



**IMPACiM**

THE IMPACT OF RESTRICTIONS  
AND ENTITLEMENTS ON THE  
INTEGRATION OF FAMILY MIGRANTS



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# Mapping the Conditions of Stay and the Rationale for Entitlements and Restrictions for Family Migrants in Germany

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### IMPORTANT NOTE

The restrictions and entitlements covered in this report are influenced by government policy and are subject to regular change. The mapping report aims to straddle a fine balance in condensing the detail of these arrangements and yet still providing a usable summary. As such, relevant sources noted throughout the text should be consulted for an accurate detailed picture of current policy. The report is correct at the point of completion of the final version in December 2012.

The rules generally refer to Germany unless otherwise stated.

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# 1. Introduction

Family-related migration is a crucial immigration channel to Europe. While it was already substantial for western European countries during the period of labour recruitment programmes, since their halt in 1973 the process of family reunion has occurred on a large scale and has become a major source of immigration. Thus, family migrants' immigration as well as their integration is of concern for European societies.

The integration of family migrants depends, on the one hand, on the actions and efforts of migrants themselves; on the other hand, it depends on the legal, economic and social conditions they encounter in the new society. The European project "The Impact of Restrictions and Entitlements on the Integration of Family Migrants" (IMPACIM) focuses on the second aspect: the project notably deals with legal rights that family migrants experience upon entering the new country and questions the link between these rights and their integration processes.

In this project the focus is particularly on the question of whether the restrictions of rights hamper the (post-entry) admission to society and affect family migrants' economic, social, cultural and political integration – and whether entitlements encourage integration.<sup>1</sup> The project further maps the different legal and political patterns across four European countries as well as their rationales. Thereby, the focus is on non-EU family migrants, i.e. on third-country nationals whose permission of stay derives from their status as a family migrant.

Geographically, the project covers four EU member states with differing migration histories and integration philosophies: Germany, the Netherlands, Spain and the United Kingdom. This report presents the evidence from Germany.

As part of the IMPACIM project, this mapping study provides a general conceptualization of the different types of family migrants in Europe and sketches the phenomenon of family migration to Germany. Following this, part 3 explores the German legislation on family migration. It outlines the legal basis and practical procedures of family migration (part 3.1). This mapping study further highlights both sides of the process, namely who is allowed to bring family members in and who is allowed to come – and under which conditions (part 3.2). Finally, it describes the conditions

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<sup>1</sup> The IMPACIM project is funded by the EU Fund for the integration of third-country nationals, commencing on 31<sup>st</sup> December 2011 and lasting for eighteen months. It is a collaborative project with research teams at the European Forum for Migration Studies (EFMS) at the University of Bamberg, the Erasmus University in Rotterdam, the Complutense University in Madrid and the Centre on Migration, Policy and Society (COMPAS) in Oxford.

required for obtaining an independent residence status (part 3.3). The IMPACIM project particularly aims to investigate patterns of restrictions and entitlements that family migrants encounter regarding education, employment, social welfare benefits, health, housing, as well as political and civic participation. Thus, these areas are all dealt with separately in part 3.2. The political rationales for entitlements and restrictions are analysed in part 3.3, while section 3.4 summarises major results.

## 2. Family-related migration to Germany

Family migration has become *the* dominant mode of legal entry into European Union states in general, and Germany in particular (Heckmann, Schnapper 2003; Kraler 2010). According to the German Central Aliens Register (*Ausländerzentralregister*, AZR), 54,865 residence permits were granted for family reasons in 2010; nearly a quarter (23.3%) of the residence permits granted in that year. Family migration was the main reason for receiving a residence permit in 2010 (Bundesministerium des Innern 2012b, p. 36).<sup>2</sup>

But what exactly is meant by family migration? The term ‘family migration’ in the European context generally refers to the migration of members of a nuclear family as defined by the state of destination. Though personal migration histories are varied and there is scarce data in Europe regarding family migration, one can identify distinct categories of family migrants. According to Kofman, there are three basic types of family migration in the European context (Kofman 2004, pp. 245–247):

- ▶ First, there is family reunification, in which members of the nuclear family join the primary migrant already residing in the country of destination;
- ▶ Second, there is migration due to family formation or marriage migration. On the one hand, there are permanent residents or citizens who bring in a partner they have met during a stay abroad for purposes of work, study or holiday. On the other hand, it includes “second and subsequent generations of children of migrant origin (citizens and non-citizens) who bring in a fiancé(e)/spouse from their parents’ homeland or diasporic space” (Kofman 2004, p. 246);
- ▶ There is a third category of family migration where the entire family migrates simultaneously. Migrants of this category are often only allowed to have long-term residence permits, although exceptions are made for the highly skilled. Though migrants of this category currently are not very common in European states, Kofman expects it to become more important as the demand for skilled labour increases (Kofman 2004, p. 247).

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<sup>2</sup> The other quantitatively important reason for getting a residence permit in 2010 was for studies, including academic studies, school attendance and language classes (19.9%), and employment (12.6%) (Bundesministerium des Innern 2012b, p. 36).

In Germany, the first two categories are the most important groups of family migration. For the most part, family migration to Germany takes place in order to reunify an existing nuclear family. This is also reflected in terminology: German legislation generally uses the terminology 'subsequent immigration of family members' (*Familiennachzug*). Yet, despite this wording, family members do not have to immigrate separately from abroad and can also immigrate together (27.1.1 VV AufenthG). Thus, all three categories of family migration defined by Kofman are covered by German law. The most common mode, however, is that of family reunification.

In this category, by far most of the subsequently immigrating family migrants are spouses: in 2010, half of the residence permits for family reasons were issued to wives joining their husbands (49.3%); about a fifth of the permits were issued to husbands joining their wives (19.8%). Children joining their parents made up 23.6% of the family migrants; migrating parents joining their children made up 6.7%. The share of other dependents was only 0.6% (Bundesministerium des Innern 2012b, p. 118).

## 3. Legislation on family migration in Germany

In Germany, foreign family members have the right to join German or even foreign citizens living in Germany with the aim of ensuring safe family reunification. Thus, citizens and non-citizens living in Germany can be joined by their spouses and registered same-sex partners, by their minor children, and – in case they are minors – by their parents.<sup>3</sup> In addition, other family members may be granted a residence permit for the purpose of family reunification in cases of particular hardship; that is in cases in which familial assistance is needed, for instance due to illness, disability, care dependency or mental distress.

However, there are pre-entry restrictions to be met by the ‘sponsor’<sup>4</sup> and the immigrating family member. These restrictions depend, on the one hand, on the degree of kinship. On the other hand, they depend on the status of the sponsor to be joined, i.e. whether the person to be joined is an EU citizen, a German citizen or a third-country national. The respective regulations are described in part 3.2, after the legal basis and practical procedures have been presented in part 3.1.

### 3.1. Legal basis and practical procedures

#### 3.1.1. Legal basis

The legal entitlement to family migration is derived from Article 6 of the **German Constitution** (*Grundgesetz*, GG) which explicitly protects families (“marriage and the family shall enjoy the special protection of the state” (Art. 6 (1) GG), see also section 27 (1) *AufenthG*).

Entry and residence of third-country family members of both German citizens and third-country nationals living in Germany are regulated in sections 27 to 36 of the **Residence Act** (*Aufenthaltsgesetz*, *AufenthG*), which, in its first version, entered into force on 1<sup>st</sup> January 2005.<sup>5</sup> Parallel to the development of this act, the European Union developed the European Directive

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<sup>3</sup> The concept of heterosexual civil partners does not exist in Germany; consequently civil partners are not included in the definition of nuclear family.

<sup>4</sup> “Sponsor” means a person who resides lawfully in a member state who either applies for family reunification or whose family member applies for family reunification with him/her (Council of the European Union, p. 13).

<sup>5</sup> The complete name of this act is the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet* (*AufenthG*)). It is part of the Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners, Immigration Act (*Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern* (*Zuwanderungsgesetz – ZuwandG*)).



2003/86/EC on the right to family reunification for third-country nationals. In order to fully implement this Directive in German law, the Residence Act was modified by the Directive Implementation Act (EU-RLUmsG) which entered into force on 28<sup>th</sup> August 2007. Since then, the Residence Act includes more preconditions for spouses' subsequent immigration from abroad. Further amendments have been made since then, e.g. in order to implement the European Directive 2009/50/EC on the immigration of highly educated skilled workers and their family members ('Blue Card'). The version cited in this study dates 1<sup>st</sup> June 2012.<sup>6</sup>

While German and third-country nationals are covered by the Residence Act, EU citizens fall under the **Act on the General Freedom of Movement for EU Citizens** (*Gesetz über die allgemeine Freizügigkeit von Unionsbürgern*, FreizügG/EU).<sup>7</sup> This act also applies to EU citizens' designated accompanying or joining family members of whatever nationality (i.e. including third-country nationals).

Further, the **Agreement on the European Economic Area** (EEA) allows Iceland, Liechtenstein and Norway to participate in the EU's internal market, including the free movement of persons. Thus, in terms of movement and residence, citizens of Iceland, Liechtenstein and Norway enjoy the same legal rights as EU citizens (Stabsstelle EWR 2012). Thanks to the agreement between the EU and Switzerland on the free movement of persons, Swiss nationals also enjoy almost the same legal rights as EEA citizens – but not in terms of discriminatory treatments.<sup>8</sup>

There are specific agreements between the EU and Turkey (**EU-Turkey Association Agreements**) having implications for Turkish citizen migrants and their family members. "They benefit from the provisions of the Ankara Agreement of 1963, and have had a privileged position under the 1970 Additional Protocol to the Agreement and the decisions of the Agreement's Association Council. They come close to enjoying parity with Union citizens in many respects except that they do not enjoy a direct right of entry as such, nor do they have a general direct right of access to the labour market" (Mole 2012). As regards Germany, these agreements and European Court of Justice (ECJ) decisions imply that a Turkish citizen who has been employed on

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<sup>6</sup> How the complex Residence Act has to be applied is specified in the Administrative Regulations on the Residence Act; the most current version, cited in this study, dates October 2009 (*Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz – VV AufenthG*).

<sup>7</sup> The application of this act is detailed in the Administrative Regulations on the General Freedom of Movement for EU Citizens (*Allgemeine Verwaltungsvorschrift zum Freizügigkeitsgesetz/EU – VV FreizügG*); the current version, cited in this study, dates 26 October 2009.

<sup>8</sup> According to the Agreement between the European Community and its Member States, on the one hand, and the Swiss Confederation, on the other, on the free movement of persons, ID 22002A0430(01).

the German labour market gets, under certain conditions, the right to continue that same or even another employment – and this right then implies the right of residence in Germany as well.<sup>9</sup> Turkish family migrants do not have direct specific rights thanks to these provisions. They benefit, however, from the standstill clause which prohibits the creation of any new requirement in addition to those which were in place in 1973 and which prohibits the deterioration of regulations (prohibition of the *reformatio in peius*). Consequently, stricter regulations adopted after 1973 are not applicable for Turkish citizens. The regulation, for instance, that marital cohabitation has to have lawfully existed in Germany for at least three years before a family migrant is entitled to an independent residence status, adopted in 2011, is not valid for Turkish migrants and their family members. They only have to wait for two years (see section 3.3.1) (Frings, Tießler-Marenda 2012, pp. 328 et seq.).

### **3.1.2 Practical procedure**

The practical procedure to become a family migrant is as follows: a third-country national has to apply for family migration at the German embassy in the country of origin, which in turn will pass the application on to the local office of the foreigners' authority of the designated sponsor. Once the foreigners' authority approves the application, the applicant will receive a visa for the purpose of family reunification before he/she enters Germany. Despite the official wording of subsequent family immigration, family members do not have to immigrate separately from abroad and can also immigrate together (27.1.1 VV AufenthG). That means a third-country national applying for a visa for the purpose of work, for instance, can simultaneously apply for a visa for family reunion. After entering Germany, the dependent has to apply for a residence permit for the purpose of family reunification at the local foreigners' authority before his/her visa expires (Kreienbrink, Rühl 2007, p. 18; Bundesministerium des Innern 2012b, p. 112).

This procedure applies to all third-country nationals other than citizens of the European Economic Area, Switzerland, the United States, Australia, Israel, Japan, Canada and New Zealand: due to bilateral agreements, citizens of these countries do not need a visa to enter Germany and may apply for the necessary residence permit after they have come to Germany. Comparable agreements exist for citizens from Andorra, Honduras, Monaco and San Marino (section 41 AufenthV). Rejected asylum seekers with a tolerated status who are living in Germany do not need a visa before applying for the residence permit for the purpose of family reunion.

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<sup>9</sup> For detailed conditions see Frings, Tießler-Marenda 2012, pp. 319 et seq. and Mole 2012.

The family ties between the resident and the designated immigrating family member have to be proven with official documents, ideally a passport or other identification, certificates of birth or marriage and/or evidence of parentage (27.0.4 VV AufenthG). If evidence cannot be provided via official documents, evidence can be provided through a voluntary DNA test (27.0.5 VV AufenthG).

## **3.2. Conditions for entry and residence**

The conditions for entry and residence depend in part on the degree of kinship: this section explores the conditions for the migration of spouses and partners (3.2.1), of children and parents (3.2.2) as well as those of other family migrants (3.2.3).

The conditions for entry and residence also depend on the status of the sponsor to be joined, i.e. whether the family member to be joined is (a) a German citizen, (b) a third-country national or (c) an EU citizen. As will be shown, Germans are privileged compared to third-country nationals who want to be joined by their family; they enjoy more extensive rights and have to fulfil less restrictive conditions. And since the Act on the General Freedom of Movement for EU Citizens is more generous than the Residence Act, EU citizens and their family members of whatever nationality are – in terms of family migration – in a better position than German citizens. The specific regulations for each of these groups are also discussed within the three following sections.

### **3.2.1. Regulations for family reunification with spouses and partners**

According to sections 28 to 31 of the Residence Act, spouses can obtain a residence title for the purpose of family reunification. All spouse-related provisions are also applied accordingly to ‘registered same-sex partners in life’ within the meaning of the Life Partnership Act (*Gesetz über die Eingetragene Lebenspartnerschaft – LpartG*), hereinafter ‘same-sex partners’ (section 27 (2) in conjunction with sections 28 (1) and 30 (1) AufenthG).

A long-term non-marital relationship, by contrast, does not entitle applicants to the right to reunification (no. 27.1.6 VV AufenthG). In accordance with the European Directive 2003/86/EC, the same holds true for polygamous marriages, where the sponsor already has a spouse living with him/her in Germany (section 30 (4) AufenthG) (no. 27.1.6 VV AufenthG). False marriages are explicitly exempted from the right to family reunification (section 27 (1a) AufenthG).

Forced marriages are also excluded from the right to family reunification. The German law defines such a marriage as one in which at least one of the spouses was coerced and forced to marry someone by means of violence or threat (section 27 (1a) AufenthG, 27.1.6. VV AufenthG). Arranged marriages, by contrast, are not excluded since it is assumed that they are usually grounded in both spouses' willingness and consent. Therefore, they are included as are all other families (no. 27.1.6. VV AufenthG).<sup>10</sup>

### 3.2.1.1. Spouses and partners of German citizens

Foreign spouses and registered same-sex partners of a German citizen are granted a residence permit because the German citizen has an absolute right of residence in Germany and would be prevented from marital cohabitation if his/her foreign spouse/partner was not allowed to enter the country (Kreienbrink, Rühl 2007, p. 34).

Notwithstanding, three preconditions have to be met:

- ▶ First, the resident to be joined has to be able to secure the family's livelihood, including adequate health insurance coverage; the residence permit for the subsequent immigration of dependents may be refused if the person to be joined by his/her dependents is reliant on social benefits for the maintenance of dependents or other members of his/her household (sections 2 (3) and 27 (3) AufenthG).<sup>11</sup> Two aspects have to be highlighted: first, the livelihood can also be secured by a third party, such as other relatives and friends, if they agree to be formally bound (section 68 AufenthG). If the family member who is planning to move to Germany is willing and able to support someone who already lives in Germany and that person has relied on public funds, a residence title is to be granted as well, provided that the other preconditions are met (no. 27.3.4 VV AufenthG) (Kreienbrink, Rühl 2007, p. 21). Second, the law defines (in a somewhat contradictory fashion) that the residence permit for the purpose of family reunion

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<sup>10</sup> The distinction between forced and arranged marriage may be complicated in practice. Thus, cases of suspicion must be checked carefully (nos. 27.1.6. and 27.1a.2.1 VV AufenthG).

<sup>11</sup> The law does not specify when a livelihood is considered as secure. In practice, the authorities require that the sponsor has an income of at least the standard rate for non-contributory social benefits (i.e. 337 EUR per person for couples per month, lower for children and youths), plus his/her rental charges. Therefore, (future) child allowance, parental allowances and pensions and unemployment benefit are also considered as income. By contrast, personal tax-exempt amounts are deducted from income, i.e. the respective sums have to be earned additionally (Weber et al. 2008).

with spouses to Germans “should be granted as a general rule” even if the livelihood cannot be secured (section 27 (3), sentence 3 AufenthG); only in exceptional cases that are not clearly defined by law can the precondition of secure living conditions be decisive for the visa (Frings, Tießler-Marenda 2012, pp. 94 et seq.).

- ▶ Second, both spouses have to be at least 18 years of age (section 28 (1) in conjunction with section 30 (1) no. 1 AufenthG).
- ▶ Third, evidence of basic German language skill<sup>12</sup> must be submitted by the immigrating spouse (section 28 (1) in conjunction with section 30 (1) AufenthG). The language requirements can be waived under certain conditions: the requirement shall have no bearing on the issuance of the residence permit where (a) the spouse is unable to provide evidence of a basic knowledge of German on account of a physical, mental or psychological illness, (b) the spouse’s need for integration is “discernibly minimal” and (c) where by virtue of his/her nationality, the foreigner may enter and stay in Germany without requiring a visa for a long-term residence (section 30 (1) no. 1 AufenthG). This requirement is contested and might be revised in future, see chapter 5.

### 3.2.1.2. Spouses and partners of third-country nationals

As is the case for German citizens, third-country nationals living in Germany can also be joined by foreign dependents so that they can live together as a family. The rationale is to protect marriage and the family (section 27 (1) AufenthG)). In this case, however, more conditions have to be met.

- ▶ The first condition is that the resident third-country national possesses a residence title meeting the following requirements: he or she has to have (a) a permanent settlement permit, (b) an EC long-term residence permit, (c) an EU Blue Card, (d) a residence permit confirming that he or she is a long-term resident in another EU Member State and that he/she married in that state, or (e) a limited residence permit for the purpose of research or because the third-country national is entitled to asylum or has been granted refugee status. In case the resident third-country national possesses a limited residence permit for any other purpose than

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<sup>12</sup> A1 level of the Common European Framework of Reference for Languages (no. 28.2.4 AufenthV).

research, asylum or refugee status, the residence permit (f) either has to last for at least two years, or (g) the marriage has to have existed at the time of said permit being granted and the duration of the foreigner's stay is expected to exceed one year (30 (1) no. 3 AufenthG).<sup>13</sup>

- ▶ A second condition, since 2007, is that both spouses have to be at least 18 years of age. Interestingly, this provision cannot be waived for the spouse of a German citizen, but might be waived for a spouse of a third-country national who is a highly qualified person, a self-employed person, a researcher or a long-term resident of another EU member state.<sup>14</sup>
- ▶ Third, the immigrating spouse has to prove basic verbal communication skills in the German language. As is the case for spouses of German citizens, this requirement can be waived under the conditions explained above (see part 3.2.1.a). Additionally, the language requirements can be waived for spouses who reunify with a highly qualified person, a self-employed person, a researcher or a long-term resident of another EU member state.<sup>15</sup> As mentioned above, this language requirement is contested and might be revised in future, see chapter 5.
- ▶ As a fourth precondition, the resident (or the subsequently immigrating family member) has to be able to secure the family's livelihood, as described in the section on spouses and partners of German citizens. It has to be noted, however, that although the basic regulation is similar for the family reunion with Germans and third-country nationals, "exceptions" have to be made for the family reunion with Germans who are not able to meet the preconditions, while this is not the case for the family reunion with third-country nationals.
- ▶ Fifth, the resident has to show that sufficient living space is available (section 29 (1) no. 2 AufenthG). This is described in more detail in part 3.4 on housing.

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<sup>13</sup> By contrast, family reunification is not granted if the foreigner resides illegally in Germany. Furthermore, it is not granted if the foreigner holds the residence permit on urgent humanitarian or personal grounds or due to substantial public interests (section 25 (4) AufenthG). Additionally, the right is not granted if the foreigner is expected to be deported and his/her departure is impossible (Kreienbrink, Rühl 2007, p. 30).

<sup>14</sup> More precisely, the spouse might be minor (a) if the sponsor is a highly qualified foreigner, a researcher or self-employed foreigner (holding a residence permit under sections 19-21 AufenthG) and the marriage existed already when the sponsor relocated the focus of his/her life to Germany; (b) if the sponsor is a researcher (holding a residence permit under section 20 AufenthG) immediately before he/she was granted a settlement permit or a permanent residence permit/EU; (c) if the sponsor holds a long-term residence permit of another member state of the European Union (residence permit under section 38a AufenthG) and marital cohabitation already existed in that state (section 30 (1) AufenthG).

<sup>15</sup> The details are the same as for the age requirements (section 30 (1) AufenthG).

The requirements of sufficient living space and a secure livelihood may be waived – and in some cases even have to be waived for refugees and persons entitled to asylum, as will be explained in part 4.5. It is noteworthy here that once the subsequently immigrated spouse lives in Germany, the spouse's residence permit may be extended for as long as the marital cohabitation continues – even if the livelihood can no longer be secured and the couple can no longer afford the sufficient living space on their own (section 30 (3) AufenthG). After a certain period of residence, the family migrant will be entitled to a residence status that is independent of family ties (see part 3.3).

### 3.2.1.3. Spouses and partners of EU citizens

The Act on the General Freedom of Movement for EU Citizens (FreizügG/EU) grants free movement within the EU, i.e. also on entry and residence in Germany, to Union citizens. Free to move – without any conditions – are EU citizens who are employees, who seek employment, who carry out vocational training, who are self-employed, who provide or receive services, and who have acquired the right of permanent residence. Other EU citizens not being gainfully employed (including students, pensioners and retirees) are free to move as well, but are subject to some conditions: they may enter and reside in Germany if they have adequate health insurance coverage and adequate means of subsistence, i.e. if the livelihood is secure (section 4 FreizügG/EU, 2.2.5 VV FreizügG).

This right of free movement does not only apply to EU citizens, but also to family members of EU citizens, regardless of nationality and irrespective of the time of the family reunification; thus, spouses as well as same-sex partners must therefore be granted a residence permit also (section 2 (2) nos. 6 and 7 in conjunction with sections 3 and 4 FreizügG/EU).

While for spouses and same-sex partners of non-gainfully employed EU citizens the livelihood has to be secure, no such requirement has to be met for the spouses and partners of employees, providers and recipients of services and the self-employed. Moreover, spouses and partners of EU citizens do not have to meet the additional requirements listed in the Residence Act, such as pre-entry German language skills, and are not obliged to attend an integration course (3.0.I VV FreizügG).

Pursuant to section 2 (2) no. 5 FreizügG/EU, the right to free movement also allows EU citizens and their families to remain in Germany after they have terminated their employment or self-employed economic activity.

Finally, it shall be noted that the right to freedom of movement implies that EU citizens do not require a visa or a residence title in order to enter the federal territory and to stay in Germany (section 2 FreizügG/EU). Nevertheless, family members of EU citizens who are not EU citizens themselves require a visa for entry and a residence card (*Aufenthaltskarte*) for their stay<sup>16</sup> although this is largely symbolic, since the visa and the residence card are in principle, always granted (section 2 (4) FreizügG/EU, section 5 FreizügG, 2.4.2.1 VV FreizügG/EU/, 5.2.1 VV FreizügG/EU).

### **3.2.2. Regulations for family reunification with children and parents**

#### 3.2.2.1. Children of German citizens and parents of minor German citizens

A residence permit is granted to the minor unmarried, non-German child of a German citizen<sup>17</sup> and to the non-German parent of a minor unmarried German citizen for the purpose of care and custody, provided that the German's ordinary residence is in the federal territory (section 28 (1) nos. 2 and 3 AufenthG). The general precondition of being able to secure the family's livelihood does not have to be met in the case of a German child joining a parent or in the case of a parent joining a child for the purpose of care and custody. In the case of the parent of a minor, unmarried German who does not possess the right of care and custody of said child, the residence permit may be granted to the parent although the livelihood cannot be secured if the family unit already exists in the federal territory (section 28 (1) sentence 4 AufenthG).

The reasoning behind this is that the German parent or child has an absolute right of residence in Germany and would be prevented from familial cohabitation if his/her foreign child or parent was not allowed to enter the country (Kreienbrink, Rühl 2007, p. 34).<sup>18</sup>

#### 3.2.2.2. Children of third-country nationals and parents of minor third-country nationals

Unmarried children of third-country nationals (including students) shall be granted a residence permit up to the age of 18 if the child relocates the central focus of his/her life together with his/her parents to Germany and if both parents hold a limited residence permit or permanent

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<sup>16</sup> They are exempted from the visa requirement if they already possess a residence card of another EU member state.

<sup>17</sup> Since the amendment of the Nationality Act in 2000, children of German citizens obtain German citizenship by birth. Thus, the given case – non-German child of a German citizen – is an exception.

<sup>18</sup> It is noteworthy that children have the right to reunify with their biological and adoptive parent as well as with their stepparents if the biological/adoptive parent also reunify with his/her new spouse, according to section 21 (1), No. 2 AufenthG (no. 27.1.5 VV AufenthG).



settlement permit. Again, however, in most cases, the family's livelihood has to be secure (sections 2 (3) and 27 (3) AufenthG).<sup>19</sup>

People entitled to asylum or refugee status also have the right to be joined by their children (section 32 (1) AufenthG). In these cases, the authorities may not insist on evidence showing that the livelihood is secure (section 29 (2) AufenthG).

In the case of only one parent migrating with his/her child or a parent wanted to be joined by the child, he/she needs to hold the sole right of care and custody (section 32 (1) AufenthG). This can be problematic for parents of countries in which the concept of sole right of care and custody does not exist (e.g. some Eastern European countries) (Frings, Tießler-Marenda 2012, p. 115).

A distinction has to be made between the aforementioned migration of the whole family and children's subsequent immigration. Regarding the latter, there is an additional requirement for children older than 15 but younger than 18: these children will be granted a residence permit only if they have a command of the German language<sup>20</sup> or if their education and way of life to date suggests that they will be able to integrate into the "German way of life" (section 32 (2) AufenthG).

These provisions are supplemented by a discretionary regulation to prevent special hardship "on account of the circumstances pertaining to the individual case concerned. The child's well-being and the family situation are to be taken into consideration" (section 32 (4) AufenthG).

Under certain circumstances, the subsequent immigration of parents of a foreign minor is possible as well: a residence permit shall be issued to the parents of a foreign minor who is entitled to asylum or is a refugee if no parent entitled to legal custody is resident in Germany. The general precondition of a secure livelihood can be waived in this case (section 36 (1) AufenthG).

### 3.2.2.3. Children of EU citizens and parents of minor EU citizens

For children and parents who wish to join EU citizens, the same regulations apply as has been discussed in the section on spouses of EU citizens. The EU citizen's right on free movement within the EU is also granted to the EU citizen's family member of whatever nationality.

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<sup>19</sup> For the regulations regarding stepchildren, see the footnote above.

<sup>20</sup> C1 level of the Common European Framework of Reference for Languages (no. 32.2.1 AufenthV).

The definition of family is broad and covers not only the parents of minor children but also children under 21 years old (section 3 (2) no. 1 FreizügG). Further, it includes relatives in the ascending and descending line of the sponsor for whom these persons or their spouses provide maintenance (section 3 (2) no. 2 FreizügG).

The conditions of entry and stay are the same as those applying to spouses: free to move are children and parents of EU citizens who are employees, seek employment, carry out vocational training, are self-employed, provide or receive services, or have acquired the right of permanent residence. Children and parents of EU citizens not gainfully employed (and not falling under section 2 (2) nos. 1-4 and no. 7 FreizügG) may only enter and reside in Germany if they have adequate health insurance coverage and if the livelihood is secure (section 4 FreizügG/EU, 2.2.5 VV FreizügG).

Adult people younger than 21 have the right to join their parents, although neither the parents nor the child him-/herself may be able to secure the livelihood.

As mentioned previously, the right to free movement also allows EU citizens and their families to remain in Germany after they have terminated their employment or self-employed economic activity (section 2 (2) no. 5 FreizügG/EU).

### **3.2.3. Regulations for the migration of family members outside the nuclear family**

#### **3.2.3.1. Other family members of German citizens or third-country nationals**

Regarding the immigration of other family members who are not part of the nuclear family (e.g. parents of adults or other close relatives outside the nuclear family), the regulations are the same for those of German citizens and third-country nationals: other family members may be granted a residence permit “if necessary in order to avoid particular hardship” (sections 28 and 36 AufenthG), i.e. in cases in which familial assistance is needed, for instance, due to illness, disability, care dependency or mental distress (no. 36.2.2.3 VV AufenthG). The residence permit should serve to establish or ensure a stable and long-term family (care and custody), which includes the care and custody of children but also maintenance payments or other material support (no. 36.2.1.1 AufenthV).

The rules on the application of the Residence Act, cover the following cases: parents joining their adult children, adult children joining their parents and minor children joining close adult relatives who possess the sole right of care and custody in the sense of a protected parent-child

relationship (no. 36.2.1.3 VV AufenthG). As explained by Kreienbrink and Rühl, however, “these persons must not have any comparable family relationships abroad. For example, other minor dependents may only join family members in an ascending line (e.g. grandchildren joining their grandparents) if they are orphans or if their parents are demonstrably unable to care for them. The hardship provision set out in section 36 AufenthG also says that living in a family household has to be both appropriate and necessary to prevent particular hardship” (Kreienbrink, Rühl 2007, p. 14).

#### 3.2.3.2. EU citizens' family members outside the nuclear family

For other family members who wish to join EU citizens, almost the same regulations apply as mentioned above. As explained, the Freedom of Movement Act includes all relatives in the ascending and descending line of the sponsor for whom these persons or their spouses provide maintenance (section 3 (2) nos. 1 and 2 FreizügG/EU). The only exception is constituted by students. The definition of family member applied to them is tighter than for other EU citizens entitled to free movement and only refers to the nuclear family consisting of the spouse and the children of the student (section 4 sentence 2 FreizügG/EU).

### 3.3. **Conditions for an autonomous residence status**

Family migrants in Germany can get a residence permit that is autonomous of the sponsor. The following paragraphs describe the conditions for getting, first, a residence permit independent of the sponsor and, second, a permanent settlement permit.

#### 3.3.1. Conditions for an independent residence permit

As said, after a certain period of time, a family migrant can get an **independent right of residence**, i.e. a residence permit that is independent of the sponsor and that entitles the family migrant to pursue an economic activity.

### 3.3.1.1. Regulations for an independent residence permit for family migrants having joined German citizens or third-country nationals

Regarding **spouses and parents of minors** having joined German citizens or third-country nationals, the period of time before being granted an independent right of residence generally lasts for **three years**. In the event of termination of marital cohabitation, the spouse's residence permit generally is extended (by initially one year) as an independent right of residence if marital cohabitation has lawfully existed in Germany for at least three years (section 31 (1) AufenthG).<sup>21</sup> The requirement for marital cohabitation to have existed for three years is waived if the sponsor has died while marital cohabitation existed in Germany (section 31 (1) AufenthG) and is also waived "if necessary to enable the spouse to continue his or her residence in order to avoid particular hardship". As such, the law specifies family migrants' "legitimate interests; in particular this is to be assumed where the spouse is the victim of domestic violence" (section 31 (2) AufenthG).

This is different for Turkish citizens: as explained in section 3.1, Turkish citizens and their family members benefit from a standstill clause of an EU-Turkey Association Agreement, prohibiting the creation of any new requirement in addition to those of 1973. In the context of the independent residence status, this means that for Turkish citizens, the former regulation is valid. According to that, a marital cohabitation only has to have lawfully existed in Germany for at least two years (instead of three years) in order to be entitled to an independent residence status (Frings, Tießler-Marenda 2012, pp. 329 et seq.).

For **children**, the regulations are as follows: once a child reaches the legal age of majority, "the residence permit granted to the child shall become an independent right of residence which is unrelated to the purposes of the immigration" (section 34 (2) AufenthG).

### 3.3.1.2. Regulations for an independent residence permit for family migrants having joined EU citizens

**Spouses** having joined EU citizens are allowed to stay in Germany **after a divorce** on condition that the marriage lasted for at least **three years**, including at least one year in Germany. They can also stay if they have been allocated parental custody of the EU citizen's children by virtue of an agreement between the spouses or by a court ruling, or if the divorce is necessary "in order

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<sup>21</sup> Further, the sponsor must have been in possession of a residence permit, settlement permit or EC long-term residence permit up to this point in time, unless he or she was unable to apply for an extension in due time for reasons beyond his or her control.

to avoid special hardship, in particular because the spouse cannot be expected to continue the marriage due to the infringement of his or her legitimate interests” (section 3 (5) FreizügG/EU).

The **children** of an EU citizen who is entitled to freedom of movement and the **parent** who actually exercises parental custody over a child resident in the federal territory and attending an educational establishment, can keep their right of residence after the death of the EU citizen or upon the latter leaving the country until the children complete their education (section 3 (4) FreizügG/EU).

### **3.3.2. Conditions for a permanent settlement permit**

The conditions for getting a permanent residence/settlement permit are described in the following.

#### **3.3.2.1. Regulations of settlement permit for family migrants joining German citizens or third-country nationals**

As a principle, the duration of residence permits for immigrating family members depends on the status of the resident family member (sponsor). Nonetheless, there are two general rules. First, the duration of a family migrant’s residence permit should not exceed the duration of the residence permit of the sponsor. Second, the first residence permit lasts at least one year and is prolonged afterwards (section 27 (4) AufenthG). For some migrants, though, participation in an integration course is obligatory in order to prolong their residence permit, as long as the family unity continues to exist. This regulation is explained further in part 3.4 on education.

**Third-country family members joining a German citizen** are entitled to a permanent settlement permit after a period of three years if the family unity with the German citizen continues to exist, there are no grounds for expulsion, and he/she is able to communicate in German on a basic level (section 28 (2) AufenthG).

**Third-country family members joining a third-country national** have to wait longer and to meet more conditions in order to be entitled to a permanent settlement permit. A settlement permit shall be granted (according to section 9 (2) AufenthG) provided that

- ▶ the foreigner has held a residence permit for five years;
- ▶ his/her livelihood is secure;

- ▶ he/she has paid contributions into the statutory pension scheme for at least 60 months or furnishes evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company; time off for the purposes of childcare or nursing at home shall be duly taken into account;
- ▶ the granting of such a residence permit is not precluded by reasons of public safety or order;
- ▶ he/she is principally permitted to be in employment or self-employed;
- ▶ he/she has an adequate knowledge of the German language<sup>22</sup> and basic knowledge of the legal and social system and the way of life in Germany;
- ▶ and he/she possesses sufficient living space for himself or herself and the members of his or her family forming part of his or her household (section 9 (2) AufenthG).

If marital cohabitation (with a German or third-country national) ends by divorce or permanent separation before the spouse has received a settlement permit, the Residence Act entitles him/her to an autonomous residence permit, which allows him/her to pursue an economic occupation, provided that marital cohabitation existed lawfully in the federal territory for at least three<sup>23</sup> years (section 31 (1) no. 1 AufenthG). If the sponsor died while marital cohabitation existed in the federal territory, the spouse will also be granted an autonomous residence permit.<sup>24</sup> The duration of the autonomous residence permit is first limited to one year but may be extended until the preconditions for a settlement permit are met (section 31 (4) sentence 2 AufenthG).

In order to prevent particular hardship, e.g. in case of a violent marriage, the condition that the marriage needs to have existed lawfully in the federal territory for at least three years can be waived (section 31 (2) AufenthG).

The regulations for children are somewhat more generous: once a child reaches the legal age of majority, his/her residence or settlement permit becomes an independent right of residence in its own right, which is not related to the purpose of family reunification (section 34 (2) AufenthG). Moreover, children who hold a residence permit for the purpose of family reunification will be

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<sup>22</sup> B1 level of the Common European Framework of Reference for Languages (no. 9.2.1.7 AufenthV).

<sup>23</sup> Until 2011, the marriage had to exist for two years (Bundesregierung 2011; Bundesregierung 2011).

<sup>24</sup> An autonomous right of residence can, however, only be granted if the sponsor, at the time at which marital cohabitation ended, held a right of residence which is basically eligible for consolidation. These regulations apply accordingly to registered partners (section 27 (2) AufenthG).

granted an autonomous, unlimited right of residence (settlement permit) if they have held a residence permit for five years at the date of their 16<sup>th</sup> birthday. This also applies to adult foreigners who entered Germany as children, have held a residence permit for five years, possess an adequate knowledge of the German language<sup>25</sup> and have a secure livelihood or are undergoing vocational training (section 35 (1) AufenthG) or if they had a right to return (section 37 AufenthG).

If the family relationship breaks down before the children receive an independent right of residence, they may be granted a residence permit if a parent possessing the right of care and custody holds a residence permit or settlement permit and the child lives in a family household with him/her or if the right to return is applied accordingly (section 34 (1) in conjunction with section 37 AufenthG).<sup>26</sup>

### 3.3.2.2. Regulations for permanent residence (EC long-term residence permit) for third-country nationals joining EU citizens

In general, **family members** of EU citizens can receive the right of permanent residence (EC long-term residence permit) if they have continuously resided in the federal territory for **five years** (sections 4a (1 and 4) FreizügG/EU). This period can be shortened for family member in the case of the death of an EU citizen who migrated to Germany for professional reasons (section 2 (2) nos. 1-3 FreizügG/EU).<sup>27</sup>

By contrast, the residence permit can be lost if the family migrant does not live in Germany (out of a reason which is per se not of a temporary nature) for more than two consecutive years (section 4a (7) FreizügG/EU) if it is required due to reasons of public order, safety or health (section 6 (1) FreizügG/EU).

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<sup>25</sup> B1 level of the Common European Framework of Reference for Languages (no. 35.1.2.3 AufenthV).

<sup>26</sup> The right to return is an independent right. It entitles third-country nationals who have lived in the Federal Republic of Germany as minors to return to Germany within a maximum of five years since leaving the country, to a residence title and to the right of pursuing an economic occupation. Originally, this right was not created to protect marriage and the family. While section 37 AufenthG erects significant hurdles (8 years of residence and 6 years of schooling, a secure livelihood by oneself or a third-party and submitting the application between 15 and 21 years of age), the provisions concerning a secure livelihood are covered by the Directive (Art. 7.1 b and c). Moreover, the periods mentioned above may be waived in order to prevent particular hardship (section 37 (2) AufenthG).

<sup>27</sup> This is only the case if they were permanently resident at the deceased's address at the time of his/her death and if the EU citizen has lived continuously in the federal territory for a period of at least two years at the time of his/her death or died as a result of an occupational accident or an occupational disease (section 4a (3) FreizügG/EU).

## 4. Entitlements and Restrictions facing non-EU family migrants

The IMPACIM project aims to investigate patterns of restrictions and entitlements for family migrants and is particularly interested in the fields of education, employment, social welfare benefits, health, housing, and civic participation. Family migrants' restrictions and entitlements in these fields are presented in the following section. However, one has to bear in mind some general aspects.

First, family migrants' rights do not depend on their status as family migrants per se, but are rather conditional (in the same way as for other migrants) on the kind of residence title they have.<sup>28</sup> Once a residence permit is issued, there is hardly any specific regulation for family migrants; family migrants have the same entitlements, duties and restrictions as other foreigners on the same residence permit – these do not depend on the purpose of immigration but on the kind of residence title. People with a limited residence permit have different entitlements, duties and restrictions than foreigners with an unlimited settlement permit.

Second, the rights of entry and residence, i.e. the conditions of stay including the restrictions and entitlements, differ according to the legal situation of the sponsor (person to be joined) who resides in Germany.

Third, an underlying concept of German integration policy is the inclusion of migrants into the German welfare system. Thus, in many aspects, migrants have the same legal rights as German citizens, as will be explained in the following section.

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<sup>28</sup> Generally speaking, there are two kinds of residence titles: a residence permit that is issued for a limited amount of time and a settlement permit that allows for an unlimited time of residence in Germany.



## **4.1. Education**

Education is a crucial factor for gaining employment and developing a career, and thus for making successful progress in the receiving society. In the German education system, family migrants' entitlements and restrictions are very similar to those of Germans. There are, however, some additional migrant-specific provisions such as integration and language courses.

### **4.1.1. Pre-school programmes for migrant children**

Early childhood education – especially acquiring language skills at a young age – can play an important role in succeeding in education. In Germany, there is a comprehensive range of crèches, kindergartens and child day care centres. Most of these facilities are either run by cities or by welfare organisations such as the Catholic Caritas, the Protestant Diakonie and the Workers' Welfare Association (AWO). They are open to every child, irrespective of nationality and immigration status. However, the facility chooses the children it accepts – and it is up to the facility to set criteria and to assign priorities. Funding is provided by local authorities and the responsible federal state, together with compulsory parental contributions (Presse- und Informationsamt der Bundesregierung 2010). The parental costs can partly be covered by different institutions for low-income families.<sup>29</sup> These rights also apply to family migrants.

While every child has the right to be placed in a kindergarten from the age of three years, an early application is recommended in order to be placed in the preferred facility. This holds particularly true for crèches.<sup>30</sup> Thus, family migrants can be disadvantaged due to their time of arrival – a disadvantage not only for international migrants but for internal ones as well.

Before enrolling for school, both native and immigrant children in kindergarten have to pass a language test in order to check their competence. In case of language problems, special language support can be provided (Bundesamt für Migration und Flüchtlinge (BAMF) 2012b).

### **4.1.2. Primary and secondary education**

Generally, access to public schools is available to all children, regardless of the type of residential status and/or citizenship, including those arriving as family migrants. The right to education is

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<sup>29</sup> The youth welfare office covers the costs for low-income single parents and the employment agency for parents who receive unemployment benefits.

<sup>30</sup> It is a goal of federal policies to provide places for 35% of 0-3 year-olds by 2013.

codified in the German constitution and implemented through the compulsory school attendance policy (see below).<sup>31</sup>

Generally, compulsory school attendance in Germany begins in the year in which the child has his/her sixth birthday and lasts for nine years.<sup>32</sup> (Presse- und Informationsamt der Bundesregierung 2010, p. 86). The assessment or year allocation is carried out by the responsible school administration in agreement with the responsible education authority and the parents (Bundesministerium für Bildung und Forschung 2012).

Attendance at both primary and secondary schools in Germany is free of charge, and transportation costs are reimbursed by municipalities. Costs for school supplies such as books, photocopies etc. as well as trips and excursions have to be covered by parents but can be reimbursed for low-income parents.

Schools offer a range of special courses for migrant children. This can include preparatory classes, language courses, special classes combining instruction in the core subjects with language training, bilingual classes as well as special support lessons. All these are offered free of charge.

#### **4.1.3. Vocational education**

To find a job in Germany it is important to have completed either a course of study, vocational training in the so called dual system or in schools. Around 60% of young people attend vocational training in Germany, generally lasting between two and three years (Bundesamt für Migration und Flüchtlinge (BAMF) 2012b). In general, at least a certificate from a lower secondary school (*Hauptschule*) or an equivalent certificate from another country is required to start a vocational training programme. The rules not only apply for Germans but also for family migrants.

#### **4.1.4. Tertiary education**

After having migrated to Germany as a family migrant, one can also enter German institutions of higher education, since these are open to all who fulfil the admission criteria. Candidates must have gained the school-leaving qualification that entitles them to study at the type of institution of

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<sup>31</sup> An exception applies to asylum seekers. While all other children have the duty to attend school, children of asylum seekers have this duty only in some federal states. In others, they have the right to attend school.

<sup>32</sup> Due to federal states' competence in education, provisions can differ in terms of age as well as duration (Bundesamt für Migration und Flüchtlinge (BAMF) 2012b).

their choice. In the case of foreign qualifications, the individual institutions decide whether they meet entry requirements (Bundesamt für Migration und Flüchtlinge (BAMF) 2012b).

To study at a state institution of higher education, a study contribution fee (*Semesterbeitrag*) is charged by the respective institution – in general an amount of 50 to 150 EUR per semester.<sup>33</sup> Private institutions usually charge considerably higher fees (Bundesamt für Migration und Flüchtlinge (BAMF) 2012b).

#### **4.1.5. Financial assistance for secondary and tertiary as well as vocational education**

Students attending certain types of secondary schools and those attending higher education institutes may be eligible to receive grants and loans pursuant to the Federal Training Assistance Act (*Bundesausbildungsförderungsgesetz, BAföG*). The so-called BAföG is supposed to ensure that young people can benefit from comparable opportunities when embarking on careers, regardless of differences in their financial backgrounds.<sup>34</sup>

Migrants who came to Germany with the sole purpose of study (section 16 AufenthG) cannot receive BAföG assistance. Some family migrants, by contrast, are eligible to apply for this financial assistance: European citizens as well as third-country nationals who came to Germany for the purpose of family reunification with a German citizen or with an EU citizen can apply for BAföG assistance. Third-country nationals who came to Germany for the purpose of family reunification with another third-country national can apply for BAföG aid only if the sponsor has a permanent settlement permit or has lived in Germany for at least four years. Furthermore, training assistance can be awarded to other foreign nationals if they – or at least one parent – have been gainfully employed in Germany for several years prior to the commencement of training (section 8 BAföG).

#### **4.1.6. Integration course**

Beside the offers within the general education system, there is a specific measure designed for migrants: integration courses. These consist of a language course (600 hours) and an orientation

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<sup>33</sup> Additionally, students have to pay additional tuition fees (*Studienbeitrag/Studiengebühr*) of approximately 500 EUR per semester in the federal states of Bavaria and Lower Saxony. Bavaria has decided to abandon this fee from autumn 2013 on, in Lower Saxony it will probably be abandoned in autumn 2014.

<sup>34</sup> Training assistance can, however, only be claimed if the individual's financial means have been exhausted. For this reason, BAföG support is dependent on family circumstances: the income of the student, his/her spouse, and his/her parents are all taken into consideration.

course on Germany's legal system, history and culture (60 hours). These have been introduced with the Residence Act in 2005. Under the heading 'promoting and demanding' (*fördern und fordern*), the "willingness" of migrants to integrate is legally demanded and new offers and obligations have been established. Upon being issued his/her first residence permit, a third-country national family migrant is entitled to participate in an integration course (section 44 (1) AufenthG) (Bundesministerium des Innern 2012a).<sup>35</sup> The entitlement might turn into an obligation in the case of insufficient language skills (section 44a AufenthG).<sup>36</sup>

For the participation in an integration course, each migrant has to contribute 1.20 EUR per lesson, except ethnic German resettlers (*Spätaussiedler*) and their families as well as low-income migrants.

In order to receive a permanent residence permit, proof of sufficient knowledge of the German language has to be provided (section 3 (2) *Integrationskursverordnung*, IntV). This is usually done by passing the integration test but can also be achieved via individual examination (Seveker, Walter 2010, p. 25).<sup>37</sup>

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<sup>35</sup> Unless he/she will attend school in Germany or is in vocational training, shows a recognisably small need for integration or already has a sufficient German language proficiency (section 44 (3) AufenthG).

<sup>36</sup> If a family migrant does not participate in an obligatory integration course or fails the final test, this can be sanctioned by a fine and/or the denial to prolong the residence permit (section 44a (3) AufenthG).

<sup>37</sup> Since July 2009, immigrants who fail to reach level B1 in the test, but achieve level A2 "receive a certificate of their language skills, and obtain the opportunity to take the advanced language course again (up to 300 hours) to reach level B1" (Strik et al. 2010, pp. 45.49).

## 4.2. Employment

Access to the labour market is a crucial aspect of the structural integration of migrants. It is not only connected with the economic status and well-being of a migrant, but also with the opportunity to establish relevant social relations and to gain cultural, social and economic capital. This section shows how Germany regulates family migrants' access to the labour market.

### 4.2.1. Labour-market access for family migrants

As a general rule, the labour-market access for immigrating family members depends on the person who is to be joined, i.e. the sponsor. If the sponsor is entitled to pursue an economic activity, e.g. through a permanent settlement permit or a residence permit for employment, the same conditions apply for family members without any additional waiting time. If marital cohabitation has existed lawfully in the federal territory for at least two years, however, the family migrant will be granted access to the labour market (section 29 (5) AufenthG).

This means that a third-country national who joins his/her German family member is automatically entitled to work (section 28 (5) AufenthG). A third-country national joining another third-country national, who has equal (unlimited) access to the labour market, will be granted equal access as well, whereas dependents of sponsors with limited access will be granted limited access for the first two years before then getting full access to the labour market as well.

“In the spirit of ‘one-stop government’ there is no separate working permit. The right to pursue an economic activity is derived from the residence permit” (Kreienbrink, Rühl 2007, pp. 18–19). There are no restrictions on the kind of employment family migrants are allowed to take up. Further, foreign employees have the same rights as all employees, such as legally regulated working hours and conditions. Collective agreements between employers and trade unions also apply to foreign workers.

Again, EU citizens and their spouses and partners enjoy privileged rights: they have unlimited access to the German labour market. This is due to the principle of non-discrimination on the grounds of nationality and on the free movement of labour (section 2 (1) FreizügG/EU, no. 2.1 VV FreizügG/EU).

Migrants' access to civil servant status is, however, limited. Since 1993, EU nationals have been treated the same as German nationals. Third-country nationals, by contrast, can only be nominated as civil servants if there is an ‘urgent official need’ (“*dringendes dienstliches Bedürfnis*”)

(section 7 BBG and section 4 BRRG). This does not mean that they cannot be employed by a public authority (e.g. a municipality), but that they have a different, less privileged status, implying differences regarding their employment protection and pension schemes.

#### **4.2.2. Requirements for entrepreneurs**

Access to entrepreneurship goes along with certain formalities every entrepreneur has to meet. First of all, the entrepreneur has to choose the legal structure of the company. Taxes, finances, and laws that apply to businesses are determined by this structure. In general, a new business has to be registered with the local Trade Office (*Gewerbeamt*), which then automatically informs other authorities such as the Tax Office, where a new business must also register. These regulations do not differentiate between entrepreneurs with a migration background and those without it. However, third-country nationals must have a valid residence permit that allows them to work in order to start their own business in Germany.<sup>38</sup> EU citizens do not need permission to settle or start their own business in Germany because of the freedom of movement, of establishment and of trade within the EU.

Founders of new businesses often need financial assistance. In addition to credit from banks, there are other financing possibilities for entrepreneurs in Germany, which are relevant to family migrants. Founders of businesses who need a relatively small amount of money and/or face difficulties in securing credit from banks (which is often the case in the hospitality industry), can apply for a 'micro loan' issued by the German reconstruction loan corporation (*KfW*). And people who want to start a business while unemployed can apply for monthly grants from the Employment Agency or the Jobcenter which can be granted for up to twenty-four months. These loans and grants can be granted for family migrants as well (Lüken-Klaßen, Pohl 2010).

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<sup>38</sup> For third-country nationals who plan to immigrate to Germany in order to become self-employed, the regulations of the Residence Act apply. According to these, "self-employed persons can obtain a residence permit if there is an overriding economic interest or a regional demand, if the activity can be expected to have a positive impact on the economy, and if the funding is ensured" (section 21 AufenthG). The 'overriding economic interest' is given when entrepreneurs make an investment of at least 250,000 EUR or create five new jobs. If these requirements are fulfilled, the entrepreneur obtains a residence permit for a maximum of three years. If the business is successful, i.e. the entrepreneur has sufficient means to assure a livelihood, he or she then gets a settlement permit.

### **4.2.3. Recognition of educational and vocational diplomas obtained in other countries**

Third-country nationals with educational certificates and vocational qualifications gained abroad can apply for recognition of their qualifications under the Professional Qualifications Assessment Act (*Berufsqualifikationsfeststellungsgesetz – BQFG*).

While such an official recognition is not needed for the majority of occupations in Germany and jobseekers can apply directly for employment in the German labour market, there are some occupations for which an official recognition as well as registration is needed. Examples for these occupations are medical occupations, legal practitioners, the whole public service system and some crafts. The recognition procedure varies depending on the specialist regulations of the individually regulated professions.

The recognition of foreign vocational qualifications within the area of the chambers of industry and commerce (*IHKs*), for instance, are recognised by the chamber's centre *IHK FOSA* (Foreign Skills Approval); the recognition of higher education certificates is made by the Central Department of Foreign Education Systems (*Zentralstelle für ausländisches Bildungswesen, ZAB*) (Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (KMK) 2012).<sup>39</sup>

To enhance the accreditation process for regulated occupations, a new Accreditation Act (*Anerkennungsgesetz*) became effective on 1 April 2012. The four important alterations are (1) the introduction of the general right of a recognition procedure, (2) the aim to create uniform national criteria and processes, (3) the entry into the profession only depends on the content and quality of the occupational qualification (henceforth neither nationality nor origin are crucial) and (4) it is also possible apply from abroad (since the act refers to the willingness to work in Germany and not to the kind of residence permit) (*Zentralstelle für die Weiterbildung im Handwerk (ZWH)* 2012).

Thus, third-country national family migrants only need an official accreditation for regulated occupations. If, however, they prefer to complete a recognition procedure, they are entitled to do so.

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<sup>39</sup> Special entitlements apply to EU citizen in order to ensure access to the same occupation under the same conditions as for natives; summarised in the Directive 2005/36/EG (Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (KMK) 2012; Europäisches Parlament, Rat der Europäischen Union 2005).

#### **4.2.4. Anti-discrimination clauses for public and private employers**

With the enactment of the German General Equal Treatment Act in 2006 (*Allgemeines Gleichbehandlungsgesetz, AGG*) a strong framework against discrimination in the workplace, including those who apply for a job or an apprenticeship, who work at home, who work on subcontracts or appear to be self-employed was created. In the scope of its implementation and in accordance with section 25 sub-section I of the AGG, the Federal Ministry for Family, Seniors, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend, BMFSFJ*) established the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes, ADS*) in August 2008, which covers especially the support of discrimination victims (Lechner et al. 2011, p. 31).

Third-country national family migrants are also protected by this act and are free to contact the Anti-Discrimination Agency.



### 4.3. Social welfare benefits

Welfare policies affect migrants' integration: inclusive policies protect migrants from severe poverty and some other risks (such as those posed by the labour market or by accidents) and may give migrants a sense of belonging to the new host country. In Germany, family migrants generally receive the same amount of social welfare benefits as German citizens – though there are some limitations for newly arrived immigrants and for job-seeking immigrants.

#### 4.3.1. Pre-entry admission criteria

As a general principle, family migration is only allowed if the livelihood of the migrating person is secure, including adequate health insurance coverage without recourse to public funds (sections 5 and 27 (3) AufenthG).<sup>40</sup> This can be done thanks to a wage or salary but also parental allowance (*Elterngeld*), child allowance (*Kindergeld*) and supplementary child allowance (*Kinderzuschlag*), educational support (such as *Bafög*) as well as certain unemployment benefits (*Arbeitslosengeld I*) are accepted as contributing to the 'income' and insuring the livelihood, since these benefits do not fall under the category of 'public funds' (section 2 (3) AufenthG). The law does not specify the income level necessary; foreigners' authorities accept an income that covers the social security's standard rate for oneself and the immigrating family members, plus the cost of rent.<sup>41</sup>

If a refugee or a person entitled to asylum is joined by his/her family, the requirement of a safe livelihood may be waived (section 29 (2) AufenthG). This requirement can further be waived if the family member who is planning to move to Germany is willing and able to support persons who already live in Germany and have so far relied on public funds to finance their livelihood after having entered Germany (no. 27.3.4 VV AufenthG).

Thus, except for refugees and people entitled to asylum, family migrants entering Germany are generally expected to take care of themselves without recourse to public funds.

If, however, over time family migrants become unemployed or are somehow unable to secure their livelihood, social welfare benefits are granted: once migrants are in possession of a limited

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<sup>40</sup> In this respect it is unimportant whether any benefit of the Social Code is being received or has been applied for; the issue is only whether there is an entitlement to such benefits (no. 27.3.1 VV AufenthG).

<sup>41</sup> In 2012, the social security's standard rate according to the Social Code Book II is 374 EUR for oneself, 337 EUR for the spouse and between 287 and 299 EUR for other family members (amount depending on the family member's age) (sections 20 and 23 SGB II). Following a court decision of the federal administrative court in 2008, the tax-exempt amount has to be deducted from the fictive income, a decision tightening the situation of family members (Weber et al. 2008, p. 10).

residence permit or a permanent settlement permit, they face few limitations or restrictions in accessing the social protection system and benefits in Germany.<sup>42</sup> There is, though, an initial period of three months where access to social security is restricted for newly arrived migrants and labour-seeking migrants and their families. This will be elaborated on in more detail in the sections below.

If migrants apply for a renewal of their residence permit, the requirement of providing a secure livelihood is generally waived; it is at the foreigners' authority's discretion to decide on the renewal (Weber et al. 2008, p. 11).

#### **4.3.2. Contributory benefits for family migrants**

Migrants with a residence or settlement permit principally enjoy the same benefits and have to comply with the same obligations as citizens. Consequently, both citizens and migrants have to fulfil several insurance obligations. They are required to possess unemployment insurance, health insurance, statutory accident insurance, and be a member of a statutory pension insurance scheme.

- ▶ The most important benefit is unemployment insurance to which contributions are mandatory for people earning more than 400 EUR. People are insured automatically from the beginning of a paid job, with contributions from their employer, themselves and through subsidies from the central government. As a consequence, unemployed people who were employed for at least 12 months are entitled to an unemployment benefit (called 'Unemployment Benefit I', according to Social Code book III). This is paid for a period between six to 24 months (depending on the employment duration and the age of the applicant), with the level of benefits depending on their former income (section 147 SGB III). After that period, the unemployed receive social benefits, as described in more detail below.
- ▶ Another contribution-based scheme is statutory health insurance that covers a wide range of health services. It is financed in the same way as unemployment insurance (Bundesministerium für Gesundheit (BMG) 2012). The scheme includes

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<sup>42</sup> By contrast, asylum seekers whose procedure is still underway and 'tolerated' persons (who are not entitled to asylum but cannot be deported for reasons of international law or on humanitarian grounds) only receive social protection to cover their basic needs. These are given in kind, with additional needs covered in money. Moreover, these benefits are around 20% lower than those given to any other recipient of social security (European Commission against Racism and Intolerance 2009, p. 37).

people who are employed (with an income over 400 EUR), enrolled in vocational training or studying, or unemployed and receiving 'Unemployment Benefit I' or 'Unemployment Benefit II'. Children are generally insured with their parents, as elaborated in more detail in part 4.4 on health (Presse- und Informationsamt der Bundesregierung 2010, pp. 132, 134, 142).

- ▶ The third insurance scheme is statutory accident insurance. Aside from employees and trainees also children, pupils, and students are covered by this scheme which is solely financed by the employer or the facility (e.g. childcare, education facility). It provides financial assistance for work accidents and any subsequent treatments (Presse- und Informationsamt der Bundesregierung 2010, p. 170).
- ▶ The statutory pension insurance scheme is financially comparable with the unemployment insurance and the statutory health insurance schemes. In order to receive benefits, people have to meet certain criteria such as the fulfilment of an insurance period and a minimum age. Except benefits for old age or disability, the insured person's surviving dependants can claim benefits from the insurance scheme after their death (Presse- und Informationsamt der Bundesregierung 2010, p. 176; Bundesministerium für Arbeit und Soziales (BMAS) 2006).

### **4.3.3. Non-contributory social benefits for family migrants**

To cut a long story short: the German welfare system generally includes non-citizen residents. Long-term unemployed people and people who are unable to work (of whatever nationality) can receive social benefits if their usual place of residence is in Germany.<sup>43</sup> The amount of the social benefits – financed through taxes – depends on the receiver's and his/her family's financial resources and needs (Presse- und Informationsamt der Bundesregierung 2010, pp. 156, 160, 164, 168, 174; Deutsche Sozialversicherung Europavertretung 2012).

There are, however, three restrictions for migrants.

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<sup>43</sup> Since the so-called Hartz IV-reform, enacted in 2005, the regulation is as follows:

- ▶ People of working age, who are capable of working, but unemployed can get 'Unemployment Benefit II' (*Grundsicherung für Arbeitsuchende – Arbeitslosengeld II*), called *Hartz IV*, according to SGB II
- ▶ People of working age, who are not capable to work and living together with another person of working age who is unemployed can get 'Social Allowance' (*Sozialgeld*) according to SGB II
- ▶ All other persons who are not capable of working can get 'Social Assistance' (*Sozialhilfe*), according to SGB XII.

- ▶ First, asylum seekers are not entitled to regular benefits (section 7 (1) SGB II, section 23 (2) SGB XII); they only receive a basic social protection (according to the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz – AsylbLG*)). Once asylum has been granted (or a person has been recognized as a refugee), however, the immigrant receives a temporary residence permit and is eligible for regular benefits.
- ▶ Second, third-country nationals who are not able to work (e.g. due to age or disease) can get financial assistance immediately after arriving in Germany.<sup>44</sup> By contrast, migrants of working age and capable to work cannot obtain any financial assistance within their first three months of stay in Germany. This also holds true for their children (section 7 (1) sentence 2 nos. 1 and 2 SGB II). In case the migrant finds employment or becomes self-employed but needs top-up assistance due to low wages, the migrant and his/her family can get this benefit immediately (section 7 (1) sentence 2 nos. 1 and 2 SGB II).
- ▶ Third, a third-country national is not entitled to receive any benefit if his/her stay is for the purpose of looking for work. The same holds true for his/her family members (section 7 (1) sentence 2 no. 2 SGB II, section 23 (3) SGB XII). Anyhow, in case a job-seeking immigrant finds employment but needs top-up assistance due to a low wage or salary, the migrant and his/her family can get this benefit.<sup>45</sup>

Regarding the last restriction, it must be stressed that it is a contentious issue of current political and juridical debate. According to several courts at the federal state level, the mentioned restriction can neither apply to EU citizens nor to citizens of those states that signed the European Convention on Social and Medical Assistance of the Council of Europe of 1953 – which are, aside from 15 EU states, Norway, Iceland and Turkey. According to these jurisdictions, citizens of these states are entitled to benefits immediately after arrival in Germany even if the purpose of their stay was to look for employment (jurisdiction of the Social Courts Berlin (S 96 AS 6145/12 ER and S 110 AS 28262/11) and Leipzig (S 20 AS 852/12 ER) of March 2012). The official line of the government as well as the Federal Employment Agency, however, is to follow a caveat issued by the government that implies that non-German citizens – both third-country nationals and EU citizens – are currently not entitled to receive any benefit according to the Social Code Book II if his/her stay is for the purpose of looking for work (Bundesagentur für

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<sup>44</sup> They get 'Social Assistance' (*Sozialhilfe*) according to section 23 SGB XII.

<sup>45</sup> According to an interview with an expert of the Jobcenter Bamberg, conducted on 19 June 2012.

Arbeit 2012).<sup>46</sup> This contradictory situation will have to be resolved by the Federal Social Security Court.

It is worthwhile to note, that even after a decision at the federal level, the situation might differ slightly at the local level since the local “Jobcenters”, which are in charge of the social welfare benefits, fall under municipal authorities.

#### **4.3.4. Non-contributory family benefits for family migrants**

All families with children can claim a wide range of family benefits.

- ▶ After the birth of a child either one or both parents can stay at home to take care of the child and receive ‘parental allowance’ (*Elterngeld*), the amount of which depends on the former income of the parent, for a maximum of 14 months. It cannot only be claimed by German citizens but also by EU citizens and their family members of whatever nationality as well as by all parents with a permanent settlement permit or with a residence permit that allows them to work (Presse- und Informationsamt der Bundesregierung 2010, pp. 56, 58, 60; Bundesamt für Migration und Flüchtlinge (BAMF) 2012a). No ‘parental allowance’ is paid if the residence is only of a temporary nature, i.e. no ‘parental allowance’ is paid for students or for people doing further training for a limited period of time (section I (7) BEEG) – except if they can prove a case of particular hardship.
- ▶ Parents with children under 18 years of age or under 25 years of age but who are in vocational training or higher education are entitled to ‘child allowance’ (*Kindergeld*).<sup>47</sup> Again, the monthly payment will also be paid to all parents with a permanent settlement permit or with a residence permit that allows them to work (Presse- und Informationsamt der Bundesregierung 2010, pp. 64, 66; Bundesamt für Migration und Flüchtlinge (BAMF) 2012a). No ‘child allowance’ is paid if the residence only is of temporary nature, i.e. no ‘child allowance’ is paid for students or for people doing further training for a limited period of time (section I (3) BKGG). Again, in cases of particular hardship, the allowance can be paid.

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<sup>46</sup> In April 2012, the Federal Ministry of Labour and Social Affairs recognised that courts might allow EU citizens to apply for social assistance (*Sozialhilfe*) according to the Social Code Book XII also immediately after arriving in Germany (Deutscher Bundestag).

<sup>47</sup> The monthly payment rises with the amount of children: for the first and second child, one gets 184 EUR, for the third 190 EUR and for every for any further child 215 EUR.

- ▶ Further, parents with an income below a certain level can claim a ‘supplementary child allowance’ (*Kinderzuschlag*) that can be granted for a maximum of 36 months (Presse- und Informationsamt der Bundesregierung 2010, p. 68; Bundesamt für Migration und Flüchtlinge (BAMF) 2012a).

To summarise, third-country national family migrants are eligible for a wide range of social welfare benefits, covering unemployment risks as well as health care, retirement, and child care provisions. The social welfare benefits hardly differ from those received by German citizens – if the family migrant holds a permanent settlement permit or a residence permit that allows them to work. On the other hand, this means that students and asylum seekers as well as their families do not get these allowances.

## **4.4. Health**

The issues of migrants' health and access to healthcare are not only relevant with regard to human rights but also vital in helping these people integrate in the German society. The well-being of migrants is crucial for their integration because the state of health affects migrants' participation in society. Since migrants might have differing needs, rights and obstacles to healthcare than autochthonous people do, it is important that European states explicitly look at migrant health and healthcare. Despite its significance, many European states have not sufficiently or only recently started to deal with migrant health, their rights and access to healthcare (Mladovsky 2007; Ingleby et al. 2005).

### **4.4.1. Pre-entry admission criteria**

In principle, family reunification is to be granted. The granting of a residence title shall generally presuppose, however, that the foreigner's residence does not compromise or endanger the interests of the Federal Republic of Germany (section 5 (1) no. 3 AufenthG). The public interest includes public health criteria (5.1.3.5.1 VV AufenthG). Still, the regulations do not specify what this could entail.

Another precondition for family reunification as mentioned earlier is adequate health insurance coverage (section 2 (3) AufenthG). This is fulfilled if one has a statutory or private health insurance (no. 2.3.5.1 and no. 2.3.5.2 VV AufenthG), which might – in the case of the statutory health insurance – be covered without additional costs by family co-insurance of the dependent with his/her sponsor.

Since a third-country family migrant must have sufficient health insurance coverage, he/she then has the right to the same treatment as the resident population, irrespective of nationality. The respective entitlements are explained below.

#### 4.4.2. The German healthcare system: statutory and private health insurance opportunities

Since 1 January 2009, all people with residence in Germany have to be insured, irrespective of nationality (Presse- und Informationsamt der Bundesregierung 2010, p. 136).<sup>48</sup> There are two types of health insurances in Germany: statutory and private health insurance. Statutory health insurance – through which most people are insured<sup>49</sup> – covers a wide range of health services. These services are regulated in the Code of Social Law V (*Sozialgesetzbuch (SGB) Fünftes Buch (V) – Gesetzliche Krankenversicherung – SGB V*). Since statutory health insurance is a ‘community of solidarity’ (section 3 SGB V), all health services are financed through their members, employers as well as through government subsidies (Bundesministerium für Gesundheit (BMG) 2012).

Workers and employees with a monthly salary of more than 400 EUR are compulsory members of statutory health insurance as are trainees (and under certain conditions, interns), students of state universities as well as recipients of Unemployment Benefit I and II (*Arbeitslosengeld I and II*) (section 5 SGB V) (Presse- und Informationsamt der Bundesregierung 2010, pp. 132, 134, 142). People earning less than 400 EUR monthly do not have to participate in compulsory insurance; instead they can be co-insured with others (section 7 SGB V). If the salary of a worker or employee exceeds the upper income limit of (pre-tax) 49,500 EUR per year, then this person can choose to insure him/herself with private health insurance. Freelancers and officials are always free to choose private health insurance (sections 5 (5) and 6 (1) SGB V). However, whether they are taken as members is at the discretion of the company (Herzner 2011).

The monthly contribution that members of statutory health insurances have to pay depends on their salary. In 2011, the regular contribution amounted to 15.5% of one’s gross income (section 241 SGB V). Members are entitled to health services and benefits that deal with the avoidance, abatement and early diagnosis of illnesses, contraception, abortion, and treatment of other diseases. Further, officially recommended vaccinations are covered (Bundesamt für Migration und Flüchtlinge (BAMF) 2011b).<sup>50</sup>

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<sup>48</sup> Before then, officials, freelancers and higher-income earners did not have to be insured (insurance I. Der Versicherungsvergleich 2009). And despite the obligation to have health insurance in Germany, there are still some who are uninsured. Such basic insurance always includes ambulant and stationary care (Presse- und Informationsamt der Bundesregierung 2010, p. 136). In the case of illness of an uninsured person, the person will be automatically insured in the system that applies to the work he or she carried out (Presse- und Informationsamt der Bundesregierung 2010, p. 136).

<sup>49</sup> In 2003, 94% of migrants in Germany were insured through statutory health insurance (Razum et al. 2008).

<sup>50</sup> A study from 2009 indicates that children and youths with a migrant background are significantly less vaccinated with diphtheria and tetanus vaccines than children and youths without a migrant background.



With statutory health insurance in Germany, family members such as same-sex partners, spouses and children until a certain age can be co-insured with the corresponding sponsor (wife, husband, partner and parent). This co-insurance is free of charge, irrespective of nationality, if the spouse, partner or child do not exceed a monthly salary of 400 EUR (section 10 (1) SGB V) (Presse- und Informationsamt der Bundesregierung 2010, p. 142).

The member's monthly contribution to a private health insurance fund does not depend on his/her salary but on the health situation and age of the insured<sup>51</sup>, on the tariff chosen by the member (defining benefits and services) and on the co-payment. This is laid down in the contract and defines the amount the patient covers by him- or herself in case of curative treatment (Herzner 2011; Presse- und Informationsamt der Bundesregierung 2010, p. 134).<sup>52</sup>

While the German insurance system covers a wide range of health services, some services are not or only in part covered by one's health insurance and thus have to be paid by the patient. An example of these services – known as Individual Health Care Services (*Individuelle Gesundheitsleistungen – IGeL*) are the costs of dental prostheses. There are no differences, though, for family migrants and German citizens.

#### **4.4.3. Access to health care**

In the case where an ill person has statutory health insurance, he or she does not have to pay for visiting a medical practitioner. If a patient needs a prescription, he or she can get the medications at a pharmacy where the proportion paid by the patient does not exceed the maximum amount of 10 EUR. People under 18 years of age do not have to pay any additional payments (Presse- und Informationsamt der Bundesregierung 2010, p. 138).

If the patient has a private health insurance, he or she initially pays the costs (e.g. pharmacy and hospital bills) and – after sending the invoice – retrospectively receives the money back from the insurance company (Bundesamt für Migration und Flüchtlinge (BAMF) 2011a). Depending on the type of insurance and illness, the patient has to contribute in the form of co-payment (Presse- und Informationsamt der Bundesregierung 2010, p. 136).

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However, looking at the group of youths and children with a migrant background, the vaccination rate of those from the first generation is worse than that of latter generations (Blümel 2009).

<sup>51</sup> In general, in a private health insurance, elderly and sick people pay more than the young and healthy.

<sup>52</sup> The higher the defined co-payment, the lower is the monthly contribution by the member. The limit of co-payment is 5,000EUR per year (Presse- und Informationsamt der Bundesregierung 2010, p. 136).

Regarding hospitals, members of the statutory health insurance schemes have access to German hospitals, except for a few private clinics, which are exclusively for members of private health insurance schemes. Normally, the practitioner admits the patient to the hospital. There, the patient from the statutory health insurance schemes is obliged to contribute to the costs by paying 10 EUR per day for a maximum of 28 days a year. The statutory health insurance pays the remainder of the costs (Presse- und Informationsamt der Bundesregierung 2010, p. 138). Members of a private health insurance company do not have to contribute to hospital costs. However, payment for special services such as a private room or treatment by the chief physician also depends on the private health insurance company.

Pregnant women of any nationality with insurance have the right to access antenatal care, medical examinations, provision of medicines, medical care, the aid of a midwife, birth in hospital and maternity pay.<sup>53</sup> Like autochthonous women, migrant women are protected under the Maternity Protection Law, which inter alia defines the employment ban for mothers of six weeks before and eight weeks after giving birth (Presse- und Informationsamt der Bundesregierung 2010, pp. 42, 44, 46, 50, 52).

People with drug addictions have the possibility to access informal services and anonymous aid; there are several organisations and self-help groups. With regards to eating disorders, parents of affected children can consult the public health department and paediatricians. Moreover, free information is available at the Federal Centre for Health Education. In case of HIV and AIDS or questions concerning these illnesses, one can anonymously contact the public health department or special AIDS information centres (Presse- und Informationsamt der Bundesregierung 2010, pp. 148, 150, 152).

To sum up, Germany's healthcare system offers the same rights for family migrants as for autochthonous persons. Health services, benefits and costs depend neither on the nationality nor the migration status but on the chosen health insurance and tariff. It is worthwhile to bear in mind that even though family migrants have the same rights to access healthcare, they may encounter or perceive barriers and discrimination. These may lead to migrants not profiting from the German healthcare system to the same extent as does the German population (Hieronymus et al. 2011).

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<sup>53</sup> The costs of abortion are normally not covered by statutory health insurance. The costs will be covered by statutory health insurance if it falls under the indication rule. This can be the case if a woman was raped or her health is in danger due to the pregnancy. (Presse- und Informationsamt der Bundesregierung 2010, p. 44).

## 4.5. Housing

Housing is one of the most important aspects with regard to integration of the migrant population. It is seen as playing an important role in the integration process and counts as a central indicator of the ongoing integration process (Bosswick et al. 2007). This section describes housing-related pre-entry admission criteria for family migrants, family migrants' access to social housing and housing allowances as well as anti-discrimination clauses for private housing.

### 4.5.1. Admission criteria before entry

If a foreigner wants to come to Germany in order to reunify with his/her family, there are different regulations relating to housing.

For family members with third-country citizenship joining a third-country national in Germany, there is a 'compulsory requirement' which has to be fulfilled by the sponsor. It requires that 'sufficient living space' must be available (section 29 (1) no. 2 AufenthG). Sufficient living space exists if each family member that is over six years old has twelve square meters and each family member that is younger than six years has at least ten square metres at his/her disposal. To be 10% under this standard is accepted as well (no. 2.4.2 VV AufenthG). Regarding this provision, it is noteworthy that once the subsequently immigrated family member lives in Germany, his/her residence permit may be extended for as long as the cohabitation continues – even if the sufficient living space cannot be provided any more (section 30 (3) AufenthG).

For refugees and people entitled to asylum, the conditions are more generous: in the case of persons entitled to asylum and recognised refugees, the authorities may not insist on evidence that the foreigner has sufficient living space. In some cases, the authorities have to waive this condition (namely if the application for issuance of a residence title is filed within three months of final recognition as refugee or person entitled to asylum and if it is not possible to live together as a family unit in a state outside the EU to which the family has special ties (section 29 (2) AufenthG).

For a third-country family member joining a German citizen, by contrast, there is no regulation regarding sufficient living space (section 28 AufenthG). The same holds true for a family member joining an EU citizen, independent of the family member's nationality and the time of the family reunification (section 2 (2) no. 7 in conjunction with section 3 and 4 FreizügG/EU).

#### **4.5.2. Access to social and public housing and to housing allowances**

In Germany, two public measures exist that aim to support households: subsidised social housing and housing allowances. Since an underlying concept of German integration policy is the inclusion of migrants into the German welfare system, migrants have the same legal rights to apply for housing allowance and social housing as German citizens, provided they live legally in Germany, the apartment in question is situated in Germany and the person living in this accommodation pays the rent or cost of his accommodation on his/her own. Thus, family migrants have the same entitlements as German citizens.

The legal basis for getting social housing is the Housing Assistance Act (*Gesetz über die soziale Wohnraumförderung, WoFG*), which seeks to ensure that sufficient affordable housing is available. It pursues the primary objective of assisting households that face difficulties in accessing the regular housing market, namely low-income families as well as families and other households with children, single parents, pregnant women, the elderly and disabled, the homeless and others who need assistance (section 1 (2) No. 1 WoFG). The law establishes that housing companies that provide inexpensive dwellings within the scope of a social housing scheme shall receive financial support from the state. These social housing schemes have to be made available to people in need of inexpensive housing. In order to be able to apply for such an accommodation, one has to register at the local authority in question and apply for a certificate called *Wohnberechtigungsschein*, which is available to all people below a certain income level (section 9 and 27 WoFG).<sup>54</sup> As said, one has to live at least for one year (in some cities even for three years) in the city before the certificate will be granted – a regulation with negative impacts on newly arrived persons be they German citizens or foreigners, which also has negative effects on newly arrived family migrants. Some states, however, have specific arrangements. In the state of Schleswig-Holstein, for instance, family members who still live abroad can be taken into account in the whole application process if their immigration is imminent.<sup>55</sup>

The legal basis for housing allowances is the Housing Allowances Act (*Wohngeldgesetz, WoGG*). A housing allowance is paid as a top-up subsidy for the rent or the mortgage in order to ensure appropriate housing conditions for individuals and families (section 1 (1) WoGG). Whether a

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<sup>54</sup> An application for such a certificate contains information about all members of the family and their income, detailed information about the current flat, reasons for the additional living space and information on the 'social urgency'. Holding such a permit is the precondition but not an automatic guarantee for getting social housing. The landlord – though bound to rent the flat only to a person with such a permit – selects his/her tenants, in due consideration of existing legal provisions such as the AGG.

<sup>55</sup> As described in the “*Verwaltungsvorschrift zur Sicherung von Bindungen in der sozialen Wohnraumförderung nach Wohnungsbindungsgesetz und Wohnraumförderungsgesetz (VwV-SozWo 2004)*“.

household is entitled to this form of subsidy (and, if so, to what extent), depends on a combination of three criteria: (a) the number of household members (family and relatives); (b) the household income; and (c) the level of the rent (section 4 WoGG). All German and non-German residents – even asylum seekers – who meet the formal eligibility criteria can apply for this subsidy and are legally entitled to receive it (section 3 (5) WoGG) (Peucker 2009). Thus, there are no explicit, formal restrictions for family migrants.

#### **4.5.3. Anti-discrimination clauses for private housing**

The German Equal Treatment Act (*Allgemeines Gleichstellungsgesetz*, AGG) prohibits discrimination based on race or ethnic origin, religion or belief, sex, disability, age or sexual orientation (section 1 AGG). The AGG makes, however, several explicit exceptions in which unequal treatment in access to housing is considered lawful: unequal treatment is not deemed as discriminatory where it serves ‘to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions’ (section 19 (3) AGG).

#### **4.5.4. Criteria for obtaining mortgages**

The conditions for obtaining a mortgage are not contingent on nationality but on guarantees the recipient can provide, such as stable income. The final decision rests with the bank providing the mortgage.

## **4.6. Political and civic participation**

Democratic legitimacy requires participation by all groups of society – including migrants – in the political process, as stated, for instance, by the Council of Europe (Parliamentary Assembly of the Council of Europe 2001). Furthermore, active engagement of migrants in civil and political life can have positive impacts on both the individual and the community: “It can provide the migrant with a sense of belonging and commitment to the society, and, by strengthening bonds with non-migrants, contribute to developing social capital and cohesion. Participation also provides a means for migrants to express their needs to government or employers and thus serves as a method of communication not available through the ballot box” (Spencer, Cooper 2006, p. 50).

Nevertheless, for some decades, political and civic participation of migrants was not considered to be an important issue in either academia or in politics. This was due to the fact that immigrant workers were not considered as potential citizens and were thus not supposed or expected to be politically active (Martiniello 2005, p. 1). This view has changed significantly; migrants’ political and civic participation has become a topic of public concern. The following sections present family migrants’ voting rights, their access to local democratic participation processes as well as the national rules on party and NGO membership affecting family migrants.

### **4.6.1. Voting rights**

In Germany, active voting rights (to be allowed to vote) and passive voting rights (to stand for election) depend on citizenship. German citizens are entitled to vote on the local, state, national and European level and are allowed to run for elections, regardless of their country of origin if they are registered in the community for a period of at least three months (Art 12 – 15, BWahlG). Since the Treaty of Maastricht entered into force in 1994, citizens of the European Union have been allowed to vote and stand for elections on the local level if they have been registered in the community for a period of at least three months. EU citizens are also eligible to vote for European Parliament elections if they choose to vote in Germany rather than in their country of citizenship (Art. 28, sec. 1, GG). Third-country nationals are not eligible for candidacy or voting in elections at any level.

To conclude, active and passive voting rights do neither depend directly on the purpose of immigration nor on the status of the residence permit. Whether a family migrant has voting rights depends on his/her nationality.

#### **4.6.2. Access to local democratic participation**

As already mentioned, third-country family migrants have no right to vote or to stand as a candidate in elections. Furthermore, they are not eligible to take part in forms of direct democracy like petitions for a referendum (*Bürgerbegehren*) on municipal level and popular petition (*Volksbegehren*) on the national level (Deutscher Bundestag 2002).

Yet most city councils provide other forms of civic participation, namely Integration or Foreigners' Advisory Councils (*Integrations- or Ausländerbeirat*). The first Municipal Foreigners' Advisory Councils were introduced in the early 1970s. Today, they exist in about 450 German towns and cities as a means of political representation for the local foreign population. Their functions are to support local politics, to contribute to the improvement of the migrants' situation within a city and to enhance foreigners' political say. Therefore, the council may advise the city government and city council and its various committees in all matters of local politics. If a petition is brought, its proposals and positions must generally be considered. They have, however, no actual rights to decide on community actions.

The composition and specific tasks of these advisory councils differ significantly from one federal state to another and even from city to city, since the responsibility for regulations lies within the federal states. Some states have adopted respective regulations while others have not. In general, all foreigners living for at least three months in a city have the right to stand as a candidate for the local Foreigners' Advisory Council and to vote in the respective election. In some communities, naturalised migrants, i.e. German citizens, have an active and passive voting right for these councils as well (which then often are labelled "Integration Councils"). Some cities prefer a model according to which the council's members are not elected but appointed by the city council (e.g. in the city of Stuttgart); or the councils consist of elected and delegated members of immigrant organisations and/or experts of the native population (Storz, Wilmes 2007; Lüken-Klaßen, Heckmann 2010, p. 52).

In some federal states, local Foreigners' Advisory Councils have joined together to form associations and working groups which help to coordinate and support the local efforts, such as the Integration Council of the federal state of North Rhine-Westphalia (*Landesintegrationsrat LAGA NRW*).

Although research on the political impact of these councils as well as on councils' federations is limited, scholars largely agree that these forms of civil participation only partially support the

'pure' political participation of migrants and consider that their influence on local decision processes is low (Hunger, Candan 2009).

To summarise, there are different forms of Integration or Foreigners' Advisory Councils that are useful instruments allowing third-country family migrants to participate in local politics. However, since they have no actual rights for decision-making, they cannot compensate for the lack of opportunities for political participation.

#### **4.6.3. Rules on party membership**

In the German Law on Political Parties (*Gesetz über die politischen Parteien*, PartG), the party membership of migrants and their families is not subjected to any restrictions. Yet restrictions can be made by the various parties, and some German parties have introduced restrictions affecting (family) migrants in an indirect way.

In general, one can say that all German parties are open to members with a migration background, irrespective of nationality. Two parties have introduced prerequisites referring to the length of stay in Germany. In order to become a member of the conservative parties the Christian Democratic Union (CDU) and the Christian Social Union of Bavaria (CSU), one has to have lived in Germany for at least three years. Similarly, the liberal Free Democratic Party (FDP) asks for two years of residence. Further, in the CDU/CSU and the FDP, the membership of a foreigner ends with the loss of the residence permit (CDU 2003; FDP 2010).

The Social Democratic Party (SPD), the Alliance '90/The Greens (BÜNDNIS 90/DIE GRÜNEN) and The Left Party (DIE LINKE) do not have such restrictions and each person can become a member of their parties as long as he/she lives in Germany (SPD 2010; BÜNDNIS 90/DIE GRÜNEN 2010; DIE LINKE 2011).

#### **4.6.4. Rules on NGO membership**

According to Article 20 of the Universal Declaration of Human Rights, which has also been adopted by Germany, everyone has the right to gather peacefully and form associations and no one may be compelled to belong to an association. Article I of the German Law on Associations (*Gesetz zur Regelung des öffentlichen Vereinsrechts*, VereinsG) clarifies the general freedom of forming associations.



There are, however, some specific regulations for the so-called foreigners' associations: according to the German Law on Associations, any association is considered a foreigners' association if more than half of the board or the members of the association are foreigners (Art. 14 (1) VereinsG). Contrary to mainstream associations, foreigners' associations not only have to register officially but also have to provide information about their activities to the local authorities (Arts. 19-21 VereinsGDV). Finally, it is worthwhile to note that the Law on Associations has a specific article on foreigners' associations, detailing possible reasons for forbidding an association (Art. 14 VereinsG) (Jagusch 2008).

Thus, NGOs may have specific requirements regarding membership rules that might affect migrants and their families. In principle, however, every family migrant can found an association or other NGO in Germany or become a member thereof, irrespective of their nationality.

## 5. Rationales for entitlements and restrictions

As explained previously, German law grants reunification rights to families. There are, though, some entry restrictions (such as age requirements), and pre-entry requirements (such as language competence) that must be met. Once the family migrants have received a visa for family migration as well as a residence permit, however, migrants have wide-ranging rights regarding many services and benefits. This part elaborates on rationales for granting entitlements and establishing restrictions.

### 5.1. Rationale for granting the right to family migration

The legal entitlement to family migration is derived from Article 6 of the German Constitution (*Grundgesetz*, GG) that explicitly protects families: marriage and the family shall enjoy the special protection of the state (Art. 6 (1) GG, see also section 27 (1) *AufenthG*). The current implementation of this fundamental right has been influenced by European legislation, namely by the EU Directive 2003/86/EC on the right to family reunification for third-country nationals.

### 5.2. Rationales for pre-entry requirements

In the course of the debates about the formulation of the Residence Act of 2004, the policy on family reunification has been discussed explicitly and extensively. Two years later, in 2006, the discussion emerged again, when Germany had to reform the Immigration and Residence Act in order to fully implement EU Directive 2003/86/EC on the right to family reunification for third-country nationals. The debates were mainly based on the integration of family migrants: one focus was on the insufficient language competencies of sections of the migrant population, another on ‘misogynistic parallel societies’, referring to women living in Germany who are trapped in a forced marriage and deprived of their rights (Lechner 2012, p. 14).<sup>56</sup>

Against this background, the discussion was dominated by the question of whether an age limit should be introduced for minor children who want to enter Germany. “Positions ranged from reducing the age limit down to 10 years to increasing it up to 18 years. In the end the agreement

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<sup>56</sup> These debates were boosted by the ‘honour killing’ of a young Turkish woman of Kurdish origin by family members in Berlin in February 2005.

foresaw maintaining the existing age limit of 16 years and introducing additional integration criteria for children up to 18 years of age (e.g. proficiency of the German language)” (Kreienbrink, Rühl 2007, p. 35).

In 2006, the debate was dominated by the question of whether a minimum age should be introduced for reunification with spouses. A first draft foresaw an increase in the minimum age to 21. However, no majority for a rise in the minimum age limit emerged in the discussion, so in the end a uniform limit of 18 for both spouses was adopted. Additionally, there was a discussion on the requirement to prove a basic pre-entry knowledge of German since a post-entry integration course alone was not deemed sufficient to guarantee a successful integration (Kreienbrink, Rühl 2007, p. 35).

Following these debates and implementing the EU Directive 2003/86/EC on the right to family reunification for third-country nationals, Germany introduced the new regulation of the Immigration and Residence Act in 2007 which entails more rigid preconditions for spouses' subsequent immigration from abroad: both spouses have to be 18 years old and the immigrating spouse has to prove evidence of basic knowledge of the German language before a visa application. If the sponsor is a third-country foreigner, he or she additionally has to show evidence of sufficient living space for him/herself and the dependent family as well as - independence from reliance on social benefits (Kreienbrink, Rühl 2007).<sup>57</sup> While exceptions from these general preconditions can be made for the family reunion with Germans, no such exceptions are defined for family reunion with third-country nationals.

The proclaimed rationales for these changes have been (a) the facilitation of immigrated spouses' and children's integration, (b) the prevention of forced marriages as well as (c) the prevention of the misuse of family reunification. Besides, the policies implicitly aimed at (d) reducing the share of subsequently immigrating third-country national spouses, especially poorly skilled/socio-economically weak spouses with high integration needs and reduced opportunities for promoting the education and integration of their children (Lechner 2012; Scholten et al. 2012; Kreienbrink, Rühl 2007; Göbel-Zimmermann, Born 2007).

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<sup>57</sup> In 2011 the European Court of Justice decided that countries can demand integration requirements, but the right to live with the family must have priority. Ever since, different parties requested to revise the legal situation (Deutscher Bundestag 2011a; Deutscher Bundestag 2011b; Bundeszentrale für politische Bildung (bpb) 2011). The federal government refused a revision of the law, referring to a decision of the Federal Constitutional Court in 2010, according to which the language tests do not violate the European law (Deutscher Bundestag 2012; Bundeszentrale für politische Bildung (bpb) 2011).

The language requirement is very contentious. Following a decision of the European Court of Justice in 2011<sup>58</sup>, the European Commission stated in its Commission Opinion that a language requirement (as adopted by Germany and the Netherlands) is not in accordance with the Directive 2003/86/EC on the right to family reunification for third-country nationals. The Commission argues that the directive does not allow a member state to refuse entry and admission of a family member (of a third-country national lawfully resident in that member state) on the sole ground that this family member did not pass the integration exam abroad prescribed in the legislation of that member state.<sup>59</sup> This reasoning also includes language tests. Subsequently, the Federal Foreign Office has proved to be more generous regarding the language requirement. In the case of a Cameroonian wife who claimed for joining her husband living in Germany, for instance, the Federal Foreign Office has granted the visa for family reunion for her and her children despite the fact that she does not speak German, justifying this decision with the Commission Opinion.<sup>60</sup> Following that, some debates have started within the parliament, in some newspapers and on the web.<sup>61</sup> Until now, however, no landmark court or policy decision has been made; the current law, as described above, still is valid.

### 5.3. Rationale for restricted voting rights for migrants

In Germany, migrants have limited possibilities for political participation via Integration Advisory Councils, political parties and NGO membership. Active and passive voting rights, however, traditionally depend on citizenship. Since many family migrants – at least in the first years of residence – do not have German citizenship, they are excluded from many political processes.

Since the 1980s, some academics and politicians have supported the stronger political integration of foreigners. For this purpose, the federal state of Schleswig-Holstein enacted a law in 1989 that authorised foreigners to participate in local elections. In 1990, however, the Federal Constitutional Court declared this newly adopted law incompatible with the German Constitution (Bundesverfassungsgericht; Bauer 2007, p. 8). The court referred to Article 20 (2) sentence 1 of the German Constitution, according to which all state power is derived from the German people (*Volk*). Since foreign citizens were part of the German resident population but not

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<sup>58</sup> Decision on the Dutch Case Mohammad Imran, C-155/11 PPU

<sup>59</sup> Commission Opinion to the European Court of Justice, 4<sup>th</sup> May 2011

<sup>60</sup> Case: BVerwG, I C 9.10 of 28<sup>th</sup> October 2011

<sup>61</sup> For official statement by the German parliament see Deutscher Bundestag 2012, for discussion in German newspapers and websites e.g. Rath 2011 and <http://www.migrationsrecht.net/nachrichten-rechtssprechung/sprachkenntnisse-ehegatte-nachzug-familienzusammenfuehrungsrichtlinie-bverwg.html>

part of the German nation, an expansion of state power to non-German citizens would be incompatible with the German Constitution.

Thus, the legislative implementation of this project would require a constitutional amendment that needs the consent of two-thirds of the members of the parliament (*Bundestag*) and two-thirds of the members of the *Bundesrat* (federal council).

Since then, there have been several requests by political parties to introduce local voting rights for third-country nationals with permanent residence in Germany (Fraktion BÜNDNIS 90/DIE GRÜNEN 1999; Fraktion DIE LINKE 1999; Deutscher Bundestag 2010a; SPD Fraktion 2010; Fraktion BÜNDNIS 90/DIE GRÜNEN 2011). These proposals were discussed in parliament, yet never passed as this legislative initiative can only be decided in a cross-party consensus which, at this point, does not exist. Namely the conservative parties refused to support such a motion (Deutscher Bundestag 2010b). Nonetheless, the topic is still on the political agenda of several parties (Bauer 2007; Storz, Wilmes 2007).

#### **5.4. Rationale for granting welfare services for family migrants and for including them in the core institutions**

Since the 1970s, the control over rising family migration as well as the integration of family migrants has regularly erupted in German public, political and academic debates. In 1978, the office of the ‘Commissioner for the Promotion of Integration of Foreign Employees and their Families’ was institutionalised, a fact demonstrating that the integration of both labour migrants as well as their dependents was officially recognised and deemed necessary. There were, however, only a few targeted integration offers for migrants – may they be family migrants or others.<sup>62</sup>

Instead, the underlying concept and main feature of the German mode of integration has been to open core institutions (the labour market, self-employment, education and training system, housing, health) to immigrants – including their family members – and to include them in the welfare state and social policy system. This concept derives from respect for human rights as well as of fundamental principles of the social order. In Germany, the social order, i.e. the system of economic, social and political relations, is the so-called *Soziale Marktwirtschaft*. “The state is a welfare state and its role is understood in an interventionist sense, i.e. to help provide social

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<sup>62</sup> This situation has somewhat changed with the beginning of the new millennium, since the Immigration and Residence Act acknowledges the importance of a comprehensive integration strategy, including specific integration measures.

security, social justice and to improve opportunities for disadvantaged groups. The most important aspect of the welfare system for immigrant integration is that non-citizen residents are generally included in it” (Heckmann 2003, p. 55).

This German pattern of integration remains valid today. There were, however, some attempts to restrict migrants’ access to social welfare benefits and to enlarge waiting periods regarding social welfare, e.g. in the beginning of 2012, when the government feared that the economic crisis might raise immigration and misuse of the social system. The outcome of such attempts is as yet still uncertain (see part 3.4).

## **5.5. Rationales for entitlements and obligations on participation in integration courses**

The main feature of the German mode of integration has been to open core institutions and to include migrants in it – without pursuing a targeted integration strategy. The beginning of the new millennium brought some changes. In particular, the knowledge of the German language was increasingly seen as crucial for participating in the host society in general and in the labour market in particular. The ‘Independent Commission on Migration to Germany’ (called *Süßmuth Kommission*) proposed in its 2001 report the introduction of integration courses for immigrants, referring to experiences of the Netherlands and Sweden with this type of integration method (Strik et al. 2010, p. 59). This recommendation has been translated into law: the Residence Act, implemented in January 2005, acknowledges the importance of a comprehensive integration strategy as well as the importance of language skills for integration. Under the heading ‘promoting and demanding’ (*fördern und fordern*), the “willingness” of migrants to integrate is legally demanded and new offers and obligations have been introduced: the most crucial of which are integration courses. The rationale for the course is to provide migrants “with support in integrating into the economic, cultural and social life” (section 43 (1) AufenthG). To be more precise, the “aim of the integration course is to successfully impart the German language, legal system, culture and history to foreigners. In this way, it is intended to acquaint foreigners with the way of life in the federal territory to such an extent as to enable them to act independently in all aspects of daily life, without the assistance or mediation of third parties (section 43 (2) AufenthG).

## 6. Summary

German law grants reunification rights to the nuclear family, i.e. to minor children of German citizens and foreign nationals living in Germany, to the parents of minor children living in Germany as well as to the spouses and registered same-sex partners of German citizens and foreign nationals living in Germany. Additionally, there are exceptions for cases of hardship.

The detailed regulations depend on the family tie as well as on the status of the sponsor to be joined, i.e. whether the family member to be joined is an EU citizen, a German citizen or a third-country national. Family migration to join a German citizen is easier than it is to join a third-country national since German citizens enjoy more extensive rights and have to fulfil less restrictive conditions. It is even easier for EU citizens to reunify their families, since they fall under the more generous Act on the General Freedom of Movement for EU Citizens.

In order to get the permission to migrate to Germany, however, one has to meet several preconditions. The immigrating family member has to prove basic knowledge of the German language, the resident family member has to provide evidence of sufficient living space and a secure livelihood and, in case of immigration of spouses, both spouses have to be 18 years of age. It is noteworthy that these preconditions may be waived for some groups, namely for people granted asylum/refugee status on the one hand and the privileged group of highly qualified foreigners, foreign researchers and self-employed foreigners on the other hand. Further, it is noteworthy that the basic regulations are similar for the family reunion with Germans and third-country nationals, but “exceptions” have to be made for the family reunion with Germans who are not able to meet the preconditions.

Besides, there are some restrictions facing family migrants after they have entered the country. The two pivotal ones are: third-country nationals are not entitled to vote as they do not have German citizenship, and there are restrictions regarding social welfare benefits. While third-country nationals, who are not capable to work (e.g. due to age or disease), can get financial assistance immediately after arriving in Germany, migrants who are capable of working but unemployed cannot obtain any financial assistance within their first three months of stay in Germany. This also holds true for their spouses and children. And a third-country national is not entitled to receive any benefit if his/her stay is for the purpose of looking for work. Again, this also holds true for the family members.

One has to note, however, that family migrants' rights do not depend on their status as family migrants per se, but rather are conditional (in the same way as for other migrants) on the kind of residence title they have. Once a family migrant has got his/her residence or settlement permit there is hardly any specific regulation for him/her; family migrants have the same duties and restrictions as other foreigners have – and in several aspects, they have the same legal rights as German citizens.



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