market integration as being important in order to prevent immigrants from turning into a burden on national welfare systems; immigration can thus be politically legitimised and above all the welfare state's social security systems can remain effective. In this context, two questions must be raised which cannot always be answered separately. The first is whether comprehensive social security benefits encourage the migration of people who are likely to claim benefits (as is suggested by the so-called magnet hypothesis) (Bauer 2002).¹⁸² The second and connected question is whether immigrants already resident in the country of residence are more or less likely to make social security claims than the non-migrant population.

The connection between immigration and welfare state performance was most recently publically discussed in the context of the lifting of the transitional controls on the freedom of movement of citizens of countries which joined the EU in 2007 (Romania and Bulgaria) in early 2014 (Guild/Carrera/Eisele 2013). In this context, the Austrian, German, Dutch and British interior ministers called on the European Commission to re-examine European social benefit legislation in April 2013.¹⁸³ This

chapter initially uses empirical data to analyse and compare immigrant labour market integration in different countries. It subsequently examines the extent to which immigrants (from EU member states and third countries) are covered by social legislation in countries with differing levels of social state protection. As a last step, the general labour market and social policies of the selected countries are examined.

B.3.1 Labour Market Integration and Social Benefit Receipt

Just as welfare state structures greatly influence the effectiveness of immigrant-targeted integration policies, so they also impact on immigrant labour market integration. The promotion of labour market participation has a different dynamic in welfare states based on a model of social insurance than in those which are tax-funded and guarantee a needs-based minimum income (Sainsbury 2012). The standard work of comparative welfare state research is Esping-Andersen's study on the "The Three Worlds of Welfare Capitalism" (1990), a book which has spawned a plethora of other surveys. In this seminal work, Esping-Andersen analyses 18 OECD countries and distinguishes three types or 'models' of welfare state: the 'liberal Anglo-Saxon' model, the 'conservative-continental European' model and the 'Social Democratic-Scandinavian' model. The advantages which the use of models brings to an analysis of integration policy strategies and the limits of this approach have already been discussed in Chapter B.2. These models should thus not be understood as providing an empirically reliable description of the different welfare state regimes; instead they provide merely heuristic support. They can be used as instruments

¹⁸² The small number of studies on this issue can provide no evidence or no convincing evidence for the magnet hypothesis. This hypothesis was specially analysed with reference to EU internal migration in the SVR's Annual Report (2013: 124–128) and will thus not be examined in any detail here.

¹⁸³ As Groenendijk (2013a) has shown, this scepticism towards freedom of movement is not a new phenomenon; there have been debates about 'social tourism' in most member states with each enlargement of the EU.

in comparative welfare state research in order to show general tendencies and important differences between welfare states (Ebbinghaus 2012; Sainsbury 2012).

The welfare state models discussed in the literature serve as the starting point for the choice of comparison countries.¹⁸⁴ The comparative analysis considers the following countries:

- (1) Great Britain, which has a limited range of welfare state benefits and can clearly be characterised as having a liberal Anglo-Saxon welfare state;
- (2) Austria as a conservative-continental European welfare state with generous social insurance provisions;
- (3) Sweden, the country which has shaped the 'Social Democratic-Scandinavian' model and whose welfare state is based on egalitarian-universalistic welfare protection principles;
- (4) The Netherlands, which is allocated to various groups in the literature¹⁸⁵ and can be regarded as a hybrid model located between the conservative and the social democratic models (see the summary analysis in Ebbinghaus 2012).

B.3.1.1 Unemployment

The unemployment rate, and especially the long-term unemployment rate, is one of the classical indicators of labour market integration. Table B.1 shows initially a well-known pattern: third-country nationals are much more frequently unemployed than citizens of the countries analysed; the share of unemployed citizens of other EU countries is located between those of third-country nationals and national citizens. One of the reasons for this pattern is that immigrants frequently become unemployed at periods of economic stagnation (most recently following the 2008/2009 economic crisis) due to their overrepresentation in vulnerable employment situations or in sectors which are more greatly affected by economic crises (OECD 2012a).

The differences between immigrants and non-immigrants are especially large in Sweden, whilst they are especially small in Great Britain. However, the proportion of all population groups who are unemployed for a prolonged period is relatively small in Sweden. The extent to which immigrants are successfully integrated into the labour market depends on three mutually interdependent factors: 1) the individual features of the immigrants (these include language competence, labour market

experience, skills, education level and region of origin), 2) the structural conditions in the immigration country (i.e. the economic and labour market situation) and 3) the policy measures implemented in the fields of education, labour market and integration (Benton/Fratzke/Sumption 2014). The relatively large discrepancies between immigrants' and citizens' labour market integration in Sweden can be at least partially attributed to the traditionally high proportion of humanitarian migrants among all migration inflows to the country. Countries do not habitually select refugees according to labour market-related criteria (this is also not the case with family migrants). As a result, these migrants often initially do not possess the skills needed by the local labour market and require longer to gain a foothold in the labour market. In addition, refugees in Sweden are obliged to participate in orientation courses, a factor which also further delays their labour market integration (Bevelander/Irstorza 2014).

Structural factors may also be responsible for the relatively modest differences between the unemployment rates of the local and immigrant populations in Great Britain: the British labour market is one of the least regulated in the OECD, a factor which "can enable easier entry into the labour market" (Benton/Fratzke/Sumption 2014: 16). In addition, immigrants possess comparatively high skill levels in Great Britain (Dustmann/Frattini 2014a). Germany is more at the lower end of all indicators displayed in Table B.1, a factor which suggests that a large proportion of immigrants successfully integrate into the domestic labour market. However, it is conspicuous that an especially high proportion of unemployed people in all groups (citizens, EU citizens and third-country nationals) are long-term unemployed.

(Long-term) unemployment is, however, merely one indicator of the differences in labour market participation and the underlying political strategies aimed at promoting participation, measures which are of particular interest in this chapter. In particular, diverging socio-legal definitions of employability can distort the picture of labour market integration in the comparison countries. Thus, several countries across all welfare state models have implemented a "subsidised reduction of the labour pool via occupational disability and illness" (Konle-Seidl/Lang 2006: 4, SVR's translation) in periods of economic crisis. This measure entails providing employees with greater opportunities to have an occupational disability diagnosed and to thereby withdraw from the labour market. Seidl,

184 In principle, the comparative analysis in this chapter is based on states, which 1) are countries of immigration to a similar extent as Germany and for which 2) comparative international data regarding migrant labour market integration and social benefit receipt is available. The decision to select EU member states was taken due to the criteria on the availability of data.

185 From the ten studies listed by Ebbinghaus (2012), three regard the Netherlands as belonging to the social democratic model, three to the conservative model and one to a so-called European model. Three other studies consider the Dutch welfare state as not belonging to any model.

Table B.1 Unemployment and long-term unemployment of 25-64 year olds by nationality in selected EU countries, 2013

	Unemployed					Long-term unemployed (12 months or more)				
	Unemployment rate			Unemployment rate of foreigners relative to that of citizens of respective state		Share of long-term unemployed relative to total unemployed of the respective group			Long-term unemployment rate of foreigners relative to that of citizens	
	Citizens	EU citizens	Third-country nationals	(EU citizens/nationals)	(Third-country nationals/citizens)	Citizens	EU citizens	Third-country nationals	(EU citizens/citizens)	(Third-country nationals/citizens)
Austria	3.6 %	7.1 %	10.3 %	1.97	2.86	29.5 %	19.5 %	23.4 %	0.66	0.79
Germany	4.6 %	6.6 %	12.0 %	1.43	2.61	49.5 %	38.4 %	48.3 %	0.78	0.98
Great Britain	5.3 %	6.1 %	9.5 %	1.15	1.79	42.4 %	24.8 %	36.2 %	0.58	0.85
The Netherlands	5.5 %	7.9 %	18.0 %	1.44	3.27	41.7 %	33.5 %	51.7 %	0.80	1.24
Sweden	4.9 %	9.8 %	27.3 %	2.00	5.57	24.5 %	26.9 %	30.1 %	1.10	1.23
EU28	9.0 %	11.7 %	20.5 %	1.30	2.28	51.6 %	41.3 %	49.6 %	0.80	0.96

Note: Statistics by nationality and not by country of birth, as the latter are unavailable for Germany.

Source: Eurostat 2014a; 2014e; SVR calculation and tabulation

Rhein and Trübswetter (2014, SVR's translation) attempt to avoid this problem in their analysis on economic (in) activity by including information about occupation disability and early retirement. The results of their study qualify the positive picture of the Netherlands and Sweden, countries which "until the economic and financial crisis in 2008/2009 were thought to employ particularly successful labour market policies."¹⁸⁶ In Sweden, foreigners are thus about twice as likely to belong to the group of long-term unemployed people as the population as a whole. In Great Britain, there are no differences between foreigners and citizens in this respect. This picture differs greatly from that in the Netherlands, where immigrants who do not (yet) possess Dutch citizenship are 61 percent more likely to suffer from long-term unemployment than the population as a whole. In Germany, in contrast, foreign citizens are only 9 percent more likely to belong to the group of the long-term unemployed than the general population.

B.3.1.2 Employment

The employment rate, i.e. the share of the population that is economically active, has become generally accepted as an important indicator for economic participation in international comparative surveys.¹⁸⁷ Chart 2 reveals that a high proportion of Swedish and, to a somewhat lesser extent, Dutch citizens are in gainful employment, whereas the proportion of employed third-country nationals, in contrast, is below both the EU average value and that of two other countries analysed in this section, Great Britain and Austria. This difference is probably due to the same factors mentioned above: rapid labour market access is inhibited in Sweden by the presence of 'unselected' humanitarian and family migration, and immigration to the Netherlands has long been shaped by the country's colonial history. The employment of foreigners in Great Britain, in contrast, is facilitated by the highly deregulated nature of the labour market and the

¹⁸⁶ The comparative study MIPEX, which is presented in Chapter C of this report, also regards Sweden as being "favourable overall for integration" (Huddleston et al. 2011: 189).

¹⁸⁷ Eurostat (2014c) defines 'employed persons' as "persons aged 15 years and over who, during the reference week performed work, even for just one hour a week, for pay, profit or family gain or who were not at work but had a job or business from which they were temporarily absent because of something like, illness, holiday, industrial dispute or education and training." This definition differs slightly from that employed by the International Labour Organisation (ILO).

country's comparatively early decision to concentrate on recruiting highly skilled migrants.

An examination of the changing employment rate of recent arrivals over time (not displayed here), usually shows gradually increasing labour market integration, seeing as migrants generally acquire the competences required by the local labour force (language, knowledge of the institutions) over time. This correlation can be confirmed for Germany and to a lesser extent for Great Britain and Sweden (Benton/Fratzke/Sumption 2014). A comprehensive analysis of the labour market integration of migrants must furthermore consider in exactly which types of employment migrants (are able to) engage. As Benton, Fratzke and Sumption (2014) demonstrate for six EU states, people who have immigrated in the last ten years are overrepresented in less qualified jobs to an extent that cannot solely be explained by their respective education levels: the proportion of the immigrant population working in lower-skilled jobs is higher than that of the non-migrant population with a similar education level.

B.3.1.3 Social Benefit Receipt

A direct consequence of failed labour market integration is welfare reliance. The question about the degree to which immigrants claim benefits is frequently discussed in the media under headlines such as 'social welfare tourism'. The ratio of the proportion of immigrants receiving support to the corresponding proportion of the general (non-migrant) population (in German known as the *Transferbezugsquote*) can be used to compare and contrast immigrant welfare claims in different countries. Whenever country-specific differences exist between the proportion of immigrants and that of natives receiving benefits, it is tempting to interpret a lower ratio as indicating that a higher proportion of the immigrant population have successfully integrated into the labour market.

However, it must be considered that such differences can also be a result of a lack of awareness among the immigrant population as to their benefit entitlements (Barrett/Maitre 2011: 1).

In order to compare immigrants' relative receipt of welfare benefits across different countries, economists use data from the European Union Statistics on Income and Living Conditions (EU-SILC) (e.g. Boeri 2009; Barrett/Maitre 2011; Zimmermann et al. 2012).¹⁸⁸ A recent study (Huber/Oberdabernig 2014) uses this data (from the 2009 survey wave) to compare the intensity of welfare dependency of migrants and non-migrants (by country of birth) in 16 different European countries.¹⁸⁹ The central finding of the study is that migration has no effect on the likelihood of welfare receipt. Put another way, any comparisons carried out between people from the immigrant- and non-immigrant sections of the population with similar socio-cultural characteristics will reveal no differences in the likelihood of social benefit receipt between both groups.¹⁹⁰ This finding is revealing, as it once more demonstrates that immigration and integration policy are strongly related. It also demonstrates that by actively selecting migrants whose presence fits the requirements of the country, states can increase the speed with which migrants (can) participate in the societal fields of education and employment.

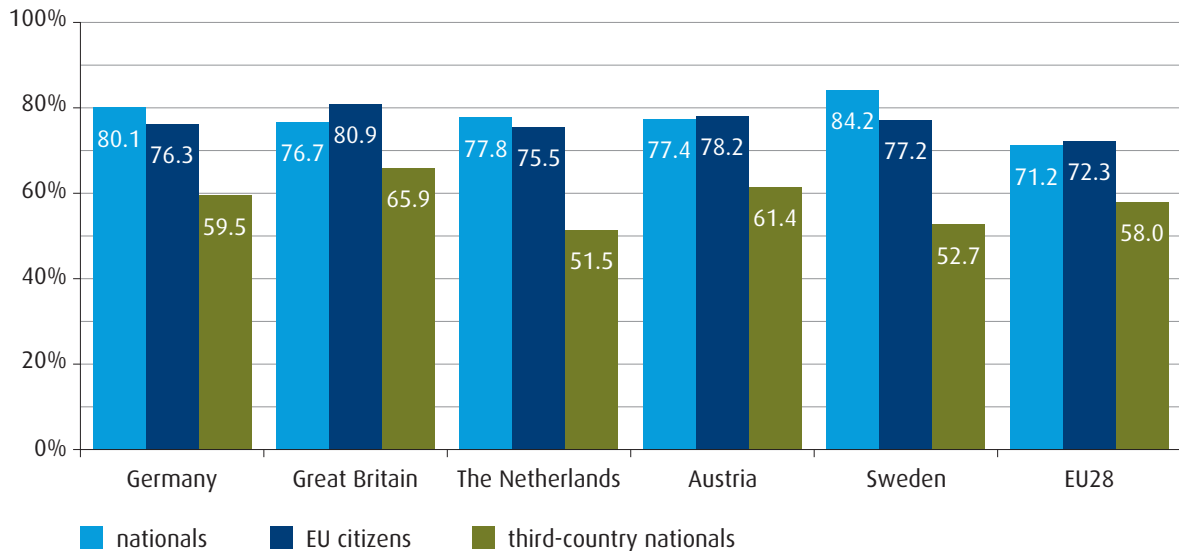
Economic analyses carried out in individual countries of immigration provide further clues as to the extent of immigrants' social benefit claims. Thus, Dustmann and Frattini (2014b) demonstrate in a study on migrant benefit claims in Great Britain between 1995 and 2011 that immigrants were less likely than British citizens living in the same region to receive state benefits or tax credits or to live in government-subsidised housing (i.e. social housing) in this time period. In general, migrants arriving in the country since 2000 have made a positive contribution to the British taxation and social welfare system. The authors emphasise in particular the sizeable financial

188 EU-SILC is the only investigation on income and living conditions which is harmonised at a European level and which enables a direct comparison between the results of all EU-member states (Statistisches Bundesamt 2011: 4). The survey has been conducted in all member states as well as in Norway and Iceland since 2005. The legal basis is found in Regulation (EC) no. 1177/2003 of the European Parliament and the Council of the European Union. EU-SILC collates both cross-sectional and longitudinal data; a total of 130,000 households and 270,000 people upwards of 16 years are questioned in order to obtain the cross-sectional data. Around 14,000 households are surveyed annually for the German survey "LEBEN IN EUROPA" (Life/Living in Europe) conducted as part of the EU-SILC investigation. The sampling frame is made up of permanent sample of households willing to be surveyed, which in turn is based on the results of the microcensus.

189 The Netherlands is one of the countries which Huber and Oberdabernig (2014) were unable to consider in their analysis due to a lack of appropriate data.

190 The analysis from Huber and Oberdabernig thus comes to the same conclusion as a range of other surveys with a similar focus. Zimmermann et al. (2012) carried out literature research and data analysis (with EU-SILC) as well as twelve country-specific case studies as part of the EU Programme for Employment and Social Solidarity PROGRESS (2007-2013). They came to the same conclusion that Huber and Oberdabernig (2014) came to later; according to their analysis, immigrants claim some social benefits more often and some less often than the native population. They also stress that "[t]he most clear-cut result to emerge from this [descriptive] element of the analysis is the greater likelihood of migrants being in poverty" (Zimmermann et al. 2012: xii.). The second half of the analysis shows that "taking account of characteristics such as age, education and family composition [...] the regressions generate a general pattern of lower rates of receipt among migrants relative to natives" (Zimmermann et al. 2012: xii-xiii).

Chart 2 Employment rate of 25-64 year olds by nationality in selected EU countries, 2013



Note: Statistics by nationality, as no data relating to migrants' country of birth is available for Germany.
Source: Eurostat 2014b; SVR calculation and tabulation

contribution made by immigrants from the EU 10 countries (i.e. those that acceded to the EU in 2004).¹⁹¹ The presence of immigrants also does not seem to represent a financial burden, but instead a boon for the German social welfare system: thus, according to Bonin (2014), people with foreign citizenship contributed a total of 22 billion euros to state finances in 2012. When benefit receipts are factored in, the net contribution per foreigner (i.e. the difference between the total tax and insurance contributions made by an average foreigner and his or her benefit claims) came to 3,300 euros in the same year. However, the question as to which income and expenses should be considered in calculations about the fiscal effects of immigration is a controversial one. In this context, Sinn (2015) comes to a completely different conclusion than Bonin: he calculates a fiscal loss to the German treasury of 1,800 euros per immigrant. These diverging findings can be explained by Sinn's decision to allocate a per-capita share of the costs of general state expenditure (such as road construction) to immigrants, an approach not employed by Bonin. It should in any case be pointed

out that any attempts to calculate the 'costs' or 'financial benefits' of immigration are fraught with methodological difficulties, and that the results should consequently be interpreted with a large degree of caution. When examining the fiscal contribution of immigrants in this fashion it is, for example, extremely problematic to directly attribute the costs of state benefits, and particularly the costs of public service provision, to benefit claimants. Some of the positive financial effects of migration are also frequently ignored in any calculations over the 'costs' of immigration. These include the indirect fiscal effects of immigration, such as its influence on the labour market, as well as its impact on economic growth or structural changes in different economic sectors of the economy. The total fiscal contribution that immigrants make over the course of their entire lifetime thus cannot be calculated to within 1,000 euros or 100 euros. The majority of studies published to date suggest, however, that immigrants make a more positive than negative contribution to state finances (see von Loeffelholz et al. 2004 for a survey of the literature).

¹⁹¹ It is interesting to observe that large differences exist between the public perception of immigration and the actual situation 'on the ground': the British public perceive the presence of immigrants as negatively affecting the country's welfare state. In Norway, this opinion is considerably less prevalent, although immigrants are less well integrated into the labour market and make more welfare state claims than immigrants living in Great Britain (thus the analysis of Bratsberg/Raaum/Røed 2014); the comparison between the two countries is made by Dustmann and Frattini (2014a).

B.3.2 Equal Treatment within the Social State: The Concept of ‘Tiered Solidarity’

The empirical findings on immigrants’ benefit claims briefly presented in Chapter B.3.1 have not answered the question as to what options nation-states can employ in order to differentiate between foreigners and citizens in the field of welfare legislation. The previous pages have revealed that a type of ‘participation gap’ exists: in most cases, immigrants’ labour market integration rates remain below those of the population without a migration background. Against this backdrop, countries wishing to actively manage immigration might be tempted to differentiate between the non-immigrant and immigrant populations when according social benefits in order to prevent ‘immigration into the social welfare system’. States’ ability to withhold (benefit) rights from immigrants which are conferred on citizens has greatly diminished in the last few years, a development which is also a consequence of a series of European and national legal rulings. The legal situation is generally speaking highly complex and the legal framework for access to social benefits is “highly fragmented” across the EU (Guild/Carrera/Eisele 2013: 132). In any case, the benefit entitlements accorded to EU citizens must be examined separately from those granted to third-country nationals.

B.3.2.1 Social Benefit Provisions for EU Citizens

In the EU, social welfare systems are the prerogative of the individual member states. However, a system has existed since 1971 which coordinates social security systems across the EC/EU (Cornelissen 2013).¹⁹² As major differences exist between the social welfare systems of EU member states, this coordination system must reconcile two goals. On the one hand, it must prevent EU citizens from losing previously-accrued benefit entitlements when moving to another EU member state, as

this would go against the EU principle of the freedom of movement for workers and would be a negative incentive to worker movement inside the Union. On the other hand, it must prevent people from ‘playing the system(s)’ by simultaneously making social benefit claims in different countries (Benton 2013). According to Article 3 of the Coordination Regulation (Reg. (EC) no. 883/2004), the coordination system encompasses various branches of social security (health, accident and invalidity insurance, pensions, family benefit and unemployment benefit) as well as so-called special non-contributory benefits. The German Basic Unemployment Insurance (*Grundsicherung*) belongs to the latter group of benefits, i.e. to the group of benefits “with a hybrid character” (Art. 70 Reg. no. 883/2004; Thym 2014c: 82, SVR’s translation).¹⁹³ Basic social assistance (*Sozialhilfe*) (i.e. benefits conferred on people requiring assistance who are unable to work), is explicitly excluded from the coordination system; member states have retained a greater room to manoeuvre here (see below). The Coordination Regulation contains a clause guaranteeing equal treatment (Art. 4 Reg. 883/2004): EU citizens cannot be excluded from social security benefits merely due to their citizenship and in principle are to be treated as citizens of the respective EU state. The Free Movement of Citizens Directive also contains a clause guaranteeing equal treatment for all Union citizens. This also applies to basic social assistance. Both the freedom of movement Directive and legal rulings of the European Court of Justice (ECJ) allow exceptions and restrictions; “the ECJ’s established jurisprudence [allows] member states [to specify] unequal access to social benefits” (Thym 2014c: 87, SVR’s translation).

Table B.2 displays how EU citizens’ right to reside is regulated in the Free Movement of Citizens Directive (Article 7, Directive 2004/38/EC). Gainfully employed persons (employees and self-employed) are integrated into the social system of the country of residence to the same extent as citizens. Unemployed EU citizens who have previously been employed for more than a year in another EU country retain their employee status and, despite

192 The coordination system contains no stipulations as to social benefit legislation in the member states, but instead restricts itself to regulating the ‘exportability’ of benefits and determining which member state is responsible for differing welfare state claims. A number of benefits, such as “old-age and invalidity insurance as well as pensions are (therefore) paid during a stay in another member state”, and entitlements to unemployment benefit can exist under certain conditions for up to six months “after relocation to another EU member state” (Hailbronner 2014: 298, SVR’s translation).

193 Whilst most benefits can be exported to other EU countries via the coordination system, these ‘hybrid’ benefits cannot be exported to other member states and are instead exclusively conferred by the member state in which claimants reside. No official statistics on the number of inactive EU citizens living in other member states exist. A report has recently been commissioned by the European Commission aimed at ascertaining the extent to which economically inactive internal EU migrants’ entitlements to certain non-contributory monetary and healthcare benefits impact on the social security systems of member states. This report found that immigrants constitute – depending on the data set employed – between 0.7 and 1.0 percent of the entire EU population (Juravle et al. 2013: 13). In Austria, Germany, Great Britain and the Netherlands, the rate of inactive EU immigrants is between 8 and 12 percentage points below that of the local population; the only EU country in which the proportion of inactive EU migrants is slightly higher (about 1 %) than that of the non-migrant population is Sweden (Juravle et al. 2013: 18f.).

Table B.2 Residence entitlements for EU citizens by economic status

Length of stay and/or employment status	Worker	Less than three months, unemployed and economically inactive	More than three months, unemployed	More than three months, economically inactive	More than five years
Right of residence	Unconditional	Unconditional	At least six months unconditional, afterwards conditional on the general possibility of finding employment	Under the proviso that they have enough financial means and health-care insurance	Unconditional

Source: SVR research and compilation

their (temporary) unemployment, are entitled to equal treatment.¹⁹⁴ European law also dictates that the marginally employed (*geringfügig Beschäftigte* – a German legal term referring to people earning little money and/or working a limited number of hours) who earn less than the basic cost of living and as a result receive supplementary welfare benefits (known in German as *Aufstocker*) should also be seen as ‘workers’. Whilst ‘workers’ enjoy unconditional freedom of movement, this entitlement is limited for other (economically inactive) EU citizens.

Altogether, it can be seen that Europe is a relatively long way down the road towards a social union (SVR 2013) and that member states now have very limited opportunities to differentiate between their own citizens and EU citizens. The fact that the population sees this differently and favours a stricter differentiation between citizens and EU citizens is another – equally important – finding.¹⁹⁵

Thus, who is entitled to social benefits and under what circumstances? To start with, it should be stressed that the ECJ has consistently pronounced that there is in principle nothing to prevent rendering the granting “of social security benefits to Union citizens who are not economically active being made conditional” upon

their residence entitlement in the country of residence (ECJ, judgement of 19.09.2013, C-140/12, *Brey*). Member states are thus entitled to exclude those EU citizens from social security benefits who do not fulfil the conditions outlined in Table B.2. In a judgement from 2014, the ECJ thus ruled that economically inactive persons who “do not have sufficient resources and thus cannot claim a right of residence in the host Member State [...] cannot invoke the principle of non-discrimination” contained in Article 24(1) of the Directive (ECJ, judgement of 11.11.2014, C-333/13, *Dano*).¹⁹⁶ In general, people who are not gainfully employed or self-employed must demonstrate “sufficient resources” (examined in detail in SVR 2013: 69f.) in order to make use of their right to freedom of movement inside the EU (Directive 2004/38/EC, Article 7[1]) whilst not becoming “an unreasonable burden on the social assistance system of the host Member State” (ECJ, judgement of 19.09.2013, C-140/12, *Brey*).

Social assistance claims are thus contingent on right of residence. Conversely, immigrants making inappropriate social assistance claims can have their residence entitlement revoked. This does not happen automatically: the ECJ ruled in the aforementioned case of *Brey* (September 2013) that “Member States must accept a certain number

194 According to jurisprudence of the ECJ a ‘worker’ is “any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary” (ECJ, judgement of 04.06.2009, jc. C-22/08 and C-23/08, *Vatsouras and Koupatantze*, Articles 26 to 30). Workers can lose their status during their first year in another country. If they discontinue their employment in this period, they are then only regarded as being ‘workers’ for the following six months (Article 7[3], letter c, Directive 2004/38/EC).

195 The results of a representative opinion poll carried out by the SVR found that differences existed between the perceived minimum requirements which immigrants have to fulfil in order to claim benefits and interviewees’ personal views about how long immigrants should have to wait before being granted benefit entitlements. The interviewed persons tended to favour obliging migrants to wait longer before granting them access to social security benefits (Chart 6 in Appendix I).

196 In this particular case the social court of the city of Leipzig had presented a case to the ECJ: the city’s job centre had turned down a Romanian woman’s application for non-contributory German unemployment benefit (known in German as unemployment benefit II or *Hartz IV*) as, in the view of the court, she had not entered Germany to search for work and was not endeavouring to find employment. Ms. Dano had protested against this decision.

of social security claims from economically inactive persons” (Thym 2014c: 82, SVR’s translation).¹⁹⁷ Social security transfers are not in themselves problematic, these must not be “inappropriate”; this is however a “notoriously open formulation which needs to be concretised” (Thym 2014c: 85, SVR’s translation). Broadly speaking, the place of employment is decisive for social security benefits. The country of habitual residence is responsible for social insurance claims made by economically inactive persons.

More precise rules exist for the conferral of social assistance benefits. European law allows economically inactive persons to be excluded from these benefits for the first three months of their stay and unemployed persons (i.e. people *searching for work* – *Arbeitsuchende*) for the entire period in which they are searching for employment (Article 24[2], Directive 2004/38/EC). The key issue here is the exact definition of ‘social assistance benefits’ and thus the extent of entitlements to such benefits. This issue is especially pertinent as regards the question about whether migrants can be excluded from special non-contributory benefits.¹⁹⁸ The ECJ ruled in the cases brought by *Vatsouras and Koupatantze* (ECJ, judgement of 04.06.2009, joined cases C-22/08 and C-23/08, *Vatasouras and Koupatantze*) that “benefits of a financial nature which, independently of their status under national law, are intended to facilitate access to the labour market cannot be regarded as constituting ‘social assistance’ within the meaning of Article 24(2) of Directive 2004/38”. It judged that EU citizens “seeking employment in another Member State who have established real links with the labour market of that State” are entitled to benefits which are “intended to facilitate access to the labour market.” This decision did not refer to all migrants from other EU countries, but instead merely to EU citizens who had already been employed for a short period in Germany and had applied for basic social benefits (non-contributory unemployment benefit). All in all, it has been clearly established in the last few years that benefits regulated in Germany in SGB II (non-contributory unemployment benefit) and in SGB XII (general social assistance for people who are unavailable for the labour market) fall under the social assistance category as defined by the exclusion clause in Article 24(2) of Directive 2004/38 (ECJ, judgement of 11.11.2014, C-333/13, *Dano*). Yet despite the seemingly clear rules contained in Article 24(2) of the Directive, the ECJ must still decide

whether unemployed people who have never been economically active in the country of residence have an entitlement to these benefits.

A further issue concerns the extent to which economically inactive persons are entitled to social assistance benefits and ‘hybrid benefits’ – i.e. non-exportable benefits which are not funded through employer and employee contributions – during the first three months of their stay in another EU country. According to current European jurisprudence, “a partial decoupling of the right of residence from the right to benefit entitlements” in the sense of a “tiered solidarity” (Thym 2014b: 89, SVR’s translation) exists for EU citizens. In the light of the *Dano* judgement it is, however, also clear that persons who make no effort to integrate into the labour market of the country of residence cannot invoke the right to freedom of movement in order to claim benefits. Persons economically inactive can furthermore have their access to social security benefits made conditional on the existence of ‘real links’ to the country of residence’s labour market. If, for whatever reason, they are not actively seeking employment (e.g. due to a disability) they can instead be required to demonstrate a certain degree of societal integration (Hailbronner 2014: 462).

EU member states thus enjoy certain, although limited, powers of discretion to limit social assistance benefits. The British government is one executive which makes active use of this room to manoeuvre: it has thus subjected EU citizens who have applied for Jobseekers Allowance (JSA) – a ‘hybrid’ benefit to which unemployed people capable of employment are entitled – to a so-called rights-to-reside-test since 2004, i.e. since the accession of ten Eastern European countries to the Union. This test is intended to determine whether the persons involved genuinely have their main place of abode in Great Britain (Juravle et al. 2013: 63f.). Cornelissen (2013: 104) doubts whether the test is compatible with EU law, as in his view the notion of residence in “the Council Regulation 1408/71 [...] never depended on the legality of that residence”, but instead on the “centre of interests” of the persons involved.

The Dutch government has also attempted to introduce legislation preventing an alleged misuse of benefits by immigrants. The country’s minority government, which was at the time reliant on the votes of the far-right populist *Partij voor de Vrijheid* (PVV) of Geert Wilders, suggested two measures between 2010 and 2012: firstly

197 This case was about whether the taxation-funded Austrian compensation allowance should be conferred on a German pensioner who had previously worked in Austria. According to a case study commissioned by the European Commission, only 0.3 percent of people receiving the said compensation allowance in 2012 were EU citizens who were simultaneously drawing a pension from another member state; the number of cases of this nature has, however, slightly increased in the last few years (Juravle et al. 2013: 152f.).

198 According to a ruling of the ECJ, social assistance refers to benefits which aim to ensure that recipients have sufficient resources to support themselves. This definition is valid irrespective of social benefits’ classification in national law (Hailbronner 2014: 463).

tightening the expulsion criteria for foreign citizens (EU citizens and third-country nationals) receiving social benefits and secondly rendering the receipt of social assistance contingent on the successful completion of a Dutch language test. This language test can also be found in the coalition agreement of the current conservative-social democratic coalition (made up of the *Volkspartij voor Vrijheid en Democratie* [VVD] and the *Partij van de Arbeid* [PvdA]). Groenendijk (2013a: 8f.) regards the test as being incompatible with the European Directives 2004/38/EC and 2003/109/EC, a situation which illustrates the “large symbolic character of this intended policy”. However, at the time of publishing, the planned regulation had neither been implemented nor has its compliance with European law been fully cleared.

The ECJ jurisprudence in the *Dano* judgement has underlined once more that immigrants’ entitlement to freely move within the single labour market and their labour market integration are closely intertwined. It remains to be seen whether this legal framework will be amended with respect to EU citizens actively seeking employment in the future (see above). Countries have furthermore the ability to react to social benefit fraud by expelling ‘benefit cheats’ from their territory. In Germany, the Federal Parliament (*Bundestag*) and Federal Assembly (*Bundesrat*) enacted an amendment to the Freedom of Movement Law/EU (*Freizügigkeitsgesetz/EU*) in November 2014. This measure aims at temporarily preventing EU migrants who have committed deception or abused rights from re-entering the country (Deutscher Bundestag 2014). This measure will probably have only a limited effectiveness, as it is unlikely that social benefit fraud is a frequent occurrence or can be proven where it does occur.

B.3.2.2 Social Benefit Options for Third-country Nationals

Third-country nationals’ entitlements to welfare benefits also vary greatly depending on the relevant benefit specifications (Table B.3). This group of individuals have only a limited entitlement to non-contributory benefits: from the six EU Directives on migration which were passed between 2003 and 2012,¹⁹⁹ only Directive 2003/109/EC guarantees third-country nationals equal treatment to social assistance benefits, and this only if they have a secure residence permit. The other Directives usually make the right to reside conditional on proof of sufficient

income and allow the member states to regulate to what extent and under which circumstances they wish to make non-contributory benefits available to third-country nationals (Groenendijk 2013b). Only the Qualifications Directive (Directive 2011/95/EU) grants recognised refugees an unconditional residence status and equal treatment as regards access to social benefits. Third-country nationals have greater entitlements to contributory social security benefits; four of the six Directives contain rules on this issue (Groenendijk 2013b). They only have a genuine entitlement to equal treatment, however, when they have lawfully resided for at least five years in a member state and have been granted a permanent right of residence.²⁰⁰

In line with the guidelines contained in the EU Directives, German law requires third-country nationals wishing to obtain a right of residence to generally prove that they can fund their own livelihood without claiming non-contributory benefits (see Section 5[1] and the connected Section 2[3], Residence Act). Family benefits (child benefit, supplementary children’s allowance, childcare payments, parental allowance) together with student grants and bursaries are normally excluded from this requirement (see Section 2[3], no. 2, Residence Act). The receipt of such benefits thus does not generally have a negative impact on the residence entitlement; migrants from third-countries can therefore claim these benefits in order to prove that they have sufficient income to fund their own livelihood.

As regards equal treatment with citizens, the jurisprudence of the Federal Constitutional Court (*Bundesverfassungsgericht*, FCC) is relevant, as are the (limited) stipulations contained in European law. In this context, the FCC judged in February 2010 that the German Basic Law (*Grundgesetz*) guarantees all people resident in Germany a “fundamental right to the guarantee of a subsistence minimum” (FCC, 09.02.2010 – 1 BvL 1/09; 1 BvL 3/09 and 1 BvL 4/09). All persons are entitled to this right irrespective of their citizenship or residence status. In its judgement on the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz* [ASBA]) of 18 July 2012, the Federal Court ruled that migration policy considerations cannot justify reducing benefits to a level below the physical and socio-cultural subsistence minimum; human dignity guaranteed in the Basic Law “may not be modified in light of migration-policy considerations”. In defining the details of existential benefits the legislature may only differentiate between different groups of individuals if their

199 These are: Directive 2003/86/EC on the right to family reunification, Directive 2003/109/EC for long-term resident third-country nationals, Directive 2004/114/EC for students, Directive 2005/71/EC for researchers, Directive 2009/50/EC for highly qualified employees (the Blue Card Directive) and Directive 2011/98/EC on a single application procedure for a combined permit for third-country nationals.

200 Third-country nationals who migrate within the European Union or otherwise fulfil the criteria of an agreement which is valid in all parts of the EU are also subject to the guidelines contained in the aforementioned Regulation (EC) 883/2004. As previously mentioned, this Regulation coordinates the differing social security systems in the Union (see Article 1, Regulation [EU] 1231/2010).

Table B.3 Social benefits for third-country nationals as defined in the EU migration Directives

Directive	Social Assistance	Social Security
Directive 2003/86/EC (Family reunification)	Right of residence conditional on ability to sustain living standards without state assistance Principle of equal treatment with citizens does not apply	Principle of equal treatment with citizens does not apply
Directive 2003/109/EC (Third-country nationals holding a long-term residence permit)	Conferral of a long-term residence entitlement conditional on ability to sustain living standards without state assistance Principle of equal treatment with citizens applies after conferral of long-term residence status (with restrictions) ²⁰¹	Principle of equal treatment with citizens applies following conferral of long-term residence status (with domicile in country of residence)
Directive 2004/114/EC (Students)	Right of residence conditional on ability to sustain living standards without state assistance Principle of equal treatment with citizens does not apply	Principle of equal treatment with citizens does not apply
Directive 2005/71/EC (Researchers)	Right of residence conditional on ability to sustain living standards without state assistance Principle of equal treatment with citizens does not apply	Principle of equal treatment with citizens applies
Directive 2009/50/EU (Highly qualified employees [Blue Card])	Guaranteed minimum income as precondition for right of residence Principle of equal treatment with citizens does not apply	Principle of equal treatment with citizens applies with restrictions (Blue Card can be revoked if holder is unemployed for more than three months or is frequently unemployed)
Directive 2011/95/EU (Qualification Directive for refugees)	Principle of equal treatment with citizens applies	Principle of equal treatment with citizens applies
Directive 2011/98/EU (Framework Directive for worker entitlements)	Principle of equal treatment with citizens does not apply	Principle of equal treatment with citizens applies with restrictions (among others, the state's ability to revoke the right of residence remains untouched)

Source: SVR research and compilation

201 Member states can limit equal treatment to certain "core benefits" (Article 11[4], 2003/109/EC).

existential benefit needs significantly deviate from those of other persons in need (FCC, 18.07.2012 – 1 BvL 10/10, 1 BvL 2/11). The Federal Parliament implemented the jurisprudence of the Constitutional Court with the amendment to the Asylum Seekers Benefits Act of 6 November 2014.

The FCC has also made clear in a number of judgements that any attempts to discriminate against third-country nationals in terms of the conferral of social benefits which are not intended to guarantee the subsistence minimum (i.e. voluntary non-contributory benefits), must be sufficiently justified (FCC, 06.07.2004 – 1 BvL 4/97, 1 BvL 6/97; FCC, 09.02.2010 – 1 BvL 1/09; 1 BvL 3/09 and 1 BvL 4/09; FCC, 18.07.2012 – 1 BvL 10/10, 1 BvL 2/11). According to these judgements, third-country nationals can be denied benefits in certain circumstances. In this context, a sufficient reason for refusing to grant people family benefits aimed at promoting a sustainable population development in Germany might be, for example, that the persons affected are not going to stay in Germany and thus do not belong to the target group of the said benefit (Britz 2014: 59).

Table B.4 provides a summary of the extent to which third-country nationals are entitled to social benefits in Germany. It shows their rights to basic social security benefits (i.e. non-contributory and ‘hybrid’ benefits) regulated in SGB II (volume II of the German social insurance code), child benefit and parental allowance (family benefits) and insurance-based (i.e. contributory) unemployment benefit regulated in SGB III (volume III of the social insurance code). The degree to which these regulations are consistent with the jurisprudence of the FCC still has to be definitively resolved.

Other (mostly more stringent) conditions apply for benefits granted for the purposes of an apprenticeship (benefits regulated in the Federal Training Assistance Act [*Bundesausbildungsförderungsgesetz*, BAföG]; vocational training grants are regulated in SGB III; “Meister[mas-ter]-BAföG” grants are regulated in the so-called Upgrading Training Assistance Act [*Aufstiegsfortbildungsförderungsgesetz*, AFBG]) (for further information see Section 8, BAföG, Section 59 SGB III and Section 8 AFBG respectively). Third-country nationals holding a residence permit issued for purposes of study or apprenticeship generally receive neither benefits regulated in BAföG nor vocational training grants. At present, third-country nationals who have temporary leave to remain (*Duldung*) or are in possession of a humanitarian residence permit can only claim the aforementioned benefits if they have resided for at least four years in the country. The same is true of people holding a residence permit issued for the purpose of family reunification, insofar as family members already living in Germany have not been granted an unlimited residence permit. However, the German authorities currently intend to reduce the minimum period of

residence required before these benefits – with the notable exception of the Master-BAföG – can be claimed to 15 months from 1 August 2016 onwards. In so doing, the minimum time requirements will be brought into line with those contained in the new regulations of the SGB II and the Employment regulations (*Beschäftigungsverordnung*, BeschV) (see Section 1[5], Section 3[4] and Section 6[2] in the 25th amendment of the Federal Training Assistance Act [BAföGÄndG-E], BT-Drs. 18/2663).

The information provided in this section has shown that EU member states have now very few possibilities to differentiate by citizenship when granting access to social security systems. The declining ability of member states to differentiate between ‘insiders’ and ‘outsiders’ in this field may well have been a contributory factor in the decision to reform the relationship between the welfare state and its clients (i.e. the much discussed ‘activating’ welfare state).

B.3.3 Labour Market Policy: A Convergent Development Towards the ‘Activating’ Welfare State

In its 2014 Annual Report, the SVR attributed the improved labour market integration of immigrants which has been observed in Germany in the last few years at least partly to structural reforms of the German labour market (Box 3). Yet the shift from a supportive to an ‘activating’ welfare state is in no way a German specificity. Instead, many OECD countries have recently reformed their labour markets and their social security systems with the aim of improving the ratio of net contributors to net recipients of contributions (for international comparative studies and/or a description of these general trends see, among others, Eichhorst/Konle-Seidl 2008; Dingeldey 2009; Bonoli 2010; Immervoll 2012; Immervoll/Scarpetta 2012).

The common thread running through these welfare state reforms is the greater focus on labour market ‘activation’, understood as “a combination of policy tools that support and incentivize job search and job finding, productive participation in society, and becoming and remaining self-sufficient and less dependent on public support” (Immervoll 2012: 1). The aim of a labour market policy of this nature is to ensure that people become economically independent and do not need to rely on state benefits. It is complemented by the previously described integration programmes (Chapter B.2) exclusively targeted at immigrants, and affects both people with and without a migration background.

Policies aimed at boosting labour market participation by providing incentives are not new. Their beginnings go back to the 1950s; elements of an activating labour market policy were then tested by many European countries in the 1970s as a result of large-scale unemployment

Table B.4 Third-country nationals' benefit entitlements guaranteed in German law

Basic insurance regulated in SGB II (non-contributory benefits)	Child benefit and parental allowance (family benefits)	Unemployment benefit regulated in SGB III (contributory benefits)
No regular residence permit (asylum seekers, person with exceptional leave to remain, <i>Duldung</i>)		
<ul style="list-style-type: none"> – Entitlement after a prior residence of 15 months (Section 2[1] ASBA new, Section 7[1], no. 2 and no. 3 SGB II) – Prior to this, benefits consistent with the Asylum Seekers Benefits Act 	<ul style="list-style-type: none"> – No entitlement (Section 1[7], Act on Parental Allowance and Parental Leave [BEEG]; Section 62[2] German Income Tax Act) 	<ul style="list-style-type: none"> – Conditional on permission to work, permission can generally be granted after 3 months (Section 61[2], no. 1 Act governing Asylum Procedure, Section 32[1] BeschV [employment regulations]),²⁰² waiving of so-called priority review after 15 months²⁰³ – Otherwise as citizens
Temporary acceptance for humanitarian reasons		
<ul style="list-style-type: none"> – Entitlement after a prior residence of 15 months (Section 2[1] ASBA new, Section 7[1], no. 2 and no. 3 SGB II) – Prior to this, benefits consistent with the Asylum Seekers Benefits Act 	<ul style="list-style-type: none"> – Entitlement after a prior residence of 3 years; further limitations also apply (Section 1[7] BEEG, Section 62[2] German Income Tax Act) 	<ul style="list-style-type: none"> – As citizens – Holders of a residence permit according to Section 22ff. of the Residence Act are either legally allowed to work or they can be issued with a work permit without the job centre giving prior consent
Other forms of temporary residence (apprenticeship, further and higher education, employment without extension option)		
<ul style="list-style-type: none"> – Right of residence conditional on ability to sustain living standards without state assistance 	<ul style="list-style-type: none"> – No entitlement 	<ul style="list-style-type: none"> – Stay for education or higher education purposes: no entitlement as permit holders do not have unconditional access to labour market – Stay for employment purposes: legal consequences for residence entitlement if position is lost
Temporary right of residence with prospect of remaining in country		
<ul style="list-style-type: none"> – Right of residence usually conditional on ability to sustain living standards without state assistance – Entitlement to Basic Social Security commensurate with Section 7 SGB II when the right of residence is not merely issued to enable foreigner to search for work and when foreigner is permitted or could be permitted to work – However: the residence permit cannot be extended if SGB II is claimed and no exceptional circumstances are fulfilled 	<ul style="list-style-type: none"> – As citizens – Benefits are considered when the income necessary to maintain living standards is calculated. These have no negative impact upon right of residence 	<ul style="list-style-type: none"> – Stay for employment purposes: legal consequences for residence entitlement if position is lost
Legally recognised refugees		
<ul style="list-style-type: none"> – As citizens 	<ul style="list-style-type: none"> – As citizens 	<ul style="list-style-type: none"> – As citizens
Long-term residence permit (settlement permit, EU long-term residence permit)		
<ul style="list-style-type: none"> – As citizens 	<ul style="list-style-type: none"> – As citizens 	<ul style="list-style-type: none"> – As citizens

Source: SVR research and compilation

(Bonoli 2010). The decisive “activation turn” (Bonoli 2010: 20) took place in the mid-1990s; other organisations, such as the OECD and the European Union have advocated the adoption of corresponding labour market policies since this period (Dingeldey 2009). Converging labour market trends can thus – at the very least in Europe – be observed. This does not mean that the countries involved are moving towards adopting a uniform policy of labour market activation.²⁰⁴

Eichhorst and Konle-Seidl (2008) speak of a process of “contingent convergence” with reference to Germany, France, the Netherlands, Switzerland, Great Britain, the USA, Sweden and Denmark: while the instruments, target groups and organisational structures are becoming increasingly similar, the labour market policy strategies of the individual states continue to be influenced by particular national specificities. Indeed, Dingeldey (2009) goes so far as to actively stress the differences between states when speaking of a “divergent convergence” as regards the activating labour market strategies employed in Denmark, Germany and Great Britain. The following pages will briefly trace the development of labour market policy strategies from welfare to workfare in the countries selected.

B.3.3.1 Great Britain: Activation Policies With the New Deal

British social and labour market policies are characterised by the belief in a classical market liberalism and have traditionally been based “on the core principles of equality of opportunity and self-reliant individualism” (Hemerijck et al. 2013: 13). As a result, the main aim of this liberal welfare state was for many years to provide the deserving poor with a (more modest) minimum income (Mitton 2008). From the 1980s onwards, Conservative governments implemented “a series of radical modifications” (Mitton 2008: 264, SVR’s translation) to the British labour market with the aim of making the country internationally more competitive. During the governments led by Thatcher (1979–1990) and Major (1990–1997) social security systems were increasingly privatised and the total level of social security was reduced. The governments of the time accepted rising societal inequality as the price for reducing the amount spent on state-funded welfare state benefits (Mitton 2008).

While a policy of labour market activation was initiated by the Conservative government led by John Major with the implementation of the Job Seeker’s Allowance in 1996, it was expanded and extended under the (New) Labour government of Tony Blair. The New Deal programme, which was first conceived as a means of tackling youth unemployment, became transformed in the following years into a comprehensive programme of labour market activation (Dingeldey 2009). In line with the famous social policy metaphor that a ‘trampoline’ should be preferred to a ‘hammock’ (Hemerijck et al. 2013: 14), the payment of social security benefits was made conditional upon unemployed persons proving that they were endeavouring to find work or had attended further training. People failing to cooperate with the rules when searching for employment were penalised with reduced benefits rights. In addition, in line with the strategy of ‘making work pay’ lower wages were topped up in order to provide people with a greater incentive to enter employment. Alongside these reforms, training and work placement schemes were increasingly placed in private hands (Dingeldey 2009) and the administrative separation between the Employment Service and the Benefit Administration was dissolved.

B.3.3.2 The Netherlands: Reform of Disability Insurance

For many years, the Netherlands had guaranteed an expansive welfare state with a correspondingly large array of generous benefits (see, among others, Pioch 2000: 79). The sale of North Sea gas enabled the state to guarantee these government-organised social insurance benefits over a prolonged period of time (see van Paridon 2003: 381). However, this focus on the export of raw materials resulted in the country facing a huge range of social and economic policy challenges in the years following the global economic recession which took hold from the early 1980s onwards: when the first revenues generated by the sale of raw materials gradually started to fall away at this time, the Dutch state became increasingly unable to fund the generous state social benefits.

As in other countries, the dictum ‘welfare without work’ can be used to describe the Dutch strategy of relieving the labour market through generous state social measures which were mostly unconnected to labour

202 See BT-Drs. 1528/18 of 28.05.2014 and BR-Drs. 383/14(B) of 19.09.2014.

203 See the German government’s declaration on the ‘TOP 5’ made during a session of the Federal Assembly on 19.09.2014. However, the general employment ban for people who enter the country for economic reasons or for people who cannot be deported in line with Section 33 of the German employment regulations remains intact.

204 The EU influences the welfare state systems of the member states directly through the above-mentioned Directives. Yet its indirect influence on the freedom of movement of workers is much greater (Greve 2014): the latter puts welfare states characterised for their universality, such as the Danish welfare state, under pressure to implement regulations that permit migrants to access the social system only after a certain period of residence. The EU thus indirectly contributes to the convergence of European welfare state systems.

Box 3 Germany: Agenda 2010 and the transition to an activating welfare state

The transition from a protective to an activating welfare state predominately took place in Germany with the reform of the labour market and social state which became known as Agenda 2010. This reform was implemented somewhat more than ten years ago in a number of steps (for a similar portrayal of the Agenda 2010 reforms, see SVR 2014: 159f.). This “largest labour market reform in the history of the Federal Republic of Germany” (Hüther/Scharnagel 2005: 26, SVR’s translation) consists of a number of measures whose principal aim is to structurally reform the incentives for entering employment and to transform a “protective” welfare state into an “activating welfare state” (Dingeldey 2006: 3, SVR’s translation). The German reforms, like developments in other industrialised countries, were a reaction to the economic situation in the first few years of the new century, in which the consequences of decades-long high structural unemployment together with the gradual but continuous demographic transition had resulted in an overburdening of the country’s social security systems (see Rinne/Zimmermann 2013; Straubhaar 2013). One of the most far-reaching reforms of the Agenda was the amalgamation of unemployment assistance and social assistance (Hartz IV) in 2005, a measure which created a uniform basic security system for the unemployed (ALG II). On the one hand, this measure occasioned the gradual removal of inefficient and superfluous dual bureaucratic structures in the labour and social administration and ensured that unemployed people can be placed in employment in a more efficient fashion (Berthold/von Berchem 2005). On the other hand, the measures also resulted in the elimination of disincentives embedded in the system and – in line with the overarching policy framework ‘rights and responsibilities’ – the creation of greater incentives for entering employment (Blum 2008: 153). As part of these reforms the maximum period of time in which contributory unemployment benefit (now known as ALG I) could be received was reduced. This measure was intended to help the unemployed to rapidly find a new position (see Bauer 2007).

Different views exist as to the value of Agenda 2010: supporters emphasise that the currently stable economic situation and the low unemployment rate in Germany are partly a result of these reforms. Critics point to the fate of the losers of the reform and complain that upward social mobility has still not been sufficiently achieved in the country. Despite these evaluations (which are doubtless at least partially connected to political affiliations and views), a wide basis of empirical data allows certain conclusions to be drawn: the reforms implemented as part of Agenda 2010 have unquestionably caused social difficulties for certain groups of people. However, they also have created the preconditions for a stable labour market, which has defied the European trend of rising unemployment. The labour market upturn is also a result of the courageous structural reforms implemented by the then SPD/Green coalition in the Federal Parliament. These reforms have also changed the framework conditions within which the integration of migrants in the labour market occurs. In this context, the data demonstrates that persons with a migration background have also profited from the improved situation in the German labour market.

market participation (Esping-Andersen 1990). A special feature of the Dutch system was the country’s very generously endowed invalidity and disability insurance (WAO), beneficiaries of which were entitled to claim 80 percent of their previous income over an unlimited time period. This insurance was state-funded; the qualifying period for and the access conditions to the system were set at a low level. The *Sociaal-Economische Raad* (SER 2000: 27, SVR’s translation), a social and economic policy advisory body to the Dutch government, reports that at the end of the 1990s around 900,000 people were drawing invalidity pension, many of them for 15 years or more; according to the report this was akin to a “good 12 percent of the country’s workforce”. Entry criteria to this

disability insurance scheme lacked – at least for a certain period of time – transparency and a relatively generous approach was taken towards granting access to disability benefits. In total, the Dutch state was required to spend an annual sum of over ten billion euros funding the disability insurance system (Gebbink 2009). The relevancy of the Dutch disability insurance scheme as an element of the country’s state-funded social security system is a special feature of the Dutch system that is absent from other European welfare states.

It is thus little surprise that disability insurance became one of the cornerstones of the reforms (Kleinfeld 1997: 305). Its restructuring in the Netherlands had more or less the same importance as the fundamental

reorientation of the German social insurance benefit system in the Agenda reforms of the first decade of the 21st century. In his summary of the development of the Dutch welfare state Van Oorschot (2008: 472f.) details the various steps taken to reform the country's disability insurance scheme: replacement rates were reduced from 80 percent to 70 percent of claimants' last income, the assessment criteria were tightened, the duration and the extent of benefits were made dependent on the age of the claimant and employers were granted government subsidies if they employed less able persons. However, these measures enjoyed only limited success at first. More successful were measures which were first implemented as part of the so-called Gatekeeper Act in 2002 (*Wet Verbetering Poortwachter*) and further tightened the conditions which had to be fulfilled in order to claim a disability allowance. The new regulations required, among other things, that an independent doctor verify the health of the relevant employee and, if an employee was unable to work due to illness, a reintegration plan be put together when the employee had sufficiently recovered from illness. In 2006, the WAO system was finally completely replaced by the so-called WIA (*Wet werk en inkomen naar arbeidsvermogen* – the Act governing Work and Salary according to Employment Capability), a piece of legislation which “pays more attention to the remaining employment capacities than to the grade of disability” (van Oorschot 2008: 473, SVR's translation). This legislation pushed active labour market participation into the centre of the country's social and labour market policy.

B.3.3.3 Sweden: Three Phases of Activation Policy

The Swedish welfare state is considered to be the prototype of the Scandinavian-Social Democratic model. It pursued “from the outset an approach targeted at the entire society at the same time as being state-centred” (Hort 2008: 525, SVR's translation) and, according to the same author, has retained this orientation despite the policy reforms aimed at activating the welfare state which have been implemented in the recent past. The country has traditionally provided its population with a wide range of generous welfare benefits (Sproß/Lang 2008). Indeed, the Swedish constitution names the following task as one of the state's targets: (cited in Hort 2008: 530, SVR's translation), “it shall be incumbent upon the public administration to secure the right to work”, and, according to Hort (2008: 531, SVR's translation), the active labour market policy concentrates on transforming “outsiders – particularly youths and immigrants – into insiders, i.e. into taxpayers in the labour market”.

Sproß and Lang (2008) divide the Swedish activation policies into three phases. The ‘work first’ principle was first introduced in the face of high unemployment figures during the economic crisis at the start of the 1990s; it

was intended to enable especially younger unemployed people to actively participate in Swedish society by helping them to gain a foothold in the country's labour market. In addition to the training programmes which had been implemented as early as the 1970s, a form of state-sponsored employment for people under the age of 25 was introduced as part of the Act governing Dealings with Young People (1992). Moreover, the initial target group of unemployed youths was extended in 1994 to young people receiving social assistance. The second wave of the Swedish activation policy set in from the mid-1990s onwards: with the new orientation of the ‘lines of work’ (*Arbejdslinjen*), the state began to make more demands on the economically inactive. From this point onwards, the authorities began to interpret unemployed peoples' obligation to accept all types of employment in a stricter sense. This measure was then complemented and strengthened with the reform of the unemployment insurance system in 1997. As part of this reform, firstly unemployment benefits, and in the following years other benefits were reduced. People were now expected to also accept employment which paid considerably less than they had previously earned. Many unemployed people – and no longer just those of a younger age – were now obliged to participate in labour market programmes. The municipal authorities played a greater role in this process, as they were granted greater powers of discretion in the formerly strongly centralised Swedish state apparatus. Parallel to this activation policy, the country reduced the taxation level, especially for households belonging to the lower and middle income cohorts (Sproß/Lang 2008). The Swedish system saw further “far-reaching changes” (Sproß/Lang 2008: 65, SVR's translation) in a third phase, which commenced relatively late compared to similar changes in the Netherlands and Great Britain. This phase started with the introduction of a so-called activity guarantee in 2000; since this date, all welfare claimants have been obliged to draw up individual labour market reintegration plans with an advisor. Also, greater demands were placed on benefits claimants as part of the social legislation reform implemented in the following year (2001). A further decisive turning point in the history of the Swedish welfare state was the election defeat suffered by the Social Democrats in 2006. This was seemingly connected to an “increasingly changed perception of the Swedish model” of social security (Sproß/Lang 2008: 66, SVR's translation). The middle-class Alliance for Sweden, which formed the new government in 2006, implemented a series of reforms as part of which it cut both social security benefits and established stricter prerequisites for potential benefit claimants. The Swedish government has been criticised for many years for not providing enough programmes aimed at facilitating the labour market integration of newly arrived immigrants. Indeed, it was 2007 before the government entrusted

the state Employment Office with the task of improving the newcomers' access to the regular labour market programmes and of introducing targeted programmes for immigrants who were unable to participate in standard programmes due to limited knowledge of the Swedish language (Emilsson 2014). In 2010, the government transferred the responsibility for organising so-called Introductory Programmes for people who have come to Sweden on humanitarian grounds and their families to the Employment Office; the municipalities had previously been responsible for this task. This measure is aimed at increasing the speed with which this group of migrants is integrated into the country's labour market.

B.3.3.4 Austria: Rights and Responsibilities

In Austria, whose labour market belongs to the conservative-continental European model (Heitzmann/Österle 2008: 59), policies of labour market activation have also "played an important role in the country's labour market and employment strategy since the beginning of the 1990s" (Grand 2009: 212, SVR's translation). As in other countries, the activation of the labour market has been interpreted as being predominately a reaction to rising unemployment rates from the start of the 1980s onwards (Atzmüller 2009). A number of authors also related it to the country's accession to the European Union in 1995 (Grand 2009), "not least because it became possible to utilise resources from the European Structural Funds for this purpose" (Heitzmann/Österle 2008: 59, SVR's translation).

The foundation had been laid for a policy of labour market activation in the Labour Market Support Act (*Arbeitsmarktförderungsgesetz*, AMFG) that came into law in 1968 (Atzmüller 2009). However, fundamental changes in Austrian labour market policy did not take place until 1994, when the country implemented institutional and programmatic reforms in its labour market and introduced the first activating elements as part of the Labour Market Service Act (*Arbeitsmarktservicegesetz*, AMSG) (Atzmüller 2009). The labour market authority, which had previously been directly organised and run by a Federal Government department, was transformed into the *Arbeitsmarktservice* (AMS) (roughly translated as 'Labour Market Service'), a state-owned service company. The AMS is the sole body responsible for implementing labour market policy in Austria, whereas three different entities are responsible for this task in Germany. These are – depending on the social code book to which the unemployed person is allocated – the Federal Employment Agency (*Bundesagentur für Arbeit*) (SGB III), the Federal Government (or the Federal Employment Agency on behalf of the Federal Government) or the municipalities (SGB II) (Bock-Schappelwein et al. 2014).

The labour market activation policy was implemented in Austria in a number of steps from 1994 onwards. It

involved measures in three different areas (employment, training, support) together with a series of special programmes (BMASK 2012). As regards 'responsibilities', the benefits entitlements accorded to the unemployed were gradually reduced and the range of possible sanctions was extended. In addition, unemployed people became required to accept a wider range of jobs than had previously been the case (Atzmüller 2009). As regards 'rights', the Austrian state started to invest more money in training and further education measures as well as in individual counselling. Austria's labour market activation policy has mainly concentrated on youths and older people (Grand 2009). The expenditure in this policy field rose continuously between 1998 and 2007, and the number of people who have benefited from these measures also increased between 2001 and 2007 (Grand 2007).

Compared to Germany, Austria spends a slightly smaller proportion of the public budget on labour market activation measures. However, the expenditure patterns of both countries in the field of labour market policy are very similar, and the ratios of total expenditure in this area to each country's GDP have become more similar in the last few years, and especially since 2007 (Bock-Schappelwein et al. 2014: 45). One of the differences between Austrian and German labour market policy is that the Austrian authorities place more emphasis on training measures (including long-term and thus more expensive programmes), whereas Germany, in contrast, focuses more on supporting start-up initiatives and incentivising employment (Bock-Schappelwein et al. 2014: 46). More is spent on funding pre-retirement benefits in Austria than in Germany, although early retirement in Austria has been made more difficult in the wake of pension reforms implemented in 2000 and 2003 (Grand 2009).

B.3.4 Labour Market and Social Policy: Increasingly Equal Rights and Responsibilities

In each of the countries analysed in this chapter, people with migration backgrounds are overrepresented in the unemployment figures and among the recipients of social benefits. This is mainly a result of past immigration policy which paid scant attention to skills level of immigrants; it is also due to the long absence of a continuous integration policy, or indeed in many cases, any form of integration policy at all. One approach which states can take towards dealing with the particular predisposition of immigrant populations to be benefit recipients – a problem which has at least partially been caused by political inaction – is to differentiate between persons of differing citizenship when allocating social rights. However, in reality, this option has been increasingly curtailed by legal judgements and European guidelines. Immigrants

resident in European states rapidly grow into a state of socio-legal equality, although this process is clearly contingent on their legal status and length of residence in the country to which they have immigrated.

❗ **Many European countries of immigration have thus modified the state social measures (and thus implicitly the integration policy measures) which they employ towards people at risk of societal exclusion and have adopted the principle of 'rights and responsibilities'.** This is not just true of special measures of integration policy which are exclusively targeted at immigrants (see Chapter B.2) – these measures are in any case losing

much importance in face of the increasing tendency towards a mainstreaming of integration policy and its consequent inclusion in standard regulatory structures (Bendel 2014) – but also of more general labour market and social policy. ❗ **Just as immigrants are increasingly being treated as equals as regards social rights, so they are also expected to engage in the same social responsibilities as the non-migrant population.** In many European countries of immigration, these responsibilities increasingly include demonstrating self-responsibility and self-initiative in order to gain a foothold in the labour market.

Chapter **B.4**

Civic and Political Participation

There is no doubt that participation in the education sector (see Chapter B.1) and in the labour market (see Chapter B.3) are central mechanisms enabling participation in other sections of society. This is nowadays also generally accepted by both politicians and the general public. Less attention is paid to another field of societal participation, that of political and civil engagement. Yet participation in these societal sub-sections is an important way of creating social capital or, put more broadly, resources for social participation. Social capital is usually understood here as “the aggregation of current and potential resources which are linked to the possession of a durable network of more or less institutionalised relationships of mutual acquaintance or recognition” (Bourdieu 1983: 190f., SVR’s translation). And, while political and civil engagement enables the creation of social capital, the opposite is also true: social capital promotes and fosters political and societal participation. Granovetter (1973) has already pointed to this dialectical relationship.²⁰⁵

Interconnections also exist between civic participation and participation in other spheres of society. Engagement in clubs, associations or political parties can thus improve, for example, participation opportunities in the labour market and in the educational sector. At the same time, successful labour market integration can also widen people’s social network and increase their knowledge of societal processes. It can thus be generally assumed that people who engage in civic and/or political activities expand their knowledge of society and its different systems, feel more at ease in society and enjoy increased participation opportunities in other sectors of society.

In the next few pages, the civic and political participation of immigrants in Germany will be compared with their participation in these societal fields in Canada

and Sweden (see Chapters B.4.1 and B.4.2). The latter two countries are not just particularly generous in their conferral of political rights on immigrants, but are also generally regarded as especially successful in terms of immigration and integration policy (see Pendakur/Bevelander 2014). The naturalisation criteria in both countries are considerably less stringent than in Germany. However, both countries and indeed Germany employ a type of generational cut-off to limit citizenship by descent and thus prevent citizens living abroad from unconditionally passing their citizenship on to their foreign-born children via *ius sanguinis* (i.e. blood descent) from a certain immigrant generation onwards. Chapter B.4.3 examines this issue in more detail. Empirical findings from the comparison countries are presented in Chapter B.4.4, and lessons which Germany can draw from measures employed in other countries are provided in Chapter B.4.5.

B.4.1 Non-electoral Civic and Political Rights: Scarcely Any Differences

Elections are an important mechanism of civic and political participation. Yet they are far from being the only ones. In addition to voting rights and the ability to be elected to parliaments, people can influence policymakers – a process which Hirschman (1973) summarises as “voice” – by engaging in non-parliamentary forms of political and civic engagement. The latter include founding interest groups or societies with a political focus, joining a political party or engaging in an academic or literary activity.

Moreover, scarcely any limits are placed on foreign citizens’ ability to make use of central political liberties,

205 See the classical study by Granovetter (1973) and – with reference to Germany – those published by Franzen/Freitag (2007) and Runia (2002). The connection between social capital and immigration is explored in the case of the USA by authors such as Min (1996) and Palloni/Massey/Ceballos (2001). Haug (2010) finds a positive correlation between membership of clubs and societies on the one hand and labour market integration in Germany on the other and Diehl (2004) observes a connection between membership of ethnic clubs and societies and political participation in Germany. However, the nature of the interrelationship between social capital and cultural or economic capital (i.e. exactly how one factor leads to another and these factors mutually influence each other) has still not been sufficiently investigated. This is the case both generally and as regards migration processes (Hope, Cheong et al. 2007).

such as the right to establish political organisations, join a political party or work as a journalist in Canada, Sweden or indeed in Germany. In all three countries, foreigners and citizens alike can participate in activities at the civil society level and enjoy freedom of expression, association and assembly. Freedom of assembly and association are so-called German fundamental rights (i.e. *Deutschen-grundrechte*) which are accorded only to German, and not to foreign citizens in the Basic Law of the Federal Republic of Germany (German constitution, *Grundgesetz*). Yet, in practice, this distinction has no effect on EU citizens, as EU law prevents citizens from other EU countries being discriminated against in national law. German fundamental rights must either apply to EU immigrants or migrants from these countries must be guaranteed equal entitlement to basic rights in line with the general freedom of action enshrined in Art. 2[1] of the Basic Law. General consensus also exists that this Article constitutionally guarantees other (i.e. non-EU) foreigners the freedoms which the aforementioned citizen fundamental rights accord to German citizens. As a consequence, any restrictions imposed on foreigners' freedom must be covered by basic principles of constitutional democracy. Certain legal regulations which have been passed at a sub-constitutional level (i.e. regulations which are known as 'basic' or 'simple' laws in the German-speaking world, examples of which are the Assembly Act [*Versammlungsgesetz*] and the Society Act [*Vereinsgesetz*]) mean that foreigners in any case enjoy identical rights to those bestowed on German citizens. These rules are supported by the corresponding provisions of the European Convention on Human Rights (ECHR), a covenant which has been incorporated into sub-constitutional Federal law in Germany. There are however differences as regards freedom of association: the state has more options to limit the activities of clubs and societies which are completely or mainly run and attended by people without German citizenship (Section 14ff., Society Act).²⁰⁶

The state is able to not just foster or limit the political participation of foreigners outside of elections by legally permitting or banning their activities in the political or societal sphere. In addition, it can enable and promote foreigners' and/or immigrants' participation in at least

two ways: firstly by supporting civic or political organisations which are run and/or attended by foreigners and/or immigrants in a financial or institutional sense and secondly by providing their members with other means of influencing the political decision-making process (such as by allowing them to form advisory boards or other committees). It is in this context pertinent to note that while associations run and attended by foreigners and/or immigrants enjoy organisational and financial support in Canada, the comparative Migrant Integration Policy Index (MIPEX) has found that this support is less generous than in Germany or Sweden (Huddleston et al. 2011). In Canada, government support is linked to certain criteria which vary according to each individual case. In Germany and Sweden, in contrast, associations of foreigners and/or migrants which defend the interests of migrants at different levels of the political system are supported and funded to the same extent as those run by and/or attended by German and Swedish citizens.²⁰⁷

In contrast to the situation in many European countries, foreigners resident in Canada have little chance of exerting influence on the political decision-making process via institutionalised advisory communities, such as the independent and elected committees which allow foreigners to be politically active at municipal and regional levels in Germany (e.g. the so-called integration, migration or foreigners' committees [*Beiräte*]) (see Huddleston et al. 2011: 48, 90).²⁰⁸ However, it should be noted that it is considerably easier to obtain Canadian than German citizenship and to thereby acquire full political membership in the Canadian community of citizens. As a result, advisory committees may not seem necessary as a replacement for political participation in the country.

The comparison has revealed that foreigners resident in the countries under consideration have – with the notable exception of electoral rights – almost identical civic and political rights as those conferred on citizens. A policy of rendering the conferral of civic and political rights conditional upon citizenship would – at least in EU member states – be incompatible with EU regulations and would thus be destined to failure. In EU countries, third-country nationals possess almost identical civic and political rights as citizens of these countries.

206 Limitations exist as regards the formation of parties: according to Section 2[3] of the Act governing Political Parties (*Parteiengesetz*, PartG) political associations in which the majority of the members (or the committee members) are foreigners are not legally considered to be parties. A central characteristic of the activities of political parties is their participation in elections and therefore implicitly their members' ability to run for election and to take up political posts. As foreign citizens cannot be elected or stand for office at a Federal or a regional (*Länder*) level, this limitation is only logical in terms of the Federal and regional levels of the German political system. Its constitutionality can therefore not be questioned.

207 As a consequence, Sweden and Germany are, in contrast to Canada, given the highest possible score of 100 in the MIPEX comparative study (see Chapter C.1.3) (Huddleston et al. 2011).

208 The SVR (2010: 192, SVR's translation) has come to an ambivalent conclusion as to the importance of integration and foreigners' advisory committees: in the SVR's view, these can "adopt the role of a mediator at a local and regional level", but are "in face of meagre participation in the relevant committee elections" scarcely able to ensure "genuine political participation".

B.4.2 Voting Rights: Municipal and Regional Voting Rights in Sweden

The right to vote is one of the tenets of democratic government. It is the decisive instrument protecting and preserving popular sovereignty, as it enables people who are permanently subject to rule by a particular form of government to decide by whom they wish to be ruled and which issues should be at the forefront of government policy. None of the countries analysed here has chosen to decouple voting rights from citizenship (a decision which would mean that foreigners could also vote). Opening voting rights to all people resident in a territory in this way would devalue the concept of citizenship, as it would render it only relevant for questions relating to legal interactions between countries.²⁰⁹ An exception to this rule are citizens of EU countries living in Sweden and Germany, who as EU citizens have been entitled to vote in, and be elected at, municipal and European elections since the ratification of the Maastricht Treaty (see SVR 2013: 39–43). Further to this, Sweden has accorded third-country nationals who have lived for at least three years in the country voting rights (i.e. both the right to vote and to be elected) at regional and local level since 1975 (see Bernitz 2013). This is not envisaged in Canada and Germany (for Germany, see Pedroza 2013). However, it is important to stress that Canada and Germany are countries with federal systems of government in which the *Länder*/the provinces together with the municipalities are endowed with considerable political competences. In centralist Sweden, in contrast, comparatively few decisions are taken at the regional level. In this context, the regional and local voting rights for foreigners in Sweden appear to offer foreigners only extremely limited opportunities to shape and to participate in the political decision-making process.

One of the main aims of democracy policy is to prevent the community of citizens and that of the resident population from diverging. This is because it is clearly undesirable that only a subset of the resident population is entitled to vote and can thus decide on issues which affect the entire resident population. One method of bringing a country's community of citizens into line with its resident population is by enfranchising foreigners. Another method is to promote and encourage naturalisation, an approach by which the affected persons acquire full membership through citizenship acquisition (see Bauböck 2002; 2005). These two largely antithetical methods towards enabling migrants' political participation are to a certain extent interconnected, as any decision to grant foreigners voting rights would (at least partially) devalue the concept of citizenship as full

membership of a political community. In previous Annual Reports (SVR 2010: 190–192; 2014: 117–119), the SVR has always advocated easing access to full membership of the German political community (i.e. citizenship) as a way of promoting migrants' political participation. The SVR has also favoured this approach due to the constitutional problems which the introduction of voting rights for foreigners might entail in Germany. In Sweden and Canada there is also no sign that political rights might be entirely decoupled from citizenship. Citizenship thus plays an important role in the promotion of political participation in these countries, an issue which, as previously mentioned, is important from a democratic-theoretical point of view and as regards integration policy.

B.4.3 Citizenship Policy in Canada and Sweden

The rules governing the acquisition of a country's citizenship define which conditions people have to fulfil in order to obtain full and unrestricted political rights. A juxtaposition of the current regulations in the comparison countries reveals two convergences or trends: in both Sweden and Canada, naturalisation criteria are less stringent than in Germany, and a generational cut-off prevents citizens of both countries who are living abroad from unconditionally passing their citizenship on to their children from a certain 'expatriate generation' onwards (i.e. to prevent citizenship from being continually passed on to the descendants of the original emigrants over many generations).

B.4.3.1 Acquisition At and Through Birth: Mixed Forms in Canada, Sweden and Germany

Citizenship is either acquired through birth or naturalisation. The central mechanisms for the conferral of citizenship at birth are the principle of descent from a citizen (*ius sanguinis*), according to which children automatically inherit their parents' citizenship(s), and the 'birthplace principle' (*ius soli*) by which children receive the citizenship of the country of birth. As a classical country of immigration, citizenship legislation in Canada was based on the concept of *ius soli* for many years. In Germany, in contrast, citizenship legislation was for a prolonged period almost entirely tied to the first principle, that of *ius sanguinis*. In recent years both states have introduced citizenship legislation which contains elements of the two principles (OECD 2011c: 69, 76). Canadian citizenship is attributed to people born in Canada or to foreign-born children of at least one Canadian parent; dual citizenship is generally accepted. Since the citizenship reform

²⁰⁹ This envisages the concept of denizen-ship (i.e. the community of all people living in the territory of a country) instead of citizenship.

of 1999/2000, German citizenship has been acquired through birth to a) a German parent²¹⁰ or b) a foreign citizen who has been lawfully resident in Germany for at least eight years (Section 4[1], no. 3, Citizenship Act). There thus now exists in both Germany and Canada a conditional form of *ius soli*, a form of attributing citizenship which (partially in combination with *ius sanguinis*) can be regarded as the 'standard model' of liberal countries of immigration (see, among others, Hansen/Weil 2001). The attribution of citizenship in Sweden is also based on a combination of elements of *ius sanguinis* and *ius soli* (OECD 2011c: 69, 76; Bernitz 2012: 10f). Multiple citizenship is also generally accepted here. There are thus now only limited differences in the policies employed regarding birthplace acquisition in the three countries. This is especially the case following the recent abolition of a clause in German citizenship legislation obliging children of foreign citizens who themselves acquired two citizenships at birth – German citizenship by way of birth in the country and the citizenship of their parents via descent – to choose between both citizenships (so-called *Optionspflicht*, i.e. the duty to choose). German citizenship law thus now tolerates multiple citizenship for children of foreigners born and brought up in Germany.

As regards Sweden, it is noticeable that a gender bias was long present in the country's citizenship legislation: the attribution of citizenship through birth in the country was exclusively dependent on the citizenship of the child's mother. Whilst children born to Swedish fathers outside the country are automatically accorded the country's citizenship at birth, this has traditionally not been the case for children born in the country's territory to a Swedish father and a foreign mother. This discrepancy was eliminated in 2001, since when children born in the country to a Swedish father and a foreign mother automatically receive Swedish citizenship (*ius soli*). Children born to Swedish mothers are still granted citizenship at birth, irrespective of their place of birth (i.e. through *ius*

sanguinis). An additional measure was also introduced in 2001: if a Swedish man marries a foreign woman, all children of the foreign woman born prior to the marriage are also granted Swedish citizenship (see Bernitz 2012: 11f.).

B.4.3.2 Naturalisation: Short Minimum Residence Requirements in Canada and Sweden

In addition to the acquisition of citizenship at birth, foreign citizens can also obtain the citizenship of their country of residence through naturalisation. At first glance, the naturalisation rules in Germany and Canada appear to contain more similarities than differences:

- (1) Both countries require naturalisation candidates to demonstrate knowledge of the national language or one of the national languages. In Germany, naturalisation candidates must demonstrate German skills commensurate with level B1 of the Common European Framework of Reference for Languages (CEFR). This requirement is somewhat more demanding than in Canada, where level 4 of the Canadian Language Benchmarks (CLB; Niveaux de Compétence Linguistique Canadiens, NCLC) in either English or French is required. This is more or less commensurate with level A2 of the CEFR.²¹¹
- (2) Both countries require naturalisation candidates to have no previous criminal convictions. Candidates must furthermore prove knowledge of the country and of the civic rights and duties which citizenship entails in a written naturalisation test.²¹²
- (3) Finally, naturalisation applicants in both countries must also declare that they agree with and promise to fulfil the (civic) rights and responsibilities of the country and sign an agreement confirming that this is the case (OECD 2011c: 71, 77). In Germany, this involves declaring allegiance to the country's free democratic order (*freiheitlich-demokratische Grundordnung*, Section 10[1] no. 1, Citizenship Act); in

210 In this case, multiple citizenship is generally accepted; i.e. the child of a German mother and a Turkish father acquires both German and Turkish citizenship via the principle of *ius sanguinis*.

211 By way of a comparison: level 4 CLB (Fluent Basic) presupposes the following linguistic skills: "Basic language ability encompasses abilities that are required to communicate in common and predictable contexts about basic needs, common everyday activities and familiar topics of immediate personal relevance. In the CLB, these are referred to as non-demanding contexts of language use" (Centre for Canadian Benchmarks 2012). In order to demonstrate language skills commensurate with level A2 of the CEFR (elementary use of language), a German language learner must, in contrast, be able to "understand sentences and commonly used expressions associated with topics directly related to his/her direct circumstances (e.g. personal information or information about his/her family, shopping, work, immediate surroundings) [...] make him/herself understood in simple, routine situations dealing with a simple and direct exchange of information on familiar and common topics." The person must also be able to "describe his/her background and education, immediate surroundings and other things associated with immediate needs in a simple way."

212 The Canadian authorities provide naturalisation candidates preparing for the test with the course book "Discover Canada: The Rights and Responsibilities of Citizenship" free of charge. As the title suggests, the book deals primarily with the rights and responsibilities of Canadian citizens. Following the introduction of a new naturalisation test in 2010, the proportion of candidates failing the test rose sharply from 4 to around 30 percent. The test was subsequently once more adjusted, and currently between 80 and 85 percent of participants successfully pass the test (Elrick 2013). In Germany, between 98 and 99 percent of candidates successfully pass the multiple choice test which is sat in the same form in all parts of the country (BMI/BAMF 2014: 153). Candidates can prepare for the test by attending non-compulsory preparation courses (Section 10[5], no. 2, Citizenship Act). An interactive preparatory questionnaire is also provided. A naturalisation candidate who does not (or cannot) fulfil these prerequisites due to "a physical, mental or emotional illness or disability or on account of his or her age" is exempted from the test (Section 10[6], Citizenship Act, SVR's translation).

Canada candidates are required to make an Oath of Citizenship as part of the legally binding naturalisation ceremony.

However, the naturalisation requirements in Germany do differ in two fundamental ways from those in Canada:

- (4) In order to gain an entitlement to German citizenship, candidates must have lived for at least the last eight years in the country (Section 10[1], Citizenship Act). The minimum residence period is reduced to seven years if an integration test has been successfully completed; it can be reduced to six years if the responsible authorities conclude that the candidate demonstrates “outstanding efforts at integration” (Section 10[3], Citizenship Act). Canadian law is considerably less demanding in this respect: foreigners can be naturalised if they have spent at least three of the last four years in Canada²¹³ (or 1,095 days, two years of which as a permanent resident).²¹⁴
- (5) The two countries also differ as regards their policy towards the issue of multiple citizenship. Whilst Canada accepts dual and multiple citizenship in principle, the coalition partners in the German government have recently rejected allowing naturalised foreigners to retain their previous citizenship(s).

Canada thus imposes fewer conditions on naturalisation candidates than Germany. Naturalisation criteria are also even more generous in Sweden, a country, which, because of these rules and a general acceptance of multiple citizenship, is now generally regarded as one of the most liberal countries of immigration in the world (see Bernitz 2012: 13; Sochin D’Elia 2012: 20). However, it must be considered that citizenship both in Sweden and elsewhere has lost its role as a type of permanent “social attendant” (Bommes 2006: 65, SVR’s translation): the rights enjoyed by citizens now scarcely differ from those accorded to denizens (i.e. long-term resident foreigners).

Sweden is seen as having generous naturalisation not just because it allows immigrants to generally acquire the country’s citizenship after a relatively short period of residence of five years. In addition, it also does not

require naturalisation candidates to fulfil criteria which have become standard in many other countries of immigration in the last few years (e.g. proof of language skills, a naturalisation test or pledging oath to the constitution or the basic democratic system of governance). Foreigners are furthermore not required to surrender their first citizenship when naturalising, as multiple citizenship has been generally accepted since the reform of the Citizenship Act in 2001 (see Gustafson 2002; Parusel 2009: 6; OECD 2011c: 70, 76; Bernitz 2012). The only remaining demands placed on naturalisation candidates are that they have a permanent resident status²¹⁵ and have no prior criminal convictions.²¹⁶ In contrast to Germany, naturalisation candidates in Sweden are not obliged to sustain their living costs without making recourse to social benefits. People over 18 years of age can lodge naturalisation applications; children under 18 can be naturalised as part of the same application (see Bernitz 2012: 13).²¹⁷ Similarly to Germany, naturalisation parties or ceremonies are organised in many different towns and cities across Sweden; these are generally held on the National Day of Sweden (see Parusel 2009: 6).

In Sweden, a number of exceptions also render the country’s citizenship law even more liberal in practice. In this context, some groups of people are allowed to acquire Swedish citizenship after an even shorter stay in the country. Among these are stateless people and refugees recognised as suffering from persecution in their home countries (four years minimum residence period) and people living in bi-national marriages or registered partnerships (three years minimum residence, provided that the couple live together and the partner has been a Swedish national for at least two years). In addition, Danish, Finnish, Icelandic and Norwegian citizens can acquire Swedish citizenship after five years residence in the country as part of a simplified and particularly rapid notification procedure; this fast-track naturalisation procedure costs citizens of these countries a total of just 52 euros. If citizens of these countries have lived for less than five

213 Each day spent by candidates in Canada before the conferral of permanent resident status is counted as a half day. Individuals can use an online tool, the so-called “Residence Calculator”, to check if they have fulfilled the minimum residence requirements.

214 A topic currently being discussed in Canada is whether to increase the minimum period of residence required in order to take out Canadian citizenship. The Canadian government has recommended the acceptance of a legal bill (Bill C-24) which envisages, inter alia, increasing the minimum period of residence from three (or 1,095 days) of the last four years to four (1,460 days) of the last six years prior to the submission of the naturalisation application. The bill also proposes no longer considering the period in which a migrant held a temporary residence permit (i.e. prior to obtaining permanent resident status) when processing naturalisation applications. The latter proposal affects students and foreign workers in particular, who in most cases initially only receive a temporary residence permit. The total residence period currently required from naturalisation candidates belonging to one of these groups is thus becoming similar to that required from people wishing to naturalise in Germany. The new rules are expected to be adopted in mid-2015 (Thym 2014b: 20; see also Beiser/Bauder 2014).

215 This status is generally accorded to immigrants after five years of lawful residence in the country.

216 In Sweden, this includes the fulfilment of financial commitments to the Swedish state and to private people (maintenance, taxes, fines, etc.). Foreigners who have been convicted of a criminal offence can only be naturalised after a certain minimum waiting period has elapsed.

217 As in Germany and Canada, foreign citizens whose naturalisation application has been rejected can lodge an appeal against the decision (OECD 2011c: 70, 77). The naturalisation fee comes to 1,500 Swedish Krona (about 165 euros) and is thus somewhat cheaper than in Germany (255 euros).

years in Sweden, they can instead submit a standard naturalisation application. In this case, they are better placed than candidates from non-Nordic countries, and only have to demonstrate that they have spent the previous two years in the country. Simplified naturalisation procedures also exist for young adults aged between 18 and 20 years of age who have been permanently resident in Sweden with indefinite right to remain since the age of thirteen (fifteen if the person is stateless).

Sweden surpasses even Canada in the generosity and ‘liberality’ of its naturalisation measures, a country which, in comparison to Germany and other European immigration countries, has very liberal rules in this policy field.²¹⁸ This may in part be attributable to the historically open Swedish immigration policy pursued in the 1950s and 1960s, a period in which the country, which was in desperate need of workers in the wake of a period of strong economic growth, welcomed migrants with open arms. However, any societal consensus that may have existed as to this immigration policy and as to the country’s liberal naturalisation policy has long since disappeared. Thus, while the Communist party, the Greens and the Social Democrats remain committed to maintaining the liberal measures, the Conservatives, the Christian Democrats, the Liberals and the Swedish Democrats demand at the very least two changes. These are that people wishing to naturalise demonstrate Swedish language skills and that a citizenship test be introduced that examines immigrants’ knowledge of both the historical developments of the country and its current political system. It remains to be seen which (new) approach the Swedish government elected in autumn 2014 will take in this field.

As previously outlined in this chapter, despite the increasingly globalised nature of the world and processes of European integration, naturalisation policy remains one of the central preserves of national policymakers in EU member states. The decision of the Swedish government to adopt a generous naturalisation policy is without question compatible with EU law. Yet the country’s position as a ‘liberal outsider’ is from a European point of view not unproblematic, seeing as third-country nationals also acquire the citizenship of the European Union when becoming Swedish

citizens. They can consequently make use of the rights attached to EU citizenship (SVR 2013: 39–49) and above all the freedom of movement, in order to travel to other EU member states and/or to settle in another EU country. The effects of Swedish citizenship policy therefore ‘spill over’ into other states.²¹⁹ ➔ **A tighter coordination between European states is perhaps here called for, although this does not necessarily mean curbing member states’ ability to freely decide on their citizenship legislation. This could take the shape of a European system of citizenship margins, within which states are freely able to set variable naturalisation requirements.**

B.4.3.3 The ‘Generational Cut-off’ for Expatriate Canadian and Swedish Citizens

As the analysis has already shown, while there are scarcely any differences in the basic framework of citizenship policy of the three countries under consideration, they diverge greatly in terms of the conditions which they place on potential naturalisation candidates. However, the countries do have one thing in common in this field. This is the approach taken towards the concept of *ius sanguinis* (i.e. descent from a citizen) as a mechanism for the conferral of citizenship (for more detailed information see Langengeld 2014; SVR 2014: 145–152). The notion that this principle builds the exclusive basis for defining people’s political belonging is nowadays regarded (not just in Germany) as being outdated. However, there is no disputing its fundamental validity as a means of attributing citizenship. This is because while the principle of *ius soli* focuses merely on the concept of place or territory and is as such completely ‘timeless’ in nature, the conferral of citizenship by *ius sanguinis* allows for intergenerational aspects to be appreciated. This form of citizenship attribution thus allows for the widely held belief that first and foremost parents and children should be able to possess – at least in principle – identical political, social and cultural affiliations. However, the intergenerational transferral of political affiliation should not remain constant from one generation to the next, but should instead gradually lose importance over time and/or generations.²²⁰ This can be

218 In the MIPEX comparative survey (see Chapter C.1.3) Sweden received 71 points in the field of conditions for naturalisation, Canada 68 points and Germany just 33 points (Huddleston et al. 2011).

219 This is also true of course in the case of the ‘sale’ of citizenship, such as in Malta, where such cases have come to light in the recent past. Third-country nationals can acquire Maltese citizenship, and thereby implicitly EU citizenship, by investing a minimum sum of money in the country. The European Parliament has condemned the country for misusing its legal ability to confer national and thus implicitly EU citizenship in a resolution (2013/2995(RSP)).

220 Third or, to an even lesser extent, fourth generation immigrants often have only a limited relationship with their countries of origin (which is often restricted to holidays and visits to relatives). Against this background, it is only logical that the political ties to their grandparents’ or great-grandparents’ country (or countries) of origin, which only exist as a result of the automatic inheritance of citizenship, should be severed. This does not mean that cultural ties to the country of origin of the antecedents of the current migrants should not be accepted and fostered, and does not stand in the way of the cultivation and promotion of these ties (SVR 2014: 152). Harrington (1982) has established for migrants living in the USA that dual loyalties on the part of immigrants do not negatively influence relationships with the countries of origin. These ties have instead positively promoted and fostered ties of friendship between states.

shown in an easily understandable fashion in the following short portrayal of a typical pattern of immigration and settlement:

The question of birth-ascription does not normally apply to the first migrant generation, as full political membership in the country of residence can only be achieved through naturalisation. However, the second generation, the children of the ‘pioneer migrants’, may in some cases have a dual sense of belonging: they may feel as tightly bound to the country of origin of their parents as to the country in which they have grown up and live. It can be assumed that with the passage of generations the ties to the country of origin of the parents’ generation will continually diminish, whereas the ties to the country in which immigrants (or their descendants) now live will increase.

Germany, Sweden and Canada all take this into account in their citizenship legislation: they employ a strategy which the SVR (2014) – following Masing (2001) – has labelled ‘dual citizenship with a generational cut-off’. Canadian citizenship legislation was extensively reformed in 2009 to take these considerations into account (Bill C-37): alongside enabling the re-naturalisation of former citizens who had previously lost their rights (so-called Repatriation Clause) the reformed legislation introduced the so-called First Generation Limitation. The Repatriation Clause is a generally uncontroversial addition to the country’s citizenship legislation which is seen as being long overdue. Its intention is to enable the re-naturalisation of former citizens who could not acquire or lost citizenship as a result of specific stipulations contained in the country’s 1947 Citizenship Act; these stipulations are nowadays considered discriminatory and are incompatible with the Canadian Charter of Rights and Freedoms.²²¹ Politically more controversial is the First Generation Limitation, which prevents the inheritance or the passing on of Canadian citizenship to people belonging to the second or subsequent expatriate generation(s) (see Winter 2014a: 51–54; 2014b: 43–46): foreign-born children of Canadian parents who had themselves emigrated (i.e. second expatriate generation) still acquire the Canadian citizenship through descent, but can no longer pass the country’s citizenship on to their own children if these were also born abroad (i.e. third expatriate generation).

The First Generation Limitation was introduced in order to prevent Canadian citizenship from being indefinitely passed on over generations to people who have no (longer) genuine ties to the country and use Canadian

citizenship as a way of guaranteeing access to a type of ‘safe haven’ (so-called citizens of convenience, see Winter 2014b: 44).²²² The new regulation is thus the Canadian (in practice more stringent) equivalent to Section 4[4] of the German Citizenship Act, which stipulates the circumstances under which Germans living outside the country are not able to pass their citizenship on to their children (the generational cut-off). The German regulation in force since 2000 states that a foreign-born child with at least one German parent does not automatically inherit German citizenship if the parent concerned was born after 31 December 1999 and is not habitually resident in Germany. The child can acquire German citizenship if the parents apply to register the child’s birth in the following twelve months in the birth register in Germany. No evidence for a connection to Germany needs to be provided. The child is subsequently granted German citizenship in addition to his or her other citizenship(s); the citizenship is however not automatically conferred. The German stipulations are less stringent than those employed in Canada. Section 4[4] of the German Citizenship Act hence merely limits the transmission of citizenship from the second to third (or subsequent) expatriate generations, whereas the First Generation Limitation completely prevents Canadian citizenship from being passed from the second to the third expatriate generation.

The question as to whether expatriates are entitled to pass their citizenship on to their children via *ius sanguinis* is dependent in both the Canadian (the First Generation Limitation rule) and the German (Section 4[4] of the Citizenship Act) regulations on their habitual place of residence (*domicilium*). As the Canadian example demonstrates, classical countries of immigration which in principle accept multiple citizenship and have traditionally conferred citizenship via *ius soli* also regard an unlimited transmission of their country’s citizenship by or to expatriates residing abroad to be problematic when the persons involved no longer have a connection to the country. Section 4[4] of the Citizenship Act and the First Generation Limitation provide two regulations which, while differing in their restrictiveness or leniency, guarantee that a functionally unjustifiable accumulation of citizenships is prevented.

It is notable that Sweden also employs a generational cut-off policy towards its citizens who are living abroad or have emigrated: children of expatriate Swedes (i.e. second generation expatriates) are on the one hand initially accorded Swedish citizenship (i.e. automatically) at

221 This affects, for example, foreign-born children with one Canadian and one non-Canadian parent or people who had to surrender their Canadian citizenship when naturalising in another country before 1977, as Canadian citizenship legislation did not tolerate dual citizenship at that stage (see Dvorak 2009; Winter 2014a: 51).

222 As an example of this, 15,000 Canadian citizens were evacuated from Lebanon during the Lebanon crisis in 2006; this operation was estimated to have cost around 85 million Canadian dollars (CAD). The majority of the evacuated Canadians were probably dual citizens possessing both Canadian and Lebanese citizenship who had never lived or even visited Canada (see Winter 2014b: 44).

birth. Yet, on the other hand, foreign-born Swedish citizens who have never resided in Sweden and are unable to demonstrate a connection to the country automatically lose their Swedish citizenship on their 21st birthday. An exception to this rule are people who do not possess another citizenship (i.e. most people affected by this rule are citizens of the country in which they reside) and would as such become stateless if their Swedish citizenship were revoked (see Bernitz 2012: 15). The Swedish authorities normally approve applications submitted by second generation expatriate Swedish citizens (i.e. people belonging to the first foreign-born generation) wishing to retain their Swedish citizenship. In the case of subsequent generations, this approach is only taken when the people concerned can actively demonstrate that the connection to Sweden has not been completely severed (Bernitz 2012: 16).

❗ **The SVR regards the more limited transmission of citizenship via *ius sanguinis* practised by the states examined here and its stronger linking to the place of residence (*ius domicilii*) as being reasonable and appropriate.** In order to politically advance along this road, it is however necessary to ensure that this principle is adopted at a similar speed in different countries. Otherwise, the danger is that one state ‘produces’ a constantly growing foreign population, whilst another takes a more purist approach and is thus criticised for ignoring the interests of its diaspora population abroad. It is difficult to reconcile that an approach which appears justified and correct with respect to a state’s own citizens living abroad can be incorrect as regards foreign citizens living in the country’s territory. ➡ **In order to avoid asymmetries, it is vitally important that this question is highlighted internationally and thus a political initiative started in order to limit the indefinite transmission of citizenship via *ius sanguinis*.**

B.4.4 Empirical Findings

The moderate naturalisation requirements placed on potential new Canadian citizens are seen as the primary reason for naturalisation figures and naturalisation rates which are high even for a classical country of immigration (see Diehl/Blohm 2003; Bauböck 2006; Kober/Morehouse/Walther 2008; Thränhardt 2008; Henkes et al. 2011: 59; Diehl/Fick 2013: 343; Tjaden 2014: 14; Winter

2014b: 43). The same is true for Sweden: naturalisation is still highly popular among the country’s resident foreign population, although any remaining differences between the rights enjoyed by citizens and those accorded to denizens (i.e. the resident foreign population) are increasingly disappearing. Third-country nationals, who acquire all rights associated with EU citizenship when being naturalised, are especially keen on acquiring Swedish citizenship (see EUDO Observatory on Citizenship 2014). The considerable interest in naturalisation is a result of the relatively easy access to citizenship (i.e. as naturalisation requirements are less stringent than in other countries) and the comparatively high proportion of asylum seekers among the migrant population. Whilst many refugees who have been granted asylum are unlikely to return to their home countries, a permanent stay in the country appears, in contrast, probable. The rising naturalisation figures are also interpreted against the background of Sweden’s policy of generally tolerating multiple citizenship, an approach which the country has taken since 2001 (see Bernitz 2012: 11-13; Sochin D’Elia 2012: 20).

B.4.4.1 Naturalisation: High Figures Despite Limited Additional Benefits?

Attempts to empirically compare the extent to which foreign citizens entitled to naturalise actually choose to acquire citizenship in different countries (with the help of indicators such as the naturalisation rate or the so-called ‘exhausted naturalisation potential’), are methodologically difficult. These difficulties stem from differing modes of calculation and sample sizes (e.g. whether merely people born abroad or all resident foreigners are included in the calculation); in addition, corresponding data is also often not available (see OECD 2011b: 161). The Federal Statistical Office in Germany calculates the ‘exhausted naturalisation potential’ for Germany each year, i.e. the ratio of naturalisations to potential naturalisations.²²³ Corresponding figures for Canada and Sweden cannot be calculated due to a lack of appropriate data. Two other figures are available which indicate the extent of citizenship acquisition in these two countries: firstly the ratio of all naturalisations to the total number of foreign-born persons and secondly the naturalisation rate, i.e. the ratio between the number of naturalisations during a calendar year and the total foreign population at the start of the same year. At 1.1 percent and 1.7 percent respectively,

223 The ‘exhausted naturalisation potential’ is calculated by dividing the number of naturalisations by the stock of foreigners who have been living in Germany for at least ten years. The reference base is the stock of foreigners who according to the data stored in the *Ausländerzentralregister* (central register of foreign citizens) had lived in the country for the sufficient period at the start of the relevant calendar year. The exhausted naturalisation potential for 2013 is thus the ratio of all naturalisations in 2013 to all foreigners who at the beginning of the year had been living for more than 10 years in Germany. A residence of ten years in the country is, for the purposes of ease of understanding, “equated with the assumption, that ‘all naturalisation requirements’ are fulfilled” (Statistisches Bundesamt 2014b, SVR’s translation).

the German values are much lower than the corresponding values in Canada (2.7 % and 9.2 %) and Sweden (2.6 % and 5.6 %) (Table B.5).

International comparative studies regularly use the naturalisation rate as an indicator of the proportion of the resident foreign population acquiring the country's citizenship (see SVR 2014: 118; OECD 2014c; Reichel 2012). Yet this figure is problematic for two reasons as a criterion for comparing and contrasting citizenship acquisition through naturalisation in different countries. Firstly, it is unclear to what extent the foreign population, taken as a base for calculating the naturalisation rate, fulfils the naturalisation requirements. Secondly, the size of a country's foreign population is conditional on the rules for acquiring citizenship through *ius soli* employed in each country. In Germany, where children of foreign parents, subject to the fulfilment of certain conditions, have only automatically acquired German citizenship at birth since 2000, the total foreign population is likely to be higher than in countries which have a longer tradition of attributing citizenship via *ius soli*. This is because the effects of new regulations easing citizenship acquisition only become noticeable in the naturalisation rates of countries which (have traditionally) based their citizenship legislation predominantly on the concept of *ius sanguinis* much later.

Irrespective of these methodological difficulties, it can be seen that both the ratio of naturalisations to the total foreign-born population and the naturalisation rate are lower in Germany than in the two comparison countries. In addition, the proportion of all foreign-born migrants over 15 years old who are simultaneously citizens is considerably higher in Canada (more than 75 %) and Sweden (approx. 70 %) than in Germany (more than 50 %) (OECD 2012b: 134-137, no table provided). While it is difficult to directly compare and interpret these figures, the absolute values clearly show that naturalisations are 1.7 times more common in Canada than in Germany, even though the population born abroad – and thus the population group which is relevant for naturalisations – is 0.7 times as large. A similar situation applies in Sweden: while in

absolute terms fewer people are naturalised than in Germany, the reference group (i.e. the number of potential naturalisation candidates) is much smaller.²²⁴

Differing naturalisation requirements provide one possible explanation for the diverging naturalisation rates in the comparison countries. Another might be the extent to which naturalised foreigners enjoy better rights than immigrants with a permanent residence permit. However, this explanation is not convincing: a relatively high proportion of the foreign population naturalises in Canada, even though the permanent residence permit, a document which is comparatively easy to obtain,²²⁵ accords a range of entitlements and can in many ways be described as 'citizenship less voting rights'. This also appears to be largely true in Sweden: the minimum residence period required in order to obtain a permanent residence status is identical to that needed to acquire citizenship. Indeed, the only additional benefit accorded by citizenship is the ability to vote and be elected (i.e. enfranchisement).²²⁶ However, this limited additional benefit does not appear to greatly influence migrants' naturalisation behaviour, seeing as both countries belong to the OECD states with the highest naturalisation rates (see Pendakur/Bevelander 2014: 389). In Germany, while slightly more conditions must be fulfilled in order to be granted a permanent residence permit,²²⁷ the minimum residence requirement for a long-term residence entitlement according to Art. 4[1] of Directive 2003/109/EC is also five years. A permanent residence permit can thus be obtained earlier than German citizenship. Citizenship brings above all – besides the advantages which come with EU citizenship – voting rights; visa conditions and consular protection abroad are also better. Although there are only small differences between the countries as regards the additional benefits which naturalisation offers migrants, a smaller proportion of foreigners choose to naturalise in Germany than in the comparison countries. The additional benefits offered by naturalisation are thus clearly not decisive.

Another possible explanatory factor might be that foreigners have to give up their existing citizenship when

224 In 2011, almost three times as many people were naturalised in Germany than in Sweden; the number of foreign-born persons who are resident in the country is, however, almost seven times as large as in Sweden.

225 In order to apply for a Permanent Resident Card (PR Card) (also known as the Maple Leaf Card), foreigners must have resided for at least two of the previous five years (i.e. 730 days) in Canada.

226 While this is the case, immigrants questioned in Sweden frequently mention the entitlement to permanently remain in the country implicitly acquired when naturalising as one of the reasons for acquiring the country's citizenship. The protection and support provided abroad, the chance to receive a Swedish passport and the entitlement to participate in national elections are seen as being just as important. Both immigrants who had naturalised as adults and immigrants holding a permanent residence entitlement hold this view. Whilst more than half of the latter think it is important to possess a permanent residence entitlement in Sweden, only 20 percent find it important to be able to acquire Swedish citizenship (Statens Offentliga Utredningar 2013: 95f.).

227 A long-term residence permit is issued in Germany when a foreigner has been resident in the country for at least five years and fulfils a series of basic requirements. These include adequate knowledge of the German language, basic knowledge of the country's legal and social system and of the country's way of life. Such foreigners must also furnish evidence that they are able to provide for their subsistence and that of their dependents through a regular income and that enough living space for themselves and for other members of the family is available. In addition, they must not pose a danger to the public safety or order of the Federal Republic of Germany (Residence Act, Section 9[2]).

Table B.5 Data on naturalisations, foreigners and migrants in Germany, Canada and Sweden, 2011

		Germany	Canada	Sweden
Total population		80.3 million	33.5 million	9.5 million
Foreign-born population (1st generation)	total	9,642,400	6,775,800	1,427,300
	share of total population	12.0 %	20.2 %	15.1 %
Foreigners	total	6,338,900	1,975,100	655,100
	share of total population	7.9 %	5.9 %	6.9 %
Naturalisations		106,900	181,300	36,600
Ratio of naturalisations to foreign-born population		1.1 %	2.7 %	2.6 %
Naturalisation rate		1.7 %	9.2 %	5.6 %

Note: The naturalisation rate is the ratio between the number of naturalisations and stock of foreign residents living in the country. Data from the 2011 National Household Survey (NHS) was used to calculate the stock of foreigners living in Canada.

Source: Bernitz 2012; OECD 2013a; Statistics Canada 2012, 2013a, 2013b; Statistisches Bundesamt 2012, 2014c; SVR calculation and compilation

naturalising in Germany, something which is not the case in Sweden or Canada.²²⁸ The subjective ‘additional costs’ of acquiring citizenship are therefore higher in Germany. However, this explanation cannot by itself account for diverging naturalisation figures, as it does not explain the differences between the German regions (*Länder*),²²⁹ the different naturalisation rates of the various immigrants from different countries of origin or the fact that only a small number of EU citizens choose to acquire German citizenship even though they do not have to give up their first citizenship when naturalising (for details, see Lämmermann 2009).

Monocausal explanation patterns are in any case clearly insufficient. Instead, a range of factors appear to either encourage or discourage immigrants to acquire citizenship. A glance at the differing naturalisation rates in the German regions shows exactly what can be achieved when politicians directly address immigrants – an approach which gives expression to the frequently cited (German) ‘welcome culture’ (*Willkommenskultur*). The mayor of Hamburg, for example, personally writes to those foreigners who are entitled to acquire German citizenship and invites them to be naturalised. This personal

engagement resulted in the naturalisation rate rising for many years. The decision to acquire or not to acquire the citizenship of the country of residence is thus clearly more than just a rational consideration of the advantages and disadvantages which naturalisation entails. It is also an emotional act which is partially connected to a) the degree to which the country concerned regards itself as being a country of immigration and b) the message which it sends out to immigrants in this respect.

B.4.4.2 Voting Rights: Strong Immigrant Representation in Canadian and Swedish Parliaments

In the previous pages it has been shown that large differences exist in the naturalisation requirements which prospective new citizens need to fulfil and in the extent to which immigrants choose to naturalise. As a result, it can be expected that the degree to which naturalised immigrants make use of their entitlement to vote and to stand in elections also varies. However, this does not seem to be the case, as the proportion of foreign-born people entitled to vote who make use of this right in national elections hardly varies across the three countries:

228 Opinion polls reveal that the requirement to give up the first citizenship when naturalising is the main reason why immigrants choose not to acquire German citizenship. The limited additional benefits which German citizenship provides in comparison to those conferred by the denizen status is also mentioned (see, among others, Worbs 2008; Niesten-Dietrich 2012; Sauer 2013; Weinmann/Becher/Babka von Gostomski 2012).

229 The differing naturalisation rates between the different immigrant groups can be partially explained by examining the core naturalisation motives of migrants with a Turkish background. Most of these immigrants are predominately interested in the legal security and the legal equality which citizenship entails. Pragmatic factors, such as the ability to freely travel within the EU, are also important. In the last few years, a gradually increasing proportion of immigrants with a Turkish background have also mentioned having put down roots in Germany and/or feeling at home in the country as reasons for wanting to acquire German citizenship (Sauer 2013: 63; Witte 2014).

in both Canada and Germany about 64 percent of these people make use of their right to vote. However, a comparison with the voting activity of the entire population born in the country (both the immigrant and the non-immigrant population) reveals another picture. So whilst there is only a marginal difference between the electoral turnout of both groups in Canada (3 percentage points), this difference comes to 20 percentage points in Germany. And while a similar gap between the voting pattern of the foreign-born population and the population born in the country can also be observed in Sweden, a higher percentage of both the foreign-born population and the population born in the country make use of their entitlement to vote: a total of 75 percent of foreign-born Swedish citizens exercise their right to vote, whereas this figure comes to 91 percent among the population born in the country (OECD 2012c). The tendency of Swedish citizens to make greater use of their right to vote in elections may be a result of the more centralist nature of the country's polity. Thus in contrast to Germany, a country in which the electoral system is characterised by numerous regional elections which can in many ways be regarded as mini-federal elections, national elections in Sweden attract the attention of the entire political class due to the practical absence of other politically meaningful elections.

In terms of the right to stand in elections, it can be seen that immigrants (of the first and second generations) are more often represented in national parliament in Canada and Sweden than in Germany.²³⁰ This is presumably due to these countries' naturalisation requirements, which, as previously mentioned, are less stringent than those in other countries. Whilst 35 of the 631 members of the German Federal Parliament (*Bundestag*) have a migration background (5.5 %), this figure comes to 64 of the 303 members of the Canadian House of Commons (21.1 %)²³¹ and 38 out of a total of 349 members of the Swedish *Riksdag* (10.8 %). Moreover, a higher proportion of parliament members with a migration background belong to the first than to the second immigrant generation in both comparison countries (Canada: 40 out of 64,

Sweden: 26 out of 38). In Germany, conversely, a larger proportion of members of the *Bundestag* are second generation immigrants (23 out of 35) (Table B.6).

At least in theory, the best way to compare the parliamentary representation of migrants in the three countries would be to juxtapose the ratio of 'immigrant members of parliament' to all immigrants entitled to vote in each of the countries (see SVR 2014: 120). For the purposes of this study, a comparison of this nature is unfortunately not possible due to the absence of data on the population with a migration background in Canada and Sweden (i.e. the first and second generations) and thus implicitly on immigrants entitled to vote in these countries. As a result, data on people born abroad (i.e. the first migrant generation) has been used for comparative purposes. For each country, the ratio of first generation members of parliament to the total population born abroad has been calculated. The ratio of parliament members with a migration background of the first *and* second generations to the population born abroad (just the first generation) shown in Table B.6 is only intended as supplementary information. The findings displayed in Table B.6 reveal that in each of the countries surveyed, the proportion of all parliamentarians who had themselves migrated does not correspond with the proportion of the population of the relevant country which was born abroad (i.e. the first generation). The difference between the two figures is largest in Germany.

B.4.5 Lessons Which Germany Can Learn: Reduce Minimum Residence Period, Make the Case for a 'Generational Cut-off'

International comparative studies reveal that a relatively small percentage of the foreign population entitled to naturalise in Germany choose to do so (i.e. the naturalisation intensity in the country is relatively weak) (see OECD

230 It is relatively difficult to systematically and reliably track down all parliament members with a migration background. Wüst and Saalfeld (2011) carried out an 'inventory' of this nature in four European countries, including Germany and Sweden in 2008; the authors of this report are not aware of more recent investigations on this subject. The SVR's statistical investigation (November 2014) has been compiled by making use of publicly accessible information related to parliament members in the comparison countries (e.g. biographical guides, electronic indexes of the parliaments concerned, parliamentary groups and parties, websites of members of parliament) as well as writing to those members of parliament whose name and/or photo suggest a migration background. The birthplaces of members of the German and Canadian national parliaments are documented, thus enabling first generation immigrants to be identified (for Germany, see Kürschners Volkshandbuch 2014; for Canada, see, for example <http://www.parl.gc.ca/Parlinfo/Compilations/Parliament/BornOutsideCanada.aspx?Menu=HOC-Bio&Show=MP&Language=E>, 03.12.2014). Research into members of the Swedish parliament with a migration background proved more difficult due to the language barrier. However, the *Immigrant Institutet* provides a summary of all migrants represented in the Swedish parliament (Benito 2014). This was subsequently supplemented by data obtained through research carried out by the SVR.

231 While the Canadian House of Commons currently has 308 seats, five of these are currently vacant, meaning that 303 seats are occupied. In contrast to what could be expected, only a very small number of these members of parliament (five in total) have an American migration background.

Table B.6 Parliamentary representation by migrants in German, Canadian and Swedish national parliaments in autumn/winter 2014

		Germany	Canada	Sweden
Total members of parliament		631	303	349
Members of parliament with a migration background in current legislative period	Total	35	64	38
	Proportion of total	5.5 %	21.1 %	10.8 %
	1st generation	12	40	26
	2nd generation	23	24	12
Difference between the proportion of members of parliament with a migration background of the first migrant generation and the proportion of the population born abroad (in percentage points)		-10.1	-7.0	-7.6
Only for additional information purposes: Difference between the proportion of all members of parliament with a migration background and the proportion of the population born abroad (in percentage points)		-6.5	+0.9	-4.3

Note: As no data is available on the population with a migration background in Canada and Sweden, there is also no data available documenting the proportion of the population entitled to vote who have a migration background.

Source: SVR research, calculation and compilation

2011b; 2011c). It is not just in Canada and Sweden that naturalisation rates are higher than in Germany, this phenomenon also applies to many other countries. The latter two countries have been used for comparative purposes in this chapter and are in no way representative of countries of immigration in general. The dynamic increase in naturalisation figures observable in the last few years in Germany has recently showed signs of stalling and almost came to a complete halt in 2013 (see Statistisches Bundesamt 2014b).

➔ **The SVR recommends the implementation of a bundle of different measures in the field of citizenship and naturalisation policy. These measures can be grouped into three main elements:**

(1) **Well-integrated immigrants should be able to naturalise after a shorter period of residence in Germany than is currently the case.** The SVR already recommended a 'turbo-naturalisation' of this nature in its first Annual Report (2010: 73, 188). This should be made available "for immigrants who are particularly well integrated in an economic and social sense (e.g. newcomers who earn 1.5 times as much as the average German or engage in voluntary work), speak good German, have definitively settled in Germany and do not have a criminal record" (SVR 2010: 73, SVR's translation). A 'turbo-naturalisation' should be made possible after a four-year stay in Germany.

(2) ➔ **Naturalised immigrants should be able to retain existing citizenship(s).** The German Coalition Government has already enabled dual citizenship for people awarded German citizenship at birth (*ius soli*) by abolishing the regulation compelling young people with a migration background to choose between citizenships (the so-called *Optionspflicht*, i.e. duty to choose). The legal stipulation obliging naturalising immigrants to give up prior citizenship(s) should now also be abolished. As shown by the results of the SVR opinion poll carried out for the 2015 Annual Report, the German population is generally in favour of this measure: the population agrees in principle that (even) more people should be permitted to have dual citizenship than is currently the case. At the same time, the results show that the population does not unrestrictedly advocate accepting dual citizenship, but is instead 'cautiously in favour' (Chart 7 in Appendix I). ➔ **The SVR also does not advocate a general and unconditional acceptance of dual citizenship and believes that this should instead be combined with a 'generational cut-off' clause** which prevents the citizenship of the country of origin being unrestrictedly passed on over an infinite time period. If such a 'generational cut-off' mechanism were firmly anchored in the legislation of the countries which are important countries of origin for

immigrants resident in Germany, the central argument against allowing people acquiring German citizenship to retain their existing citizenship(s) would fall away.²³²

One question that this raises is exactly how the 'generational cut-off' can be implemented. This is a complicated issue, as it requires the assistance of immigrants' countries of origin. Two possible solutions are imaginable: a parallel or a sequence solution. The sequence procedure is based on the principle of mutual reciprocity: only those foreigners holding the citizenship of countries which are prepared to incorporate a 'generational cut-off' into their own citizenship legislation are allowed to retain their existing citizenship when naturalising (this legislation could be worded in a similar fashion to Section 4[4] of the German Citizenship Act). A parallel procedure would, in contrast, require the German government to initially go on the offensive. It would first have to unconditionally permit immigrants to retain their existing citizenship at naturalisation. At the same time, the German government would endeavour to convince the governments of the countries of origin of the most important immigrant groups in Germany to also incorporate a 'generational cut-off' into their own citizenship legislation. The advantage of the one procedure is the other procedure's disadvantage: if the implementation procedure were to be implemented, the German government would not be exclusively reliant on the goodwill of the countries of

origin, but would instead act according to the motto 'do ut des' and would be in a better position than if the parallel procedure were employed. The latter procedure would have, in contrast, the advantage that foreigners living in Germany could not be made liable for the actions of their countries of origin (or of these countries' government).

- (3) Irrespective of legal changes, which are – at least as regards the 'generational cut-off' – more long-term solutions due to the need to negotiate with the countries of origin, ➔ **the SVR recommends a campaign aimed at increasing immigrants' willingness to acquire German citizenship.** The Stuttgart initiative "PASS Auf, lass Dich einbürgern!" or the aforementioned naturalisation campaign of the city of Hamburg could serve as role models for boosting the number of naturalisations. Such initiatives attempt to exhaust the pool of potential naturalisation candidates by writing to people who are entitled to acquire German citizenship and inviting them to naturalise. This active 'welcome culture' (*Willkommenskultur*) has a concrete, measurable impact on the naturalisation figures: the number of naturalisation applications has increased in Hamburg by around 37 percent as a direct result of this campaign (Behörde für Inneres und Sport 2013). The aim is ultimately to create a social climate which invites people to acquire German citizenship. Political parties, associations and other organisations are here called upon to publically advocate this position.

232 The Council of Europe would be a suitable place to discuss the idea of incorporating a generational cut-off into citizenship legislation at an international level. A (further) harmonisation of the citizenship laws employed by the members of the Council of Europe is in any case highly desirable (see Wiedemann 2005: 27). To this end, a convention could be negotiated within the Council of Europe, or existing conventions could be amended, such as the European Convention on Nationality from 1997. Germany could play a leading role in the negotiations over the adoption of a new convention or over the amendment of (an) existing convention(s) by, among other things, drawing other member states' attention to the country's own legal framework.

Chapter **B.5**

Anti-discrimination Policy

Various chapters of this Annual Report highlight the extent to which diverging traditions of promoting participation in different nation-states influence specific policy areas. However, this analysis has revealed no uniform trend. Thus, on the one hand, integration policy philosophies are increasingly losing their distinctive character in terms of the infrastructure which states provide to newcomers, and state-funded integration processes are increasingly converging in the different countries (see Chapter B.2). On the other hand, however, Chapter B.6, which analyses different approaches taken towards naming migrants (i.e. the politics of naming) as well as towards their memberships and affiliation (i.e. the politics of membership and belonging), demonstrates how deeply rooted state and social-institutional methods of identifying and describing diversity remain. These major differences can best be understood by considering the differing traditions in dealing with diversity engendered by processes of immigration.

The question as to the extent to which policy decisions are shaped and influenced by distinctive state traditions is also a highly pertinent one for anti-discrimination policy, which is examined in this chapter. This subject inspired the selection of the comparison countries Great Britain, France and Hungary. This chapter is based to a large extent on the findings of a comparative expertise commissioned by the SVR (Thym 2014b). When analysing anti-discrimination policy it must also be considered that the EU, as a norm-setting entity in this policy area, has a larger influence in this field than in other areas of integration policy analysed in Section B of this report.²³³ Especially important are two Directives which were passed in 2000, considerably before many other European laws on migration-related issues, and are based on a 'stringent' anti-discrimination concept (Jestaedt 2005: 314): the Racial Equality Directive (2000/43/EC) and the

Employment Equality Directive (2000/78/EC). As the name implies, the main focus of the Racial Equality Directive is discrimination suffered on grounds of a person's racial and ethnic origin. Its area of application includes the societal fields of employment, education and training, social protection and access to goods and services which are available to the general public, including housing. The Employment Equality Directive, while only being aimed at employment-related and occupation-related discrimination, widens the range of personal attributes which are protected against discrimination: it forbids discrimination on grounds of religion, belief, disability, age or sexual orientation.

B.5.1 EU Legal Guidelines on Anti-discrimination Measures

The aforementioned EU Directives, in conjunction with the Directives targeted at tackling gender-specific discrimination, form a 'stringent' EU legal anti-discrimination concept, which is characterised by three aspects. Firstly, the Directives establish an additional concept of discrimination, which includes not just direct forms of discrimination, but also oblique or indirect discrimination – i.e. apparently neutral provisions, criteria or procedures which nevertheless result in a particular group suffering from discrimination.²³⁴ Harassment and the instruction to discriminate against other people are also regarded as discrimination. Secondly, the non-discrimination rules extend to civil transactions "in a way which was previously not found in German law" (Langenfeld p.p., SVR's translation). Thirdly, the EU Directives establish a robust enforcement mechanism as part of which, in addition to group/collective action (*Verbandsklage*) and sanctions aimed at discouraging discrimination, measures reversing

233 As a result, only EU member states can be considered in this comparative study on anti-discrimination policy. A comparison of the anti-discrimination policy measures in the USA, Canada and India can be found in a European Commission Report compiled by Fredman (2012); for an analysis of the situation in South America see Dulitzky (2005).

234 In the field of gender-specific discrimination, a typical example for the indirect discrimination of women is the unfavourable treatment granted to part-time workers.

the burden of proof are especially worthy of mention. Furthermore, all EU member states are obliged to form a National Equality Commission, although the tasks and competences of these commissions are not further concretised in the Directives.

Positive discrimination is not included in the EU's 'stringent' anti-discrimination concept. Measures aimed at actively promoting persons with certain characteristics are permitted in EU law. However, the jurisprudence of the ECJ places boundaries on the legal extent of these measures. The court rejects schematically privileging certain groups by implementing fixed quotas and requires any quotas to be made more flexible by incorporating exclusion clauses (Langenfeld p.p.).

The Racial Equality Directive and the Employment Equality Directive have now been incorporated into national law in all EU member states, and the ECJ has delivered a number of clarifying judgements in the course of the last few years. Detailed and largely analogous legal rules aimed at preventing discrimination thus now exist in all EU member states. However, the increasing harmonisation in the legal and policy measures in this field differs in one critical point from the convergence tendencies visible in the policy area of integration programmes (see Chapter B.2 of this report): integration course convergence has occurred largely as a result of member states' decision to alternately align their programmes to the measures employed by other countries. This approach has thus been interpreted as 'mimetic behaviour'.²³⁵ The convergence in anti-discrimination policy is, in contrast, a centrally managed process. This process entails the EU providing nation-states with a clearly defined framework with certain minimum standards of anti-discrimination policy which must be upheld at all times. The legal harmonisation process is thus not a result of nation-states voluntarily choosing to imitate measures employed in other countries. Thus, while convergence tendencies visible in the nature and content of integration courses can be attributed to 'mimetic isomorphism', similar tendencies in anti-discrimination policy can instead be considered as being due to "coercive isomorphism" (DiMaggio/Powell 1983: 150). Put another way, the convergence tendencies can be interpreted as a process of mutual approximation which has been 'enforced' at EU level by way of a series of – to a greater or lesser extent jointly formulated – Directives.

Thus, more than almost any other field of immigration and integration policy, the European Union now

provides the member states with a comprehensive and wide-reaching legal framework within which measures aimed at tackling discrimination can be developed and implemented. Yet its actual effectiveness is qualified by the differing and in some cases inadequate implementation of the laws in the member states. Moreover, despite the influence of Brussels and the resulting legal harmonisation there is still no uniform European anti-discrimination policy. This is because the effectiveness and implementation of the European legal framework are to a large extent dependent on the distinctive traditions of societal integration in general and the measures aimed at tackling the exclusion of individuals and group-specific discrimination in particular. Both the traditions and specific measures differ greatly across the member states. In this context, it is – analogous to Chapter B.2 – only logical to select comparison countries in which measures aiming to combat exclusion and promote participation are based on different socio-political premises. The following pages thus focus initially on the anti-discrimination policy in two countries with 'antagonistic' models in this field: the pluralistic and liberal Great Britain on the one hand and the republican France on the other. The third country chosen is Hungary, one of the new post-Communist EU member states. Due to the country's Communist legacy, its population is suspected of being fundamentally sceptical to state attempts to establish equality among all citizens (Thym 2014b).

Table B.7 provides a first indication that, despite the EU-wide harmonisation of institutional anti-discrimination measures previously outlined, country-specific differences remain. This table provides a brief overview of the categories of discrimination which are protected in addition to the basic catalogue covered in the EU Directives. It makes clear that the countries have adopted measures which supplement and indeed exceed to varying degrees the minimum framework required by the European regulations. The findings also reveal that, in contrast to what might be expected, Hungary, at a legislative level, has one of the most progressive anti-discrimination policies in Europe. This is a country which has proved to be a 'bastion' of discrimination and human rights violations committed particularly against Roma (FRA 2009: 9), but also against other minorities in the last few months and years. Thus, it can already be seen at this stage that while a comprehensive legal framework is necessary, it is not in itself sufficient to effectively protect people against discrimination.

²³⁵ As the EU has only limited competences in this field, it can only attempt to coordinate state measures via so-called *soft law*. The measures developed by the Union in this area include the so-called *Common Principles of Integration*.

Table B.7 Summary of additional features contained in French, British and Hungarian anti-discrimination legislation

	France	Great Britain	Hungary
Family status	Yes	yes	yes
Health	Yes	no	yes
Skin colour (or appearance)	Yes	yes	yes
Membership of a trade union	Yes	no	yes
Political views	Yes	no	yes
Language	No	no	yes
Citizenship	Yes	yes	yes
Other additionally protected characteristics	Apparent origin, moral opinions, genetic characteristics, family name	Same-sex partnership, national origin	Social background, financial status, part-time employment

Source: Thym 2014b

B.5.2 Great Britain: Long Tradition of Anti-discrimination Policy

Anti-discrimination policy has a long, almost fifty-year tradition in Great Britain. The first legislation was passed in 1965 with the Race Relations Act, a piece of legislation which was greatly inspired by the American civil rights movement. This movement had resulted in black people being granted equality of rights in the 1964 Civil Rights Act. The Race Relations Act has since been complemented and revised on a number of occasions. The early prominence of anti-discrimination policy in Great Britain is above all due to the absence of a codified constitution and therefore the lack of a basic legal entitlement to equal treatment. This distinguishes Great Britain from many European countries with written constitutions, which use a constitutional entitlement to equal treatment as a functional replacement and as a guarantee for an effective anti-discrimination policy. Great Britain's liberal legal tradition, which attributes protection against discrimination to individuals' basic rights to negative liberty also plays a role here. In addition, Great Britain, in contrast to other countries such as Germany, acknowledged at an early stage that it was a country of immigration. This contributed to the country's decision to introduce policy measures in the field of anti-discrimination at a very early stage. As an immediate consequence of this long

tradition of explicit anti-discrimination policy, the institution entrusted by the state with the implementation of these measures has an extremely strong position.

The most important player in the field of British anti-discrimination policy is the Equality and Human Rights Commission (EHRC). This body was created in the Equality Act of 2006 (one of the pieces of legislation which have followed the Race Relations Act), an act which was itself passed as part of the British government's obligation to implement the EU Directives (Table B.8).²³⁶ The British parliament has granted the EHRC the mandate to combat discrimination and to protect human rights. It does this by supporting legal appeals, conducting its own investigations into suspected cases of discriminatory behaviour and by sensitising the general public through public relations work. The EHRC also combats discrimination at the workplace by negotiating binding agreements with employers and enforcing these by issuing injunctions against offenders. In terms of its structure and public effectiveness, the EHRC corresponds to a mixture of the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*, DIM) and the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*, ADS). It is present to a much greater extent in the media than the DIM, and the entity has a much higher profile in the public and especially in the political domain than the ADS.

²³⁶ According to its own 'vision', the EHRC has the following mandate: "We live in a country with a long history of upholding people's rights, valuing diversity and challenging intolerance. The EHRC seeks to maintain and strengthen this heritage [...]". (Equality and Human Rights Commission 2014).

Table B.8 Summary of the implementation of the EU anti-discrimination Directives in France, Germany, Great Britain and Hungary

	Equality body	Legal provisions	Implementation form
France	<i>Défenseur des droits</i>	No central anti-discrimination act; employment, civil and criminal law provisions exist alongside each other	"Routine"
Germany	<i>Antidiskriminierungsstelle des Bundes (ADS)</i>	General Equal Treatment Act (AGG), in addition other provisions	"Routine"
Great Britain	Equality and Human Rights Commission (EHRC)	No central anti-discrimination act; most important legal provision: Equality Act	"Routine"
Hungary	<i>Egyenlő Bánásmód Hatóság (EBH)</i>	Central General Equal Treatment Act	"Ambitious"

Note: Implementation form according to Benecke (2010: 65, SVR's translation): "routine" = the provisions contain no deficits but do not exceed European framework; "ambitious" = the minimum standards are clearly exceeded, and not just in individual cases

Source: SVR compilation

It is against the background of the lengthy tradition of explicit state-based anti-discrimination policy in Great Britain perhaps not very surprising that the formalised legal framework contained in the Equality Act from 2010 goes at least to a certain extent beyond the mandatory EU requirements. The British Act also provides more protection than that guaranteed by the German General Anti-Discrimination Act (*Allgemeines Gleichbehandlungsgesetz*). Among the concrete measures contained in the British legislation are the prohibition of open and hidden discrimination, harassment, victimising and instruction to discriminate against people on the grounds of age, disability, gender reassignment, marriage and civil partnerships, pregnancy or motherhood, race, religion or faith, gender and sexual orientation. Skin colour, citizenship and ethnic or national background fall under the category of 'race' in the Equality Act. A broader range of groups is thus protected under the British Act than under the EU Directives (Table B.7).²³⁷ In 2013, the scope of the legislation was widened to include the criterion of affiliation to a caste (as a further aspect of 'race'), a decision which

reflects Great Britain's specific immigration history. This decision allows for the relatively large proportion of the British population with an Indian background.

At least in some areas of application, the anti-discrimination rules contained in the British Act also go further than those found in either the EU regulations or the German General Anti-Discrimination Act. The area of application of the European Employment Equality Directive (2000/78/EC) is specified in Article 3[1]: the Directive thus applies to all people employed in both public and private sectors, and is especially relevant as regards labour market access and conditions of employment.²³⁸ The Directive does not apply to social protection and social security provided by the state or state-like systems; these are however covered by the Racial Equality Directive (2000/43/EC). The latter also applies to protection in relation to health services, social privileges, education/training and access to, or the provision of goods and services which are available to the general public (including housing). In Great Britain, the Equality Act additionally covers discrimination on the grounds of

237 It must however be considered that the "explicit acceptance of further attributes [does] not necessarily lead to a widening of the field of protected persons". Thus the addition of skin colour as a further attribute is meant to clarify which people are protected because of their 'racial and ethnic' background (Thym 2014b, SVR's translation).

238 The concrete area of application of the Directive is described in the following fashion: "Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; (c) employment and working conditions, including dismissals and pay; (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations."

nationality and skin colour, disability, sexual orientation as well as religion and ideology committed in the equality strands of education/training, public goods and services and when carrying out tasks for public authorities. It is unclear whether the Act extends to the strand of social protection.²³⁹

Victims of discrimination can present a claim to an employment tribunal or to a civil court, depending on the nature of the alleged discrimination suffered. In most cases of proven discrimination victims are awarded damages. These compensation awards are often so high that it can be suspected that they should act as a deterrent: claimants in race-related discrimination cases were awarded an average of 100,000 pounds sterling (approx. 126,000 euros) in 2011 and 2012. The largest sum came to more than 4.4 million pounds sterling.

With the Equality Act, public bodies became obliged for the first time to pay due regard to issues relating to discrimination when carrying out their activities (the so-called 'public sector equality duty'). They are thus now required to "have due regard to" the objectives and requirements of the Equality Act "in the exercise of their functions" (Equality and Human Rights Commission 2013). In this context, the Equality Act also permits so-called positive measures in order to thereby promote equality of opportunities (e.g. the establishment of a pension trust that is compliant with the requirements of the Islamic religion). Public bodies are, however, not obligated to establish measures of this nature (Equality and Human Rights Commission 2013).²⁴⁰ It can nevertheless be ascertained that since the introduction of the 'public sector equality duty' British "public authorities [have taken] a proactive role in protecting people against discrimination" (Thym 2014b: 26, SVR's translation).

B.5.3 France: Anti-discrimination Policy in Republicanism

The EU Directives from 2000 did not prompt the British government to implement anti-discrimination reforms, as the country's pluralist and liberal traditions mean that regulations aimed at combatting discrimination have long had a firm anchoring in the country. The European Directives have thus merely given the existing protective norms an additional overarching European legal framework. The French Republic belongs, in contrast, to the

great majority of European states in which the aforementioned Directives have indeed acted as a catalyst for the development of anti-discrimination measures and have rendered combatting discrimination a genuine task for the French state.

The concept of equality is one of the core values enshrined in the French constitution. The state's strategy consists of fostering equality (and combatting inequality and discrimination) by taking an indifferent approach towards cultural, religious and other differences (see Chapter B.2). The country's anti-discrimination legislation is thus fragmented and inconsistent, despite the reforms triggered by the EU regulations introduced since 2001: regulations pertaining to employment, civil and criminal law exist alongside each other (Benecke 2010), and there is no central anti-discrimination law. A number of inaccuracies in the previously valid jurisprudence meant that the implementation of the EU Directives was not completed until the promulgation of Law no. 2008-496 in 2008 (Benecke 2010). Following the enactment of this legislation, France can now be regarded as one of the Northwest European countries which have "routinely" implemented anti-discrimination regulations from Brussels. In this context, the country has incorporated the EU guidelines into national law, and has not generally introduced additional legislation going beyond this EU framework (according to Benecke 2010: 65). Whilst this is the case, the country has nevertheless enacted some limited legislation in this field that goes beyond the basic European guidelines. In this context, French law now forbids, *inter alia*, discrimination on the following grounds: physical appearance, family situation, political opinions, state of health, (apparent) origin, moral views, surname, genetic characteristics and trade union activities (Table B.7).

In the wake of recent improvements, French anti-discrimination law thus now exceeds the minimum requirements laid down in the EU Directives. The general principle of equality enshrined in French law guarantees all people active in the social and educational sectors of French society identical protection in the fields mentioned in the previous paragraph. Non-discrimination rules for the attributes listed in the Racial Equality Directive also apply in the field of public goods and services including housing (Thym 2014b). As regards the legal consequences of discrimination, compensation awards in civil damages cases tend to be more limited in nature. The criminal penalties can conversely be considerable, as "following the Penal

²³⁹ Though covered in the European Directives, the self-employment sector, i.e. people who work for themselves and are thus not subordinated to an employer, is not fully protected under the British legislation. The Supreme Court ruled in the case of *Jivraj vs. Hashwani* in July 2011 that anti-discrimination protection is not valid for this group of people (see Thym 2014b: 24). The particular case centred on an arbitration agreement, according to which the arbitrators in a dispute between two parties had to belong to a specific Muslim community.

²⁴⁰ While the Equality Act contains some provisions explicitly allowing positive measures targeted at supporting certain groups of people in the labour market environment, such measures are in most cases not legally covered. In particular, quota-based positive discrimination is explicitly forbidden (Jarrett 2011).

Reform Act from 2004 a maximum of five years imprisonment and a fine of up to 75,000 euros” are envisaged (Benecke 2010: 51, SVR’s translation).

The French method of promoting participation, generally known as republicanism, has been comprehensively described in Chapter B.2. At the heart of this model is the assumption that participation can best be achieved by ignoring cultural and religious differences, by having faith in the integrative power of French citizenship and consequently emphasising belonging to the French *Citoyenneté*. A general anti-discrimination policy can be derived from the French Declaration of Human and Civic Rights, which as early as 1789 proclaimed the equality of all people before the law. Following the experiences of the Vichy Regime, which had cooperated with the German occupiers during the Second World War, a preamble was added to the constitution in 1946 stating that all people without distinction of race, religion or creed possess the same rights.²⁴¹ For many years, this was interpreted as requiring the authorities to be blind towards the immigrant population (i.e. to adopt no measures targeted only at the immigrant population) and that migrants should be statistically invisible (see Wihtol de Wenden/Salzbrunn/Weber 2013: 48; also see Chapter B.6).

French anti-discrimination legislation has especially focused on criminal and employment law. Since 1972, the French state has been able to prosecute people speaking and behaving in a racially discriminating fashion for committing an offence against human dignity. Moreover, the state has been able to punish discriminatory practices in the recruitment and dismissal of employees or as part of disciplinary measures as violations of the *Code du Travail* since 1982. However, French legal practice requires that discriminatory intention be first proven.

Republicanism and the closely connected principle of laicism, which together with the universally valid human rights are the central tenets of French self-understanding, are currently undergoing a process of modification: the introduction of integration courses specifically targeted at new migrants (see Chapter B.2) together with the increased public responsibility and visibility of religion(s) initiated under Sarkozy under the heading ‘positive laicism’ can be understood as a move away from the traditional republican traditions *à la française*. These changes correspond in the field of anti-discrimination policy with the establishment of an independent administrative authority explicitly entrusted with combatting

discrimination (*Haute Autorité de Lutte Contre les Discriminations et pour l’Égalité*, HALDE, French Equal Opportunities and Anti-Discrimination Commission).

The principle tasks and competences of the authority include legally verifying and accompanying cases submitted to the authority and fostering equality by implementing measures targeted at the general public, such as by publishing reports and studies as well as organising further training sessions (Keller/Tucci/Jossin 2010). The equal opportunities and anti-discrimination authority HALDE was dissolved in 2011 and its tasks transferred to the newly created *Défenseur des droits* (Defender of Rights). This independent authority disposes of constitutional powers of authority and possesses – like the British EHRC – “a wide range of competences. It serves as an ombudsman akin to the Scandinavian role model and has achieved in the first years of its existence a certain visibility in the public discourse” (Thym 2014b: 30, SVR’s translation). The *Défenseur des droits* can recommend legal reforms, initiate support measures and carry out research; it has, however, only a limited amount of funds. The establishment and expansion of an institute engaged in implementing and monitoring governmental anti-discrimination policy such as the *Défenseur des droits* can basically be interpreted as a sign that France is gradually moving away from the exclusively republican strategy of denying ethnic and cultural differences as well as the exclusionary and discriminatory processes that go along with these differences (Tandé 2008; Streiff-Fénart 2012).

B.5.4 Hungary: Wide-ranging Anti-discrimination Laws With Limited Outcomes

Hungary has been a member of the European Union since the 2004 enlargement and enjoys the unfortunate reputation of being a country in which minorities are subject to ongoing and grave discrimination. Whilst Roma are particularly frequently victims of discrimination (FRA 2009; 2013c), anti-Semitic attitudes are also widespread in the country (FRA 2013a). Hungary is currently (with Greece) one of two EU countries in which discrimination, racism and intolerance have taken on such a magnitude that increasing concern is being raised at national, EU and international levels (FRA 2013c).²⁴² Elements of extremist ideologies can be increasingly found in political, media and

241 As long ago as 1789, the first Article of the French Declaration of Human and Civic Rights states that: “men are born and remain free and equal in rights”. The preamble to the Constitution of the French Republic from 1946 affirms that “each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights” (see Chi-hye Suk 2008).

242 The independent European Commission against Racism and Intolerance (ECRI), which is part of the Council of Europe, has frequently reported on widespread racism towards, discrimination against and intolerance of Roma and other minorities in Hungary (ECRI 1997; 2000; 2004). The commission praised positive developments, particularly as regards the integration of Roma, in its fourth report (ECRI 2009). However, the report also concluded that racist remarks and comments in public discourse had increased to an alarming extent.

public discourses (FRA 2013c), and even the established parties reveal themselves to be openly hostile to Roma in the public discourse: the Jobbik party (movement for a better Hungary), which has been the third-largest party in the Hungarian parliament since 2010, employs far-right rhetoric when referring to Roma and Jews (FRA 2013c). The UNHCR (2012) has furthermore expressed its concern over the increasingly xenophobic views of the Hungarian population towards asylum seekers and refugees.

These societal developments provide (at least at first glance) a curious contrast to the decision of the Hungarian authorities (and those of other post-Communist Eastern European countries) to introduce regulations which habitually exceed the requirements contained in the Directives. Whilst numerous Southern European countries have more “reluctantly” implemented the Directives and Northwest European countries have “routinely” implemented them, Hungary has opted to take an “ambitious” approach to implementing the European guidelines (three-tiered classification in Benecke 2010: 65; SVR’s translation; Table B.8).

The Hungarian Equal Treatment Act was introduced just prior to the country’s EU accession in 2003. The Act had to be frequently amended, as previous versions contained implementation deficits (see Benecke 2010). Like Germany – and in contrast to France and Great Britain – Hungary thus has a central anti-discrimination law. This legislation is accompanied by regulations in civil, employment and health law which also protect against discrimination. These provisions, coupled with the ban on discrimination anchored in Article XV of the Hungarian constitution, mean that the country has at least in principle given itself a consistent system of rules which in many areas exceed the minimum standards laid down by the EU. This is exemplified by Article 13 of the Hungarian Anti-Discrimination Act. With 19 characteristics, this legislation contains the most comprehensive list of grounds for discrimination of all EU countries, and the wording at the “end of the Article suggests that this already comprehensive listing is not exclusive” (Benecke 2010: 31, SVR’s translation).²⁴³

As regards the scope of its anti-discrimination legislation, Hungary stands out as the only country of those

analysed in this chapter that does not provide a list of the differing areas in which the legislation is valid. Instead, the country defines which public and private actors are required to respect the guidelines contained in the central Equal Treatment Act in all their activities. Alongside state institutions, these are private persons and companies engaged in publically advertised projects or in activities involving public goods and services, the self-employed, legal persons and organisations which receive state subventions and grants and those who employ employees. Hungary is thus – in contrast to the widely held perception of the country – one of the more progressive European states in terms of the legal framework for the country’s anti-discrimination policy.

The well-developed legal and institutional infrastructure of anti-discrimination policy includes the Equal Treatment Authority (*Egyenl Bánásmód Hatóság*, EBH), which was established with the Equal Treatment Act from 2003. The main tasks of this authority are to sensitise the Hungarian legal system and the general public to anti-discrimination issues and to impose fines for non-compliance with the regulations. These fines may amount to up to 12,000 euros, but they are normally more moderate and oscillate between 2,000 and 3,000 euros (Benecke 2010: 51, 58). The EBH also carries out research projects, training and communication activities and enables networking between and with NGOs, trade unions, lawyers, etc. (Equinet 2012).

Hungary has thus developed a wide-ranging anti-discrimination policy framework in the last few years that has similar standards to those of comparable anti-discrimination policy frameworks in other European countries.²⁴⁴ However, the main problem in Hungary is that the legal stipulations are inadequately implemented; there is a huge gap between the policy framework and the actual legal and political practice. This striking disparity has many causes, which, in many ways, can only be speculated upon. In addition to the aforementioned national-conservative political climate in the country, the possible causes include the general societal framework conditions in post-Communist countries. These are countries in which the principle of equality inherent in state

243 The individual grounds for discrimination mentioned in this Article are: “gender, ethnic background, skin colour, nationality, belonging to a national or ethnic minority, native language, disability, state of health, religion or creed, political and other opinions, family status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity, age, social background, financial situation, part-time employment or other work-based relationship, affiliation to a representative group or other situation, other characteristic or state of a person or a group” (Benecke 2010: 31, SVR’s translation).

244 It can only be speculated as to exactly why the Hungarian government decided to “ambitiously” implement the legal anti-discrimination guidelines of the European Union. The cause of the comprehensive protection granted to minorities may ironically be found in the nationalist climate prevalent in the country. This explanation is suggested by Kelemen (2007): around 2.4 million ethnic Hungarians live in neighbouring countries (above all in Romania, Slovakia, Serbia and Ukraine), whereas about 9.5 million people live in Hungary itself. The separation of territory previously belonging to Hungary which was agreed upon in the Treaty of Trianon from 1920 is still deemed a great injustice in the country, and the situation of ethnic Hungarians living abroad remains an important domestic issue. In this context, a comprehensive legislation package could have the aim of giving neighbouring countries an example to follow and of putting them under pressure to grant Hungarian minorities a greater degree of autonomy.

thinking is “critically seen and there is still habitually no sensibility for ‘soft’ factors of societal participation” (Thym 2014b: 27, SVR’s translation). In addition, and as in most post-totalitarian countries, there remains a great distrust of the Hungarian justice system. The relative poverty of the country compared to Northern and Western European countries may also play a role, as only a small proportion of the population is able to afford legal protection insurance. This limits the use of the existing legal framework, seeing as victims of discrimination must bear the risks associated with carrying the costs of a claim (Benecke 2010: 66). A closer analysis of the Hungarian legal stipulations also reveals that the country at least “partially by copy-pasting incorporated EU guidelines or regulations of other EU countries” directly into its own legal framework immediately prior to the country’s EU accession (Thym 2014b: 28, SVR’s translation). These factors, together with the fact that the comprehensive implementation of – or the implementation of legislation exceeding – the EU guidelines has as previously suggested more strategic (and less intrinsic) motives, may well indicate that the political community and Hungarian society in general has not yet fully embraced the new rules.

As a last point, Hungarian anti-discrimination jurisprudence has turned out to contain a number of deficits; a consistent line can only be vaguely recognised. It is against this background especially problematic that the popular so-called *actio popularis* (i.e. cases brought for abstract constitutional review without claimants having a specific personal interest) which were formally brought before the Constitutional Court are now no longer being employed. A number of municipalities had previously successfully combatted the discrimination of Roma children by making use of this form of public interest litigation. Furthermore, Hungarian courts and the Equal Treatment Authority did not recognise so-called testing procedures (situation tests)²⁴⁵ as proof of discrimination until 2006; however, these have been accepted ever since (see Klose/Kühn 2011).

B.5.5 Anti-discrimination Protection in Germany: The AGG and Other Norms

In Germany, the implementation of the EU Directives envisaged “a paradigm shift, as non-discrimination suddenly became a legal and political issue” (Thym 2014b:

24, SVR’s translation). Germany has implemented the guidelines of the EU Directives with the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*, AGG) from 2006 and thus belongs to the states that have “routinely” implemented the provisions contained in the EU Directives (Benecke 2010). However, the non-discrimination rule in civil law exceeds the EU provisions, as it also applies to discrimination on grounds of religion, disability, age or sexual orientation. In this respect, the AGG goes well beyond the provisions contained in the Directives applying to civil law – such as in the housing market but also in normal business transactions – which only prohibit discrimination on the grounds of race, ethnic background and gender.²⁴⁶

In the course of implementing the Directives, Germany, like most other EU countries, created a new authority, the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*, ADS), which was formally launched when the AGG came into effect. Its tasks are enshrined in the AGG. It supports people who suffer/have suffered discriminatory treatment due to their race, their ethnic background, their age, their gender, their religion or ideological views, a handicap or their sexual orientation. Its tasks include not just designing and implementing measures aimed at preventing discrimination, but also providing information on legal claims and outlining the possibilities of legal action in order to protect against discrimination, referrals to counselling and academic research. In addition, the Anti-Discrimination Agency, in conjunction with the other authorities responsible for dealing with issues related to discrimination (e.g. the Federal Republic’s Commissioner for Migration, Refugees and Integration or its Commissioner for the Needs of Handicapped People) as well as the German Federal parliament, publishes a report every four years. This report summarises discrimination in the country and provides suggestions as to how this could be avoided (see ADS 2010; 2013). The report also contains details about inquiries on counselling issues and about complaints lodged with the ADS. The results reveal that the majority of the inquiries are concentrated in the fields of ethnic background and disability (25 % in both cases) (ADS 2013: 46).

The AGG explicitly covers just the six characteristics named in the Racial Equality Directive, i.e. it protects people against discrimination on grounds of race or ethnic background, gender, religion or belief, disability, age or

245 “A situation test is a procedure that serves to obtain evidence for discrimination with the help of a paired comparison between two almost identical people, who only differ from each other as regards a particular characteristic that is to be investigated (e.g. age) and who are in the process of trying to achieve the same objective, such as being interviewed for the same job” (Thym 2014b: 28, SVR’s translation). “A type of role-play is thus set up, during which the person who is to be tested is confronted with one or more fictitious candidates in order to observe his or her behaviour and to compare his or her behaviour towards the different candidates” (Klose/Kühn 2011: 6, SVR’s translation).

246 The non-discrimination rule is not employed in situations in which a special relationship of proximity or mutual trust is present, such as when renting a flat in a house occupied by two families which is used by the owner himself or herself.

sexual orientation. As the ADS's recently published guide "Rechtlicher Diskriminierungsschutz" (Legal Protection against Discrimination) shows, there are, alongside the AGG, a number of other legal norms in both civil and public law which contain non-discrimination rules and thus enable people to react to discriminatory behaviour by taking legal action (Berghahn et al. 2014, see especially the overview on pages 31f.).

One of the other ways of penalising discriminatory behaviour is through criminal law. This is a branch of jurisprudence in which discrimination on the grounds of characteristics not covered in the AGG can be made liable to prosecution. Possible grounds for prosecution in this field include criminal liability due to Agitation of the People (Section 130 StGB) and particularly Insult (Section 185 StGB) (Berghahn et al. 2014: 24, 68, 187–195). The AGG limits itself to the "areas of employment and predominately to legal relations. It thus does not encompass general education (in state-run schools), with the notable exception of employment (e.g. for teachers)" (Berghahn et al. 2014: 23, SVR's translation). However, the German *Länder* can also include rules outlawing discrimination in their respective school laws. In addition, state schools are in the same way as other state institutions bound to, and thus obliged to uphold, the basic rights enshrined in the country's constitution (i.e. the Basic Law). In this way, "at least discrimination perpetrated by schools and teachers is covered by the provisions banning discrimination contained in the Basic Law" (Berghahn et al. 2014: 25, SVR's translation). As a further point, Section 5 of the AGG allows positive measures which aim to prevent or equalise handicaps or disadvantages faced by persons possessing one (or more) of the characteristics listed in the Act. Such measures must, however, conform to a legal clause in the Basic Law (Art. 3[3]) prohibiting people or groups from being given preferred treatment (the so-called 'preference ban' or *Bevorzugungsverbot*) (Langenfeld p.p.).

As regards court judgements, only relatively minor damages have as of yet been awarded in Germany in discrimination cases. One of the highest sums awarded was 17,000 euros; this sum was granted by the regional labour court (*Landesarbeitsgericht*) of Berlin-Brandenburg to a victim of gender discrimination in 2011 (von Steinau-Steinrück 2013). To date, there have only been a few judgements outside the fields of employment and work (ADS 2014). The flood of cases which employer organisations, some companies and others had feared has not materialised in Germany, or indeed in the EU as a whole. Nevertheless, Germany, along with France, the Netherlands, Sweden and Great Britain, is one of the EU

states in which the most court judgements have been reported (Benecke 2010).

B.5.6 Anti-discrimination Policy: Legal Boundaries and Boundaries of Supra-national Harmonising 'From Above'

! This chapter's country comparison has not just revealed the way in which/the extent to which European countries have taken quite different approaches towards implementing EU guidelines in the area of anti-discrimination policy. The comparison is furthermore highly instructive, as it makes the boundaries of law as an instrument for shaping social policy crystal clear. While a corresponding legal framework is without doubt necessary, it is by itself insufficient. In all EU member states detailed legal provisions prohibiting discrimination are now in place. These legal stipulations do not, however, come close to guaranteeing a society free of discrimination. This is demonstrated in reports published by the European Union Agency for Fundamental Rights (FRA 2013b; 2014a), according to which migrants and members of differing minority groups in the EU are still frequently subject to discrimination. As the results of the Integration Barometer 2014 make clear, people with a migration background in Germany also feel discrimination in everyday life. This is especially the case in schools and universities, in the workplace and when searching for a place of residence (SVR 2014).²⁴⁷

One of the particularly problematic issues is the lack of awareness among people potentially affected by discrimination as to their fundamental rights to defend themselves against discrimination in the EU. A recurring finding in many studies conducted by the Agency for Fundamental Rights is that many people indeed lack knowledge of their own rights (FRA 2014a: 128). The results of an opinion poll carried out by FRA in 2011 reveal that at that time only around 49 percent of female Roma and 55 percent of male Roma (16 years and older) in Hungary knew that job applicants are legally protected against discrimination; the situation is similarly worrying in France (47 percent of female Roma and 56 percent of male Roma) (FRA 2014b: 38). Most Europeans also know little about their respective national equality authority: when the name of the relevant national body was mentioned during a survey interview, around 60 percent of those questioned replied that they had never heard of this authority (FRA 2013b).

The country comparison has also made clear that the centrally initiated process of equalising legal frameworks

247 Empirical test procedures which do not measure 'perceived', but instead genuine discrimination prove that this is the case in the housing market (Auspurg/Hinz/Schmid 2011), in the labour market (Kaas/Manger 2010) and in the market for apprentices (SVR-Forschungsbereich 2014a).

‘from above’, i.e. through EU Directives, does not guarantee that similar political practices or societal processes take place in each member state. If just the protection against discrimination ‘on paper’ is considered, the ambitious anti-discrimination legislation in Hungary does indeed eclipse the legal framework in place in other EU member states. This is also shown by the MIPEX (Migrant Integration Policy Index), which employs seven policy indicators in the area of anti-discrimination to ascertain the extent to which the entire population of a particular country is sufficiently protected against discrimination in different walks of daily life. Hungary achieved a score of 75 points in 2010, a result which was well above the average score calculated for the ‘old’ EU countries (i.e. the EU15 member states), which came to 64 points. The country therefore belongs to the leading group of European countries in terms of protection against discrimination. Germany achieved a score of just 48 MIPEX points in this policy field.

However, a one-sided examination of the anti-discrimination provisions in the different EU states provides a distorted picture of the social reality in the different states. **📌 Alongside formalised legislation, two other factors influence this picture: firstly the extent to which these legal stipulations find resonance in society at large, and secondly the socio-political views regarding the promotion and fostering of societal participation**

which have traditionally been prevalent in these countries. Against this backdrop, socio-psychological studies make clear that the country-specific socio-political context greatly influences personal attitudes towards ethno-religious minorities (Guimond et al. 2013).²⁴⁸

It can thus be seen that Great Britain, as a country without a codified constitution, has passed laws aimed at protecting people against discrimination, an approach which can also be considered as a type of substitute for a written constitution. French non-discrimination legislation is legally fragmented; this is a consequence of the republican self-understanding as a *Communauté des Citoyens*, as part of which all people are quasi automatically regarded as equals and special measures are usually seen as conflicting with the aforementioned self-understanding. In Hungary, as in other former Eastern Bloc countries, the legacy of the totalitarian Communist regime, which was only overcome a quarter of a century ago, continues to have an influence. As a result, while the anti-discrimination rules imposed ‘from above’ by the European Union have been incorporated into a comprehensive national legal framework, there are still large deficits in the practical application of these rules in the country. The Hungarian example shows how important it is that, alongside the legal implementation of the guidelines, political actors and society in general are prepared to truly prevent minorities from suffering discrimination.

248 At the same time, experimental socio-psychological studies have shown that members of the ‘majority society’ are more willing to accept and internalise norms of social equality when these are presented as a being less a moral duty and more a moral ideal. Put another way: positive moral incentives increase people’s willingness to support social equality between ethnic groups (Does/Derks/Ellemers 2011).

Chapter **B.6**

The Politics of Naming and Belonging

Belonging to and membership of 'German society' was chiefly defined by the principle of blood descent during the 20th century: a German citizen was, put simply, somebody who had German parents. Elements of *ius soli* were introduced alongside this principle of *ius sanguinis* with the reform of the country's citizenship legislation in 2000 (see also Chapter B.4). Since then, people born in Germany to non-German parents are also German citizens. In this context, the question must be asked: do German residents without German citizenship not belong to German society? The term 'foreign co-citizen' ('*ausländischer Mitbürger*'), which was frequently employed in the past, draws attention to the fact that this group of individuals also belong in some way to German society. The term 'persons with a migration background' ('*Menschen mit Migrationshintergrund*') was introduced in national statistics in 2005.²⁴⁹ Some groups consider this to be a positive step, as it acknowledges that Germany is a country of immigration (*Einwanderungsland*), whereas others feel as though they have been 'labelled' in an unwanted fashion.

B.6.1 Who are 'the Others'? Definitions and Perceptions of Belonging in Countries of Immigration

Terms and categories which (are intended to) demonstrate belonging and affiliations change over time and are not uncontroversial in modern societies. They are not biological or naturally given, but instead result from social processes of collectively ascribing self-belonging and belonging to the 'Other'.²⁵⁰ Questions of the politics of

naming and belonging, of defining in a more or less clear fashion who belongs to the community of members (i.e. who are 'we') and of distinguishing oneself from 'Others' – people who usually prove equally difficult to definitively identify – increasingly arise for nation-states, and particularly for countries of immigration. Ascriptions of belonging to a socially delimited group and to the group of 'Others' are thus a central instrument of defining and maintaining societal identity in the sense of "we are who we are by virtue of who we are not" (Zolberg 1999: 85).

The most basic form of state politics of naming and belonging is the binary differentiation between citizens and foreigners. Citizenship builds the legal bond between the state and its citizens. It may have lost its monopoly position as a legal category which facilitates social participation in most Western countries of immigration (Pries/Pauls 2013: 13; Walter 2013), but it remains a central criterion. In a society which is made up of people from a range of different countries of origin, ethnic and cultural backgrounds, any attempt to precisely define both 'the Others' and the meaning of belonging semantically must go beyond the simple differentiation between citizens and non-citizens. This is because the politics of belonging influence people's opportunities to participate and gain recognition in practical sections of daily life such as in the neighbourhood, in the workplace or in a religious or civil society context (Crowley 1999; Brubaker 2010). The membership of a nation is thus not just managed by civil servants, but also by "ordinary people in the course of everyday life, using tacit understandings of who belongs and who does not, of us and them." (Brubaker 2010: 65).

State policy of membership and/or belonging thus takes place in different 'arenas': not just at Federal,

249 The Federal Statistical Office (Statistisches Bundesamt 2014a, SVR's translation) regards people with a migration background as being "all foreigners and naturalised former foreigners, all people who migrated to the present territory of the Federal Republic of Germany as Germans after 1949 as well as all people born as Germans in Germany who have at least one parent who has either migrated to Germany or was born in Germany as a foreign citizen."

250 An example of how dynamic and often how contentious self-ascriptions and ascriptions from 'others' can be is the case of the former Yugoslavia, where ethnically, religiously and/or nationally defined conflicts broke out in the wake of the country's disintegration.

Länder and municipal²⁵¹ levels and hence in the places in which processes of this nature are earmarked to take place in a multi-layered political system, but also in state organisations (such as the Federal Armed Forces, *Bundeswehr*). Migrants are, however, not just the subject of state politics of belonging. Instead, they also participate themselves in the mutual processes of negotiation over belonging and thus actively influence the types of self-ascription and ascription by others (i.e. 'Othering') in the society shaped by immigration (for a good example, see Uslucan 2011). Migrant organisations play an important role in this process, a subject which is examined in greater detail in the 2014 Annual Report (SVR 2014: 123–125). The main focus of these organisations has changed with the passage of time: while they were originally chiefly focused on the respective country of origin, their aims are now more related to Germany and/or transnational issues. These changing priorities have consequences for the terminology which is employed to describe the migrant organisations.

Group membership and the boundaries thereof are thus not just defined in the political domain, but also and most especially in the public arena and in public discourse. The general public and state institutions influence each other reciprocally (Pries/Pauls 2013: 2); the media plays a key role in this process, as it acts as a catalyst and occasionally intensifies this process of mutual influencing. Belonging is thus not a statically defined constant, but is instead constantly negotiated and (re)constructed as part of complex and multi-layered reciprocal discussions between the state and the public. This ongoing process of negotiation takes place against the background of the political and social framework conditions and the respective nation-building narrative.²⁵²

This Annual Report is mainly interested in determining and examining which options state actors have to 'learn from others'. The following comparative remarks and comments on country-specific politics of belonging and naming thus consciously limit themselves to the politics of naming which are employed by the state and at the level of the nation-state (i.e. 'top-down'). In doing

so, they largely omit other state and non-state actors engaged in the politics of belonging.²⁵³

A comparison of the terms employed by different states to refer to migrant groups is especially relevant for two reasons. First of all, these state-run policies are decisive for the actual distribution of resources within a society. The dynamic processes of enabling participation opportunities and societal integration can only be genuinely understood against the backdrop of state politics of belonging (see Pries 2013a: 56; Wimmer 2007: 19). Second, terminology and categorisations are indispensable in order to be able to combat discrimination (for more detail, see Chapter B.5). However, this results in the paradoxical situation emerging in which "[f]or detecting unequal opportunities or discrimination, instruments of measurement are needed, but at the moment of generating new categories, these turn out and get alive as forces of naming and blaming in public discourses and in the politics of ascription" (Pries 2013a: 78).²⁵⁴

The (re)construction of concepts of membership and belonging in different countries can best be appreciated by examining which definitions of 'the Other' have been traditionally dominant and how this has changed over time. The development of the respective terminology in Germany is juxtaposed below with the developments in the Netherlands, France, Great Britain and the United States:

(1) Membership of a religious or political-ideological minority was a constitutive element of the Dutch nation-state. As is comprehensively described in Chapter B.2, the multicultural model was long dominant in the country. From the point of view of the politics of naming, this resulted in the terms used by the migrants to refer to themselves being adopted. The dual terms *autochtoons* (old Greek for 'down to earth, native, long-established') and *allochtoons* (old Greek for 'foreign, external'), which refer to each person's country of birth and that of the person's parents, were introduced about two decades ago with the country's movement away from multiculturalism. The term *allochtoons* was originally conceived as a

251 Particularly in the case of Germany as an "undeclared immigration country" (Thränhardt 1992), municipalities, which are directly affected by immigration, play an important role in terms of the policy of belonging. For many years, Germany was characterised by the contrast between the political denial that it had become a country of immigration on the one hand and the reality of large-scale migration inflows on the other. The 2012 SVR Annual Report examined policy measures implemented by different municipalities in this field (SVR 2012).

252 The politics of belonging are thus not just relevant in terms of questions of membership and/or belonging caused by migration, but also as regards states' approach towards ethnic and religious minorities which have long been resident in their territory (Brubaker 2010).

253 Not just countries of residence, but also the countries of origin frequently engage in the politics of belonging (a subject which will also not be explored at any great length here). This is exemplified by the political approach taken by the Turkish government towards people of Turkish origin resident in Germany. While these were regarded as 'lost sons of the patria' until the 1990s, a – albeit hesitant – disengagement has been observed in the course of the last few years. Aydin (2014) describes in a detailed fashion the changing policies adopted by the Turkish government towards the Turkish diaspora; in his view, these measures only influence to a very limited extent the views of the (heterogenic) population with a Turkish background in Germany.

254 This area of societal conflict is analysed in detail in Chapter B.5, which examines the varying approaches taken towards combatting discrimination in different countries.

- neutral instrument for evaluating policy measures, and is in itself neutral and purely descriptive. However, it soon became employed as a synonym for ‘undesired’, less qualified and/or Muslim immigrants in the public discourse (Doomernik 2013).
- (2) France has a republican state model. In this country, the group of French constituting the *Communauté des Citoyens* was traditionally delimited from ‘the Others’ through citizenship, and not through alleged ethnic similarities (for details, see Chapter B.2). Migrants were called upon to rapidly acquire French citizenship and to ‘become French’ by adapting to the country’s culture and way of life.
 - (3) Questions of national identity in the former colonial power of Great Britain are generally difficult due to its constitution as the United Kingdom. The country categorises the population primarily through its affiliation to an ethnic group. In so doing, it follows the Anglo-American concept of self-categorisation. It can be well observed here how categorisations are negotiated in a process of mutual interaction between the state and ethnic groups, with the state providing platforms in order to make one’s ethnic group visible. This approach also allows ethnic groups to organise themselves into pressure groups and to obtain resources (Green/Skeldon 2013).
 - (4) The most important category employed in the USA to render inequality visible is the concept of ‘race’, a concept which is discredited in Germany primarily due to historical reasons. However, this concept is increasingly being challenged by actors who advocate ethnicity as an alternative characteristic of differentiation (Hollinger 2005; Hattam 2007). The controversial questions about how ‘the Latinos’ should be categorised or their presence statistically measured is particularly illuminating in the context of attribution of membership and/or belonging (Rodríguez 2009).

B.6.2 Processes of Negotiation and the Politics of Naming in Germany

The ascertainment that “[t]he categories used for newcomers mainly tell us something about the society in which they arrived” (Pries 2013a: 55, see also Anderson 2013) applies to Germany. These discursive categories, the terminology used by politicians and other societal

actors to refer to migrants and the way in which the categories have changed over time provide insights into the shifting self-perceptions of the German population over the course of time (Pries 2013a: 62).

The German history of delimiting and demarcating ‘us’ from ‘them’ in the context of the country’s singular history is characterised by both continuities and breaks. Different groups have unwillingly replaced each other in taking on the role of ‘the Other’ at various times in the country’s history. These groups have furthermore often been spatially congregated in the same places, seeing as “there were barracks in many cities, towns and villages which were successively used by, for example, crews from the Reich Labour Service (*Reichsarbeitsdienst*), then during the war ‘foreign employees’ (*Fremdarbeiter*), later DPs (displaced persons) and finally German expellees (*Vertriebene*). They also not infrequently found use as ‘guest worker barracks’ (*Gastarbeiterlager*) in the early 1960s” (Herbert 2003: 197, SVR’s translation).

In order to ascertain the location of the boundaries of belonging in the Federal Republic of Germany and their shifting positioning on a chronological basis since 1945, it appears helpful to differentiate between two strands, which initially run parallel to each other: on the one side the influx of German co-ethnics (i.e. ‘*Volkszugehörige*’), that is expellees and ethnic German migrants from Eastern Europe and the (former) Soviet Union (i.e. the so-called [late] *Aussiedler*),²⁵⁵ and on the other side the influx of foreigners, who were not seen as belonging to the German nation (i.e. *Volk*). This differentiation mirrors the logic of belonging regulated by *ius sanguinis* (i.e. through blood descent), a thinking which held sway in Germany for many years. According to this line of thinking, it is not the passport which assigns membership in the German nation. Instead, belonging to the nation is made contingent on belonging to a community of descent (see Chapter B.4). Correspondingly, the Federal Act on Refugees and Expellees (*Bundesvertriebenengesetz*) defines belonging to the German ‘*Volk*’ in the following fashion (SVR’s translation): “a member of the German nation according to this Act is somebody who has declared his belonging to the German culture, provided that this declaration is confirmed by certain characteristics such as descent, language, education or culture.”²⁵⁶ In Germany, ‘the Others’ were thus for many years people who did not belong to the ethnically defined German nation (‘*Volk*’). The history of boundary drawing between the self-ascribed community of Germans on the

255 The term ‘Late *Aussiedler*’ (*Spätaussiedler*) refers to co-ethnic German migrants who were able to migrate to Germany due to their ethnic German background after 1 January 1993. Co-ethnics who had migrated before this time are/were known as *Aussiedler*. As members of the German *Volk*, (late) *Aussiedler* (*Spät-/Aussiedler*) are German according to Article 116[1] of the Basic Law.

256 The related insistence of the West German state that a uniform German national feeling existed contrasted sharply with the everyday experience of the general population, which for many years continued to differentiate between ‘locals’ (*Einheimische*) and people from ‘the other side’ (i.e. ‘*von drüben*’) and later between West Germans (i.e. ‘*Wessis*’) and East Germans (i.e. ‘*Ossis*’).

one hand and 'the Other(s)' on the other is, however, a very dynamic and changeable one.

B.6.2.1 From 'Alien Workers' to 'Guest Workers' to 'Foreigners'

The worker recruitment agreements which were signed by the Federal Republic of Germany between the mid-1950s and the beginning of the 1970s have had a defining impact on the Federal Republic as a country of immigration right up until the present day.²⁵⁷ The first agreement was signed with Italy in 1955; it was followed by treaties with Greece, Spain, Turkey, Portugal and Yugoslavia until 1968 (see for instance Bade 1994).²⁵⁸ In this way, Germany (or at least the western part thereof) recommenced the "large-scale employment of foreigners" fifteen years after the end of the Second World War, "without the population's attitudes towards the foreign forced labourers employed during the war being made subject to a critical public reflection during the 1950s" (Herbert 2003: 201, SVR's translation). The "continued habitual usage of the expression 'alien worker' (*Fremdarbeiter*)" (Herbert 2003: 206, SVR's translation) in this period testifies to the fact that the local population did not critically reflect on the presence of new migrants so soon after the end of the war. This term had belonged to standard German vocabulary since the beginning of the 20th century.

The term 'guest worker' (*Gastarbeiter*) was ubiquitously employed in Germany from the beginning of the 1960s onwards. It "was intended to sound friendlier and to above all emphasise the temporary nature of the foreign labour migrants' stay in Germany" (Herbert in Frankfurter Allgemeine Zeitung, FAZ 2005, SVR's translation). The recruitment ban (*Anwerbestopp*) from 1973 had the unintended consequence of prompting a larger number of the foreign employees, who had originally only been recruited on temporary contracts, to settle in Germany. This fuelled fears that the presence of migrants might 'swamp' the country. As it became clear by the mid-1970s that the "tendency to permanent residence" (Herbert 2003: 232, SVR's translation) could no longer be prevented, the term 'guest worker' was increasingly replaced by that of 'foreigner' (*Ausländer*) in political circles and in the public discussion.

B.6.2.2 'The Turks' as a Reference Point for German Identity

Public disquiet centred initially on the presence of 'foreigners' in general. However, it soon became apparent that one sub-group was perceived as being especially problematic: people with a Turkish background (Thranhardt 2000). In contrast to the (Christian) Italian, Portuguese, Spanish or Greek 'guest workers', this group was regarded as being 'not European' and hence somehow 'different'. The singling out of this particular migrant group is also to be seen in the context of the prevailing global political situation of this period. In this context, "Islam, which had since the Iranian revolution increasingly been regarded as a political threat, had played an increasing role in the debate over the 'problem with Turks' (*Türkenproblem*) since the early 1980s" (Herbert 2003: 260, SVR's translation). The prominent role played by 'the Turks' as 'the Other' or as a type of mirror in which the non-immigrant population could recognise itself gained further importance in the 1990s. Simultaneously, the view that Germany was not a country of immigration became once again increasingly emphasised in the prevailing political discourse.²⁵⁹

B.6.2.3 Public Attention Shifts to the 'Asylanten' ('Asylum Seekers')

At times, politics and the general public – by interacting, complementing and reinforcing each other – can occasion an ethnic boundary between the dominant ethnic group and an 'Other' to become more salient. This was shown particularly during the German asylum debate of the 1990s. A sharp rise in the number of refugees petitioning asylum in the Federal Republic in the 1980s resulted in the "public interest [...] increasingly focusing on this group of migrants" (Herbert 2003: 263, SVR's translation). An inglorious by-product of this public interest was "one of the most acrimonious, controversial and consequential domestic political disputes of German post-war history" (Herbert 2003: 299, SVR's translation). In some sections of the media, asylum seekers were depicted as swindlers and cheats, and they were frequently defamed as '*Asylanten*' (a pejorative term used to refer to asylum

257 European states signed contracts regulating the recruitment of 'alien employees' (in the sense of *Fremdarbeiter*) from the 1920s onwards (see Rass 2010).

258 The migration of a significant number of foreign labour migrants to the German Democratic Republic (*Deutsche Demokratische Republik*, GDR – East Germany) started much later than the corresponding labour migration to the Federal Republic. So-called contract workers (*Vertragsarbeiter*) first started to arrive at the end of the 1970s/beginning of the 1980s after the GDR had signed bilateral agreements with a number of non-European socialist states (see Dennis 2005; Bade/Oltmer 2004: 95).

259 The following passage on this subject can be found in the coalition agreement signed by the CDU/CSU and the FDP in 1982 (SVR's translation): "The Federal Republic of Germany is not a country of immigration. All humanely justifiable methods should be employed in order to inhibit the influx of foreigners".

seekers) or indeed 'economic *Asylanten*', who were allegedly not in need of protection, but instead wished to claim social benefits in Germany (see Herbert 2003). This anti-refugee feeling peaked in burning asylum seeker residences and the attempted murder and assassination of asylum seekers and other migrants.

The unusually high immigration rates, but also the public and media discourse of this period which tended to favour a closed-door strategy, impacted on German migration policy, which became more rigid in some areas in the 1990s (Pries/Pauls 2013: 6). Pressure from sections of the political community and the general public finally led to the so-called asylum compromise (*Asylkompromiss*) from 1993. This replaced the previously 'ultra-liberal' German asylum law, which could be regarded as a "historical answer to foreign countries' acceptance of, but also the refusal to accept people persecuted by the National Socialists" (SVR 2010: 75, SVR's translation). The 'asylum compromise' has been interpreted as either unnecessarily destroying the unusually broad scope of the country's asylum law (according to Bade 1993: 21), or making it compatible with European stipulations (Joppke's view goes in this direction [1998]).

B.6.2.4 Foreign Co-citizens ('Ausländische Mitbürger'), Immigrants ('Einwanderer') and Migrants ('Zuwanderer')

At the end of the 1970s, the 'guest workers' who had originally come to the country for a limited period of time had largely turned into genuine immigrants (SVR 2010). Their legal residence status became more consolidated with increasing length of stay in the country, and a legal entitlement to naturalisation was introduced as part of the Foreigners' Act (*Ausländergesetz*) from 1990. As a result, a wider range of terminology was used to refer to migrant groups; new terms were employed, such as 'ausländische Mitbürger' (foreign co-citizens) or 'Einwanderer' (immigrants), the latter being a term used to refer to naturalised foreigners. The positioning of the ethnic boundary in the public discourse gradually shifted from citizenship to other characteristics such as the country of origin (Bauder 2006).

At around the same time the term 'Zuwanderer' was coined and became frequently used, especially in the prevailing political discourse. One of the reasons for the increased usage of the term was the desire to stress that the migration process could be reversed; another was possibly the wish to uphold the assertion that Germany was not a country of immigration (Pries 2013a: 65). The intentions which inspired the usage of the term at this

period differ greatly from the reasons which have motivated the SVR to speak of *Zuwanderung* (migration or in-migration as opposed to immigration) and *Zuwanderer* (migrants as opposed to immigrants) in the German language version of its yearly reports: this term mirrors the transnational character and the temporality of migration processes better than the competing terms *Einwanderung* (permanent immigrants as opposed to migrants, who may or may not settle in the country) and *Einwanderer*.

B.6.2.5 Shifting Terminology Used to Refer to Co-ethnic German Migrants ('Spät-/Aussiedler'): From Co-nationals ('Volkszugehörige') to 'Persons With a Migration Background'

The migrants, who were correctly described by Bade and Oltmer (1999, SVR's translation) as being "German immigrants from Eastern Europe" and migrated to the Federal Republic as members of the German 'Volk', were mentioned neither by policymakers nor by other societal actors (e.g. the media) in the migration and integration policy discussion which emerged in the wake of the purported problems caused by the presence of migrants in Germany in the late 1970s and early 1980s. The dominant political goal of the policy towards these migrants was to provide them with a *Heimat* (i.e. a homeland where they could live among fellow Germans), an aim which endured until shortly after German Reunification. The socio-cultural and legal boundaries which were drawn to other migrant groups thus remained correspondingly static over a long time period.²⁶⁰ However, public opinion towards co-ethnic *Aussiedler*, who were migrating in ever greater numbers to the Federal Republic, started to change in the years prior to German Reunification, i.e. towards the end of the 1980s.

Aussiedler enjoyed the same legal status as German refugees and expellees (*Vertriebene*) from 1957 onwards, and therefore automatically acquired German citizenship and were entitled to a range of state-funded integration measures. The decision to grant refugees and expellees a series of special welfare benefits was justified as being "a question of showing solidarity with fellow members of a national 'community of fate' in the wake of the catastrophe of the Second World War" (Bommes 2004: 16, SVR's translation). This semantic of solidarity lost much of its ability to convince following the end of the Cold War, and an ever smaller percentage of the general public accepted the special treatment accorded to refugees and expellees. As a result, "the legal and political grounds for the special status enjoyed by co-ethnic *Aussiedler* [also became the] subject of an increasingly

260 The process of normalisation which set in following German Reunification has already been comprehensively described by the SVR (2010) and others.

controversial domestic political discussion" (Herbert 2003: 276, SVR's translation). At the end of the 1980s, the then Federal Commissioner for questions related to *Aussiedler* attempted to influence the debate over the legitimacy of the special treatment with a national PR campaign containing the slogan "*Aussiedler* are not foreigners" (Bade 2007, SVR's translation). This motto strikingly illustrates that the boundaries of the German politics of belonging lay at that time between members of the German '*Volk*' (*Volkszugehörige*) and foreigners.²⁶¹

B.6.2.6 'Persons With a Migration Background' as an Additional Statistical Category Designating Migrants

The German nation-state building process can be regarded as being finally complete with the reunification of the two German states. This new situation provided the country with the opportunity to finally admit that it had become a country of immigration (Joppke 1998; SVR 2010: 76). However, this issue proved to be so emotionally and negatively charged that ten years would pass before new legislation was introduced which reflected these changed circumstances. In this context, the country's citizenship law was only modified at the end of the 1990s (see Chapter B.4) and the Green Card was not introduced until the start of the new century. The following years were then to witness a gradual reform of the country's immigration law, a process which has been ongoing for about fifteen years and has resulted in a greater privileging of highly qualified migrants and those generally deemed 'suitable' for the German labour market (SVR 2014: 72-77; also see Chapter A.1). New categories and differentiation forms emerged as a result of these modifications. However, while this is the case, the migrants' credentials, rather than the characteristics attributed to them, such as their ethnicity or religious affiliation, are now seen as the decisive factor (for a more general discussion, see Joppke 2005): the difference between the 'highly qualified' and the 'lesser qualified' has become politically relevant, as the usefulness – and thus the desirability – of migrants is now seen as being tied to their credentials.

The category 'migration background' was introduced in the 2004 Microcensus Act, which came into force in 2005. It was introduced in order to statistically track the extent to which certain immigrant groups are integrating into society and continue to suffer from socio-economic inequality (see Pries 2013a: 75). The migration status of a person is thus no longer defined merely by his or her citizenship, but also by the person's country of birth and that of his or her parents. This approach brings Germany

more into line with that employed by other Western countries marked by immigration. German co-ethnics and naturalised foreigners are thus registered alongside foreign nationals as 'persons with a migration background' in official statistics.

The usage of the migration background as a category for statistical purposes has two sides. On the one hand, the new category is indisputably an innovation compared to the previous approach, which only allowed for a differentiation between citizens and foreigners. The registration of the migration background is thus a necessary (although not a sufficient) prerequisite in order to make inequality and discrimination visible and to document cases of successful integration. It can be shown that a disproportionately large number of socio-economically successful migrants 'disappear' from the statistical records on foreigners as a result of their higher propensity to acquire German citizenship. They are thus placed into another statistical group which is calculated according to the citizenship of individuals. This unintentional selectivity results in the dictum of 'failed integration' being statistically legitimised.

On the downside, and this has been increasingly discussed in the last few years, the term ascribes a heterogeneous group of people a common identity (see, among others, Foroutan 2012; 2013; Mecheril 2013; Elrick/Schwartzman 2015). According to its critics, this form of labelling excludes people attributed to this state-created group from mainstream German identity, even though many of the immigrants, as German citizens, are to some extent 'co-members' of the German 'identity community'. At the same time, it has been expressly acknowledged that this criterion provides policymakers with the chance to promote participation in the central fields of everyday society in a better and more targeted fashion. The term, which was intended to serve as a neutral registration of migrants, has taken on a meaning of its own and has lost its neutrality in the public and media discourse. As Scarpaglieri/Zech (2013) have shown in a linguistic analysis, the term has increasingly acquired a negative connotation in the public discourse, where it is frequently used to describe a group of people who present an array of different problems and allegedly lack many of the qualities necessary to find a foothold in modern-day society.

B.6.2.7 New Points of Reference for the Projection of Self: 'Muslims' and 'Poverty Migrants'

A tendency towards repetition can be observed in the complex negotiation processes which result in the (re) construction of belonging: "Migration and integration are

261 Against this background, it is hardly surprising that not all *Aussiedler* welcomed their retrospective re-classification as migrants following the introduction of the category 'migration background' (Pries 2013a: 72).

from generation to generation consistently regarded in a pessimistic light [...]. Typical of this is the idea that earlier immigration flows could be easily integrated and were less problematic, whereas current migration inflows, in contrast, are dangerous and difficult to integrate" (Thranhardt 2000: 8, SVR's translation).

Whilst an alleged problem with Turks was perceived in the 1980s, a boundary has increasingly been drawn between 'us' and 'the Muslims' – parallel to developments in other European countries of immigration – since the turn of the century. In the secular Western world, the more harmless version of the Islamic religion – especially since 11 September 2001 – has increasingly become seen in a sceptical light and as being 'out of date', and in its more radical version as being 'incompatible with Western life' and 'dangerous'. The migrant is thus transformed into the Muslim and the Muslim into the symbol of the problematic migrant (Spielhaus 2013).²⁶²

The most recent immigrant group which has been described as 'the Other' is the Eastern European 'poverty migrant' ('*Armutszuwanderer*'). This term was beaten in Germany by the related word 'welfare tourism' ('*Sozialtourismus*') in the category 'ghastly neologism of the year' in 2013. It can, however, be ascertained that the population's sensibility for such words and expressions has risen in the recent past. The last few pages of this chapter will examine in more detail the dangers which are attached to the retention or the replacement of the term 'migration background' for German society.

B.6.3 Who are 'the Others' in Other Countries? A Comparison of Terminologies and Concepts of Belonging

The example of Germany, comprehensively detailed in Chapter B.6.2, has shown that the shaping and development of a politics of naming and belonging are closely intertwined with the structure of the nation-state. To exemplify this, Germany is compared with the Netherlands, France, Great Britain and the United States in the following pages, countries in which the nation-building process took place in a completely different fashion than in Germany.

B.6.3.1 The Netherlands: Allochtoons and Autochthoos

The affiliation to a denominational or ideological group or to a minority played a fundamental role in the functioning of the parliamentary monarchy in the Netherlands.

The country was characterised over many decades by the concept of 'pillarisation': the different denominational and ideological groups formed the pillars of the state, with the roof being provided by the royal family together with the Netherlands' self-narrative as a tolerant and cosmopolitan country. The minorities in the Netherlands entertained their own social infrastructure (schools, universities, societies, media, etc.) in order to fulfil their official entitlement to maintain their respective religious or ideological identity. As the Netherlands became a country of immigration in the wake of the influx of migrants from the country's former colonies and of people recruited as 'guest workers', it made sense to employ the 'tried and tested' method of dealing with minorities when designing and implementing policy measures for the new arrivals. Dutch multiculturalism emerged against this socio-political backdrop (for details, see Chapter B.2).

In principle, therefore, the term 'ethnic minority' has a long tradition in the political and public discourse in the country. Yet it first acquired importance as an official political category in the context of the immigration of groups of people who were regarded as being structurally disadvantaged in a socio-economic sense (Jacobs et al. 2009: 77).

The term *allochtoon* (old Greek for 'foreign' or 'outsider'), which currently dominates both the statistical collection of data and the public discourse on issues related to migration and integration in the country, was introduced into the political discourse in a report compiled by the government's academic commission in 1989. However, the term only became widely accepted after the National Office for Statistics (*Centraal Bureau voor de Statistiek*, CBS) operationalised the term in 1995. While the CBS initially used a narrower and a wider definition of the term, the statistics office has employed a uniform definition since 1999. This decision was influenced by the government's wish to evaluate the long-term effects of its integration policy which it was in the process of reforming at the time (Dommernik 2013: 98). In official statistics, '*allochtoons*' are thus nowadays defined as "every person living in the Netherlands of which at least one of the parents was born abroad" (Jacobs et al. 2009: 78). The country of birth of the parents is thus used in order to also incorporate the second generation of immigrants into the national statistics.

The CBS introduced a further differentiation in 1999: it complemented the primary division into *allochtoons* and *autochthoos* (i.e. autochthonous) with a further sub-division into 'Western' and 'non-Western' *allochtoon* people. This apparently harmless differentiation based on purely geographical criteria illustrates the current Dutch

262 The general structure of disqualifying and discrediting newcomers has already been described by Norbert Elias and John Lloyd Scotson (1965) in their seminal work "The Established and the Outsiders".

philosophy towards the politically inspired naming of groups of individuals. This is because not just people with North American or European backgrounds (except people of Turkish descent) are regarded as ‘Western *allochtoons*’, but also migrants from Oceania, Indonesia and Japan, i.e. people who are assumed to have fewer integration issues. The ‘non-Western *allochtoons*’ include people with Turkish, African, Latin American and Asian backgrounds (with the exception of people with Indonesian and Japanese backgrounds) and thus groups of migrants who are generally associated with integration problems. It is clear therefore that the term ‘*allochtoon*’ “has thus more than an ethnic dimension” (Jacobs et al. 2009: 80). As the CBS has itself admitted, it also considers socio-economic and cultural factors.

The term ‘*allochtoons*’, which was initially introduced as a neutral instrument of statistical collation, has – similarly to what was to later happen with the German phrase ‘persons with a migration background’ – taken on a life of its own in the public discourse, in political documents and in academic discussions. It has also found its way into the media and finally into everyday language. Thus, “[n]ot surprisingly, in the process the notion of ‘*allochthone*’ underwent a change of meaning and became increasingly used in ways differing substantially from its original administrative definition” (Jacobs et al. 2009: 79). The term ‘*allochtoons*’ was soon automatically associated with ‘failed’ integration and was partially used in a pejorative sense in order to exclude people of Turkish, Moroccan, Surinamese or Antillean descent or refugees from Africa, Asia or Latin America (Dommernik 2013: 99). It has thus gradually received the “connotation of the ‘non-white non-European other’” (Jacobs et al. 2009: 79). The group perceived as being the dangerous ‘Other’ has also changed in the course of the last few years, and Eastern Europeans – and thus Western ‘*allochtoons*’ – are currently “standing in the dock” (Lucassen/Lucassen 2014: 9, SVR’s translation).

Debates over perceptions of belonging have always been, and indeed still are tightly intertwined with political events in the Netherlands (Pries 2013b: 189). This has especially been the case since the ‘ethnic boundary’ between the local population and Islam has become more pronounced. As early as the late 1980s, the Rushdie Affair²⁶³ sent shock waves through the Dutch population, especially because Muslims resident in the Netherlands also actively protested against the British author

(Lucassen/Lucassen 2014: 19f.). Gert Wilders’ Party for Freedom (*Partij voor de Vrijheid*, PVV) has pushed criticism of Islam – which has increasingly mutated into hatred of the religion – to a new level. This has increasingly resulted in the term *allochtoons* being used generally to refer to Muslims and to people who are prone to commit criminal offences and possess ‘non-Dutch’ values and norms (Dommernik 2013: 101). The Netherlands thus belongs to a group of states in which the collision between an increasingly secular society on the one hand and ‘old’ and ‘new’ immigrants from countries of origin influenced by Islam on the other hand builds a central societal fault line (see Dommernik 2013: 87, 99f.).

B.6.3.2 France: The Politics of Naming in the *Communauté des Citoyens*

The French system is considered the prototype of the republican model of assimilation and thus the antithesis to Dutch multiculturalism. Republicanism tries to achieve equality by refusing to grant special rights to different groups and by requiring migrants to adapt to local society (for details, see Chapter B.2).

The issues of immigration and integration attracted increasing public attention in the early 1980s. This was the period in which not just migrant workers and post-colonial migrants, but also their family members migrated to the country in greater numbers. The children of migrant workers were rapidly granted French citizenship, in line with the previously mentioned republican principles. However, this turned into a mobilising theme for the *Front National*: the far-right political party achieved its first successes at this period by arguing actively against a citizenship law which was in their view too lax. The party publically questioned the loyalty of newly naturalised ‘paper French’ to the state and defended the position that ‘French-ness’ required more than just the possession of a French passport (see Bertossi 2012: 431).

Ethno-cultural differences between the ‘newcomers’ and French society were also stressed for the first time in government documents written in the 1980s and 1990s. In this context, the *Haut Conseil d’Intégration* (HCI), which was formed in 1989, juxtaposed the ‘good’, economically successful Chinese, Korean and Vietnamese migrants with those from the Maghreb countries, whose integration was regarded as having ‘failed’ (Bertossi 2012: 433). In this way, a “de facto hierarchy of the French” (Wihtol de

263 The origin of this affair was the publication of the novel “The Satanic Verses” by the British-Indian author Salman Rushdie. This book contains passages which are allegedly blasphemous and more generally disparaging and insulting to the Islamic religion. The presence of these passages in the book prompted the Iranian Revolutionary Leader Khomeini to issue a fatwa calling on Muslims to kill Rushdie. This fatwa remains in place today, although all countries belonging to the Organisation of the Islamic Conference have distanced themselves from it. The author has lived under police protection and under a false name since the issuing of the fatwa; several translators and a publisher have been victims of attacks, one of which caused the death of a translator.

Wenden/Salzbrunn/Weber 2013: 40) emerged, which was accompanied by a de-jure hierarchy of foreigners following the country's immigration policy reforms which were implemented in the mid-2000s: as part of the global struggle to attract the 'most talented people' together with complaints from French employers over a shortage of suitably qualified personnel, French immigration policy was reformed under the then Interior Minister Sarkozy in 2006. This new policy contained, inter alia, the new category 'competences and talents'. The policy was given the following slogan: "yes to chosen immigration, no to suffered immigration" ("*oui à l'immigration choisie, non à l'immigration subie*") (Wihtol de Wenden/Salzbrunn/Weber 2013: 36). This decision to differentiate between (potential) immigrants on the grounds of their purported 'usefulness' to France occasioned the formal legal difference between citizens and foreigners, which had long been a constitutive part of the French Republic, to lose a degree of importance (Pries 2013b: 189).

The increasingly sceptical views of the French public on immigration – and most especially on the immigration of Muslims²⁶⁴ – are themselves contributing to the declining importance of the legal distinction between foreigners and French citizens. In the secular republic's public discourse, Islam is seen as being incompatible with laicism, which is once again regarded as a key element of French identity (see Bertossi 2012: 436). Islam is also perceived as being the religion of 'the poor' and 'the colonised'. The religion thus encounters "many forms of islamophobic rejection in public opinion" (Wihtol de Wenden/Salzbrunn/Weber 2013: 46). This public discourse coincides with the increasing tendency of politicians and the French political establishment to move away from the norms of state indifference, which are generally expected in universalist France, by engaging with religious and cultural claims. Against this backdrop, the institutionalisation of a dialogue with Islamic representatives under the then Interior Minister Sarkozy in 2002 can be seen as a break with the traditional 'colour blind' policy (see Bertossi 2012). In 2004, Muslim schoolgirls were forbidden from wearing headscarves in schools.²⁶⁵ A few years later, the extent to which the burqa, or the Islamic face-veil, represented 'a danger for republican values' came to the centre of the public debate over membership and belonging (Bertossi 2012). In 2011, a ban on full body coverings came into force, which the European Court of Human Rights ruled as legal in a decision from 2014.

Despite the aforementioned 'culturalisation' of the politics of belonging, terms such as 'ethnicity' "are still considered to be taboo in this country of formal-rights equality" (Wihtol de Wenden/Salzbrunn/Weber 2013: 42). Nevertheless, an important alteration was made in the statistical categorisation of migration about fifteen years ago: whilst the national census only differentiated between French citizens and foreigners until 1999, an additional category, that of the 'immigrant' was introduced in this year. All French residents who were not born in the country are allocated to this new category, irrespective of their citizenship. It thereby became possible for the first time to quantitatively measure social inequality within the community of citizens (*Communauté des Citoyens*). The national statistical authority INSEE published detailed data and evaluations on the situation of the immigrant population and their offspring (i.e. as regards education, labour market integration, etc.) by country of origin in October 2012. With the introduction of this category, France is thus endeavouring to "make the demographic contribution of immigration to its population a bit more visible without, however, distinguishing ethnic groups" (Jacobs et al. 2009: 71).

Ethnicity is still not recorded in official statistics in France. However, this possibility has been frequently discussed, and conservative politicians last suggested introducing ethnic categories in national statistics in 2007. The Constitutional Council rejected this suggestion on the grounds that collating data on the ethnic background of the population would breach the principle of equality protected in the French constitution. The court thus held that: "although the processing of data necessary for carrying out studies regarding the diversity of origin of people, discrimination and integration may be done in an objective manner, such processing cannot, without infringing the principles laid in the Article 1 of the Constitution, be based on ethnicity and race" (taken from: Wihtol de Wenden/Salzbrunn/Weber 2013: 52).

B.6.3.3 Great Britain: Super-diversity and the Extension of Ascribed Characteristics

Great Britain takes a completely antithetic approach to that of France towards the statistical recording of minorities as well as, at least to a certain extent, towards the concomitant informal negotiation of a demarcated community of common identity, of who constitutes the 'us'.

264 The roughly five million Muslims who live in France are a very heterogeneous group. Most of them have North African roots; other regions of origin are Turkey, the Middle East and Sub-Saharan Africa (see Wihtol de Wenden/Salzbrunn/Weber 2013: 46).

265 Germany has never introduced a prohibition of this nature. However, throughout the 1990s and into the first part of the 2000s there were occasionally cases in which school boards attempted to forbid schoolgirls from wearing headscarves 'in their own best interests', that is, with the aim of making them more emancipated. These cases prompted a number of jurists to engage with the headscarf debate during the 1990s. A summary of these discussions is provided by Karakaşoğlu (2000: 27–57).

New population groups recognisable as being 'different' in a phenotypic sense settled down in the former colonial power in the period immediately following the Second World War (Green/Skeldon 2013: 110). These groups of people had migrated or re-migrated to the country from the territories of the Commonwealth, the successor organisation to the British Empire. An anti-discrimination policy was incorporated into national law with the Race Relations Act as early as 1965 (see also Chapter B.5). Great Britain thus followed a long tradition of political liberalism, which placed the rights of the individual above those of the group. The individual was allowed to be 'different'; the Sikh turban or the Islamic headscarf became normal appearances in the public sphere (Sales 2012: 38).

The migration pattern became increasingly diverse in Great Britain at around the end of the 1990s. Super-diversity, a term originally coined by Vertovec (2007) and which applies empirically to many countries of immigration, was used initially to refer to the multi-ethnic, multi-religious and multicultural British society at the start of the new millennium. The public perception and the depiction of the 'migrant' are constantly evolving. This can be appreciated if the terminology currently employed to refer to these groups is examined: terms such as migrant, foreigner and immigrant are used indiscriminately and synonymously in everyday language use and are occasionally mixed with other categories such as ethnic minorities and asylum seekers (Anderson/Blinder 2014).

The term 'ethnic minority' has been officially used to categorise immigrant groups in Great Britain for about the last two decades. Green and Skeldon (2013: 116) attribute this approach to the presence of an increasing number of second and third generation immigrants, whose 'origin' can no longer be determined by their place of birth – the category which had been previously employed by the Office for National Statistics (ONS).

Information as to the processes of negotiation of 'belonging' in Great Britain is provided above all in the results of the census, which takes place once every ten years. The questions contained in the census are developed and determined by the ONS in conjunction with an array of different entities such as ministries, non-profit organisations and the minority groups themselves. The way in which the boundaries of self-ascription and the ascription of 'other-ness' result from processes of negotiation thus becomes particularly clear here (Green/Skeldon 2013: 108, 117). The aspect of ethnicity was included for the first time in the 1991 census with the question "What is your ethnic group?" (taken from: Green/Skeldon 2013: 121). The possible answers were based on various types of characteristics which can be used to distinguish and separate people from each other. These included skin colour ('white', 'black'), geographical elements ('Indian',

'Pakistani', etc.) and combinations of these two categories ('Black African', 'Black Caribbean') (Table B.9).

The categories were widened in the following two decades, a process which "clearly reflected the fact that the introduction of the principle of a question on ethnicity had generated an increased demand for such data" (Green/Skeldon 2013: 121). The category 'Mixed' was added in 2001; this reflects the increasing diversity of British society. The trend towards greater disaggregation continued in the 2011 census: two new categories, 'Gypsy or Irish Traveller' and 'Arab' were included for the first time. The first is deemed to be a threatened national minority, which had not been able to be made subject to a systematic statistical investigation until this point (Office for National Statistics 2014). The decision to include the latter category may be a result of the increasing amount of attention which the British public is paying to Muslims in the country (Sales 2012). In addition, a question on national identity was also introduced in 2011 (this contained six possible answers: 'English', 'Welsh', 'Scottish', 'Northern Irish', 'British' and 'Other' [write in]). The inclusion of these categories attests to an increasing political interest in the British regions in understanding to which part of the United Kingdom people feel they belong (Green/Skeldon 2013: 125).

A comparison of the terminology used to refer to the membership of ethnic groups or ethnicity in the three censuses carried out between 1991 and 2011 reveals not just that the population can now tick more options, but also that the nomenclature employed to refer to the various categories has remained more or less constant. The use of colour terminology, for example, which can be irritating on the eye for many readers from Central European countries, did attract some criticism in the consultations which took place prior to the 2011 census, but now "seems to have become well established" (Green/Skeldon 2013: 128).

Most European states are sceptical about systems based on the self-categorisation of interviewees. However, the classification system in Great Britain, which draws on the subjective ethnicity of the interviewees, attracts very little controversy (Green/Skeldon 2013). The only issues debated are the selection of groups and the names given to these. In Great Britain, the categories employed in the census and the resulting ethnic ascriptions are not seen as a problem; instead the problem lies with the categories that are *not* included. In this way, immigrants of Latin American origin have criticised that a corresponding category (i.e. 'Latin American') is lacking in the census; they interpret this as exclusion and as a signal that they do not belong to British society (BBC 2011).

The collation of statistical data based on self-categorisation contains other problems, both of a technical and of a political nature. It thus allows people who visibly belong to a minority to instead describe themselves as

Table B.9 Classification of ethnic groups in the English census 1991 to 2011

1991 (9 categories)	2001 (16 categories)	2011 (17 categories)
- White	A. White - British - Irish - Any other White background (write in)	A. White - English/Welsh/Scottish/Northern Irish/British/Irish - Gypsy or Irish Traveller - Any other White background (write in)
	B. Mixed/multiple ethnic groups - White and Black Caribbean - White and Black African - White and Asian - Any other Mixed background (write in)	B. Mixed/multiple ethnic groups - White and Black Caribbean - White and Black African - White and Asian - Any other Mixed/multiple ethnic background (write in)
- Indian - Pakistani - Bangladeshi - Chinese	C. Asian/Asian British - Indian - Pakistani - Bangladeshi - Any other Asian background (write in)	C. Asian/Asian British - Indian - Pakistani - Bangladeshi - Chinese - Any other Asian background (write in)
- Black African - Black Caribbean - Black other (write in)	D. Black/Black British - African - Caribbean - Any other Black/African/Black background (write in)	D. Black/African/Caribbean/Black British - African - Caribbean - Any other Black/African/Caribbean/Black background (write in)
- Any other ethnic group (write in)	E. Chinese or other ethnic group - Chinese - Any other (write in)	E. Any other ethnic group - Arab - Any other ethnic group (write in)

Note: In Scotland, Wales and Northern Ireland slightly different categories are used. The consultations take place separately in the four regions (Green/Skeldon 2013).

Source: Green/Skeldon 2013: 120

belonging to the societal majority.²⁶⁶ This would clearly be “their legitimate choice but would at the same time frustrate correct analysis of discriminatory practices” (Jacobs et al. 2009: 74). It also raises the question about whether the inflationary increase in the number of census categories does not have the unwanted side-effect of increasing societal and cultural fragmentation and creating the impression that the state regards this process as being legitimate or even desirable (Green/Skeldon 2013: 131). The main danger of the British approach is thus addressed: the constantly increasing number of categories in the census occasions above all the differences between individuals to be highlighted. It can thus not be discounted that this approach has a detrimental impact on the generally recognised target of rendering arbitrary

inequalities, which cannot be justified from a meritocratic point of view, visible. The approach may therefore have more negative than positive effects on societal cohesion.

B.6.3.4 USA: Movement Away from the Ethno-racial Pentagon

In the USA, ‘race’ continues to be the decisive criterion for questions of belonging even though this concept is nowadays discredited in academia (Hollinger 2005; Cobas/Duany/Feagin 2009). Whilst the term has been increasingly replaced in academic and political circles by ‘ethnicity’ in the course of the last few years (Hattam 2007), it has been solidly anchored in the American census for the last 200 years (Rodríguez 2009). The first census from

²⁶⁶ Telles, Flores and Urrea (2014) provide an interesting comparison of the extent to which important characteristics of social inequality (such as income and school education) are related to ethnic ascriptions which are either undertaken by the interviewees or by the interviewers in six Latin American countries.

Box 4 American census questionnaire 2010

The opening and first filter question in the 2010 census referred to the person's origin. It was worded in the following fashion: "Is this person of Hispanic, Latino, or Spanish origin?"

Possible answers were:

- "No, not of Hispanic, Latino, or Spanish origin
- Yes, Mexican, Mexican Am., Chicano
- Yes, Puerto Rican
- Yes, Cuban
- Yes, another Hispanic, Latino, or Spanish origin (Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:...)"

This was followed by the question: "What is this person's race?" Respondents were required to tick one or more of the following checkboxes (i.e. possible answers):

- "White
- Black, African Am., or Negro
- American Indian or Alaska Native (Print name of enrolled or principle tribe: ...)
- Asian Indian
- Chinese
- Filipino
- Japanese
- Korean
- Vietnamese
- Other Asian (Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on: ...)
- Native Hawaiian
- Guamanian or Chamorro
- Samoan
- Other Pacific Islander (Print race, for example Fijian, Tongan, and so on:)
- Some other race (Print race: ...)"

Source: US Census, taken from: Humes/Jones/Ramirez 2011: 1

1790 differentiated between just three categories, 'free white', 'slaves' and 'all other free people'; new categories were later introduced "[w]hen a group had grown sufficiently large or visible" (Rodríguez 2009: 39). The census classification system only changed radically in 1980. In this year, the principle of self-identification was introduced and the identity marker 'Hispanic' was included as a new option alongside the different 'races'. This policy of differentiating between different ethnic groups and 'races' was predominately motivated by the desire to be in a position to describe the diversity in the American population and to thus be able to introduce policies aimed at effectively combatting the ongoing inequality and discrimination in American society.

The American historian David Hollinger attributes the "distinctive system of classification" in the USA to a "feeling [...] that the goal of equality demands for America a future even more ethnic than its past" (Hollinger 2005: 23). In terms of the politics of naming, this has gradually engendered the "ethno-racial pentagon" (Hollinger 2005: 23), a naming strategy which shapes and influences the USA as a country and the everyday

life of many Americans: numerous application forms, questionnaires and other documents routinely foresee a colour-specific self-description as 'black', 'brown', 'red', 'yellow' or 'white' with the help of the official categories 'Euro-American', 'Asian American', 'African American', 'Hispanic' and 'Indigenous Peoples' (Hollinger 2005: 221). This "ethno-racial pentagon" was finally prised open with the 2000 census, which gave Americans the chance to tick more than one of the 'race categories' contained in the census questionnaire (Rodríguez 2009). This "epochal decision" of the US Census Bureau (Hollinger 2005: 235) was above all a consequence of the gradually increasing number of interethnic partnerships and their increasing societal acceptance.

Today, the US Census Bureau collates data on 'race' and Hispanic origin according to the guidelines for the Standards for the Classification of Federal Data on Race and Ethnicity of the US Office of Management and Budget (OMB). These guidelines were first issued in 1977 and were rereleased in revised form in 1997 (Hattam 2007). According to these guidelines, 'race' and Hispanic origin are two different concepts, which consequently must be

dealt with in two separate questions (Humes/Jones/Ramirez 2011). The question about ethnicity was posed before that about a person's 'race' for the first time in the 2010 census. The breakdown and the shape of the census questionnaire is summarised in detail in Box 4.

In terms of the politics of naming, the most controversial issue remains the question of the identity and the identification of Latinos (Rodríguez 2009; Hattam 2007). The reason for this is obvious in face of the fundamental demographic changes in the United States: "How Latino identifications play out in the decades ahead is of considerable political import and might even tip the balance of political power between the Republican and Democratic parties" (Hattam 2007: 11).

The introduction of the category 'Hispanic' in the national guidelines from 1977, a decision which was imposed 'from above', was controversial. The revised guidelines from 1997 speak of 'Hispanics or Latinos'. However, the 'Latinos' are a very heterogeneous group of people, and a pan-Hispanic identity – to the extent to which it exists at all – is only just starting to emerge in the United States (Hattam 2007). It is also noticeable that Latinos had for many years a strong tendency not to choose the category 'white', which is often ascribed to them, in the question as to their 'race'. Instead, they often ticked the category 'some other race' and complemented it with Latino terminology such as 'Puerto Rican'. In the 1980, 1990 and 2000 censuses, around 40 per cent of Latinos chose this category, although officials and authorities endeavoured to prevent this from happening (Rodríguez 2009: 43). The problems of self-identification that have already been described in Great Britain are thus also becoming visible in the United States. In Hollinger's view, not just has "[t]he internal diversity of these groups [...] become harder to ignore" (Hollinger 2005: 237). It is furthermore becoming more and more clear that the categories generally employed in the United States are "political artifacts", whose number and embodiment can be changed through "political lobbying" (Hollinger 2005: 237).

B.6.4 Germany's Third Way Between State Denial and Excessive Differentiation

❗ **A comparison of the politics of naming in Germany and in other countries of immigration with different socio-political conditions reveals that in this aspect, the country has adopted a central position between the extreme poles of France and Great Britain.** As a republic, France relies on the integrative power of the French *Citoyenneté* and makes the collection of information on ethnic diversity and differences a taboo subject; the country is thus characterised by a general abstinence from

an official politics of naming. In face of the normative conviction that there is no (or cannot be any) inequality in France that is directly linked to ethnic belonging/membership of an ethnic group, the collation of corresponding statistical data appears superfluous or even detrimental to the aim of establishing and maintaining social cohesion. Great Britain's approach is diametrically opposed to that of France; when compared to France's reluctant politics of naming, the country appears to employ a downright actionist method in this field. The country aims to obtain as much information as possible about the processes which enable immigrants' societal participation by continually widening and differentiating the categories of ascription.

The differing methods employed by individual states are strongly intertwined with the respective nation-building processes and the structures of nation-states which have developed over the passage of time and must be regarded against this background. ❗ **This is also a reason why – in the context of 'learning from others' – neither the French nor the British or American approach is an attractive or even a viable alternative for Germany. At the heart of the German politics of naming is the 'migration background', a relatively young statistical feature.** When it was introduced in 2004/05, the term was initially welcomed by migration researchers as providing a long overdue addition to the differentiation by citizenship, a category which people had been previously forced to use due to a lack of alternatives. It fulfils an important political function as a statistical classification criterion as it can render processes of participation in the differing societal fields of the country of immigration Germany transparent to a much greater degree and with considerably more precision than the previous differentiation between citizens and non-citizens had been able to do.

❗ **Nevertheless, the term is not unproblematic, as it stretches back over several generations into the past and confers the label 'migration background' also on people for whom the term is no longer relevant. People to whom this label is attached may regard it as being discriminatory,** especially if it is almost or entirely associated with problems or deficits in the prevailing public discourse. Qualitative studies reveal the extent to which self-ascription and ascription by others are connected and also, for example, how young people's identity-building process is negatively influenced by being continually put into the position of an outsider (the 'Other') (Riegel/Geisen 2007). Other authors also object to the use of the term 'migration background', as, in their view, it leads to new forms of differentiation (see the contributions in: Mecheril et al. 2013). As a result, a paradigm shift can currently be observed in the official German politics of naming. The Federal Office for Migration and Refugees thus stresses in its current self-portrayal in social media

that (SVR's translation): "There are no 'others'. There is only us."²⁶⁷

➔ **Whilst the SVR takes such objections to the principle of the German politics of naming seriously, it nevertheless advocates continuing to collate data on features such as the 'migration background' and to employing them in the official statistics.** This data is necessary in order to identify systematic disadvantages which exist in the mutual interaction between migration and societal participation. Political decision makers and civil society cannot do without reliable data if they want to engage with the genuine structures and dynamics informing the opportunities for participation and the population's experiences of belonging and membership. The societal discrimination against certain groups on the grounds of characteristics which suggest or show that they have origins in other countries, have a certain cultural background, affiliation with certain ethnic groups or religious communities cannot be academically analysed and corresponding social policy introduced without appropriate evidence-based studies. The findings from differing countries of immigration presented in the previous pages

demonstrate that labelling and discriminatory treatment occur particularly frequently when academically analysed and interpreted data on migration- and integration-related issues is lacking. This is because a paucity of information enables speculation about certain groups and their characteristics which are allegedly relevant for their societal integration and interaction with other members of society.²⁶⁸ The SVR agrees with Hollinger (2005: 49) that state and academic definitions of these characteristics and data collection on these characteristics should be aimed at achieving only the following two ends: firstly at protecting the "historically disadvantaged populations from the effects of past and continuing discrimination" and secondly at fully appreciating and recognising the differing cultures within a country – and often within one individual. In addition to advocating the retention of the aforementioned statistical criterion, the SVR also deems it necessary to find a language or a terminology for German society as a country of immigration, which the Federal President Joachim Gauck described in 2014 as the "*neues deutsches Wir*" (i.e. a new German understanding of self).

267 See <https://de-de.facebook.com/bamf.socialmedia/photos/a.359656124147288.1073741828.318902741555960/476013015844931/>, 14.04.2015.

268 A short memo ("To The Point") recently published by the SVR's Research Unit reveals that the German population tends to greatly overestimate the size of the country's Muslim population. The estimates on the size of the Muslim population were related to the education level of the people questioned (SVR-Forschungsbereich 2014b).

C. Compare with and Learn from Others: Options and Limitations

The first international comparative studies in the field of migration and integration research were presented at the beginning of the 1990s; they were mostly qualitative analyses containing a small number of comparative examples. One of the best examples of a study comparing migration policy is the standard social science textbook “The Age of Migration”, which is currently in its fifth edition (the first edition from 1993 was written by Castles and Miller, the latest from 2014 was written by Castles, Miller and de Haas). In this work, countries of immigration are compared with each other using a typology of migration regimes. A comparative study from the field of integration is Brubaker’s two-country comparison (1992) of German and French citizenship policy. Many other studies have been written since this date, such as the investigation by Thränhardt (1992) and the studies by Freeman (1995), Cornelius, Martin and Hollifield (1994), Mintzel (1997) or Bommers and Halfmann (1998).²⁶⁹

For this Annual Report, the question about how the existing comparative surveys explicitly address the subject of learning from others and how the findings are passed on to policymakers is especially pertinent. If this is taken as a criterion for classifying surveys, the literature on the subject can be divided into three distinct groups of comparative studies:

Group 1: Studies which are not written with the aim of attracting the attention of or advising policy decision makers and consequently do not (or are not intended to) discuss what a country can or should learn from the policy measures employed by other countries. Many studies of this nature exist; they are mostly studies oriented towards basic research which compare different countries in order to generate purely academic knowledge.

Group 2: Studies which, while being written with the aim of attracting the attention of policymakers, are not intended to convince the latter to adopt certain migration or integration policy measures identified in another country. Instead, they merely point out possible political and societal consequences of a certain policy. These studies thus take a more indirect and subtle (or a less ambitious) approach towards advising policymakers. Studies which compare the approaches taken by EU states towards implementing European stipulations tend to belong to this group of investigations.

Group 3: Comparative studies which have the explicit purpose of advising policymakers. These studies are intertwined more closely than the other studies with day-to-day political activities. They aim to identify (combinations of) policy measures which the studies regard as being superior to other policy considerations. Other countries are then advised to adopt these policy programmes, which are frequently described as ‘best practice’ in these studies. Such investigations can be described as being ‘political interventionist’ seeing as they aim to provide policymakers with concrete operational guidelines.

There is a now a vast range of studies on migration related issues. As a result, only a small selection of the most relevant studies can be mentioned here. Chapter C.1 thus presents – classified according to the nature of their political or political advocacy aspirations – some important comparative surveys which have been received and discussed by policymakers and in academia. In doing so, the chapter focuses on studies which have been published in the last few years.

²⁶⁹ Qualitative studies are based on narrative and more or less standardised country reports, whereas quantitatively structured investigations use indexes and usually compare countries over time.

Established Comparative Studies in Migration Research and their Policy Consulting Intentions

The previously outlined typology, which classifies studies by the extent to which a connection exists between academic research and political decision makers, does not match perfectly to each study: some of the investigations presented in the following pages cannot be definitively classified as belonging to one or another survey type, but are instead located between these categories. However, a basic trend can nevertheless be identified in the existing comparative studies.

As illustrated in Table C.1, many studies fall into the first category: they are not intended to inform policymakers and also make no recommendations about what a country can or should learn from policies employed in other countries. Politics and political decision-making processes are together just one of a series of independent variables in the analyses undertaken in these studies. A similar number of studies can be allocated to the second group – studies, which, while being intended to advise policymakers, do not endeavour to provide direct policy solutions. Examples of studies classified as belonging to the third group, i.e. comparative studies which are explicitly intended to be seen as policy advice, are least frequent. A classic example of a study of this nature is the Migrant Integration Policy Index (MIPEX) study.

C.1.1 Comparative Studies as Academic Instruments: Migration Research with no Policymaking Aims

In the last few years, a number of particularly quantitatively based comparative research surveys have been carried out. These surveys convert individual components of a policy field into a score according to a numerical formula and subsequently construct an index from the findings. The central and unavoidable difficulty with

index-based studies of this kind is that the individual variables included in the index are (or must be) by definition subjectively weighted. The results thus can vary according to the weighting of the variables. The studies classified as belonging to this group do not provide any concrete recommendation for action in terms of, inter alia, ‘learning from others’, and do not seek to achieve this aim in the first place.

A classic example of such an index-based quantitative comparative study is the *Citizenship Policy Index* developed by Howard (2010), with which the citizenship policies employed in the EU15 countries can be displayed over time.²⁷⁰ The thus collated data subsequently provides the empirical basis for the study’s main focus, i.e. the question as to how the political orientation of a government is connected with a liberalisation of citizenship policy (the latter is regarded in a fully non-judgemental fashion as the dependent variable).

The study conducted by Koopmans, Michalowski and Waibel (2012) examines a similar theme: it compares the development of civic rights conferred on immigrants in ten Western European states over four measurement points (1980, 1990, 2002 and 2008). The study makes use of 41 indicators from eight subject fields.²⁷¹ It aims to determine whether an international convergence in the civil rights enjoyed by immigrants can be observed or whether national path dependencies slow the progress of, or indeed hinder, harmonisation processes. According to the authors, the study reveals that policies have become more inclusive and ‘multicultural’ with the passage of time: all European states with the exception of Denmark are thus now paying more attention to cultural differences and are placing more emphasis on individual rights. However, there are no signs that state policies are converging around a common model of integration or accommodation.

270 This index is made up of three factors: 1) the principle of the transfer of citizenship (*ius soli* vs. *ius sanguinis*), 2) the minimum residence period for an entitlement to naturalisation and 3) the acceptance of dual citizenship. Between zero (very restrictive) and two points (no restrictions) can be awarded for each component, the overall index thus fluctuates on a scale from zero to six points.

271 The eight thematic fields are: acquisition of citizenship, family reunification, deportation, anti-discrimination, employment of non-citizens in the public sector, political rights of non-citizens, cultural education entitlements and other cultural and religious rights.

Table C.1 Overview of selected comparative studies, classified according to the extent to which they are intended to inform policy deliberations

No intention to inform policy deliberations		Intention to indirectly inform policy deliberations		Intention to directly inform policy deliberations	
Author(s)	Short title	Author(s)	Short title	Author(s)	Short title
Howard 2010	Citizenship Policy Index (CPI)	Banting/ Kymlicka 2012	Multiculturalism Policy Index (MPI)	Huddleston et al. 2011	Migrant Integration Policy Index (MIPEX)
Koopmans/ Michalowski/ Waibel 2012	Citizenship Rights for Immigrants	Ruhs 2013b	Openness Index, Rights Index		
Jeffers/ Honohan/ Bauböck 2012 (EUDO Citizenship)	Citizenship Law Indicators (CITLAW)	Klugman/ Medalho Pereira 2009	Assessment of National Migration Policies		
Goodman 2010	Civic Integration Index (CIVIX)	Lowell 2005	Index of Skilled Immigrant Competitiveness		
Cerna 2008	High-Skilled Immigration Index (HSII)	Hatton 2011	Asylum Policy Index (API)		
Helbling et al. 2013	Immigration Policy in Comparison (IMPIC)	Castles/Delgado Wise 2007	Migration and Development: Perspectives from the South		
Thielemann 2004	'Deterrence Index'	IOM/EurAsylum 2008	<i>Costs and Impacts of Migration Policy</i>		

Note: Subject fields: yellow = primarily labour migration, blue = primarily asylum policy, green = primarily integration policy, purple = migration and development, blue/yellow = asylum and integration policy

Source: SVR research and compilation

The findings of these studies, although not conducted with the express intention of directly influencing policy-making decisions, can still prove relevant for policy-makers who know of the studies and take their findings into account. For this reason, it is particularly important to point out the weaknesses of these quantitatively based index studies (for considerable detail, see Bjerre et al. 2014). These difficulties result not just from the unavoidable need to subjectively weight individual variables and the diverging results which differing weighting of variables can produce. Furthermore, the extent to which indexes habitually employed in quantitatively based comparative studies are able to portray the complex migration and integration policy reality must also be questioned (Ruhs 2013a: 39). Moreover, index studies are limited to

comparing the rules codified in laws and administrative regulations, as any other approach is not possible due to their quantitatively based approach and their aspiration to compare different countries over a period of time. The study conducted by Koopmans, Michalowski and Waibel (2012) thus covers a time period of almost 30 years and currently contains data on more than 25 countries. A social reality existing outside laws and other regulations cannot be measured using these studies: if countries choose, for example, to take diverging approaches towards implementing migration and integration policy, these differences cannot be determined – at least not over a prolonged time period – by quantitatively based studies (de Haas/Czaika 2013).

C.1.2 Basic Scientific Premises for Informed Policy Decisions: Studies Aspiring to Indirectly Influence Policymakers

The studies classified as belonging to the second group differ from those attributed to the first group less in the methodologies they apply, but rather as regards their advisory intentions: they are explicitly intended as a contribution to the political discussion and are directed both at people involved in academic research (who are the exclusive target group of the first group of studies) and at political decision makers. Yet these studies do not direct their results at political actors by analysing specific integration or migration policy measures and advising other countries to adopt them. Instead, they advise political actors in a more indirect fashion, such as by highlighting possible relationships between different political measures.

A classic example of a group 2 study of this type is the Multiculturalism Policy Index (MPI) from Banting and Kymlicka (2006), which the authors have devised “[i]n the hope of generating a more informed and careful debate” (Banting/Kymlicka 2012: 6) on the development and socio-political consequences of political multiculturalism. The data collected for the study is used to calculate the intensity of multicultural policies in 21 Western countries of immigration at three points in time (1980, 2000 and 2010).²⁷² The authors are mainly concerned with ascertaining how a policy of multiculturalism is associated with the development of levels of social security provisions in different countries. The study was chiefly motivated by concerns raised by proponents of multiculturalism from different countries that a multicultural policy might be structurally incompatible with comprehensive social security provisions. However, the results of the MPI survey provide no evidence for this much-feared erosion of the social security provisions through multiculturalism. A policy of multiculturalism, understood as the

explicit promotion and fostering of cultural identities, has never been employed in Germany to the same extent as in the so-called classical countries of immigration. In this context, therefore, this survey has only a limited relevance for German policy discussions. However, the MPI does highlight in exemplary fashion a specific form of academic political advocacy, which does not seek to advise country x to adopt a measure identified in country y. Instead, the survey aims to make the possible consequences and (also unintended) effects of certain political measures transparent for political decision makers.

Hatton’s (2011) Asylum Policy Index (API), which investigates asylum policy developments in 19 OECD countries between 1997 and 2006, is perhaps also best attributed to the second group. Its content is based on the annual reports on policy developments and the country reports of the OECD, the European Council on Refugees and Exiles (ECRE) and the United States Committee for Refugees and Immigrants. Changes identified in these reports are converted into scores by country experts.²⁷³ The API does not provide recommendations for actions in the shape of advising states to adopt specific policy approaches which have been deemed to be particularly good (whatever criteria may have been used here). The study forgoes rankings, which are highly popular among political actors due to their ease on the eye and legibility. It restricts itself instead to describing the changing asylum and refugee policy developments in the analysed countries over time. It thus provides political decision makers in the field of asylum and refugee policy, a field marked by numerous international agreements (see Chapter A.4), with information about trends in this field.

The Price of Rights study conducted by Ruhs (2013b) concentrates, in contrast, on the area of labour migration policy. The study mainly focuses on whether the two frequently heard immigration policy demands – that the range of immigration alternatives should be increased and migrant workers’ rights should be strengthened

272 The MPI is based on eight indicators: 1) constitutional, legislative or parliamentary affirmation of multiculturalism at the central and/or regional and municipal levels, 2) the adoption of multiculturalism in school curricula, 3) the inclusion of ethnic representation/sensitivity in the mandate of public media or media licensing, 4) exemptions from dress codes (either by statute or court cases), 5) acceptance of dual citizenship, 6) the funding of ethnic group organisations or activities, 7) the funding of bilingual education or mother-tongue instruction, 8) affirmative action for disadvantaged immigrant groups. For each of these indicators, scores from 0 (no corresponding policy), 0.5 (some corresponding policy) to 1 (a clearly corresponding policy) are awarded and these are added together with equal weighting, meaning that states can achieve a total score of between 0 and 8 points. The decision to weight the individual indicators equally was taken by the authors of the study and cannot be justified by making reference to the content of indicators. The results would possibly be different if the indicators were weighted in a different way (a decision which could be justified in an equally good or bad fashion).

273 The index has 15 individual components, five in each of the following areas: 1) conditions relating to access to territory (rules concerning visa requirements, border controls, penalties for people trafficking, air-carrier liability and offshore asylum applications), 2) conditions relating to the processing of applications and the determination of status (rules concerning the definition of refugees, manifestly unfounded asylum applications, speeding up of processing, subsidiary status and appeals), 3) conditions relating to the welfare of asylum seekers (rules concerning detention, deportation, employment, access to benefit and family reunification). The index starts with zero points and increases by one point if a policy is significantly toughened and decreases by one point if a policy is significantly liberalised. The problems which result from this classification system are highlighted by Hatton himself (2011: 53): the criterion of a “major” policy change is a “crude indicator of what are often subtle and complex changes in the way that asylum systems work”.

– can be simultaneously realised or whether they are not instead, in an empirical sense, antithetical demands. Both demands are often made in the same breath in immigration policy discussions. The study accordingly develops an ‘openness index’ containing 104 programmes for labour migrants with different skill levels in 46 comparison countries²⁷⁴ and juxtaposes it with an index of legal rights which employs 23 indicators in order to measure the extent of political, economic, social, residency and family reunion rights granted to migrant workers.²⁷⁵ The result is already apparent in the title of the final report (“The Price of Rights”): at least in the countries analysed in the study, there are trade-offs between the openness of the country to admitting migrant workers and the rights granted to migrants after admission. The study does not present the findings in the form of recommendations for action, but instead as information which helps to inform people engaged in the field of labour migration policy as to the consequences that the implementation of corresponding policy measures might have.

C.1.3 Clear Preferences, Unequivocal Formulas? MIPEX as a Classic Best-practice Study

The most influential comparative study is without doubt the MIPEX, which has been developed by the Brussels-based advisory and lobby organisation Migration Policy Group (MPG) and was published for the second time in 2011 (a newly updated third version is being released in the first half of 2015). Alongside subject fields relating to integration policy such as anti-discrimination policy, citizenship legislation, political participation and education policy, the study also sporadically investigates topics which fall into the field of migration policy, such as family reunification. The study compares a total of 31 countries of immigration on the basis of 148 indicators in 7 policy areas.²⁷⁶

The MIPEX study differs from group 1 and group 2 investigations mainly in its political aspiration to clearly and definitively identify the countries with the best integration policy, both in the individual policy fields and

overall. The study’s normative guidelines specify that states providing immigrants with a comprehensive entitlement to rights automatically receive a high score and the grade ‘favourable’ or at least ‘slightly favourable’. In terms of integration policy, countries employing this sort of policy are regarded as being superior to those combining measures encouraging immigrants’ societal integration with those obliging them to make a greater effort at integrating (in terms of ‘rights and duties’). None of the other studies contain such a direct and pronounced normative requirement.

In addition to the aforementioned direct normative stipulation, the methodological subjectivity inherent in the survey is especially problematic from an academic point of view. The study leaves the assessment of integration policy measures to individual national correspondents. Those correspondents close to governments before in agreement with certain policy measures tend to give higher scores than more critical rapporteurs. They have the ability to do this, seeing as the assessment of individual measures is not tied to any concrete integration results. Countries which rapidly and unconditionally award rights thus receive – at least in principle – high MIPEX scores and are praised for their successful integration policy; however, the extent to which immigrants can genuinely participate in the differing sections of societal life in these countries is not considered.

The overall results of the MIPEX study are presented in the form of a league table. Unsurprisingly, in 2007 and 2010, the MIPEX champion was Sweden. Candidates for the ‘MIPEX Champions League’ (Canada, Portugal) can be contrasted with MIPEX ‘relegation candidates’, which have all come from Southern, Central and Eastern Europe (Cyprus, Latvia, Turkey, Slovakia) in the last two surveys. This is accompanied by the clear recommendation that countries with a low point score should take countries with higher values as an example and consequently adopt corresponding policies in order to improve their MIPEX score.²⁷⁷

It cannot be disputed that the MIPEX study has created a qualitatively high-value dataset for the purposes of comparative migration research that is employed by numerous ancillary investigations²⁷⁸ and prompts

274 The ‘openness index’ measures the extent to which labour migrants’ access to the labour market is restricted. The survey covers classical labour migration policy management instruments such as quota rules, employment contracts and priority checks, but also other restrictions such as fees, the role of trade unions, whether the command of the language spoken in the country is a prerequisite to immigration, etc.

275 The 23 indicators contained in the index of legal rights encompass five civil and political rights (e.g. voting rights), five economic rights (e.g. free choice of occupation), five social rights (e.g. access to social transfers and education), five rights in the field of residence and access to citizenship and three rights in the field of family reunification (e.g. the right of the spouse to work in the country of residence).

276 As with the approach taken in other studies, the scores calculated in the seven policy areas are converted into a total score without any specific weighting of individual indicators.

277 An “Improve your Score” tool can be found on the MIPEX homepage (<http://old.mipex.eu/play/interact.php>, 22.05.2015).

278 People responsible for the MIPEX study thus point out in the blog on their website that the study strongly correlates with the MPI and the survey directed by Koopmans (Koopmans/Michalowski/Waibel 2012); see <http://www.mipex.eu/blog/are-europes-policies-becoming-more-multicultural>, 17.05.2015.

policy-makers and other political actors to consider migration- and integration-related issues in more detail. Yet its specific intention to influence the policy-making process is problematic. This is because it does not just make academically generated results available and thus endeavour to improve the basis for policy decisions. Instead, the survey aims to support and strengthen (undoubtedly legitimate) integration policy positions in the political process with the help of a data-based league table.

Two aspects of the MIPEX can be particularly criticised. It firstly grants individual countries and policies strongly evaluative grades ((un)favourable, slightly unfavourable, halfway favourable, etc.) in line with their respective scores. The survey thereby creates the impression that the MIPEX is based on exact and empirically verifiable information on cause-effect relationships in the field of migration and integration policy. It thereby disregards (in

the same way as other index-based surveys)²⁷⁹ the genuine nature of integration policy 'on the ground' in the different countries, which can be measured by assessing the extent to which migrants are disadvantaged in the labour market, suffer from objective discrimination, are successful in education, etc. These are factors which MIPEX must clearly disregard for methodological reasons.²⁸⁰ Secondly, MIPEX ignores the differing historical, political, economic and cultural framework conditions in the countries being compared and suggests that a favourable policy can be simply transferred from one country to another in all cases and at all times. Political decision makers should regard indexes such as MIPEX as purely descriptive and informative instruments and not as policy guidelines, especially given the fact that MIPEX and other index-based studies are unable to analyse the causal effects of specific policy measures.

279 The main (relevant) difference between MIPEX and other index-based surveys is that only MIPEX contains a normative basic position which holds that "policy x is better than policy y".

280 Koopmans (2010) points out that particularly states scoring highly in the MIPEX survey perform relatively badly as regards the genuine integration of migrants into the labour market (see Chapter B.3) or in terms of migrants' residential segregation. The implied suggestion that policies regarded as being 'favourable' in the MIPEX survey lead to positive integration results can thus not be proven (or of course disproven).

‘Learning from Others’ or the ‘Limitations of Learning’: Germany’s Migration and Integration Policy Compared to that of Other Countries

The concept of ‘learning from others’ has become nothing short of a mantra in German migration policy and in the media debate thereon in the last few years. The accompanying narrative goes as follows: German migration and integration policy is still very deficient or contains – despite some improvements – a large number of deficits; it can only be made competitive and adjusted to the needs of a society shaped by immigration by the consistent and unceasing adoption of measures which have (apparently) shown their worth in other countries (for examples of this view see Berlin-Institut für Bevölkerung und Entwicklung 2012; Morehouse 2013). Studies such as MIPEX, which provide policymakers with clear instructions and easy formulas along the lines of “do it like the country xy”, are consequently particularly attractive for societal actors both inside and outside the political establishment. The central points of reference for this frequently demanded ‘learning from others’ are generally countries such as Canada or Sweden, which are usually characterised by their tendency to rapidly grant rights to immigrants and to make only small demands of them (and thus traditionally do well in MIPEX, the main group 3 study). Particularly for Canada, a type of ‘policy tourism’ has become established which seeks to unlock the secret to Canada’s migration and integration policy success (Bauder/Lenard/Straehle 2014).²⁸¹

As the comparative analyses on migration and integration policy fields presented in Sections A and B of this Annual Report have shown, it is scarcely possible to learn from others in the sense of being able to identify measures and approaches aimed at fostering integration (see Chapters B.1 to B.6) and managing migration (see Chapters A.1 to A.4) which have proven their worth in other countries and can now be transferred to Germany without much ado. None of the report’s ten chapters recommend a course of action along these lines. This is due to three independent factors and/or developments, which are examined in more detail in the next few pages.

C.2.1 Germany as a Pioneer: Rapid Policy Shifts in Labour Migration and Student Migration Policy

A shortage of skilled workers has already been documented in some branches and regions. This will only intensify due to demographic developments in the future. In face of these developments, the SVR is convinced that, while liberal immigration rules are necessary in the fields of labour and student migration policy, they are not in themselves sufficient for Germany to successfully attract highly sought-after skilled workers from third countries. If this basic assumption is accepted and the extent to which a country employs an open, labour market-based migration policy is taken as a benchmark for evaluation, it can be seen that Germany now lends itself more as a teacher than as a pupil in this field (see Chapter A.1): the immigration of third-country nationals with (recognised) academic credentials is almost completely liberalised. In addition, with Section 18c of the Residence Act the country has introduced an instrument from the field of human capital-driven management and has hence moved away from the dogma of ‘no immigration without an employment contract’ which had been valid in Germany for many years.

Moreover, the field of employment contract-based immigration management has been considerably liberalised with the implementation of the EU Directive on the entry and residence of highly qualified workers (Blue Card Directive); the new version of the employment regulations (*Beschäftigungsverordnung*) together with the planned introduction of Section 17a of the Residence Act will open the German labour market yet further, especially for skilled workers without academic credentials. This is because German authorities will be able to issue a residence permit for the purposes of topping up qualifications issued abroad if vocational qualifications obtained in

²⁸¹ Visibly irritated by the one-sided fixation with and enthusiasm for Canada, the migration researchers Bauder, Lenard and Straehle (2014: 2f.), all of whom are resident in the country, turn the topic on its head by asking in which migration and integration policy areas Canada can learn something from Germany.

the country of origin have only been partially recognised by German authorities. These changes have resulted in the OECD (2013a) including Germany in its list of the most liberal countries of immigration in the world in the area of labour migration. This is the case even though Germany continues to – in principle correctly – make immigration to the country conditional on the possession of vocational qualifications which have the same value as qualifications obtained in Germany. The Federal Government and the *Länder* have created laws in their respective areas of responsibility in order to facilitate the recognition of credentials obtained abroad. However, their usage in practice is often too cumbersome and bureaucratic; the legislation needs to be further liberalised. Nevertheless, Germany has moved from being a ‘latecomer’ or a ‘straggler’ to a ‘pioneer’ in the field of labour market policy and, as a result, has little to learn, at least at a legal-institutional level (see also SVR 2014: 72–78). There is, however, potential for learning as regards the ‘packaging’ of what the SVR considers to be successful content. The world is unaware of the previously mentioned OECD finding, according to which Germany belongs to the most liberal countries in the world in the field of labour migration. The task for policymakers consists of rectifying this tragic fact.

The diagnosis that Germany cannot learn a great deal from other countries as regards labour migration policy also holds true for the field of student migration or foreign students’ entitlements to remain in the country and adjust their legal status following graduation from a German higher education institution (see Chapter A.2). Up until 2000, foreign graduates of German higher education institutions had almost no opportunities to remain and work in the country at the end of their course of study. Nowadays, the package of measures offered to young academics wishing to remain in the country (18-month stay to search for work with unrestricted labour opportunities, no ‘priority check’ and no verification that credentials match those issued in Germany, flexible interpretation of the criterion ‘position commensurate with qualifications’) mean that Germany has some of the most liberal rules in the world for foreign graduates wishing to remain in the country in which they have studied. And, once again it must be asked: is the world aware of this?

A “rapid policy shift” (Rüb 2014: 9–46, SVR’s translation) has thus taken place in both fields. This can be normatively evaluated in different ways, but from the point of view of the SVR it was urgently necessary for Germany as a country of immigration which is ‘shrinking’ in a demographic sense. **⚠ Due to the radical learning**

process which Germany has been through in the past, the country has currently very little to learn from others in these two areas, at least at a legal-institutional level.

C.2.2 Germany as a Country ‘Going With the Flow’: Convergence Pressure in Migration and Integration Policy Fields

⚠ In numerous migration and integration policy fields investigated in this Annual Report, categorical differences between the individual countries of immigration no longer exist: any remaining differences are now gradual and less significant than was previously the case. Germany is also following the migration and integration policy mainstream. This is initially not linked to any form of normative positioning. The “tendency of policies to grow more alike, in the form of increasing similarity in structures, processes and performances” (Drezner 2001: 53), which can be observed in many migration and integration fields, significantly reduces Germany’s potential to learn from other countries, as this potential to learn from each other results precisely from differences between policies employed in different countries.

These international processes of convergence, which have the effect of reducing the rate at which states can learn from each other, can be differentiated according to the way in which they function and whether they are imposed from ‘above’ or are consciously implemented ‘from below’, i.e. by the states themselves. In this context, it can be seen that some common rules are centrally imposed on the nation-states (occasionally against their will), such as by a supranational entity. Other convergence processes develop without a centrally responsible entity of policy implementation, but instead take place through the mutual adoption of practices which have been identified as being (allegedly or genuinely) successful in other countries.²⁸²

The integration courses for newcomers discussed in detail in Chapter B.2 provide a classic example of such a convergence from below. In this area, even the basic philosophies of integration policy, long regarded as being stable and unchangeable, are dissolving. They are being replaced by a state integration policy that is basically limited to teaching the language used in the country together with some central facts about the relevant country’s political system and useful knowledge for dealing with the challenges of everyday life.

282 These two convergence variants are described as “mimetic” or “coercive” in the neo-institutional literature which engages intensively with these processes of policy harmonisation; for details, see DiMaggio and Powell (1983).

A wide range of factors are clearly responsible for these trends; however, there is much to be said for the theory that the emergence of conceptually highly similar integration programmes in various countries is primarily a policy for the non-migrant population. At the same time at which migration inflows are increasing and a liberalisation of labour migration policy is also increasingly seen as necessary, state budgets are stretched. Political decision makers come under pressure especially at times such as these: they must endeavour to guarantee the integration of immigrants into the labour market in order to create the preconditions which enable immigrants to lead an independent existence free of social security transfers. The integration courses being offered across Europe attest, among other things, to the increased pressure which European electorates are placing states under to legitimise and justify the actions taken by the states.

A similar development can be determined in the field of political participation and citizenship policy, which is examined in Chapter B.4. Two processes of convergence are becoming apparent in the comparison countries: firstly the international ‘victory parade’ of a conditional form of *ius soli* as a central principle by which citizenship is conferred on migrant children born in the territory of the respective state; this is a subject which has been comprehensively covered in the literature (see, for example, Hansen/Weil 2001 and the detailed country reports in the EUDO database²⁸³). Other ways of acquiring citizenship in addition to *ius sanguinis* are thus gaining relevance in societies shaped by immigration. The second convergence trend, which relates to the citizenship policy approach taken by states towards its citizens living outside its territory and their descendants, is less well known: Germany, Sweden and Canada have all incorporated a clause into their citizenship legislation preventing the automatic and (in principle) temporally unlimited conferral of its citizenship on descendants of expatriate citizens with a ‘generational cut-off’.

Decentralised processes of convergence ‘from below’ can also be observed in the field of labour migration and socio-legal integration or in the area of general labour market and social policy explored in Chapter B.3. However, other harmonisation processes are the result of a policy which has been imposed on the nation-states from an independent or superordinate entity. It is thus established practice nowadays in Europe to grant immigrants practically the same rights and entitlements as citizens; the discretionary ability of states to differentiate between citizens and non-citizens as regards access to systems of social protection has increasingly diminished.

This is a direct result of EU legal stipulations that have subsequently been given expression by the ECJ (see, for example, Greve 2014).

A prime example of a policy harmonisation ‘from above’ is the field of anti-discrimination policy, which is described in Chapter B.5. A pan-European anti-discrimination framework was created by the passing of two Directives (which have now been implemented across Europe) and a number of court rulings from the ECJ that have given expression to these Directives. The nation-states should not be seen here as being compelled to accept anti-discrimination policy which has been developed by ‘Eurocrats’ in Brussels; this would be a distorted picture, if only because the nation-states are represented in the Council of the European Union, the EU institution which continues to play the decisive role in the European decision-making process. Nevertheless, the decisive initiatives and momentum for a tighter legislative enshrining of anti-discrimination protection were without doubt initially made at EU level. The Union forced the member states’ hand and set the harmonisation process in motion, which has more than anything occasioned the establishment of a minimum level of anti-discrimination legislation.

C.2.3 Limitations of Learning: Other Political, Economic and Historical-cultural Contexts

⚠ There are also always limitations to mutual learning. Certain measures require a very specific historical or geographical context, and measures cannot be simply transferred to other countries if the context is a different one. The quota rules, one of the approaches employed by states in the field of family migration policy which are described in Chapter A.3, provide a good example of this. Quotas are a central element of American policy in this area, something which significantly qualifies the idea that the USA interprets the notion of a family in a more generous way than European countries of immigration. In Europe, quota regulations of this nature are not implementable, and this is not just because of the stipulations contained in the EU Directive on the right to family reunification. They also contradict the belief, largely undisputed in Europe,²⁸⁴ that family migration cannot be regulated through rigid quota regulations and must be determined on a case-by-case basis; family migration policy is also strongly influenced and shaped by human rights provisions. The use of quotas in order

283 See <http://eudo-citizenship.eu/country-profiles>, 18.05.2015

284 This is shown by the approach taken by Great Britain, which also chooses to do without quotas to manage family migration although it is not tied to the obligations contained in the EU Directive on the right to family reunification and has thus greater room to manoeuvre.

to manage family reunification is incompatible with the legal traditions and political-cultural beliefs prevalent in most of Europe.

The limitations of learning from others can also be seen in the approaches taken towards the politics of naming and belonging, which are analysed in Chapter B.6. The tendency towards a convergent development evident in many areas of migration and integration policy are also absent from this policy field. The approach taken to dealing with diversity brought about by immigration continues to be strongly influenced by the traditions of individual nation-states (this is also the case for the selected education policy approaches described in Chapter B.1). The same applies to the subsequent state and societal-institutional attempts to quantify and describe ‘diversity’. This can be seen most clearly in the USA as a ‘settler state’: not just the method of self-ascription, but also the concept of ‘race’, which for obvious reasons is completely discredited in Germany, play a role here in state policies of naming and affiliation.

The differences between Canada and Europe in the field of asylum and refugee policy, which are explored in Chapter A.4, are, in a structural sense, somewhat different to those in other migration and integration policy fields. Canada is in a very specific geographical position: alongside coastal borders which are almost impossible to cross, the country shares a land border, which, due to a bilateral agreement with the USA, is almost insurmountable for refugees. Canada is consequently able to manage the reception of refugees almost exclusively by way of resettlement procedures. In contrast, the EU is relatively easy to reach for refugees. Indeed, the individualised asylum procedure in the country of reception will never lose as much relevance as it has done in Canada, and resettlement as a collective procedure carried out ‘on foreign soil’ will never become as prominent in the EU as in the North American country. The geographical framework conditions alone thus prevent Germany from directly learning things from Canada in this policy area.

Conclusion: Learning at Another Level

What thus remains from the idea of ‘learning from others’? **❗ Germany can learn that it can particularly gain knowledge from other countries about the interconnections between different policy measures and the specific contextual situations in which they are implemented.** The international comparison also confirms the central diagnosis of the 2014 Annual Report: this report sees Germany as being on the way to a modern country of immigration and concludes that significant progress has been made particularly in the field of migration policy, but also (although to a smaller extent) in the area of integration policy in the last few years.

It is important to emphasise that this does not mean that Germany should not do more in the area of migration and integration policy. While this is clear as regards the field of asylum and refugee policy, the 2014 Annual Report determined that much political action remains necessary in other fields as well. **❗ As this comparative report has made clear, Germany cannot simply make use of ‘blueprints’ developed in other countries when endeavouring to deal with these challenges. The country must instead find and go down its own path (which is agreed upon with its EU neighbours and embedded into European approaches on migration and integration). However, the international comparison can assist the country in this process.** It may not have been able to identify political measures which can be directly transferred to Germany. However, the report has firstly confirmed that the country’s migration and integration policy reforms (which were not always uncontroversial

from a political perspective) have resulted in the country’s legal-institutional framework conditions becoming more similar in many areas to those of other countries of immigration.²⁸⁵ Secondly, as a country of immigration, there is no doubt that Germany can learn from the international comparison, but not in the sense of identifying and implementing best-practice measures.

Germany is able to learn things about, on the one hand, the connections and interdependencies between general political, economic, cultural and social framework conditions and, on the other hand, the room to manoeuvre enjoyed by policymakers to set migration and integration policy. The individual countries can reveal the different room to manoeuvre enjoyed by states in differing societal circumstances. **❗ Germany can also learn that a successful migration and integration policy encompasses much more than the mere implementation of liberal migration and integration laws meeting international standards.** Migration and integration policy goes beyond just passing laws and regulations; more than most other policy fields, this is one that is highly emotionally charged. **➡ Consequently, a central task for the political establishment is to promote a self-understanding of Germany as a country of immigration among the population at large and in doing so to include all important societal actors.** This necessitates a decisive political will, more energy and courage and politicians ready to take responsibility for this process as well as an agreed strategy in order to actively shape this process.

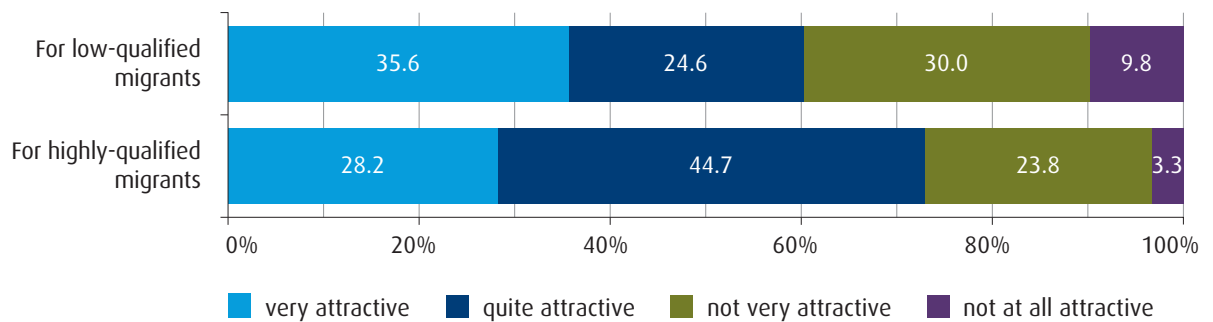
²⁸⁵ The finding that a policy harmonisation has taken place is not in itself a normative valuation. There may be policy areas in which an ‘outsider role’ (whichever this might be) would be preferable in a normative sense.

Appendix I: SVR Opinion Poll Charts for the 2015 Annual Report

Box 5 National German public opinion poll conducted for the SVR's 2015 Annual Report

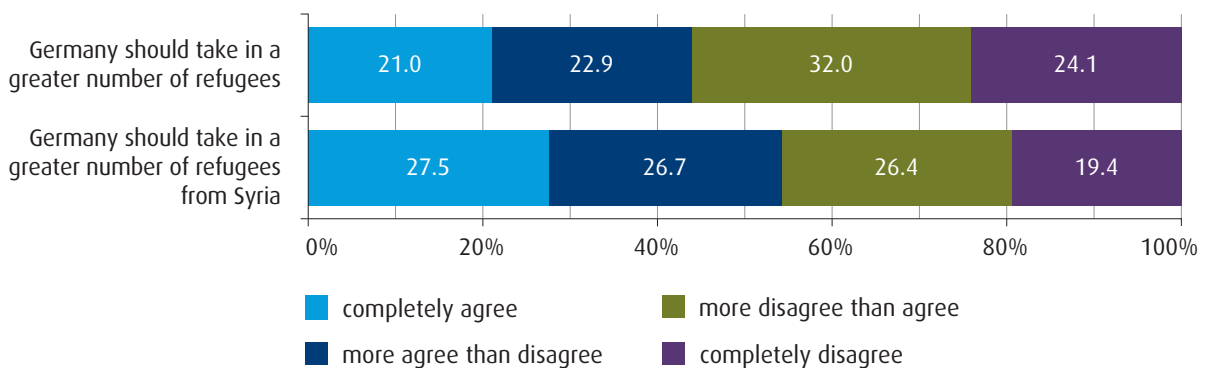
A total of 1,002 people throughout Germany were surveyed by telephone in a national representative opinion poll for the SVR's 2015 Annual Report. The basic population consists of all people over 16 years who live in private households with a landline and/or can be reached on a mobile telephone. The selection of interviewees for the landline sample took place in two steps: private households with a landline telephone were first selected. As a second step, the target persons in the household were determined using the Last-Birthday method, i.e. the last household member who had a birthday was interviewed. In the mobile phone sample the target person was always the mobile phone owner. The response rate came to about 26 percent; the average interview lasted 5.7 minutes (the median length was 4.8 minutes). The opinion poll, which is representative for the entire resident population of the Federal Republic, was carried out by Sozialwissenschaftliches Umfragezentrum (SUZ), a polling agency for social research.

Chart 3 Views on the attractiveness of Germany for migrants



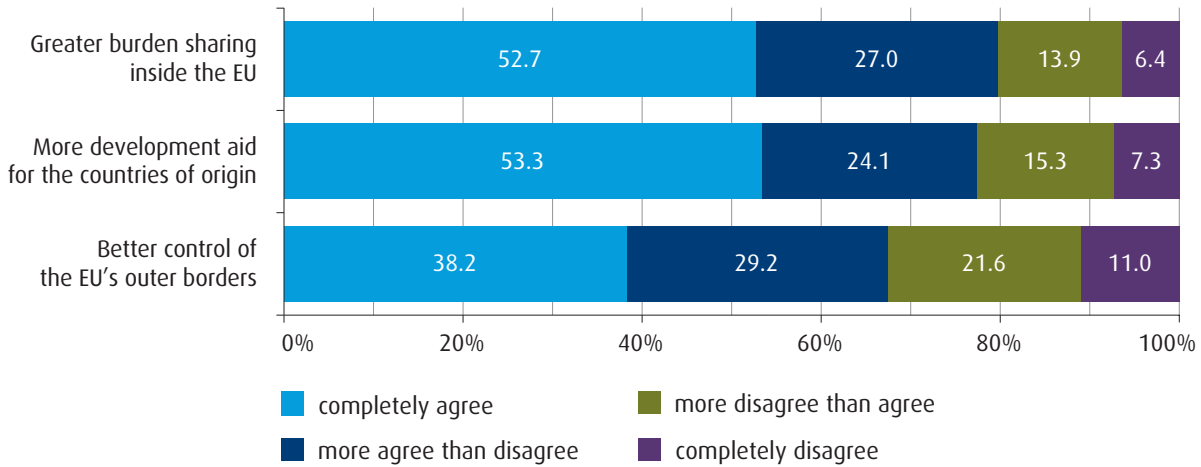
Source: SVR opinion poll conducted for the 2015 Annual Report; weighted data

Chart 4 Germany should take in a greater number of refugees (from Syria): extent of agreement



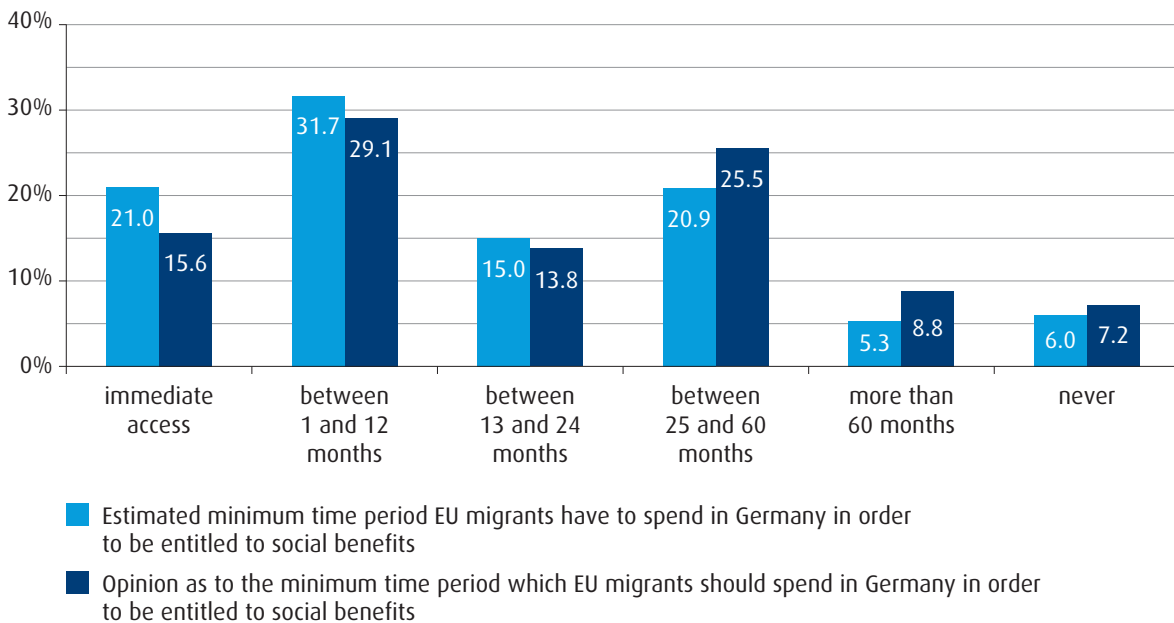
Source: SVR opinion poll conducted for the 2015 Annual Report; weighted data

Chart 5 Germany should campaign more strongly for certain policy measures: extent of agreement

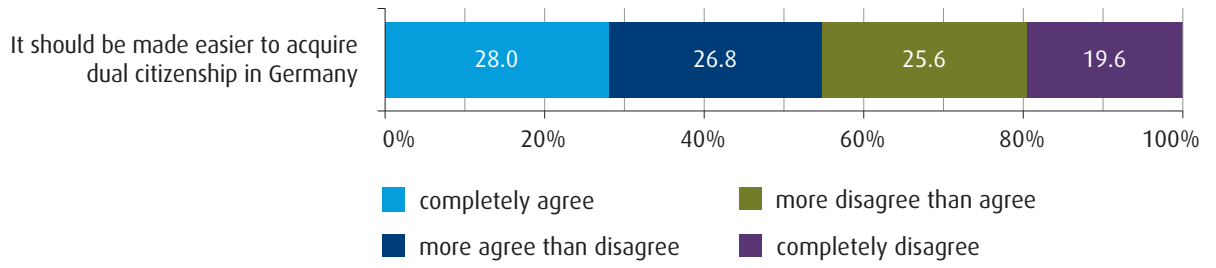


Source: SVR opinion poll conducted for the 2015 Annual Report; weighted data

Chart 6 Views on the minimum time period EU migrants (should/have to) spend in Germany in order to be entitled to social benefits



Source: SVR opinion poll conducted for the 2015 Annual Report; weighted data

Chart 7 Easier access to dual citizenship: extent of agreement

Source: SVR opinion poll conducted for the 2015 Annual Report; weighted data

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Abbreviations

ADS	Federal Anti-Discrimination Agency (Antidiskriminierungsstelle des Bundes)
AGG	General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz)
AIDA	Asylum Information Database
ALG	Unemployment Benefit (Arbeitslosengeld)
API	The Asylum Policy Index
APuZ	Aus Politik und Zeitgeschichte
Art.	Article
ASBA	Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz)
BA	Federal Employment Agency (Bundesagentur für Arbeit)
BAföG	Federal Training Assistance Act (Bundesausbildungsförderungsgesetz)
BDA	Confederation of German Employers' Associations (Bundesvereinigung der Deutschen Arbeitgeberverbände)
BDI	Federation of German Industries (Bundesverband der Deutschen Industrie e. V.)
BEEG	Act on Parental Allowance and Parental Leave (Bundeselterngeld- und Elternzeitgesetz)
BeschV	Employment regulations (Beschäftigungsverordnung)
BfM	Federal Office for Migration (FOM, Bundesamt für Migration) (Switzerland); now: State Secretariat for Migration (SEM, Staatssekretariat für Migration)
BMASK	Federal Ministry of Labour, Social Affairs and Consumer Protection (Bundesministerium für Arbeit, Soziales und Konsumentenschutz) (Austria)
BMBF	Federal Ministry of Education and Research (Bundesministerium für Bildung und Forschung)
BMI	Federal Ministry of the Interior (Bundesministerium des Innern)
BMWi	Federal Ministry for Economic Affairs and Energy (Bundesministerium für Wirtschaft und Energie)
BR-Drs.	Federal Assembly publication (Bundesratsdrucksache)
BT-Drs.	Federal Parliament publication (Bundestagsdrucksache)
CBS	Centraal Bureau voor de Statistiek
CEAS	Common European Asylum System
CIC	Citizenship and Immigration Canada
CIIP	Canadian Immigrant Integration Programme
CITLAW	Citizenship Law Indicators
CIVIX	Civic Integration Index
CLB	Canadian Language Benchmarks (see also NCLC)
CPB	Centraal Planbureau
CRSR	Convention relating to the Status of Refugees (Geneva Refugee Convention)
DAAD	German Academic Exchange Service (Deutscher Akademischer Austauschdienst)
DZHW	German Centre for Research on Higher Education and Science Studies (Deutsches Zentrum für Hochschul- und Wissenschaftsforschung)
EASO	European Asylum Support Office
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECRI	European Commission against Racism and Intolerance
ECTHR	European Court of Human Rights
EFTA	European Free Trade Association
EHRC	Equality and Human Rights Commission
EMN	European Migration Network
EU	European Union
EUDO	European Union Democracy Observatory on Citizenship
EurAsylum	Research and Consulting on Migration and Asylum Policy Worldwide
EU-SILC	European Union Statistics on Income and Living Conditions
FAZ	Frankfurter Allgemeine Zeitung
FCC	Federal Constitutional Court (Bundesverfassungsgericht)
FRA	European Union Agency for Fundamental Rights
FSWP	Federal Skilled Worker Program

HDI	Human Development Index
HSII	High Skilled Immigration Index
HWWI	Hamburg Institute of International Economics (Hamburgisches WeltWirtschaftsinstitut)
IAB	Institute for Employment Research (Institut für Arbeitsmarkt- und Berufsforschung)
IIE	Institute of International Education
IMIS	Institute for Migration Research and Intercultural Studies (Institut für Migrationsforschung und Interkulturelle Studien)
IMPIC	Immigration Policy in Comparison
IND	Immigratie- en Naturalisatiedienst
IOM	International Organization for Migration
IRPA	Immigration and Refugee Protection Act
IW Köln	Cologne Institute for Economic Research (Institut der deutschen Wirtschaft Köln)
IZA	Institute for the Study of Labor (Forschungsinstitut zur Zukunft der Arbeit)
KMK	The Standing Conference of the Ministers of Education and Cultural Affairs of the <i>Länder</i> in the Federal Republic of Germany (Kultusministerkonferenz)
MIPEX	Migrant Integration Policy Index
MPI	Multiculturalism Policy Index
MPG	Migration Policy Group
NAM	National Action Plan on Migration (Nationaler Aktionsplan Migration)
NCLC	Niveaux de Compétence Linguistique Canadiens (see also CLB)
nuffic	Nederlandse organisatie voor internationalisering in het hoger onderwijs
NVwZ	Neue Zeitschrift für Verwaltungsrecht
OECD	Organization for Economic Co-operation and Development
ONS	Office for National Statistics
OPT	Optional Practical Training
PIRLS	Progress in International Reading Literacy Study
PISA	Programme for International Student Assessment
p.p.	publication pending
RdJB	Recht der Jugend und des Bildungswesens
RWR Card	Red-White-Red Card (Rot-Weiß-Rot-Karte)
S. C. R.	Supreme Court of Canada
SER	Sociaal-Economische Raad
SGB	German Social Code (Sozialgesetzbuch)
SGB II	Volume II of German Social Code (Zweites Buch Sozialgesetzbuch)
SGB III	Volume III of German Social Code (Drittes Buch Sozialgesetzbuch)
SGB XII	Volume XII of German Social Code (Zwölftes Buch Sozialgesetzbuch)
STCA	Safe Third Country Agreement
STEM	Science, Technology, Engineering and Mathematics
StGB	German Criminal Code (Strafgesetzbuch)
SVR	The Expert Council of German Foundations on Integration and Migration (Sachverständigenrat deutscher Stiftungen für Integration und Migration)
TFWP	Temporary Foreign Worker Program
TIMSS	Trends in International Mathematics and Science Study
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
USCIS	United States Citizenship and Immigration Service
ZAR	Zeitschrift für Ausländerrecht und Ausländerpolitik

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Appendix III: The Expert Council

The Foundation Initiative

The Expert Council of German Foundations on Integration and Migration (SVR) is based on an initiative of the Stiftung Mercator and the Volkswagen Foundation. The initiative includes seven member foundations. In addition to the Stiftung Mercator and the Volkswagen Foundation, the member foundations are: Bertelsmann Stiftung, Freudenberg Foundation, Robert Bosch Stiftung, Stifterverband für die Deutsche Wissenschaft and Vodafone Foundation Germany.

At the time of the establishment of the Expert Council in 2008, this kind of alliance among foundations was a novelty. The initiative was based on the finding that an independent institution for research-based policy advice is needed in this complex and highly emotional field.

Integration and migration are central fields of the work of the supporting foundations. The goal and mission of the Expert Council of German Foundations on Integration and Migration is to provide research-based and practically oriented policy advice in the field of integration and migration as well as to provide critical policy support. It informs the general public in a factual and politically independent fashion on societal and political developments and thereby gives new momentum to the debate on integration and migration related issues.

Every spring, the SVR publishes an Annual Report which analyses trends in integration and migration and provides concrete recommendations and options for action.

Members of the Expert Council

The members of the Expert Council are appointed by the foundations for a three-year period. An independent selection committee provides the foundations with advisory support in this process. A reappointment is possible.



PROF. DR. CHRISTINE LANGENFELD

Chairwoman of the Expert Council

Department of Public Law, University of Göttingen, Germany

Christine Langenfeld is Professor of Public Law and Director of the Department of State Law at the University of Göttingen. Her fields of expertise include European law and the European Convention of Human Rights, integration and migration law and education law. She conducted her postdoctoral research, which she completed in 2000, in German and comparative public law, as well as European and international law at Saarland University.



PROF. DR. LUDGER PRIES

Deputy Chairman of the Expert Council

Faculty of Sociology, University of Bochum, Germany

Ludger Pries is Professor of Sociology and a member of the board of directors at the Institute for International Law of Peace and Armed Conflict at the University of Bochum. His fields of expertise include international comparative sociology of labour, organisation and migration, as well as transnational studies and globalisation studies. He has researched and studied in Brazil, Mexico, Spain and the USA.



PROF. DR. GIANNI D'AMATO

Faculty of Humanities and Social Sciences, University of Neuchâtel, Switzerland

Gianni D'Amato is Professor of Migration and Citizenship Studies at the University of Neuchâtel and Director of the Swiss Forum for Migration and Population Studies (SFM) and of the research cluster "On the Move: the Migration-Mobility Nexus". He is a board member of the Swiss Centre of Expertise in Human Rights (SCHR). His fields of expertise include migration, civil society, national identities and social movements.



PROF. DR. THOMAS K. BAUER

Faculty of Management and Economics, University of Bochum, Germany

Thomas Bauer is Professor of Economics at the University of Bochum and Vice-President of the RWI economic research centre in Essen. His fields of expertise include the economics of migration, population economics and applied microeconometrics.



PROF. DR. WILFRIED BOS

Institute for School Development Research, University of Dortmund, Germany

Wilfried Bos is Professor of Educational Research and Quality Assurance at the Technical University of Dortmund and Director of the Institute for School Development Research (IfS). His fields of expertise include international comparative educational research and school development research. He is also Project Leader of the PIRLS, ICLIS and TIMSS student performance assessments in Germany.

**PROF. DR. CLAUDIA DIEHL**

Professor of Sociology at the University of Konstanz, Germany

Claudia Diehl is Professor of Sociology with a particular emphasis on microsociology at the University of Konstanz. Prof. Dr. Diehl engages mainly in quantitatively based research. Her fields of expertise are international population movements, socio-cultural and identification-related integration processes of immigrants, as well as ethnic demarcation processes such as xenophobia and discrimination. Prof. Dr. Diehl is a member of the Council of Experts for Demography at the German Federal Ministry of Internal Affairs and the Scientific Advisory Committee for Family Affairs at the German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. She has been a member of the Expert Council since 1 January 2015.

**PROF. DR. HEINZ FASSMANN**

Department of Geography and Regional Research at the University of Vienna, Austria

Heinz Faßmann is Professor of Applied Geography, Vice-Rector for Human Resources Development and International Relations at the University of Vienna and Director of the Institute for Urban and Regional Research at the Austrian Academy of Sciences. He is Chairman of the Expert Council for Integration at the Austrian Ministry for Europe, Integration and International Affairs. His areas of expertise include urban geography, demography and select issues in migration and integration research.

**PROF. DR. YASEMIN KARAKAŞOĞLU**

Faculty for Pedagogical and Educational Sciences, University of Bremen, Germany

Yasemin Karakaşoğlu is Professor of Intercultural Education at the Faculty for Pedagogical and Educational Sciences and Vice-Rector for Intercultural and International Affairs at the University of Bremen. Her areas of expertise include the intercultural opening of schools and higher education institutions, the educational situation of migrant children and juveniles in Germany together with their position in a society shaped by migration, and transcultural women's studies.

Prof. Dr. Yasemin Karakaşoğlu ceased to be a Council Member of the SVR on 31 December 2014.

**PROF. DR. URSULA NEUMANN**

Prof. emeritus at the Institute for International Comparative and Intercultural Education, University of Hamburg, Germany

Ursula Neumann was a Professor in the Department of General, Intercultural and International Comparative Education at the University of Hamburg until her retirement in April 2015. Her areas of expertise are the education and socialisation processes of children and juveniles with a migration background as well as the design and shaping of intercultural and linguistic education in nurseries and schools. She was commissioner of the Senate of the city of Hamburg for migration policy questions between 1999 and 2002.

Prof. Dr. Ursula Neumann ceased to be a Council Member of the SVR on 31 December 2014.

**PROF. DR. CHRISTIAN JOPPKE**

Chair of General Sociology at the University of Bern, Switzerland

Christian Joppke is Professor of Sociology at the University of Bern. His fields of expertise include the Islamic religion in Western countries of immigration, international comparative immigration policy, as well as citizenship and multiculturalism.

He has been a member of the Expert Council since 1 January 2015.

**DR. HACI HALIL USLUCAN**

The Zentrum für Türkeistudien und Integrationsforschung at the University of Duisburg-Essen, Germany

Hacı Halil Uslucan is Professor of Modern Turkish Studies and Academic Head of the Zentrum für Türkeistudien und Integrationsforschung at the University of Duisburg-Essen. His fields of expertise are developmental and educational psychology, comparative cultural psychology, migration and mental health as well as young people's development and education in intercultural contexts.



The employees of the SVR:

Front row (from left to right) Katrin Dölle, Heidi Standt, Dr. David Schiefer, Juliane Schremer, Caroline Schultz, Dr. Cornelia Schu, Dorothee Winden, Sabine Schwebel. Back row (from left to right) Dr. Jan Schneider, Simon Morris-Lange, Alex Wittlif, Marcus Engler, Dr. Henriette Litta, Martin Weinmann, Dr. Holger Kolb, Linda Brackwehr.

Employees at the Berlin Office

Dr. Cornelia Schu Managing Director of the SVR and Director of the Expert Council's Research Unit

Cornelia Schu holds a PhD in German studies and has many years of experience working at the interface between academia, politics and foundations. She gained extensive knowledge in the field of integration policy while leading the Stiftung Mercator's thematic cluster on integration. She had previously been employed in various functions in the office of the German Council of Science and Humanities.

Dr. Holger Kolb Head of Annual Report Unit and Deputy Head of the Berlin office

Holger Kolb held research positions at the Universities of Freiburg and Osnabrück following the completion of his academic studies in political science and economics. He taught at the Faculty of Social Sciences at the University of Osnabrück and at the Institute for Political Science at the University of Münster.

Dr. Henriette Litta Head of Office

Henriette Litta is a political scientist. She studied and researched in Berlin, Philadelphia and Singapore. She served as Associate to the Dean of the Hertie School of Governance in Berlin before joining the SVR.

Dr. Jan Schneider Head of Research Unit

Jan Schneider is a political scientist. His previous employers included the Hamburg Institute of International Economics (HWWI), the Institute for Advanced Study in the Humanities in Essen (KWI) and the German Federal Office for Migration and Refugees (BAMF). He taught migration policy at the Universities of Halle-Wittenberg and Erlangen-Nuremberg.

Marcus Engler Researcher

Marcus Engler is a social scientist. He has worked in an information centre for refugees in Marseille, taught at the Humboldt University in Berlin and was Chief Editor of the newsletter "Migration and Population". His most recent position prior to joining the SVR was as an External Consultant for the Berlin Senate's Commissioner for Integration.

Simon Morris-Lange Researcher

Simon Morris-Lange is a social scientist and holds a master's degree in public policy from the Hertie School of Governance. He previously worked for iversity, a Berlin-based edutech company and also served as an Analyst with the Illuminate Consulting Group in Silicon Valley.

Dr. David Schiefer Researcher

David Schiefer is a psychologist. After completing his studies he wrote his PhD and worked as a Research Associate at the Jacobs University in Bremen. He was also a Postdoctoral Fellow at the Bremen International Graduate School of Social Sciences.

Caroline Schultz Researcher

Caroline Schultz holds a master's degree in migration studies from the University of Oxford (UK). In her master's degree, she analysed the effects which the Arab Spring has had on EU migration policy. Before coming to the SVR, she served as Migration Health Officer with the International Organization for Migration (IOM) in Geneva.

Martin Weinmann Researcher

Martin Weinmann is a political scientist. Prior to joining the SVR, he held a research position with the German Federal Office for Migration and Refugees (BAMF) and worked for a member of the Hessian regional parliament.

Alex Wittlif Researcher

Alex Wittlif studied history and sociology with a focus on empirical social research and migration. In his master's thesis he investigated the empirical relation between the cultural capital and health of migrants and people from a non-migrant background.

Sabine Schwebel Communications Manager

Sabine Schwebel holds a degree in literary studies and history and has also completed a traineeship in journalism. She has worked in the marketing department of the weekly newspaper DIE ZEIT and as a Communications Manager at Stiftung Mercator.

Dorothee Winden Communications Manager

Dorothee Winden is a political scientist and a graduate of the Deutsche Journalistenschule. She has worked as an Editorial Journalist for an inter-regional newspaper and was Press Officer of both a political parliamentary group in the German Bundestag and an association.

Katrin Dölle Administration, Events and Project Consultancy

Katrin Dölle studied cultural science at the Leuphana University in Lüneburg and cultural management at the Université Paul Cézanne Aix-Marseille III in Arles. She worked as a Project Manager in different cultural institutes before coming to the SVR.

Heidi Standt Administrative Assistant to the Managing Director

Heidi Standt holds a degree in business administration. She was employed as an Accountant, a Company Officer with statutory authority and as a Commercial Director in many companies in the construction industry.

Linda Brackwehr, Leonie Buczynski, Zhim-xun Ho, Juliane Schremer Student Assistants**Further Support and Cooperation:**

Dr. Julia Herzog-Schmidt, Dr. Esther Weizsäcker, Dr. Heike Wendt, Safia Ahmedou, Ramona Fischer, Mikhail Lantsov, Nguyen Nhat An Trinh, Aron Vrieler

Supporting Foundations



Stiftung Mercator

Stiftung Mercator is a private foundation which fosters science and the humanities, education and international understanding. It specifically initiates, develops and funds projects and partner organizations in the thematic fields to which it is committed: it wants to strengthen Europe, improve integration through equal educational opportunities for everyone, drive forward the energy transition as a trigger for global climate change mitigation and firmly anchor cultural education in schools. Stiftung Mercator feels a strong sense of loyalty to the Ruhr region, the home of the founding family and the foundation's headquarters.



Volkswagen Foundation

Contrary to what the name implies, the Volkswagen Foundation (VolkswagenStiftung) is not a corporate foundation. Located in Hanover, it is a completely independent non-profit foundation established under private law. The Volkswagen Foundation supports the humanities and social sciences as well as science and technology in higher education and research. Since the start of funding activities in 1962 it has granted 4.2 billion euros in support of over 30,000 projects.

With an annual funding volume of around 150 million euros it is among the country's largest foundations, and it is the largest private science funding foundation in Germany. The funds allocated by the Foundation are generated from its capital and assets of currently about 2.7 billion euros. These funds are supplemented by profit entitlements accruing from Volkswagen AG shares held by the Federal State of Lower Saxony (mainly dividends).

The Volkswagen Foundation places a special focus on providing support for junior scholars and scientists and fostering cooperation between researchers across the borders of disciplines, cultures, and national states.



Bertelsmann Stiftung

The Bertelsmann Stiftung works to promote social inclusion for everyone. It is committed to advancing this goal through programs aiming to improve education, shape democracy, advance society, promote health, vitalize culture and strengthen economies. Through its activities, the Stiftung aims to encourage citizens to contribute to the common good. Founded in 1977 by Reinhard Mohn, the non-profit foundation holds the majority of shares in the Bertelsmann SE & Co. KGaA. The Bertelsmann Stiftung is a non-partisan, private operating foundation.



Freudenberg Foundation

The Freudenberg Foundation was set up by members of the entrepreneurial family Freudenberg in 1984, and is operationally active. With its partners in the field at particular model locations, it trials support strategies in the categories of the integration society, youth people between school and working life, democratic culture in schools and communities and work for mentally ill persons, and invests in consolidating and disseminating transferable approaches. The principal focus of its operations is practical projects for children and young people, generally aimed at enhancing social integration. One crucial element of the foundation's work ever since it was founded has been the integration of children and young people from immigrant families. In geographically small-scale, long-term practical development programs like "One Square Kilometer of Education", the aim is to improve in disadvantaged districts the integrative vigour of the municipality and the local civil society. The foundation is primarily responding to initiative shortfalls in governmental and municipal action.



The Gemeinnützige Hertie Stiftung (non-profit Hertie Foundation)

The Hertie Foundation carries on the life's work of its founder, Georg Karg, the owner of the Hertie Waren- und Kaufhaus GmbH (department stores) who died in 1972. As one of Germany's largest foundations that is independent of any world view and unattached to any company, the Hertie Foundation has assets of

more than 900 million euros whose proceeds are devoted to the common good. The areas of operations are “Preschool and School”, “University”, “Neuroscience” and “Work and Family”. The Hertie Foundation implements model projects up to the point when they are ready to be “brought to the market” with the aim of establishing them on a permanent basis. It sees itself as an enterprise geared to the common good and as the trustee of an estate that, in its way, is equivalent to public funds. It functions economically and efficiently.

The Gemeinnützige Hertie-Stiftung was part of the consortium of foundations from 2008 to 2014 and co-funded the production of the current Annual Report.



The Körber Foundation

The Körber Foundation is currently focussing on five social challenges with its operational projects, in its networks and with cooperation partners: Dialogue with Asia, Engaging with History, STEM Promotion, Potential of Old Age and Music Education. Fathered in 1959 by the entrepreneur and instigator Kurt A. Körber, the foundation is now active both nationally and internationally from its locations in Hamburg and Berlin.

The Körber Foundation was part of the consortium of foundations from 2008 to 2014 and co-funded the production of the current Annual Report.

Robert Bosch Stiftung

Robert Bosch Stiftung

The Robert Bosch Stiftung is one of Europe’s largest foundations associated with a private company. It invests approximately 70 million euros annually in supporting approximately 800 of its own as well as third-party projects in the fields of international relations, education, society and culture, as well as health and science. Since its founding back in 1964, the Foundation has used more than 1.2 billion euros for charitable activities. The Robert Bosch Stiftung continues the charitable pursuits of Robert Bosch (1861–1942), the founder of both the company and the Foundation. It owns about a 92 percent stake in Robert Bosch GmbH, and finances its operations from the dividends it receives from this holding. Robert Bosch’s former home in Stuttgart serves as the Foundation’s headquarters. Around 140 employees work for the Foundation at this location and at its offices in Berlin.

The Robert Bosch Stiftung has been part of the consortium of supporting foundations since January 2015. It had previously been connected to the SVR through the provision of project-specific funding, such as for the Integration Barometer.



Stifterverband für die Deutsche Wissenschaft

Gifting education, creating knowledge, enabling innovation – this has been the Stifterverband’s motto since 1920. A motto which symbolises the shared responsibility by businesses and foundations for science and education in Germany. The Stifterverband is a business community initiative advocating long-term improvement of the German education and research landscape. In order to achieve this goal, the Stifterverband provides funding for universities and research institutes, supports talents, analyses the higher education system, and devises recommendations for policymakers and business.



The Vodafone Foundation Germany

The Vodafone Foundation Germany is one of the large German corporate foundations. Since its establishment in 2003, the foundation supports projects in the areas of education, integration and social mobility to advance the opportunities of socioeconomically disadvantaged children and youth. As a Think Tank, the Foundation also aims to identify relevant socio-political challenges that hitherto do not find adequate representation within the political discourse. In collaboration with academic and policy experts it develops target-group specific, pragmatic as well as effective policy recommendations, which are made accessible to social networks, the media and a wide range of policy and decision makers in government and civil society.

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The Expert Council is an independent and non-profit monitoring, evaluating and advisory council which takes a stand on issues relevant to integration and migration policy and offers practically oriented policy consultation. The results of its work are published in this Annual Report.

The SVR includes nine researchers from different disciplines and research institutes: Prof. Dr. Christine Langenfeld (Chairwoman), Prof. Dr. Ludger Pries (Deputy Chairman) as well as Prof. Dr. Gianni D'Amato, Prof. Dr. Thomas K. Bauer, Prof. Dr. Wilfried Bos, Prof. Dr. Claudia Diehl, Prof. Dr. Heinz Faßmann, Prof. Dr. Christian Joppke and Prof. Dr. Hacı Halil Uslucan.

More information can be found at: www.svr-migration.de