

**RESPOND**

## **Working Papers**

### **Global Migration: Consequences and Responses**

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## **Germany – Country Report**

### **Legal & Policy Framework of Migration Governance**

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## Disclaimer

This national report presents macro level information about the socio-economic, cultural, political, legal, institutional and policy context of migration governance in Germany between 2011 and 2017. The quantitative and qualitative data for this report has been compiled from various data sources (see citations). The authors relied on information freely available online, from official government-funded (European and German) institutions and organizations. For Europe, we utilized Eurostat (European Commission Statistical Office - <http://ec.europa.eu>) whilst for Germany we utilized various sources, the most official (centralizing) of which is the Federal Statistical Office of Germany (*Statistisches Bundesamt* – [www.destatis.de](http://www.destatis.de)). The office collects data on a systematic and coherent manner and makes most of the data available on open access (most documents are easily accessible online via the office's website). For case-law, we relied on EDAL (European Database of Asylum Law - [www.asylumlawdatabase.eu](http://www.asylumlawdatabase.eu)), for population and asylum we sourced data from the Deutsche Bundestag, BMI (*Bundesministerium des Innern* - [www.bmi.bund.de](http://www.bmi.bund.de)), BAMF (*Bundesamt für Migration und Flüchtlinge* – [www.bamf.de](http://www.bamf.de)), and BMJV (*Bundesministerium der Justiz und für Verbraucherschutz* - <http://www.bmjv.de>). We also utilized various other data banks accessible online such as AIDA (Asylum Information Database – [www.asylumineurope.org](http://www.asylumineurope.org)) a database managed by the European Council on Refugees and Exiles – ECRE: [www.ecre.org](http://www.ecre.org)) and PROASYL (a human rights-based network organization concerned with refugee protection - [www.proasyl.de](http://www.proasyl.de)). We also relied on public and university library catalogues. All sources are appropriately referenced.

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**Table 1. Basic terminology regarding asylum laws and procedures in Germany<sup>1</sup>**

Arrival centre ( <i>Ankunftszentrum</i> )	Centre where various processes such as registration, identity checks, interview and decision-making are streamlined in the same facility. Around 26 branch facilities of the BAMF operate as arrival centres.
Arrival certificate ( <i>Ankunftsachweis</i> )	Certificate received upon arrival in the arrival centre. This replaced the BÜMA in 2016.
Formal decision	Cases which are closed without an examination of the asylum claim's substance, e.g. because it is found that Germany is not responsible for the procedure or because an asylum seeker withdraws the application.
Geographical restriction ( <i>Residenzpflicht</i> )	Also known as "residence obligation", this refers to the obligation on asylum seekers to stay in the district of the Federal State where they have been assigned for a maximum period of 6 months, pursuant to Section 56 Asylum Act. Derogations apply for applicants who are obliged to stay in initial reception centres for the entire asylum procedure or up to 24 months.
Initial reception centre ( <i>Aufnahmeeinrichtung</i> )	Reception centre where the BAMF branch office is located and where asylum seekers are assigned to reside.
Residence rule ( <i>Wohnsitzregelung</i> )	Obligation on beneficiaries of international protection to reside in the Federal State where their asylum procedure was conducted, pursuant to Section 12a Residence Act. This is different from the geographical restriction imposed on asylum seekers.
Revision	Appeal on points of law before the Federal Administrative Court.
Secondary application	Under Section 71a Asylum Act, this is a subsequent application submitted in Germany after the person has had an application rejected in a safe third country or a Dublin Member State.
Special officer ( <i>Sonderbeauftragter</i> )	Specially trained BAMF officer dealing with vulnerable asylum seekers.
Special reception centre ( <i>Besondere Aufnahmeeinrichtung</i> )	Reception centre where accelerated procedures are carried out in accordance with Section 30a Asylum Act. Two such centres exist in Bavaria at the moment (Bamberg, Manching/Ingolstadt). Special reception centres are distinct from initial reception centres.
Transit centre ( <i>Transitzentrum</i> )	Initial reception centre hosting asylum seekers for a period of up to 24 months, in application of Section 47(1b) Asylum Act. Three such centres exist in Bavaria at the moment (Manching/Ingolstadt, Regensburg and Deggendorf).

Source: AIDA

<sup>1</sup>Compiled and adapted from AIDA Country Report (Germany). Available at: [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_de\\_2017update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2017update.pdf). Retrieved 13/04/2018

**Table 2. Abbreviations often used in asylum laws and procedures in Germany<sup>2</sup>**

ARE	Arrival and Return Centre   Ankunfts- und Rückführungseinrichtung
BAMF	Federal Office for Migration and Refugees   Bundesamt für Migration und Flüchtlinge
BÜMA	Confirmation of Reporting as Asylum Seeker   Bescheinigung über die Meldung als Asylsuchender
BVerfG	Federal Constitutional Court   Bundesverfassungsgericht
CEFR	Common European Framework of Reference for Languages
CJEU	Court of Justice of the European Union
CPT	European Committee for the Prevention of Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GGUA	Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender
ILGA	International Lesbian and Gay Association
OVG	Higher Administrative Court   Oberverwaltungsgericht
VG	Administrative Court   Verwaltungsgericht

Source: AIDA

<sup>2</sup>Compiled and adapted from AIDA Country Report (Germany). Available at: [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_de\\_2017update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2017update.pdf). Retrieved 13/04/2018

## Summary

- **An Immigration Model Based on Restrictions**
  - **Guest Workers:** Post-1945 immigration to (West-) Germany is characterized by the “**guest worker**” system (*Gastarbeiter*) for the period between 1955 to 1973.
  - **Lack of Long Term Migration Policy:** The assumption of the eventual return of the *Gastarbeiter* to their countries of origin prevented the development of socio-political or infrastructural concepts to account for longer-term residence or societal integration of immigrants in Germany. <
  - **Transition to an asylum regime.** In 1973, the recruitment ban (*Anwerbestopp*), marked the official end of the era of foreign labor recruitment to West Germany. What followed was a slow transition to an asylum regime with the worldwide rising numbers of asylum seekers. In 1980, for the first time, more than 100,000 asylum applications were registered. The political debate around migration in the 1980s focussed strongly on the proclaimed necessity to restrict the access to asylum. A growing “repressive consensus” resulted in the 1992-93 reform of asylum laws.
  - **The Post Cold War Migration/Balkan Wars - “asylum compromise”:** Through a prolonged campaign from the conservative party that was accompanied by racist violence all over the recently unified Germany, the social-democratic party in 1992 gave in and accepted a reform of article 16 of the German **Basic Law**, in which the right to political asylum was enshrined. The so-called “asylum compromise”, passed in 1993, introduced the notions of Safe Third Countries, Safe Countries of Origin, accelerated asylum procedures at international airports, reinforcement of border controls, and a separate social welfare regime for asylum seekers which saw benefits reduced by 30 % and mandated a preference of in-kind transfers.
  - **Paradigm shift – the new Act on Migration.** In the context of a new red-green coalition government the consensus grew that Germany is a country of immigration that needs to be governed. The **Act on Migration** was eventually formulated that replaced the Act on Foreigners and which simplified the available residence statuses, EU directives of the CEAS as well as the **Blue Card Directive** were transposed into national law, and for the first time in the post-war history a national integration policy was set up.
  - **EU Accession as biggest legalisation scheme:** the two rounds of EU accession of Eastern European countries in the 2000s, automatically legalised the presence of up to a million persons in Germany that was highly scandalized as irregular before.
  - **Post 2011 Migration:** Since 2011 the numbers of asylum seeking migrants has steadily risen, however the events of summer 2015 took Germany by a surprise. After some months of an open door policy (with a suspension of the Dublin regulation) several regulations were set up to restrict the access and accelerate the procedures whereas for those refugees that were defined as having a “perspective to stay” new integration measures were being put in place. Today, the presence of asylum seekers in the German territory is rigidly controlled by a multilevel system of laws and regulations from the EU level down to the federal level, the federal state level, and the municipal level (see Aumüller, Daphi, & Biesenkamp, 2015;

Schammann&Kühn, 2016; Wendel, 2014 cited in El-Kayed and Hamann 2018: 138). From housing to healthcare, from employment to education, this multilevel legislative mesh regulates the lives of asylum seekers and refugees as a specific category of migrants set apart from others; limiting their movement, constraining their life choices, asserting geographical limitations and in essence creating borders within borders.

### Numbers and Data Issues: Overview of Quantitative Analysis

- Immigrants in Germany: Around 20% of Germans today (out of an 80 million population), has a migration background.<sup>3</sup> Most of this migration background is from Turkey, followed by people from Poland, Russia and Italy. Latest data on net migration (2016) shows a positive balance of 497,964.
- Steep Rise in asylum claims: Since 2011, there has been an increase in the number of people with a migration background. Asylum Applications is one major reason for this. In 2011 Germany registered 53.347 asylum applications. In 2016 Germany registered 745.545 asylum applications
- **Religion:** Most asylum seekers arriving in Germany after 2011 have come from Muslim-majority countries (Syria, Afghanistan, Iraq, Eritrea, Sudan).
- **Gender Issues:** The data shows that most asylum seekers are male and young (average of 30 yrs). This has been widely problematized in German public debate whereas in 2015 and 2016 the number of women and children was steadily rising up to 40% (depending on the age group even more). The specific situation of female asylum seeking migrants and their heightened risk of being a victim of (gender based) violence was taken up by welfare organizations and some Länder leading to the set-up of “Violence prevention programs” (Ministry of family affairs, youth and women).
- **Restrictions:** Through a series of restrictive measures (including the EU-Turkey Statement) Germany was able to cap the numbers of asylum applications and resettlement plans. In 2017 we see the number of applications reduced to 207,157.
- **Ambiguity and Lack of Transparency:** Government generated statistics on asylum in Germany can be rather ambiguous and it is often highly politicized. The data is also not always transparent and contradictions can be found even on data produced for the same purposes by the same governmental institutions (i.e. BAMF).

### Political Organization and Asylum and Immigration in German Law

- In Germany, **administrative responsibilities in the area of migration and asylum are strongly intertwined and distributed among the federal, state and municipal levels** (cf. section 2.3). The right of asylum recognizes the definition of “refugee” **as established in the 1951 Refugee Convention in the form of the 1967 protocol.** Furthermore the term “refugee” must be interpreted in the sense of **the 2011/95/EU directive.** Generally, these

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<sup>3</sup> In Germany, the definition “migratory background” refers to people who have been born as non-German citizen or whose mother and/or father have not been German citizen at the time of their birth. This definition differs from other European countries such as Austria, where both parents have been born abroad or Switzerland, where “migratory background” is defined independently from the citizenship status.

protection is a part of the asylum procedure itself and are verified by the **Federal Office For Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) - BAMF** without any further application.

- **Current Asylum Law, Application Procedures and Overall Legal Status of Foreigners**
  - The German Asylum regime is based on three main acts:
    - **The Asylum Act (*Asylgesetz - AsylG*)**
    - **The Residence Act (*Aufenthaltsgesetz - AufenthG*)**
    - **The Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz – AsylbG*)**
  - The **Asylum Act** is, however, the central to the German asylum system. According to the **Asylum Act (*Asylgesetz*)** an asylum seeker coming to Germany may be granted one of the following four forms of protection after his/her case is assessed. It is only when none of the above forms of protection can be considered is the application then rejected.
    - **Art 16a of the Basic Law**
    - **Award of Refugee Protection (Section 3 of the Asylum Act)**
    - **Award of Subsidiary Protection (Section 3 of the Asylum Act)**
    - **Imposition of a Ban of Deportation (Section 60V+ VII of the Residence Act)**
- **Constitutional entrenchment of the principle of asylum**
- **The right of asylum for persons persecuted on political grounds is a basic right stipulated in Art. 16a GG.** Apart from integration, labour market and health policies, migration policy is increasingly intertwined with development policy, e.g. in the area of assisted return. But also other areas such as security policy and anti-discrimination policy are not to be neglected in that respect.
- **Länder, German Federation, EU and UN: Multi-Level Continuities and Discontinuities in Asylum Legislation/ Procedures**
  - The administrative court procedure is three tiered: **Administrative Courts (*Verwaltungsgerichte*)** on the local level - **Higher Administrative Courts (*Oberverwaltungsgerichte* or *Verwaltungsgerichtshöfe*)** on the *Länder* level - **Federal Administrative Court (*Bundesverwaltungsgericht*)**. As sole competent court it shall rule at first and last instance on regarding disputes against expulsion orders in accordance with **§ 58a of the Residence Act** and their implementation. **§ 58a** stated that the supreme **Land authority** may issue a deportation order for a foreigner without a prior expulsion order based on the assessment of facts, in order to avert a special danger to the security of the Federal Republic of Germany or a terrorist threat.

## Refugee Crisis Driven Reforms: Amendments to Current Laws and New Legislation

- Several amendments to current laws have been adopted in recent years due to the refugee crisis. The major amendments and their most important implications have entered into force:
- October 24, 2015, the **‘Asylum Package I’** or **Act on the Acceleration of Asylum Procedures (*Asylverfahrenbeschleunigungsgesetz*)**.
- August 1, 2015, the **Act to Redefine the Right to Stay and the Termination of Residence**.
- November 1, 2015, the **Act to improve the Housing, Care, and Treatment of Foreign Minors and Adolescents**
- February 5, 2016, the **Data Sharing Improvement Act**
- March 17, 2016, the **“Asylum Package II”**
- March 17, 2016 the **Act to Facilitate Deportation of Foreign Criminal Offenders**
- August 6, 2016 the **Integration Act**
- July 20, 2017 the **Act to Enforce the Obligation to Leave the Country**
- There are also many more reforms proposed such as **Substitution of Benefits in Kind for Cash Benefits** and the **Reduction of the Financial Burden of German States and Municipalities**.

## Abstract

The aim of this national report is to gather information about the **legal, institutional and policy context of migration governance** in Germany in respect of asylum. As such, it offers a short (non exhaustive) overview of the asylum regime in Germany within the context of the so-called “Refugee Crisis” of 2015/2016. For this end, our focus is on macro level aspects of the legal and policy framework of the German asylum regime. This report is part of a comparative exercise between the partner countries involved in RESPOND.

The time frame comprehends the **period between 2011 and 2017**. The logic behind this is that it encompasses the beginning of the Syrian civil war and its aftermath. Within this period, Europe has received millions of asylum seekers not only from Syria but also from the wider Eastern Mediterranean and Middle Eastern regions, Central Africa and Eastern Europe whilst Germany in particular has become the most sought-after destinations in Europe for those seeking asylum.

## Introduction

According to the United Nations High Commissioner for Refugees (UNHCR) “Global Trends Report on Forced Migration”, a record high 65.3 million people, or one in 11 persons, were displaced by conflict and persecution between 2015 and 2016 (UNHCR, 2015), a majority of which are women and children (International Rescue Committee [IRC], 2014; Sherwood, 2014). According to the same report, Syria is the largest source country for refugees, with a total refugee population of 4.9 million (and 7.6 million who are internally displaced persons (IDPs) at the end of 2015, while Afghanistan was the second-largest source country with 2.7 million refugees. Unfortunately, the signs indicate that these numbers will continue to increase, especially because of the long and bloody conflict in Syria and the lack of a foreseeable diplomatic resolution. According to the International Displacement Monitoring Centre (IDMC) GRID – Global Report on Internal Displacement – the total number of conflict-related IDPs throughout the world as of December 2015 is 40.8 million (2016). Furthermore, another 22 million people in Asia are currently displaced as a direct consequence of natural disasters. The estimated total figure of IDPs around the world is 55 million, of which a significant number will never return home. For those who do return, the average time of displacement is 17.5 years. According to the International Red Cross and Red Crescent Federation, approximately 73 million people in the world are, or have recently been, forced to migrate (2015). If correct, these numbers indicate that one in one hundred individuals in the world today is either an IDP or an international refugee or asylum seeker. However, overall, data on refugees is not unambiguous and often it is highly politicized (see Crisp 1999). Europe has been reluctantly slow to respond to the challenges offered by such large human displacement occurring elsewhere in the globe. Germany is among some of few European countries that have accommodated significant numbers of asylum seekers within its territory recently. However, Germany itself is a country with a migration history based on restrictions. Refugees are more often than not seen as a “burden” to society. This view is visible in the very language of policy reports, for instance “burden-sharing” (see Thielemann 2006).

This report takes an in-depth look at the asylum legislation of Germany and explores how the legislators has reacted to the raise in asylum application in the country since 2011. Given the restrictions in terms of space and time, and the complexity of the issue at hand, we cannot offer an all-encompassing analysis, nor can we address every theme pertinent to the issue of asylum, borders, or the social, cultural and political context of Germany vis-à-vis the development of migration governance (including asylum laws). Rather, what is possible to achieve is a brief descriptive and, more importantly, *critical account* of particularly important events, quantitative outlines and descriptive contours of the most recent asylum-related changes to the German legal framework.

This report, as the entirety of **RESPOND** is an interdisciplinary effort that is inherently complex given the multiplicity of disciplinary streams it contains. For this report alone, we have counted on the expertise of anthropologists, sociologists and legal scholars. Although collaboration of this kind can be rather problematic, the benefits of interdisciplinary work overshadows the technical and theoretical shortcomings. This situation is not unique to our endeavour alone but shared with other research teams. For instance, a study looking at “solidarity” in the EU found that “the bias due to the discrepancy between the “law in the books” and “law in action” that can so often affect pure legal analysis [...] has been strongly mitigated by a “social science” approach to legal studies, definitely more prone to making reference to legal realism, i.e. to ask how laws affect people in real life” (Federico et al 2017: 9).

Besides a brief historical overview, we offer some quantitative analysis of current asylum flows. The data we display gives us a basic idea of the outline of contemporary migration into Germany. According to the Basic Law, social law is subject to the concurrent legislation principle. This means that the federal states have the power to legislate social matters “so long as and to the extent that the Federation has not exercised its legislative power by enacting a law” (**Art. 72 para 1 Basic Law**).

**Underlying the overall contribution of this report is the relationship between federal asylum law and the application of legislation amongst the German *Länder*.** Germany’s federalism also structures the field of migration and asylum to a large degree (see El-Kayed and Hamann 2018, Laubenthal, 2016). In that sense, the *Länder*, differently shape the living conditions, social situations and integration opportunities of refugees (ibid).

**Typically, federal laws are executed by the 16 federal states in their own right (Art. 83 Basic Law).** Execution of federal laws by the central Federal Government is restricted to exceptional cases defined by the **Basic Law**<sup>4</sup> (adopted by the Parliamentary Council on 8 May 1949, was ratified in the week of 16 to 22 May 1949). Moreover, the execution of federal law by the single federal states implies that they establish the necessary administrative bodies and regulate all related administrative procedures (**Art. 84 para 1 Basic Law**). “The executive competences of the federal states constitute an important pillar of their autonomy because they enable them to shape policies and to exercise influence” (Stoy 2015: 85 - see also Zschache 2017: 86). Consequently, there is a variety of administrative procedures that reflect the preferences of the different regional governments to some extent. This complexity is further enhanced by the prominent role of local governments. In the organisation of the state system, local communities belong to the federal states and cannot be directly addressed by the Federation with executive tasks. Instead, they must be commissioned by their federal state. In practice, this is very often the case. In fact, according to estimates, between 75% and 80% of federal laws are executed by local administrations (Stoy 2015: 85). Hence, the implementation of federal law may vary considerably across Germany depending on the local administrative practices and regional administrative regulations.

This report is organized into 5 sections. **Section 1** offers a brief explanation of the historical highlights of migration to Germany and the evolution and constitution of migration policy since 1945. In **Section 2** we turn to a quantitative overview of asylum in Germany between 2011 and 2017. **Section 3** discusses current asylum law, the steps involved in the application procedure and the overall legal status of foreigners in Germany whilst distinguishing between asylum seekers and other immigrant categories. **Section 4** draws a sketch of the overall constitutional entrenchment of the principle of asylum and immigration law in the country. Finally, **Section 5** points to changes provoked in part or as a direct result of the so-called “Refugee Crisis”. The report also contains 4 annexes and lists of basic terminology and abbreviations.

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<sup>4</sup> Available at: <https://www.btg-bestellservice.de/pdf/80201000.pdf>. Retrieved on 26/04/2018.

# 1. A History of Migration to Germany: The Evolution and Constitution of Migration Policy Since 1945

Today, Germany is one of the primary destinations in Western Europe for asylum seekers from the Eastern Mediterranean, Eastern Europe and Central Africa. However, the country has a much longer history of migration dating back centuries. For reasons of space, we will narrow our historical overview to the period between 1945 and the present day, whilst highlighting only the most relevant events for the purposes of this report. The different migration and asylum trends of post-war migration to (West-) Germany can be divided into “phases”, with accompanying legal regimes and administrative practices – see for instance the genealogy that Serhat Karakayali (2008) has developed.

## 1.1 The Guest Worker System

The first phase, lasting from 1955 to 1973, is usually described as the “**guest worker system**” (**Gastarbeit**). Economically, the 1950s in Germany were characterised by high growth rates (up to 12%) and shrinking unemployment (1% in 1961). In order to offset labor shortages, the federal government turned to a traditional model of recruiting and temporarily employing foreign workers. The first “**Agreement on the Recruitment and Placement of Workers**” (**Abkommen über Anwerbung und Vermittlung von Arbeitskräften**) was negotiated with Italy in 1955. Further contracts soon followed: with Greece and Spain (1960), Turkey (1961), Morocco (1963), Portugal (1964), Tunisia (1965) and Yugoslavia (1968). While supervision and implementation of these contracts lay with the **Federal Employment Office (Bundesanstalt für Arbeit)**, there existed two other practices of migration: **migration with a visaed passport (Sichtvermerk)** and **entry of the country as a tourist or student** with retroactive obtainment of a work permit. These two latter forms were less regulated. Initially, the relevant legislation was the **Foreigners’ Police Regulation (Ausländerpolizeiverordnung)** of 1938, a recast of the Weimar Republic law of 1932. It granted both a certain form of subjective rights to residence to foreigners, and leeway to local authorities. Generally, it was assumed that the “guest workers” (Gastarbeiter) would eventually return to their countries of origin (Heilbronner 1987). Based on that assumption, the development of socio-political or infrastructural concepts to account for longer term residence or societal integration were not put into practice. With the prolonged existence of the regime of Gastarbeiter and the ever-increasing presence of migrant workers in Germany, the public debate on the issue heated up over the 1960s (DOMID 2017, Heilbronner 1987). Particularly, new forms of re-asserting control over labour migration were sought.

In 1965, the new Act on Foreigners<sup>5</sup> was passed, replacing the Foreigners’ Police Regulation. Additional regulations were codified in the Implementing Regulation on the Act on Foreigners.<sup>6</sup> The Act did not specifically address guest workers or ethnic German re-settlers. In

<sup>5</sup>Ausländergesetz [Act on Foreigners], Apr. 28, 1965, BGBl. I at 353, Available at: [www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl165s0353.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl165s0353.pdf), archived at <http://perma.cc/ETG7-ELMS>. Retrieved 22/01/2018.

<sup>6</sup>Verordnung zur Durchführung des Ausländergesetzes [DVAuslG] [Regulation to Implement the Act on Foreigners], Sept. 10, 1965, BGBl. I at 1341, Available at: [www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl165s1341.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl165s1341.pdf), archived at <http://perma.cc/2HPM-H2KR>. Retrieved 22/01/2018.

fact, it did not differentiate at all between the different residence purposes, nor did it address questions of family reunification or social and political rights of foreigners. This was followed, **in 1969, by the Law on European Economic Community (EEC) Residence** to implement European Community (EC) law in West Germany regarding freedom of movement for workers from EEC Member States, freedom of establishment and freedom to provide services.<sup>7</sup> **In 1970, citizens from EEC Member States made up around 25% of the total number of foreigners present in the Federal Republic of Germany.**<sup>8</sup>

## 1.2 The Recruitment Ban and the End of the “*Gastarbeit*”- System

**In 1973, the recruitment ban (Anwerbestopp)**, set forth in a directive on November 23, 1973, marked the official end of the era of foreign labor recruitment to West Germany. What followed was a **slow transition to an asylum regime** also in reaction to the worldwide rising numbers of asylum seeking persons, lasting from 1973 until the reform of German asylum legislation in 1993. It was initially characterised by immigration along the legal avenues of family reunification, which were however successively restricted over the years, different forms of illegal migration, and especially since 1980 immigration of asylum seekers. **In 1980, for the first time, more than 100,000 asylum applications were registered. The political debate around migration in the 1980s focussed strongly on the proclaimed necessity to restrict access to asylum.** However, given the constitutional status of the right to asylum, there were – at the time – insurmountable hurdles to passing such legislation. Nevertheless, restrictive legislation was passed in the 1980s, such as the Return Assistance Act<sup>9</sup> of 1983, legislation that mandated the housing of asylum seekers in refugee camps and imposed a residential obligation, and a recast of the Act on Foreigners in 1990<sup>10</sup>. These legislative acts were premised on the notion that Germany was not a country of immigration.

Hence, we can say that a growing “repressive consensus” resultant from migration to Germany in the 1980s and 90s resulted in the 1992-93 reform of asylum laws and that since then Germany has displayed “a relatively strict migration and asylum policy” with continuous influence of a conservative tendency (Kirchhoff and Lorenz 2018: 55).

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<sup>7</sup> Gesetz über Einreise und Aufenthalt von Staatsangehörigen der Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft (AufenthG/EWG) [Law on EEC Residence], July 22, 1969, BGBl. I at 927, Available at: [www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl169s0927.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl169s0927.pdf), archived at <http://perma.cc/QV3F-J48W>. Retrieved 22/01/2018.

<sup>8</sup> Table 12521-0002, Foreigners: Germany, Reference Date, Sex, Country Groups/Citizenship, Destatis, Available at: [www-genesis.destatis.de/genesis/online](http://www-genesis.destatis.de/genesis/online) (select 1970 as “reference date” and EEC-6 as “country group,” Retrieved 22/01/2018.

<sup>9</sup> Rückkehrhilfegesetz (RückHG) [Return Assistance Act], Nov. 28, 1983, BGBl. I at 1377, Available at: [www.gesetze-im-internet.de/bundesrecht/r\\_ckhg/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/r_ckhg/gesamt.pdf), archived at <http://perma.cc/44U3-4K3C>. Retrieved 22/01/2018.

<sup>10</sup> Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet (Ausländergesetz - AuslG) [Act on Foreigners 1990], July 9, 1990, BGBl. I at 1354, 1356, Available at: [www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl190s1354.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl190s1354.pdf), archived at <http://perma.cc/3HEY-A8PH>. Retrieved 23/01/2018.

### 1.3 The Aftermath of Reunification and the Balkan Wars

It was only with the dynamics of the post-Cold War global constellation that a decisive reform of German asylum law became feasible. The early 1990s were characterised by many different forms of migration to Germany: citizens of the former USSR that could lay claim to German ancestry were granted citizenship and resettled into Germany<sup>11</sup>, hundreds of thousands of refugees from the wars in Yugoslavia sought refuge in Germany, and in 1992, it was estimated at the time that around 400,000 asylum applications were lodged in Germany. Through a prolonged campaign from the conservative party that was accompanied by racist violence all over the recently unified Germany, the social-democratic party in 1992 gave in and accepted a reform of article 16 of the German **Basic Law**, in which the right to political asylum was enshrined. This reform, the so-called “asylum compromise”, passed in 1993, introducing the notions of Safe Third Countries, Safe Countries of Origin, accelerated asylum procedures at international airports, reinforcement of border controls, and a separate social welfare regime for asylum seekers which saw benefits reduced by 30 % and mandated a preference of in-kind transfers. Since Germany declared itself to be surrounded by Safe Third Countries, asylum applications after an entry across a land border were generally deemed inadmissible (Bosswick 2000)<sup>12,13</sup>

### 1.4 21<sup>st</sup> Century Reforms of Citizenship Law: The New Act on Migration

After the reform of Germany’s asylum law, migration shifted to more irregular forms, with asylum applications declining throughout the 1990s. In 1998, after 16 years of a coalition government between the conservative and liberal parties, a new government was formed between the social-democratic and Green parties. An overhaul of Germany’s migration law was one of the government’s main priorities. To this end, **a bipartisan commission on immigration was constituted, and a reform of the German citizenship law was passed in 2000**. Until that moment, citizenship was based on the *ius sanguinis* principle, while the reform opened citizenship to the principle of *ius solis*. However, only children of EU citizens or parents from states with special agreements with Germany were allowed dual citizenship. All others were obliged to choose one of their nationalities upon reaching legal adulthood. Both the reforms of citizenship and migration policy were subject to deep political opposition, at the core, the status of Germany as a country of immigration was negotiated.

**In 2005, a new Act on Migration** was passed. Its first version, which had been proposed by the bipartisan commission and which had sought to open legal avenues of migration beyond asylum had been invalidated by the constitutional court on procedural reasons. The renegotiated version stated as its aim to restrict and manage migration to Germany. Through the **Act on Migration, the Act on Foreigners was replaced by a Act on Residence**, which is currently in

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<sup>11</sup>A law on ethnic Germans was passed that allowed for persecuted people from the eastern block to „return“ to Germany. Since 1950, a total of 4.5 million ethnic German re-settlers, including family members, have immigrated to Germany as a result of the **article 116, paragraph 1 of the German Basic Law**. The re-settlement of Ethnic Germans continues to this day. For instance in 2014, Germany received 4,215 ethnic German re-settlers.

<sup>12</sup> From the late 1980s to 1992, the numbers of asylum seekers and immigrants in Germany steadily increased, in particular due to the war in the former Yugoslavia. In 1992, the number of immigrants reached an all-time high of 440,000. The approval rate for asylum applications, however, was at 4.3% (Gesley 2017).

<sup>13</sup> Act to Amend Provisions on Asylum Procedure, Foreigners, and Citizenship Law art. 1, no. 10.

force and which simplified the available residence statuses, EU directives of the CEAS as well as the **Blue Card Directive** were transposed into national law, and integration was defined as a legal duty.<sup>14</sup> Despite the restrictive nature of the Act on Migration, its passage marks the end of the debate whether Germany was a country of immigration. From now on, domestic migration policy would focus on integration measures. However, the most profound effect on the legal status of migration to Germany would be the two rounds of EU accession of Eastern European countries in the 2000s, automatically legalising the presence of up to a million persons in Germany.

In 2006, the Federal Chancellor, religious representatives and communities, media, unions, sport associations, employers, charitable organisations and migrants took part in what became known as the “**integration summit**”. The trigger was the results from the PISA study, which said that success in the educational system is linked to the origin and the educational background of one’s family. The Integration Summit led to the development of the **national integration plan implemented in 2007**. In the same year amendments were made to the immigration law because of EU guidelines. **A third residence title was introduced: the permission for permanent residence (*Erlaubnis zum Daueraufhalt-EG*)** and that was followed by a **citizenship test introduced on the 1st September 2008**.

## 1.5 From 2011 to Present

At least since 2011, Germany, together with Sweden, has been one of the preferred countries of destination for many people who fled their countries in Africa and the Eastern Mediterranean and Middle East due to armed conflicts and social unrest. Germany is viewed as a socially stable country with a strong economy and an open democratic political system that encourages civic participation and guarantees basic freedoms. As a result of this image as well as due to long established diaspora networks, in 2015 alone, Germany received more than one million asylum seekers mainly from African and Middle Eastern countries. This has been termed “**Der Lange Sommer der Migration**” (the long summer of migration - Hess et al 2016). This large number of people crossing the German borders have signified a great variety of reactions and changes that have, in some cases, created anxieties regarding the possible impact of these new populations on national and local social, economic, religious and cultural dynamics in the country.

Such movement initiated a range of changes in immigration and asylum law and policy. One of **the latest most important amendments to the German migration framework entered into force on August 6, 2016. The Integration Act and the Regulation on the Integration Act** aim to facilitate the integration of refugees into German society.<sup>15</sup> The basic idea behind the legislation is a continuation of the policy of “**support and challenge**” (**Fördern und Fordern**), which had been introduced in 2005 in the Migration Act. Recognized refugees who show the potential to integrate and have a good chance of staying permanently in Germany are provided with easier and faster access to integration classes and employment opportunities (Gesley 2016). The period after

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<sup>14</sup>BT-Drs. 15/420, at 60, <http://dipbt.bundestag.de/doc/btd/15/004/1500420.pdf>, Available at: <http://perma.cc/MV54-ZYLU>. Retrieved 23/01/2018.

<sup>15</sup>Integrationsgesetz [Integration Act], July 31, 2016, BGBl. I at 1939, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl116s1939.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl116s1939.pdf), archived at <http://perma.cc/SF3C-MY53>; Verordnung zum Integrationsgesetz [Regulation on the Integration Act], July 31, 2016, BGBl. I at 1950, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl116s1950.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl116s1950.pdf), Available at <http://perma.cc/FDS7-2XAA>. Retrieved 23/01/2018.

2011, saw several amendments to German asylum law; they will be detailed in the remainder sections.

Germany's more recent history of migration policies is marked by an increasing Europeanization of policies on asylum and deportation. Yet, this Europeanization is faced with internal division, a certain level of conservatism and, sometimes significant, differences between the implementation of federal asylum policy by the *Länder*. Today, migration policy in Germany varies between, on one hand, restrictive asylum regulations and increased opportunities to remain on the other hand. "This in turn creates a complex context for protests, both for and against (rejected) asylum seekers" (Kirchhoff and Lorenz 2018: 55). A good example of this is found in housing. Housing is one of the most important issues faced by refugees as, together with nutrition, it is the most basic need asylum seekers have upon arrival (see Schiefer, 2017) an issue that is extremely dependent on the interplay between federal legislation and the application of this legislation in individual *Länder* and smaller geographical localities as a recent study by El-Kayed and Hamann (2018) show.

## 1.6 Religious, Cultural and Linguistic Context

It is important to define, even if very briefly, the kind of contextual historical background asylum seekers enter when they arrive in Germany. As with every nation in Europe, the asylum seeker must make sense of a great array of highly complex social environments imbued with religious, cultural and linguistic norms.

Upon its establishment in 1871, Germany was about two-thirds Protestant<sup>16</sup> and one-third Roman Catholic, with a notable Jewish minority. Other faiths existed in the state, but never achieved the demographic significance and cultural impact of these three confessions. However, the country lost nearly its entire Jewish minority during the Holocaust. Religious makeup changed gradually in the decades following 1945, with West Germany becoming more religiously diversified through immigration and East Germany becoming overwhelmingly irreligious through state policies (Thompson 2012)<sup>17</sup>. It continued to diversify after the German reunification in 1990, with an accompanying substantial decline in religiosity through all of Germany and a contrasting increase of Evangelical Protestants and Muslims. Geographically, Protestantism is concentrated in the northern, central and eastern parts of the country. These are mostly members of the EKD (Evangelical Church in Germany, *Evangelische Kirche in Deutschland*)<sup>18</sup>, which encompasses Lutheran, Reformed and administrative or confessional unions of both traditions dating back to the Prussian Union. Roman Catholicism is more concentrated in the south and west (REMID 2018)<sup>19</sup>.

According to the 2011 German Census, Christianity is the largest religion in Germany, claiming 66.8% of the total population. Relative to the whole population, 31.7% declared themselves as Protestants, including members of the EKD (30.8%) and the free churches (*Evangelische Freikirchen*) (0.9%), and 31.2% declared themselves to be Roman Catholics. Orthodox believers constituted 1.3%. Other religions accounted for 2.7%. According to the most recent data from

<sup>16</sup>German Protestantism has been overwhelmingly a mixture of Lutheran, Reformed (i.e. Calvinist), and United (Lutheran and Reformed/Calvinist) churches, with Baptists, Pentecostals, Methodists, and various other Protestants being a more recent development.

<sup>17</sup> Available at: <https://www.theguardian.com/commentisfree/belief/2012/sep/22/atheism-east-germany-godless-place>. Retrieved 31/01/2018.

<sup>18</sup>for more information, please see EKD -<https://www.ekd.de>.

<sup>19</sup>Available at: [http://remid.de/info\\_zahlen/](http://remid.de/info_zahlen/). Retrieved 31/01/2018.

2016, the Catholic Church and the Evangelical Church claimed respectively 28.5% and 27.5% of the population. Both large churches have lost significant numbers of adherents since the 1950s. In 2011, 33% of Germans were not members of officially recognized religious associations with special status. Irreligion in Germany is strongest in the former East Germany, which used to be predominantly Protestant before, and major metropolitan areas. Islam is the second largest religion in the country. Indeed, 1.9% of the 2011 census population (1.52 million people) gave their religion as Islam, but this figure is stated as being unreliable because a disproportionate number of adherents of this religion (and other religions, such as Judaism) are likely to have made use of their right not to answer the question. Studies by the Federal Office for Migration and Refugees (BAMF) suggested a figure of 4.4 to 4.7 million (around 5.5% of the population) in 2015 and held that between 2011 and 2015 the Muslim population rose by 1.2 million people, mostly due to immigration. In contrast, a recent survey by the German Institute for Economic Research indicated a number of 2.7 million Muslim adults<sup>20</sup>. Most of the Muslims in Germany are Sunnis and Alevites from Turkey, but there are a small number of Shi'ites, Ahmadiyyas and other denominations. Other religions comprising less than one percent of Germany's population are Buddhism with 250,000 adherents (roughly 0.3%), Judaism with 200,000 adherents (around 0.2%), as well as Hinduism and Yezidism with some 100,000 adherents (0.1%). All other religious communities in Germany have fewer than 50,000 adherents each (DESTATIS 2013/REMID 2018)<sup>21</sup>

In cultural terms Germany was heterogeneous (or even fragmented) from the very beginning of its (reluctant) process of nation building, a constellation which is still strongly reflected in the federalist state system as well as (more or less mocking) intercultural animosities, e.g. between “Bavarians” and “Prussians”. In addition, the of recruitment contracts with predominantly Roman Catholic countries, such as Italy (1955) and Spain (1960) as well as countries with a Muslim majority, such as Turkey (1961), Morocco (1963) and Tunisia (1965) entailed a considerable pluralization, not only in religious, but also in cultural terms. As a matter of fact, these older minorities position themselves towards recent refugees in different ways: On the one hand, people with a migration background, and Muslims in particular, have been more active in refugee aid than the German average (Karakayali and Kleist 2016; Nagel and El-Menouar 2017), on the other hand, there were factions within the Turkish and the Russian-German immigrant community who actively mobilized against refugees. It should be mentioned that the pattern of public awareness of the multicultural constellation has changed considerably over the last decades: while the perception of multiculturalism (and xenophobic stereotypes) used to concentrate on ethnic or national characteristics until the 1990s, cultural differences have been increasingly religionized along with the emergence of Islamophobic attitudes across the traditional cleavage between multiculturalists and assimilationists (see Kühnel, Leibhold 2007; Spielhaus 2013).

## 1.7 Languages

German is the official and predominant spoken language in Germany. Recognised native minority languages in Germany are Danish, Low German, Low Rhenish, Sorbian, Romany, North Frisian,

<sup>20</sup>[https://www.diw.de/de/diw\\_01.c.582774.de/themen\\_nachrichten/4\\_3\\_prozent\\_der\\_in\\_deutschland\\_lebenden\\_erwachsenen\\_sind\\_muslime.html](https://www.diw.de/de/diw_01.c.582774.de/themen_nachrichten/4_3_prozent_der_in_deutschland_lebenden_erwachsenen_sind_muslime.html).

<sup>21</sup>Available

at: [https://www.destatis.de/DE/PresseService/Presse/Pressekonferenzen/2013/Zensus2011/Statement\\_Egeler\\_zensus\\_PDF.pdf?\\_\\_blob=publicationFile](https://www.destatis.de/DE/PresseService/Presse/Pressekonferenzen/2013/Zensus2011/Statement_Egeler_zensus_PDF.pdf?__blob=publicationFile). Retrieved 31/01/2018. [http://remid.de/info\\_zahlen/](http://remid.de/info_zahlen/). Retrieved 20/04/2018.

and Saterland Frisian, which are officially protected by the European Charter for Regional or Minority Languages. The most used immigrant languages are Turkish, Kurdish, Polish, the Balkan languages and Russian. Germans are typically multilingual: 67% of German citizens claim to be able to communicate in at least one foreign language and 27% in at least two (EC 2004, Eurobarometer 2006)<sup>2223</sup>. The fact that many Germans (in particular the young) are able to communicate in English may facilitate the adaptation of some refugees. Yet, the majority of interactions, in particular with state officials, must be conducted in German and for refugees, the language is anything but easy to learn. The language barrier is a high hurdle to overcome in particular in the first few months, despite provisions for language learning.

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<sup>22</sup> European Commission (Europe on the Move. Many Tongues one Family: Languages in the European Union) Available at:<https://web.archive.org/web/20110430202922/http://ec.europa.eu/publications/booklets/move/45/en.pdf>. Retrieved 31/01/2018.

<sup>23</sup>European Commission (Special Eurobarometer, Europeans and their Languages). Available at:[http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs\\_243\\_en.pdf](http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_243_en.pdf). Retrieved 31/01/2018.

## 2. A Quantitative Overview of Asylum in Germany: 2011 - 2017

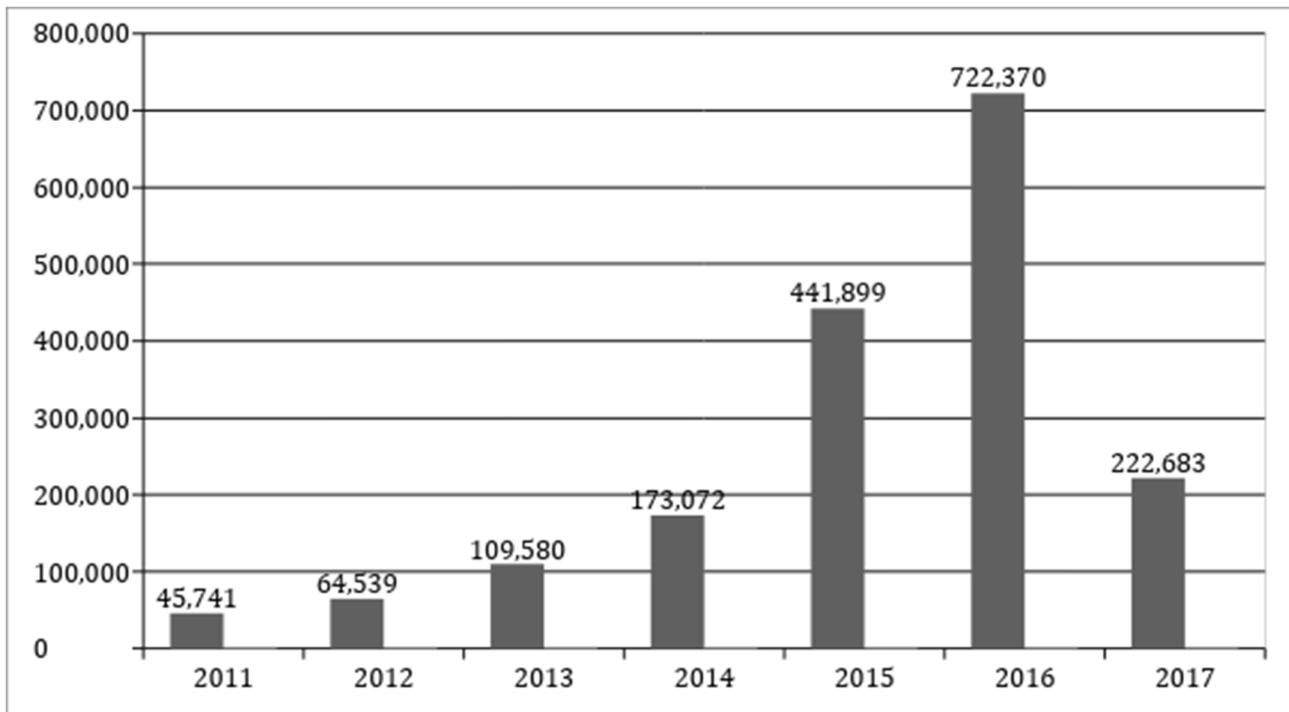
In the short historical overview presented in the past section, we showed the most important developments of migration policies taking place in Germany since 1945. We now bring this history up to date by turning to a brief quantitative summary of the numbers of asylum applications in Germany in the past few years. In the last years Europe has received hundred thousands of asylum seekers not only from Syria but also from the wider Eastern Mediterranean and Middle Eastern regions, Central Africa and Eastern Europe. Germany is one of the most sought-after asylum destinations in Europe and the numbers we present here are a reflection of this. These numbers have led to heated political debates and the governing coalition introduced several changes in migration and asylum policies all of which will be discussed in later sections of this report.

### 2.1 Some Basic Numbers

According to the Federal Statistical Office of Germany, in 2011, Germany had 80.3 million residents. Of those, 15.96 million - almost 19% of the entire population – had a migration background. In 2012, 92% of residents (73.9 million) had German citizenship, with 80% of the population being Germans (64.7 million) having no immigrant background. Of the 20% (16.3 million) people with immigrant background, 3.0 million (3.7%) had Turkish, 1.5 million (1.9%), Polish, 1.2 million (1.5%) Russian and 0.85 million (0.9%) Italian ancestry. In 2014, most people without German citizenship were Turkish (1.52 million), followed by Polish (0.67 million), Italian (0.57 million), Romanians (0.36 million) and Greek citizens (0.32 million). The German population at the end of 2016 was of 82,5 million. Of this total number, 18,6 million had a migration background whilst 8,7 million were foreign born. The latest available data on net migration is for 2016. It shows a positive balance of 497,964 (*Statistisches Bundesamt*, 2017). **Thus, since 2011, there has been a rise in people in Germany with migration background.**

**Parallel we have been seen as well a rise in asylum applications.** The latter in turn, is partly a result of conflicts in Syria, Afghanistan and Iraq, as well as social unrest, civil wars and economic problems in central Africa. In 2011, Germany received 53.347 asylum applications. **By 2016, that number had reached 745.545, an all-time high.** At least since 2015, there were many public, media and polity reactions to this rising numbers of asylum applications. As a direct consequence of these the (controversial) **EU-Turkey statement, or “deal”** was authorized in March 2016. Together with the closure of the Balkan corridor these measures essentially capped the number of asylum seekers coming to Germany. By 2017 we see a substantial reduction in the numbers of asylum seekers to Germany (207,157).

Figure 1. Illustrates this. It is important to note that 2016 shows a backlog, of the application for the prior two years. Thus the high number does not mean “arrivals” but rather *applications processed*.

**Figure 1. Total of Applications for International Protection (2011-2017)**

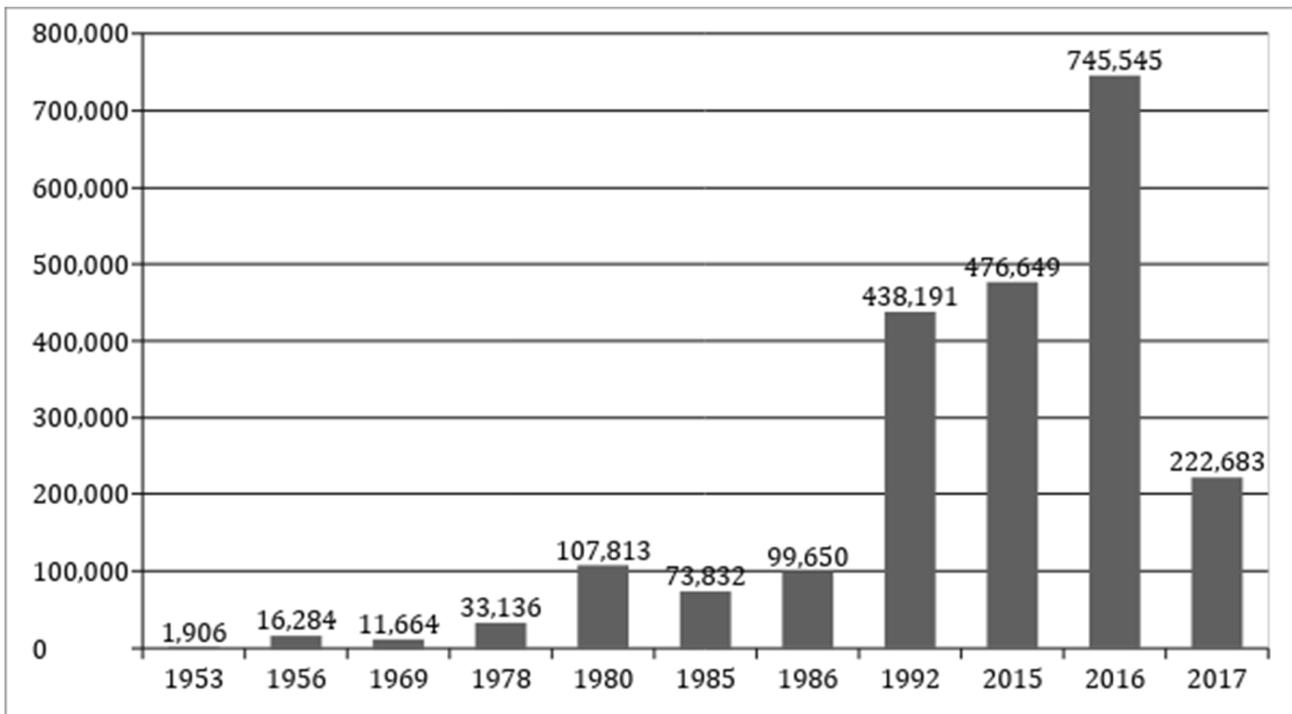
Source: BAMF

In 2017, 222,683 asylum applications were filed, including 198,317 initial applications. This is about one third of the applications submitted in 2016. The Federal Office for Migration and Refugees (BAMF) decided over 603,428 applications. **The protection rate** was 43.4 percent. If we compare this percentage with the protection rates of other EU member states, we could argue that Germany has a relatively low protection rate (for more detailed statistics, see report compiled by AIDA 2017)<sup>24</sup>. 186,644 asylum-seekers entered Germany during this period and were recorded in the core data system (BAMF 2017). In 2016, a total of 745,545 asylum applications were filed in Germany, 722,370 of which were initial applications. The main countries of origin were Syria, Afghanistan and Iraq. The Federal Office for Migration and Refugees has processed more than 695,733 asylum applications during this time. The protection rate was around 62 percent. According to the Ministry of the Interior (*Ministerium des Innern*), some 280,000 asylum seekers arrived in 2016 (BAMF 2016).

Before 2015, the previous peak in the number of applications for asylum was in 1992, when over 400,000 applications were received. At that time, most applicants came from the former Yugoslavia. However, after 1993 (the year of the German “Asylum Compromise“ (*Asylkompromiss*)), there had been a continual decline in applications. In 2005, for example, 29,000 applications were received. The number of first-time applicants continued to decrease throughout 2007, when Germany saw only 19,164 applications, the lowest amount since 1977 (see figure2).

<sup>24</sup>Aida (2017). Available at: <http://www.asylumineurope.org/reports/country/germany/statistics>. Retrieved 26/04/2018.

**Figure 2. Asylum applications between 1953 and 2017 showing 1990s pick – comparable to 2015**



Source: BAMF

Since 2008, however, the number of applications has started to increase again. In 2014, the highest amount since 1993 was recorded. The reasons for this increase included the surge in asylum seekers from Serbia and Macedonia as a result of the abolishment of the visa requirements for both countries in December 2009. In the first half of 2013, the number of first-time applications for asylum increased 90% when compared to the same period in the previous year. The majority of the asylum seekers in this year came from Russia, followed by Syria and Afghanistan. The Federal Office of Migration and Refugees expected 450,000 applications for asylum in their calculations for 2015, based on the number of applications they received in the first half of the year. In August 2015, however, the Federal Ministry of the Interior corrected this number, claiming up to 800,000 applications. Data released by Germany's Federal Office for Migration and Refugees (BAMF) in January 2016 showed that Germany received 476,649 asylum applications in 2015, mainly from Syrians (162,510), Albanians (54,762), Kosovars (37,095), Afghans (31,902), Iraqis (31,379), Serbians (26,945), Macedonians (14,131), Eritreans (10,990) and Pakistanis (8,472).

Among the asylum seekers who applied in Germany in 2017, 39.5 percent were girls and women (see table 3). In the age group 16- to 18-year-olds, there was the lowest proportion of women with about 22 %. Among the children (under 16 years), the gender ratio is more balanced. Here the proportion of boys outweighs girls only slightly. Compared with the whole of 2016, the proportion of women among refugees has risen by about five percent. Asylum seekers to Germany are on average very young: 75.2 % of the total were under 30 years old according to statistics for 2017. Minors accounted for around 45 % of all asylum seekers. 60,5% of all asylum seekers are men. The profile of asylum seekers coming to Germany has been overwhelmingly that of young males. The data for the period January - November of 2017 shows that 75.2% of the asylum applicants were younger than 30 years old. 60.6% of all applicants were male (see table 3).

**Table 3. Asylum Applications for the year 2017 divided by age and gender groups (shown in both, absolute values and percentages<sup>25</sup>)**

Age Group	Asylum Applications						Percentage of male applicants within the age groups	Percentage of female applicants within the age group
	Total		Distribution of male applicants by age group		Distribution of female applicants by age group			
bis unter 4 Jahre	42.999	23,30%	22.240	19,90%	20.759	28,50%	51,70%	48,30%
von 4 bis unter 6 Jahre	5.804	3,10%	3.039	2,70%	2.765	3,80%	52,40%	47,60%
von 6 bis unter 11 Jahre	12.838	6,90%	6.760	6,00%	6.078	8,40%	52,70%	47,30%
von 11 bis unter 16 Jahre	10.959	5,90%	6.265	5,60%	4.694	6,40%	57,20%	42,80%
von 16 bis unter 18 Jahre	10.430	5,60%	8.115	7,20%	2.315	3,20%	77,80%	22,20%
von 18 bis unter 25 Jahre	34.894	18,90%	25.297	22,60%	9.597	13,20%	72,50%	27,50%
von 25 bis unter 30 Jahre	21.062	11,40%	14.027	12,50%	7.035	9,70%	66,60%	33,40%
von 30 bis unter 35 Jahre	15.965	8,60%	9.657	8,60%	6.308	8,70%	60,50%	39,50%
von 35 bis unter 40 Jahre	11.056	6,00%	6.392	5,70%	4.664	6,40%	57,80%	42,20%
von 40 bis unter 45 Jahre	7.044	3,80%	4.008	3,60%	3.036	4,20%	56,90%	43,10%
von 45 bis unter 50 Jahre	4.588	2,50%	2.576	2,30%	2.012	2,80%	56,10%	43,90%
von 50 bis unter 55 Jahre	2.854	1,50%	1.566	1,40%	1.288	1,80%	54,90%	45,10%
von 55 bis unter 60 Jahre	1.888	1,00%	937	0,80%	951	1,30%	49,60%	50,40%
von 60 bis unter 65 Jahre	1.216	0,70%	615	0,50%	601	0,80%	50,60%	49,40%
65 Jahre und älter	1.199	0,60%	518	0,50%	681	0,90%	43,20%	56,80%
Insgesamt	184.796	100,00%	112.012	100,00%	72.784	100,00%	60,60%	39,40%

Source: BAMF

The largest number for refugees presented in the data, prior to the “refugee crisis” of 2015/2016 was in 1992. The number often quoted is something in the region of 440,000 people in one single year. But that number was calculated on an extrapolation of potential arrivals, times two. It was believed at the time that single males would eventually bring their families over at some point in time. The reality is that we simply do not know how many people came to Germany during 1992 even if such number is often presented as fact. The great raise in the numbers for the much-discussed year of 2016, for example (nearly 750,000 asylum claims) must also be equally deconstructed for it does not represent yearly “arrivals” but simply the accumulation of all asylum claims that built up over the year because of the sheer volume of applications and the simultaneously lack of infrastructure in Germany to manage applications in a more timely manner. After 2016, we see a great reduction in the number of asylum applications. This is at least partly the result of the EU-Turkey statement of March 2016 and the official closure of the Balkan corridor at the same time. These events had tremendous effects on German asylum policy. However, the drastic fall in asylum applications between 2016 and 2017 is also due to the fast tracking of applications that occurred in Germany all along 2016. Hence, the fall in numbers is related to at least two aspects: the effect of the closure of the Balkan route added to a restructuring of the administrative infrastructure that allows for the faster processing of asylum applications in the last two years.

<sup>25</sup> Data adapted from BAMF (2018). Available at [http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/aktuelle-zahlen-zu-asyl-november-2017.pdf;jsessionid=B7746458AB00F24C77DA37873BA35915.1\\_cid286?\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/aktuelle-zahlen-zu-asyl-november-2017.pdf;jsessionid=B7746458AB00F24C77DA37873BA35915.1_cid286?_blob=publicationFile). Retrieved 18/01/2018.

## 2.2 The Distribution of Asylum Seekers in the German Territory (*KönigsteinerSchlüssel*) and the “residence rule”

Today, the majority of non-German citizens (migrants, asylum seekers, etc.) live in urban areas, with the highest number living in the conurbation region of North Rhine-Westphalia where the greatest concentration of industry is spread over this large area in West Germany (Destatis, 2017)<sup>26</sup>. NRW is the most populous state of Germany, with a population of approximately 18 million, and the fourth largest by area. Its capital is Düsseldorf; the largest city is Cologne.

Given its industrial strength, the Rhine-Ruhr region has also received the highest number of asylum seekers between 2011 and the present (21,2%). The second-largest percentage of asylum quotas is directed to Bavaria (15,5%) and to Baden-Württemberg (12,8%). Together, these three regions account for almost half (49,5%) of asylum quotas in Germany, most of which are directed at urban centres within these regions such as aforementioned cities in the Rhine-Ruhr region as well as Munich in Bavaria and Stuttgart in Baden-Württemberg (see table 4).

**Table 4. First Application for Asylum According to each of the 16 German Länder (Period 2011-2017 – Absolute values and Percentages)**

	First Application 2011	%	First Application 2012	%	First Application 2013	%	First Application 2014	%	First Application 2015	%	First Application 2016	%	First Application 2017	%
BadenWürttemberg	5.186	11,34%	7.481	11,59%	13.421	12,25%	16.482	9,52%	57.578	13,03%	84.610	11,70%	21.371	10,80%
Bayern	7.020	15,35%	9.827	15,23%	16.698	15,24%	25.667	14,83%	67.639	15,31%	82.003	11,40%	24.243	12,20%
Berlin	2.425	5,30%	3.582	5,55%	6.113	5,58%	10.375	5,99%	33.281	7,53%	27.247	3,70%	9.369	4,70%
Brandenburg	1.296	2,83%	1.679	2,60%	3.058	2,79%	4.906	2,83%	18.661	4,22%	18.112	2,50%	5.547	2,80%
Bremen	420	0,92%	629	0,97%	1.109	1,01%	2.222	1,28%	4.689	1,06%	8.771	1,20%	2.495	1,30%
Hamburg	1.421	3,11%	1.880	2,91%	3.207	2,93%	5.705	3,30%	12.437	2,81%	17.512	2,40%	4.664	2,40%
Hessen	3.283	7,18%	5.079	7,87%	8.129	7,42%	12.536	7,24%	27.239	6,16%	65.520	9,10%	14.676	7,40%
MecklenburgVorpommern	973	2,13%	1.231	1,91%	2.303	2,10%	4.418	2,55%	18.851	4,27%	7.273	1,00%	3.954	2,00%
Niedersachsen	4.310	9,42%	5.941	9,21%	10.225	9,33%	15.416	8,91%	34.248	7,75%	83.024	11,50%	18.861	9,50%
NordrheinWestfalen	10.587	23,15%	15.028	23,29%	23.719	21,65%	40.046	23,14%	66.758	15,11%	196.734	27,20%	53.343	26,90%
RheinlandPfalz	2.164	4,73%	2.872	4,45%	5.481	5,00%	8.716	5,04%	17.625	3,99%	36.985	5,10%	12.951	6,50%
Saarland	531	1,16%	679	1,05%	1.219	1,11%	2.564	1,48%	10.089	2,28%	6.865	1,00%	3.099	1,60%
Sachsen	2.128	4,65%	2.825	4,38%	5.040	4,60%	6.030	3,48%	27.180	6,15%	23.663	3,30%	7.389	3,70%
SachsenAnhalt	1.274	2,79%	1.867	2,89%	3.198	2,92%	5.978	3,45%	16.410	3,71%	19.484	2,70%	5.118	2,60%
SchleswigHolstein	1.510	3,30%	2.217	3,44%	3.756	3,43%	7.032	4,06%	15.572	3,52%	28.982	4,00%	6.084	3,10%
Thüringen	1.192	2,61%	1.680	2,60%	2.722	2,48%	4.867	2,81%	13.455	3,04%	15.422	2,10%	5.040	2,50%
Unbekannt	21	0,05%	42	0,07%	182	0,17%	112	0,06%	187	0,04%	163	0,09%	113	0,10%
Insgesamt	45.741	100,00%	64.539	100,00%	109.580	100,00%	173.072	100,00%	441.899	100,00%	722.370	100,00%	198.317	100,00%

Source: BAMF

Upon their arrival in Germany, asylum seekers are allocated to a specific federal member state through a distributional process based on the tax income of the federal member states (Länder) as well as their population size. This is known as the *KönigsteinerSchlüssel* (§45 AsylG). It is a processual mechanism that administers the distribution of asylum seekers and refugees across the German Federal Republic. Meanwhile, asylum seekers themselves have almost no choice regarding where they are going to live (Wendel, 2014, p. 9 cited in El-Kayed and Hamann 2018: 138). The distribution of asylum seekers in the German national territory is thus by no means a homogenous process, nor does it respect freedom of movement.

<sup>26</sup>Available at:

[https://www.destatis.de/DE/Publikationen/Thematisch/Bevoelkerung/MigrationIntegration/Migrationshintergrund2010220107004.pdf?\\_\\_blob=publicationFile](https://www.destatis.de/DE/Publikationen/Thematisch/Bevoelkerung/MigrationIntegration/Migrationshintergrund2010220107004.pdf?__blob=publicationFile). Retrieved 11/01/2018.

Applicants from countries in Europe and beyond labelled “safe countries of origin” have an “obligation to reside” (*Wohnverpflichtung*) in the initial accommodation throughout the full duration of their asylum proceedings and are thus subject to the residency requirement during the entire process (**§47 Ia AsylG**)—a situation regarded by legal experts as a severe violation of basic civil rights (Pelzer & Pichl, 2016, pp. 99–100 cited in El-Kayed and Hamann 2018: 139). In such case, asylum seekers are only allowed to leave the district with permission from the Foreigner’s Office. The violation of the “residency requirement” may lead to detention and a criminal record (§59 II AsylG; §95 I Nr. 6a AufenthG; §95 I Nr. 7 AufenthG), and for some refugees from so-called “safe countries of origin”, even to a termination of their asylum application (§33 II, §33 III AsylG.). This requirement is considered disproportional and in contradiction to European Law by legal experts (ibid.).

## 2.3 Rates of Success of Asylum Applications – Protection Rate

In 2014, 202,834 asylum applications were filed in Germany. 128,911 decisions were made. Only 1.8% of the applications led to a recognition of refugee status according to **Article 16a GG**; another 24.1% were recognised as refugees from **Section 3 (1) AsylG**; 4% received subsidiary protection of Section 4 (1); and 1.6% were granted a prohibition of deportation. Therefore, 31.5% of all applications were “successful” in the broadest sense (so called “protection rate”). 33.4% of the applications were rejected. Following the calculation of charity organisations, Germany has an adjusted protection rate of 48.5% (not including those whose cases were passed on to other EU countries according to the Dublin Regulation) If successful legal claims against the decisions of the BAMF are counted as well, more than half of the refugees were granted a status of protection in 2014. In 2015, Germany made 282,762 decisions on asylum applications; the overall asylum recognition rate was 49.8% (140,915 decisions were positive, so that applicants were granted protection). The most successful applicants were Syrians (101,419 positive decisions, with a 96% recognition rate), Eritreans (9,300 positive decisions; 92.1% recognition rate) and Iraqis (14,880 positive decisions; 88.6% recognition rate).

## 2.4 Deportations and Voluntary Departures

From 2007 until 2012, the numbers of deportations from Germany slightly dropped (9,617 in 2007 and 7,651 2012)<sup>27</sup>. Since 2013 it rose again significantly, correlating with rising numbers of asylum applications and marking an on-going trend: In 2014, there were 10,884 deportations, in 2015 20,888, and in 2016 25,375 (the last number includes 3,968 transfers of migrants to other EU member states based on the Dublin regulations). In 2017, 31,068 people were deported from Germany (including 7,102 Dublin transfers). The steadily rising numbers can be explained by a variety of factors such as an increasingly restrictive refugee and migration policy in Germany connected to the perceived ‘refugee crisis’ in 2015/16, including new categorizations of countries as safe countries of origin (currently Albanien, Bosnien/Herzegowina, Ghana, Kosovo, former Yugoslav Republic of Macedonia, Montenegro, Senegal, Serbia) and the introduction of additional bilateral readmission agreements.

On top of that, in 2016 there were 1,279 statistically noted expulsions (*Zurückschiebungen*) in the time frame of six months after irregular entry into Germany. For 2017, the number of

<sup>27</sup> Available at: <https://www.proasyl.de/wp-content/uploads/2015/12/2017-Abschiebungen-und-Ausreisen.pdf>. Retrieved 26/04/2018.

expulsions was 1,707 (including 66 unaccompanied minors). In addition, as result of the introduction of EU-internal border controls in 2016 in particular at the German-Austrian border, a high number of people were refused entry at the German border (**Zurückweisungen**) (in 2016, 20,851 and in 2017 12,370). In 2017, 171 of the people refused entry were registered as unaccompanied minors.

In some cases deportations could not be carried out because of lacking cooperation by countries of origin. In other cases, they were halted because of medical concerns, the refusal of airlines/pilots to transport deportees or because of acts of resistance by migrants and other civilians.

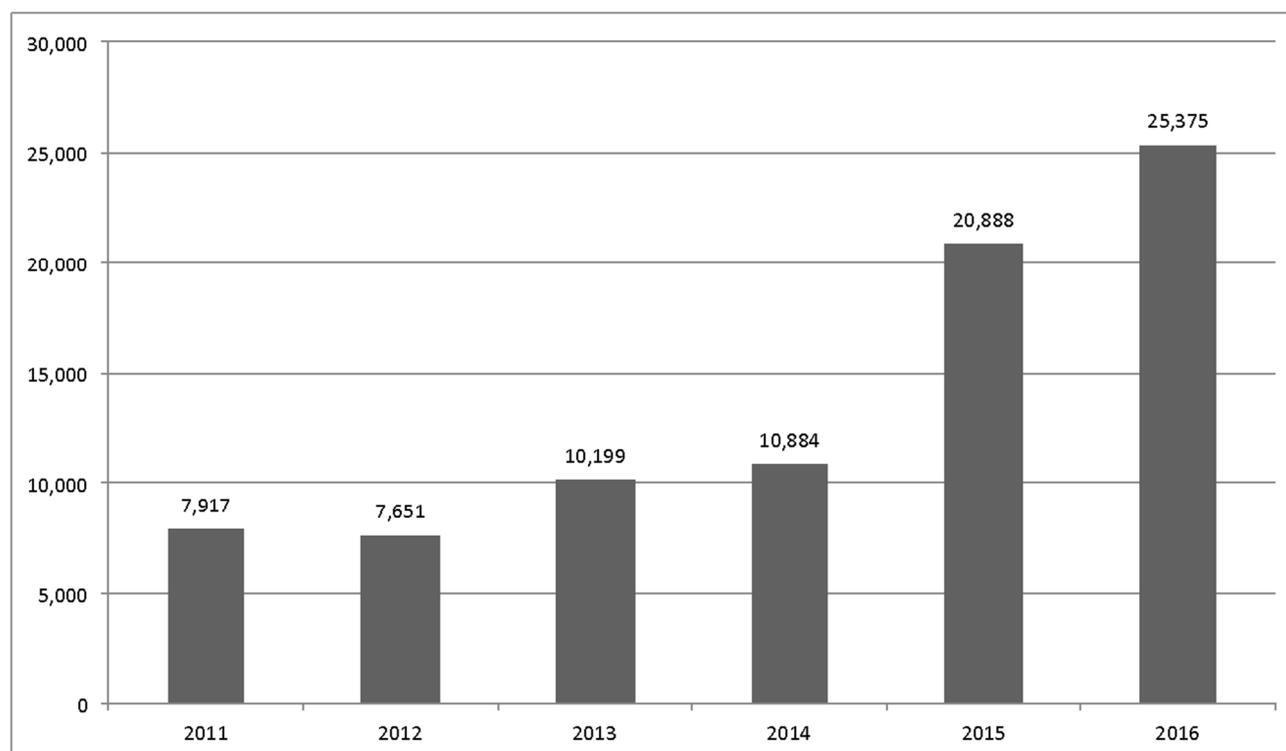
The estimated numbers of so-called ‘voluntary departures’ offering migrants financial rewards for their departure financed by the German state are significantly higher than the numbers of deportations. While the data is not collected with statistical reliability, for 2016, the German government presented a number of 54,069 departures in the frame of the Bund-Länder-programme REAG/GARP (Reintegration and Emigration Programme for Asylum Seekers in Germany/Government Assisted Repatriation Programme) and 29,587 departures in 2017. According to the Bundespolizei 43,019 people who had irregularly entered Germany departed voluntarily in 2017. Beside these, there are ‘voluntary departures’ supported by the German Bundes-Länder as well as voluntary departures without support that are not officially counted.

So-called ‘Erweiterte Rückkehrhilfen’<sup>28</sup> (Enhanced Return Assistance) that will grant higher rewards if applicants for international protection decide to withdraw their asylum claim have been politically criticized.<sup>29</sup>

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<sup>28</sup>[www.bamf.de/DE/Rueckkehr/Rueckkehrprogramme/Starthilfe Plus/starthilfeplus.html](http://www.bamf.de/DE/Rueckkehr/Rueckkehrprogramme/Starthilfe Plus/starthilfeplus.html)

<sup>29</sup><https://www.proasyl.de/wp-content/uploads/2015/12/2017-Abschiebungen-und-Ausreisen.pdf>

**Figure 3. Deportation (Abschiebungen) Germany (Air, Land and Sea – 2011-2016)<sup>30</sup>**

Source: Bundestag/ProAsyl

## 2.5 Dublin Regulations

The Dublin procedure is a mechanism inherent in the Common European Asylum System. It is the part of the asylum procedure that determines which European state is responsible for applying for asylum. An asylum application in the European context is an application for "international protection", which covers both refugee protection as well as subsidiary protection<sup>31</sup>. The Dublin regime was originally established by the **Dublin Convention**, signed in Dublin, Ireland, on **15 June 1990**. In 2003, the Dublin Convention was replaced by the Dublin II Regulation. In 2013, the **Dublin III Regulation** (EU Regulation No 640/2013 of 26 June 2013) was adopted, replacing the Dublin II Regulation. The Dublin III Regulation has been in force since 1 January 2014<sup>32</sup>. In addition to the 28 states of the European Union, Switzerland, Norway, Liechtenstein and Iceland comply with this regulation. In total, there are 32 "Dublin states".

**The Dublin system was never designed to achieve a fair sharing of responsibility;** its main purpose from the very beginning was to assign responsibility for processing an asylum application to a single Member State. The **Dublin III Regulation** identifies the EU country responsible for examining an asylum application, by using a hierarchy of criteria such as family unity, possession of residence documents or visas, irregular entry or stay, and visa-waived entry.

<sup>30</sup> Data from Bundestag from years 2011 to 2016 can be found compiled at [www.Proasyl.de](http://www.Proasyl.de) available at: <https://www.proasyl.de/thema/fakten-zahlen-argumente/statistiken/>. Retrieved 25/01/2018.

<sup>31</sup> [http://www.asylumineurope.org/sites/default/files/resources/basisinf\\_2\\_dublin\\_fin.pdf](http://www.asylumineurope.org/sites/default/files/resources/basisinf_2_dublin_fin.pdf).

Retrieved 21/04/2018

<sup>32</sup> [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS\\_BRI%282016%29586639\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS_BRI%282016%29586639_EN.pdf).

Retrieved 21/04/2018.

In practice, however, the most frequently applied criterion is the irregular entry, meaning that the Member State through which the asylum-seeker first entered the EU is responsible for examining his or her asylum claim. Asylum seekers should, as a rule, stay in the state responsible for them. Breaking this rule can result in deportation, referred to as "transference".

The current migration and refugee crisis has revealed significant structural weaknesses in the design and implementation of the CEAS and of the Dublin regime. This has been confirmed by recent external studies on the Dublin system (Meijers Committee 2016, Kasperek2018) and acknowledged by the Commission in its communication of 6 April 2016 (European Commission 2016).

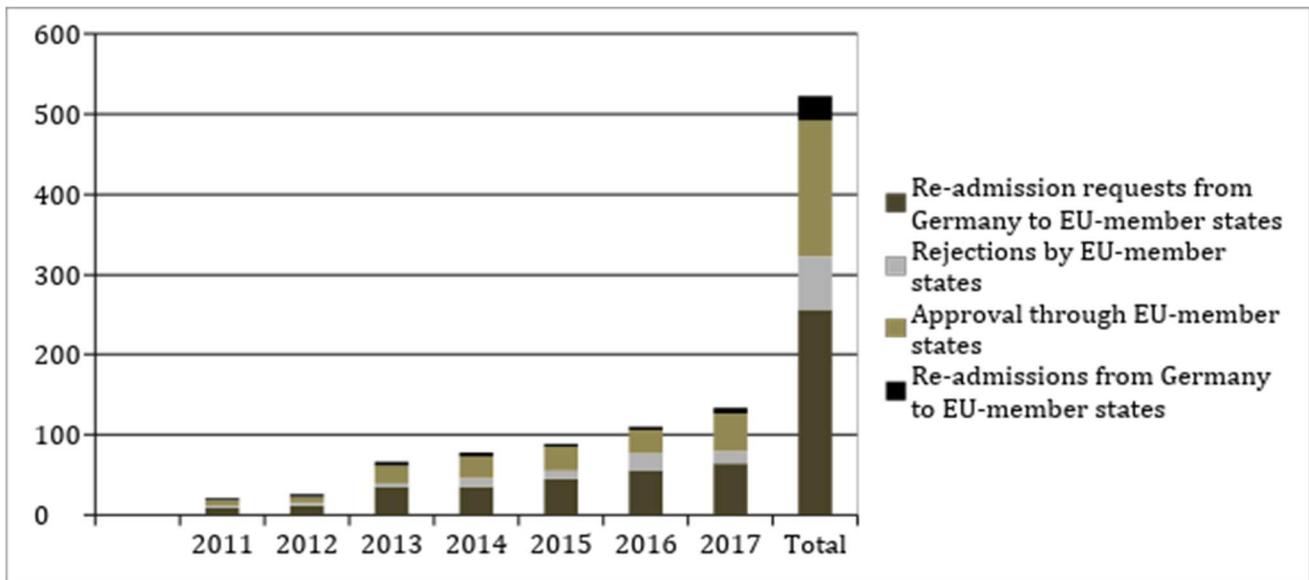
The number of Dublin returns from Germany to other EU-member states has been constantly rising from 2011 (2,902 returns) to 2017 (7,102 returns). Likewise, the number of readmission-requests to other European countries, which by far exceeds the actual returns, rose from 9,075 requests in 2011 to 64,267 in 2017<sup>33</sup>. In 2015 and 2016 the number of Dublin returns dropped slightly while Germany's return requests remained steadily rising. The most requested countries were Italy, Bulgaria, Poland, Hungary, Switzerland and France. In total, Germany requested from 2011 to 2017 in 255,788 cases to return migrants under the Dublin regulations to other EU-member states (see table. 30,137 returns were actually carried out. At the same time, Germany received 86,339 relocation/return-requests to its own country and approved 30,854 of them. Hence, **from 2011 until 2017, Germany received slightly more returnees from other EU members states (30,854) than were returned from Germany to other EU member states (30,137).**

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<sup>33</sup> Pro Asyl:

<https://www.proasyl.de/wp-content/uploads/2015/12/2017-Dublin.pdf>  
[https://www.proasyl.de/wp-content/uploads/2015/12/Dublin\\_2016.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/Dublin_2016.pdf)  
[https://www.proasyl.de/wp-content/uploads/2015/12/Dublin\\_2015.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/Dublin_2015.pdf)  
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[https://www.proasyl.de/wp-content/uploads/2015/12/Dublin\\_2013.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/Dublin_2013.pdf)  
[https://www.proasyl.de/wp-content/uploads/2015/12/Dublin\\_2012.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/Dublin_2012.pdf)  
[https://www.proasyl.de/wp-content/uploads/2015/12/Dublin\\_2011.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/Dublin_2011.pdf)

**Figure 4. Requests to EU Member States from Germany**



Source: ProAsyl

## 2.6 Relocation and Resettlement

Resettlement is an internationally recognized instrument in particular for the transfer of refugees as response to a “refugee crises”, mostly administered by the UN. The UN has annual requirements in terms of numbers for resettlement. For 2016 the world-wide requirement was more than 1,150,000 people (UNHCR 2015: 12). Resettlement only applies for people who have been recognized by the UNHCR as beneficiaries of international protection. The UNHCR provides proposals for admission to the Federal Office for Migration and Refugees (BAMF), which takes the final decision for the admission in Germany. Recently, we have seen the introduction of additional national and Länder-driven admission procedures, differing regarding the setup, target groups and benefits granted to the respective persons.

While Germany follows a highly restrictive visa policy<sup>34</sup>, there have been several procedures developed in the past few years that grant admission in Germany on humanitarian grounds. Most of them are related to requirements posed by the European Union and the United Nations. Currently, most programmes are in fact considered as achieved or halted, even if the committed number of admissions has not been achieved. The most relevant programmes are:

1) **The German Resettlement Programme** (2011 – 2015) that was extended for 2016-2017 after a European Council decision in the frame of the EU-Resettlement Programme.

2) **Humanitarian Admission Programmes** such as the HAP Syria (2013 – 2016) for a total of 20,000 beneficiaries of protection from Syria, its neighbouring countries, Egypt and Libya (HAP Syria) (extended for 2017 – 2018) and the admission procedure for Afghan local staff (2013-2016).

<sup>34</sup><https://www.berlin.de/labo/willkommen-in-berlin/einreise/verlaengerung-eines-visums/artikel.280062.php>

### 3) Family-Reunification

### 4) The EU-Relocation Programme (2015 – 2017)

**Resettlement Programmes:** In 2011, Germany adopted a pilot programme at federal and Länder level for resettling 300 particularly vulnerable refugees annually who would be admitted from third countries to Germany in the years 2012 to 2014 (Grote et al., 2016). In December 2014, the Conference of the Ministers of the Interior agreed to continue this resettlement programme and extend it to 500 persons per year.

In practice these numbers were roughly achieved until 2015: In 2012, 307 people (202 from Tunisia and 105 from Turkey) were resettled to Germany. In 2013, there were 293 people resettled – all of them from Turkey. In 2014, a total of 321 people came to Germany via this system (114 from Indonesia and 207 from Syria). For 2015 the number was 480 (300 from Egypt and 180 from Sudan).

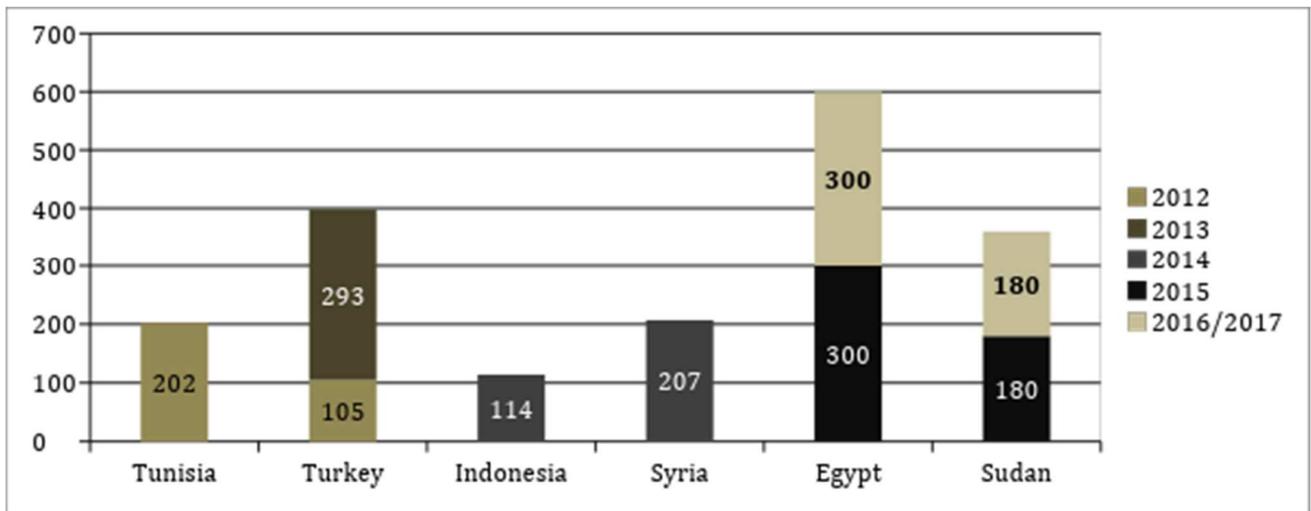
Since August 2015, the resettlement programme is legally based in the **August 2015 § 23 Abs. 4 AufenthG. - § 23(4)** – allowing resettled refugees to receive a residence permit (**Aufenthaltserlaubnis**), which is usually issued for an initial three years (Grote et al., 2016: 6). After five years, they are entitled to a residence permit.

In 2016, the German resettlement programme was extended and is now guided by a European quota: On 20<sup>th</sup> July of 2015, the European Council decided to implement an EU-Resettlement Programme for 2016/17 and to resettle 22.504 persons to the European Union. Taking into account the national quota, in 2016 and 2017, Germany expressed the intention to resettle **1,600 persons** in total and 800 persons per year within the framework of the EU resettlement pilot programme. According to the Ministry of Interior, they were supposed to be stateless people, refugees from Lebanon, Sudan, Egypt and possibly Turkey.

In fact, this **quota was mainly used to fulfil the obligation of the EU-Turkey Statement** where Germany had claimed among other states that one Syrian refugee would be resettled from Turkey to the European Union for each deported Syrian from the Greek Islands. Therefore, the promised 1:1 exchange defined in the EU-Turkey Statement did not lead to additional admissions apart from the existing requirements. In 2016, 1,215 people (1,060 from Turkey and 155 from Lebanon) were resettled via the EU-Resettlement Programme 2016-2017.

In April 2018, the European Commission decided to resettle up to 50,000 refugees from Northern Africa to EU member states. Germany to participate in this resettlement programme accommodating 10,000 people.

**Figure 5. German Resettlement Programme between 2012 and 2016/2017<sup>35</sup>**



Source: BAMF

<sup>35</sup><http://resettlement.de/aktuelle-aufnahmen/>

**Table 5. EU-Resettlement Admissions<sup>36</sup>**

Date of Entry	Number of People	Country	Nationality	Residence Permit
24.11.2015	258	Egypt	Ethiopia, Eritrea, Iraq, Somalia, Sudan, Uganda	§ 23, 2
14.12.2015		Sudan	Ethiopia, Eritrea, Syria	§ 23, 2
<b>Total for 2015</b>	<b>414</b>			
24.02.2016	24	Sudan	Ethiopia, Eritrea	§ 23, 4
04.04.2016	32	Turkey	Syrien	§ 23, 4
11.04.2016	5	Turkey	Syria	§ 23, 4
15.04.2016	17	Turkey	Syria	§ 23, 4
19.05.2016	103	Turkey	Syria	§ 23, 4
16.06.2016	135	Turkey	Syria	§ 23, 4
27.06.2016	2	Turkey	Syria	§ 23, 4
16.08.2016	143	Turkey	Syria	§ 23, 4
08.09.2016	172	Turkey	Syria	§ 23, 4
27.09.2016	5	Turkey	Syria	§ 23, 4
13.10.2016	152	Turkey	Syria	§ 23, 4
10.11.2016	170	Turkey	Syria	§ 23, 4
30.11.2016	155	Lebanon	Syria	§ 23, 4
01.12.2016	124	Turkey	Syria	§ 23, 4
<b>Total for 2016</b>	<b>1.239</b>			
12.01.2017	153	Turkey	Syria	§ 23, 2
23.02.2017	182	Turkey	Syria	§ 23, 2
16.03.2017	181	Turkey	Syria	§ 23, 2
20.04.2017	180	Turkey	Syria	§ 23, 2
09.05.2017	255	Turkey	Syria	§ 23, 2
23./24.05.2017	22	Lebanon	Syria	§ 23, 4
30.05.2017	237	Turkey	Syria	§ 23, 2
20.06.2017	246	Turkey	Syria	§ 23, 2
11.07.2017	247	Turkey	Syria	§ 23, 2
02.08.2017	140	Turkey	Syria	§ 23, 2
07.09.2017	236	Turkey	Syria	§ 23, 2
26.09.2017	185	Turkey	Syria	§ 23, 2
12.10.2017	237	Turkey	Syria	§ 23, 2
02.11.2017	231	Turkey	Syria	§ 23, 2
07.12.2017	256	Egypt	Sudan, Syria, Ethiopia, Eritrea, Somalia, Iraq, Iran, Zimbabwe, Chad	§ 23, 4
<b>Total for 2017</b>	<b>2.988</b>			
09.01.2018	267	Turkey	Syria	§ 23, 2
15.02.2018	107	Egypt	Syria	§ 23, 4
22.02.2018	251	Turkey	Syria	§ 23, 2
13.03.2018	176	Turkey	Syria	§ 23, 2
29.03.2018	173	Turkey	Syria	§ 23, 2
<b>Total for 2018 (April)</b>	<b>974</b>			

Source: Resettlement.de/Caritas

**Humanitarian Admission Programme:** Parallel to the resettlement programme, a humanitarian admission programme (HAP Syria) – granting only temporary protection for Syrians – was implemented since 2013 as reaction to the civil war in Syria. Through the HAP, Germany has accepted almost **20,000 Syrians** who were moved directly from countries in the neighbourhood of Syria (i.e. Egypt and Libya) between 2013 and 2017. In March 2013, the Federal Minister of the Interior agreed with the Interior Ministers and Senators of the federal Länder “to admit 5,000

<sup>36</sup>This data only includes individuals who were processed through the Friedland border transit camp (GDL Friedland). Direct entry into municipalities is not included. Consequently, this data could differ from other representations. Reproduced from Resettlement.de/Caritas. Available at <http://resettlement.de/en/current-admissions/> Retrieved 16/04/2018.

particularly vulnerable Syrian refugees in 2013 for the duration of the conflict and its aftermath affecting the refugees, in anticipation of the expected all-European rescue mission to cope with the refugee crisis in Syria and its neighbouring countries [...]” (BMI 2013a: 1). At the end of 2013, it was agreed to accommodate 5,000 more people and in 2014 the programme HAP Syria 3 came into force aiming to transfer **another 10,000 people**.

These are temporary admissions, intended to bridge a period while the country of origin is undergoing crisis, war and dangerous conditions. The respective persons are provided with a residence permit under Section 23 subs. 2 and 3 in connection with Section 24 of the Residence Act, issued for two years with the option to renew the residence permit (BMI 2013a: 4 cited in Grote et al., 2016: 6). Officially, the programme has been closed in 2017 but was formally extended with a goal of 500 people per months and late registrations are still added to the statistics.

Beside the Humanitarian Admission Programme, from 2013-2016 there were other much smaller admission programmes in place designed to allow Syrians entry into Germany. They were carried out on the level of Germany’s federal *Länder*. The persons admitted under this programme are given a residence permit for up to two years under Section 23 subs. 1 of the Residence Act with the option to renew the residence permit.

Connected to the ISAF-mission in Afghanistan, Germany’s Foreign Office, Defence Ministry, Economic Ministry and Ministry of the Interior decided on a joint procedure for Afghan staff that had been working for German public agencies and Afghanistan and was therefore put at risk in Afghanistan. The Federal Government had offered it already since 2012. From 2012 – 2016, more than 1,800 local employees applied to be admitted to Germany, 771 were granted admission for themselves and their nuclear family and were enabled to get a visa for entering Germany. They were granted a residence permit for two years that can be renewed and lead to a permanent residence title after if certain criteria are met.

**Family-Reunification**<sup>37</sup>: There exists a EU-wide program or framework with provisions for family reunification designed for third-country nationals. It first came into existence in 2003, and was referred to as the “EU Family Reunification Directive” (2003/86/EC) (Grote 2017). As for the German national case, provisions are described in **Sections 27 – 36 of the German Residence Act** (ibid.). For the purposes of family reunification, one must first assert what constitutes a “family”. Here, civil partnership is treated as equal to officially married couples.

According to Grote (2017) at least since 2014, there has been a considerable rise in residence titles granted to third-country nationals for the purpose of family reunification with Germans or third-country nationals. The following numbers show this clearly. For instance, between 2010 and 2013, residence titles granted for the purpose of family reunification came close to 55,000 for each year. By 2014, the annual number had risen to 63,677. In 2015, it went up again to 82,440.

The majority of residence titles are issued to wives or “female registered partners” (42.8% of the total titles issues were for wives or female partners, or 35,319 in absolute numbers - figure from 2015) with the purpose that they join their **husbands or registered partners**. **Minor children** are the second-largest group (22.1% in 2011 and 33.9% in 2015). **Husbands and male registered**

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<sup>37</sup>For the following few paragraphs, we rely heavily on the work conducted by Grote (2017) on behalf of BAMF.

**partners** are the third-largest group, ahead of **parents and other family members**. Regarding specifically the issue of family reunification, the ten most important countries of origin in 2015 were: Syria (15,956), Turkey (7,720), the Russian Federation (4,726), India (4,605), Kosovo (3,808), the US (3,098), Ukraine (2,693), China (2,635), Iraq (1,800) and Bosnia and Herzegovina (1,775). All this said, it is important to emphasize that this programs have recently come to a halt regarding asylum decisions processed as subsidiary protection (see Grote 2017).

**The EU Relocation-Programme:** According to the German Federal Office for Migration and Refugees, “Asylum-seekers are re-distributed via the “relocation” procedure from EU Member States whose asylum and reception systems are under particular pressure – as is the case at present in Greece and Italy – to other Member States, and go through the asylum procedure there.”<sup>38</sup> Generally, only asylum seekers coming from countries of origin with an average European recognition rate of 75% can be relocated, which currently only applies for Syrians and Eritreans.<sup>39</sup>

The procedure is legally based on EU decisions 2015/1523 of 14th September 2015 and 2015/1601 of 22th September 2015. In May 2015, the EU decided on a relocation of 40,000 persons from Italy and Greece that was followed by another relocation programme of 120,000 people seeking protection in September. In total, within two years from September 2015 until September 2017, 160,000 persons were supposed to be resettled from Greece, Italy and Hungary. (Hungary decided in hindsight not to participate in the programme).

Drawing on ideas of the European Agenda on Migration 2015 Emergency Clause Art. 78 III AEUV and an additional European Council decision from September 2016 (EU 2016/1754), Germany was allowed to partly use the quota to carry out relocation of Syrian refugees from Turkey in order to fulfil the goals of relocation of the EU-Turkey statement. The country agreed to admit in total 27,536 asylum seekers, among them 13,694 from Turkey. However, **Germany is far from living up to this commitment. Up to now, only 5,221 people were relocated from Italy and 5,391 from Greece** (data as of 19.04.2018).<sup>40</sup>

The 13,694 planned relocations from Turkey did not take place, apart from the comparatively low numbers of resettlement carried out under the frame of the mentioned Humanitarian Admission Programme and the Resettlement programme that can formally be used to fulfil the obligations of resettlement of the EU-Turkey statement. Although there is a gap of almost 17,000 people to fulfil the obligation for the relocation programme, the German Ministry of Interior considers the process of relocation as “almost completed” and only expects a few more relocations from Italy for the future.<sup>41</sup>

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<sup>38</sup><http://www.bamf.de/EN/Fluechtlingschutz/HumAufnahmeResettlement/Relocation/relocation-node.html>

<sup>39</sup>[http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/201707-statistik-anlage-asyl-geschaeftsbericht.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/201707-statistik-anlage-asyl-geschaeftsbericht.pdf?__blob=publicationFile)

<sup>40</sup>[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_relocation\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf)

<sup>41</sup> <https://www.tagesschau.de/inland/umverteilung-fluechtlinge-103.html>,  
<http://www.zeit.de/politik/deutschland/2018-01/eu-asylpolitik-fluechtlingsverteilung-prioritaet-thomas-de-maiziere>

### **3. An Overview of Current Asylum Law, Application Procedures and overall Legal Status of Foreigners in Germany: Asylum Seekers and other Immigrant Categories**

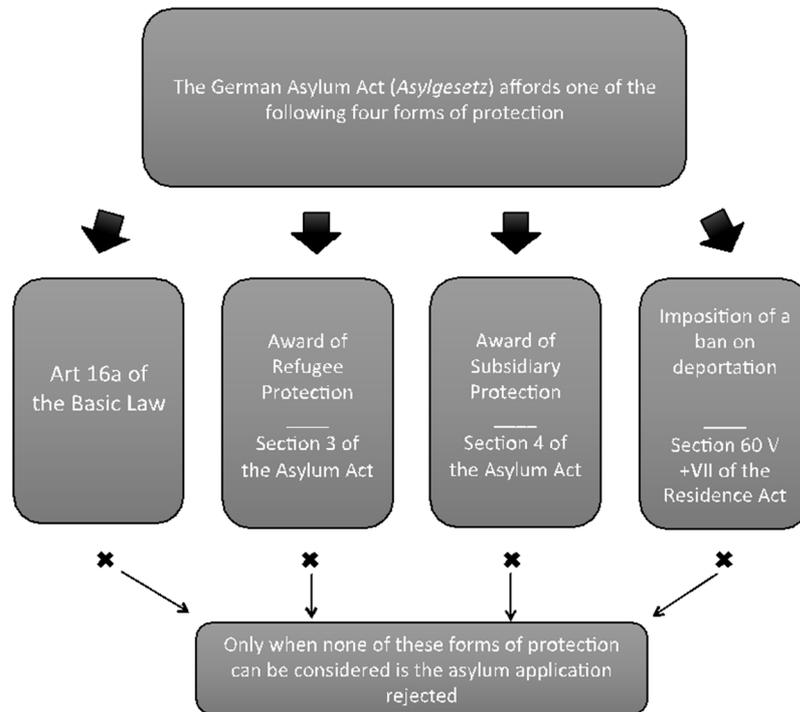
Before we can tackle the changes in the German asylum legislation, we must first draw the outline of the German asylum system.

The main provisions according to asylum related issues in Germany are regulated in three main acts: The Asylum Act (Asylgesetz - AsylG), the Residence Act (Aufenthaltsgesetz - AufenthG) and the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz – AsylbG). The Asylum Act outlines the process under which asylum is applied for and granted in Germany. The Residence Act spells the law governing residence, economic activity, and integration of foreigners into the federal territory of Germany; additionally frequent references to the Asylgesetz regarding specific rules for asylum seekers. Finally, the Asylum Seekers Benefits Act defines specific government benefits for asylum seekers and people with “toleration” during the first 15 months, including monthly payments for living expenses and health care services.

The different forms of protection based on provisions in the Asylum Act, the Residence Act as well as the German Basic Law and the Qualification Directive (2011/95/EU). According to this an asylum seeker coming to Germany may be granted one of the following four forms of protection after his/her case is assessed by the Federal Office for Migration and Refugees (***Bundesamt für Migration und Flüchtlinge*** – BAMF, see fig 6):

- **Entitlement to Asylum (Art. 16a of the Basic Law, Section 1 I of the Asylum Act)**
  - **Award of Refugee Protection (Section 3 of the Asylum Act, Section 60 I of the Residence Act)**
- **Award of Subsidiary Protection (Section 4 I of the Asylum Act)**
- **Imposition of a National ban on Deportation (Section 60 V+ VII of the Residence Act)**

**Figure 6. German Asylum Act and the Different Forms of Protection<sup>42</sup>**



Source: BAMF

### Entitlement to Asylum

On one side, the Right of Asylum is a basic right stipulated in Art. 16a of the German Basic Law (Grundgesetz - GG). Art. 16a I specifies that “Persons persecuted on political grounds shall have the right of Asylum” and is therefore the oldest form of protection. Since the concept of asylum is not defined in the Law, content and scope of application are primarily a result of the ruling by the Federal Constitutional Court/Refugee Convention. In accordance with the Court’s ruling a person is considered to be experiencing political persecution if he or she is suffering from infringements of his or her rights by the state or third person measures that can be attributed to the state, because of religious or political convictions or other inaccessible features that mark the individuals otherness. On the other side, the German legislature restricted the basic right by introducing Art. 16a II in 1993. For this reason today the Right of Asylum is insignificant within the protection system. However, it has to bear in mind that Art. 16a is the only basic right which is merely entitled to foreigners.

### Award of Refugee Protection/Non-Refoulement

Refugee Protection is granted to foreigners who are threatened with persecution in their country of origin. According to Section 3 I of the Asylum Act (see also Section 60 I of the Residence Act) a foreigner is regarded as a Refugee if he/she, owing to well-founded fear of persecution in his country of origin on account of his race, religion, nationality, political opinion or membership of a particular social group (No. 1) and resides outside the country of origin whose nationality he possesses and the protection of which he cannot, or, owing to such fear does not want to avail himself of, or where he/she used to have his/her habitual residence as a stateless

<sup>42</sup>Based on information provided by BAMF – [www.bamf.de](http://www.bamf.de)

person and where he/she cannot, or owing to said fear, does not want to return (No. 2). The prohibition of rejection of foreigners who face persecution in their country of origin is also known as the “Non-Refoulement-Principle”. Therefore this form of protection is directly linked to the Convention relating to the Status of Refugees (also known as the 1951 Refugee Convention), which is valid in Germany since 24. December 1953, and is also regulated in Art. 9 ff. of the Qualification Directive (2011/95/EU). Foreigners awarded with a refugee protection have no disadvantages compared to people entitled with the Right of Asylum according to Art. 16a GG.

### **Award of Subsidiary Protection**

The Subsidiary Protection, introduced on the European level in 2004 by the Council Directive 2004/83/EC (European Council 2004), closes a gap in the human rights protection since it refers to the fact, that some people are not threatened by persecution within the meaning of the 1951 Refugee Convention. Therefore, subsidiary protection is granted without the need of individual persecution. Instead Section 4 I of the Asylum Act states that a foreigner shall be eligible for subsidiary protection if he/she has shown substantial grounds for believing that he would face a real risk of suffering serious harm in his/her country of origin. According to this serious harm consists of the death penalty or execution, torture or inhuman or degrading treatment or punishment or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. The three alternatives mentioned in Section 4 are based on Art. 15 of the Qualification Directive and - in case of torture - the wording of Art. 3 of the European Convention of Human Rights.

### **Imposition of a National ban on Deportation**

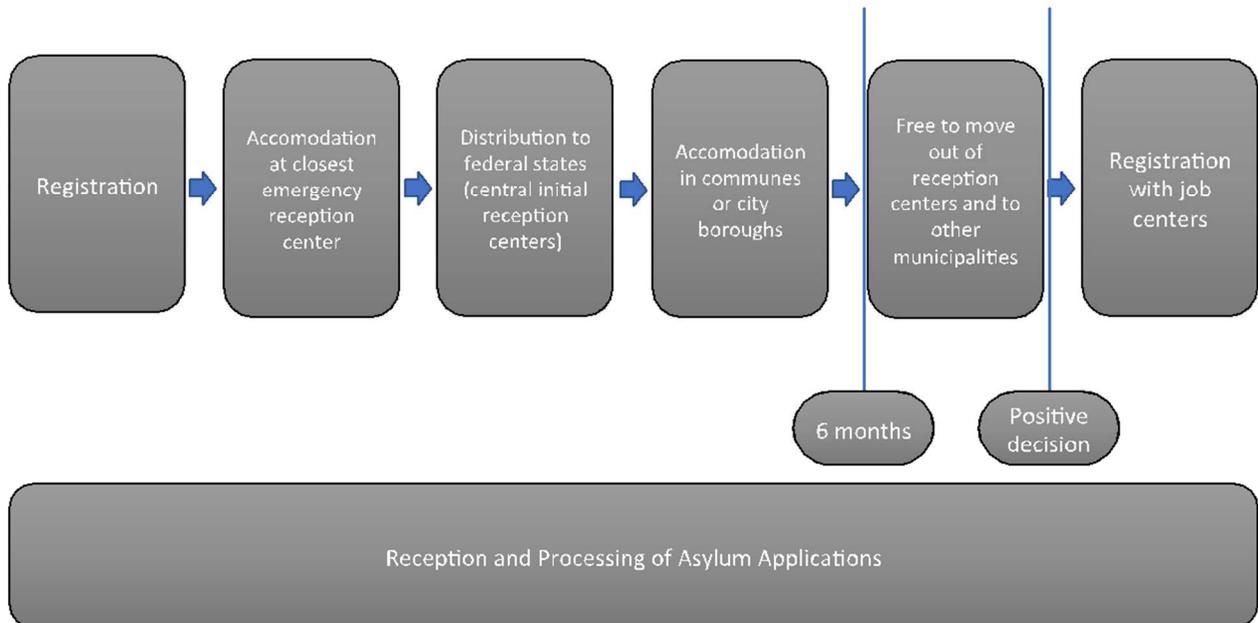
The Ban on Deportation applies only subsidiary when neither the right of asylum nor the refugee or subsidiary protections are applicable. Since this regulation is not based on European Law it’s also known as “national subsidiary protection”. Therefore in Germany a ban on Deportation is provided in two cases: According to Section 60 V and VII of the Act on Residence a foreigner may not be deported if deportation is inadmissible under the terms of the European Convention of Human Rights or when he/she faces a substantial concrete danger to his/her life and limb or liberty.<sup>43</sup> As long as Section 60 V refers to Art. 3 ECHR it overlaps with Section 4 I Nr. 2 of the Asylum Act.

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<sup>43</sup>BVerfG 80, 315 (333).

### 3.1 Application Procedures: Arrival, Registration, Reception Centres and Geographical Limitations

Fig. Process of Registration of Asylum Seekers in Germany



Source: AIDA

Authorities who are responsible if a foreigner crosses the border to enter Germany are the border authority (**Grenzbehörde**), the Federal Office (**Bundesamt für Migration und Flüchtlinge** – BAMF) and the police of the **Länder**. The border authority and police tasks and obligations are regulated in **Section 18 and Section 19 of the Asylum Act**. Therefore the border authority or the police shall take the foreigner’s photograph and fingerprints for identification measures and has the obligation to refer him/her requesting asylum with an authority charged with police supervision of cross-border traffic to the competent reception centre, or, if that is not known, to the nearest one, for the purpose of registration. In accordance with the Asylum Act, the Federal Office shall be responsible for measures and decisions taken under foreigners law. Therefore the Federal Offices tasks and obligations are regulated in Section 5 as well as Section 24 of the Asylum Act. According to Section 5 I the Federal Office shall decide on asylum applications. Hence, they shall clarify the facts of the case and compile the necessary evidence. After the application for asylum has been filed, the Office shall inform the foreigner in a language he can reasonably be supposed to understand about the course of the procedure and his rights and obligations as well as interview the foreigner (see **Section 24 I of the Asylum Act**).

Asylum seekers who arrive at an international airport without the necessary documents may be subject to the airport procedure (see Section 18a of the Asylum Act). The accelerated procedure, which has a potential total duration of maximum 19 days, is only implemented at airports which can accommodate asylum applicants on their airport complex (this is for Berlin-Schönefeld, Düsseldorf, Frankfurt/Main, Hamburg, Munich).

Unless entry is denied at the border or at the airport, a regular procedure usually takes place. Applications have to be filed at the Federal Office for Migration and Refugees (**Bundesamt für**

**Migration und Flüchtlinge**, BAMF). Every applicant over the age of fourteen must submit to measures establishing his or her identity and provide fingerprints, which are cross-checked with national and European databases such as **EURODAC** and the Visa Information System.<sup>44</sup>As part of the application process, information such as the country of nationality, number of people, sex, and family ties of the asylum seeker will be recorded with the assistance of the “**EASY**”-programme (**Erstverteilung von Asylbewerbern**, "Initial Distribution of Asylum-seeker"). This then determines to which Bundesland and reception center the refugee is sent. The first reception centres are run by the federal states where various processes such as registration, identity checks, interview and decision-making are streamlined in the same facility (**Section 22 of the Asylum Act**).

At the moment, a new type of reception centres, the so called “arrival centres” are being tested, whereas the idea is that the whole asylum procedure is taking place under “one roof” that means also, that all different agencies are concentrated there. Around **26 facilities** (operated by BAMF) are in the pilot scheme functioning as arrival centres (see table 6 for list of competencies of each agency).

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<sup>44</sup>The Visa Information System (VIS) is an IT system that allows Schengen States to exchange visa data. The main purpose of the VIS is to simplify the visa issuance process, facilitate checks at external borders and to enhance security for everyone involved, including applicants. The Schengen States' Visa Information System has been operational since 11 October 2011. (European Commission. Available at: [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system_en). Retrieved: 11/01/18).

**Table 6. List of Procedures and Competent Authorities**

Stage of the procedure	Competent authority (EN)	Competent authority (DE)
Application at the border	Border Police	Bundespolizei
Application on the territory	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)
Dublin procedure	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)
Airport procedure	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)
Refugee status determination	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)
Appeal · First appeal · Second (onward) appeal · Final appeal	Administrative Court (local) · High Administrative Court (regional) · Federal Administrative Court	Verwaltungsgericht · Oberverwaltungsgericht or Verwaltungsgerichtshof · Bundesverwaltungsgericht
Subsequent application (admissibility)	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)

Source: Adapted from AIDA

A foreigner shall request for asylum either in front of the border authority (according to Section 18 and 18a of the Asylum Act), in front of the foreigners authority as well as the police (Section 19 of the Asylum Act) or directly in a reception centre (**Section 21 of the Asylum Act**). After personal information is collected, an “arrival certificate” (see **Section 63a of the Asylum Act**) is given to the applicant upon arrival. This certificate, which exists since autumn 2015, was first called “BÜMA” (*Bescheinigung über die Meldung als Asylsuchender*) and changed its name in “Ankunftsnachweis” in the spring of 2016.

At the centre, a “**formal decision**” can also be made. These decisions represent cases, which are closed without an examination of the substance of the asylum claims (for example, because it is found that Germany is not responsible for the procedure or because an asylum seeker withdraws the application). Such decision and others can be subject to a **Revision** or an appeal on points of law before the **Federal Administrative Court**.

A **Secondary Application** can be made. Under **Section 71a Asylum Act**, this is a subsequent application submitted in Germany after the person has had an application rejected in a safe third country or a **Dublin Member State**.

After registration, applicants are assigned to a reception centre (*Aufnahmeeinrichtung*) where the BAMF branch office is located and where asylum seekers are assigned to reside.

According to **Section 20 I, 22 III of the Asylum Act** the foreigner shall make his/her application for asylum in the reception centre. Asylum seekers are obligated to stay in the district of the Federal State where they have been assigned for a maximum period of 6 months, pursuant to **Section 56 Asylum Act**. This **geographical restriction** is known as the “**residence obligation**” (*Residenzpflicht*). Derogations apply for applicants who are obliged to stay in initial arrival centres for the entire asylum procedure or up to 24 months. There is another type of obligation, the so-called **residence rule** (*Wohnsitzauflage*) which applies for recognized refugees during their first three years and that demands to reside in the Federal State where their asylum procedure was conducted, pursuant to **Section 12a Residence Act**.

**Additionally there are so called “transit centres”** (*Transitzentrum*) or “special arrival centres” (besondere Aufnahmeeinrichtungen) that combine reception and deportation facilities and where asylum seekers have to stay for a period of up to 24 months. This **applies to refugees with a low “perspective to stay” and whose recognition rates are below 50%, mostly asylum seekers from countries defined as “safe countries of origin”**. Four such centres exist in Bavaria at the moment (Bamberg, Manching/Ingolstadt, Regensburg and Deggendorf).

For unaccompanied minors a special reception regime is assigned led by the youth welfare office (see chapter 3.8.).

Applications for asylum are processed by the Federal Agency for Migration and Refugees – the BAMF. **Section 13 of the Asylum Act** defines the application for asylum as follows. **The following conditions apply.**

1) An asylum application shall be deemed to have been made if it is clear from the foreigner’s written, oral or otherwise expressed desire that he is seeking protection in the federal territory from political persecution or that he wishes protection from deportation or other removal to a country where he would be subject to the persecution defined in Section 3 (1) or serious harm as defined in Section 4 (1).

2) Every application for asylum shall constitute an application for recognition of entitlement to asylum and to international protection within the meaning of Section 1 (1) no. 2. The foreigner may limit the application for asylum to the application for international protection. He shall be informed of the consequences of such limitation. Section 24 (2) shall remain unaffected.

3) Any foreigner who does not have the necessary entry documents shall apply for asylum at the border (Section 18). In the case of unauthorised entry he shall immediately report to a reception centre (Section 22) or apply for asylum with the foreigner’s authority or with the police (Section 19).

**Section 14 AsylG outlines the application procedure.** After application, the asylum seekers will receive a temporary residence permit for the duration of their asylum procedure. **Section 16 AsylG** states that every refugee’s identity must be recorded. Only children under the age of 14 are exempt from this rule.

Holders of a temporary residence permit are not allowed to work within the first 3 months after receiving the permit. After this time, they are allowed to apply for a work permit, which can be granted by the federal agency. However, holders of temporary residence permits will only receive secondary access to the labour market. However, in the reception facilities, applicants are provided

with essential items like food, housing, heat, clothing, health care, and household items in kind or in the form of vouchers. Persons who are housed outside of reception facilities primarily receive cash allowances to purchase essential items – both on the basis of the Benefits of Asylum Seekers Act that sums up to around 359 Euro for a single adult. The rent, heating and basic furniture is additionally financed by the municipality. These provisions are the result of the verdict of the Constitutional Court of Justice that recently ruled on the minimal provision of asylum seeker benefits (**BVerfG, Judgement of the First Senate of 18 July, 2012 - 1 BvL 10/10**). Education for children, language courses and vocational training is not obligatory during the asylum procedure and varies between the municipalities and Länder. Mostly asylum seekers have to look for NGOs and civil society initiatives offering language courses or childcare for free.

According to **Art. 47 Abs. 2 S.2 EUGRCH/Art. 22AsylVfRL (RL 2013/32/EU)** asylum seekers have a right to an effective legal advice in the whole asylum process. An effective access to the law is one of the key elements in a state under the rule of law. . There is wide spread criticism especially by advocacy groups that the recent information practice by the BAMF violates these obligations. As a result there is no effective legal advice in the asylum procedure, respectively only for those who can afford a lawyer.

### 3.2 The airport procedure

In its 1996 decision the Federal Constitutional Court ruled that **the airport procedure is constitutional (BVerfGE 94, 166/195 ff.)**, but also stated that the asylum seekers have to be granted effective legal protection by the authorities. **With the amendment adopted in 1993 to Art. 16 GG and the reformulation of Art. 16a GG** the airport procedure was introduced. Without this procedure the Federal Police would have to permit anyone who entered Germany by plane and requests asylum because of the *non-refoulement principle* that is contained in **Art. 33 of the Geneva Refugee Convention and in Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**. Therefore this special procedure applies and is being carried out, when people attempt to enter the country by air and apply for asylum while they are still in the transit area. **The procedure, which is regulated in Section 18a of the Asylum Act**, has a potential **total duration of 19 days**. Since this procedure is operated subject to the principle of immediacy the **BAMF must interview the applicants within two days of receiving the asylum application**. It is then decided whether they are to be permitted to enter the country or the asylum application is to be rejected as “manifestly unfounded”. Following on from a rejection, they have three days’ time to submit an application for temporary legal protection to an administrative court. If the court approves the emergency application or has not ruled on it within 14 days, the asylum applicant may enter the country.

### 3.3 Processing the Application

Applications for asylum are processed by the Federal Office for Migration and Refugees (BAMF) According to section 10 of the **Asylum Act (AsylG)** asylum seekers are required to disclose any change in address to the aforementioned migration agency (BAMF) without delay for the entire course of their asylum in Germany; this also applies to any move that was dictated or enacted by the agency itself. The most important aspect in gaining asylum is the official hearing in front of the migration office. In the summer of 2015, the average processing time of an application for asylum was 5.4 months, as reported by the migration office (BAMF). However, experts like the national asylum rights organization PRO ASYL claim that the number is actually significantly higher, closer

to one year. The difference in these figures is said to be due to the fact that BAMF measures the processing time starting at the moment an asylum seeker files with the migration office; this can be many months after they enter the country. Furthermore, the office processes those applications that are easier to decide on more quickly, putting them in front of a pile of about 254,000 unprocessed applications.

### 3.4 Applications to be disregarded and “manifestly unfounded” applications

**Section 29 AsylG** constitutes that an application for political asylum has to be disregarded if the asylum seeker can be removed into a third country where he or she is safe from political persecution. **Section 29 AsylG** determines how to treat an asylum seeker from a safe country of origin: his application shall be rejected as manifestly unfounded, unless the facts or evidence produced give reason to believe that he or she faces political persecution in his or her country of origin in spite of the general situation there.

**Section 30 of AsylG** sets further terms about when an application has to be rejected as *manifestly unfounded* and Section 36 determines the following proceedings for these cases. An application that has been rejected as “manifestly unfounded” has a barrier effect as long as the rejection is justified by **Section 30 (3.1–6) AsylG**, since with regard to **Section 10 (3) Residence Act (AufenthG)** prior to leaving the federal territory no residence title can be granted. An exception is granted when an unsuccessful asylum seeker is otherwise entitled to a residence permit. One common example is when an asylum seeker joins a German family (**Section 28 (1) AufenthG**). The German Bar Association demands the second sentence of **Section 10 (3) AufenthG** be removed, because its barrier effect, which prevents refugees from receiving a permanent permission to stay, results in the office granting temporary residence permissions multiple times, despite integration efforts. Other arguments include that the section conflicts with European and international laws and is an unjustifiable discrimination compared to expelled foreigners.

### 3.5 False or incomplete information

**False or incomplete information that is given on the asylum application and any following inaccuracies can lead to significant consequences for the asylum seeker, according to Section 30 AsylG.** This especially concerns false identity information, which can make procedures like weddings, childbirth or targeted naturalisation more difficult or even impossible until correct information can be clarified. Additionally, if these **untrue personal details are also intentionally used apart from the application for asylum, criminal liability according to the Act on Residence (AufenthG)** can come into consideration. If the foreigner is able to clear up the facts after a successful application, the asylum which is based on incorrect or incomplete information will usually be considered for a possible revocation by the Federal Office for Migration and Refugees. Parallel to this procedure the authorities can, if necessary, make further decisions and can even disregard deception which was relevant for the right of residence or deception for the right of residence which was used a long time ago. The verification can, however, also lead to a deportation. In some federal states of Germany false or incomplete information can exclude a consideration of the Hardship Commission. Otherwise false or incomplete information for relevant questions for the decision can also lead according to the European secondary law to revoke or deny renewal of the legal status as a refugee.

### 3.6 Legal prosecution

If asylum seekers enter the country without the required visa they cannot be prosecuted for this action according to Article 31 of the Convention relating to the Status of Refugees, provided they present themselves to the authorities without delay and show good cause for their illegal entry or presence. Furthermore, a common legal opinion is that a clearly unfounded application for asylum does not automatically represent an abusive misuse of the law. This would only be the case if purposeful, abusive activity can be proven. Contrary to common belief, false or incomplete statements during the process of the asylum procedure are not immediately prosecutable. Furthermore, the residence act does not apply during the first asylum procedure. Thus, **punishment according to Section 95 (1.5) and Section (2) of the Residence Act does not apply in this case.** Asylum seekers will only be prosecuted in the following cases: If they used fake or falsified passports they could be prosecuted according to Section 267 StGB; also if they use falsified personal data in their residence permit. However, merely making false statements during the asylum procedure does not qualify as a criminal offence and is regarded as an administrative offence. The aforementioned criminal offences of the Residence Act can only be fulfilled if false statements are made and used in following lawsuits concerning the rights of foreigners. A decree released by the ministry of internal affairs and justice of North-Rhine Westphalia for example states that false or incomplete statements or the submission of false documents during official asylum procedures conflicts with public interest because it raises public expenses and could tend to encourage xenophobia and the formation of criminal organisations.<sup>45</sup> These actions shall in retrospect lead to expulsion according to Section 55 of the Residence Act. Also, since 1 November 2007, Section 96 (2.2) penalises the use of false identification documents with the goal of suspending deportation. Thus, false or incomplete statements will be punished with prison sentences of up to one year (Section 95 (1)) or three years (Section 95 (2)) according to the Residence Act. According to Section 84 and 84a tempting somebody to make false statements while applying for asylum is prosecutable as well.

### 3.7 Revocation procedure

Until 1 August 2015, the Federal Office for Migration and Refugees was legally responsible for checking that a positive decision was still valid no later than 3 years after the decision was made. One criteria for revising the decision would be a felony that was penalised with more than three years in prison or a crime against peace. If an infringement is found, the Foreigner's Registration Office reviews the claim to residency. Under certain circumstances, such as a complete lack of integration or a severe felony, the residency is ended. If the protection of the Federal Office for Migration and Refugees is not revoked, the refugee is granted a permanent residence permit. In practice, it has been granted to 95 percent of all refugees. **The renewal of the asylum law (*Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbestimmung*), which became effective on 1 August 2015 is supposed to cut efforts for the Federal Office of Migration and Refugees on individual assessments.** The Foreigner's Registration Office is allowed to grant the right to stay after three years, if the Federal Office of Migration and Refugees

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<sup>45</sup> ["Konzeption zur Bekämpfung missbräuchlicher Verwendung des Asylantragsrechts, Gemeinsamer Runderlass des Innenministeriums – IV D I/1 C-6592/2 und des Justizministeriums 4725 – III A-6 vom 1.8.1995"](https://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2015/08/konzeption_zur_bekaempfung_missbraeuchlicher_verwendung_des_asylantragsrechts_gemeinsamer_runderlass_des_innenministeriums_iv_d_ii_c-6592_2_und_des_justizministeriums_4725_iii_a-6_vom_1.8.1995.html)

[https://recht.nrw.de/lmi/owa/br\\_bes\\_text?anw\\_nr=1&gld\\_nr=2&ugl\\_nr=2051&bes\\_id=3158&val=3158&ver=7&sg=0&aufgehoben=N&menu=0](https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=1&gld_nr=2&ugl_nr=2051&bes_id=3158&val=3158&ver=7&sg=0&aufgehoben=N&menu=0)

does not give notice of an exceptional case that justifies the revocation of protection. Extensive individual assessment of applications of asylum with personal hearing which have been agreed on by the Conference of Ministers of the Interior in Koblenz on 3 December 2015 are part of the procedure since 1 January 2016: Applications from refugees from Syria, Iraq, Afghanistan and Eritrea are processed like that for safety reasons.

### 3.8 Rights and Duties Connected to Protection Status

Based on the section 25(2) of the residence act, persons with refugee status and beneficiaries of subsidiary protection have unrestricted access to the labour market under the same conditions as German citizens. Both groups are furthermore entitled to take up vocational training as well as school or university education, if their professional qualifications are recognized – which is often a practical obstacle to access the labour market and higher educational institutions. Generally, they can also receive support for the costs of living for the duration of training or studies under the same conditions as German citizens (AIDA 2017).

While asylum seekers are only provided with particularly low benefits during their ongoing asylum procedure, both refugees and beneficiaries of subsidiary protection are entitled to social benefits on the same level as German nationals. By law, they are entitled to the benefits directly after their recognition, however the actual payment can be delayed due to administrative reasons when the residence permit officially confirming their protection status (*Aufenthaltserlaubnis*) is not issued on time and individuals only hold the residence permit for asylum seekers (*Aufenthaltsgestattung*). Just as for German citizens, beneficiaries of international protection registered as unemployed can receive unemployment benefits by the employment agency or the job centre. This can include measures for integration into the labour market, language classes, job training measures etc. People who are not registered as unemployed for several reasons can turn to the Social Welfare Office (AIDA 2017).

Individuals who have been granted either asylum or refugee protection used to face no legal restrictions regarding their place of residence. However, since a legislative change in July 2016 also asylum seekers acknowledged under the German constitution law can be obliged to have a predetermined fixed abode under the ‘residence rule’ (*Wohnsitzauflage*). Likewise, the award of subsidiary protection is often accompanied by a *Wohnsitzauflage*. The respective individuals are – contrary to asylum seekers with residence obligation (*Residenzpflicht*) – free to travel within the Schengen zone. Since the legislative change, beneficiaries of protection are generally obliged to take up their place of residence within the Federal State in which their asylum procedures have been conducted. On the federal level, several states also enforce the obligation to reside in a specific municipality. Both restrictions are currently limited to a period of up to three years and can be lifted in specific cases. In case of subsidiary protection or a national ban on deportation, the *Wohnsitzauflage* is only imposed on individuals who are provided financially with social benefits.

### 3.9 Unaccompanied Foreign Minors: Some Legal Provisions

**While dealing with unaccompanied minors** Art. 24 of the Reception Conditions Directive 2013/33/EU<sup>46</sup>, Art. 25 of the Procedures Directive 2013/32/EU<sup>47</sup>, Art. 2 lit.I of the Qualifications

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<sup>46</sup><http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0033&from=DE>

<sup>47</sup><http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0032&from=DE>

Directive 2011/95/EU<sup>48</sup>, the Social Code VIII and §§ 12 and 14 of the Asylum Act. Art. 2 lit. I 2011/95/EU defines **“unaccompanied minors” as a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned**, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States. In accordance with this definition, children, adolescents and young adults under the age of 18 are regarded in the asylum procedure as being minors. If they enter Germany without being accompanied by an adult who is responsible for them, or if they are left there unaccompanied, they are regarded as unaccompanied minors.

If they entered Germany after the 1 Nov. 2015 they are taken into care by the youth welfare office that has the responsibility on the local level. **This ensures that they are accommodated with a suitable person or in a suitable facility.** Suitable persons can be relatives or foster families, whilst suitable facilities could be ‘clearing houses’ specializing in caring for minors, or youth welfare facilities. First, after provisionally taken into care the ‘initial screening’ is carried out, where the general examination of the state of health as well as the age of the unaccompanied minors is established. Methods are used for this range from simply estimating age through physical examinations to X-ray tests of the wrist, jaw or collarbone. The youth welfare office also estimates whether the implementation of the subsequent distribution procedure might endanger the child’s best interests in physical or psychological terms. The possibility of family reunification with relatives living in Germany is also examined in this context.<sup>49</sup>

It exists a nationwide distribution procedure, which is implemented within 14 days. After this distribution, the youth welfare office to which the minors have been assigned is responsible for the further proceedings. Next steps are the application for guardianship, the calculation of the need for education and clarification of the residence status. Regulated by legal provision a guardian must be appointed. Guardianship as a rule lasts until the minor attains majority and the Family Court decides who ultimately assumes the guardianship. Another important factor is that the age of majority is orientated towards the law in the minor’s country of origin and not towards German law. Therefore a minor does not attain the age of majority under this law until turning 18, the guardianship also does not end until this time.

However **since the national provisions apply to determining the age of majority within the asylum application, the minors once they have reached the age of 18 need to lodge their own asylum application, regardless of the law applying in their country of origin.** Minors aged under 18 are regarded as not having legal capacity within the asylum application. In such cases, the asylum application has to be filed in writing by the youth welfare office or guardian. If it is lodged by a guardian, a **“certificate of appointment”** needs to be forwarded. The following information regarding the minor is nonetheless helpful when it comes to simplifying the further organisation of the procedure: surname, forename(s), date of birth, or date of birth as ascertained in the age establishment, nationality, ethnicity and religious affiliation, place of birth, language knowledge, if possible the date of entry into the country.

**Since unaccompanied minors are regarded as a particularly vulnerable group of individuals enjoying special guarantees for their asylum procedure, their asylum**

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<sup>48</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>

<sup>49</sup><http://www.bamf.de/EN/Fluechtlingsschutz/UnbegleiteteMinderjaehrige/unbegleitete-minderjaehrige-node.html>. Retrieved 12/01/2018.

**applications are taken care of by specially commissioned case-officers.** Their procedural guarantees include for instance the determination that interviews do not take place until after a guardian has been appointed and are held as a matter of principle in the presence of the latter. Additionally an advisor (curator) can attend the interviews. The latter may also make statements on the individual case during the interviews or address questions to the minors, which are relevant to the asylum application. Particular emphasis is placed during the interviews on ascertaining whether there are indications of “child-specific ground for flight”. Child-specific grounds for flight are for instance genital mutilation, forced marriage, domestic violence, trafficking in human beings, as well as forced recruitment as a child soldier. A decision is taken on the respective asylum application on the basis of the interview. This notice is then served on the guardian or lawyer.

With more than 400 youth welfare associations as well as individuals’ one of the most important non-profit and non-governmental protagonists, the 1998 founded **Federal Association for Unaccompanied Refugee Minors (Bundesfachverband unbegleitete minderjährige Flüchtlinge)** advocates for the rights of displaced children, adolescents and young adults. They offer assistance to the young refugees as well as the legal guardians, social workers and the voluntary activists.

### **3.10 Immigration options for non-EU citizens**

In 2005, the Immigration Act was passed. The act replaces the Aliens act of 1990 and therefore was one of the most essential pieces of legislative reforms in the last decade. Its first version, which had been proposed by the bipartisan commission and which had sought to open legal avenues of migration beyond asylum had been invalidated by the constitutional court on procedural reasons. The renegotiated version stated as its aim to restrict and manage migration to Germany. Through the Immigration Act, the Act on Foreigners was replaced by an Act on Residence, which is currently in force and which simplified the available residence statuses, EU directives of the CEAS as well as the Blue Card Directive were transposed into national law, and integration was defined as a legal duty. Despite the restrictive nature of the Act on Migration, its passage marks the end of the debate whether Germany was a country of immigration. From now on, domestic migration policy would focus on integration measures. However, the most profound effect on the legal status of migration to Germany would be the two rounds of EU accession of Eastern European countries in the 2000s, automatically legalising the presence of up to a million persons in Germany.

Immigration to Germany as a non-EU-citizen is still limited to skilled workers (individuals with either a university or polytechnic degree or at least 3 years of training together with job experience), students and their immediate family members. Germany has 3 immigration options: Visas (validity of up to 90 days), (temporary) residence permits, and settlement permits (permanent residence permits). Work permits, if granted, are no longer issued independently but included within the immigration title and are available for foreigners that either fall into one of the several available permit categories (IT specialists, company trained specialist within a group of companies, managing personnel, scientists, highly skilled workers with exceptional income, seasonal labour, contract labour, elderly persons-care etc.) or can prove a public interest in the employment. The categories and all requirements are listed in the ordinance on employment.

The former **Information Technology (IT) “Greencard program”** has been updated with a specific category within the ordinance on employment that allows IT specialists with a university or

polytechnic degree to migrate to Germany for employment. Self-employment requires either an initial investment of EUR 250,000 and the creation of a minimum 5 jobs or the support of the local chambers of commerce or similar organizations that confirm the business plan's socioeconomic value for the region. After obtaining a university degree in Germany, foreign students may stay for one additional year to find a job that matches their qualifications. Plans were discussed in 2009 to open the labour market for all foreigners holding a university degree that have a specific job offer and for all graduates of German schools, including those located abroad. Any person married to a German citizen or being a parent of a German minor may immigrate to Germany. Immigrants need to be either enrolled in a school or university, have a specific job offer that fits the requirements of one of the work permit categories or intend to reunify with close family (spouse or minors) already residing in Germany (family reunification visa).

### **3.11 Business Visas**

Business visas are available for 90 days within every 6 months. Although it is possible to act as managing director, teacher, university scientist, sportsperson, actor, model or journalist on the basis of a business visa, businesspersons may only attend contract negotiations and buy or sell goods for an employer abroad. All other economic activity is considered work and must not be performed on the basis of a business visa. Germany is offering two different types of work or business visa categories: employment visa and self-employment visa.

### **3.12 Student Visa**

There are student applicant visas and student visas. The former can be applied for when the admission to a university is not yet completed, and lasts for three months, which can be extended up to six months. When a student visa is granted, the application for an extended residence permit should follow at the respective university office. This is relevant for non-EU citizens and all students who intend to stay longer than 90 days. While applying for a German national visa it is necessary for foreign student prepare in advance with documents that need to be submitted. In general, public German universities don't charge tuition fees. This usually also applies to foreign students. The German Academic Exchange Service (DAAD) provides support for international students and academic cooperation. After graduating, citizens of the EU or the European Economic Area (EEA) have free access to the German job market. Graduates from other countries can extend their residence permit for up to 18 months to look for employment. While many employers prefer proper German-language skills, there is also a great variety of English-language and globalised jobs in Germany, especially in multinational companies, many start-ups and in research fields. According to a study of the Federal Office for Migration and Refugees (BAMF), around 54 percent of foreign students in Germany decide to stay after graduation.

### **3.13 Rights and Duties of Legally Resident Foreigners**

The frequent changes and new legislation on the law concerning foreign nationals have resulted in changes to the rights of foreign nationals regarding living and working in Germany. Any description of the rights and duties of legal foreigners living in Germany, however, must differentiate between foreigners who are EU citizens living in Germany and foreigners who are categorized as third country nationals (from countries beyond the European borders).

Every EU citizen has the right to take up and perform employment under the same conditions as a German national. Nationals of EU member states as well as nationals of the EEA (EU member states as well as Iceland, Liechtenstein and Norway) and their spouses are – as a matter of principle – treated on equal terms as German nationals (irrespective of their own nationality) in the pursuance of self-employed or employed work. The same applies to EU citizens who wish to reside in Germany for the purpose of looking for employment or vocational training. Therefore, citizens from all EU member states enjoy the unrestricted freedom of establishment, freedom to provide services and freedom of movement for workers. This also includes every EU citizen being able to enter Germany without a particular residence title on an unrestricted basis. The only requirement is to be in possession of a valid personal identity card/ passport, and register at the municipal office (*Bürgeramt*) should your stay last longer than three months (IHK 2017).

The most restrictive aspect of German immigration law is reserved to non-EU (Third Country Nationals) – those not applying for entry/residence under international protection/ asylum or having received refugee status. The frequent changes and new legislation on the law concerning foreign nationals (see amendments to the Residence Act made in 2017 for example) have resulted in changes to the rights of foreign nationals regarding living and working in Germany. The key provisions on residency are available in the “Law on Residence, Employment and Integration of Foreign Nationals in the Federal Republic (Residence Act - *AufenthG*)<sup>50</sup>” as well as Immigration Law (*ZuwandG*) - hence here we offer only a very short description of some basic elements.

It suffices to say that in German law, there are two types of residence permits: temporary residence permit (*Aufenthaltserlaubnis*) and a permanent settlement permit (*Niederlassungserlaubnis*). The latter can be an unrestricted residence permit (*unbefristete Aufenthaltserlaubnis*) or an establishment permit (*Aufenthaltsberechtigung*). As first admission is always for a limited period of time, the unrestricted residence permit and the establishment permit are only issued after a period of lawful residence in Germany on the basis of another residence document. According to the Residence Act<sup>51</sup> a foreigner shall be granted a permanent settlement permit if:

1. he/she has held a temporary residence permit for five years,
2. his/her subsistence is secure and if he/she has paid compulsory or voluntary contributions into the statutory pension scheme for at least 60 months or furnishes evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company; time off for the purposes of child care or nursing at home shall be duly taken into account,
4. granting such a temporary residence permit is not precluded by reasons of public safety or order, according due consideration to the severity or the nature of the breach of public safety or order or the danger emanating from the foreigner, with due regard to the duration of the foreigner’s stay to date and the existence of ties in the federal territory,
5. he/she is permitted to be in employment, if he/she is in employment,
6. he/she possesses the other permits required for the purpose of the permanent pursuit of his economic activity,
7. he/she has sufficient command of the German language,

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<sup>50</sup>Residence Act in the version promulgated on 25 February 2008 (Federal Law Gazette I p. 162), last amended Article 10 (4) of the Act of 30.10.2017 (Federal Law Gazette I p. 3618)

<sup>51</sup> Refer to section 9 of the Act. Available at: [http://www.gesetze-im-internet.de/englisch\\_aufenthg/englisch\\_aufenthg.html#p0010](http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0010). Retrieved 05/06/2018.

8. he/she possesses a basic knowledge of the legal and social system and the way of life in the federal territory and

9. he/she possesses sufficient living space for himself and the members of his family forming part of his household.

Whether third country nationals have a temporary residence permit or an unrestricted residence permit, third country nationals resident in Germany are excluded from participation in all elections at federal, Länder and municipal level. The constitutional court (*Bundesverfassungsgericht*) has held, that the principles of democracy do not allow the legislator to grant these persons the right to vote, as they are not part of the nation's people (*Staatsvolk*). In German law the right to family reunion for third country nationals (spouses and children) depends, apart from other conditions such as sufficient income and housing, on the residence status of the principal. Other family members may only be admitted in case of extreme hardship (*außergewöhnliche Härte*)<sup>52</sup>.

Once a third country national has obtained an establishment permit, he or she has free access to the labour market and no longer needs a labour permit. Having an unrestricted residence permit only grants free access to the labour market after six years of lawful residence on the basis of a time-limited residence permit or if the person was born in Germany. Family members of a third country national holding an unrestricted residence status, who have not yet obtained that residence status themselves, need a labour permit, which can be refused on labour market grounds, e.g. there are German or EU citizens or other privileged foreign residents available for the job. Currently, in certain regions these family members may be excluded from all employment.

Third country nationals who hold an unrestricted residence permit or an establishment permit have access to social security benefits on the same conditions as German nationals. Social assistance is also granted to third country nationals. However, it may be a ground for withdrawal of a temporary residence permit, not of the two unrestricted residence documents.

### **3.14 Rights and Duties of Undocumented Migrants**

According to an in-depth report on the situation of undocumented migrants in Germany produced by the BAMF (see Sinn et al. 2005), "A fundamental dilemma linked to illegal residence is that illegally resident migrants indeed have rights concerning the access to social benefits, but that they don't claim them as they have to fear legal consequences. This concerns the access to social services, health care, education and legal protection" (p. 77).

As a consequence, the rights of undocumented resident migrants in Germany is diluted into the good will work of non-governmental actors (NGOs and charities). They often live under precariously conditions with insufficient medical care, poor quality housing and a high probability of being exploited. More problematic is that school attendance of illegally resident children is not ensured given all the problems cited earlier. As the BAMF report makes clear: "Concerning the views of governmental and non-governmental actors on this problem, conflicting priorities between a human rights and a state-control position become apparent" (ibid.).

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<sup>52</sup>For more on family unification of third country nationals, we suggest a comprehensive focus-study by the German National Contact Point for the European Migration Network (EMN) that focus specifically on that issue (see Grote 2015).

## 4. Political Organization and the Constitutional Entrenchment of the Principle of Asylum and Immigration Law in Germany

In order to understand the place of asylum and immigration law in Germany, we do well to first grasp the basic political organization of the country.

Germany is a federal parliamentary, representative democratic republic. Its political system operates under a framework laid out in the 1949 constitutional document known as the **Grundgesetz (Basic Law)**. Amendments to the law generally require a two-thirds majority of both chambers of parliament; the fundamental principles of the constitution, as expressed in the articles guaranteeing human dignity, the separation of powers, the federal structure, and the rule of law are valid in perpetuity (Deutsche Bundestag, 2014)<sup>53</sup>.

The president is the head of state and invested primarily with representative responsibilities and powers. He is elected by the **Bundesversammlung (federal convention)**, an institution consisting of the members of the **Bundestag** (the parliament) and an equal number of state delegates. The second-highest official in the German order of precedence is the **Bundestagspräsident (President of the Bundestag)**, who is elected by the *Bundestag* and responsible for overseeing the daily sessions of the body. The third-highest official and the head of government is the Chancellor, who is appointed by the **Bundespräsident** after being elected by the *Bundestag*.

The chancellor is the head of government and exercises executive power, similar to the role of a Prime Minister in other parliamentary democracies. Federal legislative power is vested in the parliament consisting of the **Bundestag (Federal Diet) and Bundesrat (Federal Council)**, which together form the **legislative body**. The *Bundestag* is elected through direct elections, by **proportional representation** (mixed-member). The members of the *Bundesrat* represent the governments of the sixteen federated states and are members of the state cabinets (Bundesregierung, 2018)<sup>54</sup>.

The government is elected through a party system that since 1949 has been dominated by the **Christian Democratic Union (CDU/CSU)** and the **Social Democratic Party of Germany (SPD)**. Hence, every chancellor has been a member of one of these two parties. However, the smaller liberal **Free Democratic Party** (in parliament from 1949 to 2013) and the Alliance ,90/The Greens (in parliament since 1983) have also played important roles. In the German federal election, 2017 **Alternative für Deutschland (AFD)**, a right wing populist party gained enough votes to attain representation in the parliament for the first time and become the third-largest party in Germany. This rise in the far-right in Germany has been partly attributed to the increasing numbers of refugees and migrants to the country over the past decade.

As laid down in its constitutional Basic Law, the Federal Republic of Germany is a democratic and social Federal State (**Art. 20 I GG**). Thus, policy formation and the enactment of laws and regulations take place within a political system, in which legislative and executive powers are divided between the Federation and the 16 Federal States (**Bundesländer** or **Länder**). In principle the Länder have the legislative power, unless the power is granted to the Federation by basic law

<sup>53</sup> Available at <https://www.btg-bestellservice.de/pdf/80201000.pdf>. Retrieved 11/01/2018.

<sup>54</sup> Available at <https://www.bundesregierung.de/Content/EN/StatischeSeiten/breg/federal-government-function-and-constitutional-basis-structure-and-tasks.html>. Retrieved 11/01/2018.

**(Art. 70 I GG).** The basic law distinguishes between exclusive and competing legislative competence **(Art. 70 II GG)**. Each of the individual Länder has its own constitution and government, which is responsible to an elected parliamentary assembly. Accordingly, administrative responsibilities in the area of migration and asylum are strongly intertwined and distributed among the federal, state and municipal levels (cf. section 2.3), in fact constituting a three-tiered executive structure 2004/2005 Immigration Act, (cf. Rudzio 2006: 319 in Schneider 2012).

In principle, the Länder have the legislative power, insofar the Basic Law does not confer legislative power on the **Federation (Art. 70 I GG)**. Therefore the Basic Law distinguishes between exclusive and competing legislative competence **(Art. 70 II GG)**. On matters within the exclusive legislative power of the Federation, the Länder shall have power to legislate only when and to the extent that they are expressly authorized to do so by a federal law. While on matters within the concurrent legislative power, the Länder shall have power to legislate so long as and to the extent that the Federation has not exercised its legislative power by enacting a law. According to **Art. 71 in conjunction with Art. 73** the Federation has the exclusive power with respect to citizenship, freedom of movement, passports, residency registration and identity cards, immigration, emigration and extradition. While according to **Art. 72 in conjunction with Art. 74** concurrent legislative power extends the law relating to residence and establishment of foreign nationals as well as matters concerning refugees and expellees.

Beyond the level of federal acts, several legal and administrative provisions on federal or state levels prevail. Art 83 GG states that the Länder shall execute federal laws in their own right insofar as the Basic Law does not otherwise provide or permit. Therefore, in principle, administrative enforcement lies within the responsibility of the Federal States. Furthermore, where the Länder execute federal laws in their own right, they shall provide for the establishment of the requisite authorities and regulate their administrative procedure (Art. 84 I GG). As administrative enforcement lies within the responsibility of the Federal States, emphasis is placed on processes of consultation and cooperation, which inter alia take place within the Standing Conference of the Federal States' Ministers and Senators of the Interior. Areas of migration and asylum policy that were more or less totally delegated to the Länder are accommodation and reception policies, education, health and social policies such as integration.

The executive authorities may adopt statutory ordinances, administrative regulations or articles of incorporation in order to regulate the administrative procedure. Considering the legislative hierarchy ordinances as well as administrative regulations are below the existing federal laws. Therefore a power to issue statutory instruments is required. According to Art. 80 I GG the Federal Government, a Federal Minister or the Land governments only may be authorized by a law to issue statutory instruments. Further the content, purpose and scope of the authority conferred shall be specified in the law as well as each statutory instrument shall contain a statement of its legal basis. Any further sub-delegation shall be effected by statutory instrument (for a concrete example, see case study below).

#### **Example of the multi-level governance system: Accommodation and reception**

The accommodation of refugees in the German territory is delegated to the **Länder** and further to the city level. Example of Lower Saxony: With the Lower Saxony Housing Act of 2003, the federal state of Lower Saxony withdrawn completely from the responsibility for communal accommodation and care, handing over the responsibility to the municipalities without clearly

defining standards or further directions. In this respect, municipalities do have great power of action and decision-making but are at the same time under extreme financial pressure. Until a few years ago, the per capita lump sum, which the state of Lower Saxony paid to the local authorities, was under 5,000 euros per year pro refugee, which had to suffice to provide housing and care for the refugees, had to be completely covered by the municipalities. In the last four years, a significant increase took place when in 2017, the municipalities began to receive 10,000 euros per person.

Asylum seekers who are moved to Lower Saxony are “distributed” to a residence period of up to six months to one of the six initial reception centres of the State Reception Office (**Landesaufnahmebehörde** - “**LAB**” for short). The LAB facilities have an average capacity of about 400 people each. In addition to these large accommodation complexes, emergency shelters such as gymnasiums, warehouses and tents have also been set up in recent years, due to increased numbers of refugees. After a period of officially three weeks, up to a maximum of six months, people are distributed among the municipalities. At the municipal level most cities had set up own local accommodation policies whereas before 2015 there was a high proportion of decentralized housing (about 83% 3) (see Wendel 2014: 71 cited in Elle and Hess 2017: 4). The Refugee Council for Lower Saxony is currently assuming a housing rate of less than 70% whilst the quantity and quality of housing and care-provisions changed significantly since 2015 with the set up of large scale community accommodation centers, called “Gemeinschaftsunterkunft”.

## 4.1 Constitutional entrenchment of the principle of asylum

**The right of asylum for persons persecuted on political grounds is a basic right stipulated in Art. 16a GG.** Since the origins rely on the lessons learned from the time between 1933 and 1945, when persons persecuted on political and racial grounds faced considerable difficulties to find refugee protection, the right is understood to **protect asylum seekers from deportation and grant them certain protections under the law.** In a wider sense, the right of asylum recognizes the definition of “refugee” **as established in the 1951 Refugee Convention in the form of the 1967 protocol.** Furthermore the term “refugee” must be interpreted in the sense of **the 2011/95/EU directive.**

Generally, these protection is a part of the asylum procedure itself and are verified by the **Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge - BAMF*)** without any further application. In 1993 and 2015, the initially unlimited right of asylum was revised in essential points and also limited as outlined in previous sections.

The utmost important function in policy formulation in the field of migration and asylum lies with the Federal Ministry of the Interior (BMI). The Federal Office for Migration and Refugees (BAMF) and the Federal Police (BPol) as subordinate authorities to the BMI are responsible for the majority of operative tasks on the federal level; other essential actors within the realms of administration and management of procedures are the Foreigners Authorities of the Federal States (regarding residence), the federal Employment Agency (regarding access to the labour market) and the Diplomatic Missions (regarding visa issuance). Furthermore, the spectrum of other actors engaged in asylum and migration policies has continuously broadened over the past few years. In addition to a growing number of non-governmental organisations, particularly the areas of migration research and policy advice have gained increased attention.

## 4.2 Organisation and Administration of Asylum and Migration Policies

Depending on the particular purpose of entry or residence, based on the **Residence Act**, various authorities are in charge of organisation and administration. More recently, it was predominantly in the area of visa and border management that a number of actions were taken in order to preclude illegal entries, respectively. Thus, particularly German Diplomatic Missions, border and security authorities, Foreigners Authorities and the BAMF are collaborating closely. Furthermore, expulsions have been facilitated through the introduction of additional facts of the matter; it is e.g. at the authorities' discretion to issue an expulsion order in case of certain acts which are particularly detrimental to integration. Upon entry, the municipal Foreigners Authorities are generally the competent administrative bodies for all residence- and passport-related measures and rulings. If, however, an asylum seeker reports to the border agency and is entitled to enter the country, he or she is then transferred to the nearest initial reception centre; thus, the BAMF takes over processing the asylum claim.

Over the past few years, the country has implemented important European acts of asylum legislation such as the **Dublin II Regulation** or the **Qualification Directive**. Likewise, in the area of immigration, changes in organisational responsibilities have been induced by EU-legislation. The 2007 Directives Implementation Act transposed a total of eleven European directives.

By introducing a one-stop-system, the dual authorisation procedure for residence (by the Foreigners Authority) and employment (by the Federal Employment Agency) has been replaced with one concentrated administrative act. Thus, the local Foreigners Authorities has become responsible for issuing residence titles and is now the primary (and only) location for all decisions regarding third country nationals' residence. Only in case of required assent for a certain occupation, the Federal Employment Agency is consulted by means of an internal procedure and then examines the prerequisites according to the law.

## 4.3 Infringement Procedures by the EU Commission against Germany

In September 2015, the Commission sent a letter of formal notice to 18 member states, including Germany, for having failed to fully transpose the revised Asylum Procedures Directive (2013/32/EU) into national law. The Asylum Procedure Directive sets EU-wide standards for common procedures of asylum application as well as granting and withdrawing international protection (European Commission 2015).

Furthermore, Germany was addressed in 2015 as one of 19 member states for a failure to fully transpose the updated Reception Conditions Directive (2013/33/EU). The directive determines common minimum standards concerning reception conditions of asylum seekers with regards to housing, food, health care and employment, as well as medical and psychological care and restricts detention of minors and other vulnerable groups (European Commission 2015). The 'Informationsverbund Asyl und Migration' (AIDA) and ECRE noted about Germany that "there is no requirement in law or mechanism in place to systematically identify vulnerable persons in the asylum procedure, with the exception of unaccompanied children" (AIDA 2017, p.42). They criticized that the procedure to determine vulnerability significantly varies in the different federal states of Germany and that information about vulnerability is not sufficiently forwarded to the national agency BAMF. Following a recent study on procedural safeguards for traumatized and mentally ill (Hager, Baron 2017) they argue that "identification procedures in Germany have been generally described as 'a matter of luck and coincidence'" (AIDA 2017, p.42).

In September 2016, the German government was furthermore among 14 other member states formally notified about its inadequate transposition of the Directive 2013/55/EU on the recognition of professional qualifications into German law. The directive aims at accelerating recognition procedures to allow qualified personal from EU member states to work in other EU countries (European Commission 2016).

#### 4.4 Links to other Policy Areas

**Asylum and migration in Germany are rightly termed cross-sectional topics**, as they are connected to numerous other policy areas in various respects. The most striking overlaps can be perceived with regard to integration policy; key aspects of integration such as language and integration courses are directly regulated in the **Residence Act**. Apart from integration, labour market and health policies, migration policy is increasingly intertwined with development policy, e.g. in the area of assisted return. But also other areas such as security policy and anti-discrimination policy are not to be neglected in that respect. Furthermore, strong points of reference to other specialised policy domains and a generally broad topical inclusion of migration and asylum policies become evident in parliamentary affairs of the German Bundestag. All important draft bills in asylum and immigration law are normally deliberated upon in the leading Parliamentary Committee on Internal Affairs, and in most of the times also discussed in the Committees on Legal Affairs; Labour and Social Affairs; Education, Research and Technology Assessment; Foreign Affairs; Family Affairs, Senior Citizens, Women and Youth; as well as Human Rights and Humanitarian Aid.

#### 4.5 Independence and structure of the judiciary and its role in the interpretation and definition of laws and policies on asylum

**Art. 19 IV GG** provides that any person have recourse to the courts, if his/her rights should be violated by public authority. This principle of effective legal protection (*Rechtsschutzgarantie*) protects every person's rights towards the authorities and guarantees that authority actions can be reviewed by independent courts. This is due to the fact that according to **Art. 20 III GG** and **Art. 97 I GG** courts and judges shall be independent and subject only to the law. In asylum law related cases foreigners have to take legal action in front of the administrative courts. The respondent is the Federal Republic represented by the Federal Office (BAMF).

The German legal system draws from the European codified civil law tradition. Its Civil Code was developed in the late nineteenth century, and has served as a template for other civil law jurisdictions. The judicial power in Germany is exercised by the Federal Constitutional Court (*Bundesverfassungsgericht*), by the federal courts provided for in the basic law, and by the courts of the Länder (**Art. 92 GG**). The Federal Constitutional Court is both a court and a constitutional organ. The courts sole duty is to ensure that the Basic Law is obeyed. In this function the Court helped to secure respect for and effectiveness of Germany's free and democratic basic order. Its decisions are final and all other government institutions are bound by its case-law. The court is based in Karlsruhe and is divided into two chambers (Senate) each of them with eight judges. According to **Art. 94 I GG** half of the 16 judges of the Court shall be elected by the Bundestag and half by the Bundesrat. As a consequence from the separation of powers, the judges are not allowed to be members of the Bundestag, Bundesrat, the Federal Government, or any of the corresponding bodies of the Land. Each Senate has its own, in **Section 14 Act** on the

Federal Constitutional Court (***Bundesverfassungsgerichtsgesetz - BVerfGG***) precisely defined competences. In principle, the first Senat shall be competence for judicial review in proceedings in which the main issue is the alleged incompatibility of a legal provision with the basic rights as well as for constitutional complaints concerning the basic rights. While the second Senat has its main function in adjudicate competence disputes within the different constitutional organs and between the Federation and the Länder. Pursuant to **Section 14 IV BVerfGG** the Court may change the allocation of the competences, if this becomes imperative due to a work overlaid of one of the Senates, which is not merely of a temporary nature. Especially because of its statutory competence for constitutional complaints, the first Senate's caseload would otherwise be considerably heavier than that of the second Senate. Therefore contrary to the statutory the second Senate currently has the competence for asylum related issues.<sup>55</sup> Although the Court is not a political body, its case-law has a wide impact on the political level. It could be said that the Court determines the constitutional framework within which politics may develop by its case-law. This becomes particularly clear when the Court declares a law to be unconstitutional. In this manner future legislation (changes) can be influenced directly or indirectly through Court decisions. One example for a case-law decision strongly affecting the situation of asylum seekers is the BVerfG Judgement of the First Senate of 18 July 2012.<sup>56</sup> It was decided that the amount of cash benefits paid according to § 3 of the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*) was insufficient because it had not been changed since 1993. The decision was based on Article 1.1 of the Basic Law (*Grundgesetz – GG*) in conjunction with the principle of the social welfare state in Article 20.1 of the Basic Law ensures a fundamental right to the guarantee of a dignified minimum existence. In effect this led to a significant amendment of the Asylum Seekers' Benefit Act (*Asylbewerberleistungsgesetz*) in March 2015.

#### 4.6 Constitutional Case-Law on Asylum

Apart from the Constitutional Court the judicial power in Germany is divided up into ordinary and special jurisdiction. While civil - as well as criminal courts are part of the ordinary jurisdiction - labour, social, patent, fiscal, and finally, administrative courts belong to the special jurisdiction. In general the competence with asylum related cases lies with the administrative courts (**Section 40 I Code of Administrative Court Procedure**). The social courts have the competence for cases concerning the **Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz - AsylbLG* / Section 51 I Nr. 6a Social Court Act)**.<sup>57</sup> In principle but with some (for asylum related cases) important exceptions, the administrative court procedure is three tiered: Administrative Courts (***Verwaltungsgerichte***) on the local level - Higher Administrative Courts (***Oberverwaltungsgerichte* or *Verwaltungsgerichtshöfe***) on the *Länder* level - Federal Administrative Court (***Bundesverwaltungsgericht***). According to **Section 45 VwGO** the local administrative courts (*Verwaltungsgericht – VG*) shall adjudicate at first instance.

In the second instance the Higher Administrative Court of each Land (***Oberverwaltungsgericht* or *Verwaltungsgerichtshof***) shall adjudicate on the rights of appeal on

<sup>55</sup>[http://www.bundesverfassungsgericht.de/SharedDocs/Downloads/EN/GV\\_Plenum/GV\\_Plenum\\_2015-11-24.pdf?\\_\\_blob=publicationFile&v=13](http://www.bundesverfassungsgericht.de/SharedDocs/Downloads/EN/GV_Plenum/GV_Plenum_2015-11-24.pdf?__blob=publicationFile&v=13)

<sup>56</sup> BVerfG, BvL 10/10 – paras. (1-113)

<sup>57</sup> Especially at the peak of arrivals of asylum seekers in Germany in 2015/16, the social courts played a crucial role, e.g. when the Regional Office for Health and Social Affairs Berlin (LAGeSo) was unable to provide accommodation and social benefits for all applicants. Many asylum seekers issued complaints against the LAGeSo before the social court.

points of fact and law against judgments of the administrative court and the complaint against other decisions of the administrative court (**Section 46 VwGO**). Apart this the OVG/VGH has several first instance competences (see. **Section 47, 48 VwGO**). However the Federal Administrative Court shall rule in appeals on points of law against judgements of the Higher Administrative Courts and appeals on points of law against judgments of administrative courts (**Section 49 VwGO**). As sole competent court it shall rule at first and last instance on regarding disputes against expulsion orders in accordance with Section 58a of the Residence Act and their implementation. Section 58a stated that the supreme Land authority may issue a deportation order for a foreigner without a prior expulsion order based on the assessment of facts, in order to avert a special danger to the security of the Federal Republic of Germany or a terrorist threat. The local administrative courts have to handle a large amount of asylum related cases. In the end of 2017 there were 372.443 pending cases in front of the 51 administrative courts (BT-Drs. 19/1371). At the same time the number of constitutional complaints and interim order applications in front of the Constitutional Court has increased up to 400 in 2017. The average duration of court proceedings in asylum related cases is approximately 7, 3 months (BT-Drs. 19/385, S. 33). The number of positive decisions is about 40, 8 % (BT-Drs. 19/1371).

#### **4.7 Legal Process in Asylum Cases**

In contrast to other administrative court proceedings there is no objection or administrative opposition procedure against a negative Federal Office decision/notice in asylum cases. Therefore a foreigner has two different possibilities: legal court action and emergency petition. If the foreigner decides to take court action in the first instance he/she has to appeal and lodge an enforcement action against the negative decision in front of the Administrative Court (see Section 74 of the Asylum Act). In the second instance, an appeal on points of fact and law can only be lodged if it has been admitted by the Higher Administrative Court (**see Section 78 II, III of the Asylum Act**). The third instance is the appeal on points of law (Revision) in front of the Federal Administrative Court. With the aim to accelerate the court processes in asylum cases, there is the possibility of a so-called leapfrog appeal directly from the administrative courts to the Federal Administrative Court, since 2017. Petitions e.g. against deportations can be presented before different institutions such as the hardship commission (Härtefallkommission) or the committee on petitions (Petitionsausschuss) of the federal state parliaments. The committee on petitions will examine the request and write a recommendation to the agency in charge. However, the respective agency is not bound to follow the recommendation (vgl. Classen 2017).

## 5. “Refugee Crisis” driven Reforms and Current Proposals: Amendments to Current Laws and new Legislation on Asylum

Several amendments to current laws have been adopted in recent years as a response to the events in 2015/2016. Hereinafter the major amendments and their most important implications are shown:

- On October 24, 2015, the ‘**Asylum Package I**’ or **Act on the Acceleration of Asylum Procedures** (*Asylverfahrenbeschleunigungsgesetz*) entered into force. With the amendment the Asylum Procedure Act (*Asylverfahrensgesetz – AsylVfG*) changed its name into Asylum Act (*Asylum Act – AsylG*). The Act amended several laws in order to accelerate the asylum process and is therefore a turning point in the asylum legislation: foreigners required to live for a period up to six month in the reception centre (§ 47 I AsylG; before: three months); designation of Albania, Kosovo and Montenegro as safe countries of origin (§ 29a AsylG; see. Annex II of the Asylum Act); foreigners from a safe country of origin shall be required to live in the reception centre until the Federal Office has decided on their asylum application (§ 47 IaAsylG); no work permission for foreigners from safe countries of origin during the asylum procedure (§ 61 II AsylG); substitute in-kind benefits for cash benefits for reception center residents; benefit cuts for foreigners who are obligated to leave the country; upon expiry of the period allowed for voluntary departure, the foreigner must not be informed of the date of the deportation (§ 59 I S. 5 AufenthG); integration courses for asylum applicants with a good prospect to remain.
- On August 1, 2015, the **Act to Redefine the Right to Stay and the Termination of Residence** entered into force. It amended the Residence Act by ordering a ban on entry and residence for applicants from safe countries of origin and in case of repeat follow-up applications. Furthermore, the Act grants a residence permit to persons who can prove that they are well-integrated after a period of eight years and to well-integrated minors after four years.
- On November 1, 2015, the **Act to improve the Housing, Care, and Treatment of Foreign Minors and Adolescents** entered into force. Its goal is to improve the situation of young unaccompanied minor refugees and provide them with appropriate care: distribution procedure for minors; legal regulation of the age determination.
- On February 5, 2016, the **Data Sharing Improvement Act** entered into force. Its goal is to register new arrivals more swiftly with a standardised recording of refugee data. Therefore asylum seekers are to be issued with a standardised refugee identity card. The Act also regulates the recording of other relevant information (e.g basic information like name, date and place of birth, as well as information about accompanying children, health checks and vaccinations, schooling and other qualifications).
- On March 17, 2016, the ‘**Asylum Package II**’ entered into force. In order to accelerate the asylum process it agrees on a set of stricter asylum measures, which has been debated by the German Bundestag: according to **§ 30a AsylG** swifter procedures for certain specified groups of asylum seekers come into force (safe countries; submitting a repeat request for asylum; asylum seekers who do not cooperate during the procedure); withdraw of the asylum procedure if the foreigner failed to pursue it (**§ 33 AsylG**); creation of new reception facilities; limitations on deportation bans (**§§ 60a IIb, § 60 VII S.2 - 4**);

suspense of the reunification for refugees entitled with subsidiary protection until March 2018 (**§ 104 Abs. 13 AufenthG**).

– Also on March 17, 2016 the **Act to Facilitate Deportation of Foreign Criminal Offenders** entered into force. In Response to the New Year’s Eve attacks in Cologne, the act make it possible to deport foreign criminals significantly faster. Therefore it provides for the deportation of foreign criminal offenders given a custodial sentence - irrespective of whether or not the sentence is suspended.

– August 6, 2016 the **Integration Act** entered into force. Its aim is to promote the integration: according to **§ 12a AufenthG** foreigners who have been recognised as being entitled shall be obliged to take up their place of residence for a period of three years in that *Land* to which they have been allocated for the purposes of their asylum procedure or in context of their admission process; foreigners who are in possession of a temporary residence permit in accordance with § 25 I or II S.1 first alternative, shall be granted a permanent settlement permit if they have been in possession of the temporary residence permit for three years, possess a good command of the language and their subsistence is for the most part ensured; suspension of deportation is to be granted if the foreigners begin or On have begun a vocational qualification in a state-recognised or similarly regulated occupation which requires formal training in Germany (**§ 60a II S. 4 AufenthG**).

– On July 20, 2017 the **Act to Enforce the Obligation to Leave the Country** entered into force: according to **§ 47 I AsylG** the *Länder* have the right to extend the stay in arrival centers up to 24 months; with the aim to determine a foreigners’ identity the BAMF may use his data carriers (e.g. smartphone); the youth office has the obligation to submit the asylum application immediately (**§ 42 II SGB VII**); introduction of a ‘leapfrog appeal’ in asylum cases (revision of the Administrative Court’s decision in front of the Federal Administrative Court).

– **Reform Proposals:** Currently the designation of Algeria, Morocco and Tunisia as safe countries of origin failed since the Bundesrat refused its consent. Likewise the planed reform on the youth welfare law in regard to benefit cuts for unaccompanied foreign minors (Social Code V) hasn’t implemented yet. However on EU-level a potential intended revaluation of the Directive 2013/32/EU into an ordinance could have an impact on the Asylum Act, since by then some provisions could not longer be applicable.

– **Act on the Acceleration of Asylum Procedures:** Substitution of Benefits in Kind for Cash Benefits: Before the recent changes, asylum seekers in a reception facility received essential benefits in kind and an additional cash allowance (pocket money) for personal use. The pocket money totaled €140 per month for a single adult or €126 per month for each of two adult recipients living in a common household. According to the amendment, refugees and asylum seekers in reception facilities now only receive essential items like food, housing, heat, clothing, health care, and household items in kind or in the form of vouchers. Items for personal use are also provided in kind, but states retain discretion to provide refugees and asylum seekers with cash if necessary. Cash allowances cannot be disbursed more than one month in advance.

– Asylum seekers who are housed outside of reception facilities primarily receive cash allowances to purchase essential items. A single adult recipient receives €216 per month; two adult recipients with a common household each receive €194 per month; other adult

beneficiaries without a household, €174 per month; adolescents between fifteen and eighteen years old, €198 per month; children between seven and fourteen years old, €157 per month; and children up to six years old, €133 per month.

– **Reduction of the Financial Burden of German States and Municipalities:**

Currently, the municipalities that receive refugees and asylum seekers pay for their essential needs and are reimbursed by the German states. Starting in 2016, the federal government will pay the German states €670 per asylum seeker per month, until the asylum procedure has been concluded, in order to reduce the financial burden on the German states. The federal government will therefore allocate a provisional sum of approximately €2.8 billion (about US\$3.1 billion) to the states. The sum is only an estimate and will be adjusted as needed at the end of 2016. The allocation is based on the assumption that there will be around 800,000 applicants for asylum, with an average processing time of five months, and around 400,000 denied applications, for which the states will receive another month's worth of compensation. The allocation also includes money to cover expenses for unaccompanied refugee minors.

– **Safe Countries of Origin:** The Act on the Acceleration of Asylum Procedures designates Albania, Kosovo, and Montenegro as safe countries of origin and adds them to the list contained in appendix II of section 29a of the Asylum Act. The designation as a safe country of origin allows the accelerated processing of applications from asylum seekers from these countries, because there is a presumption that the application is manifestly without merit. In such a case, the applicant has only one week to leave the country instead of the usual thirty days.

– **Integration Classes and Employment:** The Federal Employment Agency assumes the costs for integration and language classes for asylum seekers whose applications are likely to be approved, in order to improve their chances in the job market and accelerate their integration into Germany.

– **Housing for Refugees:** The Act on the Acceleration of Asylum Procedures also dispensed with some building code and renewable energy law requirements, in order to facilitate and accelerate the building of new accommodations and the repurposing of existing facilities to provide housing for refugees. There are only few provisions concerning accommodation on EU level. According to **Art. 12 Asylaufnahmerichtlinie (RL 2013/33/EU)** states shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the state concerned. According to **Art. 18 Abs. 2 - 4** gender- and age related measures have to be considered. There is a right of livelihood security which contains the right of a humanely accommodation. The **Länder** have different systems of accommodation responsibility (one,-two or three stages).

– **Support for Unaccompanied Refugee Minors:** Under current rules, the youth office in the district in which an unaccompanied minor arrives is obligated to take him or her into its care. Some local communities in central arrival locations are therefore disproportionately affected. In order to distribute the burden evenly, the Act to Improve the Housing, Care, and Treatment of Foreign Minors and Adolescents created an obligation for all German states to receive unaccompanied refugee minors. Refugee minors will be distributed throughout Germany by the local youth office according to the quota system,

***Königsteiner Schlüssel.*** In addition, the age of legal capacity to act in an asylum procedure was raised from sixteen to eighteen years. That means that every asylum seeker under the age of eighteen is provided with a legal guardian to act on his or her behalf and to handle the complex asylum procedure.

## Conclusion

### The Past and the Present: Germany as a “reluctant” immigration country

Germany as a “reluctant” immigration country: Germany has been an immigration country ever since the 19th century. After World War II it saw several considerable “waves” of immigration (e.g. expellees from the former German territories in the East, labor migrants in the 1960s and refugees since the 1980s). Even though its immigration history makes Germany a de facto immigration country, migration policy making has for a very long time been defensive and erratic. The very term “guest workers” for the early labour migrant indicates that the right to stay is transitory and based on appropriate behaviour. It purports an asymmetric understanding of hospitality and stands exemplary for a human capital centered strand of the public discussion of immigration which is also prevalent in actual debates on refugees compensating for a lack of skilled workers.

### Federation, Länder, Municipalities

As a consequence, policy measures have so far been defensively aimed at keeping and/or relocating (potential) immigrants either in their countries of origin or third countries. The so called repatriation grant (Rückkehrprämie) and other monetary incentives to leave as well as the actual development of incorporating migration as an issue of foreign and developmental policy may serve as paradigmatic examples of this strategy. The strong federal structure of Germany fosters an incoherence of migration policies and practice within and across different levels of migration governance (national, Länder, municipalities). Border management and protection (e.g. Asylum application) are national responsibilities, whereas reception and integration (in the terminology of RESPOND) are in the general responsibility of the Länder and in the organizational responsibility of the municipalities. Länder and municipalities differ remarkably in terms of reception practice (e.g. central vs. decentral housing, Wohnsitzauflage, monetary vs. material allowances).

### Europeanization & Restriction

We can also ask the question: What are the repercussions of the German case for Europeanization in Germany, as in many other European countries, immigration is part of the European *Arbeitnehmerfreizügigkeit*, particularly from Bulgaria and Romania, and the recent immigration of refugees are closely linked in the public perception. As a consequence, a restrictive stance to immigration has become part of a broader anti-European policy agenda, which is being promoted by new political movements and parties.

Apart from this, the standards for reception and procedural guarantees for asylum seekers set by the European Union are not ensured in Germany. This is exemplified by the infringement procedures of the EU Commission against Germany. In several cases, the European Commission found that Germany did not live up to the European Union’s standards regarding the treatment of migrants/asylum seekers regarding the asylum procedure, the reception conditions through a failure to transpose EU directives into national legislation.

Especially the many amendments the last three years have not only led to a new confusion also by lawyers but increased the legal vulnerability and insecurity of asylum seekers in respect of their right to information and legal advice especially due to the acceleration of asylum procedures and the expansion of the period in the so called arrival centers up to 24 months; in respect of their bodily integrity being affected by the generalisation of mass accommodation without proper legal precautions defining minimum housing standards that is particularly worrying in respect of missing

legally binding protection standards against all forms of (sexualized) violence against vulnerable groups as well as missing clearing procedures.

### **Cultural and Religious Landscape**

We can also discuss the changes in the cultural and religious landscape that tend to be asked with regards to asylum. Change in the religious immigration pattern: from Christian to Muslim majority goes along with a rising awareness of religion as a marker of cultural difference. Ambivalent reactions of the “old” immigrant to the “new” ones: high proportion of people with a migration background (particularly Muslims) in refugee aid suggest that the so-called “refugee crisis” can activate the civic potentials of “old” immigrants. At the same time we see hesitations and counter-mobilization by some factions of Russian-German and Turkish immigrants.

## Appendices I & II

Annex I: Overview of the Legal Framework on Migration, Asylum and Reception Conditions				
Legislation title and number	Date	Type of law	Object	Web Link
Grundgesetz für die Bundesrepublik Deutschland, Art. 16 (Basic Law for the Federal Republic of Germany, Art. 16)	23.05.1949	Constitution	Right to Asylum	<a href="https://www.gesetze-im-internet.de/gg">https://www.gesetze-im-internet.de/gg</a>
Asylbewerberleistungsgesetz (Benefits for Asylum Seekers Act)	30.6.1993	Legislation	social security benefits to asylum	<a href="https://www.gesetze-im-internet.de/asylblg">https://www.gesetze-im-internet.de/asylblg</a>
Verordnung über die Bescheinigung über die Meldung als Asylsuchender (AKNV) (Regulation on the certification of the declaration of asylum seeker)	05.2.2016	Regulation	Official Documents for Asylum Applicants	<a href="https://www.gesetze-im-internet.de/aknv">https://www.gesetze-im-internet.de/aknv</a>
Asylgesetz (AsylG) (Act on Asylum)	26.6.1992	Legislation	asylum seeker, asylum application	<a href="https://www.gesetze-im-internet.de/asylvfg_1992">https://www.gesetze-im-internet.de/asylvfg_1992</a>
Gesetz zur Neuregelung des Asylverfahrens (Act on the Revision of the Asylum Application Process)	26.6.1992	Legislation	Asylum Application	<a href="https://www.gesetze-im-internet.de/asylvfgng">https://www.gesetze-im-internet.de/asylvfgng</a>
Verordnung zur Neufassung der Asylzuständigkeitsbestimmungsverordnung (AsylZBV) (Regulation on the Revision of the Regulation on the Determination of the Responsibility for Asylum)	02.4.2008	Regulation	Authority on Asylum	<a href="https://www.gesetze-im-internet.de/asylzbv_2008">https://www.gesetze-im-internet.de/asylzbv_2008</a>
Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG) (Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory - Residence Act)	30.7.2004	Legislation	migration, residence, employment, integration	<a href="https://www.gesetze-im-internet.de/aufenthg_2004">https://www.gesetze-im-internet.de/aufenthg_2004</a>
Aufenthaltsverordnung (AufenthV) (Regulation on Residence)	25.11.2004	Regulation	Residence	<a href="https://www.gesetze-im-internet.de/aufenthv">https://www.gesetze-im-internet.de/aufenthv</a>
Gesetz über das Ausländerzentralregister (AZR-Gesetz) (Act on the Central Register for Foreigners)	02.9.1994	Legislation	Database	<a href="https://www.gesetze-im-internet.de/azrg">https://www.gesetze-im-internet.de/azrg</a>
Verordnung zur Durchführung des Gesetzes über das Ausländerzentralregister (AZRG-Durchführungsverordnung - AZRG-DV) (Regulation on the Implementation of the Act on the Central Register for Foreigners)	17.5.1995	Regulation	Database	<a href="https://www.gesetze-im-internet.de/azrg-dv">https://www.gesetze-im-internet.de/azrg-dv</a>
Verordnung über die Beschäftigung von Ausländerinnen und Ausländern (Beschäftigungsverordnung - BeschV) (Regulation on the Employment of Foreigners)	06.6.2013	Regulation	Employment	<a href="https://www.gesetze-im-internet.de/beschv_2013">https://www.gesetze-im-internet.de/beschv_2013</a>
Gesetz über die Rechtsstellung heimatloser Ausländer im Bundesgebiet (Act on the Legal Status of Stateless Foreigners in the Federal Territory)	25.4.1951	Legislation	Stateless Person	<a href="https://www.gesetze-im-internet.de/hauslg">https://www.gesetze-im-internet.de/hauslg</a>
Verordnung über die Durchführung von Integrationskursen für Ausländer und Spätaussiedler (Integrationskursverordnung - IntV) (Regulation on the Implementation of Integration Courses for Foreigners and Late Repatriates)	13.12.2004	Regulation	Integration	<a href="https://www.gesetze-im-internet.de/intv">https://www.gesetze-im-internet.de/intv</a>
Verordnung über die Prüfungs- und Nachweismodalitäten für die Abschlusskurse des Integrationskurses (Integrationskurstestverordnung - IntTestV) (Regulation on the Modalities of Examination and Verification for the Final Exams of the Integration Courses)	09.4.2013	Regulation	Integration	<a href="https://www.gesetze-im-internet.de/inttestv">https://www.gesetze-im-internet.de/inttestv</a>
Integrationsgesetz (Act on Integration)	31.7.2016	Legislation	Integration	<a href="http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl116s1939.pdf">http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl116s1939.pdf</a>
Gesetz zur Einführung beschleunigter Asylverfahren (Act Introducing an Accelerated Asylum Procedure)	11.3.2016	Legislation	Asylum Procedure	<a href="http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl116s0390.pdf">http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl116s0390.pdf</a>
Gesetz zur Verbesserung der Registrierung und des Datenaustausches zu aufenthalts- und asylrechtlichen Zwecken (Datenaustauschverbesserungsgesetz) (Act on Improving Registration and Exchange of Data for Residence and Asylum Law Purposes (Data Exchange Improvement Act))	02.2.2016	Legislation	Data Exchange	<a href="http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl116s0130.pdf">http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl116s0130.pdf</a>
Gesetz zur erleichterten Ausweisung von straffälligen Ausländern und zum erweiterten Ausschluss der Flüchtlingsanerkennung bei straffälligen Asylbewerbern (Act Simplifying Expulsion of Foreign Criminals and the Broadened Suspension of Refugee Recognition for Criminal Asylum Applicants)	11.3.2016	Legislation	Expulsion	<a href="http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl116s0394.pdf">http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl116s0394.pdf</a>
Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung (Act to Redefine the Right to Stay and the Termination of Residence)	01.8.2015	Legislation	Residence/Expulsion	<a href="http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl115s1386.pdf">http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl115s1386.pdf</a>
Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz) (Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners)	30.7.2004	Legislation	Migration	<a href="https://www.bmi.bund.de/SharedDocs/downloads/DE/gesetztestexte/Zuwanderungsgesetz.pdf?__blob=publicationFile&amp;v=1">https://www.bmi.bund.de/SharedDocs/downloads/DE/gesetztestexte/Zuwanderungsgesetz.pdf?__blob=publicationFile&amp;v=1</a>
Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher (Act to improve the Housing, Care, and Treatment of Foreign Minors and Adolescents)	28.10.2015	Legislation	Minors	<a href="http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl115s1802.pdf">http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&amp;jumpTo=bgbl115s1802.pdf</a>

<b>Annex II. List of Authorities involved in the Migration Governance</b>				
<b>Name of Authority</b>	<b>Tier of government</b>	<b>Type of organization</b>	<b>Area of competence</b>	<b>Web Link</b>
Bundesministerium des Inneren (Federal Ministry of the Interior)	national/federal	ministry	borders, migration, asylum, return	<a href="https://www.bmi.bund.de/DE/startseite/startseite-node.html">https://www.bmi.bund.de/DE/startseite/startseite-node.html</a>
Bundesministerium des Inneren - Abteilung M: Migration, Flüchtlinge, Rückkehrpolitik (Ministry of Interior)	national/federal	ministerial department	migration, asylum, return	n.a.
Bundesministerium des Inneren - Unterabteilung M: Migration, Flüchtlinge, Europäische Harmonisierung ( Federal Ministry of the Interior - Subdepartment M: Migration, Refugees, European Harmonisation)	national/federal	ministerial subdepartment	migration, asylum, EU coherence	n.a.
Bundesministerium des Inneren - Stab R: Rückkehr ( Federal Ministry of the Interior - Field Staff R: Return)	national/federal	ministerial field staff	return	n.a.
Bundesministerium des Inneren - Abteilung B: Angelegenheiten der Bundespolizei (Federal Ministry of the Interior - Department B: Federal Police)	national/federal	ministerial department	border protection	n.a.
Bundesministerium für Arbeit und Soziales (Federal Ministry for Labour and Social Affairs)	national/federal	federal ministry	labour market/integration	<a href="http://www.bmas.de/DE/Startseite/start.html">http://www.bmas.de/DE/Startseite/start.html</a>
Bundesministerium für Arbeit und Soziales - Referat II a 5 (Federal Ministry for Labour and Social Affairs - Unit II a 5)	national/federal	ministerial unit	employment of foreigners	n.a.
Bundesministerium für Arbeit und Soziales - Referat II a 6 (Federal Ministry for Labour and Social Affairs - Unit II a 6)	national/federal	ministerial unit	fundamental issues on migration and integration policy	n.a.
Bundesministerium für Arbeit und Soziales - Referat II a 7 (Federal Ministry for Labour and Social Affairs - Unit II a 7)	national/federal	ministerial unit	fundamental issues on refugee policy and foreigners' law	n.a.
Bundesministerium für Arbeit und Soziales - Projektgruppe Soziale Sicherheit und Migration (Federal Ministry for Labour and Social Affairs - Project Group Social Security and Migration)	national/federal	ministerial project group	social security and migration	n.a.
Bundesministerium für Arbeit und Soziales - Referat VI a 2 (Federal Ministry for Labour and Social Affairs - Unit VI a 2)	national/federal	ministerial unit	European migration	n.a.
Bundespolizei (Federal Police, formerly Federal Border Police)	national	police unit	border protection	<a href="https://www.bundespolizei.de/Web/DE/_Home/home_node.html">https://www.bundespolizei.de/Web/DE/_Home/home_node.html</a>
Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees)	national/federal	federal office	asylum, integration, return	<a href="https://www.bamf.de/DE/Startseite/startseite-node.html">https://www.bamf.de/DE/Startseite/startseite-node.html</a>
Landesinnenministerium (generisch) (Ministry of the Interior of a federal state (Bundesland) (generic))	state	state ministry	varying competences due to German federalism	n.a.
Landesministerium für Soziales und Arbeit (generisch) (Ministry of Labour and Social Affairs of a federal state (Bundesland) (generic))	state	state ministry	varying competences due to German federalism	n.a.
Landespolizei (generisch) (State police (generic))	state	state police unit	varying competences due to German federalism	n.a.
Kommunale Ausländerbehörde (generisch) (Municipal Foreigners' Office (generic))	municipal	municipal office	enforcement of foreigners' law	n.a.

**NOTE ON ANNEXES:** Since a new federal government has been formed only recently, competences might have shifted since. For example, the former MOI is now officially the "Ministry for Interior, Construction, and Home/Homeland", and might have been restructured as a response to the events of 2015 and after. Due to German federalism and the limited scope of the research, only generic authorities are listed below the federal level

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