REPORT
on the Free Movement of Workers in Germany in 2002-2003

Rapporteur: Prof. dr. Kay Hailbronner

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Abbreviations

AufenthaltG/EWG	Gesetz über Einreise und Aufenthalt von Staatsangehörigen der Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft / Federal Law on the Entry and Residence of Nationals of the EC Member States
AuslG	Ausländergesetz
Az	Aktenzeichen
Bafög	Bundesausbildungsförderungsgesetz
BayVBl	Bayerische Verwaltungsblätter
Banz	Bundesanzeiger
BFHE	Sammlung der Entscheidungen und Gutachten des Bundesfinanzhofs / Decisions of the Federal Tax Court
BGBl.	Bundesgesetzblatt / Federal Law Gazette
BKGG	Bundeskindergeldgesetz / Federal Law on Allowances in respect of Dependent Children
BR-Drs.	Drucksachen des Bundesrates / Gazette of the Federal Council
BRRG	Beamtenrechtsrahmengesetz
BSG	Bundessozialgericht / Federal Social Court
BT-Drs.	Drucksachen des Deutschen Bundestages / Gazette of the Federal Parliamentary Assembly
BVerwG	Bundesverwaltungsgericht /
BVerwGE	Collection of decisions of the Bundesverwaltungsgericht
DAR	Deutsches Autorecht
DVBl	Deutsches Verwaltungsblatt
DÖV	Die Öffentliche Verwaltung
ECJ	European Court of Justice
EFG	Entscheidungen der Finanzgerichte / Decisions of the Tax Courts
EURAG	Europäisches Rechtsanwaltsgesetz
EuroAS	Europäisches Arbeits- und Sozialrecht
EZAR	Entscheidungssammlung zum Ausländer- und Asylrecht
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
EuGRZ	Europäische Grundrechte-Zeitschrift
GBl	Gesetzblatt
GVBl	Gesetz- und Verordnungsblatt
HRG	Hochschulrechtsrahmengesetz
InfAuslR	Informationsbrief Ausländerrecht
MRRG	Melderechtsrahmengesetz
NJW	Neue Juristische Wochenschrift
NVwZ	Neue Zeitschrift für Verwaltungsrecht
NVwZ-RR	Neue Zeitschrift für Verwaltungsrecht, Rechtsprechungs-Report
OVG	Oberverwaltungsgericht
SGB	Sozialgesetzbuch / Code of Social Law
VBlBW	Verwaltungsblätter für Baden-Württemberg
ZAR	Zeitschrift für Ausländerrecht und Ausländerpolitik
ZIAS	Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht

General Remarks

In general, the information on decisions of the European Court and EC legislative acts relating to freedom of movement are communicated to the administrative authorities by way of administrative circulars of the competent ministries of the *Länder*. Frequently, the Federal Ministry of Interior will inform by a circular letter to the ministries of interior of the *Länder*, which in turn will either pass this information on to the competent administrative authorities (towns, districts etc.) or will enact administrative circulars binding for the authorities. The Federal Ministry will also inform about complaints of the European Commission and as a rule communicate its own view in relation to the practice and law of the *Länder*.[1]

On June 2002, by the Act on the General Freedom of Movement for EU citizens (Freedom of Movement Act/EU) has been enacted as part of the Immigration Act (Zuwanderungsgesetz) of 20 June 2002.[2] According to Sec. 1 para. 2 of the Immigration Act, the Act shall not apply to foreigners whose legal status is regulated by the Freedom of Movement Act/EU in the absence of specific legal provisions to the contrary. The Freedom of Movement Act replaces completely the AufenthG/EWG[3] as well as the Freizügigkeitsverordnung of 17 July 1997.[4] The Immigration Act has by decision of the Constitutional Court of 18.12.2002 been declared as unconstitutional on formal reasons (consent of the Federal Chamber (Bundesrat)). The AufenthG/ EWG therefore presently is still applicable until Parliament has passed a new law on freedom of movement on EU citizens along the lines of the Freedom of Movement Act/EU.

On July 30, 2004, following a lengthy procedure by a conciliation commission consisting of representatives of the Bundestag and of the Bundesrat (Second Chamber) and various special meetings of representatives of the major political parties, a compromise has finally been achieved by removing some of the most controversial instruments of the original immigration law like admission on the basis of a point system. The new Immigration Act in Art. 2 contains the Freedom of Movement Act of 1992 in an almost unchanged versions (for details and an English translation see the report 2004; for a previous English version of the Act of 1992 see Annex to report 2001). Details of the Immigration and Freedom of Movement Act of 2004 will be dealt with in the report 2004.

Concerning the freedom of movement for new EU citizens a law has been enacted as to the effects of EU enlargement.[5] A summary of the content of this law is given in this

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1 See for instance circular letter of the Federal Ministry of Interior of 20 June 2002 to the Länder Ministries, confirming the view of the European Commission, JAI/A 5/AM D (2002), 2568 on the lawfulness of an interdiction of entry in relation to EU citizens, which extends beyond the federal territory.

2 BGBl I, p. 1946.

3 Gesetz über Einreise und Aufenthalt von Staatsangehörigen der Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft of 22.7.1969, in the published version of 31.1.1986 (BGBl I, p. 116), amended recently by Art. 1 of the law of 27.12.2000, BGBl I, p. 2042; see *Hailbronner*, Ausländerrecht, vol. IV, at p. 1.

4 Verordnung über die Allgemeine Freizügigkeit von Staatsangehörigen der Mitgliedstaaten der Europäischen Union of 17.7.1997, BGBl I, p. 1810, amended by law of 19.3.2001, BGBl I, p. 390; see Hailbronner, *Ausländerrecht*, vol. IV, D 1.1.

5 Gesetz über den Arbeitsmarktzugang im Rahmen der EU-Erweiterung vom 24.4.2004, BGBl I, No 18, p. 602.

report while details on particular issues will be dealt with in the report 2004. One of the changes of the Freedom of Movement Act refers to the aliens of the new EU Member States. Even if they do not yet fall within the scope of application of the freedom of movement provisions, they will be treated under the new Act on Freedom of Movement equal to EU citizens if they have been admitted for labour under Sec. 284 para. 1 of the Social Code, vol. III.

Chapter I
Entry, Residence, Departure

A. Entry

Sanctions in case of non-fulfilment of visa obligations

According to Sec. 2 para 2 AufenthaltG/EWG[6] third country family members of a Union citizen need a visa.[7] The visa requirement for third country nationals of countries subject to a visa obligation may result in rejection at the border or expulsion if the necessary visa is lacking. Dienelt[8] deals with sanctions under German law in case of lack of a necessary visa. He argues that the German practice, whereby third country nationals may rely upon the freedom of movement only if they have complied with the immigration regulations[9] is not in accordance with EC law since under the Directive 68/360 and the jurisprudence of the European Court a right of entry and residence could be deduced directly from EC law, regardless of whether entry had been in accordance with visa requirements under national law. The right of entry and residence in his view could only be made dependent upon the submission of documents laid down in Art. 4 para. 3 of the Directive 68/360, which does not mention visa requirements. The right of residence, which could be derived directly from the EC Treaty, therefore, could not be made dependent upon formal requirements such as the need to have a prior visa before entry. Therefore, the German authorities were not entitled to refuse entry or a residence permit on the mere reason of a violation of immigration regulations according to Sec. 8 para. 1 of the Aliens Act 1990. This view has now been confirmed by the European Court in the judgment of July 25, 2002 in the case *Mouvement contre le racisme, l'antisémitisme e la xénophobie ASBL/Belgium*.[10]

The Freedom of Movement Act/EU of 20 June 2002 maintains the requirement that third country family members shall require a visa in order to enter the federal territory if a legal provision stipulates such a requirement.[11] Under Sec. 5 of the new Residence Act of 2002, however, fulfilment of visa requirements as a condition for obtaining a residence title may by waived if the prerequisites qualifying a foreigner for the granting of a residence title are met. This provision will enable to allow the issuance of residence titles regardless of the fulfilment of visa requirements if third country nationals can prove entitlement to freedom of movement under EC law. It is doubtful, however, whether third country nationals, relying upon freedom of movement as dependents of a Union citizen may be rejected at the border if they are not in possession of a necessary visa. According to the recent judgment of the European Court of 25.7.2002 in the case C-459/99, Sec. 15 of the Residence Act on refusal of entry may not be applicable in case of third country nationals proving their entitlement to freedom of movement.

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6 This provision has not been changed by the Freedom of Movement Act/EU of 2002.
7 See also Regulation No. 539/2001 of 15.3.2001.
8 Dienelt is judge at the Administrative Court of Darmstadt, see InfAuslR 2002, 113.
9 See Administrative Appeal of North-Rhine-Westphalia of 17.1.1996, EC-R 017, No. 10.
10 Case C-459/99.
11 Sec. 2 para. 4.

A Union citizen having quit employment for health and economic reasons is entitled to freedom of movement as a retired person even if he has become dependent upon additional social assistance.[12] The Administrative Court of Freiburg has argued that a 65-year old Italian national is entitled to a residence permit even he/she does not fulfil criteria under the Regulation No 1251/70 of 29 June 1970.[13] The plaintiff, in the Court' s view, is entitled to a EU residence permit as a former self-employed person under Sec. 6a para. 2, para. 7 Aufenth/EWG implementing the Directive 75/34 of 17 December 1974.[14] The German provisions had to be interpreted in conformity with this Directive. Since under the Directive times of self-employed activity are considered equal to employment the basic condition that the plaintiff had reached the retirement age of 65 at the time of giving up his economic activities after having been self-employed for at least 12 months is fulfilled. Dependence upon social assistance did not justify the refusal of a EU residence permit based upon the Aliens Act (Sec. 7 para. 2) since the Aliens Act had to be interpreted in conformity with EC law and respective Directives.

The question whether a third-country national, working for a Dutch transportation enterprise as driver, transporting goods from Germany to Austria, is exempt from a visa requirement, has been decided by the Bavarian Civil Appeal Court.[15] The Court does reject the argument of a violation of the freedom to provide services since the driver employed, although working for a Dutch transportation enterprise, had never been living in The Netherlands, nor exercised any activity as driver. He had also not been in possession of a Dutch labour permit. Only if he had been economically active in The Netherlands on the basis of a work permit or if he had been allowed to work in The Netherlands without a work permit, the applicability of visa requirements would be doubtful in a Community law perspective.

The Administrative Appeal Court of Hamburg in a decision of 29 September 2003[16] in application of the principles of the European Court's judgment in the MRAX case[17] has decided that the application of an illegally entered spouse of a Union citizen to a residence permit, being a national of a third country, has suspensive effect in spite of a previous deportation, if the conditions for family reunion under Community law are met. The applicant, a national from Togo, had been deported from Germany in 2000 and later married a Spanish national in Lomé. In 2003 he followed his wife to Germany without applying for a visa. According to German law the previous deportation excluded the issuance of a residence permit.

The Hamburg Court held that under Community law, in particular Art. 10 of the Regulation No 1612/68, the entry of a third-country national entitled to free movement as a spouse of a Union citizen could not be considered as illegal and therefore the relevant provisions of German law excluding the issuance of a residence permit are not applicable. Therefore, the provisions of the German law exclude the issuance of a residence permit for deported aliens could not be held applicable in case of a third-country na-

12 Administrative Court of Freiburg of 24 June 2003, InfAuslR 2003, 367.
13 Official Journal L 142, p. 24.
14 Official Journal L 14, p. 10.
15 Bayerisches Oberstes Landesgericht of 20 June 2002, BayVwBl 2003, p. 475.
16 InfAuslR 2004, 57.
17 ECJ of July 25, 2002, case C-459/99; Mrax/État Belge.

tional spouse of a Union citizen entitled to freedom of movement. A previous criminal prosecution for illegal entry and residence in Germany in the Court's view does not constitute a sufficient danger for the public order justifying a restriction of freedom of movement. The Court notes, however, that this decision cannot be equally held applicable in case of an expulsion which, according to German law, prohibits indefinitely or for a limited period of time the issuance of a residence permit. Therefore, the jurisprudence of the Federal Administrative Court, whereby these provisions are in principle also applicable to Union citizens,[18] is not challenged by the Court of Appeal.

B. Residence

The alien authorities of Rhineland-Palatinate in July 2002 had to deal with a case of an EU citizen applying for an unlimited residence permit according to Sec. 24 of the Aliens Act 1990. Under the Aliens Act it is necessary that the alien has been for five years without interruption in possession of a residence permit. There is a dispute on the question whether the interruption of lawfulness of residence in the case of EU citizens justifies a refusal of an unlimited residence permit.[19] According to the information of the Ministry of Interior it has to be taken into account that in case of EU citizens a residence in Germany without the required EC residence permit since the entry into force of the 5th amendment to the AufenthG/EWG does not constitute anymore a violation of administrative regulations and can therefore be ignored. The alien authorities, however, have argued that under the federal administrative circulars a period of interruption of four months and two weeks cannot be considered as a minor interruption. Therefore, the requirements of an unlimited residence permit are not fulfilled.

The Administrative Court of Freiburg has decided that even a minor occupation of 9 hours a week qualifies as employment in the sense of Art. 39 EC. An Italian national working for 630.-DM in 2000 for a department store is entitled to freedom of movement as worker irrespective of additional social assistance.[20]

The question whether a Union citizen is entitled to an unlimited residence permit has been raised in a petition proceeding to the Rhineland-Palatinate ombudsman in 2001/2002. The aliens authorities of Rhineland-Palatinate have informed the ombudsman that a Union citizen married to a German national is not entitled to an unlimited residence permit according to Sec. 7a para. 1 AufenthG/EWG, unless he/ she is entitled to freedom of movement as a worker or self-employed person. A person maintained by a German national can only obtain an unlimited residence permit according to Sec. 25 para. 3 of the Aliens Act of 1990 after five years of a regular permanent lawful residence. Whether the five years period is interrupted by a stay abroad is determined by Sec. 97 of the Aliens Act. The competent authorities have taken the view that the absence from Germany for 4 months and 2 weeks must be considered as an interruption thereby ex-

18 Federal Administrative Court of 1 December 1999, vol. 110, 140.
19 Under Sec. 24 there is a requirement that the alien is in possession of an uninterrupted residence permit for five years.
20 Judgment of 24 June 2003, InfAuslR 2003, 365.

cluding the issuance of an unlimited residence permit. Whether this interpretation is correct is controversial.

The Federal Constitutional Court by a decision of 20 March 2001[21] has not admitted a constitutional complaint against various decisions of administrative courts of Rhineland-Palatinate concerning the refusal to issue a residence permit to a Greek national serving a prison sentence of 2 years and 7 months. The complainant had been refused a residence permit as Union citizen since Sec. 1 of the AufenthG/ EWG did not apply to him in the absence of any economic activities. In addition, the complainant could not rely upon freedom of movement as a Union citizen according to the Freizügigkeitsverordnung/EG of 7 July 1997,[22] implementing the directives for non-economically active Union citizens of 1990/1993 since in the absence of any permission to trade and after the refusal of all commercial licences there would be no indication whatsoever for fulfilment of the requirements under EG-law, particularly the requirement to pay for his living expenses.

C. Departure

By circular letter of 8 May 2002 the Federal Ministry of Interior informs the ministries of interior of the Länder on a decision of the European Court of 20 November 2001 in the case of *Jany*.[23] The Federal Ministry interprets the court's decision in the following way. The question whether a certain activity is violating public morals or is for other reasons unwanted is irrelevant in interpreting public order restrictions. The only relevant criteria is whether a certain activity is violating penal laws or administrative provisions. Therefore, it is not admissible any more to refuse prostitutes' entry or residence for the mere reference to violation of public morals. The same applies to Union citizens. The Federal Ministry also refers to the law on regulating the legal status of prostitutes,[24] which entered into force on 1 January 2002. According to Art. 1 of the law, agreements with prostitutes are valid in law. In addition, according to Art. 2 of the law, penal laws have been amended declaring that prostitution as such is not violating the law anymore, provided that certain conditions concerning sanitary precautions and standards of accommodation are fulfilled.

The expulsion of EU citizens born or raised in Germany has again been a matter of controversial discussion. In a case of a Spanish citizen with a criminal conviction of four years as a juvenile delinquent due to serious crimes including inter alia armed robbery, the city of Speyer has justified expulsion with the concrete danger of future serious crimes. The Ministry of Interior replying to a complaint by the parents of the Spanish citizen has argued that expulsion of EU citizens even if they have been born in Germany can be justified under EC law if the requirements derived from the jurisprudence of the European Court of Justice are met.

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21 2 BVR 444/01.
22 BGBl I, p. 1810.
23 Case C-268/99.
24 Prostitutionsgesetz of 20.12.2001, BGBl 2001 I, p. 3983.

Football hooligans – restrictions of travel

The Administrative Appeal Court of Baden-Württemberg in a decision of 14 June 2002[25] has confirmed the legality of decisions to restrict the departure of German nationals who were recorded by the police in connection with disturbing international football events. The Court has argued that the protection of the international reputation of the Federal Republic of Germany must be considered as a substantial public interest justifying a restriction of freedom of movement. One could argue that the concept of public order cannot be interpreted exclusively on the basis of national interests any more and that the prevention of serious threats to the public order in other EU Member States must be considered as a sufficient public interest justifying a restriction of the freedom of movement of Union citizens regardless of the Federal Republic's reputation.[26]

In the highly controversial debate on the compatibility of the German provisions on expulsion with EC law the Administrative Court of Berlin has taken position by arguing that the expulsion of a Union citizen must not be based upon Sec. 47 para. 1 of the Aliens Law which provides for an obligatory expulsion in case of very serious criminal offences. An additional question arises whether Art. 4 para. 3 of the Directive 64/221 providing for a stand-still clause and Art. 9 para. 1 of the same directive providing for procedural guaranties in case of a legal remedy are met by the provision of the German Aliens Act on expulsion.

The plaintiff, a Greek national, had been expelled based upon Sec. 47 para. 2 No 1 of the Aliens Act, which provides for an obligatory expulsion in case of serious criminal offences. The plaintiff had been repeatedly punished for drug offences and for other serious crimes with a prison sentence of 4 years. The Administrative Court argues that Sec. 47 para. 1 No 1 does not sufficiently take into account that according to Community law an expulsion decision can only be justified on the basis of an individual assessment of all circumstances of a case justifying the conclusion of an actual and concrete danger for the public order. The issue is heavily controversial among German administrative courts. Some administrative courts take the view that Sec. 47 para. 1 is applicable to Union citizens, if the requirements of Community law as established by the European Court of Justice are properly taken into account.[27] The Administrative Appeal Court of Baden-Württemberg has argued that Community law does not provide for a legal basis for expulsions. Community law had only provided for certain additional requirements relating to a – national law-based – expulsion of Union citizens. In the absence of a legal basis for expulsions in Community law, the provisions of Sec. 45-48 of the Aliens Act were applicable for all categories of aliens as general norms properly adopted according to German national law. Therefore, facts justifying an expulsion under German national law had to be examined first according to German national law, regardless of an alien's nationality. In a second step, expulsions of Union citizens and other privileged third-

25 1 S 1271/00, VBlBW 2000, p. 474.

26 See also Grasshoff, in: Bergmann/Kenntner (eds), *Deutsches Verwaltungsrecht unter Europäischem Einfluss*, 2002, at p. 312.

27 Administrative Appeal Court of Hesse of 3 March 2002, InfAuslR 2002, 342.

country nationals (Turkish nationals privileged under the EC Association Agreement with Turkey) would have to fulfil certain additional criteria under Community law.[28]

In the German literature, there are different views as to the compatibility of the German Aliens Act with Community law. It is frequently argued that the application of Sec. 46, 47 would inevitably lead in practice to a presumption of a danger for the public order.[29] In addition, it is argued that the two-step theory is not in accordance with the jurisprudence of the European Court in the Nazli-Decision.[30] Others argue, that a modified application of Sec. 47, taking into account all the requirements for expulsion of Union citizens were in accordance with Community law, since frequently national law had to be interpreted in conformity with Community law. Therefore, Sec. 47 did not constitute a particular case of incompatibility with Community law.[31] The issues may well become obsolete if the Act on the general freedom of movement for EU citizens (Freedom of Movement Act/EU) of 20 June 2002, which is part of the "Zuwanderungsgesetz", has been passed again, after the Constitutional Court has blocked the entry into force of the Zuwanderungsgesetz for formal constitutional reasons.[32] The new law, if adopted, will contain a special provision concerning the loss of the entitlement to entry and residence and revocation of the EU residence permit on grounds of public order, safety or health. Sec. 6 para. 2 states that a criminal conviction alone shall not constitute sufficient ground for the decisions or measures specified in sub-section 1. Only criminal convictions, which have yet to be deleted from the Federal Central Criminal Register may be taken into consideration, and these only insofar, as the circumstances pertaining to the said convictions indicate personal behaviour which constitutes a current threat to public order. A real and sufficiently concrete danger must exist which affects the fundamental interests of society.

Relating to the immediate deportation of a Greek national who has been convicted for serious drug offences, the Administrative Appeal Court of Munich[33] has stated that in principle the German law providing for the possibility of immediate execution of an expulsion decision is applicable to Union citizens; the Court, however, considers that an immediate execution of an expulsion decision may be incompatible with Art. 9 Sec. 1 of the Directive 64/221 providing that administrative authorities except in urgent cases are allowed to decide upon the refusal of a residence permit or the removal of a person entitled to freedom of movement only after having received an opinion of a competent authority providing for minimum procedural guarantees like the right of fair hearing and to be represented by counsel.

The Federal Ministry of Interior by a circular letter of 20 June 2002 to all ministries of interior of the Länder has reacted to a letter of European Commission of 7 May 2002 concerning the expulsion of British nationals. The Commission has complained that the

28 Administrative Appeal Court of Baden-Württemberg, Decision of 17 April 2002, InfAuslR 2002, 375, 380.
29 Beichel, Das deutsche Ausweisungsrecht auf dem Prüfstand, InfAuslR 2002, 457, 458; similarly Gutmann, InfAuslR 2001, 420.
30 InfAuslR 2002, 161.
31 Hailbronner, *Ausländerrecht*, Sec. 47, No. 2a.
32 Decision of the Federal Constitutional Court, Vol. 106, 310.
33 Decision of 21 February 2002, NvWZ 2002, 1268.

interdiction of certain British nationals (Jones, Buckley and Jenkins) was not limited to German territory but did apply to the territory of all signatory states of the Schengen Agreement. The Federal Ministry of Interior in its circular letter shares the view of the European Commission whereby Art. 96 of the Schengen Implementation Agreement does apply only to third-country nationals. It follows that according to Art. 96 of the Schengen Implementation Agreement Union citizens cannot be put on the list of foreigners whose entry is refused. Therefore the Foreign Ministry requests the Länder to limit expulsion orders affecting Union citizens to German territory.

Referring to a previous decision the Administrative Court of Stuttgart[34] asks the European Court for a preliminary ruling on the question whether Art. 9 of the Directive 64/221 is incompatible with a national provision excluding an internal administrative complaint procedure covering legality as well as adequacy of a decision in case of administrative orders terminating the residence of an alien.[35] The Administrative Appeal Court of Baden-Württemberg has argued in a decision of 6 December 2002[36] that interim protection has to be given in an expulsion procedure because of the doubtfulness of the issue. Arguing with the fact that the Commission in the before-mentioned procedure has taken the same view, the Administrative Appeal Court concludes that if one would follow the opinion of the Commission, the expulsion must be considered as unlawful. For that reason, interim protection has to be granted. The decision is remarkable in so far as the Administrative Appeal Court has relied heavily upon the opinion of the European Commission in judicial proceedings on interim protection. According to German law the granting of interim protection requires a balance of interests in which the legal assessment plays a substantial role. Although the Administrative Appeal Court took a different view than the Commission in the question of compatibility of the German law with Community law, it has attributed the view of the Commission considerable relevance in the proceedings.

The Administrative Appeal Court of Baden-Württemberg in its judgment of 28 November 2002 confirms it previous jurisprudence whereby the expulsion of Union citizens based upon Sec. 47 of the Aliens Act does not violate Community law. Against its decision it has admitted a legal remedy to the Federal Administrative Court. The admission of a legal remedy is based upon an argument relating to the right to ask for a preliminary ruling of the European Court of Justice. The Court states that there is not obligation to ask for a preliminary ruling under Art. 234 EC. However, the Court states that in such cases as a rule legal remedies by way of the Administrative Court Procedure Act[37] will have to be accepted in order to enable the exhaustion of local remedies. This procedure guarantees in the view of the Court that the European Court of Justice is able to decide on the basis of an extensively researched and systematic examination of all aspects of the case at the appeal instance which will increase the quality of its decision.

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34 6 K 1307/01.

35 See Sec. 68 para. 1 sent. 2 of the Administrative Court Procedure Act in connection with Sec. 6 lit. a AG VwGO (implementing law to the Administrative Court procedure Act).

36 13 S 1862/02, NVwZ-Beilage I, 6/2003, p. 45.

37 Remedies have to be admitted; a ground of admission is fundamental importance of the case according to Sec. 132 para. 2 of the Administrative Procedure Act.

The question whether the particular protection for aliens having been brought up or born in Germany and other privileged aliens according to Sec. 48 para. 1 sent. 1 of the Aliens Act is inferior to the protection granted under Art. 39 para. 3 EC for Union citizens is discussed by the Administrative Appeal Court in a decision of 10 September 2003.[38] The question arose in an expulsion decision against a Turkish national arguing that he is entitled to a higher degree of protection under Art. 39 EC in combination with Art. 14 para. 1 of the Association Council Decision 1/80. The Court refuses to follow this reasoning. Both provisions would require a violation of interests of substantial intensity and a balancing of individual and public interest. The requirement of Sec. 48 para. 1 that the reason for expulsion must be of particular weight is in the Court's view basically identical to the concrete danger for a compelling public interest, necessary under Community law.

The Federal Civil Court has decided that the deportation of a Greek national to Greece may give rise to a claim for damages based upon state responsibility if the administrative court, deciding upon the deportation order did not properly examine the legal remedy filed against the order.[39] The Greek national in case had been self-employed since 1991 in Germany. By order of 1997, the administrative authorities had issued a deportation order based upon the fact that the plaintiff had given up in 1996 his economic activities in running a restaurant and had applied for social assistance. He had been deported in March 1998 to Greece. In the legal proceedings preceding the actual deportation the plaintiff's lawyer had submitted evidence on the status of the plaintiff as EU citizen and recent income flowing from a new economic activity terminating his dependence upon social assistance. The Court came to the conclusion that under these circumstances the administrative authorities were obliged to take back the deportation order of March 1997 and grant a EC residence permit. Before the Administrative Court the parties agreed on the right to return to Germany and a partial abolition of the deportation order. He subsequently claimed damages before the civil courts. His claim was partly rejected concerning restitution of costs for lawyer fees in the administrative court proceedings. In these proceedings he had agreed to cover his lawyer's fees. The Federal Civil Court has decided that his does not exclude further claims based upon the German law on state responsibility.

38 11 S 973/03.
39 Federal Civil Court of 12 December 2002, InfAuslR 2003, 129.

Chapter II
Equality of Treatment

In a publication of the Center for European Legal Policy, Bremen,[40] Ailine Wolff-Pfisterer deals with the question whether language requirements must be considered as a barrier for freedom of movement within the EU. Various parts of the publication deal with language requirements in Germany in the context of the access of EU citizens to the medical profession under the Bundesärzteordnung,[41] other medical profession like nurses,[42] and lawyers.[43] The author describes extensively the jurisprudence of the European Court and concludes that the German system, whereby a concession to practice as a doctor may be limited to clients of a specified country of origin is doubtful with respect to EC law.[44]

An Austrian national living for some time in Germany with an unlimited residence permit in a self-employed position as insurance agent has complained against his registration in the central registry for aliens. According to the law on the aliens central registry,[45] the registry contains certain data of all foreigners including Union citizens. With respect to the plaintiff, the registry had registered name, first name, birth date, sex, nationality, first date of entry into Germany and present residence status (residence permit EC). The plaintiff has applied for a removal of his data from the registry since a storage of data of Union citizens would constitute an unlawful infringement of freedom of movement. The Administrative Court of Cologne[46] accepted his claim and ordered the administrative authorities to extinguish all data in the aliens registry. The Court relying on various decision of the European Court of Justice (somewhat mistakenly) states that the plaintiff was entitled to rely upon Art. 50 (freedom to provide services) as self-employed insurance agent. The registration of his personal data in the central registry would constitute unlawful discrimination since German nationals are only registered in the local town registries while Union citizens were registered in the central registry for aliens. Union citizens were submitted to a stricter supervision than German nationals, which might have repercussions also for professional activities of Union citizens. A discrimination could not be considered as irrelevant for leading only to minor interferences (relying upon the European Court's decision in the Boussac-Case No 22/80, Rec. 1980, p. 3427, 2437). The Administrative Court at length argues that the personal data of Union citizens stored in the central aliens registry could also be delivered to other authorities and international agencies. The aliens concerned, in addition, were not properly informed about the registration of their personal data.

The Court does not see any justification for the different treatment of Union citizens and German nationals. The different residence status could not be considered as a legiti-

40 Sprache als Freizügigkeitshindernis in der EG. Sprachliche Anforderungen an ausländische EG-Bürger im Rahmen der Anerkennung von Befähigungsnachweisen für den Berufszugang und Berufsausübung, ERP-Diskussionspapier 3/2002.
41 At. p. 11 ff.
42 At. p. 16.
43 At. p. 16 ff.
44 Cf. at p. 40.
45 Ausländerzentralregistergesetz of 2 September 1994, BGBl I, p. 2265.
46 Decision of 19 December 2002, InfAuslR 2003, 266.

mate reason since restrictive measures admissible only under very limited conditions against Union citizens could be taken without registering the personal data of Union citizens. The storage of personal data of Union citizens also had to be considered as unproportional since neither considerations of public order nor considerations of collection of statistical data of Union citizens required a comprehensive collection of personal data of Union citizens. A legitimate concern to collect data of Union citizens in order to have sufficient information upon entry, residence and departure of Union citizens could be achieved by exploiting the data of local registries in which all persons irrespective of their nationality were registered. The difficulty to coordinate such registries could not justify the maintenance of a central registry.

In addition, the Court argues that the storage of personal data in the central aliens registry would violate the Directive 95/46 of 24 October 1995. The provisions of Art. 6 and 7 of the Directive had to be considered as self-executing upon the termination of the time limit for implementation. The inclusion of Union citizens into the aliens central registry had to be considered as a violation of the principles of proportionality and good faith laid down in the data protection directive.

Against the decision of the Administrative Council the federal government has filed an appeal with the Administrative Appeal Court of Münster. The Administrative Appeal Court has not yet decided on the appeal.

In an article on the developments of European Community Law,[47] Schoch deals with the participation of Union citizens at the internal legal system. Since the Basic Law distinguishes in the exercise of some fundamental rights between German and aliens, the question arises how equal treatment between Germans and Union citizens can be established. There are different techniques used in the literature to establish equal treatment concerning the freedom of profession and other fundamental rights which have been reserved by the Basic Law to Germans. Generally, Art. 2 para. 1 providing for a right to self-fulfilment of all persons irrespective of nationality is used as a general clause to embrace other fundamental freedoms.[48]

Schoch, however, rightly points to the somewhat more difficult problem of the limited capacity of juridical persons established in other EU Member States to rely upon fundamental rights. According to Art. 19 para. 3 of the Basic Law fundamental rights are only applicable for German juridical persons as far as they are applicable by their nature excluding foreign juridical persons.[49] Schoch convincingly argues that this provision is hardly compatible with Community Law. Therefore, the Basic Law has to be interpreted in accordance with Art. 12 para. 1 of the EC Treaty by including juridical persons from other EU Member States.

The Administrative Court of Stuttgart in a judgment of 9 October 2003[50] discusses the question of reverse discrimination of a state's own nationals. A German national had requested the recognition of equivalence of his school certificate acquired in the United

47 Schoch, Impulse des Europäischen Gemeinschaftsrechts, VwBlBW 2003, 297.

48 Vgl. Bauer/Kahl, Europäische Unionsbürger als Träger von deutschen Grundrechten?, JZ 1995, 1077; Bauer, Zur Aufnahme einer Unionsbürgerklausel in das Grundgesetz, in: *Festschrift für Maurer*, 2001, 13 ff.

49 See Schoch, Grundrechtsfähigkeit juristischer Personen, Jura 2001, 201 ff.

50 AZ 4 K 4733/01, InfAuslR 2004, 99.

Kingdom. He applied for admission to a Germany university on the basis of his school certificate. The authorities informed the applicant that equivalence of the school certificate could not be granted since one of the requirements for equivalence had not been fulfilled since the examination in German had taken place in his mother tongue, while his stay in the United Kingdom and attendance of an English school could not replace a separate examination in English. The Administrative Court convincingly quashed this decision by arguing that in the present case Community law were applicable. Under Art. 12 EC the applicant, having used his freedom of movement, could not be discriminated against.[51] The Court rightly states that the applicant is basically in the same situation as his English colleague who would apply on the basis of a identical school certificate in Germany for admission to university. Therefore, Sec. 85 para. 5, sentence 4 of the University Law of Baden-Württemberg[52] cannot be interpreted anymore as justifying a discrimination of German nationals having acquired a school certificate in a EU country. The Court points out that while the question of recognition of school certificates entitling for university admission is not regulated in itself by Community law, but by the Convention of 3 March 1955,[53] Community law on freedom of movement is nevertheless applicable in cases in which an application of the Convention results in unequal treatment in the sense of Art. 12 EC.

In 2003/2004 some Länder have changed their laws concerning the implementation of the Directive 89/48 of December 21, 1988 on recognition of diplomas for teachers. In Baden-Württemberg a regulation concerning teachers from the EU-EEA states[54] has been changed to accommodate the regulation to the ECJ's jurisprudence. In general, provisions have been added to make clear that in case of a different content of a professional formation remaining gaps can be compensated by professional experience. In Baden-Württemberg the regulation provides that if the professional experience cannot be considered as sufficient to make up for the difference in professional knowledge, the applicant may be required to pass a training course or an examination. Concerning the necessary requirements of German language knowledge, Baden-Württemberg requires the special certificate of the Goethe-Institut (Großes deutsches Sprachdiplom) or a certificate required as equivalent and the participation at a special colloquium as determined by the ministry. Similar provisions have been enacted in other states.[55]

To implement the Directive 2001/19 of May 14, 2001 amending the Directive 89/48 und 92/51 the Bundestag has enacted the law on amending the law on the activities of practising European lawyers in Germany.[56] One of the major changes concerns the ques-

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51 The Court refers to the decision of the European Court in D'Hoop of 1 July 2002, C-224/98, EuZW 2002, 635.

52 As amended by law of 11 December 2002, GBl S. 471.

53 BGBl II, 599.

54 See Verordnung des Kultusministeriums Baden-Württember zur Änderung der EU-EWR-Lehrerverordnung vom 8.9.2003.

55 See for example Saarländische Verordnung zur Änderung der Verordnung zur Umsetzung der Richtlinien des Rates vom 21.12.1988 für den Beruf des Lehrers vom 15.4.2004, Amtsblatt Saarland of 29.4.2004, 945; cf. also Amtsblatt of 27.7.1993, p. 763.

56 Gesetz zur Änderung des Gesetzes über die Tätigkeit europäischer Rechtsanwälte in Deutschland und weitere berufsrechtliche Vorschriften für Rechts- und Patentanwälte, Steuerberater und Wirtschaftsprüfer of 26.10.2003, BGBl I, p. 2074.

tion of professional formation passed outside an EU or EEA Member State. If an applicant has not passed a professional formation inside the EU or EEA, he/she may be admitted to an examination for proving the capability requirements under the Directive if he/she did in fact exercise the profession of a practising lawyer in the EU/EEA for at least three years and is able to provide a certificate of this state to that effect.[57] In addition, the regulation on the procedure for the examination of the capability of an applicant is changed accordingly.[58] Similar provisions have been passed for patent attorneys, tax lawyers, tax consultants and controllers (Wirtschaftsprüfer).

57 See Section 16 para. 2.

58 See Verordnung über die Eignungsprüfung über die Zulassung zur Rechtsanwaltschaft vom 18.12.1990, BGBl I, p. 2881; changed by law of March 9, 2000, BGBl I, p. 182.

Chapter III
Employment in the Public Sector

The Bavarian Minister of Justice has criticised the European Commission on its statement on freedom of establishment of public notaries. The Minister argued that the services provided by public notaries are not within the scope of application of freedom of establishment and freedom to provide services, since it is connected inseparably with the exercise of public authority. The Minister, thereby, has reacted to a communication of the European Commission announcing the preparation of an infringement proceeding of the Commission against Germany and several other Member States. Contrary to the Commission's view the Bavarian government argues that due to the special powers exercised by public notaries, Art. 45 EC, excluding such activities from the scope of application of the EC-Treaty were applicable.[59]

59 See NJW 2002, Heft 46, at p. XII.

Dienelt, in an article on the consequences of illegal entry of third-country nationals as family members of Union citizens, discusses the possibility to reject third-country nationals at the border or to refuse the issuance of a residence permit.[60] Relying upon the jurisprudence of the European Court, he argues that the right of residence cannot be made dependent upon formal requirements such as a need to have a prior visa before entry. Therefore, German authorities would not be entitled to refuse entry or a residence permit on the mere reason of the violation of immigration regulations according to Sec. 8 para. 1 of the Aliens Act.[61]

The Freedom of Movement Act/EU of 20 June 2002 maintains the requirement that third country family members shall require a visa in order to enter the federal territory if a legal provision stipulates such a requirement.[62] Under Sec. 5 of the new Residence Act of 2002, however, fulfilment of visa requirements as a condition for obtaining a residence title may be waived if the prerequisites qualifying a foreigner for the granting of a residence title are met. This provision will enable to allow the issuance of residence titles regardless of the fulfilment of visa requirements if third country nationals can prove entitlement to freedom of movement under EC law. It is doubtful, however, whether third country nationals, relying upon freedom of movement as dependent family members of a Union citizen may be rejected at the border if they are not in possession of a necessary visa. According to the recent judgment of the European Court of 25.7.2002 in the case C-459/99, Sec. 15 of the new Residence Act on refusal of entry may not be applicable in case of third country nationals proving their entitlement to freedom of movement.

A decision of the Administrative Court of Hannover deals with the issue of validity of a declaration of a Union citizen to cover the maintenance of a relative as a condition for a prolongation for a residence permit. The plaintiff, a Greek national, had repeatedly given written assurances to care for her mother in order to obtain a residence permit in Germany. The mother was entitled to old age care insurance. In calculating the amount due to the authorities, however, did take into account the written declaration of her daughter to pay for the maintenance of her mother. The Administrative Court stated that the written declaration to pay is invalid if subsequently the immigrant acquires a legal title which is independent of such an obligation. Therefore, the declaration given by the daughter had lost its validity when the residence of her mother became independent of such an obligation. According to the Administrative Court this is the case since her mother had acquired a prolongation of a residence permit based on her own employment in Germany.

In a commentary to this decision it has been rightly observed that the decision is not fully correct since already the first residence permit granted to the mother could not be made dependent upon a declaration of her daughter that she would pay for the main-

60 InfAuslR 2002, 113.
61 See also ECJ of 25 July 2002, Rs C-459/99, mouvement contre le racisme.
62 Sec. 2 para. 4.

tenance of her mother, since, according to the jurisprudence of the European Court in the case Lebon,[63] a relative is entitled to free movement even upon partial financial assistance.[64]

The Bavarian Administrative Court of Munich had to decide on the application of a Syrian national who had been born as the son of a Syrian national and his Moroccan wife in Munich. His father had subsequently married a British national, thereby enjoying freedom of movement under Community law. His son, who had in the meantime been raised in Syria, moved in 2001 to Germany for the purpose of family reunion. After having committed a number of criminal offences his residence permit was withdrawn. The Administrative Court states that the plaintiff is entitled to freedom of movement under Art. 10 of the Regulation 1612/68 since relatives entitled to free movement include all dependants of spouses of Union citizens regardless of their nationality. Therefore, the 16 year old plaintiff, although showing now intention to live together with his parents, is entitled to free movement under EC law as long he is a minor and his father is willing to accommodate him.[65]

According to a decision of the Administrative Court of Munich[66] relatives of a EU-migrant worker may always request an unlimited residence permit if the Union citizen himself is in possession of an unlimited residence permit. This would apply also for third-country nationals. The Administrative Court argues primarily on the basis of the wording of Sec. 7 lit. a para. 1 No. 1 of the AufenthG/EWG, which in the interpretation of the Court requires only a previous residence permit in Germany for five years regardless of the lawfulness of the residence or the existence of a residence permit. This interpretation, however, is not undisputed since one may well argue that the requirement of a five-year residence as a precondition for an unlimited residence permit has to be interpreted as a residence in possession of a residence permit rather than mere factual presence on German territory.[67] The Administrative Court, however, relies heavily upon European Community law arguing that a different residence status of a Union citizen and his third-country national spouse are not in accordance with Art. 4 para. 4 of the Directive 68/360. According to Community law, spouses therefore are entitled to the same legal status as Union citizens.[68]

63 ECJ 18 June 1987, Case 316/85, *Lebon*, Rec. 1987, 2832.
64 Gutmann, InfAuslR 2003, 94.
65 Decision of 26 June 2003, InfAuslR 2003, 412.
66 Judgment of 19 November 2003, InfAuslR 2004, 94.
67 For a different view see Hailbronner, AuslR Sec. 7a AufenthG/EWG, No. 4; Klösel/Christ/ Häuser, Sec. 7a AufenthG/EWG, No. 8.
68 The Court quotes in this connection the European Court's decision in *Arben Kaba* of 11 April 2000, case C-356/98, InfAuslR 2000, 269.

Chapter V
Follow-Up of Recent ECJ-Judgments

The implications of the European Court's decisions of 25 October 2001 and 24 January 2002[69] concerning the legal status of dispatched workers are discussed by Von Danwitz.[70] The author considers the ECJ jurisprudence as the attempt to balance the freedom to provide services with social protection of workers. The author concludes that the protection of workers must be considered even under the conditions of the European Single Market an essential public interest, which cannot be considered as of secondary importance.

Implementing two decisions of the European Court of Justice in the cases Corten[71] and Schnitzer,[72] the Bundestag has passed a third law amending the legislation on mechanics and workmen.[73] The law on mechanics and independent workmen (Handwerksordnung)[74] has been changed by facilitating the access to independent mechanical professions by introducing a list of certain economic activities which can be exercised independently of an admission procedure or registry in a list of mechanics.

The rather complicated legislation distinguishing between temporary activity of independent mechanics exercising their freedom to provide services and the residence of mechanics in Germany under the freedom of establishment is analysed in the article of Pechstein/Kubitzky.[75] The law distinguishes between such activities which are free of admission and such activities which are still subject to a certain control or admission procedure. For mechanical activities free of admission the legislator has abolished all kinds of professional qualification certificates, in particular the traditional "Meisterprüfung".[76]

In the area of construction business the provision concerns almost all mechanical activities. Such activities, whether exercised temporarily or permanently, have, however, to be notified and registered under the law.[77] The law also provides for an obligatory membership for such activities in an association of mechanics. Such membership, however, concerning persons providing services, must not be connected with a duty to pay contributions – as has been decided by the European Court.

Pechstein/Kubitzky note, however, that the duty to register as well as the membership in an obligatory chamber of mechanics, which in itself is not a violation of principles of Community Law, are somewhat in contrast to the rules concerning persons performing services in the area of mechanical activities which are still subject to an admission procedure. It is argued that the maintenance of a duty to register and obligatory membership

69 Finalarte, EuZW 2001, 759; Portugaia, EuZW 2002, 245.
70 Von Danwitz, Die Rechtsprechung des EuGH zum Entsenderecht, EuZW 2002, 237.
71 ECJ Reports 2000, I-7991.
72 C-215/01, judgment of 11 December 2003, EuZW 2004, 94.
73 Drittes Gesetz zur Änderung der Handwerksordnung und anderer handwerkrechtlicher Vorschriften v. 24.12.2003, BGBl 2003, I-2933; the amendment has entered into force on 1 January 2004.
74 In the version of 24.9.1998, BGBl I, p. 3074.
75 Pechstein/Kubitzky, Dienstleistungsfreiheit im Baugewerbe für polnische Handwerker, EuZW 2004, 167, 169 – 172.
76 The "Meisterprüfung" remains possible on a voluntary basis.
77 §§ 18 – 20 Handwerksordnung.

for mechanical activities free of admission should be abolished in line with the abolition of the corresponding duties for mechanics which are still subject to an admission procedure.

For mechanical activities which are still subject to a certain admission procedure, the legislature has abolished the traditional "Meisterprüfung"-requirement and the duty to register. Such traditional procedures have been replaced by the establishment of a new special certificate replacing the registry in the traditional list of mechanics "Handwerksrolle". This applies for persons providing services, while the exceptional procedure for registry in the list of mechanics is still applicable for persons relying upon the freedom of establishment.

A special certificate according to Sec. 9 para. 2 Handwerksordnung in connection with Sec. 4 EU/EWR-Handwerksverordnung may only be required dependent upon the requirements laid down in the Directive 1999/42. Besides the possibility to examine the equivalence of professional qualifications, acquired practices in the respective profession have to taken into account. For the construction business it is sufficient to prove an uninterrupted activity of six years as independent mechanic or responsible supervisor or an uninterrupted professional activity of three years as an independent mechanic or as a responsible manager provided that a previous professional formation of at least years is proven by an official certificate of the state of origin. Alternatively, an uninterrupted three-years activity as independent mechanic in case of an at least five-year professional activity in the respective profession or in case of an uninterrupted five-year professional activity in a leading position is considered as equivalent.

Pechstein/Kubitzky argue that the rule of Sec. 5 of the Handwerksordnung permitting the execution of activities in other mechanical professions does violate Community Law since Sec. 5 reserves the privilege to execute such related activities only to enterprises registered in the traditional list of mechanics (Handwerksrolle). This, however, does exclude enterprises from other EU Member States which under the new provisions are not subject to a registry in the list of mechanics. Therefore, such enterprises are discriminated against in the view of the authors.[78]

78 EuZW at p. 169.

The Administrative Appeal Court of Lower Saxony[79] has interpreted Art. 7 sent. 1 of the Association Council Decision No 1/80 in the sense that a Turkish national is entitled to a residence permit under Sec. 7 sent. 1 even if a parent has been employed for 3 years in a regular employment some time before his/her child has finished his/her studies in Germany. The fact that a residence permit had been granted for study purposes does not restrict a Turkish national's right to rely upon Art. 7 Sec. 1 of the Association Council Decision No 1/80 as a child of a Turkish worker.

The Administrative Appeal Court of Baden-Württemberg in a decision of 15 October 2003[80] deals with the issue whether a regular employment in the sense of Art. 6 para. 1 Association Council decision No 1/80 requires a secure residence permit rather than a preliminary permit. Relying upon the jurisprudence of the European Court a mere temporary or fictitious residence permit or a title achieved by fraud or deceit is not sufficient. If, however, a temporary residence permit has been confirmed by a positive final decision which excludes the withdrawal of a residence permit, a Turkish national must be treated as if he had been part of the regular labour market during the time of the temporary residence permit.[81]

The residence permit according to Art. 7 sent. 2 of the Association Council Decision No 1/80 of the child of a Turkish worker is not dependent upon a simultaneous residence of the worker and his son in Germany.[82] The plaintiff, a Turkish national, had entered Germany in 1993 for purposes of study. In 1997 he passed his examinations and subsequently requested residence permit. His father had been working since 1964 as worker in Germany and had returned in 1997 to Turkey. The application of his son, living until 1993 in Turkey, has been rejected upon completion of his studies in Germany, since, according to the administrative authorities, he would not be entitled to take advantage of the Association Council Decision No 1/80. This was rejected by the Administrative Court, arguing that the privileged residence right for children of Turkish workers according to Art. 7 is not dependent upon granting a residence permit for the purpose of family reunion. The decision has been heavily based upon the jurisprudence of the European Court of Justice.

The Administrative Court of Karlsruhe has dealt with the question whether Turkish nationals born and grown up in the Federal Republic of Germany fall within the scope of application of Art. 7 sent. 1 of the Association Council Decision No 1/80 and whether this protection is lost by a prison sentences and a successive drug therapy.[83] The Administrative Court has submitted to the European Court of number of questions concerning loss of rights under Art 6 and Art. 7 of the Association Council Decision No 1/80.

79 Decision of 21 July 2003, InfAuslR 2003, 411.
80 11 S 910/03.
81 Decision of 15 October 2003, 11 S 910/03.
82 Administrative Court of Neustadt of 12 July 2002, InfAulsR 2003, 133.
83 VG Stuttgart of 19 December 2002, InfAuslR 2003, 87.

The right of Turkish nationals under Art. 6 para. 1 Association Council Decision No 1/80 to have free access to the labour market after four years of regular employment does not require that the Turkish national has been employed with the same employer. If a Turkish national has been unemployed for a substantial amount of time the question whether there has been an uninterrupted regular employment in the sense of Art. 6 of the Association Council Decision depends upon the fulfilment of the requirement of Art. 6 para. 2 of the Association Council Decision No 1/80.[84] The Administrative Appeal Court of Hesse relies heavily upon the jurisdiction of the European Court of Justice in arguing that a Turkish national is entitled to the privileged access to the labour marker regardless of a change of employers and an involuntary unemployment. As "involuntary unemployment" the Court has included a time period during which the Turkish national had been refused a residence permit contrary to his rights under the Association Treaty.

Association Agreement Morocco

By decision of the Administrative Appeal Court of Rhineland-Palatinate on interim protection against the refusal to issue a Moroccan national a residence permit, the Court has stated that the applicant may claim a residence permit on the basis of Art. 40 para. 1 of the Cooperation Agreement with Morocco of 26 September 1978. Following the jurisprudence of the European Court,[85] Art. 40 para. 1 must be considered as directly applicable. The Administrative Court interprets the European Court's jurisprudence as entitling the applicant to a residence permit if the Moroccan national had been issued a labour permit. Since the applicant had been given an unlimited labour permit in 1989, he was entitled to a residence permit unless the labour permit had been lawfully withdrawn. The Court also refers to the German provisions whereby a labour permit does not lose its validity automatically upon expiry of a residence permit. Since he were entitled to a fictitious residence permit after application for a prolongation of his residence permit, his labour permit would have to be considered as still valid.[86]

The Administrative Appeal Court of Baden-Württemberg has upheld the expulsion of a Turkish national born in Germany who had been convicted for drug offences to a prison sentence of 2 years and 9 months. The Court did not share the applicant's view that the expulsion could not be based upon Sec. 47, 48 of the Aliens Act due to the stand-still clause of Art. 13 of the Association Council Decision No. 1/80. In the Court's view the stand-still clause is subject to considerations of public order. In addition, the new expulsion law of the Aliens Act 1990 did not bring about a diminution of the applicant's right as a Turkish national in relation to the legal situation when the Association Council Decision had been adopted in 1980.

Legislation against Terrorism

In reaction to 11 September 2001, the Bundestag has adopted a number of laws against terrorist dangers which affect also the Aliens Act and provisions relating to the Central Registry of Aliens. The legal basis has been established for enacting rules on a higher

84 Administrative Appeal Court of Hesse of 10 March 1003, InfAuslR 2003, 219.
85 ECJ of 2 March 1999, C-416/96, NVwZ 1999, 1095.
86 Administrative Appeal Court of Rhineland-Palatinate, decision of 21 August 2002, 10 B 11149/02.OVG.

degree of safety of residence permits. Provisions on refusal of entry have been enlarged by including activities against the security of the Federal Republic or acts indicating the membership to an organization supporting international terrorism or activities supporting such terrorism. Expulsion proceedings have also been amended by including a new provision whereby an alien may be subject to an examination on the existence of potential concerns against the entry or further residence of aliens. Aliens lying in the examination proceedings concerning the issuance of a visa or a residence permit to the consular services of the alien authorities about previous stays in Germany or other states or making false statements about connections or links to persons or organizations suspected of supporting international terrorism may be expelled provided that they have been explicitly informed about the possible consequences of making false statements.[87] These provisions are not applicable, however, to Union citizens since the requirements under EC law are comprehensively laid down in the AufenthG/EWG. A number of other provisions deal with the participation of security services in the procedure on issuing a residence permit or a visa.

The law on the Central Aliens Registry[88] has also been amended by facilitating the transfer of data to other services and the storage and communication of certain data like the air control authorities competent for the examining of the reliability of persons in possession of a licence as an aircraft pilot.[89]

Aliens law and related legislation

The regulation on residence permits for taking up an employed activity has been amended by a regulation of 4 February 2002.[90] The regulation now allows the issuance of a residence permit for activities in households with persons needing care for up to three years. In addition, professional athletes having completed the 16th anniversary may be issued a temporary residence permit with a German club or sports association.

The law on the competences of the border authorities[91] has also been amended in reaction to the challenge of terrorism by extending the competences of the border police to control the identity of persons and take other police measures in the costal area of maritime waters of up to 50 kilometres.

A Turkish national entering the Federal Republic of Germany with a Schengen visa of the type C while intending in reality a permanent residence in Germany is violating German immigration law and entering Germany unlawful. The Administrative Court of Darmstadt[92] has decided that Art. 41 para. 1 of the Additional Protocol to the Association Agreement EEC/Turkey of 12 September 1963 does not privilege Turkish nationals entering into Germany for the purpose of a permanent stay in Germany. The Court states that a Schengen visa of type C, although not necessarily limited for tourism, does

87 See Sec. 47 para. 4 and 5 of the amended Aliens Act of 1990.
88 AZR-Gesetz of 2 September 1994, BGBl I, p. 2265, as amended by law of 9 January 2002, BGBl I, p. 361.
89 See Regulation to implement the law on Central Registry, Verordnung zur Durchführung des Gesetzes über das Ausländerzentralregister, as amended by law of 9 January 2002, BGBl I, p. 361.
90 BGBl I, p. 578.
91 Gesetz über den Bundesgrenzschutz of 19 October 1994, BGBl I, p. 2978, as amended by law of 9 January 2002, BGBl I, p. 361.
92 Decision of 12 November 2003, InfAuslR 2004, 97.

not cover an entry for the purpose of a permanent residence, but may only be used for a residence for up to 90 days.

Election of European Parliament

The provisions concerning the election of Germany representatives in the European Parliament have been changed by a regulation of 12 December 2003[93] and the 19th Law amending the law on election of the European Parliament representative of 15 August 2003.[94] The 4th regulation provides primarily for a harmonization of the elections to the European Parliament with the elections to the Bundestag and contains some changes concerning the amendment of other laws.[95]

The law on amending the rules on election of the representatives of the European Parliament contains primarily an adjustment to the Council decisions of 25 June and 23 September 2002. Since the membership in the European Parliament is not compatible anymore with the membership in a national parliament, the provisions of the previous law providing for simultaneous membership had to be changed. Various other changes concern rather technical provisions concerning the coordination of the elections to the European Parliament and to the Bundestag.

Nationality/Naturalization

As a rule questions of nationality are not within the domain of Community law. However, there may be particular circumstances which give rise to a consideration of Community law implications in case of a withdrawal or revocation of nationality of a Member State of the European Union. The Federal Administrative Court had to deal with the case of an Austrian who had been working as a self-employed consultant in Germany. He had acquired German citizenship on application, thereby losing his Austrian citizenship. When applying for German citizenship he had given false information concerning a pending criminal proceeding for fraud. As a result, his German citizenship has been withdrawn. Before the administrative courts he argued that his German citizenship could not be withdrawn since he would therefore lose his Union citizenship altogether, since he would not retroactively require Austrian citizenship. The Federal Administrative Court did not enter into Community law considerations, but has repealed the Administrative Court decision rejecting the plaintiff's appeal against the withdrawal of his German nationality. The Federal Administrative Court argues exclusively on the basis of German national law stating that the Basic Law contains the constitutional decision to prevent, as far as possible, statelessness. Therefore, the administrative authorities, deciding upon the withdrawal of German nationality had to take account of the constitutional principle which they did not. Therefore, the decision had to be quashed and the administrative authorities ordered to make a new discretionary decision on the basis of the guidelines given by the Federal Administrative Court.

93 4. Verordnung zur Änderung der Europawahlordnung, BGGl of 18 December 2003, 2551.
94 BGBl I, 1656; for a discussion of the law see *Schreiber*, NWvZ 2004, 21, 27.
95 Gesetz zur Gleichstellung behinderter Menschen und zur Änderung anderer Gesetze v. 27.4.2002, BGBl I, 1467.

Assuming that the administrative authorities in a second discretionary decision will again withdraw the applicant's German citizenship, the question arises whether a Union citizen may lose his/her nationality and thereby his/her Union citizenship as a result of a lack of coordination between two national legal orders regulating the acquisition and loss of nationality. It is doubtful whether the plaintiff would not at least be entitled to re-acquire his Austrian citizenship in such a case.[96]

According to Sec. 87 para. 2 of the Aliens Act Union Citizens are privileged in obtaining a naturalization without the requirement to give up a previous nationality provided that reciprocity is guaranteed. That these conditions are met in the case of Greek nationals has now been decided by the Bavarian Administrative Appeal Court in the case of a Greek national living since 1980 in Germany.[97] The Bavarian Administrative Appeal Court argues that reciprocity is guaranteed according to the Aliens Act. Based upon the law and practice of the respective Member State of the European Union (Greece) a German national could be naturalized without fulfilling a condition to give up German nationality either on the basis of a general provision or in case of a general regulation providing for dual nationality for persons belonging to the same category. The Appeal Court thus has rejected the opinion of the Bavarian Ministry of Interior whereby reciprocity would be met only if all the naturalization conditions as well as the consequences of a naturalization were equal. The Appeal Court argues in particular that the reciprocity requirement does not need an individual right of naturalization provided that certain conditions are met. A discretionary naturalization could also be considered as equal and meeting the condition of reciprocity. The Court also notes that public international law considerations relating to the binding Agreement of 6 May 1963 on the reduction of dual nationality and military service of dual nationals[98] were not relevant anymore since the Agreement has been renounced by the Federal Republic of Germany on 20 December 2001. Germany's obligation, therefore, had been terminated by 21 December 2002.[99]

The question whether an Italian worker due to his naturalization in Germany is losing his Italian nationality as a result of the German legislation which makes an exception for Union citizens provided that reciprocity is guaranteed, has been decided controversially in the administrative court jurisprudence. A decision of the Administrative Court of Giesen, allowing dual nationality of an Italian under the privileged clause for Union citizens,[100] the Hessian Administrative Appeal Court has quashed this decision[101] with the argument, that reciprocity is not fully guaranteed. Therefore, an Italian worker is losing automatically his Italian citizenship by becoming a German national and is therefore obliged to return his Italian passport.[102] The question, however, has become largely irrelevant due to the renunciation of the European Agreement on Reduction of Dual Na-

96 See Federal Administrative Court of 3 June 2003, InfAuslR 2003, 445.
97 Bavarian Administrative Appeal Court of 3 April 2003, InfAuslR 2003, 298.
98 BGBl 1969 II, p. 1953.
99 BGBl 2002 II, p. 171.
100 Administrative Court of Giesen, InfAuslR 2001, 37.
101 Decision of 28 May 2001, InfAuslR 2003, 67.
102 InfAuslR 2003, 67.

tionality by the federal government and an exchange of letters with Italy concerning the mutual acceptance of dual nationality.[103]

In an article on the formal requirements to conclude a marriage the author[104] describes the German practice concerning formal requirements to conclude a marriage with aliens in Germany. The author criticizes the various formal requirements relating to the submission of documents. It is noted that as yet there are no provisions of European Community law facilitating the procedure.[105] The author does not particularly mention issues relating to free movement of workers, however, some of the considerations laid down in the article may also be relevant for the freedom of movement of Union citizens.

By a law of 31 January 2002, amending various provisions of the Social Code,[106] the Bundestag has enacted various provisions implementing bilateral agreements on social security by enacting provisions on the procedure in case of a renunciation of claims based upon EC-law or bilateral agreements on social security.

Recognition of Diploma

Questions of recognition of diploma awarded by private universities and institutions have repeatedly been the subject of administrative and judicial proceedings. Concerning a diploma of a company cooperating with the University of Wales and the University of Hagen, a diploma has been awarded on the basis of a 4 semester programme of distant learning. In accordance with a decision of the Secretariat of the Conference of Ministers of Culture, the academic degree of master of business administration (M.B.A.) has not been recognised since the degree has not been obtained on the basis of an actual study of one of the cooperating universities. A mere certificate of equivalence, therefore, would not be sufficient for recognising the diploma. This view is challenged in a legal opinion by Battis and Grigoleit on behalf of the stock-company offering such studies on a commercial basis.[107]

In a decision of 21 August 2002 the Administrative Appeal Court of Rhineland-Palatinate[108] has decided that a Moroccan national may rely upon Art. 40 para. 1 of the Co-operation Agreement between the EEC and Morocco. A withdrawal of a labour permit and a pending criminal procedure for violations of the Aliens Act, resistance against administrative authorities and bodily injury could not be considered as sufficient serious to justify an immediate execution of a deportation order. Therefore, interim protection has been granted.

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103 See verbal note No. 07154 of 19 June 2002; for the Italian legal position see also the decree of the Italian Minister of the Interior of 25 May 2002.

104 Weizsäcker, Eingeschränkte Eheschließungsfreiheit für Ausländer? Zur Vereinbarkeit des Verfahrens zur Überprüfung der Eheschließungsvoraussetzungen bei Ausländern mit Art. 6 Abs. 1 GG, InfAuslR 2003, 300.

105 With the exception of the Decision on measures for fighting sham marriages of 4 December 1997, Official Journal C 382 of 16 December 1997.

106 BT-Drs. 14/7759.

107 Zur Anerkennung der auf Grund des Studiums der Allfinanz-Akademie von der University of Wales verliehenen Grades eines Masters of Business Administration (M.B.A.) durch die Kultusbürokratie in Deutschland, Januar 2003.

108 10 B 11149/02.OVG.

Following a decision of the European Court that prostitution must be considered as self-employed economic activity in the sense of Art. 44 para. 4 of the Association Agreement with Poland and Art. 45 of the Association Agreement with the Czech Republic,[109] the Federal Administrative Court has withdrawn a request for a preliminary ruling concerning the question whether a Dutch national in Germany may rely upon freedom of movement in order to exercise prostitution in a professional manner.[110] The Federal Administrative Court has taken the view that the question has now been solved by the European Court's jurisprudence. Therefore, there could be not any question that professional prostitution cannot be considered any more as contrary to public morals.[111]

109 ECJ of 20 November 2001, C-268/99.
110 Federal Administrative Court of 18 September 2001, 1 C 17/00, DVBl 2002, p. 54.
111 Decision of the Federal Administrative Court of 24 October 2001, I C 31/02; cf. *Laskowski*, Europarecht 2003, 473.

Chapter VII
EU Enlargement

By a circular letter of 8 May 2002 to the Länder the Federal Ministry of Interior has informed the Länder about the implications of the European Court's decision on freedom of movement of prostitutes of 20 November 2001, C-268/99, *Jany*. The Federal Ministry takes the view that according to the European Court's judgment the Europe Agreements do not exclude an examination whether a national of the accession states can prove their true intention to take up a self-employed activity. Free movement in order to take up prostitution in Germany, however, could not be restricted on the basis of public policy considerations if prostitution is tolerated or permitted in the respective Member State. The Federal Ministry in this connection draws the attention of the Länder to the new law on regulating the legal status of prostitutes of 20 December 2001.[112] According to Art. 1 para. 1 of the prostitution law service contracts with prostitutes are valid and may be judicially enforced. By Art. 2 the Penal Code has been amended by permitting the establishment of socially acceptable and adequate conditions for voluntary prostitution in brothels. The Federal Ministry therefore draws the conclusion that the former practice to refuse prostitutes from accession states entry and residence under public order considerations cannot be maintained any more. However, corresponding to the Dutch practice which had been approved by the European Court, a procedure is admissible examining whether there is in fact an intention of self-employed activities. In addition, the Federal Ministry points to the consequences of the European Court's jurisprudence for Union citizens. The entry and stay of Union citizens working as prostitutes in German, whether self-employed or employed, cannot be prevented or restricted as long as there are no additional public order considerations.

According to the Accession Treaty of 16 April 2003[113] Germany has made use of the right under the Accession Treaty to suspend the freedom of movement of workers for nationals of the newly acceding states with the exception of Malta and Cyprus. A corresponding restriction is provided with respect to the freedom to provide services relating to the sending of workers to Germany and Austria. Germany is making is for the first two years of the possibility to restrict freedom of movement by enacting a law on the accession of nationals of the newly acceding states to the labour market.[114] The law regulates in detail the effects of the Accession Treaty.

The transitory regime for the admission of workers from the new Member States provides that nationals, who were admitted at the time of accession or later for an uninterrupted period of at least twelve month to the German labour market have full access to the German labour marker. They receive a labour permit of a declaratory nature since the right to work is already derived from the Accession Treaty.[115] The question arises what criteria are applicable concerning an uninterrupted period of admission to the labour market.[116] Basically, the same rules will be applicable as have been developed by

112 Prostitutionsgesetz, BGBl 2001 I, p. 3983.
113 Law of 18 September 2003, BGBl II, 1408.
114 See Law of 24 April 2004, BGBl. I, No 18, 602; see also BT-Dr. 15/2378 and BR-Dr. 17/04.
115 Cf. No 2 para. 2 and 3 of the Annexes to Art. 24 of the Accession Treaty.
116 See Renner, ZAR 2004, 203 on the different possibilities of interpretation.

the European Court concerning the definition of "worker" under Art. 39 EEC. In principle, an employment relationship with an employer seated in Germany as well as a labour permit according to the provisions of the labour law or an employment not subject to labour permit will be required. Admitted to the labour market are also frontier workers living in a new Member State as nationals of that state.[117]

Workers sent temporarily to Germany on the basis of a labour contract with a foreign employer in an accession state are not privileged under the Annexes to the Accession Treaty. Such workers may enjoy freedom to provide services.

Whether temporarily or part-time employed workers or comparable activities like participation at a voluntary service year or trainees or persons resident in Germany for the purpose of further professional training may rely upon unlimited freedom of movement for workers is at least doubtful. With regard to temporary workers the provision of an uninterrupted period of time already prevents reliance upon free movement of workers. If the principles of the European Court of Justice's jurisprudence are applied, the definition of worker is to be interpreted extensively covering also such activities regardless of the fact that such persons have received a residence permit primarily for other purposes than employment. There are convincing reasons to apply a somewhat stricter definition with regard to the privileged position of nationals of accession states since the purpose of the provision is to maintain the status of such nationals who are already integrated in the German labour market. On the other hand, one could argue that those persons who are already part of the labour market in the sense of the extensive jurisprudence of the European Court, do not fall within the scope of application of restrictions since they are already part of the German labour market. The European Court will undoubtedly have to decide on that issue. It should be noted, however, that the wording of the relevant provisions of the Accession Treaty clearly exclude persons who have only been temporarily employed. Therefore, students who are allowed to work for a maximum of 90 days without a labour permit are clearly not privileged.[118]

Nationals of the new acceding states do need a labour permit as far as the transitory regime applies and the employment is not exempt from the labour permit under the general provisions of German labour law. A labour permit may be granted to foreigners resident abroad only under the provisions of the regulation on exceptions from the recruitment stop.[119]

The restrictions provided for by the regulation on exceptions from the recruitment stop do not apply with non-economically active persons (students, retired persons etc.) staying legally in Germany and self-employed persons who intend to take up employment.[120] A labour permit may be granted according to Sec. 285 para. 1 SGB III under general principles providing for a priority treatment of Germans and persons entitled to freedom of movement. This means that a change of the purpose of a residence of a national of an accession state living legally in Germany is in principle possible provided

117 It may be doubtful, however, whether the provision whereby these frontier workers must not receive social assistance in their state of residence excludes the application of the provision.

118 See also Fehrenbacher, op. cit. at p. 244.

119 Chapter 284 para. 3 SGB III in connection with the Anwerberstoppausnahmeverordnung.

120 See chapter 1 Anwerbestoppausnahmeverordnung.

that he/she is granted a labour permit according to the general principles of labour law.[121] It should be noted, however, that a change of purpose for a residence permit must not be used to undermine the restrictions of the transitory regime for workers by taking up residence as a non-economically active national of a new accession state for the purpose of changing to a regular employment. Whether such an intention can be assumed may be doubtful. It is suggested that at least for the first three months accession to the labour market may only be granted according to the more restrictive provisions of the regulation on exceptions of the recruitment stop in accordance with the transitory regime.[122]

A national of a new accession state still resident in his/her home country who may apply for admission to the labour market within the framework of the German legislation enjoys preferential treatment with respect to other third-country nationals.[123]

Family relative of workers being legally resident on 1 May 2004 in Germany do not have a right of access to the labour market as long as the worker has not been employed uninterruptedly for at least 12 months in Germany. Until this requirement is met, family relatives may receive a discretionary labour permit on the basis of the general priority rules. Waiting periods provided for under German labour law[124] do not apply.

Relatives of workers moving after 1 May 2004 to Germany who establish a common residence are admitted to the labour market after a period of 18 months or at least on 1 May 2007. Until that time they may receive a discretionary labour permit under the general provisions of German labour law (priority rules apply).[125]

Family relatives of non-economically active nationals of the new accession states may enjoy freedom of movement under Art. 18 EC or freedom of establishment; they are not entitled, however, to accession to the labour market as workers. Admission to the labour market may be granted under the same conditions as applied to relatives of workers.

In addition to the law on access to the labour market the Federal Ministry of Interior has transmitted several explanatory guidelines to the ministries of the Länder dealing with particular issues concerning enlargement:

1. practical problems concerning the residence title according to the AufenthG/EWG and the new Freedom of Information Act;
2. implications of the Union Citizens Directive of April 29, 2004;
3. fees for the issuance of the residence title under the new law;
4. issuance of an unlimited residence permit to EU citizens;
5. practical problems to determine whether an economical activity is subject to a labour permit;
6. the fulfilment of frontier workers of the duty to register;
7. criteria to determine whether an economic activity can be qualified as a provision of services;
8. some aspects of the application of the law on registry of aliens to EU citizens;
9. the status of persons admitted under the guest worker programme;

121 See chapter 285 para. 1 SBG III.
122 Fehrenbacher, at p. 245.
123 See No 14 para. 1 of the Annexes to Art. 24 in connection with chapter 285 para. 3 SGB III.
124 See chapter 3 Arbeitsgenehmigungsverordnung (regulation on labour permits).
125 See chapter 285 para. 1 SGB III.

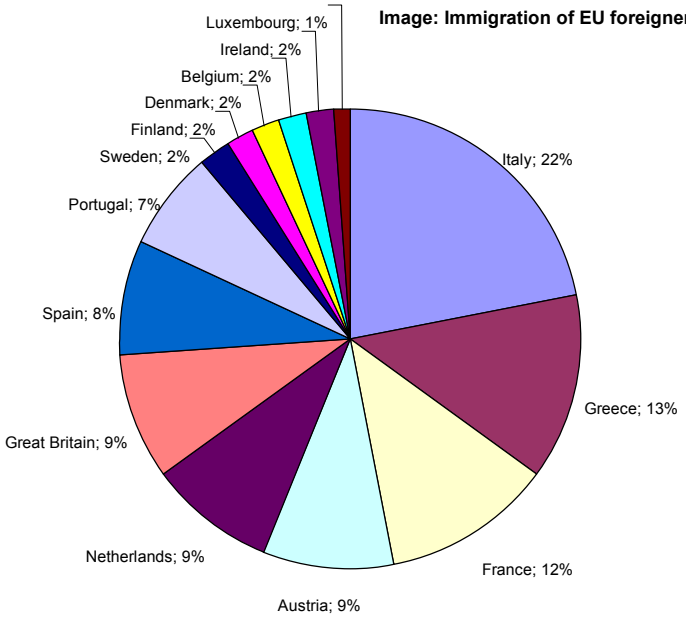
10. the application of the Council decision on organized journeys of pupils to citizens of the new Member States;
11. treatment of new EU citizens married to a German national;
12. the legal status of sport professionals from new Member States.

The report 2004 will deal more extensively with these issues.

Chapter VIII
Statistics[126]

Immigration and Emigration of nationals of EU Member States to and from Germany
In the year 2002 a total of 110,610 foreigners from the European Union immigrated to Germany, which is about 10,000 less than the year before. This corresponds to a proportion of 13.1 percent of total immigration. Almost a fourth of all moving ins was made by Italian nationals, followed by Greek (13 percent) and French nationals (12 percent). After the migration balance of EU members was evened in 2001, the figures of emigrations of EU foreigners exceeded the figures of immigrations from other EU states in 2002.

Image: Immigration of EU foreigners to Germany in 2002

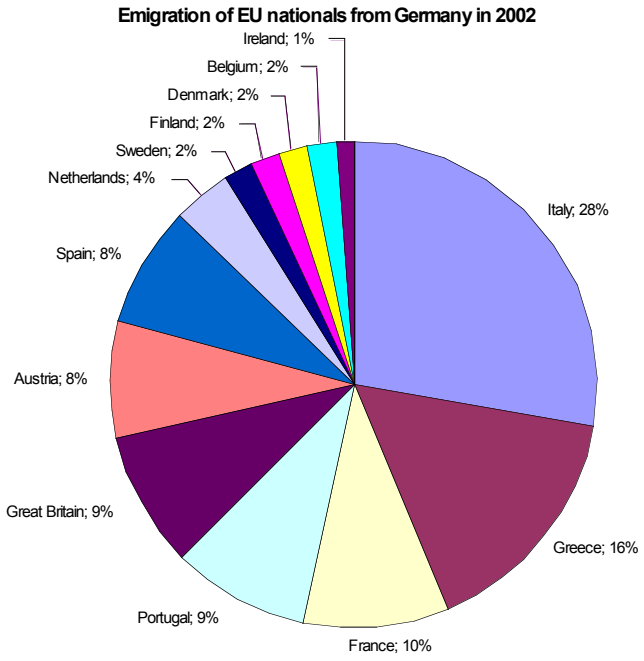


Amongst those emigrations the Italians took first place of all EU foreigners with 28 percent, followed by the Greek and French. Luxembourg is unaccounted for because of low quantity.

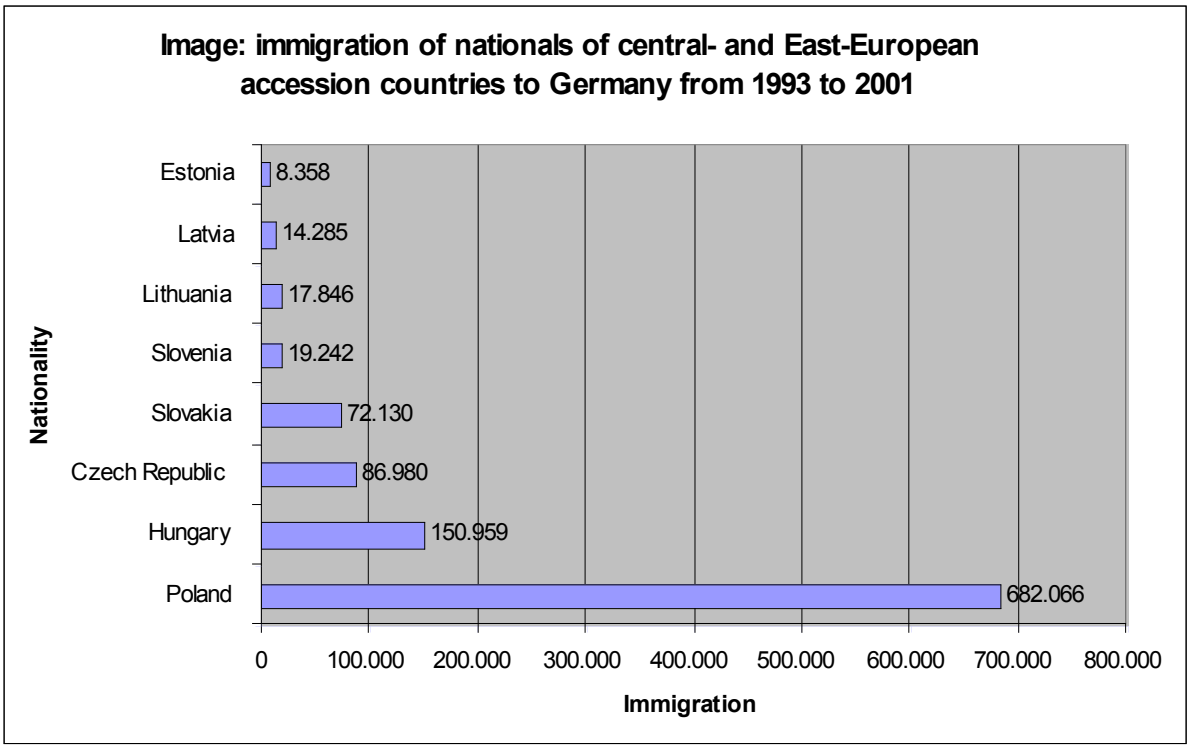
The migration inside the EU is only a small proportion of the total migration. Only 13.1 percent of total immigration and about a fifth (19.1 percent) of total emigration was caused by nationals of the other 14 countries of the EU. The absolute figures of immigration of EU nationals has been relatively consistent over the past few years ranging from 110,610 (2002) to 175,977 (1995) in the last ten years. However, the immigration

126 The statistical information as well as the accompanying explanations are taken from the comprehensive report of the Federal Commission for Migration, Refugees and Integration, January 2004, Mrs. Marieluise Beck, in cooperation with the European Forum for Migration Studies, Bamberg (Migrationsbericht der Integrationsbeauftragten, Januar 2004).

from other members of the EU receded steadily since 1995 and reached 110.610 in 2002. Similar to this, the emigration figures of EU nationals comply: They rose to nearly 160,000 in 1997, but then dropped steadily to 120,408 in 2001. In the year 2002, however, a slight increase to 122,982 was registered. Since the amount of emigration of EU nationals exceeded the amount of immigration in the years 1997 to 1999, a positive migration balance between Germany and the other 14 EU members was registered in the following two years. However, in 2001 it was only slightly positive (+182). The migration balance was negative (-12,372) in 2002, the biggest margin since 1995.

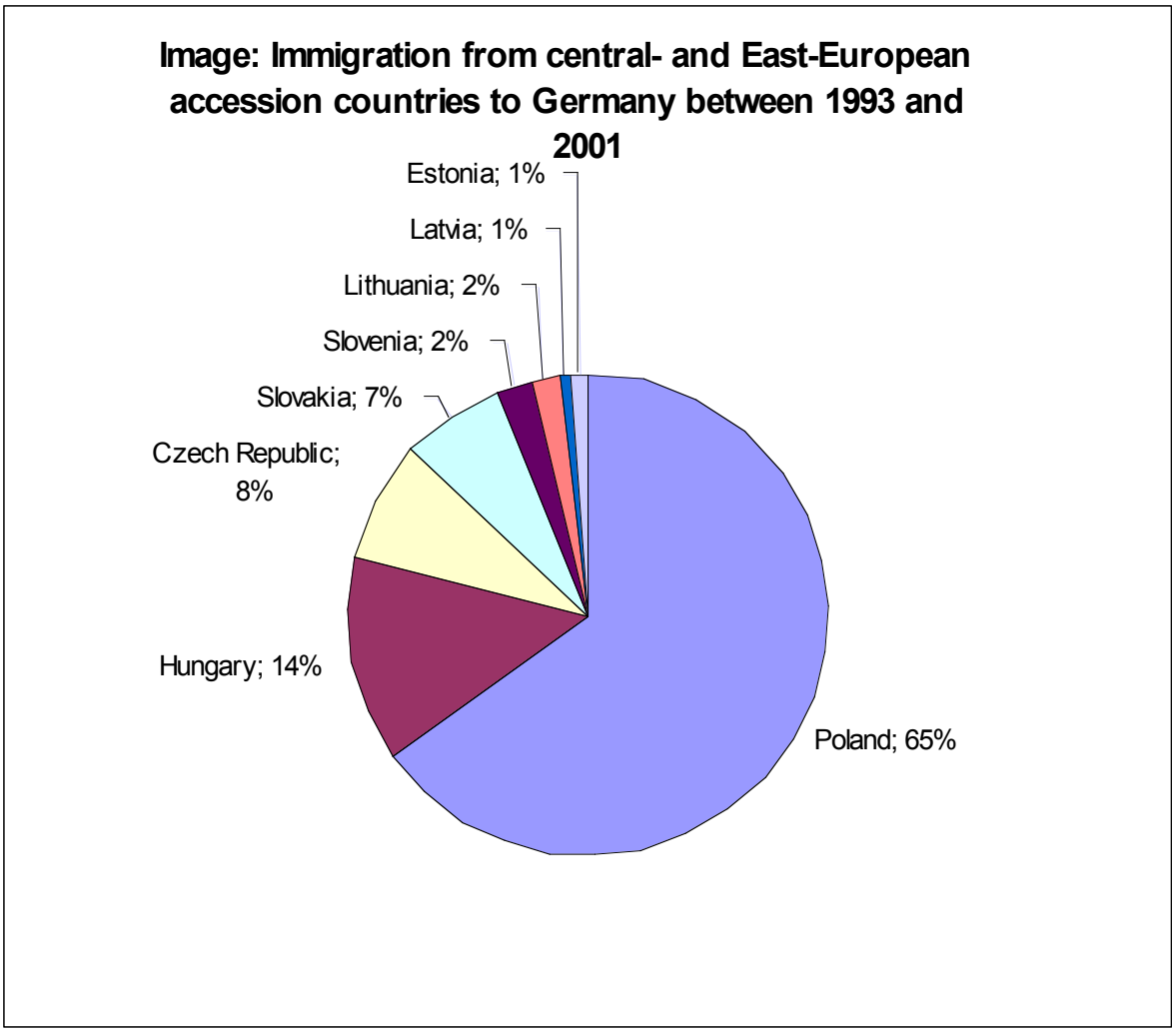


The following chart considers immigration and emigration to and from Germany from Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Estonia, Latvia and Lithuania and is based upon figures from 1993 to 2001. In this period of time a total of 1,062,124 people came from these countries to Germany. This corresponds to 12.3 percent of total immigration.



(Additionally there are 10,285 nationals of Czechoslovakia, who cannot be clearly assigned to one of the succession countries. There are no data for Estonia, Latvia and Lithuania for the years 2000 and 2001.)

Amongst these countries Poland has the leading position:Over 680,000 people immigrated to Germany from 1993 to 2001. This is about two third of the total immigration of all central- and East-European countries of origin. The majority of people from Poland came for temporarily labour in Germany. This reflects to the data of emigration: In the same period of time about 626,000 emigrating people from Poland were registered. The second major country of origin is Hungary, from where 151,000 people came to Germany between 1993 and 2001, which is 14 percent of the total proportion. The Czech Republic and Slovakia are following with 87,000 respectively 72,000 people immigrating, again followed by Slovenia (19,000 people). From the Baltic states Lithuania, Latvia and Estonia comparatively few people immigrated to Germany (about 40,000 persons). Slovenia and Lithuania represent about two, Latvia and Estonia about one percent of the total immigration.



(Total figures: 1,051,839. Excluded are 10,285 people from former Czechoslovakia, who cannot be assigned to one of the succession countries.)

Also, there has been an emigration process from Germany by nationals of these countries. Between 1993 and 2001 a total of 976,957 nationals of one of those central- and East-European accession countries left Germany, corresponding to a percentage of 15.2 of total emigration of all nationalities. The migration balance amounts to +85,167. All in all the migration report states, that there is only a marginal positive migration balance, although there is a very high volume of migration between Germany and the central- and East-European accession countries. This shows that migration between those countries is until now characterised by a strong commuting migration, which mostly consists of temporary working by nationals of the accession countries. The following chart shows the development for the particular nationalities in the years from 1993 to 2001: