Family Reunification: a Barrier or Facilitator of Integration?

German Country Report

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Family Reunification: 
a Barrier or Facilitator of Integration?

German Country Report

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1 Introduction

Family related migration has been a dominant legal mode of entry into the European Union over the past few decades. This applies for Germany as well. Here, family reunification accounts for the largest share of immigration of third country nationals. About one quarter of all third country nationals migrating to Germany are entering the country with a visa for the purpose of family migration. Family reunification allows spouses, children, and possibly other family members from third countries to join their relatives already living in Germany (so-called sponsor) under certain conditions. This report examines the statutory prerequisites of family reunification and its implementation in Germany. The general objective of the report is the question on how family reunification legislation, policies and practices impact the ability to live together with one’s family and whether the conditions concerned present an obstacle to or assist the integration of the families.

The current report forms part of a wider study, which compares the impact of family reunification rules on integration across seven EU Member States. Together with the findings of five other country reports, the conclusions of this research are summarised in a Synthesis Report, which compares the individual results and discusses similarities as well as differences. Based on the results, the transnational project aims to promote the exchange of experience and knowledge between scientists, decision makers in politics, administration and civil society and contribute to the effective integration of third country nationals within the EU Member States.

Depending on the sponsor’s legal position, significant differences result in the admission and residence requirements for the immigration of foreign family members. Therefore, a distinction is made between the requirements for the family migration of family members to third country nationals, Union citizens as well as German citizens. With respect to differences in legal requirements across countries participating in the study, the focus of analysis lies on four main types of requirements: income, housing, age and integration. The impact of legislation, policies and practices on integration is analysed in line with four areas identified as essential to integration by the European Commission: employment, social inclusion, education and language skills.

Providing insight on the differences in legal requirements for sponsors of different nationality is one of the aims of this report. Besides, it will deal with the development of the German family reunification policy during the last decade and its administration and implementation in practice. Moreover, it is to be assessed whether or not the regulations effective in Germany are consistent with the provisions laid down in EU law. In addition, the report will shed light on essential obstacles for family reunification, which can arise in connection with the four main types of requirements as well as the admission procedure as such. Finally, it will include an analysis of the available data on the phenomenon and will try to draw further conclusions on the impact legislation, policies and practices have on the integration of admitted family members as well as the sponsors.

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1 This report does not distinguish between family reunification (process of bringing in family members by the primary migrant) and formation (marriage migration), since this categorisation is not common in Germany. The different modes are not further differentiated in the following (where there are differences in the admission requirements, these are mentioned explicitly).

2 Other participating countries are: Austria, Bulgaria, Ireland, the Netherlands, Portugal and the United Kingdom. The study is funded by the European Commission under the Integration Fund Community Actions Programme (IFCAP), which aims at promoting the integration of third country nationals in EU Member States.

3 The term ‘third country nationals’ applies to nationals from a country not belonging to the EU or EEA.
Research Methodology

The methodology of this report was elaborated with regard to the methodological model adopted together with the project partners. Using a mixed method approach, the research was conducted on the basis of three main sources. This included the review of relevant legal texts and commentaries, parliamentary documents, national and European case-law as well as the review of specialised literature on the issue of family reunification. In order to obtain data on the quantitative development of family migration as well as integration pass rates, analyses of the statistics of the Federal Foreign Office, the Central Register of Foreigners and other existing evaluations were conducted. Additionally, information from primary qualitative research was collected. Interviews were carried out with: family members, who had applied for family reunification; stakeholders active in the field of family reunification (such as NGO representatives); as well as representatives from politics and administration.

The qualitative research was conducted using focus groups and individual interviews. In line with the individual interviews, thirteen family members who had undergone the admission procedure were interviewed in order to gather information on their personal experiences during the process (see details in Annex II, Table 3). In addition, a focus group of four family members was organised in order to stimulate a further analysis of the gathered information by reflection of (shared) experiences within the group (see details in Annex II, Table 4). The individuals interviewed, included persons with different personal profiles (e.g. nationality, husband/wife) in order to provide a more differentiated picture of challenges that can occur with regard to specific circumstances of family reunification. The immigrants were approached mainly by an NGO that provides counselling regarding family related issues; some were recruited via personal contacts of the family members.

In order to draw on the broad knowledge of experts, a focus group was scheduled with a total of four participants consisting of NGO representatives advising and supporting migrants and their families in migration related issues and a lawyer specialised in family and migration law (see details in Annex II, Table 4). Moreover, three individual interviews with policy makers were conducted, including representatives from the federal government and federal state authorities (see details in Annex II, Table 4).

2 Conditions for Admission and Residence of Family Members

This chapter describes the regulations effective in Germany for the immigration of third country national family members as well as their legal position after admission. Given that significant differences result in the admission and residence requirements for the immigration of family members depending on the sponsor’s legal position, this chapter is divided into four sections. A distinction is made between the requirements for the immigration of family members of third country nationals, persons qualifying for asylum and recognised refugees, Union citizens as well as German nationals. The four subchapters are constructed in the same manner and begin in dealing with the respective legal requirements before the respective rights and obligations for residency in Germany are discussed in conclusion.

The right to family reunification is derived from the constitutional protection of the family under art. 6 sec. 1 of the Basic Law. While the requirements for the admission and residence of foreign family members of third country nationals and German citizens are regulated in the Residence Act, the immigration of family members to Union citizens with the right of free movement is being subject to the Free Movement Act/EU. Principally, German immigration law grants the right to family
reunification only to members of the so-called nuclear family. The nuclear family includes the sponsor’s spouse, registered life partner as well as minor, unmarried children. Other family members are generally only admitted in order to prevent an exceptional hardship.

Family reunification in Germany is linked to general authorisation requirements and discretionary standards, which define the basic requirements for the immigration of family members. These include proof of sufficient and secured income and sufficient housing. In addition, the immigration of spouse and children is subject to certain integration criteria. Thus, spouses of third country nationals and German nationals must prove basic German language skills before admission is granted.

The following table gives an overview on the four main types of requirements:

<table>
<thead>
<tr>
<th></th>
<th>Income requirement</th>
<th>Housing requirement</th>
<th>Integration requirement</th>
<th>Age limits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Third country nationals</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>equal to welfare plus actually paid gross rent.</td>
<td>equal to publicly funded social rented housing.</td>
<td>before arrival: spouses: language skills A1 minor unmarried children between 16 and 18 (if not joint entry to Germany with parents): language skills C1 or positive integration prospect after arrival: all family members: (except: less need for integration, sufficient German language skills exist or children up to 16): integration course (B1 + orientation test)</td>
<td>spouse and sponsor: 18 minor, unmarried children: 18 (but 16-18 integration requirement) other relatives: No</td>
</tr>
<tr>
<td><strong>Refugees / Persons with a right of asylum</strong></td>
<td>Generally: Yes except: application is filed within 3 months after the granting of humanitarian status + family reunification is not possible in a third country parents of a minor child: No</td>
<td>Generally: Yes except: application is filed within 3 months after the granting of humanitarian status + family reunification is not possible in a third country parents of a minor child: No</td>
<td>Yes before arrival: spouses in case of family formation: language skills A1 spouses in case of family reunification: No children: No after arrival: all family members: (except: less need for integration, sufficient German language skills exist or children up to 16): integration course (B1 + orientation test)</td>
<td>Yes spouse and sponsor: 18 minor, unmarried children: 18 other relatives: No</td>
</tr>
<tr>
<td><strong>Union citizens</strong></td>
<td>Generally: No non-working Union citizens: yes</td>
<td>No</td>
<td>No</td>
<td>Generally: No (children: 21)</td>
</tr>
<tr>
<td><strong>German nationals</strong></td>
<td>No</td>
<td>No</td>
<td>Yes before arrival: spouses: language skills A1 after arrival: all family members: (except: less need for integration, sufficient German language skills exist or children up to 16): integration course (B1 + orientation test)</td>
<td>Yes spouse and sponsor: 18 minor, unmarried children: 18 other relatives: No</td>
</tr>
</tbody>
</table>
2.1 Family Reunification of Third Country Nationals

The requirements for the admission and residence of foreign family members of third country nationals residing in Germany are regulated in §§ 29-36 of the Residence Act. The Residence Act is part of the Immigration Act, which was enforced on 1 January 2005. The General Administrative Regulation on the Residence Act contains the regulations, information and explanations for the implementation of the German Residence Act.

2.1.1 Conditions for Family Reunification

Scope of family reunification

Above all, the Residence Act grants members of the so-called nuclear family a right to family reunification. The nuclear family includes the sponsor’s spouse, registered, same-sex life partner as well as minor, unmarried children under the age of 18 (16-18 under conditions). Influx requirements for the immigration of spouses apply accordingly (§ 27 sec. 2 of the Residence Act) to registered same-sex couples in terms of the German Civil Partnership Act (LPartG). On the other hand, same- or opposite-sex cohabitation does not suffice as grounds for the right to immigration (no. 27.1.6 of the General Administrative Regulation on the Residence Act).

Other family members of a third country national can also have a right to immigration within discretion if this is required to prevent an exceptional hardship (§ 36 sec. 2 of the Residence Act). This applies to relatives in the ascending and descending line such as parents of children, who are minors or of legal age, children of legal age, grandparents or grandchildren as well as relatives in a lateral relationship such as uncles, aunts, cousins or siblings. However, immigration is only stipulated in cases in which these family members no longer have similar family ties abroad (Walter 2009: 343 et seq.). For example, immigration of a minor to relatives in the ascending line (e.g. grandchildren to grandparents) is only possible if these are orphans or if their parents are verifiably no longer capable of exercising the care and custody of the child on a permanent basis, e.g. due to a care dependency (no. 36.2.1.4.1 of the General Administrative Regulation on the Residence Act).

General admission criteria for family members

The sponsor, whom the family members intend to join, must be in possession of a residence permit status in the form of a permanent residence permit, an EC long-term residence permit or a temporary residence permit (§ 29 sec. 1 no. 1 of the Residence Act). It is not necessary to already be

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4Act on the residence, employment and integration of aliens in the Federal Republic of Germany (Residence Act), in the version published on 25 February 2008 (Federal Gazette I p. 162) and last amended by art. 2 sec. 25 G for the amendment of regulations on promulgation and publications as well as the civil process order, regarding the act the implementation of the civil process order and the Tax Code as per 22 December 2011 (Federal Gazette I p. 3044).
5General Administrative Regulation on the Residence Act as per 26 October 2009 (Joint Ministerial Gazette p. 878).
6This includes adopted children.
7In German family and residence law, parenthood not only refers to the biological father of a child, but also recognises the acceptance of responsibility for a child, which is identified as familial-social paternity (Müller 2012: 19). This responsibility is for example given, if father and child are living in the same household for considerable time or if maintenance for the child is paid (BT-Drs. 16/2585: 13). Legally, parenthood is acknowledged when the mother of the child agrees to the declaration of paternity issued by the father. Therefore, not only the biological father but also someone with acknowledged paternity has the right to family reunification (Müller 2012: 19 et seq.).
8The EC long-term residence permit grants the right to permanent residence and is, in principle, equal to the permanent residence permit (§ 9a sec. 1 of the Residence Act).
9At the same time, the validity period of the temporary residence permit must be at least one year. Furthermore, reason-
in possession of this residence title upon application. It suffices that granting is expected or – in the event of simultaneous admission – the sponsor is granted a residence title at the same time with his/her family members (no. 29.1.2.2 of the General Administrative Regulation on the Residence Act).

In the event that the sponsor holds a temporary residence permit, a right to immigration of spouses depends on the date of the marriage (§ 30 sec. 1 sentence 1 no. 3 d to f of the Residence Act): If the marriage was not concluded until after the sponsor’s admission, the temporary residence permit must normally already be effective for at least two years before a right to immigration is given. Furthermore, the extension of the temporary residence permit may not be ruled out from the start. On the other hand, it is irrelevant when the marriage was concluded for the authorisation of immigration to a third country national sponsor, who is in the possession of a permanent residence title (Walter 2009: 336 et seq.).

In principle, the immigration of family members must serve the establishment and preservation of the family relationship in terms of an actually shared and permanently established alliance of support and care (art. 6 GG, § 27 sec. 1 of the Residence Act). Thus, immigration in cases of marriages of convenience resp. fictitious relationships or forced marriages is not possible (§ 27 sec. 1a no. 1 and 2 of the Residence Act).\(^\text{10}\) A formally effective, concluded marriage alone is not grounds for the immigration of a spouse.

The income requirement

The immigration of family members can be denied if the sponsor is reliant on benefits according to the Social Security Code (SGB II or SGB XII) to support other family members or members of the household (§§ 2 sec. 3, 5 sec. 1 no. 1, 27 sec. 3 sentence 1 of the Residence Act). Therefore, the family must have sufficient resources to be able to independently support itself, including sufficient health insurance coverage.

The amount and stability of income required to secure sufficient livelihood is not defined in more detail by resident law at the federal level and is assessed differently by the federal state’s authorities. In practice, the requirement to secure livelihood is predominantly based on the subsistence income for the unemployed pursuant to the SGB II (Social Security Code) and is calculated as standard rate pursuant to the SGB II plus the actually paid gross rent including heating and utilities (DRK 2008: 9 et seq.). The amount of the standard rate acts in accordance with the respective family constellation and amounts in 2012 to € 374 for the householder and € 337 for a partner of full age plus the costs for rent. Graded standard rates apply for children and adolescents. For children, these range between € 219 (children aged 0 up to 5 years) and € 287 (children aged 14 up to 17 years). In fact, each family member requires an extra amount of income.

\(^{10}\)While a marriage of convenience is defined as a mere marriage of convenience, which is solely aimed at the attainment of a right of residence, a forced marriage is perceived as a marriage in which one of the spouses was forced to enter into the marriage. Cp. Chapter 4 for way of proceeding in the event of suspicion of a marriage of convenience.
Example for the income requirement in 2010:

A partner and a 10-year-old child of a sponsor would like to immigrate. The actually paid rent\textsuperscript{11} is € 600.

| Standard rate to the SGB II for partners in 2010 | € 646 Euro |
| Standard rate to the SGB II for a 10-year old child in 2010 | € 251 Euro |
| Actually paid gross rent | € 600 Euro |
| Income requirement in total | € 1,497 Euro |
| Median equivalised net income Germany 2010/monthly\textsuperscript{12} | € 1,566 Euro |
| % of income requirement to median equivalised net income | 95,6% |

The livelihood must not only be sufficient but also secured in the long term. In order to determine the stability of income levels in cases of family reunification, the foreigners authorities in the federal state of Hamburg, for example, make a forecast decision, in which not only the conditions of current employment contracts but also the previous educational and employment history are taken into account (Freie und Hansestadt Hamburg 2012: 4 et seq.).

For the calculation of the available net income, payslips usually have to be submitted. Additionally, public funds based on own contributions (e.g. pension) as well as assets and the verifiably expected income from immigrating family members (e.g. employment contract of immigrating spouses or right to child benefit for immigrating children) have to be considered (§ 2 sec. 3 of the Residence Act).\textsuperscript{13} The available income must comply with the amount of required income assessed by the foreigners authorities. Should this not be the case, the immigration of family members can be denied on the basis of discretion and irrespective of whether or not social welfare benefits are actually being received or have been applied for. Decisive is whether or not a right exists (no. 27.3.1 of the General Administrative Regulation on the Residence Act).

The housing requirement

Given that the Residence Act defines the establishment and preservation of the family relationship in terms of an actually shared life as a binding purpose of residency, the central focus of the family's life must generally be able to be verified in the form of mutual housing (no. 27.1.4 of the General Administrative Regulation on the Residence Act). At the same time, it is essential that there is sufficient living space available for all family members (§§ 5 sec. 1 no. 1, 29 sec. 1 no. 2 of the Residence Act). The term of sufficient living space is based on the accommodation of persons in need of living accommodations in publicly funded social rented housing (§ 2 sec. 4 sentence 1 of the Residence Act). However, the size of living space required for a family, is regulated differently in the federal states. Children under three years are generally not included in the calculation (§ 2 sec. 4 sentence 3 of the Residence).

\textsuperscript{11}The rent in Germany differs considerably, so the amount of € 600 only gives an example.

\textsuperscript{12}Eurostat ilc_di03; the equivalised disposable income is the total income of a household, after tax and other deductions, that is available for spending or saving, divided by the number of household members converted into equalized adults.

\textsuperscript{13}Cp. also Chapter 5.1.1 for the calculation of the available income.
The integration requirement

A further requirement for spouses as well as for minor, unmarried children of third country nationals is the verification of German language skills before admission. The requirements for the immigration of spouses include that the immigrating spouse must verify that he/she can at least communicate in a simple manner\(^{14}\) in the German language (§ 30 sec. 1 sentence 1 no. 2 of the Residence Act). In practice, the German diplomatic representations normally request a respective language certificate for this purpose, which must be based on a standardised language test, which consists of all four language skills (listening, speaking, reading, writing) (no. 30.1.2.1 and 30.1.2.3.1 of the General Administrative Regulation on the Residence Act). If, upon application, the diplomatic representations are convinced that simple German language skills clearly exist, the verification by means of a separate language test can be waived (BT-Drs. 17/3070: 34).

Depending on when the sponsor was married as well as the residence title and purpose, exceptions from the language requirement are provided for in the Residence Act. Verification of language skills does not need to be provided for in the case of (§ 30 sec. 1 sentence 2 no. 1 to 3 and sec. 1 sentence 3 no. 1 to 5 of the Residence Act):

- in the event of humanitarian grounds for residency (cp. Chapter 2.2), if the marriage already existed at the time of the sponsor’s admission,
- disability or illness of the spouse,
- recognisably smaller need for integration of the spouse,
- marriages to citizens from certain countries of origin,\(^{15}\)
- spouses of highly skilled persons, researchers, self-employed persons, if the marriage already existed at the time of the sponsor’s admission,
- spouses of EU Blue Card holders,\(^{16}\)
- spouses of third country nationals, who are in possession of a long-term residence permit of another EU Member State (EU permanent residence).

Minor, unmarried children of third country nationals must verify the command of the German language\(^{17}\) if they are between 16 and 18 years of age and are not admitted to Germany together with their parents. Optionally, positive integration prospects\(^{18}\) must exist (§ 32 sec. 2 of the Residence Act).

\(^{14}\)The required German language skills must comply with the language competence level A 1 for basic language use in terms of the European Council’s Common European Framework of References (level A 1 corresponds to the lowest level of difficulty).

\(^{15}\)The exception applies to sponsors’ spouses, who are permitted to enter Germany, even for longer periods of time, without a visa due to their nationality. Among others, this applies to nationals of Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand and the USA (§ 41 sec. 1 and 2 Residence Ordinance).

\(^{16}\)With the incorporation of the EU Blue card permit into the German Residence Act as part of the implementation of the European Directive on highly qualified employment on 1 August 2012, spouses of EU Blue Card holders (persons with a university degree or equivalent education and a defined level of minimum salary) are explicitly exempted from the language requirement (§ 30 sec. 1 sentence 3 no. 5 of the Residence Act). In addition, as in the case of researchers, family members of an EU Blue Card holder gain immediate and indefinite access to employment (§ 29 sec. 5 no. 2 of the Residence Act; cp. also http://www.bamf.de/EN/DasBAMF/Aufgaben/BlaueKarte/blauekarte-node.html).

\(^{17}\)In this case, command of the German language means that the language skills must comply with level C 1 for competent language use in terms of the European Council’s Common European Framework of References (i.e. the second highest level of difficulty). Respective verification must be provided in line with a language test at an acceptable domestic or foreign institute. If the child already resides in Germany, it suffices if the last school report shows the mark 4 or better in German (DRK 2008: 38).

\(^{18}\)Positive integration prospects are given if it seems ensured that the child can integrate itself into the circumstances of living in Germany based on its previous education/vocational training and living conditions. For example, this can be assumed
**The age limit**

In addition to the required language criterion, the Residence Act also stipulates a minimum age of 18 for both spouses for a right to immigration of spouses (§ 30 sec. 1 sentence 1 no. 1 of the Residence Act). This immigration age can only be deviated from for the prevention of particular hardships (§ 30 sec. 2 sentence 1 of the Residence Act). Furthermore, it is irrelevant for specific groups of persons according to § 30 sec. 1 sentence 2 no. 1 to 3 of the Residence Act if the marriage already existed at the time of the sponsor’s admission. This includes primarily:

- highly skilled persons,
- EU Blue Card holders,
- researchers,
- self-employed persons (company founders),
- persons with EU permanent residence permit.

Minor, unmarried children up to the age of 18 have a right to immigration if both parents or the parent, who has sole care and custody, has a temporary residence permit, a permanent residence permit or an EU long-term permanent residence permit and the child relocates its central focus of life to Germany with its parents or the parent with sole care and custody\(^1\) (§ 32 sec. 1 no. 2 of the Residence Act).\(^2\) If only one of the two parents, who have mutual care and custody, lives in Germany, no right to immigration of the child exists according to that (cp. Chapters 5.1.1 and 6.1.2).

If minor, unmarried children of third country nationals are not admitted to Germany with their parents, the right to family reunification only applies as long as the immigrating child is younger than 16. Children, who are older than 16 and younger than 18, must also have command of the German language or show positive integration prospects (cp. the section *The integration requirement* in this Chapter). In exceptional cases, the minor, unmarried child can also be granted a temporary residence permit in line with an individual examination. However, this is only possible if is required for the prevention of an extreme hardship considering the well-being of the child or the family situation (§ 32 sec. 4 of the Residence Act).\(^3\) A particular hardship exists for instance if the child is dependent on the care provided by its parents due to a suddenly developing illness or an accident (no. 32.4.3.1 to 32.4.3.5 of the General Administrative Regulation on the Residence Act).

### 2.1.2 Rights and Obligations of Family Members after Admission

In principle, the granting of temporary residence permits is strictly bound to the purpose of family reasons, “for the establishment and preservation of the family relationship in the Federal Republic of

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\(^1\) The sole care and custody of a child requires that the other parent must have effectively waived his/her right of care and custody according to the respective legal provisions of the other country. For cases in which the laws of the child’s home country only allow for joint custody of the child or a partial transfer of child custody, cp. Chapters 5.1.1 and 6.1.2.

\(^2\) A joint relocation of the central focus of life is given if the respective family members relocate their central focus of life to Germany within a foreseeable time period (normally three months). Exceeding this time period is irrelevant – for instance to finish the school year – if the overall picture of relocating the entire family from abroad to Germany is still maintained and the delay does not exceed six months (no. 32.1.3.1 to 32.1.3.8 of the General Administrative Regulation on the Residence Act).

\(^3\) According to Reimann, this regulation is strictly interpreted in the practice of authorities. If there is no plausible reason as to why the child did not enter with the parents, it is routinely assumed that the child can continue to be cared for and raised abroad (DRK 2008: 39).
Germany”. Furthermore, the residence title for family members is strictly accessory, i.e. it is linked to the sponsor’s position in terms of right of residence and does not exceed its period of validity (§ 27 sec. 4 sentence 1 of the Residence Act). Should the sponsor lose his/her right of residence, e.g. if there are compelling grounds for expulsion, the period of validity can also be subsequently reduced for family members (§ 7 of the Residence Act sec. 2 sentence 2). The family members’ right of residence is linked to the sponsor’s position in terms of right of residence until an independent right of residence is obtained.

The first residence permit, which is granted for the purpose of the immigration of family members, is temporary and must be granted for at least one year (§ 27 sec. 4 sentence 4 of the Residence Act). The temporary residence permit is consistently extended until the requirements for the granting of a permanent residence permit are met (cp. Chapter 2.1.3). In principle, the duration of the extension is at the discretion of the foreigners authorities. The temporary residence permit for spouses for instance, is normally granted for one year and then extended respectively for two years (no. 30.0.11 of the General Administrative Regulation on the Residence Act). The requirements for the right of residence are re-examined when a temporary residence permit is extended. As long as the family relationship persists however, secure livelihood and the verification of sufficient living space can be waived (§ 30 sec. 3, in conjunction with § 36 sec. 2 sentence 2 of the Residence Act); they must be waived for the immigration of children and other minor family members (§ 34 sec. 1 of the Residence Act, in conjunction with § 36 sec. 2 sentence 2 of the Residence Act).

Labour market entry for family members of third country nationals is closely linked to the sponsor’s position in terms of right of residence. In principle, the entry is based on to which extent the sponsor has the right to engage in employment (§ 29 sec. 5 no. 1 of the Residence Act). Family members of third country nationals with unrestricted entry to the labour market are also given unrestricted entry, family members of persons with subordinate entry, subordinate entry (Walter 2009: 345 et seq.). Furthermore (in the event of a lack of reference to the sponsor’s employment), spouses are given entry to the labour market if the marital relationship has legitimately existed for at least two years in Germany and the extension of the sponsor’s temporary residence permit is not ruled out from the start (§ 29 sec. 5 no. 3 of the Residence Act).

In line with the first time a residence title is granted, family members, who permanently reside in Germany, are entitled (§ 44 sec. 1 sentence 1 no. 1 lit. b) of the Residence Act) to participate in an integration course. Children, adolescents and young adults, who begin educational training or continue their previous schooling in Germany are excluded (§ 44 sec. 3 no. 1 of the Residence Act). There is also no right to participation in the event of a recognisable smaller need for integration, for example for persons, who have a graduate or polytechnic degree or who do not reside permanently but only temporarily in Germany (§ 44 sec. 1 sentence 2 and sec. 3 no. 2 of the Residence Act, § 4 sec. 2 Integration Ordinance). The same applies to third country nationals, who already have sufficient German language skills (§ 44 sec. 3 no. 3 of the Residence Act). On the other hand, there is an obligation to participate in an integration course for family members after admission if they cannot at least communicate in a simple manner in German or – as a spouse – do not have sufficient

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22Permanent residence is normally assumed if the family member obtains a temporary residence permit for more than one year or has had a temporary residence permit for more than 18 months (§ 44 sec. 1 sentence 2 of the Residence Act).
23For the integration courses cp. Chapter 7.1.
24For example businessmen or employees of internationally active businesses who are deployed to Germany only for a few years, students or guest researchers and their spouses.
German language skills (§ 44a sec. 1 sentence 1 no. 1 of the Residence Act). Should the family member not fulfill his/her obligation to participate or should he/she not pass the final test, this can, among other things, have a negative effect on the extension of his/her temporary residence permit (§ 44a sec. 3 of the Residence Act). However, expulsions on these grounds are apparently not carried out by foreigners authorities (cp. Chapter 7.2.1).

2.1.3 Requirements for the Granting of an Independent Residence Permit

The appropriation and accessoriness of residence of family members become inapplicable with the attainment of an independent right of residence or the granting of a temporary residence permit for another purpose (no. 27.1.1 to 27.1.3 of the General Administrative Regulation on the Residence Act). The attainment of an independent right of residence for immigrated spouses can be executed in several ways. A third country national, who has been in possession of a temporary residence permit for five years, must be granted a permanent residence permit pursuant to § 9 sec. 2 of the Residence Act if:

- his/her livelihood is secured,
- he/she (or his/her spouse) has made payment contributions to the social pension fund for 60 months,
- reasons of public safety or order do not conflict with it,
- he/she (or his/her spouse) is permitted to engage in employment, insofar as he/she is an employee,
- he/she (or his/her spouse), in the event he/she is self-employed, is in possession of the required permits,
- he/she has sufficient living space,
- he/she has sufficient German language skills
- and has basic knowledge of the legal system, social order and living conditions in the Federal Republic of Germany.

The permanent residence permit entitles family members to take up employment as an employee as well as to engage in self-employment. In contrast to a temporary residence permit, access to the labour market is thus indefinite and independent of the labour market access of the sponsor. At the same time, access to social benefits is given: This includes benefits pursuant to the SGB II/III/XII (unemployment and social benefits), parents money, child allowance, and support in education. In addition, family members holding a permanent residence permit are subject to a particular protection against expulsion.

The accessoriness of residence does not only end with the granting of a permanent residence permit, but also ends with the breakup of the family relationship. The independent title subsequently issued grants the right to engage in employment and is initially temporary until the requirements for a permanent right of residence are met. In the event of a permanent separation or divorce, the residence permit of the spouse is extended for one year, provided that the marriage has legitimately existed for at least three years in Germany (§ 31 sec. 1 no. 1 of the Residence Act). This does not

25Both last-mentioned requirements can be verified with the successful participation in an integration course. However, these can be waived under certain circumstances, for example in the case of a physical, mental or psychological disorder or disability (§ 9 sec. 1 sentence 2 no. 3 of the Residence Act).
apply pursuant to § 31 sec. 1 sentence 2 of the Residence Act if the residence permit of the other spouse (i.e. the sponsor) may not be extended or the attainment of a permanent residence permit is ruled out (e.g. in the event that the sponsor is a student). Should the sponsor die or in the event of an exceptional hardship, such as in the case of domestic violence, the requirement for the minimum three-year duration is waived (§ 31 sec. 1 no. 2 and sec. 2 sentence 1 and 2 of the Residence Act; cp. also DRK 2008: 24 et seq.). Relatives, who are of full age, obtain an independent residence title in accordance with the regulations for spouses (Walter 2009: 348 et seq.).

The residence permit granted to a child becomes an independent right of residence with the granting of a permanent residence permit resp. the EC long-term residence permit as well as in the event of applicability of § 37 of the Residence Act (right of return in the case of departure) – however at the latest, upon reaching the age of majority (§ 34 sec. 2 of the Residence Act). The regulations of § 34 of the Residence Act must also be applied to minor family members. Furthermore, the Residence Act stipulates special, favourable regulations for the granting of a permanent residence permit for children who immigrated to Germany on grounds of family reunification (§ 35 of the Residence Act).

In principle, the deprivation of the right of residence can be effected on various grounds. A distinction is made according to obligatory expulsion, expulsions in normal cases and expulsions at the discretion of the foreigners authority (§§ 53-55 of the Residence Act). Particular protection against expulsion applies for family members of third country nationals after a five-year residence in Germany (§ 56 sec. 1 of the Residence Act). This regulation includes family members, who are in possession of a permanent residence permit or an EC long-term residence permit. Family members with a temporary residence permit are only granted this particular protection, if they were admitted to Germany as minors or live with a spouse or registered, same-sex life partner, who has a permanent residence status. Persons, who are under particular expulsion protection, can only be expelled on serious grounds of public safety and order.

2.2 Family Reunification of Persons with a Right of Asylum and Convention Refugees

The immigration of family members to persons with the right of asylum or Convention refugees in terms of the Geneva Convention on Refugees is privileged compared to other third country nationals. The variations from the family reunification regulations compared to other third country national sponsors are to be described in the following.

2.2.1 Conditions for Family Reunification

Scope of family reunification

Unaccompanied minors are under special protection pursuant to § 36 sec. 1 of the Residence Act. According to that, the right to family reunification for parents of a minor child with a recognised asylum or refugee status or a permanent residence permit is explicitly stipulated and exempt from the discretion of the provision of § 36 sec. 2 of the Residence Act for other family members. However, it is required that there is not already one parent with the right of care and custody residing in Germany.

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26The complete provision also applies to registered, same-sex life partners.
27This is for example absolutely the case if the family member has been legally sentenced to imprisonment or youth custody for at least three years for one or several premeditated criminal offences (§ 56 sec. 1 sentence 3 in conjunction with. § 53 no. 1 of the Residence Act).
28On the other hand, persons seeking asylum can generally not bring family members to Germany by way of family reunification.
General admission criteria for family members
In principle, the right to immigration of spouses is not dependent on the date of marriage. A two-year minimum duration of residence is not required for marriages, which are concluded after the sponsor’s admission to Germany. However, consequences can result regarding the requirement of simple language skills (cp. the section The integration requirement in this Chapter).

The income and housing requirement
Sufficient and secured livelihood as well as the obligation to verify sufficient living space can be waived by way of discretion. If the application for family reunification is filed within a period of three months after the granting of humanitarian status and the family reunification is not possible in a third country, to which the family members have close ties, the obligation of verification is completely inapplicable (§ 29 sec. 2 of the Residence Act). Parents of a minor child with asylum or refugee status are generally exempt from income verification (§ 36 sec. 1 of the Residence Act).

The integration requirement
The language criterion, according to which the immigrating spouse must verify simple language skills prior to admission, is irrelevant for spouses of persons with a recognised asylum or refugee status, provided that the marriage already existed before the sponsor’s admission (§ 30 sec. 1 sentence 3 no. 1 of the Residence Act).

A total exemption from the integration requirement applies to the admission of minor, unmarried children. Their right to family reunification is not depending on German language skills or positive integration prospects (§ 32 sec. 1 no. 1 of the Residence Act).

The age limit
Minor, unmarried children are admitted to Germany up to the age of 18 without having to meet age-dependent integration requirements between 16 and 18 (§ 32 sec. 1 no. 1 of the Residence Act).

2.2.2 Rights and Obligations of Family Members after Admission
The residence permit for a person with a right to asylum or a Convention refugee is limited to three years when being granted for the first time (§ 26 sec. 1 sentence 2 of the Residence Act). Thereafter, a permanent residence permit must be granted if the prerequisites for the revocation or withdrawal of recognition as a person with a right to asylum or the granting of refugee status are not given. Other requirements according to § 9 sec. 2 of the Residence Act (cp. Chapter 2.1.3) do not need to be met for this purpose (§ 26 sec. 3 of the Residence Act). Insofar as revocation or withdrawal is effected, the family member’s residence title can also be withdrawn based on the accessoriness of residence if that family member does not have an independent right to residence (§ 52 sec. 1 sentence 2 of the Residence Act).

Persons with a recognised right to asylum as well as Convention refugees obtain a permanent and indefinite work permit, which also includes self-employment (§ 25 sec. 1 sentence 4 and sec. 2 sentence 2 of the Residence Act). This also applies to their family members pursuant to § 29 sec. 5 no. 1 of the Residence Act.
2.2.3 Requirements for the Granting of an Independent Residence Permit

Family members of persons with a right to asylum and Convention refugees have a right to an independent, permanent title after five years.

Furthermore, spouses or minor, unmarried children can apply for asylum or the recognition of refugee status themselves (§ 26 sec. 1 of the Asylum Procedure Act). Under so-called family asylum resp. family refugee protection, family members have the same rights as the persons persecuted on political grounds themselves do. However, this residence title is not necessarily indefinite but can be revoked again pursuant to § 73 sec. 2b of the Asylum Procedure Act if, for instance, the recognition of the sponsor, from whom the recognition as a person with a right to asylum or the recognition of refugee status was derived from, is withdrawn.

2.3 Family Reunification of Union Citizens

The immigration of family members to Union citizens with the right of free movement is regulated in detail in the Law Governing the General Freedom of Movement of Union Citizens (Free Movement Act/EU). Pursuant to § 2 sec. 2 no. 1 to 5 and no. 7 of the Free Movement Act/EU, its provisions apply to:

- Union citizens, who want to reside in Germany as employees/workers, to seek work or occupational training,
- Union citizens who are entitled to self-employment,
- Union citizens, who provide or receive services,
- non-working Union citizens,
- Union citizens and their family members, who have acquired a right of permanent residence.

Compared to the regulations on family reunification according to the Residence Act, the requirements here are not as restrictive. Nevertheless, the Free Movement Act/EU is not completely isolated from the Residence Act. For instance the Free Movement Act/EU refers to specific provisions of the Residence Act. Furthermore, the Residence Act applies if it leads to a more favourable legal position of the family member than the Free Movement Act/EU (§ 11 sec. 1 sentence 11 of the Free Movement Act/EU).

In principle, the family members’ right to admission and residence is directly derived from the sponsor’s right to free movement (§ 2 sec. 2 no. 6 in conjunction with §§ 3, 4 of the Free Movement Act/EU). On the other hand, German nationals and their third country national family members do not fall under the Free Movement Act/EU. Instead, the regulations of the Residence Act apply (cp. Chapter 2.4) – unless the German sponsor has already exercised his/her right to free movement in another EU Member State.

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29 This includes that family members are granted a permanent residence permit already after three years.
30 Act on the general freedom of movement for EU Citizens as per 30 July 2004 (Federal Gazette I p. 1950), declared as art. 2 of the Immigration Act as per 30 July 2004 (Federal Gazette I p. 1950), last amended by art. 14 G for the improvement of the integration chances in the labour market as per 20 December 2011 (Federal Gazette I p. 2854). The Free Movement Act/EU also applies to nationals of the European Economic Area countries Iceland, Norway and Liechtenstein (§ 12 of the Free Movement Act/EU).
31 This results from the mere national constellation of family reunification, in which a German national wants his/her third country national family members to join him/her in Germany. Since such a situation does not touch on Community issues, it does not fall within the scope of EU law (Kreienbrink & Rühl 2007: 35).
2.3.1 Conditions for Family Reunification

Scope of family reunification

The term family in the Free Movement Act/EU is significantly broader in scope than in the Residence Act. On the one hand, the nuclear family includes the Union citizen’s spouse and children resp. grandchildren or his/her spouse’s, who have not yet reached the age of 21 (§ 3 sec. 2 no. 1 of the Free Movement Act/EU). Furthermore, the Union citizen’s relatives in ascending line (parents, grandparents, etc.) and descending line (children resp. grandchildren over the age of 21) or his/her spouse’s are entitled to family migration if they are supported by the Union citizen or his/her spouse (§ 3 sec. 2 no. 2 of the Free Movement Act/EU). The admission of other relatives is prescribed according to the Residence Act as in the case of other family members of third country nationals or German nationals (§ 11 sec. 1 sentence 1 of the Free Movement Act/EU in conjunction with § 36 of the Residence Act). Registered, same-sex life partners also do not have a derived right to free movement and are therefore excluded from the regulations of the Free Movement Act/EU unless they have a right to free movement themselves (§ 3 sec. 6 of the Free Movement Act/EU).

General admission criteria for family members

The right to admission and residence in Germany exists, as in the case of other third country nationals, irrespective of whether or not the family member enters Germany with the Union citizen or rejoins him/her at a later point in time (§ 3 sec. 1 sentence 1 of the Free Movement Act/EU).

The income requirement

It is irrelevant for the family reunification of Union citizens, who are seeking work, who are employed or providers or recipients of services, how living expenses are earned resp. whether benefits are obtained according to SGB II or SGB XII. The verification of sufficient means of subsistence as well as sufficient health insurance coverage is limited to non-working Union citizens (§ 4 sentence 1 of the Free Movement Act/EU).

The housing requirement

Living in mutual housing or the verification of sufficient living space is not required by law.

The integration requirement

Integration requirements, such as those obligatory for spouses and children of third country nationals are not designated for the immigration of family members to Union citizens.

The age limit

In principle, there is no age limit for the immigration of family members to Union citizens. However, the right to free movement of children resp. grandchildren, who are 21 years of age or older, de-
pends on whether or not they are supported by the Union citizen or his/her spouse (§ 3 sec. 2 no. 2 of the Free Movement Act/EU).

2.3.2 Rights and Obligations of Family Members after Admission

Family members are officially issued a residence card within six months, which is valid for up to five years (§ 5 sec. 2 of the Free Movement Act/EU). Regarding the accuracy of the information, the foreigners authority can request that the requirements for the right to free movement are substantiated three months after admission (§ 5 sec. 3 of the Free Movement Act/EU). For instance, verification of the family relationship with the Union citizen can be requested. The continuity of the residence requirements can only be reviewed under certain circumstances within the first five years of residence (§ 5 sec. 4 of the Free Movement Act/EU).

As a basic principle, family members of Union citizens have the advantage of unrestricted entry to the labour market and the right to employment or self-employment (Walter 2009: 324). There is no obligation to participate in an integration course for family members. On the other hand, there is also no entitlement to such participation. Union citizens and their family members merely have the option of participating in an integration course in line with available spots (§ 11 sec. 1 of the Free Movement Act/EU in conjunction with § 44 sec. 4 of the Residence Act).

2.3.3 Requirements for the Granting of an Independent Residence Permit

In principle, Union citizens and their family members (including the registered, same-sex life partners) have an unrestricted and indefinite right of residence after a five-year legitimate residence in Germany (right to permanent residence, § 4a sec. 1 of the Free Movement Act/EU). An independent right to residence, which is initially temporary until a right to permanent residence has been acquired, can also arise pursuant to § 3 sec. 3 to 5 of the Free Movement Act/EU if the Union citizen dies, leaves the Federal Republic of Germany or the marriage is dissolved.

The acquisition of the right to permanent residence is irrespective of whether or not the requirements for the right to free movement necessary for the previous residence will also be met in the future. An expulsion of family members with a right to permanent residence may only be effected on serious grounds (§ 6 sec. 4 of the Free Movement Act/EU).

However, until the acquisition of the right to permanent residence, the right to admission and residence can be lost in the event of a lapse of the requirements for the right to free movement (§ 5 sec. 5 of the Free Movement Act/EU). This is e.g. the case if the Union citizen no longer works, is not seeking work or does not meet the requirements for non-working persons with a right to free movement (DRK 2008: 28). Furthermore, the foreigners authority can also declare the loss of the right to free movement if an endangerment to public order, safety or health is expected from the immigration of the family member (§ 6 sec. 1 of the Free Movement Act/EU).

2.4 Family Reunification of German Nationals

The family reunification of third country national family members to German nationals complies with the provisions of the Residence Act, as in the case of third country national sponsors. In this case, the

35 Exceptions to this regulation apply to Bulgarian and Romanian nationals, whose free movement of workers is still restricted until 31 December 2013 (www.bmas.de).
regulation of § 28 of the Residence Act is decisive. Compared to the family migration of family members to third country nationals, family migration to German sponsors is possible under less restrictive conditions. However, the regulations also correspond to one another to a certain extent. In order to avoid repetition, reference is made to the corresponding paragraphs resp. sections in Chapter 2.1 in the following depiction.

German nationals, who return to Germany, after having resided in another EU Member State for a longer time period (for example by providing services), can also refer to their Union citizen status and assert their right to the immigration of family members according to the provisions of the Free Movement Act/EU (Welte 2009: 191 et seq.). In this case, the regulations for family reunification as stated in Chapter 2.3 take effect.

2.4.1 Conditions for Family Reunification

Scope of family reunification
The nuclear family, which has a right to family reunification, includes spouses, registered, same-sex life partners and minor, unmarried children under the age of 18 (§ 28 sec. 1 sentence 1 no. 1 and 2 of the Residence Act). Furthermore, the parent of a minor, unmarried German must be granted a temporary residence permit to exercise his/her right to care and custody (§ 28 sec. 1 sentence 1 no. 3 of the Residence Act). A parent of a minor, unmarried German, who does not have the right to care and custody, can be granted residence if the family relationship already exists in Germany (§ 28 sec. 1 sentence 4 of the Residence Act). On the other hand, family migration from abroad to exercise visitation rights is not stipulated in the Residence Act (DRK 2008: 22). The regulations pursuant to § 28 sec. 4 in conjunction with § 36 sec. 2 of the Residence Act apply for other family members. As in the case of third country national sponsors, they may only immigrate to avoid an exceptional hardship (cp. Chapter 2.1.1).

General admission criteria for family members
According to the Residence Act, the family migration of family members to Germans requires that the sponsor’s central focus of life is in Germany (§ 28 sec. 1 sentence 1 of the Residence Act). Furthermore, the immigration of family members must serve the establishment and preservation of the family relationship (cp. Chapter 2.1.1). Accordingly, the existence of a marriage of convenience or forced marriage excludes family migration to German nationals (pursuant to § 27 sec. 1a of the Residence Act).

The income requirement
Sufficient and secured livelihood without obtaining benefits from public funds is not required for the family migration of a minor, unmarried child to his/her German parent or for the family migration of a parent to his/her German child (§ 28 sec. 1 sentence 2 of the Residence Act). In the case of immigration of spouses, this only applies conditionally: Pursuant to § 28 sec. 1 sentence 3 of the Residence Act a respective verification is normally to be waived. However, should particular circumstances exist, for example in the case of persons with dual citizenship, for whom the establishment of the marital relationship abroad is reasonable, immigration of the spouse can be denied if the spouses are dependent on public funds (DRK 2008: 20).
The housing requirement
The verification of sufficient living space is not required by law for the immigration of family members to a German sponsor.

The integration requirement
The right to family reunification for spouses of German nationals requires the verification of simple language skills before admission (§ 28 sec. 1 sentence 5 in conjunction with § 30 sec. 1 sentence 1 no. 2 of the Residence Act). The provisions for the family migration of spouses to third country nationals apply accordingly (cp. Chapter 2.1.1). Language verification is completely irrelevant in the case of disability or illness as well as a lack of the need for integration of spouses (§ 28 sec. 1 sentence 5 in conjunction with § 30 sec. 1 sentence 3 of the Residence Act).

The age limit
While the family migration of children to German nationals is possible without any restrictions until the age of 18, the immigration of spouses is dependent on whether or not both spouses are of full age as is the case for third country national sponsors (§ 28 sec. 1 sentence 5 in conjunction with § 30 sec. 1 sentence 1 no. 1 of the Residence Act). A variation from the age criterion is possible by way of discretion to avoid an exceptional hardship (§ 28 sec. 1 sentence 5 in conjunction with § 30 sec. 2 sentence 1 of the Residence Act).

2.4.2 Rights and Obligations of Family Members after Admission
The residence permit for the purpose of family reunification is to be initially issued for at least one year as in the case of third country national sponsors (§ 27 sec. 4 sentence 4 of the Residence Act). However in the practice of authorities, family members of German nationals are normally issued a three-year limitation, provided that there is no remaining doubt regarding a fictitious relationship (no. 27.4 and 28.1.6 of the General Administrative Regulation on the Residence Act). The temporary residence permit is extended as long as the family relationship persists (§ 28 sec. 2 sentence 2 of the Residence Act). Regarding the effects of obtaining financial assistance from public funds, the regulations for first-time granting of a temporary residence permit apply (cp. Chapter 2.4.1).

Pursuant to § 28 sec. 5 of the Residence Act, the temporary residence permit grants the right to employment without being subjected to legal labour market restrictions (Welte 2009: 42).

The participation in an integration course designated for the first-time granting of a temporary residence permit for family members of third country nationals also applies to family members of German nationals accordingly (cp. Chapter 2.1.2).

2.4.3 Requirements for the Granting of an Independent Residence Permit
The requirements for the granting of an independent right to residence in the form of a permanent residence permit for family members of a German sponsor are significantly less strict overall than for family members of third country nationals (cp. Chapter 2.1.3). As early as after three years of residence, the immigrated family member is normally granted a permanent residence permit (§ 28 sec. 2 sentence 1 of the Residence Act). Prerequisites for this are that the family relationship with the German national persists in Germany, there is no reason for expulsion and the family member can communicate in a simple manner in the German language. Unlike the granting and extension of the
temporary residence permit, a verification of secure livelihood without obtaining benefits from public funds is also required.

In the event of dissolution of the family relationship, spouses and registered, same-sex life partners obtain an independent residence title according to the provisions for spouses of third country nationals (cp. Chapter 2.1.3). The provisions of § 35 of the Residence Act, which provide favourable regulations for the granting of a permanent residence permit for children, who came to Germany by way of family reunification, are also to be applied.

Contrary to family members of third country nationals, special expulsion protection applies to family members of German nationals pursuant to § 56 sec. 1 sentence 1 no. 4 of the Residence Act without any restrictions and irrespective of how long the family member has already resided in Germany.

2.5 Conclusion

Family reunification in Germany is linked to general authorisation requirements and discretionary standards, which define the basic requirements for the immigration of family members but also allow the public administration to exercise a decisive margin of appreciation in the individual case. This circumstance is reinforced by the fact that the administrative practice rests mainly on the federal states’ authorities (cp. Chapter 4.1.1), which may result in differences in the implementation of the residence law (e.g. regarding the assessment of the income or housing requirement). Depending on the legal position of the sponsor, the regulations for family migration indicate significant differences. Furthermore, the German regulations entail exceptions from the requirements for specific immigrant groups. Thus, while conditions for entry and residence of family members have been rather restricted during the last years, certain selected groups enjoy facilitated conditions for family reunification.

A comparison of the regulations shows that German nationals are better off in many ways compared to third country national sponsors. Special regulations for the immigration of family members to German nationals do not only apply regarding the scope of persons with the right to family reunification, general admission criteria (spouses of a third country national sponsor holding a temporary residence permit might have to wait for at least two years before a right to immigration is given) and for the first-time granting of a temporary residence permit (e.g. exemption from income requirement and longer duration of the initially issued residence permit). The extension of the temporary residence permit and the requirements for the granting of a permanent residence permit are regulated separately, too. For example, family members of German nationals can obtain a permanent residence permit as early as after three years – and not after five years. In addition, they enjoy indefinite labour market access as well as particular protection against expulsion right from the beginning of their stay in Germany.

Despite these privileges in light of third country nationals, German nationals are worse off compared to Union citizens, especially regarding the conditions for entry. For instance, this is shown when regarding the significantly broader scope of the term nuclear family for Union citizens and the less strict requirements for family reunification. For example, a French national residing in Germany can have his/her third country national spouse, his/her parents as well as his/her children up to the age of 21 join him/her without further ado. This is only possible for a German national with restrictions and upon fulfilment of various requirements. This unequal treatment, which is also referred to as native discrimination, can momentarily only be overcome if the German sponsor makes use of
his/her own right to free movement and temporarily resides in another EU Member State. However, in contrast to inequalities existing with regard to admission criteria, family members of German nationals are better off than family members of Union citizens regarding their legal protection against expulsion. Particular protection is only granted to family members of Union citizens (as well as third-country nationals) after a five-year residence in Germany. With respect to unrestricted labour market access, family members of Union citizens and Germans both enjoy the same rights.

Besides the disparities in the requirements for entry and residence between different nationalities, the regulations show further differences between sponsors of the same category. Thus, refugees as well as highly skilled persons and citizens from certain countries of origin have a more favourable legal position for entry as well as residence than other third country nationals. Due to their status on grounds of humanitarian protection, variations from the regulations for family migration result for the group of refugees regarding the immigration of spouses and children as well as the verification of economic requirements. Secured livelihood as well as verification for sufficient living space can be waived here. The reasons for these variations are that refugees are not able to establish their family life abroad. With respect to highly skilled persons the German Government follows the idea that there is less need for integration. Their spouses are exempt from the mandatory integration measures before admission (pre-entry language test), if the marriage already existed at the time of the sponsor’s admission, and, in case of temporary residence, also after entry (integration course). Furthermore, spouses of citizens from certain countries of origin (e.g. Australia, Israel, Japan, Canada or the USA) are exempt from the pre-entry language test. The reason given for this exception are the traditionally close economic ties that exist between Germany and the countries concerned.

3 Policy Development and Political Debate

The conditions for the admission and residence of family members have experienced significant changes in the last decade. The following chapter gives a brief overview of the developments in the family reunification regulations and the political debates on this subject. For the presentation of the subject, a brief summary of the development of migration to Germany is first shown before going into the specific discussion about the amendments in the family reunification rules. In conclusion, an explanation of the way the German Federal Government conceives the term integration will be given.

3.1 Immigration History of Germany

The immigration to (West-)Germany after 1945 was particularly shaped by two groups of foreigners. Following the lack of workforce, which began in the 1950s, workers were directly recruited through bilateral agreements. The main migration of the so-called „guest worker“ to West Germany took place between 1960 and 1973. During this time, the per cent of employed foreigners increased from 1.3 per cent to 11.9 per cent. After mainly men from Italy, Spain and Greece came to Germany at the beginning of recruitment, the percentage of women as well as people from former Yugoslavia and Turkey increased significantly in later years. In 1973 the percentage of Turkish people of the foreigners living in Germany amounted to approximately 23 per cent. The migration of those recruited was initially intended to be temporary („rotation principle“). However, as of the late 1960s a growing number of those recruited stayed in Germany permanently (BMI 2011: 14).
Starting in the 1980s, migration on humanitarian grounds played a larger role. As of 1984 the number of persons applying for asylum increased continuously and reached its peak in 1992 with nearly 444,000 applications. Since the revision of the right of asylum in 1993, the number decreased significantly again. In 2010 approx. 41,300 applications for asylum were filed in Germany (BMI 2011: 17).

Even after recruitment was stopped for people from countries outside of the European Community in 1973, the number of foreign citizens in Germany increased significantly primarily because of family reunification. Today, it still represents one of the most important migration channels for people migrating from third countries. For an overview on the total number of visas and residence permits issued for the purpose of family reunification between 2001 and 2010 cp. Annex II, Table 1.

All in all, the percentage of the foreign population, i.e. persons without German citizenship, amounted to 8.8 per cent in 2010; the percentage of people with a migration background amounted to approx. 19.3 per cent (BMI & BAMF 2012: 189).

3.2 Developments over the Last Decade

The various phases of migration were also accompanied by various migration policies in Germany. For a long time, the official political concept „Germany is not an immigration country“37 was characteristic for German immigration policies. This concept did not change until the end of the 1990s, triggered by the economic and demographic developments as well as the discussions at European level. The changes were primarily shown in the reform of the Law on Citizenship from 2000 and as of 2001 in the discussion involving a new immigration law.38 Acquiring German citizenship under certain conditions by being born in Germany („ius soli“) became possible for the first time in Germany with the Law on Citizenship.39

On 4 July 2001 the independent “Commission Immigration”, convened by the Federal Minister of the Interior, presented its final report and demanded a fundamental change in migration and integration policies (Kommission Zuwanderung 2001). The so-called „Süssmuth Commission“ was convened to formulate practical approaches and recommendations and played a decisive role in the reformation of the Aliens Law, which was effective since 1990.40 While up until this point in time immigration law mainly had an eye on maintaining public safety and order, focus was now on the organisation of migration and integration. Integration was declared a political imperative. The new Immigration Act came into force

36Since 2005 people with migration background have been recorded in Germany. This includes all persons who immigrated to the Federal Republic of Germany after 1950, foreigners born in Germany as well as Germans born in Germany with at least one parent, who falls under this category.
37For example, the coalition agreement 1982 between the parliamentary groups of the German Bundestag CDU/CSU and FDP for the 9th election period of the German Bundestag stated: „The Federal Republic of Germany is not an immigration country. Therefore, all measures, which are justifiable on a humanitarian level, must be taken to prevent the immigration of foreigners“ (Neue Bonner Depesche 1982:6).
38The first draft for the new Immigration Act was already submitted in 2001 by the Federal Minister of the Interior, Otto Schily. At that time, the Social Democratic Party formed a coalition with Bündnis 90/Die Grünen (Alliance 90/The Greens) at federal level until 2005, known as centre-left government. Later amendments in line with the RLUmsg/EU in 2007 were introduced under the conservative-centre government of the Christian Democratic Union, the Christian Social Union and the Social Democratic Party. Newly introduced measures, e.g. on the combat of forced marriages in 2011, were introduced under the current conservative-liberal government of the Christian Democratic Union, the Christian Social Union and the Free Democratic Party.
39Until then, sole orientation in Germany was geared towards „ius sanguinis“ (inheritance of citizenship).
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on 1 January 2005 after a long discussion.\textsuperscript{41} The most important elements are the Residence Act, which replaced the Aliens Law of 1990, as well as the Free Movement Act/EU.\textsuperscript{42}

For an overview on the developments of policies regarding family reunification over the last ten years see Annex II, Table 2.

\textbf{Essential discussions in the implementation of the EU Family Reunification Directive}

The amendments in German family reunification law were conducted parallel to the development of the migration laws on EU level. The formulation of the Family Reunification Directive 2003/86/EC, which covers the immigration of third country nationals and their family members, coincided with the creation of the Immigration Act, with which a part of the European regulations were already anticipated. Subsequent needs for change were to be kept as minor as possible (Kreienbrink & Rühl 2007: 38). With the maxim „no amendments in domestic law“, the German mediators were able to accomplish most of their requests for change during the negotiations on the Directive. Therefore as a result, the regulations contained in the Immigration Act were already extensively based on the Directive (BT-Drs. 16/5065: 152). However, the complete implementation of the EU Family Reunification Directive still required several amendments with the Act on the Implementation of EU Directives on Residence and Asylum Issues coming into force on 28 August 2007 (RLUmG/EU), in particular in regard to the family reunification of spouses (Walter 2009: 330).\textsuperscript{43}

\textbf{Discussion on minor children}

One of the most controversial items in the German discussion initially applied to the immigration of \textit{minor children to third country nationals} against the background of the integration debate. In 2005 the most extensive amendments were made here with the Immigration Act (BMI 2006: 101). As a result, family reunification of children is dependent on the parents’ status according to right of residence, the type of admission and the age of the child resp. his/her ability to integrate. Regarding age, the requests ranged from a lowering of the age limit to 10 to increasing it to 18. In principle, the previous legal position allowed for an upper age limit of 16 in the Aliens Law. This was basically maintained when the Immigration Act came into force. However, an additional requirement for children between the ages of 16 to 18, who do not enter Germany with their parents, was included; command of the German language as well as good integration prospects (cp. Chapter 2.1.1). The here newly added criterion for simultaneous admission, for which the requirements of language skills and age limits do not apply, had already been recommended by the independent Commission for Immigration in 2001 (Kreienbrink & Rühl 2007: 38).

\textbf{Discussion on integration policy}

Furthermore, the discussion was primarily dictated by the „main subject of integration“ (Kreienbrink & Rühl 2007: 38). Next to a limitation on the number of new immigrants, it was the Federal Government’s particular aim to implement aspects of a “preventive integration policy” for the family reunification of spouses (SVR 2011: 98). Therefore, the issues regarding the requirement of German lan-

\textsuperscript{41}Law on the control and restriction of immigration and regulation of residence and the Integration of Union citizens and foreigners (Immigration Act) as per 20 July 2004 (Federal Gazette I. p. 1950).

\textsuperscript{42}The Free Movement Act/EU replaced the Free Movement Ordinance/EC and the Residence Act/EEC effective for Union citizens until then.

\textsuperscript{43}Act on the implementation of EU Directives on residence and asylum issues as per 17 August 2007, with which the Residence Act as well as the Free Movement Act/EU, the law on administrative procedures for asylum and other laws and ordinances were amended (Federal Gazette I no. 42, p. 1970).
language skills as well as the age of immigrating spouses took centre stage. With regard to the age threshold of spouses, the legal policy debate was influenced by the practices of other countries such as Denmark and the Netherlands, which had already had “positive experiences” with such measure (Ratia & Walter 2009: 27). The general discussion about respective requirements regarding language and age was increasingly linked to the debate on forced marriages, since integration and the lack thereof are perceived as a central causal problem in this context (Ratia & Walter 2009: 65). In the Explanatory Memorandum of 2007, it is argued that forced marriages are in particular linked to immigrants living in Germany who bring very young wives from their home country (BT-Drs. 16/5065: 172). In this context, the introduction of a minimum age is “meant to avoid the situation where Turks, in particular, who hold traditional values and who are living here, bring very young wives uninfluenced by Western values from their country of origin to Germany” (Seveker & Walter 2010: 15). Furthermore, the Explanatory Memorandum points to the incentive to conclude forced marriages with a German sponsor with respect to easier access to residence rights (BT-Drs. 16/5065: 173).

Thus, the essential legally amendments in 2007 through the Act on the Implementation of EU Directives on Residence and Asylum Issues (RLUmsG/EU) pertained to the introduction of new regulations for the immigration of spouses for both third country nationals and Germans. On the one hand, a minimum age for family reunification of 18 was determined for spouses of third country nationals and Germans. The immigration Act initially did not provide for an age limit when it came into force but eliminated the criterion for the sponsor being of full age, which existed according to the previous legal situation (Kreienbrink & Rühl 2007: 15). On the other hand, the language verification before admission was included in the statutory rules. As of 2005, the criterion for language skills had already significantly gained importance: The right to participation in integration courses after admission was newly implemented; participation is mandatory in the event of insufficient German language skills (cp. Chapter 2.1.2). According to the official justification for the law on pre-entry language tests, the new regulations are to counteract forced marriages and to promote the ability to integrate in the sense that “the insight already gained in the country of origin on the necessity of learning a language facilitates access to the supportive language measures in the target country” (BMI 2011: 4). However, in view of the pre-entry language requirement, critics have pointed out that henceforth “immigration control is being practiced per integration criterion, with the result that the immigration is, in actuality, being prevented for many” (Walter 2009: 335 et seq.). Implicitly, the new regulations aimed at limiting family reunification of unqualified spouses to unqualified migrants already living in Germany, and, in particular, to restrict “immigration into the social security systems” (SVR 2011: 98/107 et seq.). In line with this, spouses of highly skilled persons have been excluded from the integration requirement, given that the immigration of professionals is politically desirable (AGF 2012: 4).

Discussion on forced marriages and marriages of convenience

There were two other amendments in connection with the debate on the prevention of forced marriages: In line with the implementation of the EU Family Reunification Directive, the requirements for admission were expanded to the effect that family migration is now impossible if it is a matter of a marriage of convenience or forced marriage.

44For the development of the figures on family reunification, cp. Chapter 6.

45In the Explanatory Memorandum of 2007 however, the aim to minimise immigration into the social security systems in the course of family reunification is only explicitly mentioned regarding the rationale of the requirement to secure sufficient livelihood (see also below) (BT-Drs. 16/5065: 171).
The German public debate on forced marriages began about ten years ago in the context of honour killings and was primarily initiated by campaigns of non-governmental and women’s organisations, which brought the issue on the political agenda. In order to prevent forced marriages, which are defined as a violation of human rights, several types of measures (mainly criminalisation measures) have been discussed (Mirbach, Schaak & Triebl 2011: 21; Ratia & Walter 2009: 64 et seq.). One of the subsequently implemented measures concerned changes in migration law, since forced marriages are seen as a migrant issue: In 2007, the legal grounds of refusal of family reunification in cases of forced marriages under § 27 sec. 1a no. 2 of the Residence Act were implemented. In addition, the required duration of marriage in order to gain an independent right of residence, was initially reduced from four to two years. This measure was considered to provide certain protection, since it allows victims of forced marriages to leave their spouse without fear of deportation. However, the duration of marriage was increased to three years again in 2011, with the official argument to hamper so-called marriages of convenience (BReg 2011: 8; Mirbach et al 2011: 22; Ratia & Walter 2009: 25 et seq.). This extension of the duration of marriage was assessed as a significant impairment for the victims of forced marriages by non-governmental organisations (FMR 2010).

The issue of obtaining a residence permit under false pretences has been the objective of discussion since around the mid-1980s. As a result, the right to enter into marriage of 1998 was amended expanding the rights of registrars, and obliging them to refuse to conclude a wedding, if the existence of a marriage of convenience is obvious (Müller 2012: 10). During the last few years, the issue gained in importance again. In 2007, the exemption clause under § 27 sec. 1a no. 1 of the Residence Act was introduced. Just recently, the Federal Government reinforced its call for a need for action, referring to the fact that German diplomatic representations and foreigners authorities would detect suspicious sham cases on a regular basis (BReg 2011: 8). The increase of the time period for which a marriage has to exist in order for the spouse to gain an independent residence status is seen by the Federal Government as effective measure for the prevention of marriages of convenience (see above). Accordingly, the willingness to enter into a marriage of convenience is perceived to be greater, the faster a spouse can detach from this marriage again and the more easily the spouse can obtain an independent residence permit (BReg 2011: 8). However, there is no representative resp. reliably collected data on the extent and degree of marriages of convenience. One of the data sources available is the police crime statistics (PCS) by the Federal Criminal Police Office, in which all suspected cases, which have been reported to the law enforcement authorities, are recorded. However, systematic information on the ratio of suspected cases to residence permits refused due to factual fraud is not available. In 2010, the share of suspected cases in the total number of visas issued for the purpose of family reunification amounted to 1.2 per cent (Müller 2012: 15 et seq.).

The issue of pretence of a marital relationship also played a role in the course of the evaluation of the Immigration Act in 2006 regarding the income requirement. German citizens had been initially exempted from this requirement. According to the Ministry of the Interior however, the privileging of foreign spouses wanting to join their German spouse, would not only facilitate the subreption of a residence status but also result in a growing immigration into the social security systems (BMI 2006: 108). For evidence, the ministry drew on figures on the proportion of newly arrived foreigners who
were exempted from the payment of the integration course fee due to the transfer of social benefits: In 2005, the BAMF had exempted 28.4 per cent of newly-arrived foreigners, who were entitled to attend an integration course, from the course fee on these grounds (BMI 2006: 108). Therefore, the income requirement – previously only applicable to family reunification with third country nationals – was consequently extended (in exceptional cases) to German citizens (bp 2012).

The other amendments in family reunification law, which were implemented in line with the EU Family Reunification Directive, attracted less attention in the public debate. Overall, more tolerant regulations were introduced with the Residence Act in 2005, e.g. regarding the requirements for family reunification and the term family, which can now be applied to other family members in specific cases. Furthermore, the case of simultaneous admission of the sponsor and his/her family member is provided for, since a prior stay in Germany by the sponsor is no longer required. Compared to the previous Aliens Law, the new regulations in the Residence Act also constituted an improvement for the access into the labour market for dependents of third country nationals. Ultimately, the new Immigration Act also implemented the admission of the group of Convention refugees into the general regulations of the Residence Act regarding family reunification for the first time (Walter 2009: 331/345 et seq.).

The amendments in family reunification regulations for Union citizens also took place in two steps: with the new Immigration Act and the Act on the Implementation of EU Directives on Residence and Asylum Issues. The superordinate aim of the Immigration Act was to simplify the right of residence of Union citizens (BT-Drs. 15/420: 1). Compared to the previous legal position, standardised regulations regarding the family reunification of Union citizens apply to all groups of Union citizens with a right to free movement since the Free Movement Act/EU came into force in 2005 (cp. Chapter 2.3). This was accompanied by a significant omission of regulations. Since the Act on the Implementation of EU Directives on Residence and Asylum Issues from 2007, the broad term of family set forth in the Free Movement Act/EU also applies to non-working Union citizens, as non-dependent children of the spouses as well as the parents of the spouses were included in the circle of those entitled to family reunification. Furthermore, according to the Free Movement Directive 2004/38/EC, rights of continued residence for family members were extended, e.g. in the event of divorce. The right of permanent residence was also intensified and since 2007 applies to all family members (Walter 2009: 319 et seq./323 et seq.). In September 2012, the Federal Government submitted a new draft law amending the Free Movement Act/EU to the German parliament, in which further rights but also restrictions are entailed likewise. On the one hand, registered, same-sex life partners of Union citizens are to be treated equally with spouses of Union citizens, and thus would fall within the scope of the Free Movement Act/EU. On the other hand, new provisions are to be implemented, which explicitly consider the case of abuse or fraud – such as the case of marriages of convenience – and allow to refuse or revoke the right to family reunification on these grounds (BT-Drs. 17/10746: 5).

3.3 German Definition of Integration

The Federal Government conceives integration as an integration process into the German community, which is to be organised in an active and sustainable manner, which enables migrants to equally participate in the economic, social, political and cultural life in Germany and reinforces social

47Cp. e.g. proposed resolution and report of the Committee for the Interior to the draft bill from the Federal Government (BT-Drs. 15/955).
solidarity on the whole. The objective is to achieve an alignment of the living conditions of persons with migration background with the total population. At the same time, the comprehension of integration is subject to the principle of promoting and demanding for integration efforts as well as the principle of reciprocity and the exchange between migrants and the social majority. On this note, the current coalition agreement states: „We expect the acceptance of the German society and migrants’ willingness to integrate in equal measures“ (CDU, CSU & FDP 2009: 74).

The acquisition of basic German language skills as well as knowledge of the legal system and system of values, the culture, history and existing living conditions in Germany are regarded as indispensable as prerequisites for a successful integration. In this manner, migrants are to be enabled to act independently in all circumstances of daily life without the help or mediation of third parties (BReg 2007: 16). The integration efforts on the part of the migrants are to be supported by nationwide integration services from the national and federal state governments, in particular by socio-educational and migration-specific consultancy services. The integration course, which was introduced in 2005, is considered the most important integration policy support measure (www.bmi.bund.de).

3.4 Conclusion

Migration to Germany in particular took place in the 1950s through specific recruitment of workers as well as in the 1980s through immigration on humanitarian grounds. After recruitment was stopped in 1973, family reunification started to play a significant role. To date, family reunification accounts for the largest share of immigration of third country nationals to Germany.

While the slogan „Germany is not an immigration country“, which originated from the Kohl era, was characteristic of German migration and integration policies for several decades, a distinct change from existing concepts has occurred since the end of the 1990s. About a decade ago, a new perspective of German immigration policy developed being dominated by the issue of integration. This has been legally emphasized by the new Immigration Act, which entered into force on 1st January 2005. Within its framework, the concept of integration is defined by the principle of 'promoting and demanding': While foreigners are provided with support for integration in the economic, cultural and social life, they are expected to undertake commensurate integration efforts in return. Since 2005, the aspect of 'demanding' has become even more important. This has also had an effect on the requirements for family reunification: Against the background that knowledge of the German language is regarded as a key to successful integration, pre-entry language requirements for children, aged between 16 and 18, and for spouses were introduced in 2005 resp. 2007. Next to the aim of a more preventive integration policy, the restriction of immigration has been, according to critics, an objective of these regulations likewise. Especially the pre-entry language requirement for the immigration of spouses of third country nationals and German nationals still remains one of the main controversial subjects in the political and legal debate today (cp. Chapters 5.1.1 and 5.1.2).

Other measures, which have been criticised for having restrictive effects on the conditions for admission and residence of spouses, are the introduction of a minimum age for both spouses in 2007 as well as the extension of the duration of marriage in order to gain an independent right of residence in 2011. The implementation of these regulations was reasoned with a need for action regarding the prevention of forced marriages resp. the prevention of marriages of convenience. In light of these developments, family migration is increasingly viewed as a growing problem and challenge for migration and integration policies on the political level in recent years.
4 Administration and Implementation of the Procedure

This chapter describes the administration and implementation of the statutory rules for family reunification in more detail. First, the fields of activity and scopes of duty of the most important actors involved in the development and execution of the regulations for family reunification are shown. Then the admission procedure is explained before the possibilities of appeals for family members are discussed.

4.1 Application of the Admission Procedure

4.1.1 Actors Involved

In Germany, the competences of the Federal Government and the 16 federal states overlap on the legislative as well as executive level due to the federal system. The statutory bases of German immigration policies are mostly passed at federal level, whereas the federal states have extensive participation rights in the legislative process.

Beneath the level of federal law, the implementation of the immigration and asylum policies are defined by ordinances and administrative regulations. The Federal Government as well as the federal state governments are authorised to substantiate the statutory provisions for administrative practice. Therefore, the Federal Ministry of the Interior has issued the General Administrative Regulation on the Residence Act, to establish a consistent nationwide application of the family reunification rules. Furthermore, special ordinances were passed at federal level for various areas of right of residence resp. aliens law. For example, the Residence Ordinance regulates matters of detail in connection with the admission to and residence in Germany, fees as well as procedural rules for the granting of residence titles. Moreover, the federal states pass special ministerial ordinances resp. administrative decrees, which include the binding parameters for judgements at discretion made by the local foreigners authorities (Schneider 2009: 13 et seq.).

Given that administrative performance is incumbent on the federal states, approval processes are very important. In this regard, the Standing Conference of the Federal States’ Ministers and Senators of the Interior represents a significant body. The decisions made here have a powerful binding effect as a recommendation for the implementation, administration and further development of the (residence)law (Schneider 2009: 13).

The local foreigners authorities are one of the central actors with respect to family reunification, since they are responsible for virtually all measures and decisions regarding the right of residence, including the granting, extension and denial of residence titles (§ 71 sec. 1 of the Residence Act). The German diplomatic representations (embassies, consulates) are responsible for passport and visa issues abroad (§ 71 sec. 2 of the Residence Act). Contrary to the domestic foreigners authorities, the diplomatic representations are subordinate to the Department of Foreign Affairs and are bound to its orders and instructions.

48 The Federal Ministry of the Interior is in charge of dealing with migration and integration policies of the Federal Government. That includes the right to residence and free movement for foreigners and Union citizens as well as matters of European harmonisation associated with it (www.bmi.bund.de).

49 Residence Ordinance as per November 25 2004 (Federal Gazette I p. 2945), last amended by art. 5 sec. 1 of the law as per June 1 2012 (Federal Gazette I p. 1224).
The Federal Office for Migration and Refugees is a central higher federal authority in the operational division of the Federal Ministry of the Interior and has been attending to the conception and implementation of the integration courses for immigrants since 2005. Furthermore, the Federal Office for Migration and Refugees is also responsible for the decisions on applications for asylum and the granting resp. withdrawal of the refugee status. Another actor in the operative area is the Federal Employment Agency. In line with the application for a residence title, the Federal Employment Agency is, if necessary, called in by the local foreigners authority, to check whether or not and to which extent the applicant has a right to employment. The legal basis for the employment of immigrants as well as the occupation-specific integration into the labour market, e.g. using special language courses for vocational preparation, belong to the duties of the Federal Ministry of Labour and Social Affairs (Schneider 2009: 18 et seq./54).

4.1.2 Practice of the Admission Procedure

In principle, third country nationals, who would like to enter Germany, require a visa (§ 4 sec. 1 sentence 1 of the Residence Act). For long-term stays such as a stay for family reasons a national visa is issued (§ 6 sec. 3 sentence 1 of the Residence Act). Family members of Union citizens do not require a visa. The same applies for nationals of certain countries (such as the USA, Australia, Israel or Japan) who are permitted to enter Germany, even for longer periods of time, without a visa.

The visa procedure is a so-called two-stage administrative procedure, in which the German diplomatic representation in the native country of the person seeking entry and the local foreigners authorities in the German federal states are involved. The visa application must be initially submitted personally by the family member seeking entry together with the required documents (e.g. marriage licence, birth certificate, etc.) at the German diplomatic representation. In addition to the respective requirements for family migration (cp. Chapter 2), further, general requirements for the issuing of a visa must be strictly fulfilled pursuant to § 5 sec. 1 of the Residence Act. That includes the passport obligation, the proof of identity and nationality as well as the non-existence of grounds for expulsion. Information on the documents resp. records required for application is available in the diplomatic representations and foreigners authorities on location as well as on the respective web pages (often in the form of pamphlets). For processing the visa application, the completeness of documents is required. A lack of essential requested documents (e.g. proof of secure livelihood or proof of German language skills) can lead to a chargeable denial of the application. However, according to the Federal Government, in administrative practice applicants are generally advised in these cases to withdraw their application and to submit it at a later stage (BT-Drs. 17/3090: 34).

The legalisation of documents is in several countries of origin (currently more than 40 countries) depending on an authentication procedure, in which an external attorney or licensed investigative bureau is engaged by the German diplomatic representations to examine and legalise the submitted documents (cp. Chapter 6). This is reasoned by the Federal Foreign Office with the insufficient state of diplomatics in these countries. The authentication procedure can take up to several months. In Afghanistan, for example, the processing time usually amounts to at least four months (Botschaft Kabul 2012: 1; DAV 2012: 7).

The list of countries concerned can be accessed on: http://www.konsularinfo.diplo.de/Vertretung/konsularinfo/de/05/Urkundenverkehr__Allgemein/__Urkundenverkehr.html.
The visa application normally requires the approval of the local foreigners authority responsible for the designated place of residence (§ 31 sec. 1 sentence 1 no. 1 of the Residence Ordinance). Therefore, the German diplomatic representation forwards the visa applications it receives to the respective foreigners authority for comments (DRK 2008: 51). In practice, this is where the actual review of the legal requirements, in particular regarding secured livelihood, takes place. For this purpose, the foreigners authority contacts the sponsor with the request to submit the required verification (e.g. income statements) within a given time period and if necessary, to appear in person (DRK 2008: 51). The attendance in person is particularly demandable if the existence of a so-called marriage of convenience is suspected (cp. Disgression on marriages of convenience below). Based on § 27 sec. 1a no. 1 of the Residence Act, authorities are entitled to interview spouses within an event-driven review in cases of initial suspicion (no. 27.1a.1.1.7 of the General Administrative Regulation of the Residence Act). This way, marriages of convenience are to be detected already upon visa application.

Disgression on marriages of convenience:

Marriages of convenience are defined as mere marriage of convenience, which is solely aimed at being granted the right of entry and residence. In Germany, giving false information in order to obtain a residence permit is prosecuted. Depending on whether the marriage takes place before or after entry, different stakeholders are involved in identifying and preventing marriages of convenience: foreigners authorities, foreign diplomatic representations, law enforcement authorities and registry offices. The latter represent the initial supervisory body if a couple marries in Germany. Registrars are obliged to refuse a wedding, if the existence of a marriage of convenience is apparent. The event-driven review of marriages also takes place in the framework of visa issuance, the first granting of a residence permit after entry and as part of the renewal of residence permits in order to prevent any existing marriage of convenience from leading to a consolidation of the right to stay. In the process, the local immigration authorities play a central role, due to their responsibility for virtually all measures and decisions regarding the right of residence (Müller 2012: 10 et seq./14).

The indicators which justify an initial suspicion of a marriage of convenience include inter alia the circumstance that the spouses have not met before marriage or that they do not speak a common language. The practices to control suspicious spouses vary in the federal states. In Bremen, for instance, the foreigners authorities draw on detailed questionnaires in the individual interviews. In the past, all binational couples had to undergo a standard survey. However, this practice was discontinued after complaints by the responsible administrative court (cp. Chapter 5.3.1). In Hamburg, authorities are instructed to engage, if necessary, the State Office of Criminal Investigations since police investigation methods provide a much more comprehensive review (Freie und Hansestadt Hamburg 2004: 3; Müller 2012: 11 et seq.).

However, the use of police investigations requires the initiation of criminal proceedings, which in turn requires a concrete suspicion. If doubts as to the existence or the will to a marital partnership occur, spouses are obliged to cooperate to clear these up (cp. Chapter 5.3.1). If a sufficient initial suspicion cannot be cleared up by the spouses or same-sex couple or if a marriage of convenience is ascertained, this has usually consequences for residence rights and may be prosecuted. Besides the loss or the refusal of the residence permit, a fine (or, in rare cases, imprisonment) may be inflicted on the spouse and the sponsor. In case of the denial of a residence permit, families can lodge an appeal before the competent administrative court (Müller 2012: 14 et seq.).

In the process of the interviews, the foreigners authorities usually examine how well each of the spouses knows the habits of their partner. The interview often takes place simultaneously in the embassy and at the foreigners authority, to avoid previous agreements between the spouses.

51 The event-driven review of marriages represents the central tool for the prevention of fraud in line with the admission procedure. The increasing use of DNA testing in connection with the proof of biological relationships serves this purpose likewise (cp. Chapter 6.1.2).
Moreover, the foreigners authorities conduct in consultation with the spouses home visits and seek information from third parties, if necessary. However, due to the legal betterment of family reunification under EU law, the review of marriages with Union citizens is often omitted by the foreigners authorities (Müller 2012: 13; DRK 2008: 17).

After the requirements have been reviewed, the foreigners authorities give their statement to the German diplomatic representation by providing information on whether or not they approve the visa application. The diplomatic representation may not override this decision. If the visa application is not approved, it must be denied. In the event of denial, the diplomatic representation issues a written notice of denial. If the foreigners authority has approved and the diplomatic representation sees no other obstacles for issuing, the family member is issued the national visa upon fulfilment of all necessary requirements (Parusel & Schneider 2012: 29; DRK 2008: 51). For information regarding the visa procedure, the German diplomatic representation is responsible given that the final decision-making power for visa application is incumbent upon it.

The adherence to the visa procedure is compulsory by law. Pursuant to § 5 sec. 2 of the Residence Act, the admission to Germany must have taken place with a visa for the intended purpose of residence. If this is not the case, this in turn means that the family member must return to his/her country of origin, if necessary, to go through the formal visa procedure for family reunification (DRK 2008: 51 et seq.). The time period, in which the decision on the issuing of a visa must be made, is not explicitly established in residence law. However, according to the Administrative Procedures Act, administrative procedures have to be concluded within an appropriate period of time (principle of a speedy procedure). Furthermore, the Administrative Courts Act enables applicants to file a motion against the authorities, if their application was not decided on within a stipulated timeframe of three months (Hailbronner & Carlitz 2007: 580 et seq.). However, in the case of missing documents, security concerns or doubts regarding family descent, the procedure can take significantly longer (DRK 2008: 51). Moreover, the forwarding of the application to the local foreigners authorities can be assessed as separate administrative act, which prolongs the stipulated timeframe for another three months in legal terms (interview experts: no. 18). The national visa is normally issued for three months. After admission, the family member must apply for a temporary residence permit within the validity period of the visa at the local foreigners authority (Parusel & Schneider 2012: 47). This on the other hand requires that the necessary information was already provided in the visa application.

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52 In parallel with the approval process, a review of the persons involved in the application procedure including German security authorities can take place to review grounds for expulsion (for example membership in a terrorist group) (§ 73 of the Residence Act).

53 In these, the grounds or instructions on the right to appeal are generally not included.

54 This is to “ensure that the visa procedure as the most important control instrument in immigration is complied with” (BT-Drs. 15/420: 70). This can only be waived in certain exceptional cases: For example the granting of a residence title for family reasons can take place directly in Germany if the third country national already resides in Germany, e.g. as a student or on humanitarian grounds. Furthermore, family members from certain countries, who are permitted to enter without a visa, are exempt from the regular visa procedure.
**Example case 1:**

Mrs. H. is a German citizen who met her husband, a Kenyan citizen, in 2005. In 2007, they married in Kenya and decided to live together in Germany. They applied for a visa, however, according to the information of the embassy, the application was stolen. In a second attempt, they were informed that their marriage was not legally valid. After getting divorced and having to wait for one year in order to being able to marry again, they applied for a visa once more in 2008. In order to being able to take the language course at the Goethe institute in Nairobi, Mrs. H.’s husband quit his job and moved away from his home town. He failed the exam by two points. Since Mrs. H. had given birth to their common child in the meantime, they decided to apply for a visa for the purpose of joining a German child. The application process took nine month but finally ended with a positive decision (interview individuals: no. 4).

Fees must be paid for the granting of a residence title. The visa fee amounts to € 60 (§ 46 sec. 2 no. 1 of the Residence Ordinance). The fees for the granting of a temporary residence permit with a validity period of up to one year amount to € 100 (plus a service charge, which is charged for all official acts, which are liable to fees). The charge for an extension for an additional residence of more than three months is € 80. The granting of a permanent residence permit costs at least € 135 (§§ 44 no. 3, 45 no. 1 and 2 of the Residence Ordinance). Family members of Union citizens must pay a fee for the issuing of a residence card and the issuing of a permanent residence card, in each case amounting to a maximum of € 28.80 (§ 47 sec. 3 of the Residence Ordinance).

4.2 Right to Appeal and Legal Aid

Family members basically have the option of filing an objection to the denial of a visa application. This can take place within one month in line with a remonstration procedure. In doing so, the sponsor composes a written counter-response, in which he/she indicates all of his/her reasons in detail, which argue for the issuing of a visa. The diplomatic representation reviews the actual situation again based on the so-called remonstration letter. Chances of success for the procedure especially exist if the facts on which the denial was based, for instance the lack of secured livelihood has changed because a higher income can now be verified. Should the denial still remain effective, the diplomatic representation issues a „remonstration notice“, which contains the decisive grounds for the denial of the application and instructions on rights to appeal (DRK 2008: 52).

An appeal to the Administrative Court of Berlin can be filed against the denial of a visa application or a negative remonstration notice within one month. The Administrative Court of Berlin is responsible for appeals regarding decisions on visas, given that these are directed against the Department of Foreign Affairs based in Berlin. The local foreigners authorities provide their written comments after receiving the statement of claim. The family member seeking entry as well as the sponsor are entitled to institute legal proceedings. There is no statutory requirement to be represented by a lawyer in the proceedings. A court ruling is made on the action against the visa in line with a hearing. In principle, the family member residing abroad can only participate if the Administrative Court issues a respective court order (DRK 2008: 52 et seq.). The amount of the court fees depends on the so-called amount in dispute as well as on the outcome of the proceedings. For exhaustive main administrative

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5Spouses, registered, same-sex life partners and minor, unmarried children of German nationals as well as the parents of minor German nationals are in general exempt from fees for the issuing of a national visa (§ 52 sec. 1 of the Residence Ordinance). The same applies for family members of Union citizens and nationals of the European Economic Area with the right of free movement.
proceedings, which end with a judgment and in which the action is dismissed, the plaintiff must pay court fees amounting to € 363 (www.berlin.de). The granting of legal aid, with which persons in need are given financial support, is fundamentally possible. However, it is only granted if the proceedings have „sufficient chances of success“ (www.berlin.de). In 2010 a total of 2,175 new visa proceedings\textsuperscript{56} were filed at the Administrative Court of Berlin. The average duration of the proceedings for actions regarding visas amounted to approximately eight months in 2010 (VG Berlin 2011: 3).

An appeal can be filed against the judgment by the Administrative Court of Berlin at the Higher Administrative Court. In the event of an appeal, the Higher Administrative Court decides on the case again. The last level of jurisdiction is the Federal Administrative Court. There is a statutory requirement to be represented by a lawyer for both proceedings (DRK 2008: 53).

Immigrants can find help and support from many actors and interest groups in Germany. On the other hand, organisations, which specifically cater to the needs of sponsors and their family members, are not very easy to find. There is for instance the Verband binationaler Familien e.V. (Organisation of Binational Families), which offers extensive consultancy services for families on location, the DRK search service of the German Red Cross, which mainly advises ethnic German immigrants on questions concerning family reunification or Pro Asyl, which provides refugees with individual aid in judicial procedures. Furthermore, there is a wide selection of specialist solicitors, who are specialised in matters pertaining to immigration law.

4.3 Conclusion

In Germany, family reunification is regulated by a series of laws, administrative regulations and guidelines. In principle, third country nationals require a visa for admission, which must be applied for at the German diplomatic representation upon presenting the required supporting documents. The visa procedure is a so-called two-stage administrative procedure. Both the German diplomatic representation in the native country as well as the local foreigners authorities in Germany are involved in the issuance of visa. Generally, the adherence to the visa procedure, as ‘the most important control instruments in immigration’, is compulsory. This means that a residence title may only be granted if the admission took place with a visa for the intended purpose of stay. Thus, if necessary, family members must return to their country of origin in order to apply for a visa for the purpose of family reunification. Negative decisions on visa applications can be contested in line with a remonstration procedure or in line with an appeal to the Administrative Court of Berlin.

In Chapter 6, the experiences and assessments of family members as well as non-governmental organisations regarding individual aspects of the admission procedure are to be presented on the basis of interviews, which were conducted. In connection with the visa procedure, especially the authentication of documents and the provision of required certificates are considered a barrier for family reunification by the respondents in terms of accruing costs and waiting periods. In addition, apparently more and more couples consider themselves being suspected of having entered into a marriage of convenience. The legal bases, on which grounds both registrars and foreign authorities may review the motives for marriage, have been created with the amendment to marriage law and the imposition of the exemption clause in the Residence Act (cp. Chapter 3.2). In the detection and prevention of marriages of convenience, registrars and foreign authorities are assisted by the

\textsuperscript{56}This number does not only refer to the proceedings regarding family reunification but includes all visa proceedings.
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diplomatic representations as well as law enforcement authorities. In order to identify cases of fraud, the authorities draw on a list of different criteria considered as initial grounds for suspicion. The decision to carry out controls (e.g. interviews, home visits) or even to inform law enforcement authorities is ultimately at the discretion of the foreigners authorities. This potentially poses the risk of a tendency towards more and more stringent controls – as in the case of the federal state of Bremen. Such a trend towards regularly reviews in the context of visa applications is also confirmed by family members (cp. Chapter 6.1.2). The procedure has immediate consequences for the spouses, since they have to prove, in cases of doubt, that their marital relationship actually exists (cp. Chapter 5.3.1). If a sufficient initial suspicion cannot be cleared up by the spouses, family reunification is usually denied.

5 Case Law

The following chapter discusses current and relevant judgments, decisions and rulings in the area of family reunification. This chapter is divided into three sections and distinguishes case law regarding the family migration to third country nationals, Union citizens as well as to German citizens. To start with, each of the chapters deals with important German court decisions. In this connection, particular reference is made to case law of the Federal Administrative Court as the court of last resort in regard to issues involving aliens law. Subsequently, the German requirements for family reunification are to be examined in more detail in light of the provisions of EU law as interpreted by the European Court of Justice (ECJ) or, if applicable, by the European Commission. The following depiction is not conclusive. It mainly focuses on decisions, which were in the centre of judicial discussions during the past years.

The right to family reunification of third-country nationals is laid down at European level in the EU Family Reunification Directive (2003/86/EC); Union citizens derive their right to family reunification from the EU Free Movement Directive (2004/38/EC). Germany has adopted both directives and is therefore legally bound to implement its national legislation in line with the provisions therein. On the other hand, German nationals are only able to invoke their right to family reunification under national law.

5.1 Third Country Nationals

5.1.1 Relevant National Case Law and the Impact of European Jurisdiction

With the Act on the Implementation of EU Directives from 2007, a revision was effected in the Residence Act regarding the immigration of spouses, which requires that spouses have simple language skills before admission (cp. Chapter 2.1.1). In 2010 the Federal Administrative Court ruled that the language requirement is, without a doubt, consistent with German Basic Law, the Family Reunification Directive as well as the European Convention on Human Rights (ECHR) (Federal Administrative Court, ruling on 30 March 2010 – 1 C 8.09). A Turkish national, who wanted to immigrate to her Turkish husband in Germany with her five minor children, had filed a suit. The plaintiff’s application for the issuing of a visa in 2007 had been denied. At first instance, the Administrative Court of Berlin had

57 The principle duty of the Federal Administrative Court is to decide on the correct interpretation and application of federal law in the area of general administrative law, i.e. to protect legal unity and to safeguard the further development of the law (www.bverwg.de).
dismissed the action filed in this matter due to the lack of German language skills (Administrative Court of Berlin, ruling on 17 April 2008, Az: VG 2 V 28.06). The Federal Administrative Court confirmed this ruling: A right to the immigration of a spouse requires that the immigrating spouse has basic oral and written German language skills. In accordance with the grounds of the law, this requirement for family reunification facilitates integration and serves the prevention of forced marriages. Since the establishment of family life is not hindered fundamentally by the requirement, art. 6 of the Basic Law is not violated. Furthermore, the language regulation is consistent with the Family Reunification Directive, because it authorises Member States in art. 7 sec. 2, to make family reunification dependent on measures for integration. Regarding the ECtHR’s case law, a denial of the spouse’s visa in the current case is not disproportionate and the establishment of family life beyond Germany reasonable. In the court’s view, the pre-entry language requirement also represents a permissible integration measure for the immigration of spouses in line with the Association between the EU and Turkey (cp. Chapter 5.1.2).

The Federal Administrative Court distanced itself from this assessment in 2011 in similar proceedings: The question whether or not the requirement of simple language skills is consistent with art. 7 sec. 2 of the Directive should have to have been submitted to the ECJ with regard to the meanwhile revised opinion of the European Commission (Federal Administrative Court, ruling on 28 October 2011 – 1 C 9.10). However, a respective preliminary ruling was not issued to the ECJ because the Department of Foreign Affairs issues the plaintiffs the visas without the required language verification and therefore, had obtained the termination of the proceedings. To date, there have been no legal consequences for the Federal Republic of Germany in view of the statement by the European Commission in the case Imran (cp. Chapter 5.1.2, Imran). According to the position of the Federal Government, the pre-entry language test is consistent with European law – not least because a contrary supreme court decision does not exist (AGF 2012: 5).

A ruling of the ECJ on the income requirement sounded the bell for a U-turn in the case law of the Federal Administrative Court. Pursuant to § 27 sec. 3 of the Residence Act, family reunification can be denied if there is a claim to financial assistance from public funds for the assurance of living expenses (according to the Social Security Code - II or XII) (cp. Chapter 2.1.1). According to a landmark decision by the Federal Administrative Court on 26 August 2008, the requirement of a secure livelihood was initially significantly tightened (Federal Administrative Court, ruling on 26 August 2008 – 1 C 32.07). In addition to the requirement rates of the SGB (Social Security Code) II, now the so-called employee tax allowances as well as the flat rate for income-related expenses were to be fictitiously added for the calculation of the required living expenses. That lead to an increase of the „amount of [available] income, which had to be earned, to secure livelihood (requirement rate of the SGB (Social Security Code) II plus rent incl. heating and utilities), per employed family member from 100 up to 280 Euros (310 Euros, in the event there is a child)” (Becker & Reimann 2011: 103). The Federal Administrative Court revised its case law based on the ruling by the ECJ on 4 March 2010 (cp. Chapter 5.1.2,

58 In this case, a Cameroonian national and her three minor children were denied the request to join her husband resp. their father due to the lack of language skills on the part of the wife.

59 In a recent judgment in September 2012, the Federal Administrative Court stated that a visa for spouses of German nationals has to be granted, if efforts for language acquisition prove to be impossible, unreasonable or not successful within one year in the individual case. Thus, a German citizen may principally not be required to establish his/her marital relationship abroad. The fundamental right of art. 11 of the Basic Law grants a German national - unlike a foreigner - the right to reside in Germany. The language requirement must, however, be acquired after arriving in Germany in order to obtain a residence permit (Federal Administrative Court, ruling on 4 Sept. 2012 – 10 C 12.12).
Given that the tax allowance for employees does not fall under the term social benefits according to Community Law, it should not be able to be taken into account at the expense of the person seeking entry. This does not apply to income-related expenses however, the actual need is to be determined in line with an individualised review of each application (Federal Administrative Court, ruling on 16 November 2010 – 1 C 20.09). A review of each individual case must also be routinely conducted if there is a fractional residual entitlement to public funds (Becker & Reimann 2011: 105).

In practice however, this discretionary decision is almost always omitted with the result that the dependent’s right to family migration is denied (DAV 2012: 8).

The ruling by the Federal Administrative Court on 7 April 2009 is particularly relevant regarding the immigration of children in the case of separated parents. The right to immigration of minor, unmarried children only exists if the parent residing in Germany has the sole care and custody of the child (cp. Chapters 2.1.1 and 6.1.2). According to the Federal Administrative Court, prerequisite for the „sole right of care and custody“ is – also in terms of art. 4 sec. 1 of the Family Reunification Directive –, that the other parent no longer has any remainder such as a right of co determination regarding residence for instance, even if custody has been awarded to the parent residing in Germany to the farthest extent possible according to the laws of the home country in question (Federal Administrative Court, ruling on 7 April 2009 – 1 C 17.08). The court did not take art. 24 sec. 3 of the European Union Charter of Fundamental Rights into consideration, according to which the right of a child to live together with its parents is protected and children are granted the right to have a personal relationship with both parents (Oberhäuser 2011: 223). Accordingly, the immigration of children from countries, whose legal system does not acknowledge sole custody arrangements corresponding to this legal concept, is only possible in line with the hardship clause pursuant to § 32 sec. 4 of the Residence Act (cp. Chapter 2.1.1) (DAV 2012: 3 et seq.). This also applies to the immigration of children, whose native country’s laws do not acknowledge sole custody arrangements corresponding to this legal concept, is only possible in line with the hardship clause pursuant to § 32 sec. 4 of the Residence Act (cp. Chapter 2.1.1) (DAV 2012: 3 et seq.).

5.1.2 Consistency of National Legislation on Family Reunification with EU Law

Prompted by a legal dispute in the Netherlands (Imran), the EU Commission expressed itself in regard to the language test for spouses before admission. The comments dated 4 May 2011 to the ECJ state, taking the wording of art. 7 sec. 2 of the Directive 2003/86/EC into consideration, that a denial of admission or residence cannot be effected based on an integration test, which was not passed abroad (KOM 4/2011). Rather art. 7 sec. 2 of the Family Reunification Directive merely allows the facilitation of integration measures according to the granting of residence. As a reaction to the statements of the Commission, the Federal Administrative Court distanced itself from its previous case law according to which the requirement of simple language skills is consistent with requirements

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60 The legal dispute was concluded with the ruling on 10 June 2011 without a decision on the substance of the case.
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According to European law. However, a corresponding amendment of the case law has not yet been effected (cp. Chapter 5.1.1).

In a further statement on 29 July 2011, the EU Commission also declared that the language requirement before admission violates the Association Agreement of the European Economic Community (EEC) with Turkey and is therefore not applicable to Turkish citizens (MiGAZIN 2011). While the Additional Protocol of the Association Agreement stipulates that EU member states may not place any restrictions on the free movement of services and the freedom of establishment, the Association Council Decision No. 1/80 prohibits the worsening of the labour market access for Turkish workers and their family members. The so-called standstill clauses preserve the legal situation, which was effective at the time the Association Agreement and the Decision No. 1/80 were implemented in the German residence and labour law in 1973 resp. in 1980. In view of the EU Commission – contrary to the previous interpretation by the Federal Administrative Court – the prohibition on the worsening of a situation also applies to Turkish nationals (including family members) willing to immigrate from abroad and not only to those, who already reside in Germany.

The ECJ had already addressed this in its ruling in 2009 in the case pertaining to Soysal, implying that the tightening of visa regulations is inconsistent with the Additional Protocol of the Association Agreement (ECJ, ruling on 19 February 2009 – C-228/06). In the Austrian case of Dereci, the ECJ ruled that the introduction of measures restricting the freedom of establishment of Turkish nationals is in violation of the Association Agreement (ECJ, ruling on 15 November 2011 – C-256/11). In the German case, these interpretations of European law by the EU Commission and the ECJ could not only have far-reaching consequences for the language requirement for Turkish spouses. In addition, regulations of the Residence Act regarding the duration of marriage, age limits or the verification of sufficient German language skills for a permanent residence permit are to be clearly called into question on grounds of the prohibition on the worsening of a situation and the ECJ’s case law (e.g. in the legal cases Toprak or Sahin) (Zeran 2011: 400 et seq.). In contrast to the Netherlands and Austria, where the language requirement for Turkish spouses has been waived, there have been no legal consequences for Germany to date. On the contrary, the Federal Government is still convinced of the lawfulness of the pre-entry integration measure (AZR 2012: 5).

Among other things, the binding effect of rulings by the ECJ for German case law is shown in view of the prerequisite for the income requirement (cp. Chapter 5.1.1). In line with a legal case in the Netherlands (Chakroun), the ECJ emphasised in its ruling on 4 March 2010 that the phrasing of „claiming social welfare benefits“ in art. 7 sec. 1 c of the Family Reunification Directive does not permit a Member State to stipulate a regulation, according to which family reunification is denied, although the sponsor verifiably has sufficient fixed and regular income but can claim social welfare benefits because of the amount of his/her income (ECJ, ruling on March 4 2010 – C 578/08). The national requirement for a minimum income for family reunification should not result in not precisely reviewing the individual case, should that income not be achieved. In light of this ruling by the ECJ, there was a correction in the calculation of the required living expenses in Germany (cp. Chapter 5.1.1).

The European Court of Human Right’s (ECtHR) case law on Article 8 of the European Convention of Human Rights (ECHR) refers mainly to the question, to which extent the protection of marriage and family laid down in Article 8 of the ECHR is opposed to measures terminating a residence. While the legal concept of the ECJ is binding for German courts, decisions by the ECtHR are to be „considered in
line with methodically justifiable interpretation of law” according to the Federal Constitutional Court.\textsuperscript{61} Regarding the reunification of family members in the country of the applicant, there are few judgments. A violation of Article 8 sec. 1 of the ECHR was found by the ECtHR in the case of Sen. Accordingly, the contracting parties shall enjoy only “some discretion” for the legal structure of family reunification when the applicant already has a permanent residence status (ECtHR, ruling on 21 December 2001 – 31465/96 – Sen). Moreover, Art. 8 of the Convention requires a comprehensive review and assessment in the individual case. Additionally, according to the jurisprudence of the court in da Silva, the state’s interest, given the far-reaching consequences that it can have, if a person’s entry into a country, where close relatives live, is denied, has to be of predominant weight in order to present a fair balance between the different interests (ECtHR, ruling on 31 January 2006 – 50435/99 – da Silva).

5.2 Union Citizens

5.2.1 Relevant National Case Law and the Impact of European Jurisdiction

On 16 June 2011 the EU Commission initiated breach of contract proceedings against Germany. Subject of the proceedings is, among other things, the regulations for the family migration of dependents of a Union citizen. German law merely allows dependents to immigrate, who do not fall under the term nuclear family, for the prevention of an exceptional hardship (cp. Chapter 2.3.1). Thus, the group of persons favoured in art. 3 sec. 2 of the Free Movement Directive\textsuperscript{62} are not only partially excluded from family migration but – in the case of approval – subject to the strict requirements of the Residence Act.\textsuperscript{63} Furthermore, the family members are not granted all rights to which they are entitled to according to the Directive. For instance, they are not issued a residence card as is the case for dependents of the nuclear family. The breach of contract proceedings are momentarily still in the pre-trial process. Should Germany not comply with the request of the Commission to implement EU regulations on the freedom of movement of EU citizens and their dependents in accordance with the Directive in due time, the Commission could take action against Germany before the ECJ (www.europa.eu; www.lto.de).

5.2.2 Consistency of National Legislation on Family Reunification with EU Law

Family members of Union citizens, whose admission and residence is regulated by the provisions of the Free Movement Act/EU, are not subject to any integration requirements in Germany (cp. Chapter 2.3). However in practice, the Department of Foreign Affairs had stipulated language verification in light of the Akrich case law since 2007 for constellations, in which the Union citizen’s spouse was admitted for the first time and directly from a third country and had not previously already resided in another Member State (Walter 2009: 321). According to the ruling by the ECJ on 25 July 2008 in the legal case Metock, this is against EU law. The proceedings dealt with the question whether or not the immigrating dependent of a Union citizen must have had a legal status in a Member State, before he/she can make use of his/her derived right of free movement. The ECJ ruled that the differentiation

\textsuperscript{61}In particular Federal Constitutional Court 111, 307, 323 (Görgülü)).

\textsuperscript{62}This includes (a) “any other family members, irrespective of their nationality, (...) who, in the country from which they have come, are dependants or members of the household of the Union citizen (...), or where serious health grounds strictly require the personal care of the family member by the Union citizen; (b) the partner with whom the Union citizen has a durable relationship, duly attested” (art. 3 sec. 2 of Directive 2004/38/EC).

\textsuperscript{63}This applies currently also to registered, same-sex life partners unless they have a right to free movement themselves.
whether or not the family bond existed or was established before or after the admission of the sponsor to the host Member State, is not consistent with art. 3 sec. 1 of the Free Movement Directive 2004/38/EC (ECJ, ruling on 25 July 2008 – C-127/08).

5.3 German Nationals

5.3.1 Relevant National Case Law and the Impact of European Jurisdiction

In addition to a legally valid marriage, the intention of both spouses to have a marital relationship in the Federal Republic of Germany is required pursuant to § 27 sec. 1 sentence 1 of the Residence Act. This prerequisite for approval includes the immigration of spouses to German nationals as well as to third country nationals. In the case of the plaintiff, a Pakistani national, who wanted to join his German wife, there were doubts for such an intention of establishment according to the opinion of the Higher Administrative Court of Berlin-Brandenburg (Higher Administrative Court Berlin-Brandenburg, ruling on 29 January 2009, 2 B 11.08). In the appeal proceedings before the Federal Administrative Court on 30 March 2010, the court came to the conclusion that in the case of existing doubt, which cannot be excluded, regarding a marriage of convenience, the burden of proof for the existence or the intention of having a marital relationship lies with the applicant. At the same time, the court referred to the Family Reunification Directive in its ruling. Although the provisions of the Directive are not to be directly applied in the present case of the sought-after family reunification with a German spouse, given that the Directive „only [regulates] family reunification through third country nationals (art. 1 of the Directive), so that according to art. 2 letter c of the Directive, a German national cannot be the „sponsor“ (Federal Administrative Court, ruling on 30 March 2010 – 1 C 7.09). Nevertheless, art. 16 sec. 2 letter b of the Directive is to be taken into account for the interpretation of § 27 sec. 1a no. 1 of the Residence Act because in this respect, the federal legislative body deliberately subjected family reunification with a German national to the same regulation. 64

Covered by jurisdiction, the obligation to proof the existence or the intention of having a marital relationship on part of the spouses has increased in practice (Müller 2012: 13). This is especially the case, the more the marriage in question deviates from the general case of a marriage with a common residence and mutual assistance (Franßen-de la Cerda 2010: 84). However, a generally understood obligation to provide proof is not compatible with the requirements of the Family Reunification Directive. In fact, art. 16 sec. 2 letter b gives Member States the right to reject, withdraw or refuse to renew a family member’s residence permit if a marriage of convenience exists. Nonetheless, according to sec. 4 of the same paragraph, only specific checks and inspections are allowed where there is reason to suspect that there is fraud (Walter 2009: 333). In addition, the practice of conducting reviews on a regular basis was recently objected to by the administrative court of the federal state of Bremen in May 2012 (Az. 4 V 320/12). In the case, which was brought before the court by a Turkish/German couple against the foreigners office, the judges declared that the review of marriages is only admissible where “actual evidence in the particular case” is given (MiGAZIN 2012).

According to § 5 sec. 2 of the Residence Act, a residence title may only be granted in Germany if the admission to Germany took place with a visa for the intended purpose of stay (cp. Chapter 4.1.2). This requirement – admission with the „correct“ visa – can be waived if a right to the granting of a

64 A reversal of the burden of proof arises, if a criminal procedure is initiated because of subreption of a residence permit. In this case, foreigners authorities and investigation authorities have to provide proof for the existence of a marriage of convenience (Müller 2012: 13 et seq.).
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temporary residence permit according to the Residence Act exists (§ 5 sec. 2 sentence 2 of the Residence Act). In a ruling on 16 November 2010 the Federal Administrative Court dealt with the case of a so-called Denmark or „express“ marriage (Federal Administrative Court, ruling on 16 November 2010 – 1 C 17.09). The Byelorussian plaintiff entered Germany for the purpose of visiting on a Schengen visa, which was valid for two months. After she had married a German national during a short stay in Denmark, she applied for a temporary residence permit in Germany on the grounds of the immigration of a spouse. The foreigners authority denied the application because the plaintiff had entered without the national visa required for permanent residence (cp. Chapter 4.1.2). The first senate confirmed the denial as legitimate in its ruling: Indeed holders of a valid Schengen visa can obtain a residence title in the Federal Republic of Germany, provided that the requirements for the granting of a temporary residence permit are fulfilled according to the Residence Ordinance (§ 39 no. 3 of the Residence Ordinance). However, given that the plaintiff had indicated that she was only entering for purposes of visiting upon applying for the Schengen visa, although she intended to stay in Germany permanently from the outset, she implemented grounds for expulsion due to false information and lost the right to a temporary residence permit. The result also corresponds to the spirit and purpose of the statutory rule, not to promote the deliberate evasion of the national visa procedure as one of the important control instruments in immigration. This ruling by the Federal Administrative Court must also be taken into account in view of immigration to third country nationals.

5.3.2 Consistency of National Legislation on Family Reunification with EU Law

In principle, the immigration of family members to German nationals does not fall under the area of application of the Family Reunification Directive. However, in the case of the language regulation for spouses, its effectiveness is dependent on the compatibility with the Family Reunification Directive (Administrative Court of Oldenburg, ruling on 10 May 2012, 11 B 3223/12) due to the respective application of the effective provision (§ 28 sec. 1 sentence 5 of the Residence Act in conjunction with § 30 sec. 1 sentence 1 no. 2 of the Residence Act) for the immigration to third country nationals set forth in the Residence Act. If the legal concept becomes prevalent in Germany that the language requirements before admission are not consistent with European law, this would also have a direct effect on the immigration of spouses to German nationals.

The Free Movement Directive and therefore, also the Free Movement Act/EU do not apply to the immigration to German nationals. The ECJ confirmed this once more in the legal case Dereci but at the same time also substantiated in which exceptional situations this principle is to be deviated from and when Union Law takes effect: to be specific then, when the denial of a right to residence for a third country national, who is a dependent of a citizen of a Member State, would result in the last-mentioned person being deprived of the practical effectiveness of his/her EU citizenship according to art. 20 of the Treaty on the functioning of the European Union - AEUV (ECJ, ruling on 15 November 2011 – C-256/11). In the legal case Zambrano the ECJ had already ruled that a right to residence for a third country national parent is to be derived from the EU citizenship of his/her minor child if the respective EU citizen child would otherwise have to forcefully leave EU territory (ECJ, ruling on 8 March 2011 – C-34/09). Given that, according to the ruling, it is irrelevant for the parental right of residence, whether or not the child ever migrated, i.e. has the right to free movement, the ruling
takes parents of German children, who pay child support and still reside in Germany, into account. According to § 28 sec. 1 sentence 1 no. 3 of the Residence Act, German law stipulates a regular right to family migration if the parent of a German child seeking entry has the right to care for the person of the child (cp. Chapter 2.4.1). On the other hand, if the parent does not have care and custody of the child, his/her immigration can only take place by way of discretionary decision, provided that there are no other grounds, which conflict with his/her admission. However, restrictions in this form are not or only consistent with the right to residence determined by the ECJ in particular exceptional cases (Oberhäuser 2011: 224 et seq.).

5.4 Conclusion

Overall, it can be stated that it is at least quite controversial, if at least specific German regulations pertaining to family reunification are in line with the provisions of EU law. In view of the interpretation of law by the ECJ as well as the European Commission, it appears to be questionable for example that the language requirement for the immigration of spouses to Germans and third country nationals, the requirements for the immigration of other family members of Union citizens (other than the nuclear family) or even the entry requirements for Turkish citizens will still be able to be maintained in the future. In particular, many standards of national law, which apply to Turkish spouses (e.g. duration of marriage or age limits), require separate review. However so far, binding information on interpretation from the ECJ is frequently not provided, so that family members cannot always rely on the family-friendly provisions of EU law.

In their judgements, national courts such as the Federal Administrative Court take art. 6 of the Basic Law as well as art. 8 of the ECHR regularly into account while assessing the right to family reunification, regardless whether the case involves the reunification with a German or third country national sponsor. This pertains especially to the principal of proportionality in order to present a balance between the different interests of the individual and the state. This also entails the consideration of the purpose, which the legislator intended with the implementation of regulations. For example, in case of the language requirement for spouses, the Federal Administrative Court came to the conclusion that the requirement, which aims at facilitating integration, is consistent with the Family reunification Directive, since it allows member states to demand that third country nationals comply with measures on integration. Therefore, the court saw no reason of reference for a preliminary ruling and did not submit the question to the ECJ. Even though the Federal Administrative Court distanced itself from this assessment in the following, the immigration of spouses is still today depending on the fulfillment of the language test, restricting the right to family reunification considerably in practice (cp. Chapter 6). The immigration of persons from countries, whose legal systems do not acknowledge a regulation similar to German law, was also not facilitated by German case law. In fact, in the case of the immigration of children, whose parents are separated or in the case of adoption proceedings, additional obstacles resulted in the practice of family reunification.

65 In the decision McCarthy on the other hand, the ECJ denies the application of Union Law for immigration of spouses if the Union citizen has not yet made use of his/her right to free movement (ECJ, ruling on 5 May 2011, Rs. C–434/09).
6 Impact of Family Reunification Policy on Family Life

First of all, this chapter will show the development of applications for family reunification during the past ten years in line with a quantitative analysis. A qualitative analysis will then follow, which discusses the essential problems in line with the admission procedure as well as the verifications required for admission. For this purpose respective assessments and information from interviews with family members as well as stakeholders active in the field of family reunification, such as non-governmental organisations (NGOs), will be used.

The quantitative analysis is essentially based on the visa statistics from the Department of Foreign Affairs. The visa statistics represent the most important and prevalent basis for the collection of data on the immigration of spouses and family members in Germany. It accounts for those cases, in which a visa was issued in a German diplomatic representation abroad for the immigration of a family member. Therefore, it does not include persons, who do not require a visa for the admission to Germany as well as persons, whose entry is based on other grounds but who obtain a residence permit for family purposes later on, for example due to marriage in Germany. The immigration of other family members is also not recorded (BMI & BAMF 2012: 111 et seq.). In addition to that, data from the Central Register of Foreigners is also used. The Central Register of Foreigners provides a comprehensive view on the immigration of family members because contrary to the visa statistics, third country nationals from countries, which do not require a visa to enter the Federal Republic of Germany are recorded here among others or persons, who were initially admitted to Germany for another purpose (employment, studies). However, the comparability of both data sources is not limited given that they are based on different data sources.

6.1 Third Country Nationals

6.1.1 Quantitative Analysis

The visa statistics from the Department of Foreign Affairs shows the family immigration of third country nationals to foreign as well as German citizens. (For the issuing of residence cards for Union citizens, cp. the following Chapter 6.2.1). Personal information regarding age, sex or nationality is fundamentally not recorded. However, the country of origin, in which the visa was issued, is shown. Furthermore, a distinction is made between the criteria „husbands to German women“, „husbands to foreign women“, „wives to foreign men“ and „wives to German men“.

The following chart shows that approximately 40,000 to 85,000 visas were approved annually between 1998 and 2010 for the family reunification of third country nationals. Until 2002 there was an upward trend and the peak of 85,305 issued visas was achieved here. Since then, the number of visas issued has continuously decreased – with the exception of a slight increase in 2009 – and was reduced to more than half the amount with 40,210 approved visas in 2010.

Contrary to the decrease in issued visas, the data from the Central Register of Foreigners indicates an increase in the number of residence permits issued for family reasons. According to that, the percentage of person, who entered in 2010, increased by 13.7 per cent to 54,865 compared to the previous

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66These are primarily Union citizens and their family members, who already hold a valid residence card from another Member State as well as other nationals from countries, which are exempt from the visa requirement pursuant to § 40 of the Residence Ordinance or based on bilateral agreements.
year (BMI & BAMF 2012: 117). (For an overview on issued visas and residence permits within the last ten years see also Annex II, Table 1).

Figure: Approved Visas for the Purpose of the Immigration of Family Members to Germany from 1998 to 2010

![Graph showing approved visas for family purposes from 1998 to 2010.](source)

Most of the visas for family purposes issued to third country nationals were issued to Turkey in 2010 (18.5 per cent), followed by Kosovo (8 per cent), Syria (7.3 per cent), the Russian Federation (6.7 per cent) and India (6.6 per cent). Turkey represents the quantitatively strongest country of origin, whereby its percentage in immigration of family members and spouses decreased all in all overproportionately: In 1998 the percentage of visas approved in diplomatic representation in Turkey for family reunification amounted to one third, while it only amounted to less than one fifth in 2010 (BMI & BAMF 2012: 113 et seq.).

The percentage of immigrating children was approx. 20 – 25 per cent during the entire period; 75 – 80 per cent was allotted to the immigration of spouses. Based on the immigration of spouses, 26.8 per cent of the visas were issued to men and 73.2 per cent to women. The proportion of spouses immigrating to foreign spouses decreased from 43.3 per cent in 1998 to 36.7 per cent in 2010, while the proportion of spouses immigrating to German spouses of the total of family migrants increased from 33.6 per cent to 42 per cent during the same period. Reasons for this can be seen in the higher numbers of naturalisations as well as the family reunification with repatriates of German origin (BMI & BAMF 2012: 113).

A comparatively significant decrease in visas issued was observed in 2005 as well as in 2007 (decrease by 19.3 resp. 16 per cent). The accession of the new EU countries in 2004 (EU-25) as well as 2007 (EU-27) is referred to as the reason for the decrease in approved visas, given that citizens of these countries consequently no longer required a visa (BMI & BAMF 2012: 112). On the other hand, there is the assumption that particularly the regulation for the language requirement in Germany, which has been effective since 2007, has led to a decrease in the immigration of spouses (Dağdelen 2012: 5 ff).
6.1.2 Qualitative Analysis

The following describes the essential problems, which can arise in connection with the admission procedure as well as the verifications required for admission.

Immigration of children
On the one hand, this pertains to the immigration requirements for children of third country nationals. Hence, the immigration of children, who are older than 16 and do not enter Germany with their parents, is only possible according to German law if they have command of the German language on level C1 or positive integration prospects are determined (cp. Chapter 2.1.1). According to a statement of the Association of Binational Families and Partnerships (iaf) on the Green Paper, this results in „children as of the age of 16 no longer being able to immigrate, given that the obstacles of the requirements are usually too high“ (iaf 2012: 4).

Experts also see the requirement of sole child custody for the right to subsequent immigration of children as being problematic. According to that, children from a previous marriage resp. a previous relationship can only immigrate in the event that the parent residing in Germany can provide proof of having sole child custody (cp. Chapters 2.1.1 and 5.1.1). This proof however, can hardly be provided in countries such as the CIS countries, in which a right of sole custody comparable to German law does not exist (interview experts: no. 19.; DAV 2012: 3 et seq.). Furthermore, a written declaration of consent from the other parent is required. However, this can prove to be difficult if not impossible, in the case that his/her residence is unknown – like in the case of a Philippine spouse, who had immigrated to Germany to live together with her German husband and their daughter (interview individuals: no. 16). The reunification with her Philippine son of a previous relationship still has not succeeded (see example case 3 in Chapter 7). One of the circumstances, which hampered the application process initially, was that she had great difficulties to get the consent of the father of the child because she had not been in contact with him for years and had lost track of his place of residence.

Immigration of other family members
In addition to the immigration of children, the immigration of other family members (§ 36 sec. 2 of the Residence Act) is, in practice, also handled „with many restrictions“ (interview experts: no. 19). The requirements for the existence of an exceptional hardship are for example, in view of parent(s) seeking entry, so high „(...) that in practice, parents can only rarely subsequently immigrate. In 2010, 306 temporary residence permits were granted for parents who had subsequently immigrated or 0.6 per cent of the overall temporary residence permits“ (iaf 2012: 6). In response to the question of whether or not the immigration of other family members is desired, one of the interviewed individuals answered that he had enquired about the immigration of his Ghanaian wife’s 28-year-old brother but that he considered this to be „hopeless“ based on the strict requirements (interview individuals: no. 5).

The provisions of § 36 sec. 2 of the Residence Act can also be applied accordingly for the immigration of additional family members to Germans and Union citizens (cp. Chapter 2). In view of the effective regulation for the immigration to Union citizens, EU infringement proceedings are currently pending against Germany (cp. Chapter 5.2.1).
Immigration of spouses

In practice, the language requirement before admission often represents a major hurdle for the immigration of spouses according to experts. From the viewpoint of the IAF, this regulation leads to „long periods of separation in numerous families, in others even to a failure of admission and therefore, to the stop of family reunification“ (IAF 2012: 2). A general regulation for hardship cases, for example for illiterates or people with other learning disabilities, is not provided for by law. Even if those interviewed did not have any serious difficulties themselves in providing the required skills, several mentioned problems in this connection they had heard about from people they knew (interview individuals: no. 6, 8, 10 and 12).

In principle, it is up to the spouse seeking entry how he/she obtains the required language skills – whether in line with a course or in line with private studies. The examination for the attainment of the language certificate can either be taken at the German Goethe institute on location or at an institute licenced to do so by the Goethe institute. However, the test results, which must be verified, are precisely defined: The attempt to acquire German language skills in line with two-month private lessons (five days a week) given by a German lawyer, ended for an interview partner with the result that she did not pass the language test on the first attempt (interview individuals: no. 6).

The costs for pre-entry language courses vary depending on the country of origin and must be borne by the applicant. In the main country of origin Turkey, for example, the fees for a course at the Goethe Institute amount to a total of between € 225 and € 600 depending on the number of offered teaching units (Federal Government of Germany 2010: 13). In the opinion of the interviewed spouses, the fees for their respective native country are comparatively high. This poses problems, especially for persons with a low income.

With regard to the effectiveness of the language requirement for spouses, the assessments were quite diverse. For instance, several persons interviewed indicated that they would find it more reasonable resp. effective to learn the language in the environment of the language, like this is arranged for after admission in line with an integration course. Others on the other hand, also considered the previously acquired language skills as being sensible and helpful, to be able to get along better after entering Germany.

Another difficulty faced by spouses wanting to join their husbands or wives occurs with respect to the fact that the issue of fraud (marriage of convenience) is gaining in importance. More and more couples consider themselves being suspected of having entered into a marriage solely for the purpose of obtaining a right of residence, as was revealed by a survey of the project *families et couples binationaux en europe* (Fabienne) (Müller 2012: 13). „An unsubstantiated accusation alone suffices to implement an official investigation, to invade privacy on a regular basis and to hinder couples from promptly living together as a married couple“ (IAF 2012: 15). In the interviews conducted with family members, more than half of all couples actually had to participate in an interview. A lawyer specialised in immigration law, whose counsel is primarily engaged by Turkish nationals, confirms this. According to his experience, brief interviews are conducted more and more often upon filing an application. In the process, the spouses are asked identical and partially extremely complicated questions in parallel. Answers, which appear to be too pre-arranged, would only nourish the initial suspicion. Therefore, he advises his clients to engage a lawyer in the event of an interview (interview experts: no. 19). Moreover, a NGO stated that the interviews do not consider cultural differences. For example the simple question of the magnitude of the wedding reception can be construed very differently in
the case of a Turkish/German couple – leading not only to non-matching answers but also to feelings of guilt and mistrust between couples (interview experts: no. 18). The majority of those family members who were interviewed, rated the interview situation critically, with the feeling of “being criminalised” and in part „humiliating questions“ (interview individuals: no. 3). This concerned especially intimate questions on the relationship of the couples (for the political debate on marriages of convenience and the procedure within the visa application process cp. Chapter 3 resp. Chapter 4).

**Admission procedure**

Regarding the admission procedure, the acceptance resp. authentication of documents (e.g. proof of identity or marriage licences) are considered problematic by experts and the interviewed family members alike. The Department of Foreign Affairs for instance, released a list with countries of origin, in which a legalisation of documents is not possible without a further examination in line with an authentication procedure. This list currently includes more than 40 countries. In line with the visa procedure, the German diplomatic representations regularly engage a so-called counsel of choice (external attorney or licensed investigative bureau) for the legalisation of the documents in these countries. The costs for the procedure must be borne by the applicant and amounted in the cases of family members from Ghana and Rwanda concerned (interview individuals: interview no. 2 and 5) to an average of 350 to 400 Euros. In both cases, family members stated that there was no transparency at all; neither with regard to the procedure nor the costs (e.g. no expense vouchers were provided).

Moreover, there can be considerable waiting periods of approx. 6 weeks up to even several months (DAV 2012: 7; iaf 2012: 15). Furthermore, proof in the form of a DNA test is apparently required more and more often to test the biological relationship or for the determination of age, in particular in African countries (iaf 2012: 14; DAV 2012: 7). According to a study, which the University of Frankfurt participated in, the costs for such a test vary greatly and can amount to up to € 500 per person (www.immigene.eu).

In addition to the legalisation of documents, many of those interviewed said that the provision of the required certificates of civil status, in particular the proof of identity, is very difficult to provide and extremely cost-intensive. This primarily applies to family members from countries, which only have a rudimental or corrupt administrative structure, and has been reported in the interviews by family members coming from Rwanda, Egypt, Kenya or Ghana (interview individuals: no. 2, 3, 4, 6 and 7). The personal appearance at the German diplomatic representation or participating in language courses, often in an unfamiliar city, can also involve comparatively great time and effort for the family members, for example due to long travelling times or organising the care of other family members (e.g. children) during their absence (interview individuals: no. 3, 4, 6, and 8; iaf 2012: 7). Particular difficulties also arise for family members from war-torn regions – two concrete cases not only reported the danger in reaching the place of the language course but also the German diplomatic representations in Cairo and Nairobi, which were closed for longer periods of time due to riots or disturbances (interview individuals: no. 3 and 4).

6.2 Union Citizens

6.2.1 Quantitative Analysis

As described in Chapter 6.1.1, there is no differentiation according to the sponsors in the visa statistics. The data from the Central Register of Foreigners also does not contain any information on Union
citizens, to which the third country nationals immigrate, given that no cross references to family members residing in Germany are recorded. However, information on persons, who were issued a residence card, is possible: In 2010 2,845 family members of Union citizens (including EAA citizens) were admitted to Germany, who were issued a residence card according to § 5 sec. 3 of the Free Movement Act/EU. That included 325 nationals from Brazil, 191 from the United States of America and 146 from Turkey. At the end of 2010 a total of 11,091 family members of Union citizens were in possession of a residence card (BMI & BAMF 2012: 111).

6.2.2 Qualitative Analysis

The admission procedure for family members of Union citizens proves to be comparatively less complicated (cp. Chapter 2.3 and Chapter 4). Third country national family members are principally not subject to the requirement of a visa to enter Germany. Only non-working Union citizens have to provide proof of sufficient means of subsistence as well as sufficient health insurance coverage. Other provisions do not exist.

In fact, a problem stated in the interviews pertained to the establishment of the family unit in Germany. A couple which was interviewed and which has been residing in Germany for many years had initially considered getting married in Germany (interview of individuals: interview no. 14 and 15). In light of the verifications (family register in the country of origin of third country nationals cannot be obtained just like that), which are difficult to provide and the procedure (friends told them about routine interviews of the spouses), the interviewed couple ultimately refrained from getting married in Germany. Instead they travelled to France, the sponsor’s country of origin, and got married there.

6.3 German Nationals

6.3.1 Quantitative Analysis

In the visa statistics, the entry to German spouses in 2011 comes to a total of 17,745 (54.3 per cent). With 65.1 per cent, the percentage of women was significantly lower compared to the immigration to foreign spouses. 34.9 per cent were men, who immigrated to their German wives (BT-Drs. 17/8823: 64, appendix to question 19).

6.3.2 Qualitative Analysis

Significant problems, which can arise in connection with the admission procedure or the verification, which must be provided for the immigration to third country nationals, also play a role for the immigration to German nationals. This pertains to the immigration of spouses (language verification as well as interviews regarding marriages of convenience) for example or the immigration of other family members (cp. Chapter 6.1.2). Furthermore, the immigration of a parent with child custody to a German child is in practice apparently subject to restrictions as well. The immigration to an unborn German child, i.e. during pregnancy, is strictly denied according to experience, although explicitly intended in the General Administrative Regulation on the Residence Act. In two cases of men from Rwanda and Kenya (interview individuals: no. 2 and 4), who wanted to join their partners during pregnancy, the visas were not obtained until after the birth of the child and an interviewed NGO confirmed never having heard of a case that deviated from this practice (interview experts: no. 18). The interviewed family members concerned described that they initially had not been informed by the
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authorities about the possibility to immigrate before the birth of their child (see example case 2 below). Some German diplomatic representations, like the embassy in Cairo, even seem to deny that this option exists in response to direct question (interview experts: no. 18). The impact of this practice on the partners depends on their respective position: While the mothers have to adapt to the situation of single parents and have to find other ways of support, fathers are often overwhelmed by their “sudden” fatherhood after entry and have difficulties to adapt to the new situation, since they missed out on the entire pregnancy process (interview experts: no. 18).

Example case 2:
While completing a voluntary year in Rwanda, Ms. F., a German citizen, got to know the Rwandese S. She got pregnant in 2009. In order to take a final seminar, she went back to Germany in October 2009. Her partner S. went to the embassy in Rwanda and asked about his possibilities to join F. in Germany. However, the official at the embassy did not let S. know that an entry is already possible during pregnancy. Only due to the advisory of an NGO F. had contacted, S. was finally able to apply for a visa for the purpose of joining his unborn child in December 2009. He was only admitted in March 2010 – one day after his child had been born. Due to the separation and the ongoing uncertainty, F. states that she still faces severe psychological problems. She is getting psychological treatment ever since (interview individuals: no. 1).

Requests for change
In addition to the problems described in Chapter 6.1.2, the following will show several other aspects in line with the procedure, for which the interviewed families gave concrete requests for change resp. assistance. These primarily pertain to a better transparency of the procedure. Above all this applies to information on the status of the procedure. Not knowing what is going to happen next was unanimously rated as a high stress factor by all persons interviewed. A frequently named difficulty mainly consisted of establishing personal contact to the person responsible for the procedure, given that all requests by mail or telephone strictly run through a central office. Personal access to the diplomatic representations, as part of the visa procedure, requires usually an appointment, which has to be made via internet or telephone hotlines. The electronic arrangement of appointments started initially out as pilot experiments, e.g. in Teheran, but serve now as a standard procedure. Depending on the country of origin and the demand resp. workload of the German diplomatic representations, family members might have to wait for several weeks or months in order to be assigned an appointment (interview experts: no. 18). One of the German spouses interviewed felt as if the German embassy was like a „fortress“, since he was hardly able to get information of the German embassy in Accra, Ghana, or even talk to the person responsible on telephone (interview individuals: no. 5).

Moreover, many of the family members interviewed said that they would have appreciated support in dealing with authorities as well as individual legal advice (interview individuals: no. 1, 7 and 9). The information provided by the German diplomatic representations and local foreigners authorities usually consist of leaflets, which are tailored to „normal cases“. However in practice, variations often result for the respective individual case. In several cases, there was uncertainty right until the end whether or not all documents were on hand, since all attempts to get information in this respect by consulting the persons in charge at the embassies have proved to be unsuccessful (interview individuals: no. 3 and 2).
Consequences

Overall, the difficulties associated with the admission procedure – meeting the requirements, lack of transparency in the procedure, conducted interviews regarding marriages of convenience – had not only led to considerable periods of separation from their families, but to severe mental and emotional stress as well as problems in the partnership of affected family members. In the interviews, family members especially described the hardship of not seeing each other for long periods leading to feelings of loneliness, alienation and unease – one of them even needed psychological treatment due to the separation and the ongoing uncertainty (cp. example case 2). Especially in the case where parents are separated from their children, they suffer enormously. Further, the immigrated family members were in agreement in stating that they would not have been able to bear the costs alone for the procedure or for the individual requirements (e.g. language courses), which had to be fulfilled, without support (usually from the sponsor).

As a result of those problems, especially couples where often thinking about alternative ways of living together, like living somewhere else or other options of immigration, up to irregular migration. In the end, all interviewed persons decided to stay in Germany because of job or other reasons and – due to advice from counselling centers – followed the regular family reunification procedure. But in particular some of the German sponsors described a deep disappointment in the constitutional democracy, since they felt as if their right to family reunification – as guaranteed by the constitution – was impaired. And even if most interviewed family members agreed that immigrants have to take own responsibility for their integration, they state a missing “welcoming culture” in Germany and a lack of appropriate conditions for integration.

6.4 Conclusion

With 23.3 per cent, family reunification represents the quantitatively highest percentage for the migration of foreign nationals to Germany. Nevertheless, the percentage of visas issued for immigration was reduced to more than half the amount since its peak in 2002. In 2010 a total of 40,210 visas were approved for family reunification.

Overall, the admission procedure and the verifications, which need to be provided for this purpose, were in fact rated rather critically by the persons interviewed. This is due to the fact that all of the difficulties described (e.g. costs, provision of required certificates, and lack of direct access to the Goethe institutes) can prolong the time periods in which families are separated considerably. They also lead to a number of further problems for sponsors as well as for their families.

Several problems are to be seen within the context of the admission procedure. Next to mental and psychological problems due to long periods of separation lasting many months, the interviewed family members also described problems regarding the partnership and the risk of separation from each other. The interviews which are conducted to avoid marriages of convenience prove to be especially problematic regarding couples with different cultural background. In addition, cases of non-matching answers not only lead to feelings of guilt but provoke mistrust between couples. This also applies for the missing transparency and the difficulty to get information from the German authorities: Couples described that they started to doubt the seriousness of their partner’s ambition to live together because they felt as if the partner would not make an effort to get the visa for entry.
Moreover, the pre-entry language requirement has a selective effect on the family migration of spouses: Especially families with a low socioeconomic status (comparatively high costs) and educational background (no general regulation for hardship cases, for example for illiterates) have difficulties fulfilling the language requirement. In fact, this seems even more of a structural problem, since respondents either themselves or people they knew faced serious difficulties in providing the required skills.

Another structural problem is to be seen in the income requirement, which causes problems especially for women as well as for migrant sponsors: In Germany, 46 per cent of women only had a part time job in 2011 and the gender pay gap represented 23 per cent in 2010 (Statistisches Bundesamt 2012: 30/40). The risk of poverty for persons with a migrant background is twice that of persons without a migrant background (Statistisches Bundesamt 2011: 168).

Thus, according to the experiences of practitioners as well as family members, the requirements before admission as well as the admission procedure as such have a recognisable obstructing effect on family reunification.

### 7 Impact of Family Reunification Policy on Integration

The following chapter deals with issues connected to family reunification and integration. The first part gives an overview of the number of persons, who participated in a language or integration course and acquired the necessary certificates. At the same time, a distinction is made between language courses before admission and integration courses after admission.

Subsequently, an assessment is made to which extent the legal requirements for visa approval (in particular the verification of sufficient living space and language skills as well as the age of those immigrating) and the obtainment of a secured residence status have an effect on the integration of the family concerned. Furthermore, a look is taken at the effects of the integration measures regarding the labour market, education, social integration and the acquirement of language skills.

#### 7.1 Quantitative Analysis

**Language courses before admission**

The language certificate, which is usually required for the issuing of an entry visa on ground of family reunification, is acquired with the language examinations „Start German 1“ at the Goethe institutes abroad.\(^{68}\) (Language verification is not required for Union citizens, among others, cp. Chapter 2.) The Goethe institutes offer respective courses to prepare for the exam. The standard crash course consists of 140 to 180 lessons each 45 minutes. The costs for the course vary depending on the country (cp. Chapter 6).

In 2010, a total of 41,776 persons participated in these language examinations worldwide. 32,093 persons (77 per cent) did not attend a language course at the Goethe institute before taking the examination (external exam participants). A total of 66 per cent passed the examination, in which significantly more internal exam participants – i.e. those, who attended the preparation course at the Goethe institute – passed the test (76 per cent compared to 63 per cent of the external exam

\(^{68}\)Certificates from other providers – with the exception of 2 other German members of the Association of Language Testers in Europe (ALTE) as well as those from the Österreichisches Sprachdiplom (Austrian Language Certificate) are not accepted.
participants). The lowest percentage was in Ghana, where merely 38 per cent of the participants passed the exam (BT-Drs. 17/5732: 19, appendix to questions 3 and 4). At the same time, it is not recorded whether the participants passed the test the first time or after taking it again.

Integration courses after admission

Even after admission, family members are usually also obligated to participate in an integration course if they are not able to communicate in the German language in an at least simple manner. (Union citizens and their family members are for example excluded from this obligation.) The integration course consists of a language course and an orientation course. In addition to sufficient language skills (language level B1), the objective is to also convey knowledge of the legal system, culture and Germany’s history to the immigrants. The general integration course takes 660 hours. Furthermore, special integration courses are offered, for instance for illiterates, parents or young adults. The costs for participants currently amount to € 1.20 per lesson, i.e. a total of € 792. Exemptions from costs are possible upon application. The successful participation is verified with a final test consisting of a test on the achievement of the language level B1 as well as a test pertaining to the orientation course. If participation was ordered by the foreigners authority, only temporary residence titles are granted until sufficient language skills have been verified (Will 2012: 12).

Between 2005 and 2010 a total of 690,000 persons participated in an integration course in Germany. In 2010 there were 88,629 new participants; participation was mandatory for 54 per cent of them. There is no data available on the number of participants in integration courses, who were admitted to Germany in line with family reunification. However, it is indicative that their percentage was relatively high. For example, nearly one third of the persons interviewed in line with a panel study (longitudinal study on the effectivity and sustainability of integration courses) entered Germany for reasons of family reunification. This included old as well as new immigrants (Schuller, Lochner & Rother 2011: 67 et seq.).

7.2 Qualitative Analysis

The Federal Government conceives integration as an integration process into the German community, which is to be organised in an active and sustainable manner, which enables migrants to equally participate in the economic, social, political and cultural life in Germany and reinforces social solidarity on the whole. The objective is to achieve an alignment of the living conditions of persons with migration background with the total population.

7.2.1 Impact of the Conditions for Admission and Residence

A central criterion for integration is living together with one’s family. On this note, the 6th Family Report from 2000, which was mandated by the Federal Government, stated: „According to available reports, families which come to Germany together have significantly more favourable requirements for the duties associated with migration than those in which the chain migration process is devised over longer periods of time. Therefore, the recommendation regarding family policy is to devise all basic conditions in a manner which minimises the separation of spouses or children from their parents“ (BT-Drs. 14/4357: 201 et seq.). However, the interviews conducted with families and the experience of persons practicing consultancy suggest, that the requirements for family reunification can prolong the time periods in which families are separated considerably. In the following, this is discussed once
more in detail based on four essential criteria (income requirement, housing requirement, integration requirement and age limit).

The income requirement
According to a report from the German Red Cross, the requirement of sufficient income „(…) represents one of the greatest obstacles for the immigration to foreign family members. In practice, most cases of family migration fail because sufficient own funds cannot be verified“ (DRK 2008: 32). This assessment was confirmed in several interviews with individuals and experts. In one of the cases described, the family migration of a biological child to a third country national was even entirely denied due to insufficient income (interview individuals: no. 16; cp. example case 3). According to an interviewed NGO, the number of precarious jobs has increased during the past years. However, the different conditions in the labour market are ignored by the requirements for family reunification (interview experts: no. 18). An attorney for immigration and family law also stated that the income requirement, for which the conditions are assessed differently in the federal states (e.g. validity of the employment contract), means that families would possibly have to relocate (interview experts: no. 19; for the conditions of the income requirement cp. Chapter 2.1.1).

Example case 3:
Mrs. B. is a Philippine citizen who is married to her German husband since 2007. In the same year, their common child was born in the Philippines. Since the child has dual citizenship, Mrs. B. was issued a visa as mother of a German child and she and her daughter entered Germany in 2010 in order to join her husband. From a previous relationship with a Philippine citizen, Mrs. B. has a minor son, whom she wants to join her family in Germany. However, Mrs. B. and her husband are reliant on benefits according to the Social Security Code: Mrs. B. has not been placed in a job since her arrival in Germany and Mr. B. is currently unemployed and plans to go into business for himself. Therefore, they cannot meet the income requirement. As a consequence, Mrs. B. is only able to see her son during vacation (interview individuals: no. 16).

The housing requirement
The requirement for sufficient living space did not represent a noteworthy obstacle in the interviews conducted.

The integration requirement
According to statements from those individuals, who (or whose spouse) had to take a language test before admission, the time of separation was additionally increased by several months because of this. According to the assessment of one of the persons interviewed, the objective of the course (simple German language skills) is out of all proportion to the long separation associated with it (interview individuals: no. 9). From practicing consultancy, the Verband binationaler Familien und Partnerschaften e.V. (iaf) (Association of Binational Families and Partnerships) is aware of cases, in which couples were separated from each other for periods up to five years (iaf 2012: 8). According to an attorney, an additional extension of the separation period can also result in cases, in which the gap between the acquisition of the language certificate and application is too long: new verification can and has been subsequently requested from clients (interview experts: no. 19). According to those interviewed, difficult conditions in line with the language course mainly resulted due to a lack of direct access to the institutes (long journeys, no accommodation on location), fully booked courses and the resulting costs. This also resulted in delays for the persons concerned. The question of costs, in
particular, is an aspect in which Germany could learn from other countries: Thus, Spain for example offers free language courses (interview policy makers: no. 24).

**The age limit**
The implementation of the age limit of 18 for both spouses for the immigration of spouses was established on the grounds that this could contribute to the prevention of forced marriages (BReg 2011: 2 et seq.). Critics argue that restrictive regulations in family reunification, such as the stipulation of an age limit, do not prevent forced marriages but if anything, would postpone immigration (iaf 2012: 3 et seq.). In view of the immigration of children, the age criterion could even result in a permanent separation of children from their parents due to its link to integration measures (iaf 2012: 4; interview experts: no. 19). According to the iaf, the requirements for the immigration of children between 16 and 18 are so high, that these children are usually denied being able to live together with their parents in Germany (iaf 2012: 4). On the other hand, a referent of the Federal Ministry defends the regulation for children older than 16 years of age, given that an immigration of adolescents, who do not have a chance of integration in Germany, is contrary to the child’s best interests (interview policy makers: no. 22).

In addition to the family living together, it also plays a role for integration to what extent the legal implementation of the family reunification policy ensures the prospect resp. reliability of permanent cohabitation. This corresponds to the position, which is argued in the 6th Family Report: „Families of foreign origin need long-term prospects in order to be able to fulfil their duties in the process of social integration. The reliability and long-term nature of the prospect of residence is very important to families because family decisions such as marriage, setting up a household or the birth of children as well as family reunification and decisions regarding the children’s education are made based on a much more long-run planning horizon than occupational decisions, such as starting a job or a work-related migration“ (BT-Drs. 14/4357 2000: 201 et seq.).

**Extension of the temporary residence permit**
As a basic principle, the existence of the requirements for residence is reviewed by the foreigners authority for an extension of the temporary residence permit. Before family members can obtain an independent right of residence, their residence permit is linked to the legal status of the sponsor: If the sponsor loses his/her right of residence, the family member is generally also stripped of his/her right of residence. Exceptions apply when the family unit dissolves, for example in the case of divorce, provided that the marriage has existed for at least three years in Germany (cp. Chapter 2.1.3). The interviewees view the accessoriness of residence (duration of marriage) with critical eyes because they think it facilitates dependencies (interview policy makers: no. 23). In another interview, one of the family members interviewed stated that the dependency provokes a high degree of uncertainty in her husband, because he worries that he will not obtain equal fathers’ rights for their common child (interview individuals: no. 3).

According to the Residence Act, the non-attendance or failing of the integration course can have effects on the extension of residence. If participation in proper form does not take place, the extension can be denied. However, according to representatives of federal state authorities, the foreigners authorities’ possibilities of enforcing measures are not particularly ample in practice;

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69 While family members of third country nationals and Union citizens can obtain a permanent residence status after five years, family members of German citizens is granted a permanent residence permit already after three years.
expulsions are practically not carried out. In individual cases, benefit cuts by the employment agency are considered, if applicable (interview policy makers: no. 23 and 24).

**Obtainment of an independent and permanent right of residence**

The requirements for the obtainment of a permanent residence permit (e.g. stable job, adequate pension funds, B1 level language skills) are relatively high in Germany according to the findings of the MIPEX II\(^70\) and are not as extensive in any other EU Member State (MIPEX III 2011: 48). According to a current study of the Advisory Council of German foundations for integration and migration (SVR), \(^71\) less than half of the interviewed third country nationals indicate problems in applying for permanent residence; if there were problems however, these were often (30.6 per cent) associated with the provision of documents (Will 2012: 16). According to the authors of the survey, this is also a portrayal of the many conditions the permanent residence status is linked to: For instance, interviewed persons, who assess their financial situation as being more difficult, also often indicate problems in fulfilling the requirements for a permanent residence status (Will 2012: 16 et seq.).

**Possibilities of naturalisation**

The possibilities of obtaining German citizenship have undergone several improvements in Germany during the past few years according to the assessments of the MIPEX III. Nevertheless, the requirements for persons willing to naturalise are still high in an economical and linguistic respect (MIPEX III 2011: 49). The period for naturalisation is reduced from eight to seven years through the verified successful participation in an integration course. A reduction of the period also results for the naturalisation of family members of German spouses. This is based on the assumption that a quicker integration can take place by living with a local resident (interview policy makers: no. 23). In the opinion of third country nationals being interviewed by the SVR, the biggest obstacle for naturalisation is renouncing previous citizenship (Will 2012: 20 et seq.). The option of dual citizenship has only been possible in Germany since 2007 and is only stipulated for Union citizens.

After the effects of the immigration requirements and the prospects of residence in terms of the integration of families was examined in detail, a discussion of the influence of the German family reunification policy on the four dimensions (employment, education, social integration and language skills), which are considered essential for the integration of family members, is to be conducted.

### 7.2.2 Impact on Different Dimensions of Integration

**Social Inclusion**

On the one hand, the family plays a central role in the social integration of immigrants. Thus, the “(...) often very widely ramified family and relational networks of the immigrants (...) contribute to maintaining the health and achievement potential of its members through psychosocial support and through preventive and curative activities” (BT-Drs. 14/4357: 207). This assessment is supported by the study compiled by the SVR, where the majority of the interviewed third country nationals had

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\(^70\) The „Migrant Integration Policy Index“ (MIPEX) has been comparing the legal conditions for integration in 31 European countries and North America every three years since 2004. In the process, the question of to which extent the countries adhere to international standards is examined. 148 indicators are reviewed in various areas such as labour market, education, permanent residence or family reunification.

\(^71\) 1,220 third country nationals were personally interviewed for the study of the SVR in the German cities Stuttgart and Berlin. The randomly selected participants were recruited via the register of residents and resided in Germany for at least one year.
brought their spouse to Germany in line with family reunification: Most of them agreed that the immigration of their spouse was particularly helpful for the emotional bond to their place of living as well as for looking for a job (Will 2012: 31). The promoting function of living with one's family, particularly with respect to emotional stability and in generating mutual support, for example regarding job search, was also emphasised by the majority of the interviewed family members. Furthermore, the integration supporting function of communities (willing to integrate) was pointed out in the interviews with political representatives (interview policy makers: no. 22 and 24). Reciprocally, the immigration into an integration hostile environment could however, significantly complicate integration (interview policy makers: no. 22).

**Contact to the social majority** is therefore considered to be particularly important for the social integration of immigrants. This results from daily contacts established at school, at work or through club memberships for instance but also through acquaintances and friendships (Haug 2010: 14/23 et seq.). The interviews with family members present a differentiated picture regarding the frequency of contact to Germans. While several of the family members interviewed had already established close social ties to home country nationals (e.g. through sports clubs) or were planning a respective participation, others felt left out in this regard (interview individuals: interview no. 2, 6, 8, 10 and 12). In this context, especially insecurities due to a lack of language skills but also the feeling of „being different“ (created from the outside) and the dissociation by Germans played a role (interview individuals: no. 6, 9 and 12).

**Employment**

The participation in the employment system is also a central requirement for social participation. According to the MIPEX III, the German labour market policy is basically rated as being positive, as a result of the direct support for immigrants in the integration into the labour market (MIPEX III 2011: 46). However, problems in the acknowledgement of qualifications obtained in other countries would lead to third country nationals being „exiled“ to employment, for which they are overqualified (MIPEX III 2011: 46). Furthermore, the unemployment rate of third country nationals is more than twice as high (18.3 per cent) than it is for home country nationals (MIPEX 2011: 45). Also the family members and stakeholders being interviewed agreed that the fact that degrees and certifications are not acknowledged represents a problem. One of the persons interviewed indicated for example that her Kenyan husband’s degree was put on a level with a General Certificate of Secondary Education (mark: 4-). She also viewed the support for starting out in one’s career with critical eyes. To date, her husband has only received offers for low skilled jobs (interview individuals: no. 4). The study compiled by the SVR also points out that especially interviewed persons with a higher educational level often tend to indicate, that they had problems with the acknowledgement of their degrees resp. certifications (Will 2012: 31). Overall, the employment of those persons, who had a paid job, did not correspond to their qualifications in 56.4 per cent of the cases (Will 2012: 33). Furthermore, more than half of the persons interviewed by the SVR indicated that they had experienced problems while looking for a job. According to them, frequent problems were discrimination and short-term, temporary employment contracts (Will 2012: 33). The interviewed family members also often mentioned experiences with discrimination – not only in regard to looking for a job but generally in everyday life, e.g. when searching for a flat. The feeling of „being reminded every day that we do not belong“ was stated several times (interview individuals: no. 3, 4 and 9).
**Education**

The importance of education for the integration process was explicitly pointed out in several of the conducted interviews. In particular, the central role of school was emphasised: integration takes place here „automatically“ (interview policy makers: no. 23). Therefore, as stated by a referent of the Federal Ministry, school education – in addition to German language skills – represents a „key factor in the integration process“ (interview policy makers: no. 22). The MIPEX III paints a differentiated picture in view of the organisation of the educational system in Germany: For example the participation of school children and parents with migration backgrounds is promoted in all types of schools and all branches of education in the educational system in the Federal Republic of Germany (from preschool to occupational training). For instance, newly immigrated children participate in „prep courses“ and language tests on preschool level. Nevertheless, not all students are offered advanced courses in German as a foreign language. Moreover, children of parents without documents only have a legal claim to attend school in five federal states, so that not all school children, who actually reside in Germany, have access to an education (MIPEX III 2011: 47).

**Language Skills**

Learning the German language was rated as an essential factor for integration and an important requirement for equal and social participation by all of the interviewed family members. This assessment is reinforced by the interdependency of language with other dimensions of integration. For instance, language skills simplify contact to the social majority, increase the educational opportunities of children and parents and in addition to that, have positive effects on entering the German labour market. The latter interdependency is described in the study by the SVR as follows: only a minor improvement of German language skills is possible without work and without such an improvement in language skills, there is usually no chance of a good job (Will 2012: 32). According to the results of the integration panel, the *integration courses* have a considerable share in the positive effects of language skills for other integration indicators. The longitudinal study, which examined the effectiveness and sustainability of the courses based on interviews with course participants, comes to the conclusion that contact to Germans increases in the course of the courses and also continues to exist after completion thereof (Schuller et al. 2011: 232 et seq.). An increase in employment can also be determined among those interviewed compared to the control group (Schuller et al. 2011: 218 et seq.). According to that, attending an integration course is accompanied by a sustainable, positive development of competence in the German language: 93 per cent of the course participants indicated that their language skills improved (Schuller et al. 2011: 6). The interviewed family members also shared this opinion. The majority of them found the integration courses to be sensible as well as a „big help“ for getting along independently in their everyday life (interview individuals: no. 2, 3, 8 and 9). According to a study by the Goethe institute from 2010, a positive effect on the integration in Germany is also shown in terms of the *language test before admission*. According to that, the vast majority of the course participants rate the courses as being helpful in preparing for their life in Germany as well as for familiarisation during the beginning of their residence (www.goethe.de). Compared with this result, the interviewed family members had a significantly more differentiated view of the language test (cp. Chapter 6), while criticism thereof predominated. For example, although a spouse from Ghana rated the essence of the course as being positive (pleasant atmosphere, friendly teachers), she nevertheless considered it to be a waste of time. According to her statements, she was never once asked questions in German at the German embassy: „if it is not needed before admission,
why learn it beforehand?”, the woman wondered (interview individuals: no. 6). Other family members also stated that it made much more sense and would be easier to learn the German language on location in Germany. Furthermore, despite its basic supporting effect on integration, it should be kept clearly in mind that the language verification before admission can have an obstructing effect on family reunification (interview policy makers: no. 24).

7.3 Conclusion

Third country nationals must pass a language test in their country of origin before obtaining a visa for family reunification. This is not always easy: In 2010 one third did not pass the test at the Goethe institutes. After admission, non-Union citizens are usually obligated to participate in an integration course; there is also an offer for group-specific courses here, for instance there are separate offers for illiterates. A differentiation of the participants based on the reason of entry is difficult. Overall, the previously existing analyses assume a positive effect of the courses on integration to a great extent.

The effects of the four essential requirements for family reunification (income requirement, housing requirement, integration requirement und age limit) on the family living together must be rated as being critical, given that considerable periods of separation result to some extent. Reliable prospects of residence, which enable permanent living together in the family circle after admission, are given in Germany however, in part subject to stringent requirements.

Although German integration policies, which objective is to enable immigrants an equal participation in Germany’s social life, show certain improvements regarding the four central dimensions of integration (employment, social integration, education and language skills), there are still deficits. This is particular the case in view of the integration into the labour market despite specific approaches (e.g. problems in the acknowledgement of qualifications obtained in foreign countries or discrimination). In addition, only family members of Union and German citizens enjoy unrestricted labour market access. Family members of third country nationals however, are restricted in the sense that their access to the labour market is based on to which extent the sponsor has the right to engage in employment. Due to the interdependency of the labour market access with other dimensions of integration, this has to be assessed critically according to experts, since a direct link is seen between the improvement of German language skills and the participation in the labour market. On the other hand however, without such an improvement in language skills, there is usually no chance of a (good) job at all.

This is one of the reasons, why knowledge of the German language was rated as an essential factor for integration and an important requirement for equal and social participation by all interviewees. In addition, language skills simplify contact to the social majority (social integration) and increase the educational opportunities of children and parents. However, a distinction in the assessment has to be made between language courses before admission and integration courses after admission. While the majority of interviewed family members found the integration courses to be sensible as well as a “big help”, the pre-entry language test was rated predominantly sceptically. This is due to the fact that all of the difficulties described in Chapter 6 lead to longer periods of separation and therefore hinder family reunification. But especially the family plays an important role in the integration process: The majority of the interviewed family members have emphasised the promoting function of living with one’s family for their integration process. However, the various difficulties associated with pre-entry language tests, present a major obstacle for this supporting effect on integration – thwarting its potential positive effects considerably.
8 Conclusions

8.1 Effects of the Developments in Family Reunification Policy

The legal core of family reunification (right to family life) is a recognized fundamental right in Germany, of which the right to family reunification, as enshrined in the Immigration Act, is derived from. But not all families in Germany have equal opportunities to exercise their right to family reunification. As a result, living with the family is not always unrestrainedly possible.

This is partly due to the given legal framework: While the requirements for the admission and residence of foreign family members of third country nationals and German citizens are regulated in the Residence Act, the family migration of family members to Union citizens with the right of free movement is subject to the Free Movement Act/EU. Thus, depending on the legal residence status of the sponsor, there are different rules for the immigration of family members. Furthermore, the German requirements for the admission and residence of foreign family members have experienced significant changes with the implementation of the new Immigration Act in 2005 and the transposition of EU legislation into national law. The legislative reforms were preceded by an intensive discussion on the subject of integration. As one of the results, the entry of spouses is currently only granted, if a German language test has already been passed in the country of origin. However, this admission criterion is only applicable for the family migration of family members to German and third country national sponsors. Next to spouses of Union citizens, also spouses of specific groups of third country nationals (highly skilled persons or citizens from certain countries of origin) are generally exempt from this requirement. These privileges for certain groups of immigrants do not only apply to the integration requirement but also to the age requirement: While the reunification of spouses with German and third country national sponsors is depending on the fulfillment of an age criterion of 18 years, highly qualified persons are exempted from this requirement, too. Thus, while conditions for entry and residence of family members have in total become more restrictive in recent years, the German regulations entail favourable conditions for certain migrant groups.

However, also structural problems come into play in this context: The admission requirements represent a potentially higher hurdle for families with a lower socioeconomic status and educational background. This is particularly true for the requirement of sufficient and secured income as well as for the pre-entry language requirement for spouses (comparatively high costs, no hardship clause). But also family members originating from certain countries are faced with greater challenges than others, especially in view of the admission procedure (e.g. legalization of documents). These structural problems increase when a combination of the aspects mentioned occurs. Future research on the impact of the requirements for family reunification should consider this.

The legally and structurally induced, negative selective effects of family reunification policy can significantly hamper family reunification in practice. In the interviews, the families reported not only on significant periods of separation, but also on severe mental and emotional distress and problems in the partnership. As a result of these problems, especially couples thought about alternative ways of living together, such as living family life abroad or having family members immigrate through other channels of migration (up to irregular migration). However, in the end, all respondents chose to live in Germany and to undergo the regular admission procedure for family reunification. Nonetheless, particularly some of the German sponsors described a deep disappointment in the rule of law, since
they felt strongly impaired in their right to family reunification as guaranteed by the constitution.

At the same time, not all of the interviewed families, who had undergone the admission procedure, saw themselves automatically confronted with problems. In fact, all interviewed family members had completed their own visa application process successfully. However, a dark field results especially in view of those family members whose application is rejected. Moreover, the consequences of self-selective effects – according to which family members might not be applying for family reunification in the first place, out of fear of not being able to meet the requirements – are still insufficiently investigated. In the course of the qualitative research conducted, both groups were covered only indirectly, through statements of other family members.

Additional research is also required with regard to the initial research question, which underlies the evidence presented in this report. Indeed, the question of the impact of family reunification policy on the integration of the families is difficult to answer, since integration is a lasting process, which is influenced by many factors. This includes, for example, the personal background of the person concerned, the economic situation in the host country as well as the design of other policy areas, such as the education sector. What can be said, yet, is that restrictive family reunification regulations that impose high hurdles on families, labor market restrictions or the trend towards a commonly understood obligation to provide evidence for the existence of a non-fictitious relationship, do not prove to be beneficial in this context. On the contrary: Measures which purportedly support integration – such as the proof of basic German language skills for spouses – can actually present an obstacle to integration if they hamper or even deny the ability to live together with one's family. At the same time, the question of proportionality of such measures is to be called into question. In this regard, alternative measures to promote integration should be examined.

This is especially true in light of the fact that the principle of promoting and demanding, which is subject to the German integration policy, is related to the idea that integration is a two-way process, which includes both immigrants and the host society. In this context, the need for (and promotion of) a “welcoming culture” has been increasingly stressed on the political level in recent years. However, politicians willing to establish a welcoming culture in Germany need to ensure that migrants indeed have the feeling of being welcomed by means of offering attractive basic conditions.

8.2 Main Differences Between Sponsors with Different Legal Status

Regarding the conditions for the admission and residence of family members, significant differences occur depending on the legal position of the sponsor. A comparison of the regulations shows that German nationals are better off in many ways compared to third country national sponsors. This applies for the scope of the nuclear family, which allows for children to reunite with their family until the age of 18 without any restrictions and also includes the parents of minor, unmarried children. Additionally, the income as well as the housing requirement is generally not applicable to German nationals. This is due to the reason, that the right to live with one’s family is firmly established by the constitution and it is not regarded as reasonable for Germans to establish their familial relationship abroad. Moreover, special regulations for the immigration of family members to a German apply regarding the granting of a temporary residence permit or the granting of a permanent residence permit. Family members of German nationals can obtain a permanent residence permit as early as after three years – two years earlier than family members of third country nationals. In addition, the stated period for acquiring the German citizenship is one year shorter for family members of
Germs than of third country nationals. This is due to the prevailing assumption that living together with a German facilitates the integration of family members due to closer contacts to other Germans and a beneficial learning environment for the acquisition of German language skills.

Despite these privileges in light of third country nationals, German nationals are worse off compared to Union citizens. Compared to the regulations on family migration laid down in the Residence Act, the requirements according to the Free Movement Act/EU are not as restrictive. For instance, this is shown when regarding the significantly broader scope of the term nuclear family for Union citizens, which includes not only relatives in descending line but also in ascending line (parents, grandparents etc.). Moreover, no income, housing or integration requirement has to be fulfilled for family migration. For example, a French national residing in Germany can have his/her third country national spouse, his/her parents as well as his/her children up to the age of 21 join him/her without further ado. This is only possible for a German national with restrictions (e.g. age limit) and upon fulfillment of several requirements (e.g. proof of language skills). In fact, in light of the more family-friendly provisions of EU law, the differences between German nationals and Union citizens will probably even further increase in the future. This unequal treatment, which is also referred to as native discrimination, can momentarily only be overcome if the German sponsor makes use of his/her own right to free movement and temporarily resides in another EU Member State.

An unequal treatment also occurs with regard to family reunification of Turkish citizens. In line with the Association Agreement (ARB 1/80), EU Member States may not place any restrictions on Turkish citizens’ freedom of movement for workers. According to the legal opinion of the European Commission and the ECJ, this prohibition on the worsening of a situation encompasses the tightening of visa regulations and also applies to persons willing to immigrate from abroad, such as family members. However, according to German law, admission requirements such as language skills or age limits apply to Turkish family members just like for other third country national family members. Unlike in the Netherlands or Austria, no changes in the regulations for the immigration of Turkish family members have been made by the German legislator so far.

As stated before, the regulations for family migration of family members to third country nationals, Germans and Union citizens are laid down in different legislation. For the two groups of third country nationals and Germans, the regulations according to the Residence Act apply. In fact, basic provisions for the immigration of family members apply to both groups. Therefore, national judges have used the group of third country nationals as a framework of reference in their judgments on cases, in which German nationals were affected. For example, according to the Residence Act, the intention of both spouses to have a marital relationship in Germany is a basic prerequisite for approval. The respective regulation (§ 27 Residence Act) applies for the immigration of spouses to both German nationals and third country nationals. In a case regarding the family migration to a German spouse, the Federal Administrative Court ruled that the burden of proof for such an intention lies with the applicant. In its judgment, the court referred explicitly to the Family Reunification Directive: Although the provisions of the Directive could not be applied directly in the case, the Directive was to be taken into account for interpretation, because the federal legislative body had deliberately subjected family reunification with a German to the same regulation as for a third country national.

Other provisions laid down in the Residence Act for the family migration of family members to Germans merely refer to the regulations of the group of third country nationals. The regulation on the language requirement of spouses of third country nationals, for example, is to be applied
accordingly to the immigration of spouses to Germans. The Federal Administrative Court stated just recently that because of the term „accordingly“, the language requirement of spouses of third country nationals cannot be used as a framework of reference for cases, in which German nationals are affected. Moreover, since the constitution grants a German – unlike a foreigner – the fundamental right to reside in Germany, a constitutional application of the statutory rules for the language requirement should be exercised.

8.3 Data on Family Reunification and Integration

Family related migration has been a dominant legal mode of entry into Germany over the past decades. This displays a trend which can be traced back to the early 1970s, when the share of family members migrating to Germany started to increase significantly. Still today, most third country nationals are entering the country with a visa for the purpose of family migration.

However, data from visa statistics show that the numbers have declined steadily during the last ten years. Since 2002, the figures on granted visa for the purpose of family reunification have more than halved. The largest share in numbers accounts for the immigration of spouses. The largest group are foreign wives who either join their German or foreign husbands. An opposing trend is displayed regarding the number of reunifications with German and third country national spouses: While the share of spouses who joined their foreign husbands or wives in total family migration almost halved since 1998, the number of reunifications with German spouses rose during the same period and currently exceeds the number of reunifications with third country nationals in absolute terms. However, due to shortages in the empirical data, there is no further information available on the sponsors. This is especially the case with regard to the group of Union citizens, since family reunification with Union citizens is not registered in the statistics separately.

The lack of available data also shows itself with regard to the issue of integration. The question, whether there are any similarities or significant differences in the integration of family members of third country nationals, Germans and Union citizens cannot be answered for the case of Germany. Existing data only considers the group of third country nationals as a whole. Further insight on family members and potential differences in their integration with regard to different groups of sponsors is not available.
Annex I: Bibliography


http://auslaender-asyl.dav.de/auslaender.html [zit: DAV 2012]


### Table 1: Numbers of Visas and resident permits issued from 2001 to 2010

<table>
<thead>
<tr>
<th>Year</th>
<th>N° of residence permits for Family reasons issued</th>
<th>D Visas for Family reasons issued</th>
<th>D Visas in all applications</th>
<th>D Visas in all issued</th>
<th>D Visas in all rejected</th>
<th>D Visas in all rejected %</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>82,838</td>
<td>(-)</td>
<td>399,975</td>
<td>(-)</td>
<td>(-)</td>
<td>(-)</td>
</tr>
<tr>
<td>2002</td>
<td>85,305</td>
<td>(-)</td>
<td>394,543</td>
<td>(-)</td>
<td>(-)</td>
<td>(-)</td>
</tr>
<tr>
<td>2003</td>
<td>76,077</td>
<td>(-)</td>
<td>381,193</td>
<td>(-)</td>
<td>(-)</td>
<td>(-)</td>
</tr>
<tr>
<td>2004</td>
<td>65,935</td>
<td>(-)</td>
<td>269,188</td>
<td>(-)</td>
<td>(-)</td>
<td>(-)</td>
</tr>
<tr>
<td>2005</td>
<td>53,213</td>
<td>241,557</td>
<td>207,527</td>
<td>34,030</td>
<td>14,1%</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>56,302</td>
<td>50,300</td>
<td>202,663</td>
<td>169,884</td>
<td>32,779</td>
<td>16,2%</td>
</tr>
<tr>
<td>2007</td>
<td>55,194</td>
<td>42,219</td>
<td>169,058</td>
<td>136,138</td>
<td>32,920</td>
<td>19,5%</td>
</tr>
<tr>
<td>2008</td>
<td>51,244</td>
<td>39,717</td>
<td>168,682</td>
<td>138,638</td>
<td>30,044</td>
<td>17,8%</td>
</tr>
<tr>
<td>2009</td>
<td>48,235</td>
<td>42,756</td>
<td>168,220</td>
<td>139,640</td>
<td>28,580</td>
<td>17,0%</td>
</tr>
<tr>
<td>2010</td>
<td>54,865</td>
<td>40,210</td>
<td>168,747</td>
<td>142,749</td>
<td>25,998</td>
<td>15,4%</td>
</tr>
</tbody>
</table>

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72Source: Central Register of Foreigners; Taken from BAMF 2012: 86. Datas about issued residents permits from the Central Register of Foreigners are based on different Data-Sources than the Visa-Datas of the Department of Foreign Affairs and are not comparable (see also Chapter 6).

73Type D Visas are mostly based on a long-term perspective for residence, e.g. for purposes like employment, education and family reunification. In generally it can be said, that the developments of the number of Type D visas granted and the number of entries of third country nations to Germany are mostly running parallel (Parusel & Schneider 2012: 71).

74Source: Department of Foreign Affairs; Taken from the migration report 2010 (BMI & BAMF 2012: 113; fig. 2-24).

75Source: Department of Foreign Affairs; Taken from EMN Working Paper 40 (Parusel & Schneider 2012: 85).

76Source: Department of Foreign Affairs; Taken from EMN Working Paper 40 (Parusel & Schneider 2012: 85).

77Source: Department of Foreign Affairs; Taken from EMN Working Paper 40 (Parusel & Schneider 2012: 85).
Table 2: Important Policy Measures on Family Reunification

<table>
<thead>
<tr>
<th>Year</th>
<th>Law</th>
<th>Policy Type</th>
<th>Detail of Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>New Immigration Act (ZuwG)</td>
<td>Altogether</td>
<td>Overall more tolerant regulations (e.g. concerning the term family; access to the labour market)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Integration requirement</td>
<td>Integration requirement for all family members of TCN, Refugees and Germans after admission</td>
</tr>
</tbody>
</table>
|      |                                                                     | Age limit                         | • age limit for sponsors eliminated  
|      |                                                                     |                                   | • age limit of 16 for children was raised to 18 with additional requirements (language or good integration prospects, if children do not enter Germany together with their parents) |
|      |                                                                     | Independent right of residence     | The required duration of marriage in order to gain an independent right of residence was reduced from 4 to 2 years |
| 2007 | Act on the Implementation of EU Directives on residence and asylum issues (RLUmsG) | Integration requirement           | Integration requirement (A1 level language test) for spouses of TCN, refugees (in case of family formation) and Germans before admission |
|      |                                                                     | Residence rights                  | Rights of independent and permanent residence of Union citizens’ family members were extended |
|      |                                                                     | Income requirement                | Requirement of sufficient and stable income was extended to spouses of Germans (in exceptional cases) |
|      |                                                                     | Forced marriages                  | Exemption clause was introduced |
|      |                                                                     | Marriages of convenience           | Exemption clause was introduced |
|      |                                                                     | Age limit                         | Age limit for sponsors and spouses of 18 (TCN, refugees and Germans) |
| 2011 | Law for fighting forced marriages and providing better protection for the victims of forced marriages as well as for the amendment of other provisions according to right of residence and asylum | Independent right of residence     | The required duration of marriage in order to gain an independent right of residence was increased from 2 to 3 years |
Table 3: Interviews with Individuals

<table>
<thead>
<tr>
<th>N°</th>
<th>Interviewpartner: Nationality</th>
<th>Sponsor or family member</th>
<th>Nationality of Partner/child</th>
<th>Sponsor: Residence status</th>
<th>Category of family member</th>
<th>Sponsor: Gender</th>
<th>Family Member: Gender</th>
<th>Status of Family reunification</th>
<th>Family formation or reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>German</td>
<td>Sponsor/Mother of common child</td>
<td>Rwandese Citizenship</td>
<td>Mother of common child (and partner)</td>
<td>Female</td>
<td>Male</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Rwandese</td>
<td>Family member</td>
<td>German Citizenship (child)</td>
<td>Father of common child (and partner)</td>
<td>Child</td>
<td>Male</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>German</td>
<td>Sponsor</td>
<td>Egyptian Citizenship</td>
<td>Spouse</td>
<td>Female</td>
<td>Male</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>German</td>
<td>Family member</td>
<td>Kenyan Citizenship (child and spouse)</td>
<td>Mother of common child (and spouse)</td>
<td>Child</td>
<td>Male</td>
<td>Spouse: 3x refused Child: Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>German</td>
<td>Sponsor</td>
<td>Ghanaian Citizenship</td>
<td>Spouse</td>
<td>Male</td>
<td>Female</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Ghanaian</td>
<td>Family member</td>
<td>German Citizenship</td>
<td>Spouse</td>
<td>Male</td>
<td>Female</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>German</td>
<td>Sponsor</td>
<td>Philippine Citizenship</td>
<td>Spouse</td>
<td>Male</td>
<td>Female</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Philippine</td>
<td>Family member</td>
<td>German Dual Citizenship (child)</td>
<td>Mother</td>
<td>Child</td>
<td>Female</td>
<td>Granted</td>
<td>Reunification</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>German</td>
<td>Sponsor</td>
<td>Togolese Citizenship</td>
<td>Spouse</td>
<td>Female</td>
<td>Male</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Turkish</td>
<td>Family Member</td>
<td>German + Turkish Dual Citizenship</td>
<td>Spouse</td>
<td>Male</td>
<td>Female</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>German + Turkish</td>
<td>Sponsor</td>
<td>Turkish Citizenship</td>
<td>Spouse</td>
<td>Male</td>
<td>Female</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Turkish</td>
<td>Family Member</td>
<td>German + Turkish Citizenship</td>
<td>Spouse</td>
<td>Female</td>
<td>Male</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>German + Turkish</td>
<td>Sponsor</td>
<td>Turkish Dual Citizenship</td>
<td>Spouse</td>
<td>Female</td>
<td>Male</td>
<td>Granted</td>
<td>Formation</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Mexican</td>
<td>Family Member</td>
<td>French EU-Citizen</td>
<td>Spouse</td>
<td>Male</td>
<td>Female</td>
<td>Granted</td>
<td>Reunification</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>French</td>
<td>Sponsor</td>
<td>Mexican EU-Citizen</td>
<td>Spouse</td>
<td>Male</td>
<td>Female</td>
<td>Granted</td>
<td>Reunification</td>
<td></td>
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<tr>
<td>16</td>
<td>Philippine</td>
<td>Sponsor</td>
<td>Philippine Philippine</td>
<td>Child</td>
<td>Female</td>
<td>child</td>
<td>Refused</td>
<td>Reunification</td>
<td></td>
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<tr>
<td>17</td>
<td>Ghanaian</td>
<td>Sponsor</td>
<td>Ghanaian Temporary residence status</td>
<td>Brother</td>
<td>Female</td>
<td>Male</td>
<td>Refused</td>
<td>Reunification</td>
<td></td>
</tr>
</tbody>
</table>

7If the Interview took place with the sponsor, this refers to the nationality of the family member. If the interview took place with the family member, this refers to the sponsor.
### Table 4: Interviews with NGOs and Policy Makers

<table>
<thead>
<tr>
<th>N°</th>
<th>Type of Organisation</th>
<th>Function / Position</th>
<th>Target Groups</th>
<th>Interview Type</th>
<th>Years of Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>NGO: lobby organisation (family issues)</td>
<td>Advisor (family related issues, esp. family reunification)</td>
<td>Binational families</td>
<td>Focus group</td>
<td>12</td>
</tr>
<tr>
<td>19</td>
<td>Lawyer</td>
<td>Specialized in family and migration law</td>
<td>Esp. Turkish nationals</td>
<td>Focus group</td>
<td>10</td>
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<tr>
<td>20</td>
<td>NGO (Migrant organisation)</td>
<td>Chairman, support for Turkish nationals</td>
<td>Turkish nationals</td>
<td>Focus group</td>
<td>33</td>
</tr>
<tr>
<td>21</td>
<td>NGO: Provider of social services (Youth-, Social- and Educational issues)</td>
<td>Social advisor for migrants/ intercultural education</td>
<td>Migrants</td>
<td>Focus group</td>
<td>10</td>
</tr>
<tr>
<td>22</td>
<td>Federal ministry</td>
<td>Referent (i.a. family reunification issues)</td>
<td></td>
<td>Individual interview</td>
<td>2</td>
</tr>
<tr>
<td>23</td>
<td>Federal State authority</td>
<td>Deputy head of Department (aliens and nationality issues)/ trainings for foreigner services)</td>
<td></td>
<td>Individual interviews</td>
<td>14</td>
</tr>
<tr>
<td>24</td>
<td>Federal State authority</td>
<td>Head of Unit (newcomer issues)</td>
<td></td>
<td>Individual interviews</td>
<td>3</td>
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</tbody>
</table>
In the last decade, the conditions for the admission and residence of family members have experienced significant changes with the introduction of the new immigration Act and the transposition of EU legislation into national law. This is not only the case for Germany but also for other EU Member States. Under the title “Family Reunification – a barrier or facilitator of integration?”, a transnational research project was carried out on behalf of the European Commission, which investigates family reunification policies and their implementation in Austria, Germany, Ireland, the Netherlands, Portugal, and the United Kingdom. Based on interviews with family members, non-governmental organisations and policy makers, the respective country reports examine to what extent national legislation, policies and administrative practices affect family reunification, and whether the family reunification policies and practices contribute to the integration of family members. The results of the six country reports were published as part of a transnational comparative research report in early 2013. The current publication presents the evidence of the German country report.