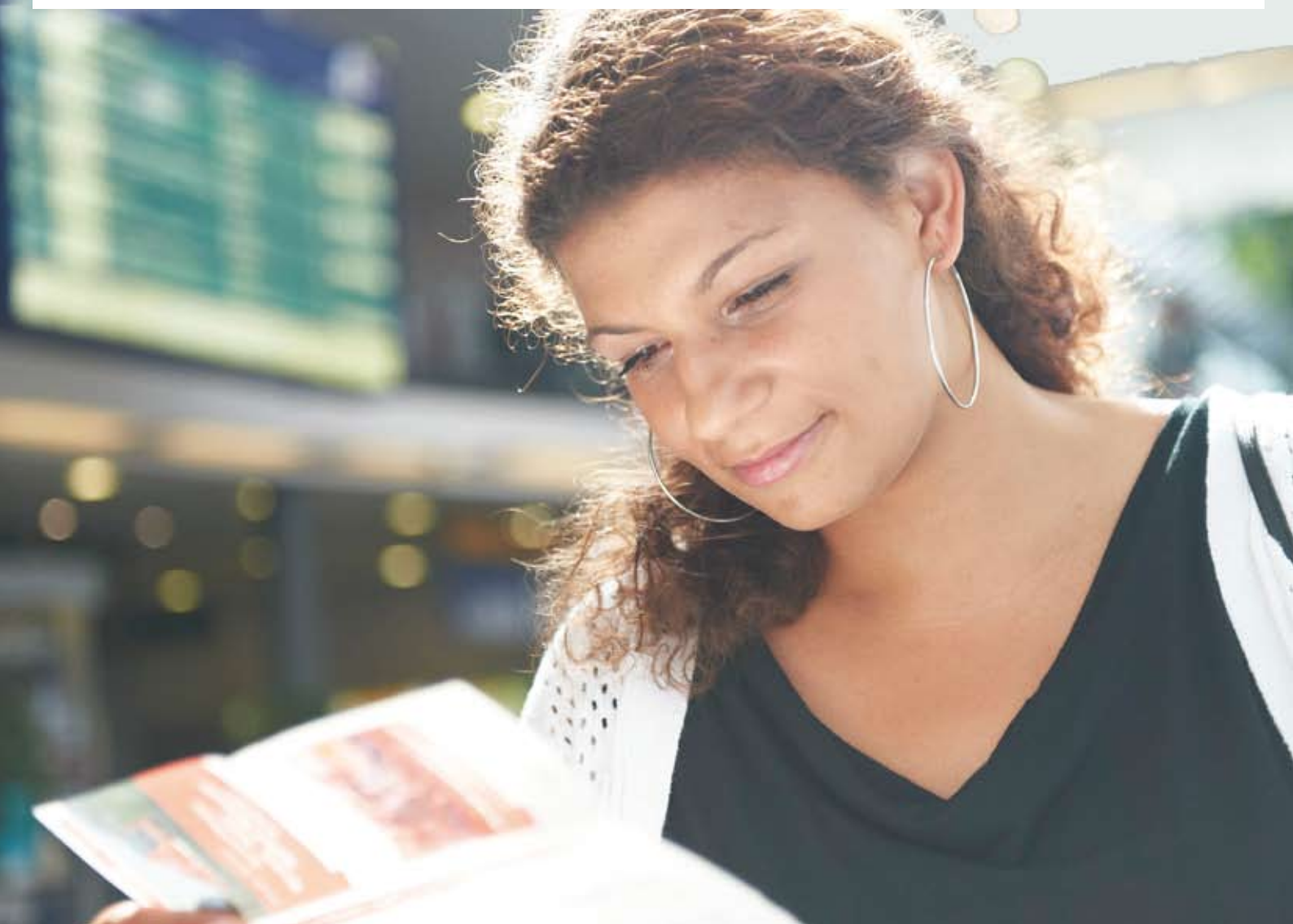


Intra-EU mobility of third-country nationals

Focused Study of the German National Contact Point for the
European Migration Network (EMN)

Working Paper 51

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Abstract

The present study is the German contribution to a comparative project of the EMN examining migratory movements by third-country nationals within the EU. As such, the report focuses on the immigration to Germany of third-country nationals who were initially resident for a prolonged period in another EU member state. The first section of the study presents the legal basis for immigration by third-country nationals and discusses what specific provisions apply to immigration from other EU member states. In this context, the residence permits and purposes based on the EU-acquis are presented which have been established on the basis of the Directive on Long-term Residents, the Researcher Directive, the Directive on Highly Qualified Workers and the Student Directive. In addition, the extent to which classic (exclusively national) residence permits can be used for the purposes of internal migration is discussed.

In the second section, the study provides a statistical overview of the extent of internal mobility among third-country nationals: It emerges that this mobility takes place for the most part using national residence permits, rather than residence titles based on the EU acquis. Spain and Italy head the list of EU member states from which immigration takes place; the majority of third-country nationals immigrating to Germany from other member states are Indians, Turks, Moroccans and Ghanaians. The total number of third-country nationals immigrating from within the EU has been subject to a continually rising trend in recent years; the annual number of immigrants doubled from 2007 to 2011, whereby only an extremely minimal fraction of this increase is attributable to the new residence permits established under the above mentioned EU directives.

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1 Legal framework: visas and residence permits

The residence permits which can be used by third-country nationals for the purpose of migration within the EU between another member state and Germany essentially break down into those which have been established explicitly to enable internal migration and which generally result from the implementation of EU directives, and those which can be used for immigration both from a third country and from another EU member state. A crucial factor with regard to the residence titles based on the EU *acquis* which serve to enable intra-EU mobility is that, under certain conditions, permission to enter the territory of one member state may establish a legal entitlement to migrate on to a second member state. The distinguishing feature in this case is thus the question as to whether the third-country national holds a legal entitlement to migrate on to a second member state or whether the decision on entry and permission to take up employment lies within the discretion of the second member state. The category of residence titles established for the purpose of intra-EU mobility (secondary movement to Germany) include the residence permit for long-term residents of other member states of the European Union (section 38a, Residence Act), the residence permit for a student from another EU member state who is mobile within the EU (section 16 (6), Residence Act), the residence permit for a person pursuing research in another EU member state (section 20 (5), Residence Act) and the Blue Card (section 19a, Residence Act). Third-country nationals who initially enter Germany from Denmark, Great Britain or Ireland are excluded from issuance of such residence permits, as these countries do not apply the pertinent EU directives. Conversely, third-country nationals who have acquired long-term residence permits (sections 9a – 9c, Residence Act) in Germany are not able to migrate on to Great Britain, Ireland or Denmark on the basis of the EU *acquis*. Beyond this, most other residence permits can also be used by third-country nationals for the purposes of intra-EU migration. In these cases, migrants have to fulfil the same conditions as if they were immigrating from a third country.

Persons entitled to long-term resident status

In accordance with section 38a of the Residence Act, a third-country national who has acquired long-term resident status (EC long-term residence permit) in one EU member state is entitled to a long-term residence permit in Germany. No verification of whether the conditions for recognition of long-term resident status are met in the first member state is carried out in Germany; rather, it is assumed that the conditions pertaining to issuance have been examined adequately in the first member state, according to the principle of mutual recognition.

Issuance of this residence permit is further subject to confirmation of adequate means of subsistence and adequate health insurance.

Persons entitled to long-term resident status in other EU member states are not subject to the visa requirement and can apply for a residence permit pursuant to section 38a of the Residence Act directly in the Federal Territory. In this case, they are not entitled to take up employment, however. This entitlement only applies when the residence permit has been issued and this permit expressly allows the holder to take up employment (nos. 38a.0.5.4, 38a.3.1 and 38a.4, general administrative regulations on the Residence Act (AVwV)).

Researchers who are mobile within the EU

The “EU”-residence permits which have been established explicitly to facilitate the intra-EU mobility of third-country nationals include the residence permit for persons pursuing research in another EU member state (section 20 (5), Residence Act), which was implemented in Germany by virtue of Directive 2005/71/EC. Third-country nationals who hold a residence title of another EU member state for the purpose of conducting research and who intend to carry out part of the research project concerned in Germany thus have a legal entitlement to issuance of a national residence permit pursuant to section 20 (5) of the Residence Act. A period of residence in excess of three months is only

possible, however, where the host institute employing the researcher has signed an effective admission agreement with the researcher and has committed to bear any costs accruing to the state until six months after the end of the validity of the admission agreement as a result of unlawful residence of the foreigner in an EU member state and in connection with the possible need to deport the foreigner concerned (section 20 (5), sentence 1 in conj. with section 20 (1), Residence Act).

Students who are mobile within the EU

Corresponding to the provisions for researchers, third-country nationals who hold a residence title of another EU member state for the purpose of pursuing studies also have a legal entitlement to issuance of a residence permit in order to carry out part of their studies in Germany, if they meet the conditions for studying in Germany and are participating in an exchange programme of the EU or between the member states of the EU, or if they have been granted residence for study purposes in another member state of the EU for at least two years (section 16 (6), sentence 1, no. 2, Residence Act). Equally, third-country national students from other EU member states have a legal entitlement to issuance of a residence permit when they are obliged under the regulations pertaining to their studies to complete part of their studies in a second EU member state (section 16 (6), sentence 1, no. 1, Residence Act).

Blue Card

The “EU Blue Card” residence permit is issued to third-country nationals who hold “a German degree, a recognised foreign degree or a qualification comparable to a German degree” and are able to furnish proof of a minimum wage as specified by a corresponding ordinance (section 19a, (1) and (2), Residence Act) where the Federal Employment Agency has given its consent if required. This minimum wage generally amounts to two thirds of the annual earnings ceiling of the state earnings-related pension scheme (section 41a (1), BeschV); for 2012, this threshold stands at an annual income of € 44,800. For so-called understaffed occupations, the annual minimum wage corresponds to only 52 per cent of the earnings ceiling, amounting to € 34,944 in 2012 (section 41a (2), ordinance on the admission of foreigners for the purpose of taking up employment BeschV). This concerns occupations belonging to groups 21, 221 and 25 of the International Standard Classification of Occupations (Official

EU Journal L 292 of 10 Nov. 2009, p. 31). In particular, these occupations include scientists, mathematicians, engineers, human medicine practitioners and academics in the field of information and communications technology.

Issuance of an EU Blue Card to third-country nationals in certain occupational groups with a qualification comparable to a degree and five years of professional experience is in principle possible if these occupational groups are specified by ordinance in accordance with section 19a (1), sentence 1, no. 1a in conj. with section 19a (2), sentence 1, no. 2 of the Residence Act. This option has not been exercised to date.

Holders of an EU Blue Card who have been resident in an initial EU member state for 18 months can enter the Federal Territory without requiring a visa and may apply for a Blue Card for the Federal Republic of Germany (section 39, no. 7, Residence Ordinance). Where the third-country national has already held an EU Blue Card in another member state for at least 18 months, such periods count in full towards the qualifying period for acquisition of an EC long-term residence permit (section 9b (2), Residence Act).

Posted third-country workers (Directive 1996/71/EC)

Third-country nationals who are employed by a company which is domiciled in another EU member state and who carry out work in Germany under the terms of their employment contracts may be issued a residence permit pursuant to section 18 of the Residence Act; in accordance with section 15 BeschV, such work is exempt from the requirement for approval from the Federal Employment Agency (BA). The terms and conditions of employment must satisfy the standards set out in the law on the posting of workers (AEntG), however.

Cross-border commuters

A third-country national who is resident in another EU member state and works in Germany may be issued a permit for frontier workers pursuant to section 12 (1) of the Residence Ordinance, where said national has relocated with their spouse or partner who is an EU-citizen to another EU country and wishes to continue working in Germany. Holders of a permit for frontier workers are obliged to return once a week to the EU member state in which they have their place of residence. The permit is issued subject to the approval

of the Federal Employment Agency. The permit for frontier workers has been established with the aim of enabling Germans and EU citizens who live together with a third-country national who is employed in Germany as their spouse or partner in a civil partnership to exercise their rights of mobility without their spouse or partner having to give up their employment in Germany in this connection (no. 3.3.2, AVwV). The permit for frontier workers thus enables third-country nationals who have relocated their place of residence to another EU member state to join other members of their family to continue their employment in Germany. As such, the establishment of this means of intra-EU mobility for third-country nationals is a logical consequence of the provisions on the freedom of movement for EU citizens.

Seasonal workers

Seasonal workers may be employed in Germany on the basis of bilateral agreements between the Federal Employment Agency and the labour authorities in the country of origin (sections 18 and 19, BeschV). Such agreements currently exist with Croatia and for the EU member states Romania and Bulgaria, for which the unrestricted freedom of movement for employment purposes will not apply until the end of 2013.

The recruitment of foreign seasonal workers is restricted to the hotel and catering sector, agriculture and show business and takes place via the Federal Employment Agency's International Placement Services (ZAV). The Federal Ministry of Labour and Social Affairs issues annual quotas for the employment of seasonal workers; in 2011, this quota amounted to 150,000 persons. This figure covers nationals of the member states of Romania and Bulgaria, which do not enjoy full freedom of movement for employment purposes, as well as Croatian nationals.

Croatian workers are required to apply for a national visa before entering the Federal Territory; no involvement is necessary on the part of the local foreigners authorities (no. 1.7.8, standing instructions on the international placement of workers). In principle, the German provisions on seasonal employment do not preclude intra-EU mobility. Whether such mobility is actually possible depends on the provisions of the second member state concerned and the labour authorities of the country of origin.

Employees in state-regulated occupations

There are no special provisions on the intra-EU mobility of members of regulated occupational groups. The decisive factor is whether the occupations fall under the provisions relating to the EU Blue Card or whether they are subject to the requirement for a labour market check and approval by the Federal Employment Agency.

Overarching provisions applying to intra-EU mobility for all third-country nationals

In addition to the "EU"-residence permits established specifically for the purpose of intra-EU mobility, third-country nationals may immigrate to Germany under the general provisions which apply also for immigration from a third country.

In this regard, section 39, no. 6 of the Residence Ordinance enables third-country nationals in possession of a residence title from another Schengen state to obtain a residence permit in Germany directly, without going through the visa process, if a legal entitlement to issuance of a residence permit applies. A legal entitlement to issuance of a residence permit does not generally exist in the case of application for a residence permit for employment purposes pursuant to sections 18 or 19 of the Residence Act, however; rather, issuance takes place at the discretion of the competent foreigners authority.

2 Extent and structure of intra-EU migration among third-country nationals

2.1 Statistical information on the overall extent of intra-EU mobility among third-country nationals

Available data

Statistical information on the extent of intra-EU migration among third-country nationals can be obtained from three data sources: the residence permits stored in the Central Register of Foreigners (AZR), the information on issued visas which is stored separately in the AZR and the immigration statistics of the Federal Statistical Office (StBA).

The information stored in the AZR which is of relevance to the matter under discussion here comprises the nationalities and residence permits of third-country nationals registered in Germany. As such, conclusions on the extent of intra-EU migration among third-country nationals can only be drawn from this information where a residence permit is contingent on a previous stay in another EU member state. This means that only the frequency with which the EU residence titles are used for the purposes of intra-EU mobility can be inferred from these data. This applies to the residence permit for persons who hold long-term resident status in other EU member states (section 38a, Residence Act), students who are mobile within the EU (section 16 (6), Residence Act) and researchers who are mobile within the EU (section 20 (5), Residence Act). Where immigration takes place on the basis of residence permits which do not serve solely to facilitate intra-EU mobility, however, the information stored in the AZR does not permit any conclusions to be drawn on intra-EU migration, as the place of residence prior to immigration to Germany is not stored. This means that the breakdown of statistics according to purpose of residence which is made possible by the AZR offers

only very limited scope for the assessment of intra-EU migration among third-country nationals.

For this purpose, it is expedient to refer to the data from the registration offices which are collected by the Federal Statistical Office, as the previous place of residence is recorded together with the nationality at the time of registration. These data are based on the obligation for persons to register with the local authorities after relocating to a new place of residence (section 11 of the framework law on registration (MRRG); see also Bundesamt für Migration und Flüchtlinge 2011, p. 14). While these data do not enable any inference on the purpose of residence, they do offer a general indication of the extent of intra-EU migration.

These data include transfers to Germany under the Dublin II Regulation, however, which thus require to be removed from the figures. In turn, this method only allows the overall extent of intra-EU migration to be determined, with no possibility of breaking down the statistics according to individual member states and nationalities.

Another data source which enables conclusions to be drawn on the extent and composition of intra-EU migration among third-country nationals is the AZR visa file, which in addition to information on visa applications and issued visas also specifies the competent diplomatic mission abroad and the type of visa concerned. This makes it possible to reconstruct how often third-country nationals have applied for / received a national visa for Germany in another EU member state. The advantage over the immigration statistics of the Federal Statistical Office is that these data do not include cases under the Dublin II Regulation and thus enable the last country of residence and the nationality to be ascertained. This advantage is offset by two

Table 1: Immigration of third-country nationals from other EU member states 2006 - 2007

	2006	2007	2008	2009	2010	2011
Absolute immigration of third-country nationals from other EU member states	6,026	6,039	6,764	8,278	9,180	12,835
Change in comparison to previous year		0.22%	12.01%	22.38%	10.90%	39.81%
Immigration of third-country nationals from other EU member states, excluding transfers under the Dublin II Regulation	3,231	3,784	4,982	6,761	7,873	11,532
Change in comparison to previous year		17.12%	31.66%	35.71%	16.45%	46.48%
Transfers to Germany under the Dublin II Regulation	2,795	2,255	1,782	1,517	1,307	1,303

Source: BAMF, StBA, own calculations

systematic distorting factors. Firstly, the visa statistics tend to overestimate the actual migration volume, as not all issued visas necessarily lead to issued residence permits. Secondly, the Residence Ordinance defines two exemptions from the visa requirement which require to be considered: Nationals of Canada, the USA, Australia, New Zealand, the Republic of Korea, Japan and Israel are exempted from the requirement to obtain a visa before applying for a residence permit, thus ruling out any conclusions on intra-EU migration for nationals from these countries. It is also possible for third-country nationals migrating to Germany from another EU member state to be exempted from the visa requirement when issuance of the residence permit does not lie within the discretionary powers of the foreigners authority but constitutes a legal entitlement on the part of the foreigner concerned (section 39 (6) Residence Ordinance). This applies above all to foreigners migrating to Germany to join family members.

In view of these limitations of both the AZR data and the immigration statistics, only a review of the full scope of available data sources would appear to permit any conclusions on the extent and structure of intra-EU migration. Consequently, the assessments below refer wherever possible in each instance to both the visa statistics and the immigration statistics. As the information stored in the AZR can only be used with regard to the data on EU residence permits, this data record is analysed later, in section 2.2.

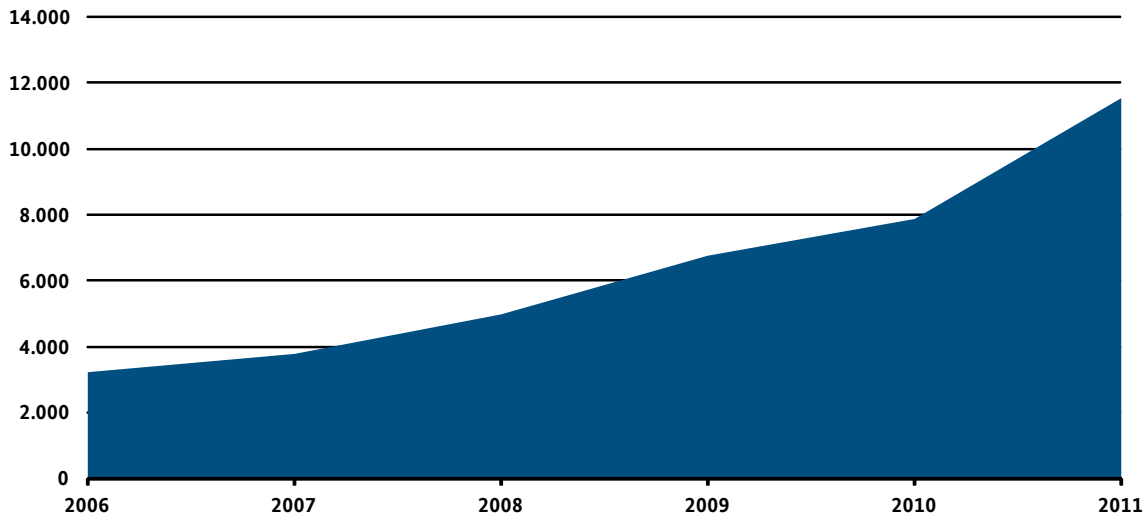
Quantitative intra-EU migration trend

The statistics show that intra-EU migration among third-country nationals has been increasing continually since 2006. 6,026 cases of immigration by third-country nationals from other EU states (excluding Iceland, Norway and Switzerland) were recorded in 2006, as compared to 12,835 in 2011.¹

It is to be noted that these figures also include asylum applicants transferred from other member states under the Dublin II Regulation. When these cases are removed from the registration statistics, the relative increase is yet more pronounced, rising from 3,231 cases of immigration in 2006 to 11,532 in 2011.² The annual growth rates indicate a substantially dynamic rise in the immigration of third-country nationals from other member states (see Table 1 and Figure 1).

1 Nationals of Norway, Switzerland and Iceland were not included here on account of their de facto equal treatment to EU citizens with regard to freedom of movement.

2 These figures underestimate the actual extent of internal migration among third-country nationals slightly, as transfers under the Dublin II Regulation from Switzerland, Norway and Iceland have been deducted from the total number of immigrants, whereby these deducted transfers cannot be calculated for all the years shown. Only a minor distortion is involved here, however, as in 2011, for example, only 307 persons were transferred from these countries to Germany under the Dublin II Regulation.

Figure 1: Immigration of third-country nationals from other EU member states

Source: BAMF, StBA, own calculations

The largest number of third-country nationals immigrating to Germany in 2011 came from Italy (2,834), followed by Spain (2,173), France (989), Great Britain (977) and Austria (882) (see Table 2).

Table 2: EU member states from which the largest numbers of third-country nationals immigrated to Germany in 2011

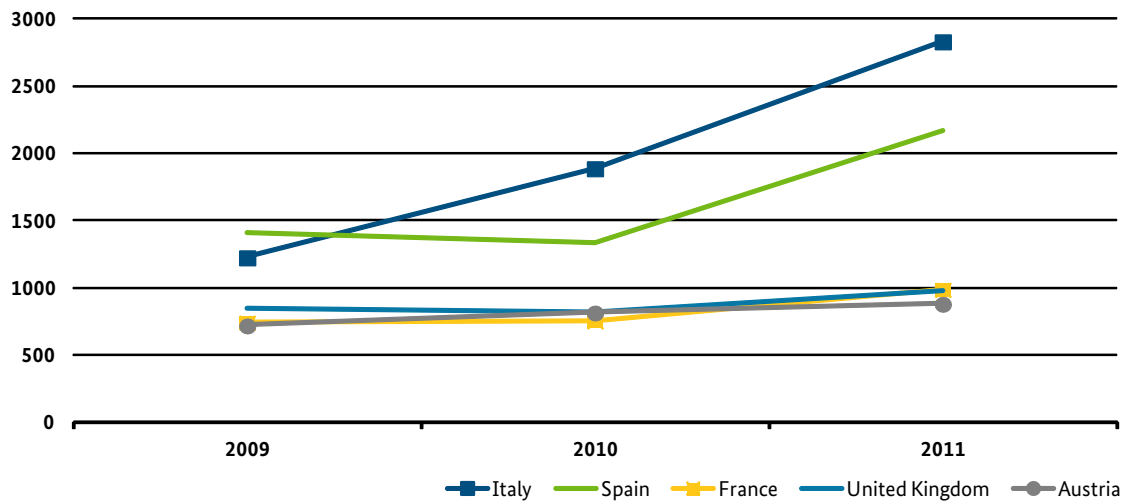
	2009	2010	2011
Italy	1,227	1,890	2,834
Spain	1,411	1,338	2,173
France	744	755	989
United Kingdom	850	823	977
Austria	721	817	882
Czech Republic	391	358	656
Slovenia	134	166	539
Netherlands	357	432	517
Greece	198	286	472
Poland	175	194	300

Source: StBA

The highest growth rates apply to Spain and Italy as countries of origin (see Figure 2). It is to be assumed that this trend is attributable to the downturns in the respective labour markets as a result of the national debt crises and the unbroken demand for labour in the German labour market.

A comparison of the findings obtained from the registration statistics with the statistics on Type D visas for long-term residence applied for and issued in other EU states reveals a different picture, however. The number of visas issued remains below the number of cases of registered migration, for example, and the dynamic trend for immigration from Italy and Spain which was ascertained from the registration data does not tally with the figures for the number of visas issued in these countries (see Table 3). This may be attributable in part to the fact that the visa process is not compulsory for all persons immigrating from other EU member states. As stated above, these cases concern third-country nationals who are resident in another EU member state and are able to furnish evidence of a legal entitlement to issuance of a residence permit.

Figure 2: The five most common countries of origin of third-country nationals migrating within the EU in 2011



Source: StBA

Table 3: Type D visas issued in other EU states according to country and year of application 2007 - 2011

	2007	2008	2009	2010	2011
Great Britain	179	660	590	682	798
France	199	466	446	557	682
Netherlands	160	523	429	493	469
Italy	97	303	296	293	375
Spain	136	264	185	185	329
Sweden	65	123	142	210	291
Czech Republic	37	78	129	146	216
Malta	3	4	14	104	160
Belgium	50	163	163	169	156
Poland	18	151	197	101	135

Source: AZR visa file, as at November 2012

Table 4: The ten most common nationalities of third-country nationals mobile within the EU in 2011

	2009	2010	2011
Indian	590	709	1018
Turkish	589	703	847
Moroccan	444	556	838
Ghanaian	365	385	741
US American	652	665	687
Bosnian	240	295	660
Nigerian	333	419	655
Chinese	458	498	622
Pakistani	323	426	561

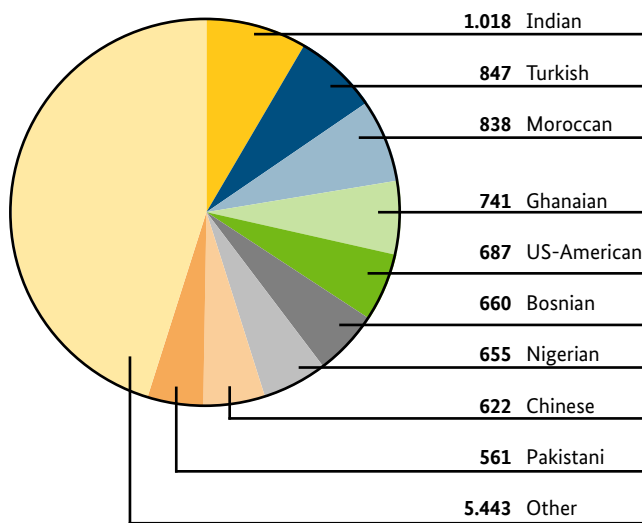
Source: StBA, BAMF, own calculations

According to the registration statistics, the list of third-country nationals mobile within the EU and resident in Germany in 2011 was headed by Indians (1,018), followed by Turks (847), Moroccans (838), Ghanaians (741) and US Americans (687).

The most pronounced growth rates are to be found among Ghanaian, Bosnian and Indian nationals. The ten most common nationalities of third-country nationals mobile within the 2011 are listed in Table 4 and presented in graphic form in Figure 3. With the exception of US citizens, a continual rise applies to all other nationalities between 2009 and 2011.

The number of visa applications also reveals a different picture: In 2011, the largest number of visas applied for within the EU were issued to nationals of Bosnia-Herzegovina (2,667), followed at some distance by India (521), Serbia (474) and China (448). When the details on the place in which the visa application was filed and the information from the registration statistics are considered, it appears probable that the majority of citizens from Bosnia-Herzegovina do not constitute third-country nationals who are mobile within the EU. Rather, the applications are likely to have been filed at the German diplomatic mission in Ljubljana, with immigration to Germany subsequently taking place directly from Bosnia. Of the 2,667 national visas applied for by Bosnians in the EU in 2011, for example, 2,631 were issued at the embassy in Ljubljana, while only 450 cases of Bosnians immigrating from Slovenia and 8,664 cases of Bosnians immigrating from Herzegovina were registered in the same year. This assump-

Figure 3: The ten most common nationalities of third-country nationals mobile within the EU in 2011



Source: StBA, BAMF, own calculations

tion is additionally supported by the geographic proximity and the strong rise in the number of applications for national visas since the requirement for visas for short-term stays was lifted in December 2010.

Table 5: Issued long-term visas applied for in other EU member states according to the ten most common nationalities in 2011

	2007	2008	2009	2010	2011
Bosnia and Herzegovina	51	277	731	954	2,667
India	84	427	356	400	521
Serbia	n.s.	36	272	352	474
China	98	367	359	371	448
Croatia	19	119	122	156	361
Kosovo	n.s.	5	31	24	354
Russian Federation	96	295	288	312	273
Ukraine	46	223	206	177	257
Macedonia	10	22	58	95	151
Iran	36	66	84	98	145

Source: AZR visa file, as at November 2012

As these considerations show, the immigration statistics compiled on the basis of registration data appear to provide a more reliable indication of the intra-EU

mobility of third-country nationals than the visa statistics. This is due on the one hand to the fact that not all third-country nationals immigrating to Germany from a member state of the EU are required to obtain a visa for this purpose, while on the other hand applications for visas need not necessarily to be filed in the country in which the applicant is resident prior to coming to Germany – as demonstrated by the example of Bosnian nationals. Furthermore, an issued visa does not necessarily lead to immigration, as the applicant may revise his or her intentions after applying for a visa. Beyond immigration statistics, the lack of available data precludes any quantifiable findings on the extent and structure of intra-EU migration among third-country nationals. Neither the immigration statistics of the StBA nor the AZR yield any information on the socio-demographic profile or economic situation of third-country nationals who are mobile within the EU. Equally, no statistical information is available on certain occupational groups, such as employees in state-regulated occupations, or on third-country nationals whose place of residence is located in another EU member state but who are employed in Germany. No conclusions are inferable as to the intra-EU mobility of seasonal workers, either. In view of the current recruitment policy, only Croatian nationals are concerned here.

2.2 Statistical information according to residence permits

Quantitative development of internal mobility among third-country nationals on the basis of the EU acquis

Various residence permits have been established in German residence law since 2007 in order to facilitate the intra-EU migration of third-country nationals in compliance with the provisions of the EU acquis (see section 1). To this end, in 2007 the Directives Implementation Act established a residence permit pursuant to section 38a of the Residence Act for third-country nationals who have acquired long-term resident status in another member state, a residence permit pursuant to section 16 (6) of the Residence Act for students from other member states and pursuant to section 20 (5) of the Residence Act for researchers registered in other member states.³ The annual immigration of persons with long-term resident status pursuant to section 38a of the Residence Act has since been on a continually rising gradient.

³ The EU Blue Card (section 19a, Residence Act) is not included here, as it can be used for immigration both from outside and from within the EU. Consequently, issuance of the EU Blue Card cannot be taken to indicate internal mobility. As the EU Blue Card was only introduced with effect from 1 August 2012, it is not yet possible to assess its quantitative significance.

Persons with long-term resident status constitute the largest group of third-country nationals who are mobile within the EU using a residence permit which was established specifically for this purpose – with regard to both persons currently resident in Germany and immigration figures (see Table 6 and Table 7). By contrast, the figures relating to the use of the residence permit pursuant to section 20 (5) of the Residence Act for researchers registered in other EU member states are negligible, with both the numbers of researchers already resident and the numbers of incoming researchers in the under-five range.

The low issuance of this residence permit cannot be taken to imply that only a small number of third-country nationals working at a research institute in another EU state spend time conducting research work in Germany after their stint in another EU state, however. The low incidence of this residence permit may be attributable to the fact that the provisions contained in section 20 (5) of the Residence Act only permits research work on one and the same research project and is thus not applicable to a term of residence covering several projects at a German host institute. In case of longer stays in Germany concerning research activities, it is further possible that, instead of a residence permit pursuant to section 20 (5) of the Residence Act, a residence permit allowing the pursuit

Table 6: Intra-EU migration by third-country nationals using EU residence titles, annual influx

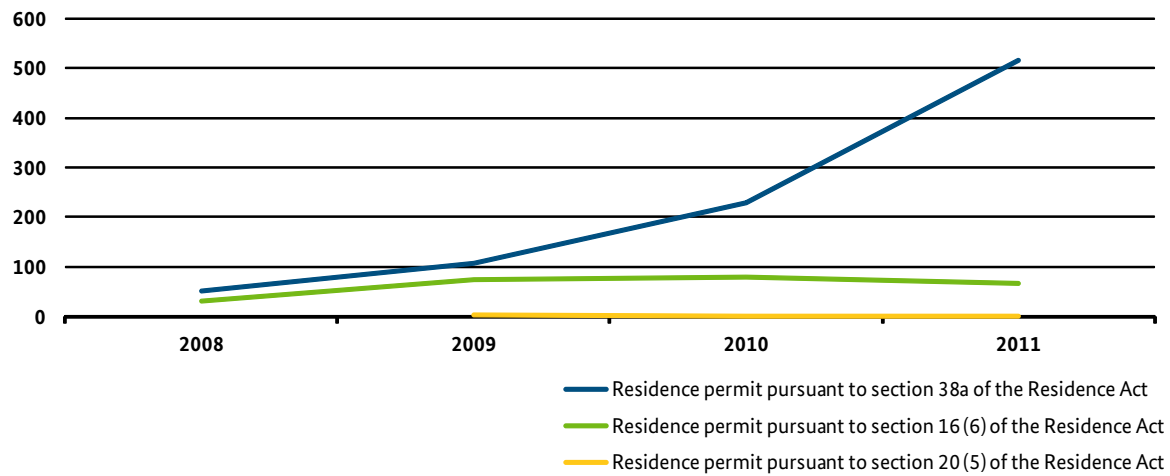
	2008	2009	2010	2011
Residence permit pursuant to section 38a of the Residence Act (persons holding long-term resident status from other member states)	52	108	230	516
Residence permit pursuant to section 16 (6) of the Residence Act (students mobile within the EU)	30	75	80	66
Residence permit pursuant to section 20 (5) of the Residence Act (researchers mobile within the EU)	0	2	1	1

Source: AZR

Table 7: Third-country nationals resident in the Federal Territory on EU residence titles (number of such nationals resident in the respective years)

	31.12.2007	31.12.2008	31.12.2009	31.12.2010	31.12.2011
Residence permit pursuant to section 38a of the Residence Act (persons holding long-term resident status from other member states)	4	72	187	473	1.086
Residence permit pursuant to section 16 (6) of the Residence Act (students mobile within the EU)	-	36	92	129	135
Residence permit pursuant to section 20 (5) of the Residence Act (researchers mobile within the EU)	-	-	2	4	4

Source: AZR

Figure 4: Intra-EU migration by third-country nationals using EU residence titles

Source: AZR

of an economic activity which is exempted from the requirement for approval from the Federal Employment Agency in accordance with section 18 of the Residence Act in conjunction with section 5, BeschV, may be issued. As such, it is not possible to ascertain any concrete information on the number of third-country nationals switching from research institutes in other EU states to German institutes.

In order to facilitate coordination between the EU member states in connection with issuance of the EC long-term residence permit and the appurtenant immigration of persons holding long-term resident status, the member states have set up national contact points to implement Directive 2003/109/EC. In Germany, the Federal Office for Migration and Refugees serves as the national contact point (section 91c (1), Residence Act). By reference to the data stored at the national contact point it is possible to ascertain information on the EU member state in which the third-country national was initially resident and on the nationality of the holders of long-term resident status. In contrast to Table 6, the following findings relate to the issuance of resident permits pursuant to section 38a of the Residence Act and not to immigration based on this title, which may result in slightly higher findings than apply to immigration.

Table 8: The five member states in which most holders of long-term resident status were initially resident

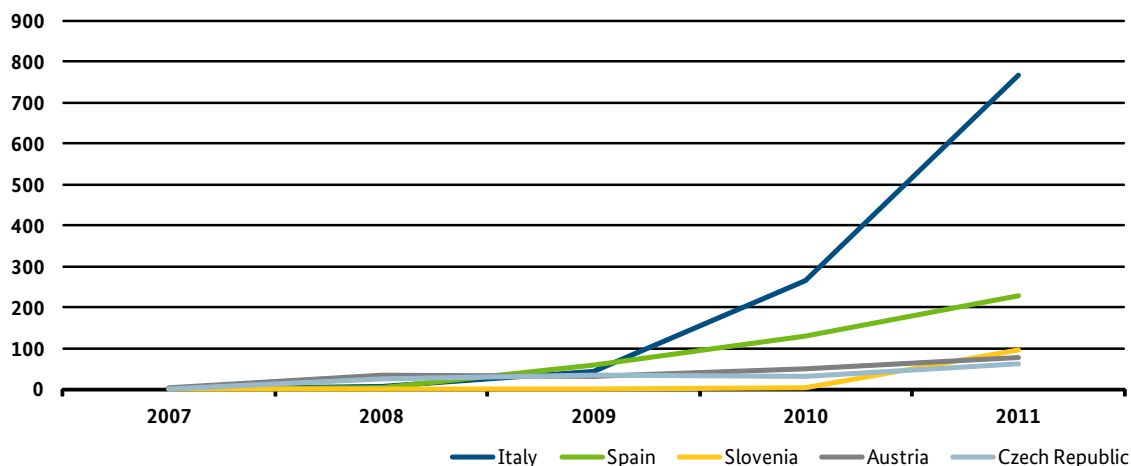
	2007	2008	2009	2010	2011
Italy	2	8	45	264	768
Spain	0	3	59	131	228
Slovenia	0	1	2	5	96
Austria	5	34	33	49	78
Czech Republic	0	24	35	33	63

Source: BAMF

As Figure 5 shows, most of the holders of long-term resident status come from Italy and Spain – EU member states which have been particularly severely affected by the national debt crisis. The figures reveal a dynamic trend comparable to the general trend for third-country nationals who are mobile within the EU.

In 2011, the highest numbers of residence permits for persons holding long-term resident status went to nationals of Kosovo (217), followed by Pakistani (145), Indian (113), Moroccan (107) and Ghanaian nationals (82).

Figure 5: The five member states in which most holders of long-term resident status were initially resident



Source: BAMF

Table 9: Residence permits issued for holders of long-term resident status from other EU member states, according to the ten most common nationalities in 2011

	2007	2008	2009	2010	2011
Republic of Kosovo	0	2	1	32	217
Pakistan	0	1	28	98	145
India	0	4	12	54	113
Morocco	0	0	14	45	107
Ghana	0	2	12	36	82
Macedonia	0	2	6	22	64
Albania	0	0	6	23	59
Nigeria	0	0	6	20	58
China	1	15	22	19	54
Bosnia and Herzegovina	1	5	8	15	47

Source: BAMF

Table 10: Residence permits issued to persons holding long-term residence status, according to the ten most common nationalities and the five most common initial states of residence in 2011

	Italy	Spain	Slovenia	Austria	Czech Republic
Republic of Kosovo	161	0	52	2	2
Pakistan	109	36	0	0	0
India	89	21	0	1	0
Albania	57	0	0	0	0
Ghana	53	27	0	0	1
Macedonia	52	1	8	2	1
China	32	6	2	4	5
Morocco	31	75	0	0	0
Nigeria	30	27	0	0	0
Bosnia and Herzegovina	13	0	25	7	0

Source: BAMF

When the issued residence permits are assessed according to the first member state in which the recipients were resident and nationality, Kosovars, Pakistanis and Indians from Italy make up the largest group, followed by Moroccans from Spain (see Table 10).

Third-country nationals mobile within the EU outside the scope of the EU acquis

A comparison of the total extent of immigration among third-country nationals who are mobile within the EU (see section 2) with immigration by means of the residence permits based on the EU acquis for the purpose of enabling intra-EU migration reveals that a substantial share of this migration activity takes place independently of the implementation of the provisions relating to persons with long-term resident status, students mobile within the EU and researchers mobile within the EU (see Table 11 and Figure 6). Since the EU residence permits were established under the Directives Implementation Act in 2007 and the act to implement the EU Directive on Highly Qualified Workers in 2012, the new EU residence titles account for five per cent of annual immigration among internally mobile third-country nationals at most. While the annual growth rates show a substantially dynamic trend, with immigration by means of the EU residence permits rising by 87 per cent in 2011 in comparison to the previous year, in absolute terms intra-EU mobility based on the residence permits which can also be used for immigration from outside the EU is subject to stronger growth. In view of the differences in scale of these two forms of internal mobility, it would appear that the issuance of national residence permits will be of greater relevance to the immigration of third-country nationals from other EU member states for the foreseeable future.

A diachronic comparison from 2006 to 2011 also reveals that immigration by third-country nationals from an initial member state to Germany was an integral part of migration activity in Germany before the provisions of the EU acquis were implemented in German residence law by virtue of the Directives Implementation Act. An assessment of the trend over time and the share of EU residence titles in the overall extent of internal mobility consequently shows that barely any use is made of the facilities for immigration established by these residence permits.

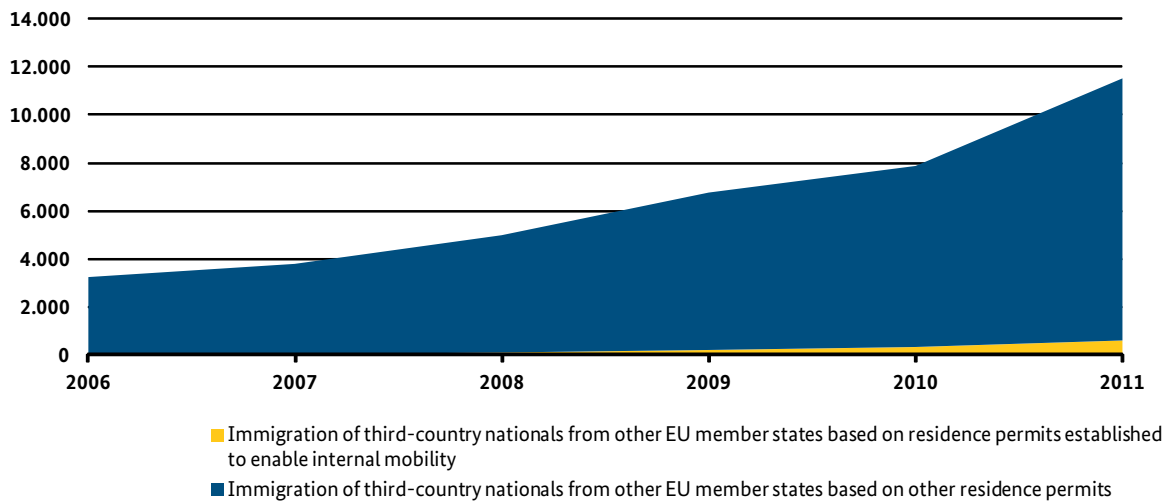
As a hypothesis to explain the low instance of use of the EU residence titles for the purposes of internal migration it is probable that in particular the requirement for five years' residence in an initial member state which constitutes a condition for issuance of the EC long-term residence permit (Art. 4 (1) of Directive 2003/109/EC) does not fit in with the mobility characteristics of third-country nationals who are mobile within the EU. In view of increasingly flexible forms of employment, particularly among qualified and highly qualified persons, it appears unlikely that a section of the population which possesses initial experience of migration and is characterised by a willingness to migrate on to other countries will remain in the same member state for five years. On the basis of this assumption it does, however, appear plausible that internal mobility takes place by recourse to residence permits to which less stringent preconditions are attached.

Table 11: Immigration of third-country nationals from other EU member states according to type of residence permit 2006 - 2011

	2006	2007	2008	2009	2010	2011
Immigration of third-country nationals from other EU member states, excluding transfers under the Dublin II Regulation	3,231	3,784	4,982	6,761	7,873	11,532
Change in comparison to previous year		17.12%	31.66%	35.71%	16.45%	46.48%
Immigration of third-country nationals from other EU member states based on residence permits established to enable internal mobility	0	0	82	185	311	583
Change in comparison to previous year		--	--	125.61%	68.11%	87.46%
Share of total internal mobility	0.00%	0.00%	1.65%	2.74%	3.95%	5.06%
Immigration of third-country nationals from other EU member states based on other residence permits	3,231	3,784	4,900	6,576	7,562	10,949
Change in comparison to previous year		17,12%	29,49%	34,20%	14,99%	44,79%
Share of total internal mobility	100.00%	100.00%	98.35%	97.26%	96.05%	94.94%

Source: AZR, StBA, own calculations

Figure 6: Immigration of third-country nationals from other EU member states according to type of residence permit 2006 - 2011



Source: AZR, StBA, own calculations

2.3 Other indicators of the extent and structure of internal mobility among third-country nationals

Recognition of educational qualifications from other member states

Educational and vocational qualifications from abroad are recognised on a decentralised basis by a diverse array of bodies and authorities. As statistical information on the recognition of vocational qualifications has only been compiled centrally since the Recognition Act entered into force in Germany on 1 April 2012, no findings are available in this connection as yet. Notwithstanding this situation, the validity of any inferred findings regarding the extent and structure of internal mobility are highly questionable from a methodological point of view (see also section 3.4).

Social insurance records

The data records which are available at the social insurance institutions do not permit the identification of third-country nationals with a prior period of employment in another EU member state, as data on previous periods of employment in other member states are not stored while the individuals concerned are economically active but are only taken into account when pension entitlements are claimed. Consequently, the data

stored by social insurance institutions do not permit any conclusions to be drawn regarding previous periods of employment abroad (and subsequent inference of internal mobility) or the employment profiles of internally mobile third-country nationals.

Information from the census

The information from the latest census will not be available until the spring of 2013 (Statistisches Bundesamt 2012b).

2.4 Internal mobility trends among EU citizens

In contrast to the dynamic picture for immigration among internally mobile third-country nationals, the immigration of EU citizens from other EU member states remains largely constant at a high level. Only since the spread of the so-called national debt crisis began in 2010 more dynamic growth rates have arisen here as well. Table 12 shows the complete statistics for EU citizens immigrating from a member state.

Table 12: Immigration of EU citizens (excluding German nationals) from other EU member states*

EU member state	2007	2008	2009	2010	2011
Belgium	1,971	2,129	2,094	2,553	2,727
Bulgaria	20,447	23,535	28,513	38,958	51,149
Denmark	1,874	2,086	2,042	2,091	2,284
Finland	1,966	1,734	1,719	1,779	1,990
France	12,504	12,691	12,425	12,765	13,267
Greece	7,768	8,080	8,406	12,079	22,974
Ireland	977	1,096	1,231	1,370	1,787
Italy	17,146	18,519	20,478	22,036	26,342
Luxembourg	2,406	2,630	2,357	2,221	2,333
Netherlands	10,461	10,782	9,133	8,708	8,937
Austria	9,419	9,355	9,738	10,008	10,289
Poland	139,740	118,779	110,571	114,343	162,835
Portugal	5,207	5,544	6,319	6,084	7,791
Romania	42,784	46,868	55,584	73,654	94,426
Sweden	2,147	2,023	2,097	2,168	2,330
Slovakia	9,397	8,593	8,327	8,385	11,806
Slovenia	1,149	1,144	1,173	1,494	2,416
Spain	7,589	8,312	9,622	11,528	17,438
Czech Republic	6,632	6,252	5,902	6,017	8,196
Hungary	22,075	24,976	25,113	29,078	40,922
United Kingdom	7,444	8,200	8,326	8,898	9,758
Total	331,103	323,328	331,170	376,217	501,997
Change in comparison to previous year		-2.35%	2.43%	13.60%	33.43%

*Due to extremely low immigration numbers in some instances, not all member states are listed

Source: StBA

The totally different scale of immigration among internally mobile third-country nationals and internally mobile EU citizens respectively precludes direct comparison of the extent of immigration. At most, it may be expedient to compare the growth rates of these divergent types of migration. As Table 13 shows, an

ongoing rise in the annual growth rates distinguishes the immigration figures for internally mobile third-country nationals from the general immigration figures for non-German EU citizens and immigrants from other EU member states.

Table 13: Comparison of annual growth rates for selected categories of immigrants

	2007	2008	2009	2010	2011
Immigration by internally mobile third-country nationals	3,784	4,982	6,761	7,873	11,532
Change in comparison to previous year	17.12%	31.66%	35.71%	16.45%	46.48%
Immigration by internally mobile EU citizens (excluding German nationals)	331,103	323,328	331,170	376,217	501,997
Change in comparison to previous year	--	-2.35%	2.43%	13.60%	33.43%

Source: StBA, own calculations

One reason for the more dynamic development of immigration among internally mobile third-country nationals may be the structural divergence between the labour market situation for immigrants and native workers respectively. As immigrants are generally more likely to be employed in the so-called “secondary” labour market, which is characterised by less stable employment conditions and is thus the initial focus of dismissals in times of crisis (Piore, 1978), they are likely to be affected by the national debt crisis before native workers. They furthermore differ from the majority of EU citizens in that they have previous experience of migration and possess an essential willingness to migrate. This assumption is corroborated by the present finding that immigration by EU nationals begins at a substantially later juncture in the course of the crisis than immigration by third-country nationals whose previous place of residence was in another EU member state.

This assumption is also borne out by administrative practice at the foreigners authorities, which confirms that the majority of foreigners holding long-term resident status are workers with low levels of qualification.

3 Mobility barriers

Obstacles to immigration can be differentiated according to intentional and non-intentional mobility barriers. An assessment of non-intentional obstacles to immigration involves special challenges, as meaningful information on such mobility barriers can only be obtained by analysing intentions to migrate and the manner in which such intentions ultimately fail to be realised.

3.1 Labour market check

The examination of the consequences of immigration for the labour market situation (labour market check) constitutes an intentional mobility barrier, as immigration is only permitted when it harbours no potential for negative impact on the employment situation of German employees, EU citizens and third-country nationals who hold a permanent right of residence.

While implementation of the directive on persons with long-term resident status and the provisions of section 38a of the Residence Act establishes a legal entitlement to issuance of a residence permit for third-country nationals who have acquired long-term resident status in a first EU member state, German residence law exercises the option of reserving unrestricted access to the labour market to Germans, EU citizens and members of the EFTA states which is provided in the directive (Directive 2003/109/EC, Art 11 (3) (a)). Consequently, approval from the Federal Employment Agency is also required for third-country nationals in possession of a residence permit for holders of long-term resident status who are seeking to take up employment. In this case, such approval is only required during the first 12 months, however.⁴

⁴ Occupations which are exempted from the requirement for approval under the ordinance on the admission of foreigners (BeschV) form an exception here.

3.2 Minimum wages

Minimum wages apply for various branches of industry in Germany, including the temporary employment sector, private security services and waste management, to name but a few. The bottom limit for eastern Germany is set by private security services and laundry services in commercial customer business at a minimum wage of € 7.00 per hour; in western Germany, the lowest minimum wage applies for leased labourers, at € 7.89 per hour. The highest minimum wages in eastern Germany apply for skilled workers with a special knowledge of mining work, at € 12,81; in western Germany the highest minimum wage of € 13.40 per hour applies for skilled workers, machine operators and drivers in the building industry (Statistisches Bundesamt 2012a).

As BeschV rules out issuance of a residence permit for the purpose of employment in accordance with section 18 of the Residence Act in these branches of industry, mobility barriers exist here under German residence law, irrespective of the stipulated minimum wages.

3.3 Self-employed service providers

Self-employed service providers who are third-country nationals are subject to the same conditions as apply to self-employed persons in general, irrespective of whether immigration takes place from outside or inside the EU. Preconditions for issuance of a residence permit for the purpose of self-employment are the existence of an economic interest / regional demand, an expected positive effect on the economy and adequate financing for the venture concerned. Only members of so-called liberal professions are exempted from these preconditions (section 21 (5) in conjunction with section 21 (1), Residence Act). These liberal professions cover doctors, dentists, veterinary

surgeons, lawyers, notaries, patent lawyers, surveyors, engineers, architects, commercial chemists, auditors, tax advisors, economics and business management consultants, chartered accountants, tax consultants, alternative health practitioners, dental technicians, physiotherapists, journalists, photographic journalists, interpreters, translators, ground marshalls and similar professions (section 18 (1), Income Tax Act (EStG)). Freelancers make up the largest group of self-employed service providers, at 40.9 per cent (Block/Klingert, 2012). It is not possible to ascertain by reference to the available data whether these provisions constitute an obstacle to mobility.

3.4 Recognition of educational and vocational qualifications

The Professional Qualifications Assessment Act (BQFG) which entered into force on 1 April 2012 entitles persons with a foreign professional qualification to file an application for recognition of their professional qualification. A distinction requires to be drawn here between regulated occupations, including doctors, nurses, teachers and engineers, and non-regulated occupations. In the case of the regulated occupations, recognition of the professional qualification is a mandatory precondition for taking up employment in Germany. As such, the Professional Qualifications Assessment Act aims to eliminate obstacles to mobility resulting from regulated access to certain occupations.

3.5 Access to social benefits

A further obstacle to mobility results from the general conditions for issuance of a residence permit pursuant to section 5 (1), sentence 1, no. 1 of the Residence Act, which requires proof of a secure livelihood. Dependence on social benefits thus constitutes a reason for denying issuance of a residence permit.

4 Conclusion

Provisions for the long-term internal migration of third-country nationals have been established at European level for the first time by virtue of the Directive on Long-term Residents, the Researcher Directive, the Student Directive and the Directive on Highly Qualified Workers. These provisions are intended to improve the mobility of third-country nationals throughout the EU – with the exception of Denmark, Great Britain and Ireland.

However, a review of immigration among third-country nationals from other EU states to Germany as a whole reveals that a large proportion of intra-EU migration activity has taken place and continues to do so outside the EU's legal framework. Even after implementation of the provisions stemming from the above mentioned EU directives, the immigration of third-country nationals to Germany from other EU member states continues to take place using residence permits which were not established specifically to promote internal mobility. Immigration among internally mobile third-country nationals is an area subject to vast growth rates. It will only become apparent a number of years from now whether this is a lasting phenomenon or an effect of the national debt crisis, however.

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Abbreviations

AEntG	Law on the posting of workers (Arbeitnehmerentsendegesetz)
AVwV	General administrative regulations on the Residence Act (Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz)
BA	Federal Employment Agency (Bundesagentur für Arbeit)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BeschV	Ordinance on the admission of foreigners for the purpose of taking up employment (Beschäftigungsverordnung)
BQFG	Professional Qualifications Assessment Act (Berufsqualifikationsfeststellungsgesetz)
AZR	Central Register of Foreigners (Ausländerzentralregister)
EFTA	European Free Trade Area
StBA	Federal Statistical Office (Statistisches Bundesamt)
ZAV	The Federal Employment Agency's International Placement Services (Zentrale Auslands- und Fachvermittlung der Bundesagentur für Arbeit)

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