

### 1. Introduction

This document will give an overview of the general structure of asylum and migration policies in Germany and of the institutional and regulatory framework for the treatment of third-country nationals who enter Germany either via legal immigration or on the search for international protection.

### 2. Overview of the political, legal and institutional framework

#### 2.1 The political system and the institutional context

The Federal Ministry of the Interior (BMI) plays a key role in formulating policies and drafting laws. The Federal Office for Migration and Refugees (BAMF) and the Federal Police are subordinate authorities to the Federal Ministry of the Interior and manage the lion's share of the operative tasks at the federal level. The foreigners authorities of the Länder, the Federal Employment Agency and the diplomatic missions also play important roles for the administration and handling of the relevant procedures.

#### 2.2 The legal framework

Asylum/refugee law and migration/residence law provisions are uniform across the country, as this area of legislation falls within the remit of the Federal Government. The Immigration Act, which entered into force on 1 January 2005, is the most important act in this context. The Residence Act, which is the most important part of the Immigration Act, and its related ordinances provide the legal basis for the entry, residence, integration and employment of third-country nationals. The asylum procedure and the provisions for the recognition of refugees follow the standards set out in the Constitution and the Asylum Act, which was formulated along the relevant EU Directives. In addition to the nationwide laws, there are a number of different legal and administrative regulations at the federal level and the level of the Federal States. At the level of the Federal States, migration issues are particularly important in the areas of education, research and the organisation of the police forces.

The jump in the number of refugees between 2014 and 2016 caused policymakers to take a number of measures at the federal level and the level of the Federal States in order to arrive at a more orderly and reliable reception and management procedure. Numerous new laws and legal amendments were adopted and included in the Residence and Asylum Acts, for example

- the Act on the Acceleration of Asylum Procedures (Asylum Package I); in force since 24 October 2015
- the Act on Improving the Housing, Feeding and Care for Unaccompanied Minors; in force since 1 November 2015
- the Data Sharing Improvement Act; in force since 5 February 2016
- the Act on the Faster Expulsion of Criminal Foreigners and Extended Reasons for Refusing Refugee Recognition to Criminal Asylum Seekers; in force since 17 March 2016
- the Act on the Introduction of Fast-Track Asylum Procedures (Asylum Package II); in force since 17 March 2016
- the Integration Act; in force since 6 August 2016
- the Act on Combating Child Marriage; in force since 22 July 2017
- the Act to Improve the Enforcement of the Obligation to Leave the Country; in force since 29 July 2017

Third-country nationals usually need to apply for a visa at a German diplomatic mission abroad before they are allowed to enter the country. After their arrival, the local foreigners authority is responsible for all residential and passport matters and decisions.

Foreigners usually need to meet certain requirements before they may be issued with a residence title. For example, their livelihood must be secured, their identity and nationality must be established, there must be no reasons for expulsion or objections to granting them a residence title, their residence must not entail risks to national interests, and they must hold a valid passport or other travel document. Residence titles are granted for a specific purpose and for a limited period of time. They may be issued for the purpose of work, family reunification, education or study and self-employment or for reasons of international law or humanitarian or political reasons. Depending on the purpose of stay, the foreigner may need to meet specific conditions. While a residence permit is valid only for a limited period

of time, a settlement permit or an EU long-term residence permit are granted for an unlimited period of time.

The issuance or extension of a residence title may depend on the foreigner's fulfilling certain integration criteria. Third-country nationals born abroad may be naturalised under certain conditions.

#### **a. Application for international protection/asylum application**

By filing an asylum application, the applicant simultaneously applies for both asylum and international protection. Asylum applications must generally be made in person to the Federal Office for Migration and Refugees; any exceptions are set out in the Asylum Act. Recognised asylum seekers or persons enjoying international protection will be issued with a residence permit, to which they are entitled pursuant to the Geneva Convention and Art. 24 of Directive 2011/95/EU. Appeals against refusals to grant asylum may be lodged with the responsible administrative court.

#### **b. Labour market access**

Foreigners may take up gainful employment only if their residence title allows them to do so, be it by law or by explicit permission. The explicit permission is granted by the foreigners authority, which will involve the Federal Employment Agency in the cases set out in the Employment Ordinance. Applicants for a permission to work must prove that granting them this permission will not have a negative effect on the labour market, that no German or equal-ranking workers are available and that the employment conditions are at least the same as those of German workers in similar jobs. Moreover, special rules may apply, in particular for seasonal workers, highly qualified foreign employees or self-employed (entrepreneurs).

#### **c. Termination of residence**

There are numerous reasons why a foreigner's residence in Germany may be terminated, for example because the residence title is no longer valid or revoked. If the obligation to leave Germany is enforceable and the foreigner does not leave the country voluntarily, he or she may be deported. The main responsibility for a deportation rests with the foreigners authorities.

The focus is on promoting voluntary returns, with financial support being available under several programmes.

### **3. Migration developments and development of international protection systems**

A strong increase in the number of refugees was the most important development in the last few years. Several new measures were taken in response. Below, we list some of them.

- **Border controls:** In the last few years the Federal Police has increasingly participated in the European missions of the European Border and Coast Guard Agency (Frontex).
- **Procedural pathways depending on the chance to remain:** Numerous measures were introduced to give those applicants who have a good chance to stay on the grounds of their country of origin privileged access to support and inclusion structures even before the asylum procedure is completed. If, however, applicants' chance to stay is low because they come from a secure country of origin, their asylum procedure will be accelerated, and new programmes were put in place to promote the applicants' willingness to return.
- **Provisions for the western Balkan countries:** The western Balkan states have been categorised as secure countries of origin in order to accelerate asylum procedures. Simultaneously, it has been made easier for nationals of these countries to obtain a visa for employment purposes once they have voluntarily returned to their country of origin (this rule will run out by 2020).
- **Integrated identity management:** A nationwide, uniform infrastructure was introduced to register newly arriving asylum seekers, avoid multiple registrations and improve the cross-authority data exchange.
- **Integrated refugee management:** Procedures are to be improved by strengthening the links between the individual organisations and the procedures during the arrival and registration phase, the processing of an asylum application and the integration or return phase. Integrated refugee management revolves around the reception centre concept. The reception centres interlink the procedures of the Federal Level and the level of the Federal States and involve any additional authorities and offices in the process.

## **4. Political organisation**

### **4.1 Overview of migration and international protection policies**

Cooperation between the EU member states themselves and with third countries, such as Turkey, plays an increasingly important role in steering refugee migration. Support for border protection along the EU borders, support provided under the EU-Turkey Agreement or participation in EU relocation and resettlement procedures are good examples for this development.

Improved cooperation will not only help to limit refugee migration, but also to ensure humanitarian reception procedures and a solidary allocation of asylum seekers and to provide relief to the EU Border States.

Germany has also stepped up its participation in operative measures of the European Asylum Support Office (EASO).

### **4.2 Overlaps with other policy areas**

Migration policy overlaps with several other policy areas, such as

- integration policy, including labour-market policy, particularly in the area of ensuring the integration of foreign workers and providing work-related language support
- development policy, for example with regard to money transfers or measures to promote the return of highly qualified workers
- interior and defence policy, which have an impact on the entry and residence of third-country nationals who might endanger public security
- healthcare policy, particularly with regard to the needs of migrants and
- anti-discrimination policies, for example in the implementation of the EU Anti-Racism Directive 2004/43/EC.



# Germany

## Institutional Framework for immigration and asylum policies\*

