



MILESTONES AND STUMBLING BLOCKS

**Mid term results of
the National Thematic Network
on Asylum seekers**

Interim Report: Milestones and stumbling blocks

Policy paper of the National Thematic Network in the ESF Federal Programme for migrants with a refugee background and refugees with access to the labour market

Current as of: 2.12.2009

Contents

I. Networking practice in the Federal ESF Programme

The objectives of the Federal ESF Programme

Facts and figures regarding the networks

Networking as a programme requirement

Networking in practice – cooperation models with strategic partners

II. Interim results judged by the standards of state-of-the-art integration policy frameworks

Individual problems

Structural problems

The arrangement of the "grand father clause" (the legal treatment of older cases) created particular difficulties.

Solutions and successes

Results and recommendations in individual thematic fields

Thematic field A) Training for young refugees

Thematic field B) work placement

Thematic field C) Needs-analysis and skill-development

III. Summary and outlook

10-point action plan

Annex 1: Fundamentals and background – evaluation of legal framework conditions from the point of view of project activities

Annex 2: List of projects related to the Federal ESF Programme for migrants with a refugee background and refugees with access to the labour market

Introduction

The National Thematic Network under the "Federal ESF Programme on Labour Market Support for Migrants with a Refugee Background and Refugees with Access to the Labour Market" presents its first interim report after one year of practical activities

From the perspective of the 43 project networks, the following expectations can be identified: It would be desirable for the Federal and *Länder* Governments to decide on a more thorough change of direction in labour market and educational policy for refugees¹. Both for humanitarian reasons and in the light of demographic development there is a need for sustainable provisions governing the right to remain; they should not provide for a cut-off date and should be based on human considerations so as to allow real participation in society. To ensure labour market participation of refugees at an early stage, it is necessary to eliminate access barriers to the labour market such as, for instance, the labour market priority review, residence obligation and clarification of the identity as prerequisite for labour market access. Moreover, the need for continuous integration assistance makes it necessary to implement programmes enabling more practical activities in the field of counselling, placement and qualification of refugees and contributing to the establishment of a culture of cooperation in the regions. In the coalition agreement, under the heading "Social Progress through Cohesion and Solidarity", the Federal Government, declares its intention to eliminate existing restrictions concerning refugees.² However, more comprehensive efforts are required, particularly in view of refugees with an insecure residence status. In this context it is crucial that in the planned revision of the provisions governing the right to remain, the recommendations set out in this report are taken into consideration. Moreover, when further voluntary commitments of the Federal Government are formulated, due regard should be paid to refugees: The experience gained by the project networks operating under this programme can serve as forward looking bases for efforts to realise the objective defined in the coalition agreement, i.e. that mandatory integration partnerships should be formed with the task of further developing the time-limited projects at regional level and to establish them as standard practice.

The central message of this first interim report on the ESF Federal Programme is: We are on the right track! Examples from various network regions illustrate that it is possible for refugees to participate in training and employment. As practical project activities are influenced by different regulatory frameworks in the regions, it can be seen that despite the relaxation of a number of rules there are still too many paradoxes in laws and instructions hindering the labour market integration of refugees. Fundamentals and background information, together with an evaluation of the legal framework conditions, can be found in the Annex.

The following sections review first experiences and recommendations, taking account of the network structure as a particularity of the programme (I), followed by a presentation of

¹ Here, reference is made in particular to the target groups of the Federal ESF Programme, i.e.

Bleibeberechtigte (migrants with refugee background) and refugees with at least secondary labour market access (asylum seekers, tolerated persons after one year of residence).

(Translators note: *Bleibeberechtigte* (migrants with refugee background) are immigrants whose residence was previously "tolerated" (*geduldet*), i.e. their deportation was suspended, for either eight or six years, respectively, subject to conditions set out in Section 104a of the Residence Act (*Aufenthaltsgesetz*) and are now granted residence status on probation.

² Coalition Agreement between CDU, CSU and FDP for the 17th legislative period: "Growth, Education, Cohesion", p. 80.

interim results for the specific thematic fields: Training of Young Refugees, Work Placement, Identification of Needs and Qualifications (II). Practical examples are given for illustration. A ten-point action plan contains theme-relevant recommendations for policy-making and practice.

I. Networking practice in the Federal ESF Programme

The goals of the Federal ESF Programme

With the “Federal ESF Programme on labour-market support for migrants with a refugee background and refugees with access to the labour market”³, the Federal Ministry of Labour and Social Affairs has launched a programme which is intended to support the labour market integration process. The programme supports networks focussing on the following themes at local and regional level:

- support through advice and placement;
- increasing opportunities for (continued) employment and safeguarding jobs;
- information and awareness-creation among stakeholders in the labour market and public figures who are relevant to the target group.

One of the programme’s main target groups are “migrants with a refugee background”, that is individuals who have received a residence permit on probation (cf. the information contained in the Annex) according to the statutory “grandfather clause” (*Altfallregelung*). Over and above this, other refugees who, on account of their prospects of legal residence in Germany, are able to draw subsistence benefits and benefits to support integration into work in accordance with Book II of the Social Code (*SGB II*), also receive support.

The aim is to integrate this group of individuals into the labour and training markets. In particular, their employment is also to be placed on a stable long-term footing. The Federal ESF Programme particularly supports short-term job-related qualifications as a means for sustainably safeguarding jobs.

Due to the cut-off date and other restrictions, the provisions concerning the right to remain and the statutory "grandfather clause" are only applicable to some of the persons who live in Germany with a tolerated residence status. However, in counselling and placement it is hardly possible or appropriate in practice to make a strict distinction between persons with a right to remain (including persons who have been granted a residence permit "on probation") and tolerated persons. In the case of refugees who are not covered by the provisions on the right to remain, it often turns out later in the course of the counselling process, that existing possibilities of access to education and employment have not been used.

The programme therefore also includes asylum-seekers and “tolerated” persons (*Geduldete*) who have (at least) secondary access to the labour market. These groups, who have no legal long-term residence prospects, can become independent of support benefits in Germany if their employability is maintained or enhanced. This also improves their chance of being re-integrated into the labour market in their home countries⁴.

Facts and Figures regarding the networks

³ Hereafter referred to as "Federal ESF Programme"

⁴ Federal Ministry of Labour and Social Affairs. Funding guideline "Federal ESF Programme on Labour Market Support for Migrants with a Refugee Background and Refugees with Access to the Labour Market of 09 June 2008 (hereinafter referred to as funding guideline).

- Support volume and timeframe: The total volume of the ESF Federal Programme, including national co-funding, is 34 million EUR. Of this, the Federal Ministry of Labour and Social Affairs provides EUR 19 million from the resources of the European Social Fund (ESF) and roughly EUR 12 million from its own budget.
- 43 advice networks⁵ comprising roughly 220 individual projects are being supported in the period from September 2008 to the end of October 2010. The term of the projects is generally two years.

The networks include a broad range of placement and counselling activities. Some of them have set priorities taking account of the programme specifications: In a number of projects support for young people has been defined as an important topic. Others specialise in particular occupational fields such as hotel and catering, industrial/technical occupations or health and nursing occupations. Furthermore, several networks have put their focus on awareness raising among labour market actors, for example by providing training to employees of the employment agency staff.

Flexible services enable networks to rapidly respond to changing conditions, whenever necessary. For example, some of the networks which at the beginning of the project had been successful in the acquisition of partner companies and in the placement of higher skilled participants later focussed on participants with lower qualifications who primarily required low-profile offers or placement into training.

According to the networks, almost 8,900 individuals had taken part in project measures as per the key date 15 August 2009.⁶ Thus, roughly 47 per cent of the number of participants targeted by the networks at the beginning of the programme has been reached before the first programming year. About half of the reported participants were benefit recipients under Social Code II. The other half of the participants included recipients of basic benefits in accordance with the Act on Welfare Benefits for Asylum Seekers (23 %) and persons who, under Section 2 of the Act on Welfare Benefits for Asylum Seekers, have become entitled to benefits in accordance with the Social Code II (27%).

Networking as a programme requirement

Network formation by establishing project associations is an obligatory requirement of the Federal ESF Programme:

“The Federal ESF Programme will promote networks at local and regional level. These are to bring about faster placement, and through mediation in companies, a higher level of participation on the part of the target group in measures of active labour market promotion and more stable employment.”⁷

The tried-and-tested model of so-called development partnerships of the EQUAL support programme 2002-2007 was therefore taken up once again.⁸ The various players in

⁵ A list of the 43 networks is set out in the Annex to this report.

⁶ Please note that within a network persons can participate in several measures provided by different project partners. Therefore, multiple counts cannot be excluded.

⁷ Funding guideline, p.2

⁸ National Thematic Network on Asylum in the European Community Initiative EQUAL (Ed.): A Beginning

migration and labour market policy work together at local or regional level in the context of the networks. The Federal ESF Programme contains the requirement that the networks are formed “of different types of institution” and “combine skills from the fields of activities for refugees, counselling, labour market and company contacts”.⁹ Consequently, non-governmental organisations and welfare associations, companies, training organisations, job placement services, economic chambers and trade unions will also be involved in meeting this requirement, in addition to the responsible authorities. The fundamental concept here is that the various players’ respective specialist knowledge will from the outset be incorporated into the planning of the project work in a manner which enables the goals to be implemented effectively.

This leads to cooperation between institutions which previously often worked in parallel or even at cross purposes. Moreover, cooperation in networks ensures that the best suited network partner can be entrusted with a specific issue – both, when it comes to solving participants’ individual problems and in dealing with cross-cutting technical matters. While at local and regional level networks cannot seek to change the legal ground rules, it is possible to explore existing leeway in administrative practice and to cooperate in testing new models. As vehicles for communication and knowledge exchange networks have the potential to outlast the programming period and to ensure the sustainability of successful project outcomes.

Networking in practice – cooperation models with strategic partners

In accordance with the funding guidelines, the networks are to implement the following tasks:¹⁰

- labour market-related counselling increasing the ability to act of the target groups with regard to their opportunities in the labour market,
- counselling/placement/mediation activities increasing the willingness of companies to recruit, and stabilising job security for migrants with a refugee background in the long run, and
- information and awareness-creation among stakeholders in the labour market and public figures who are relevant to the target group.

Cooperation in networks has proved an effective concept as measures conducted by various players and their utilization by participants can be better coordinated. In this context the following characteristics of cooperation in networks are of particular importance:

- Networks provide an opportunity for the pooling of skills and of knowledge concerning living situations.
- In networks the differences between institutions and non-governmental organisations can be overcome.

Has Been Made. New Opportunities for Vocational Integration in the Thematic Field of Asylum. Memorandum by the Development Partnerships of the National Thematic Network on Asylum, October 2007, p. 26

⁹ Funding guideline, p. 5

¹⁰ Funding guideline, p. 5

- Networks offer the opportunity for target group specific activities. This is of great importance as the project target groups are facing a number of typical problems. Moreover, the target groups are relatively small, which is why in the institutions specialised knowledge is not available at all levels.
- As "dynamic systems", networks can flexibly adapt to different problems as different partners can be used for specific tasks.

For the consolidation of network structures it was useful that some projects in the current Federal ESF Programme could build on experience with the model of so-called development partnerships under the EQUAL Programme 2002-2007. However, it was apparent that even when established structures exist, network cooperation is time-consuming and resource-intensive. It was also reported that, particularly in the initial programme phase, some newly formed networks had little scope for outward network activities because of internal coordination and other administrative tasks.

A number of promising approaches have, however, emerged, in particular where it was possible to build on available structures:

Taking **Hagen** as an example: The project partners of “*AuFBruCh Hagen*” (Hagen Gets Started) meet regularly with representatives of the immigration authority, of the joint agency, of the employment agency, of the social welfare office and of the integration council. Moreover, there is productive cooperation with the immigration authority: For instance, the authority has invited persons with humanitarian residence, as well as “tolerated” persons, to attend information events at which the project partners were able to learn about what they have to offer and arrange appointments. The projects reached one-third of their participants by these means.

Taking **Hersfeld-Rotenburg** as an example “*Interkulturelles Fallmanagement*” (Intercultural Case Management): The authorities involved in the local authority have their offices in the same building; there is constant contact with the case managers for migrants with a refugee background. As an opting-out local authority, the rural district decides on support by measures in accordance with Social Code II.

Taking **Rhineland-Palatinate** as an example (InProcedere) In Bad Kreuznach and Germersheim regular case conferences are held with representatives of joint authorities and immigration authorities to discuss progress and problems in participant support.

Taking **Hamburg** as an example “*Fluchtort Hamburg plus*” (Place of Refuge Hamburg plus): Within a programme (“AQUABA”) promoted by the Hamburg Senate, the network cooperates with a broader group of institutions and project funding organisations that work together to improve the placement of the target group. Discussions regularly take place with the employment agency and the joint agencies, as well as with the immigration authority, in order to optimise procedures in granting work permits and facilitating access to project measures.

Taking **Thuringia** as an example: The so-called "to arrange" network offers its services in existing regional counselling centres for refugees and migrants. The aim is to establish vocational guidance as another key activity of counselling centres in addition to social

work, and to develop new models of local cooperation. When the vocational guidance networks are firmly established, the projects will withdraw from the region.

Taking **Wuppertal** as an example: In the network called "Participation" the municipality's department for immigration and integration is integrated into the network as a sub-project.

As networks are formed at varying speed in the different regions general conclusions regarding their success are possible only to a limited extent. However, there are many examples showing that the creation of heterogeneous networks with the involvement of strategic partners is a suitable means to tailor counselling and procedures to the needs of target groups and to give them access to support. The networks offer the potential for sustainable cooperation with the competent authorities and other partners in the regions.

The establishment of strategic partnerships is the most important precondition for successful project work. This has however proven to be difficult and above all time-consuming, especially (but not only) in the networks, where the competent authorities are not involved as project partners. A particular challenge here lies in ensuring the sustainability of the partnerships which have been established.

Recommendations in the field of cooperation models with strategic partners:

- Flexible partnerships should be facilitated in order to expand successful networking practice and to attract different constellations of partners for different topics.
- Awareness-creation among the institutions for the specific interests of the target group should be improved. Public relations should also play a more important role in applications and grants in this context.
- An over-arching coaching network has proven its worth in facilitating an exchange of experience and ideas at federal level. It was possible for this to be shown in the current Federal ESF Programme by the National Thematic Network in the programme for migrants with a refugee background. Such an over-arching "network of networks" should be continued.

II. Interim results judged by the standards of state-of-the-art integration policy frameworks

Individual problems

With the steps described above and in Annex I, policy-makers have generally recognised that the need and the possibility to be integrated into the labour market exists also for persons who have been tolerated over many years. The Federal ESF Programme is geared towards these groups of persons, who are handicapped by significant placement obstacles on account of their many years of inactivity. It should be noted from the outset that this report only covers the experience with project participants and does not make any general statement on the vocational situation of migrants with a refugee background, asylum seekers and tolerated persons. Normally, the networks are only used by persons in need of support. It is not rare for project participants not to have engaged in regular work for ten years, and in individual cases even for twenty years. It is by no means unusual for alienation from the world of work to take place under these conditions. What is more, however, individual factors in the target groups of the Federal ESF Programme frequently make things worse and further prevent integration in the labour market:

- Large numbers of participants have scant knowledge of German. It should also be noted here that the target groups have not been entitled to attend integration courses during their stay in Germany so far. Even after a residence permit has been issued under the “grandfather clause”, there is no right to attend an integration course.¹¹
- Many participants have had little school and vocational training, and some are illiterate. This does not necessarily mean that the target groups have a generally low level of training. It is more probable that an above-average number of individuals who have a poor starting position for the labour market, and hence require particular support, contact the projects of the Federal ESF Programme.
- Formally-acquired foreign education certificates or vocational qualifications are frequently not recognised. What is more, there are virtually no recognised instruments for the confirmation and categorisation of vocational skills which have been acquired by means of gainful employment in the country of origin, in most cases without a formal qualification.
- Previously-acquired vocational experience further loses value because it has not been applied in the years which have been spent in Germany so far, and social skills that are needed for the world of work may decrease (deskilling).
- As a result of violent experiences in the countries of origin, through flight, as well as the circumstances encountered in Germany, an above-average number of individuals who are suffering from mental problems and psychosomatic diseases can be found in the projects’ target groups. The extent of this problem posed a particular challenge, especially in projects which had not previously worked with “tolerated” persons and refugees.

¹¹ In individual cases participation in integration courses has been made possible. Additional places in the courses have been made available, for example, in Hamburg under a programme funded by the Hamburg Senate.

- A lack of childcare may make it impossible to take up certain activities which would otherwise be suitable for the target groups – for instance in care professions where shift work is the norm. Cultural reservations against childcare provision by “strangers” also apply to some participants.

Structural problems

Regardless of the modifications in the legal framework described in Annex I, German residence law still provides for a number of restrictions and sanctions directed in particular at persons with tolerated residence status.

- Thus, the modifications of the Employment Procedures Ordinance (Beschäftigungsverfahrensverordnung – BeschVerfV), which are to give tolerated persons access to the labour market as a matter of principle, may be rendered ineffective by § 11 of the same Ordinance. According to § 11 of BeschVerfV tolerated persons may not be granted permission to take up employment, particularly in the case where measures to terminate their stay cannot be executed owing to circumstances for which they are themselves responsible. In practice this leads quite often to complete exclusion from the labour market. In administrative practice and case law, this rule is interpreted in different ways, for instance regarding the extent of cooperation that can be reasonably expected in the process of obtaining a passport.
- Tolerated persons may be granted permission to take up employment without the so-called labour market and priority review pursuant to § 39 of the Residence Act (AufenthG) only after four years of residence in Germany. ... In the first four years this leads to difficulties in labour market access, particularly in regions with high unemployment.
- Moreover, placement efforts in the case of tolerated persons often fail because of their restricted geographical mobility due to the fact that they are not allowed to leave their district or federal state without permission. In this context, the Residence Act provides for a derogation for tolerated persons entitled to take up employment without priority review (§61, paragraph 1, third Sentence, AufenthG) But its application is left to the discretion of the immigration authorities which means that in some regions tolerated persons are not granted permission to leave their place of residence. Placement prospects are, however, enhanced by greater regional mobility. It is therefore specifically supported by the employment agencies and the authorities providing basic income support in the case of persons with restricted professional mobility or in order to avoid long-term unemployment.

For asylum seekers taking up a job is also virtually impossible. In the first year of asylum proceedings asylum seekers – like tolerated persons – are completely excluded from the labour market. Afterwards, their taking up employment is subject to the above-mentioned labour market and priority review provided for in § 39, paragraph 2 of the Residence Act.

In addition to the legal restrictions there is the problem that institutions responsible for placement still have deficits in handling intercultural contacts with their clients, although

major efforts have been undertaken in recent years. Moreover, administrations are not always prepared for the special requirements of the target groups covered by the Federal ESF Programme and the support options it offers. Several networks have reported that employment agencies and companies, tend to generally categorise tolerated persons and migrants with a refugee background as "unplaceable" or "not suitable for hire" without reviewing each case individually.

The above-mentioned restrictions and practical problems are the result of a regulatory philosophy according to which persons with only temporary residence in Germany should not be integrated into the labour market and society. This approach overlooks the fact that people who have for many years been excluded from employment, are losing skills which might be essential when they return to their home country. The notion that this kind of restrictions would convince tolerated persons to leave the country after many years of residence in Germany has turned out to be wrong in most cases, as is shown by the latest figures on persons with tolerated status referred to above. However, when a person's residence and employment status changes, great efforts have to be undertaken to overcome past deficits in labour market integration. This has become apparent, for example, in the case of migrants with a refugee background. The fear is, unfortunately, that unless legal provisions are focussed more strongly on labour market integration similar problems will emerge in the future.

Particular problems due to the modalities of the "grand father clause".

Under the so-called grandfather clause residence permits in older cases are issued with an initial validity until 31 December 2009. Despite the renewal option under Section 104a, paragraph 5 of the Residence Act, this deadline has often been a real obstacle in efforts to find a training place or a job, because in these circumstances employers are reluctant to conclude an employment contract or, in particular, a training contract. Moreover, the deadlines by which secure means of livelihood have to be shown make it impossible to place participants in long-term qualification measures, even though such measures would in principle be available and would be eligible for support. Without acquisition of basic qualifications, which in many cases requires participation in longer-term courses, there is little prospect for participants to find a higher-skilled job to secure their own living. Moreover, the provisions do not allow young people to catch up on their school certificates, which may be a precondition for taking up vocational training.

The unfavourable starting position of individual participants has been further aggravated by the tight labour market situation in the wake of the economic and financial crisis. In most regions placement into employment has become significantly more difficult as a result. This holds particularly true for placement into employment as a means to meet the prerequisites for an extension of the residence permit beyond the 31 December 2009. There is reason to fear that many persons holding a residence permit issued under the "grandfather clause" are in low-paid employment which does not enable them to meet the requirement of a (predominantly) independent livelihood specified in the "grandfather clause". For the projects it was difficult to reach this group of persons. The objective defined in the programme specifications of "bringing persons from low-skilled and low-paid employment or fixed-term employment ...into new jobs" ¹² is therefore difficult to

¹² Funding guideline, p. 2

achieve. Many of the persons concerned have little prospect of advancing to better paid employment. Moreover, a similar situation probably exists for a large number of people who can be assumed to meet the requirement of an autonomous livelihood, but run the risk that necessary measures to upgrade their skills and ensure sustainable employment are not undertaken. Because of the key date regulation they are practically forced to stick with less stable jobs. However, it is not possible to gather reliable data on this issue because, here again, the problem is that persons who have found employment do not always contact the projects, while the projects themselves have no possibility to reach out to them and inform them about their activities.

Solutions and successes

In view of the difficult situation in general and of the many individual problems, it becomes clear that there are no simple paths for direct placement into employment for the target groups of the Federal ESF Programme – especially when it comes to sustained integration into the labour market, as is provided for by the programme for migrants with a refugee background.

Virtually each individual case requires from the projects a considerable degree of individual and at the same time multifunctional care. Against this background, the networks have developed a wide range of strategies to strengthen the interests and abilities of the participants and to create the conditions for placement into training and work.

In the case of many participants it is necessary to organise a step-by-step skill building process comprising different measures: It begins with competence assessment, which can also help to motivate participants with little labour market experience – particularly those who have failed to find employment because of the existing regulations. Once skills have been assessed, the networks can offer further support services, the following measures, among others, having proven useful in this phase:

- preparation and coaching in making job applications, including drawing up curriculum vitae
- motivation training through individual interviews or discussion in small groups
- Occupation-related promotion of language skills
- in-house traineeships,
- training to update vocational skills
- social counselling in the participants' surroundings to ensure that concentration is fully focussed on seeking and taking up work.

In view of the difficult starting situation it should be noted that successful participation in the measures listed above can in itself be considered a partial success. For participants and projects they constitute important milestones, even though this may not be directly reflected in the number of successful placements. When placing a participant into employment, the project's most important contribution is establishing contact with companies in cooperation with the institutional or private job placement services. Even after successful placement and conclusion of an employment relationship, the projects continue to be available as contact points for companies and participants. Such arrangements are an essential stabilising factor.

In this context the networking approach of the Federal ESF Programme has proved not

only useful but indispensable. Networking enables measures to be tailored to the needs of participants and to be optimally synchronised. This is also illustrated by the successful examples outlined in the following chapters discussing the thematic fields "Training", "Work Placement" and "Qualification". Over and above day-to-day counselling and placement activities, networks can also contribute to cooperation at regional level whose effects transcend the Federal ESF Programme. Examples of this form of networking have been described above under the heading "Networking in Practice – Cooperation Models with Strategic Partners".

Results and recommendations in individual thematic fields

Thematic field A) Training for young refugees

As per the key date 15 August 2009, the projects recorded 251 participants who had concluded a training contract and another 185 individuals who had taken up school training. This corresponds to 8.3% and 6.2%, respectively, of participants aged under 27.¹³

Encouraging results have been recorded particularly in projects whose priorities include training placement. It has emerged in the project work that young people are particularly highly motivated towards new tasks although they frequently have difficult starting circumstances. Their educational careers to date were typified by the uncertainty accompanying “tolerated” residence and the concomitant restrictions on access to work and training, as well as the difficulties encountered in life planning. Marginalisation, crime, a lack of knowledge of German, as well as of school-leaving qualifications, are widespread problems, as are incorrect perceptions of the vocational training system, everyday life at work or specific occupations.

Nonetheless, the projects have enabled many young people to take up schooling or vocational training, enabling them not only to obtain prospects for residence under the “grandfather clause”, but at the same time also considerably increasing their chances of sustainable employment.

In **Recklinghausen** “*JobNet Bleiberecht*” (JobNet for migrants with a refugee background) and **Tübingen** “*Bleib in Tübingen!*” (Stay in Tübingen), “external training management” is carried out, providing support before and during training both for the young people and for the companies. Here, for instance, advance internships are offered, accompanying language skill-development and “support lessons” for trainees with problems in vocational school.

Taking **Bremen** (BIN – Bremer IntegrationsNetz) as an example: The network has established institutionalised working relations with the youth welfare office and the immigration authority; a committee meeting every six months lays the groundwork for successful cooperation.

Taking **Osnabrück** (NetwIn) as an example: As funding agency for Social Code II benefits the district of Osnabrück is represented in the network by officials specialised in services for the target group. Vocational training assistance was regularly granted to trainees. The Refugee Aid Organisation provided training for the staff of the respective services; this had a positive impact on placement figures.

Taking **Berlin** as an example (*bridge* - network of the Berlin Treatment Centre for Torture Victims and of the Refugee Assistance and Migration Services Centre [*bzfo-zfm*]): The network co-operates with the local Vivantes hospital group in acquiring training placements: First of all, the young people attend an eight-month course to be trained as nursing assistants. Where necessary, additional instruction in specialist language is provided in the initial months. Over and above this, the participants are supported in job applications by being prepared within the network for the aptitude test. After recruitment, the young people receive weekly extra lessons within the network from nursing instructors,

¹³ As most of the training courses and the school year start after the key-date, it can be expected that the respective figures will be higher by the end of the year.

in particular when there are tests coming up.

Taking **Hamburg** as an example (“*Fluchtort Hamburg plus*”): Placement is largely in dual training, including in companies which are run by entrepreneurs with a migration background. In cooperation with the Hamburg University of Applied Sciences, social education students act as mentors in coaching young refugees. At strategic level, it has been possible to lend the topic permanence in Hamburg by including it in the “Action Plan for Education and Training Promotion of Young People with a Migration Background” promoted by the Mayor of Hamburg. Over and above this, refugees were given access to the training programmes for young people and measures offered by organisations of youth vocational assistance.

According to experience to date in the Federal ESF Programme, training placement can be successful if it is accompanied by intensive preparatory coaching of trainees and companies. Major difficulties no longer arise here primarily through the legal framework,¹⁴ but as a result of individual obstacles to placement, as well as through an administrative practice which remains restrictive. Among other things, this is due to an inconsistent implementation of laws and regulations where still existing regulatory sanctions are an obstacle to placement into employment. In this context it has proved particularly useful to include the competent administrations in network activities. But experience has also shown that support measures involve an enormous amount of time and effort. This is true in particular when young people with language deficits and lacking school certificates need to be prepared for vocational training by means of basic skills training and courses to overcome language deficits. In this context, regional initiatives organised in the form of “training pacts” by policy-makers, administrations and employers and coordinated or at least supported by the networks have proved particularly effective.

Recommendations in the field of “training for young refugees”:

- The existing tools are to be adjusted and new programmes developed to ensure that existing services to accompany the transition from school to training and work (transition management) are better adapted to the needs of the target groups.
- When re-designing programmes in the context of transition management, measures should also be created to offer skill-development opportunities, outside the customary training courses. The measures should be tailored to labour market realities, provide basic skills which are relevant to jobs and increase the prospects for subsequent employment. This appears to be necessary because a large number of target group members are unable to take advantage of the services provided in the dual training system, which are tailored to seamless educational biographies.

¹⁴ Recent improvements in the legal framework are outlined in Annex 1.

Thematic field B) work placement

1,041 successful job placements have been reported from the projects. However, this figure provides little information on whether the job secures the person's livelihood as required by the "grandfather clause" and whether it is a long-term employment relationship. The main difficulties in this area have been described above in the section dealing with the general policy framework. In addition to individual placement obstacles and the deteriorating labour market situation, the legal framework conditions continue to create difficulties. In many cases, a job placement is only possible in the form of auxiliary work and short-term temporary work or in sectors in which short-term, seasonal, low-paid employment is customary (hotels and catering, agriculture).

In addition there are regional differences, where not only the tight labour market resulting from the economic and financial crisis but also different wage structures have an impact. Thus, collectively agreed minimum wages in some federal states are well below the national average. Throughout Germany and in particular in the east German federal states full-time jobs covered by social insurance are increasingly being replaced by fixed-term employment, mini jobs, temporary and part-time work and self-employment.¹⁵ In economically weaker regions this makes it even more difficult for workers to earn a secure living as required by the regulations.

In the case of persons with lower priority in labour market access, the mere duration of the priority review may deter employers from making a job offer. In addition, the conditions imposed by the immigration authorities when granting tolerated status prove to be serious obstacles to placement, in particular in the case of alleged violations of the obligation to cooperate and restricted residency. The latter affects in particular persons who are obliged to reside in a region where there are only few suitable jobs, or where companies are unwilling to hire them because of reservations and lacking information about legal requirements.

Unlike other European countries, no institutionalised, systematic assessment of refugees' skills, in other words a survey of their vocational qualifications and skills (formal and informal), as well as of the level of education, is carried out in Germany. Moreover, refugees are frequently unable to submit references and formal qualifications because of the conditions dictated by their flight. As a result, the task is made much more difficult both for the competent institutions, as well as for providers of training, seeking to carry out expedient, target group-orientated measures.

In many networks experience has shown that the competent institutions like joint agencies, job centres and immigration authorities have insufficient information about legal changes and are not aware of the target group's special need for support and the specific instruments that are available. Often, the impression was that at the level of management or individual contact persons the institutions were, in principle, willing to include the target groups in their programmes. But the necessary information did not reach the level of case handling agents. In many cases, the joint agencies were not in a position to identify the target groups in their data processing system Rapid and targeted contact and assistance tailored to the particular situation is difficult under these circumstances. Many networks include among

¹⁵ Cf. DGB-Bundesvorstand (DGB National Executive Board), (Ed.) "Der Arbeitsmarkt im Osten – 20 Jahre nach dem Mauerfall", (The Labour Market in the East – 20 Years after the Fall of the Berlin Wall), *Arbeitsmarkt aktuell* Nr.6/2009.

their contact points a number of different joint agencies or opting-out local authorities. As a consequence the establishment of working relations requires a lot of time and effort.

Regardless of the multifarious difficulties, the projects have achieved successful outcomes which show that when individual support is combined with expedient use of standard instruments, placement in sustainable employment is possible.

Taking **Tübingen** as an example (Bleib in Tübingen!): The job centre maintains a placements unit tailored to the target groups in the premises of the organisation. The city, the job centre and the asylum centre cooperate in the placement.

Taking **Wuppertal** (Participation) as an example: The municipal department for migration and integration participates in the network as project partner. As it is a public body implementing tasks in the area of responsibility of the immigration and welfare authority it can directly contact the target groups. An initial support plan is drawn up together with binding follow-up measures. Depending on the participants need for support, they may be referred to sub-projects specialising in support for labour market integration and placement into training.

Taking **Freiburg** as an example (Freiburg project association for migrants with a refugee background): It was possible for a group of twelve individuals to be placed in low-skilled employment in a newly-established supply company for the automotive industry. The company had previously had good experience with a migrant with a refugee background who was placed by the joint agency.

Three factors, i.e. the labour market situation, individual obstacles to placement and the legal framework equally oppose successful labour market integration. De-skilling and a lack of knowledge of the German labour market as a consequence of many years of unemployment are particularly significant here. The lack of formal certification of skills acquired in the country of origin, as well as the lack of recognition of other previously-acquired vocational skills, forces refugees to revert to low-skilled employment.

In job placement it is noticeable that job agencies and actors in the labour market are often inadequately informed about the target group's special need for support. Therefore, standard instruments are effective only in individual cases. In the future it must be ensured that institutions and companies have a better understanding of the difficult situation and specific problems of the target group.

To ensure sustainable employment, it is important that measures to support placement into a job and the necessary preparatory and ongoing vocational training are not only of a short-term nature. In this context, the short validity of the tolerated status and of residence permits as well as the cut-off date under the "grandfather clause" are real obstacles.

Recommendations in the “work placement” field

- Joint agencies, opting-out local authorities, job centres and the employment agency still need to improve their knowledge of the circumstances of the new target group and of the complex legal conditions. Individual staff members should be trained so that a counselling process can take place which

accommodates the particularities of the target group. Knowledge of vocational recognition procedures and adaptive skill-development should be improved in particular.

- As intended by the legal requirements, decision-making practices in the immigration authorities should be orientated towards opening the labour market for asylum-seekers and “tolerated” individuals at an early stage.

Thematic field C) Needs-analysis and skill-development

In the first year of the programme, the field of skill-development has become more and more significant in many projects because a great demand for skill training emerged as a result of the difficulties in job placement which were described in the above chapters.¹⁶

In particular the considerable need for basic skills described by many projects is not currently met by an adequate supply of suitable measures. It was only possible to place a relatively small share of the participants in measures leading to obtaining a qualified vocational qualification by the key date of 15 August 2009 (251 individuals, corresponding to 2.8% of participants).

Other skill-development measures have been taken up by 1,254 participants (14.1% of the total number of participants). The measures include labour market integration measures/one-euro-jobs, which in some cases may be a useful preparation for employment. These measures can be useful to bring participants closer to the labour market, but they do not have a sustainable effect because they are not embedded in an individual support plan. Quite often, participants and projects believe that these measures are not helpful.

It is particularly striking that in both areas a relatively small percentage of qualification measures was funded under Social Code II or III. Networks reported that as a rule the employment agency did not approve skill development measures in the case of non-beneficiaries; in the case of persons eligible for benefits under Social Code II, approval was granted only in individual cases. Many networks are of the view that, here again, the standard institutions do not sufficiently cater for the special needs of the target groups.

Moreover, because of the framework conditions that have been described, and of a lack of funding, frequently only short-term, low-threshold skill-development is possible (examples: training as a cashier or as a nursing assistant, fork-lift truck licence). It can be predicted that these measures by themselves will not as a rule provide a key to livelihood-securing employment.

In the networks, 1,509 participants were registered in language courses, roughly 60% of the courses being implemented by the projects themselves and 40% by external providers. It was seen as a deficit that the joint agencies were hardly aware of the possibility of referring persons concerned to German language courses which have been offered by the Federal Office for Migration and Refugees (BAMF) since autumn 2009. To some extent, this is due to the fact that the conditions for attendance and the referral procedures to be observed by the joint agencies were defined just shortly before the programme started.

Experience suggests that skill-development measures tailored to the target groups frequently take place within the networks and only seldom within the scope of standard instruments. The networks have tried out a wide variety of cooperation models with different partners:

Taking Augsburg as an example: Augsburg adult education college carried out a skill-development measure in the field of hotels and catering/home economics in which the

¹⁶ Here we can see a shift in emphasis compared with the Federal Programme, which specified that 60 per cent of the project activities should focus on counselling/placement and 40 per cent should be devoted to qualification.

participants were prepared for their internships by attending a vocational language course and social-educational coaching, as well as by visits to companies. It was possible to place some of the participants in regular jobs prior to the commencement of the internship phase.

Taking **Berlin** as an example (*bridge* network *Arbeit und Bildung e.V. – AuB* [Work and Training]): Instruction and vocational preparation for employment in the field of gastronomy is offered in cooperation with the “*Weltküche*” (World Kitchen) restaurant and catering company. Since the project began in January 2009, participants from the three Berlin networks for migrants with a refugee background (*bridge*) have regularly completed traineeships. This has enabled three trainees to become employees in the “*Kiezkafee*” (Neighbourhood Café), which is part of the *Weltküche*, with a job with full social insurance coverage.

Taking **Cologne** (Bunt in die Zukunft – Colourful into the Future) as an example: In cooperation with the West German Chambers of Crafts and Skilled Trades' Council (WHKT), participants are given the opportunity to participate in aptitude tests for occupations which do not require formal vocational certificates.

Taking **Dresden** as an example: A "commercial qualification course" consisting of recognised training modules developed by the Central Agency for Advanced Training in the Skilled Crafts (ZWH) is supported by ESF funds. The federal state of Saxony decides on the allocation of the funds..

It is necessary not only to increase the number of qualification measures, but they must in particular be tailored to the needs of the target groups. There is, for example, a lack of skill-development concepts, building on basic vocational skills. Skill-development and accompanying measures (such as application and motivation training courses) are often carried out in isolation from one another instead of being integrated in an overall concept aimed at a vocational certificate (or partial certificate). In future, these measures should be designed as modular components to be coordinated within an individual support plan, if necessary in a longer-term perspective. Support plans should be drawn up with the participation of the joint agencies/opting- out communities and immigration authorities, but they should not be understood as sanctions in terms of residence law. Their modalities should be flexible enough to ensure that subsequent adjustments can be made, for example in cases where a participant failed to complete one of the qualification modules.

Recommendations in the field of “Needs-analysis and skill-development”

- Language training must be better tailored to the target groups. This means in particular also enabling individuals with little knowledge of German to attend courses which can take place prior to or during a vocational measure. Access to integration courses, as well as to the vocational German language courses implemented by the Federal Office for Migration and Refugees, should be opened up for all target groups of the programme.
- Skill-development and accompanying measures (such as application and motivation training courses) should be coordinated in the framework of an individual support plan so that they can be implemented in a targeted fashion and are not carried out in isolation from one another. For the duration of such a

support plan it should be guaranteed that a residence permit can be granted in derogation from the general conditions for the grant of a residence permit set out in section 5 of the Residence Act (*AufenthG*). This call goes out in equal measure to educational organisations, joint agencies and the immigration authorities.

III. Summary and outlook

In the Coalition Agreement of the CDU/CSU-FDP government, the integration of persons with a migrant background has been defined as a key issue in Germany.¹⁷ A variety of target agreements have been concluded to systematically remedy existing shortcomings in integration policy.

- German language training plays an important role in this context: The aim is to improve existing integration courses and to focus language training instruments more generally on labour market integration. To meet the target groups' need for support, occupation-specific language training will in future be included in the regular instruments under Social Code, Books II and III.
- To reduce the number of young migrants who fail to complete their school education or vocational training, it is planned to implement skill-building initiatives including a variety of support programmes. A new instrument of holistic integration coaching is to facilitate integration in training and to ensure its sustainability.
- Another target agreement aims at giving migrants a legal right to a procedure for the assessment and recognition of vocational qualifications they acquired abroad, if necessary combined with a possibility for upskilling.

Against the background of experience gained in implementing the Federal ESF Programme, the project associations welcome the platform agreed by the new government as the integration deficits and need for action identified in this context also exist with regard to their own target groups. The coalition partners are agreed that action is needed in the context of implementing the grandfather clause. However, the only revision that has been announced concerns the so-called residence obligation. A revision would contribute to greater mobility of refugees and facilitate their taking up employment. It has been stated in the National Integration Plan that no one may be excluded from education and training on account of their residence status. It should be noted, however, that in political statements the artificial distinction is still being made between migrants on the one hand and refugees on the other – including the target groups of the Federal ESF Programme.

In the administrations there is still a lack of information on the legal changes which have been introduced in recent years and their implementation remains insufficient. It has become evident in the implementation of the grandfather clause that immigration authorities and joint agencies/job centres have not been sufficiently aware of the legal possibilities they could make use of.

It must also be borne in mind that under the provisions on the right to remain and the grandfather clause arrangement only few refugees with unsecure residence status will have a chance to find sustainable employment. All indications are that even if the deadline for submitting proof of secure means of livelihood is postponed, many of the residence permits granted "on probation" can not be extended. This means that the persons concerned risk falling back into toleration status – if only at a later date. Moreover, the grandfather clause does not apply to a significant number of persons who have also for many years lived in Germany as tolerated persons.

They must not simply be told that a new grandfather clause might be adopted in a few years time. Instead, the measures that have been introduced to ensure that people with

¹⁷ Coalition Agreement between CDU, CSU and FDP for the 17th legislative period: "Growth, Education, Cohesion", pp. 74-79

tolerated status can be integrated in the labour market, must be consistently implemented. In particular, it is necessary to remove legal obstacles which still prevent labour market access in many cases, such as Section 11 of the Ordinance on Official Procedures Enabling Resident Foreigners to Take up Employment, or at least provision should be made for far-reaching exceptions.

In the regions where the Right-to-Remain-Programme is implemented by the 43 networks, experience has shown that a gradual change of policy can also be felt at the practical level. It should be noted, however, that at the level of local authorities and federal states policy principles have not been modified to ensure that tolerated refugees are included in education, training and employment on a regular basis.

Against the background of the problems described in the above chapters, the following results can be observed:

A) Training of young people: Major difficulties now no longer arise here primarily as a result of the legal frameworks, but of individual obstacles to placement. It takes time to overcome these difficulties and necessitates considerable care on the part of networks and strategic partners.

B) Job placement: The existing problems have been caused in equal measure by the labour market situation, individual placement obstacles and legal frameworks. The key date arrangement of the “grandfather clause” equally poses difficulties when it comes to the – frequently time-consuming – acquisition of vocational skills, as does the insecure residence status of those target groups who are only “tolerated”. A high degree of care is necessary for successful placement in longer-term employment, as is an amendment of the framework conditions.

C) Needs-analysis and skill-development: The standard instruments to improve labour market opportunities only work in individual cases. The “grandfather clause” arrangement and the insecure residence status of people who are “tolerated” are obstacles when it comes to participation in necessary skill-development measures, in particular those which lead to the acquisition of school-leaving or vocational qualifications. Here, it is necessary to tailor measures more closely to the needs of the participants and to the demands of the labour market.

A **Ten-Point Action Plan** building on the recommendations put forward in the chapter entitled “Networking in practice”, as well as in the thematic fields has been drawn up to give momentum to the ongoing work of the networks in the regions and the *Länder*. At the same time, these points should be taken into account in designing possible future support programmes in the regions, as well as at federal level:

Action Plan:

Expanding networking

1. Networking as a cooperation model should be established independent of nationwide support programmes. To this end, the networks should become an

inherent part of programmes which are implemented in the local authorities and the *Länder*.

2. In the framework of the National Thematic Network, the professional dialogue with strategic partners is to be optimised and expanded in the current programming period by involving further decision-makers. Resources should be made available for increased public relations work and awareness-creation among labour market stakeholders.

A) Increasing young refugees' participation in training

3. Those who are responsible at education and vocational training authorities and authorities at the level of municipalities and the *Länder* should involve the network partners in a review of school-work transition management with the aim of adapting existing programmes to the circumstances in which young refugees find themselves.

4. With the involvement of decision-makers from the political arena and administrations in the regions, as well as of the business community, sustainable training cooperation should be initiated explicitly involving young refugees.

B) Making job placement more efficient

5. The strategic partners in the regions should endeavour to ensure that concrete goal agreements are reached with joint agencies, opting-out local authorities and employment agencies, in order to increase the job placement rate of refugees and to place more refugees in measures supported under the Social Code.

6. Measures should also be agreed here to encourage intercultural opening and train staff in the job centres and in the agency to overcome information deficits.

C) Stepping up skill-development

7. Language acquisition: To ensure better use of integration courses and occupation-related language training made available under the ESF-BAMF programme, and to tailor them to the needs of the target group, those who are responsible for the programme in the regional authorities, the joint agencies and the Federal Office for Migration and Refugees (BAMF) should examine possibilities of practical implementation and initiate appropriate action.

8. The implementation of individual support plans and the creation of vocational skill-development services should take place on the basis of a specific survey of the target group's skill-development requirements. This challenge addresses education planners and persons responsible at the joint agencies and employment agencies.

Consistently implementing labour market integration of the target groups

9. In order to give more concrete shape to the politically intended relaxations for the target groups in access to training and the labour market, administrative and social policy statutes and ordinances are to be brought into line with one another. Regulatory restrictions which clash with the goal of labour market integration should be eliminated or provision should at least be made for exceptions to ensure that taking up employment is not completely ruled out.

10. The implementation of the programme for migrants with a refugee background and of the Action Plan which has been outlined here is heavily dependent on the willingness of the stakeholders in the regions and at federal level to integrate the target groups in the labour market at an early stage and in a sustainable manner. The available margin of appreciation should be used more consistently by the individuals who are responsible in each case.

Annex 1:

Fundamentals and background – evaluation of legal framework conditions from the point of view of practical project work

In recent years, things have started to change in German migration policy. For a long time, the prevailing view among policy-makers and authorities had been that the integration of tolerated persons was not desirable because it would generally be in contradiction with the existing exit obligation. Particularly during the 90's, but also in the context of the Immigration Act of 2004, this argument was repeatedly used to justify a tightening of laws concerning foreigners with the aim of discouraging tolerated persons from remaining in Germany. The tightening of rules included a reduction of benefits for asylum seekers under the Asylum Seekers Benefit Act, restriction of residence to an assigned area, and, not least, considerable barriers to labour market access.

Over the years it has become increasingly clear that this approach did not meet its objective of reducing the residence periods of tolerated persons and of motivating them to leave the country. Thus, at the end of 2006, the Central Register of Foreigners contained about 175,000 entries of persons with tolerated status; of those, almost 100,000 had been resident in Germany for at least six years.¹⁸ After intensive public debate, measures were taken to give tolerated persons with many years of residence in Germany the prospect of permanent residence in the country.

- Based on the provisions governing the right to remain which were agreed by the Conference of Interior Ministers on 17 November 2006, immediate residence permits were granted to tolerated persons with many years of residence and livelihood-securing employment. Persons without employment were granted tolerated status for job search until the end of September and within this period had to furnish proof of a secure livelihood. A residence permit was granted when a binding job offer existed.
- With the "grandfather clause" contained in the Act on the Implementation of EU Directives a similar procedure was incorporated into law. The criteria for the granting of a right to remain were largely included in the new provisions governing the right to remain. However, under the new provisions persons without employment could be granted a residence permit "on probation" for the purpose of seeking a job. Now, they must prove by 31 December 2009 that in the past 18 months their livelihood was predominantly secured through gainful employment, or that since 1 April 2009 their livelihood has not only temporarily been secured through predominantly own means and that this will continue to be the case in the future. As in the case of the provisions governing the right to remain, immigration authorities may, by way of exception, grant a residence permit even if the applicant's income is insufficient.
- This applies especially to trainees, families with under-age children and single parents.

Both, the provisions governing the right to remain and the "grandfather clause" stipulate a

¹⁸ Gesetzesbegründung zum Zweiten Änderungsgesetz BT- DRS. 16/5065 (Explanatory Memorandum to the Second Amendment Law, Bulletin of the German Bundestag, 16/5065), p.201

number of requirements, including, in particular proof of sufficient living space and a basic knowledge of the German language. In addition, there are other grounds for exclusion, such as "deliberate delay and obstruction" of measures to terminate a foreigner's stay, or Court sentences of more than 50 day fines, or of more than 90 day fines in the case of offences that can only be committed by foreigners. Offences referred to above that have been committed by individual family members lead to the refusal of residence permits for the entire family.

Moreover, there are some improvements in access to training and employment from which the so-called migrants with a refugee background and tolerated persons can benefit:

- By an amendment of the Federal Education and Training Assistance Act of 1 January 2008 (BAFöG), eligibility for education and training assistance or federal training allowance of persons with prospects for permanent residence was considerably expanded. Before, eligibility for these benefits in general existed only in the case of previous employment of the claimant's parents.
- Since 1 January 2009, several new instruments have been included in Social Code II (placement budget, measures aimed at activation and vocational integration, free use of funds), which are basically available to every person seeking a training place or a job and consequently also apply to persons with tolerated status.¹⁹
- The Act on the Implementation of EU Directives amended Section 10 of the Ordinance on Official Procedures Enabling Foreigners to Take up Employment to ensure that the so-called labour market and priority reviews²⁰ are abstained from in the case of tolerated persons who, for an uninterrupted period of four years, were lawfully resident in Germany, or resided in the country as tolerated persons or asylum seekers.
- The Federal Government's Action Programme "Using Labour Migration to help Secure Germany's Supply of Skilled Labour" facilitates labour market access for young people with tolerated status who have at least one but less than four years of residence in Germany.
- Under the new Section 18a of the Residence Act, tolerated persons may be granted a residence permit if they have completed training in Germany and have found a job in the occupation for which they have been trained. Moreover, persons with a vocational certificate or university degree acquired abroad and two years of employment in Germany in an occupation commensurate with their qualification, and skilled personnel with three years of employment can have their toleration status transformed into a residence permit.

By adopting these measures policy-makers and the legislator have generally recognised

¹⁹ Joint Declaration of 16 June 2009 on labour market integration benefits adopted by the Federal Ministry of Labour and Social Affairs and the *Länder* Ministries responsible for basic income support for job seekers.

²⁰ In the labour market review the Federal Employment Agency has to decide whether the applicant's employment would have "negative consequences on the labour market" (Section 39, Para.2, Sentence 1 of the Residence Act). In the priority test it must be ascertained whether any job applicants with labour market priority are available for the job. Priority may exist both for German nationals and foreign nationals with better status in terms of labour market access.

that persons with toleration status may have a legitimate interest in labour market integration. However, substantial restrictions remain. In the context of the provisions on the right to remain and the grandfather clause, the requirement of secure means of livelihood and the existing grounds for exclusion prevent many of those concerned from making use of the new rules or they are facing the risk that after the key date of 31 December 2009 they will fall back into toleration status. The outcome of the coalition negotiations seems to indicate that the Conference of Ministers of the Interior to be held at the beginning of December will decide to extend the key-date regulation.²¹ However, if the extension only concerns the deadline for furnishing proof of secure means of livelihood, there is reason to fear that a number of problems encountered during the project activities will remain unresolved. These include in particular:

- The full or predominant securing of livelihood is difficult to calculate. So far, the questions involved have not been conclusively clarified by German case law.
- In addition, the Residence Act stipulates that the extension of residence permits is subject to the prediction that the person's livelihood will also in future be predominantly secured by himself. The criteria for making this prediction still need to be clarified.
- It is still not clear what exceptions to the rule of secure means of livelihood are permitted (for example, hardship clauses for persons in pre-vocational training or families with children temporarily in receipt of supplementary (in-work) benefits).

It can be expected that many controversial issues will have to be resolved and that there will be hardship cases, where some persons only just fail to meet the requirements of the grandfather clause.

Evaluation of the provisions governing the right to remain and the grandfather clause

The provisions on the right to remain which were decided by the Ministers and Senators of the Interior of the *Länder* at their conference on 17 November 2006, benefited in particular those persons who at that time fulfilled the requirement of long-term tolerated residence and were able to secure their own livelihood. The other potential beneficiaries were initially granted toleration status for the purpose of seeking employment; in the case of a binding job offer a residence permit could be issued. The implementation of the regulation was dependent on instructions from the *Länder*, which is one of the reasons why decisions on the large majority of applications were still outstanding in spring 2007.²² A final assessment of the regulations governing the right to remain can hardly be made, as from summer 2007, many of the pending applications were further processed under the terms of the "grandfather clause".

For the purposes of the "grandfather clause" set out in Sections 104a and 104b of the Residence Act, 1 July 2007 was set as key-date date for the fulfilment of the required residence period of eight years in the case of single persons, or six years in the case of

²¹ The results of the Conference of Ministers of the Interior were not yet available when this paper was finalised. They will be taken into account in the printed version of the report.

²² Federal Ministry of the Interior: Report to the German Bundestag's Internal Affairs Committee on the implementation of the decision on the right to remain adopted by the Conference of Interior Ministers on 7 May 2007.

families or persons who entered the country as unaccompanied minors. The deadlines under the two regulations are therefore only about 7 ½ months apart, which suggests that the group of persons eligible under the two sets of provisions was more or less identical. For some persons with tolerated status the new rules opened up the prospect of living in Germany. As a matter of fact, 38,676 applications based on the grandfather clause set out in Sections 104a and 104b of the Residence Act were registered throughout Germany (as of 30 June 2009)²³. 35,128 persons were granted a residence permit in accordance with Sections 104a, 104b of the Residence Act. Of those, 80.35% (28,227 persons) were granted a residence permit "on probation" in accordance with Section 104a, paragraph 1, Sentence 1 of the Residence Act. Here it remains to be seen how many tolerated persons will eventually succeed in obtaining a permanent residence title.²⁴

There is the problem that 13,632 tolerated persons living in Germany on 30 June 2009 had not completed eight years of residence by 1 July 2007, as required by the grandfather clause, but they would reach 8 years of residence on 1 July 2009.²⁵ The Central Register of Foreigners does not provide any information on the number of persons who, for an uninterrupted period, have lived in Germany as tolerated persons, or with a residence permit, or with a residence permit for humanitarian reasons. Therefore, it can only be assumed that not all would meet the requirements of the "grandfather clause". The figures indicate, however, that since the entry into force of the grandfather clause, another generation of tolerated persons has meanwhile been in the country long enough to meet the requirement of long-term residence. These persons are now in the same situation as those who benefited from the "grandfather clause" in summer 2007. Therefore, there is an urgent need also in these cases to open up the prospect of secure residence as a basis for integration. To resolve the recurrent problem of refugees who have lived here under toleration status for many years, it is necessary to provide for sustainable rules taking account of human needs and facilitating integration. The right to remain should not be governed by deadlines.

²³ Zukunft der Gesetzlichen Altfallregelung. Antwort der Bundesregierung auf die Kleine Anfrage der Fraktion Bündnis 90/Die Grünen, 8.9.2009, BT-Drs. 16/14023. Ergänzende Angaben in: Bilanz der gesetzlichen „Altfallregelung“ zum 30. Juni bzw. zum 31. August 2009. Antwort der Bundesregierung auf die Kleine Anfrage der Fraktion Die Linke vom 25.9.2009, BT-Ds. 16/4088. (Future of the statutory "grandfather clause". Reply by the federal government to the minor interpellation tabled by the Bündnis 90/Die Grünen parliamentary group, 8 September 2009, Bulletin of the German Bundestag 16/14023. Additional information in: Evaluation of the statutory "grandfather clause" as of 30 June/31 August 2009. Reply by the federal government to the minor interpellation tabled by Die Linke parliamentary group of 25 September 2009, Bulletin of the German Bundestag 16/4088).

²⁴ Ibid. In 2760 cases where applications were filed under Sections 104a, 104b of the Residence Act, residence permits were granted pursuant to other legal provisions. 4205 applications were still pending on 30 June 2009.

²⁵ Ibid.

Imprint

Editor:

The National Thematic Network in the Federal ESF Programme for migrants with a refugee background and refugees with access to the labour market

More information at: www.esf.de

Editorial staff:

Karin Fiebiger, Maren Gag, Imke Juretzka, Michael Kalkmann, Annett Roswora

Design:

Andrea Thurner Design Grafik, Munich

Co-funded by the Federal Ministry of Labour and Social Affairs and the European Social Fund (ESF)

December 2009

