



# The Organisation of Asylum and Migration Policies

## Factsheet: Germany

### 1. Introduction

This factsheet provides an overview of how asylum and migration policies are organised in *Germany*, including the organisation of the institutional and regulatory context and framework for dealing with third-country nationals coming for the purpose of legal immigration or for international protection. It is based on information provided in the Germany National Report of the EMN Study *The Organisation of Asylum and Migration Policies in EU Member States*<sup>1</sup>, as at **May 2009**. The Report was based on desk research: key sources were legal texts, commentaries, recommendations and a brochure by the Federal Ministry of the Interior; internal elaborations of the Federal Office for Migration and Refugees; figures from the German Central Aliens register; reports and studies by the Office for Migration and refugees; reports of the Federal Government Commission for Migration, Refugees and Integration; publications from the Federal Employment Agency and the Federal Statistical Office; governmental and non-governmental websites.

### 2. Overview of organisation of political, legislative and institutional framework

#### 2.1 The political system and institutional context

The most important function in policy formulation lies with the Federal Ministry of the Interior (BMI). The Federal Office for Migration and Refugees (BAMF) and the Federal Police, as subordinate authorities to the BMI, are responsible for the majority of operative tasks at Federal level. Other essential actors within administration and management of procedures are the Foreigners Authorities of the Federal States (residence), the Federal Employment Agency (access to the labour market) and the Diplomatic Missions (visa issuance). The spectrum of other actors has broadened over the past few years. In addition to a growing number of NGOs, the areas of migration research and policy advice have gained increased attention.

#### 2.2 The legal framework

Both German asylum/refugee law and immigration/residence law are governed at the Federal level under exclusive or concurrent legislation. The basic legislation in the field is the Immigration Act. The Residence Act as part of the Immigration Act provides the legal basis for the entry, residence and employment of third-country nationals. Asylum procedures and the recognition of refugees follow constitutional standards and the provisions set by the Asylum Procedure Act. Beyond the level of Federal Acts, several legal and administrative provisions at Federal and State level prevail. On the level of the Federal States, education, research and the organisation of police forces are the most relevant policy areas related to migration.

### 3. Development of migration and international protection systems

The most essential piece of legislative reform in the last few years can be attributed to the introduction of the 2004/2005 Immigration Act, which superseded the Aliens Act of 1990. Relevant EU Directives have been transposed, including the Dublin II Regulation, the Qualification Directive and the Researcher Directive. The most sweeping amendments of German asylum and refugee law in the last three years, however, took place with the implementation of both the Qualification and Procedures Directives. A number of actions have been taken in the area of visa and border management in order to improve security and preclude illegal entries. This entails closer collaboration between authorities at various levels. A one-stop-system has been introduced making local Foreigners Offices responsible for all decisions on residence and employment.

<sup>1</sup> Available on the EMN website

## 4. Organisation of policy

### 4.1 Overview of migration and international protection policy

Upon entry, the municipal Foreigners Authorities are generally the competent administrative bodies for all residence and passport-related measures and rulings. However, an asylum applicant reporting to the Border Agency, and being entitled to enter, is transferred to the nearest initial Reception Centre, where BAMF takes over processing the asylum claim. Applications for asylum must usually be made in person at the Federal Office for Migration and Refugees.

Prerequisites for a residence title include: holding a secure means of subsistence; known identity and nationality; no grounds for expulsion; no objections and no jeopardy of the interest of the state, possession of a valid passport or travel document. A residence permit is granted for a specific purpose and a limited period of time. Residence permits are issued for the following purposes: employment, family reunification, study and self-employment. A settlement is permanent. Each foreigner appealing to the basic right of asylum must undergo the recognition procedure outlined and fixed in the Asylum Procedure Act with personal interviews as the core of the asylum procedure. Persons recognised as entitled to asylum obtain a residence permit (refugee status pursuant to the Geneva Conventions entitles a residence permit). Negative decisions may be appealed to the administrative court.

Obligatory integration courses are linked to some residence titles, for others it may be optional. As a general rule, third-country nationals born abroad may obtain German citizenship through naturalisation. It requires, inter alia, residence in Germany for at least eight years, ability to ensure own subsistence, and no sentences for unlawful acts.

While access to the labour market usually requires a residence permit, it is also possible that a national visa by law or by special permission may authorise employment. The local Foreigners Office is responsible for issuing residence titles, including for employment (involving the Federal Employment Office). For authorisation of employment, it must be proven that this does not negatively impact on the job market, that there are no German or co-equal workers, and that the working conditions are not below those of comparable German labourers. There are certain regulations for e.g. seasonal workers and highly qualified foreigners. Asylum applicants may work with a "subordinate" work permit after one year. Persons granted subsidiary protection may also only be granted "subordinate" permits during the first three years of residence. Recognised refugees obtain unrestricted and unlimited work permits.

There are multiple reasons for termination of the right to stay, including the expiry of validity of residence title or revocation, or criminal offences. In such cases the third-country national may be removed by force, and in some cases custody is applied. The primary responsible bodies are the Foreigners Authorities. Priority, however, is given to voluntary return, which may be financially facilitated through assisted voluntary return programmes.

### 4.2 Links with other policies

Asylum and migration policies intersect with several other policy areas, most notably integration policy as e.g. elaborated in a National Integration Plan. Other areas include labour market policy (for integration), development policy (in relation to e.g. remittances and facilitation of return of highly skilled workers), home and security policy (with implications for entry and stay of third-country nationals deemed to impose a threat), health care policies (with specific attention to the needs of immigrant groups), anti-discrimination policy (implementing e.g. the EU Racial Equality Directive).

## 5. Analysis of asylum and migration systems

Efforts to improve practical routines of the relatively new Immigration Act include: The practice of multiple temporary renewals of exceptional leave to remain, have been replaced by a regulation granting residence permits. All Federal States have created advisory bodies dealing with cases in which the forceful termination of stay would pose unbearable hardship. A naturalisation test has been introduced. Facilitation of immigration of highly skilled workers has been enhanced. Conditions and practices for entry and removal and been clarified and, regarding the latter, optimised vis-à-vis conditions for circular migration.

## ANNEX: Institutional Chart for Germany

