

COUNTRY REPORT GERMANY

2015 is considered as a key year in the European migration context with an increase in arrivals at Europe's gates, and the need to adapt migration policies.¹ Germany is the country that granted protection to the largest number of people in 2015, with 890,000 asylum seekers, a record in the country's history. Chancellor Angela Merkel has become the symbol in public opinion of the German state's solidarity with refugees, as the embodiment of a hospitality tradition dear to Germany, the "Wilkommenspolitik". But this policy of open arms will not last long: three months after Mrs Merkel declared "Wir schaffen das!", "We're going to make it!" about the challenge that the so-called refugee crisis would represent for the country in August 2015, a law was adopted restricting access to asylum.²

Seen from the outset, Germany appears to be the model to follow at European level, in terms of refugees' reception, asylum process, applications or integration. Considering Germany's political and legislative developments from 2015 to today, how does reception and asylum policy work in Germany? How has it evolved and what are the prospects? Finally, what are the resistances? The purpose of this article is to give a general overview of the mechanisms linked with asylum policy in Germany.

I. The Legal and Political Context since 2015

In 2015, Angela Merkel has been at the head of the State since 2005, leading a coalition between her party, the conservative CDU, the social democratic party SPD, and the Greens. This great social-democratic agreement faces the rise of the extreme right and the growing division of public opinion on the issue of asylum. The Asylgesetz, voted in October 2015, resulted in the addition of three Balkan countries (Albania, Montenegro and Kosovo) to the list of states considered "safe", and in the acceleration of expulsion procedures for failed applicants. Peter Altmeier, then government coordinator on the issue of migrants, also seeks to create special border centres - called "transit zones" - to expel quicker migrants who do not meet the conditions for refugee status in Germany, such as so-called economic migrants.

In 2016 a new law, the "Integrationsgesetz", pushes the compromise between reception and repression even further with the aim of increasing the number of deportations. The asylum application procedure is accelerated: the majority of applications are then processed in less than two months, aiming at the immediate expulsion of asylum seekers who have not been granted protection status. A residence permit is granted in priority to refugees who demonstrate an "explicit willingness" to learn German. Immigration controls are being tightened under the pretext of a lack of accommodation facilities, and the grounds for detention of asylum seekers are being broadened. These repressive measures are taking place in a tense political context: regional elections are approaching and the threat of a victory for the far right constrains the ruling parties. The AFD, an extreme right-wing party founded in 2013, does not win a major post but will consolidate its position in the elections as one of the country's major political forces.

Germany is hosting 187,000 asylum seekers in 2017, a figure constantly falling but still "too high" compared to other European countries according to Berlin. To speed up the expulsion of

¹ The march through the Balkans became known as the "march for hope". Here is an interesting article from bordermonitoring.eu that puts into light the political struggle that led Germany to open its borders: <http://bordermonitoring.eu/ungarn/2015/09/of-hope-en/>

² "Beyond the 'Welcome Culture': Projects of the New German Government on Migration, Asylum and Integration", Daniel Thyme, EUmigrationlawblog.eu, 09.03.2018: <http://eumigrationlawblog.eu/beyond-the-welcome-culture-projects-of-the-new-german-government-on-migration-asylum-and-integration/>

undocumented migrants, the German authorities are opting for a more radical solution. Deportation centres are being set up to accelerate the return of failed asylum seekers. Since May 18th of 2017, the authorities can forcibly expel unsuccessful asylum seekers more easily, particularly if they have made false statements in their asylum application. In addition, living conditions for asylum seekers are deteriorating. In May 2017, for example, a German court ruled that any rejected asylum seeker who did not provide proof of identity would receive only the bare minimum of social benefits and no cash.

At the federal elections in September 2017, the historic centre and centred-right wing parties, the SPD and the CDU, have recorded their worst scores since 1949. 94 AFD deputies are entering parliament. If Angela Merkel's CDU is in the majority, it is with a low vote, 33%, and a weakened base in parliament. Several months of political crisis followed after the failure to form a first coalition in November 2017. Finally, a new government was introduced in March 2018 following a weak agreement between the SPD and the CDU and its more conservative counterpart, the Bavarian CSU party. Angela Merkel then appointed Horst Seehofer, leader of the CSU party, as head of the Ministry of the Interior. This created a permanent power struggle between the two, as the Conservatives manage to occupy the political and media agenda with their favourite topic, the fight against immigration, "mother of all problems" according to Seehofer. While the coalition contract outlined an increasingly restrictive migration policy focused on integration, with a desire to harmonize practices on the territory, the policies promoted by the Minister of the Interior is more voluntary and repressive. These include closed centres, new "safe" countries, the opening of sorting centres at German borders and reception centres in transit countries, greater militarization of European borders, increased expulsions and "voluntary" returns, main lines of the Master Plan for immigration by Mr. Seehofer published this summer.³ Although many of these measures are still in discussion, they are being considered and debated at local and national level, even though they seemed unimaginable in the past. Mr Seehofer is also working closely with the Austrian and Italian Interior Ministers, Herbert Kickl and Matteo Salvini, for a fortress Europe. Angela Merkel, weakened and politically isolated, does not put up any real resistance, and seems paralysed, while she is torn by her right and left to take a stand. In addition, there is an explosive social context in Germany, with a summer of mobilizations of both extreme right-wing extremists and pro-migrants' activists, in a period of high political stakes, including the local elections in Bavaria on October 14th 2018 for which the CSU, after more than 80 years of supremacy, is threatened by the AFD.

II. The Situation at the Borders

Border control at the German borders was partially reintroduced in 2015, after the terrorist attacks in France but also following the increase in migration moves arriving by road from the Balkans to southern Germany. In principle, the border police has the right to refuse entry into German territory to individuals who do not have valid identity documents, a valid visa or residence permit, have exceeded the possible deadline for residence in the EU, cannot demonstrate the ability to support themselves, represent a threat to national security. Discharges by land in 2017 affected 7,504 people, including 7,009 at the border with Austria.⁴ This border has been the most closely monitored in the last three years. Since July 2018, the Bavarian regional government has decided to allocate responsibility to the Bavarian police for carrying out systematic controls on border traffic routes.

³ *Masterplan Migration, Maßnahmen zur Ordnung, Steuerung und Begrenzung der Zuwanderung*, BIBH, 04.07.2018: https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/migration/masterplan-migration.pdf?__blob=publicationFile&v=5

⁴ Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hah, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE. – Drucksache 19/800 – Abschiebungen und Ausreisen im Jahr 2017

Agreements to reject foreigners at the borders

Italy is Germany's main partner, as it is also the country to which most people are deported from Germany. Interior Minister Seehofer has met several times with the Italian and Austrian Interior Ministers to create a common strategy, in particular to discuss the establishment of border transit centres and direct refoulement of individuals under the Dublin procedure, without having been able to reach an agreement yet. An arrangement with Italy is currently under negotiation, with Italy wanting to ensure that Germany will "relieve" Italy of a refugee on its territory for each person readmitted to its territory. In addition, since August 7th, 2018, Berlin has been able to automatically expel individuals arrested at the border who are already registered in the EURODAC software in Spain. Germany also signed a commitment this summer with Greece to speed up family reunification procedures, while 3,000 people are waiting in Greece to be able to join their families in Germany. In return, Germany will proceed with the direct deportation at the borders of individuals who have already been registered in Greece in EURODAC.

III. Procedure and Protection Status

a) Procedure

In Germany, the asylum procedures are carried out with the "Bundesamt für Migration und Flüchtlinge", the administration for migration issues. After registration, the applicant is sent throughout the country using the EASY software, which calculates the availability according to the income/population of each Land and the number of exiles already received by each Land. Once assigned to a reception centre, the individual can formulate a formal request for protection. He or she will then have an interview with the BAMF and will be asked about his/her personal biography, initial situation, journey, possible persecution, situation expected in the event of return, if possible with supporting evidence. Then the asylum seeker must wait for the official answer. Since 2015, the main purpose of the various legislations has been to speed up procedures. On average in 2017, the total procedure took 13.2 months from registration to the last decision, with appeals. On average from the registration to the first decision two months go by. If the decision is negative, the querant receives an obligation to leave the territory (or "Ausreisepflicht") within thirty days. This period is reduced to a week if the individual is from a safe country of origin. Nonetheless, this obligation is suspended during the appeal. An appeal against a negative decision of the BAMF is made to the Administrative Tribunal (the "Verwaltungsgericht"). The appeal is made to the Administrative Court of Appeal ("the Obergerverwaltungsgericht"). Finally, the last instance is the Supreme Administrative Court ("the Bundesverwaltungsgericht"), which only judges law. 146,168 decisions on appeal were taken in 2017. 16.3% granted the applicant asylum or refugee status.⁵

Once the formal request has been made, the applicant obtains permission to reside on the German territory, with limitation to the district of the reception centre where the person is sent to ("the Residenzpflicht"). Then, the Land of reception decides whether the individual should stay in the reception centre, go to another reception centre, or move to an apartment. Often, this restriction on freedom of movement depends on the person's perspective. Those with "poor prospects of staying", coming from safe countries of origin for example, are required to remain in the reception centre until the end of their procedure. If their request is rejected, this obligation is extended until deportation. People with good prospects of staying have a "Residenzpflicht" that lasts 3 months and can then move around the country. However, since

⁵ All the numbers and following come from : Das Bundesamt in Zahlen 2017:
http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2017.pdf?__blob=publicationFile

2016, after the recognition of a formal status, the refugees must live three years in the Bundesland where they applied for protection, according to the “Wohnsitzauflage” rule. This obligation may be lifted if the refugee can prove that he or she found a relevant paid job elsewhere (min. 15 hours per week, min. 710 € earnings) or will start an apprenticeship or studies in another land.

At the time of the asylum application, the personal data are entered in EURODAC. If the individual has been registered in another EU country, a transfer request is made to the EU member state in question. If it is accepted, the BAMF will order the transfer and inform the individual. The transfer must take place within six months; however, the period may be extended to one year if the subject is in detention or up to eighteen months if he or she cannot be found. In the meantime, the individual is supposed to stay in a reception centre. An urgent appeal to the court makes it possible to suspend the transfer until the court decision.

b) Protection Status

In 2017, 198,317 people applied for protection in Germany. One third came from Syria, Iraq and Afghanistan. There were 441,899 in 2015. BAMF processed more than 600,000 requests in 2017. 123,909 were granted refugee status, i.e. 20.5%.

4,359 were granted national asylum, i.e. 0.7%. 98,074 were granted subsidiary protection status, i.e. 6.6%. 232 307 individuals had their applications rejected, i.e. 38.5%. 109,479 were granted a ban on expulsion (“Duldung”), i.e. 18.1%.

Refugee status: It is based on the definition of refugee by the Geneva Convention.⁶ This status implies: three-year residence permit, renewable; residence permit obtainable after three to five years if the person can prove that she has means to support herself and that she has learned German well; access to the labour market; possibility of family reunification.

Constitutional asylum: This status concerns people threatened with a violation of their fundamental rights upon return to their country of origin, and who have been persecuted for political reasons. This status is defined in the German Constitution. Rarely given, it relates to state persecution which has led to a violation of human rights but excludes civil war. It involves: a renewable three-year residence permit, a residence permit after three to five years if the person has sufficient means to support herself and has a good knowledge of German, access to the labour market, and the possibility of family reunification.

Subsidiary protection: This concerns individuals who can prove that their return to their country of origin would cause them serious harm. The status implies: a one-year residence permit renewable for two years, a residence permit after three to five years (including asylum procedure) if the person has sufficient means to support herself and a good knowledge of German, access to the labour market but does not give priority access to family reunification. This status concerns mainly people from Syria, Iraq and Afghanistan.

Ban on deportation or “Duldung”: In case of denial of the three previous statuses, an applicant may obtain a “Duldung” if: the return to the country of origin constitutes a violation of the European Convention on Human Rights; a considerable tangible danger to life, physical integrity or freedom exists in that country. In practice: a person can obtain a “Duldung” if she is ill, or if there is a national prohibition on expulsion to her country of origin. This status is very precarious, can last several years and be cancelled at any time and involves: a one-year residence permit, which can be renewed, difficulties to be employed because under the cover of

⁶ Individual who cannot return to his or her country of origin because of a well-founded fear of persecution by state/non-state actors because of their race, nationality, political opinions, convictions, religious beliefs, membership of a social group, sexual orientation.

an official authorization from the BAMF, not eligible for family reunification. In 2017: 228,859 people were summoned to leave the territory; 166,068 people were in possession of a “Duldung”.⁷

IV. From Reception Centers to Closed Centers

Federal law lays the foundations for the German reception system. Each federal state then passes a local law on the reception of refugees, determining their distribution on the territory, the type of centres it wishes to set up, and how these centres will be managed and financed. However, the typical pattern remains the following: once the distribution by the EASY software is made, the exiled person is sent to a first reception centre at the federal level where she can stay more or less indefinitely (see Appendix 1: the typology of centres).

There are differences in treatment according to the Länder and depending on whether the individual comes from a so-called safe country, or whether his or her case falls under the Dublin legislation. Unofficially, some first reception centres will “specialize”: people with little prospect of staying, for example, or all Dublin cases will be transferred there. Some Länder will prefer to house exiles in apartments at municipal level, as it is the case in Cologne. The “Residenzpflicht”, the pocket money also depends on the Land. The system is therefore very complex, and changes regularly (see Appendix 2: the Brandenburg example).

A recent trend is the opening of semi-closed centres or “Ankerzentren”, an initiative promoted by the Minister of the Interior, Mr Seehofer. Anker is the German acronym for “Ankunft, Entscheidung and Rückkehr”: arrival, decision and return. The idea is to bring together all the administrations needed for the asylum procedure on the same site where the refugees will also be housed: the Central Administration for Foreigners (ZABH), the Federal Office for Migration and Refugees (BAMF), the National Employment Agency (BAA), but also the Court of Appeal, and of course the police. Individuals are housed in the centre from the beginning until the end of their administrative procedures, up to 18 months if the application for protection has been rejected and they wish to appeal. The aim: to speed up procedures, and to enable the rapid deportation of rejected candidates. Freedom of movement is limited: refugees may leave the centre but are not allowed to travel outside a defined area, or to leave the centre for more than two days. Living conditions are difficult: population concentration, limited access to education or work, stress and anguish over arrests and deportations. Only Bavaria and Saxony volunteered to carry out a pilot project led by Mr Seehofer, which began on August 1st, 2018. If successful, a law planned for January 2019 will extend the “Ankerzentren” system throughout the country. However, in reality, other facilities already are similar to such centres and operate in the same way without being having the same name. This is the case in Nordrhein-Westfalen, in Münster, according to the local refugee council, or in Saxony-Anhalt in Halberstadt with the only difference that vulnerable people (single women, victims of sexual violence or torture, children, LGBT people) cannot stay in the centre for more than six months.⁸

As for pre-deportation detention centres, they represent a major trend⁹:

Region	City	Capacity
Nordrhein-Westfalen	Büren	140, 35 to come
Niedersachsen	Langenhagen	58

⁷ Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hah, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE. – Drucksache 19/800 – Abschiebungen und Ausreisen im Jahr 2017

⁸ Buzzfeed investigation, 13.07.2018, „Von 40 geplanten Ankerzentren sind nur acht bestätigt – und kaum ein Bundesland macht mit“: https://www.buzzfeed.com/de/marcusengert/ankerzentren-standorte-seehofer-bundeslaender-fluechtlinge?utm_term=.jsbxnB55N#.wbJzy2XXq

⁹ Following data found in a Niedersachsen-Flüchtlingsrat article, may 2018, „Haft ohne Straftat. Abschiebungshaft häufig rechtswidrig“: <https://www.nds-fluerat.org/themen/abschiebungen/haft-ohne-straftat/>

Baden-Württemberg	Pforzheim	36
Hamburg	Fuhlsbüttel airport	20
Bavaria	Passau	200

Regions that do not have facilities available may reserve beds in facilities in neighbouring regions. Only the Saarland and the Thüringen region do not use this process. The tendency to lock up individuals awaiting deportation has increased since 2015. Clear rules apply to detention orders pending deportation: they can only take place following a judicial decision, there must be good reason to suspect that the person will obstruct the deportation process, the person concerned must be heard before a decision is taken and the principle of proportionality must be respected. 80% of detention orders are cancelled by the judge because considered as illegal.

V. Deportation and Externalisation

Safe countries of origin

Under article 29 of the German Asylum Act, individuals from countries identified as safe by BAMF may be refused asylum without justification, unless they have been able to prove that they are victims of serious persecution in their countries of origin. The "safe" countries of origin according to the Ministry of Foreign Affairs are: EU members Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia, Ghana, Senegal. Mr. Seehofer would like to add Morocco, Algeria, Tunisia as well as Georgia to the list. The law is currently under discussion in Parliament.

Bilateral readmission agreements

Here is the latest updated list from April 2017: Albania (01.08.2003), Algeria (12.05.2006), Armenia (01.01.2008), Bosnia and Herzegovina (14.01.1997), South Korea (22.03.2005), Croatia (22.10.1997), Georgia (01.01.2008), Hong Kong (17.02.2001), Kosovo (01.09.2010), Morocco (01.06.1998), Macedonia (01.05.2004), Switzerland (01.02.1994), Serbia (01.04.2003), Syria (03.01.2009), Chechnya (01.01.1995), Vietnam (21.09.1995).¹⁰

Informal deals

Germany has a particular interest in approaching the Maghreb countries to facilitate the deportation of their nationals and to block the passage to Europe. Already in 2016, Foreign Minister Thomas de Maizières was on a tour of the Maghreb countries to conclude agreements for the return of undocumented migrants to Morocco, Tunisia and Algeria. These countries, that had previously refused to accept individuals who could not prove their identities agreed to compare German data with their own databases in order to certify their nationality.

Angela Merkel visited Algeria in September 2018 in order to increase collaboration with this country to facilitate the deportation of its nationals. Algerian Prime Minister Ouyahia said he was ready to receive undocumented migrants provided that he could identify their nationality.

The precise diplomacy led by Germany with or without the help of the EU is paying off and leads to informal, political understandings, often at the cost of enormous financial investments. By doing so, the main objective is to avoid parliamentary control. The deal settled between Germany and Afghanistan is a good example. Whereas the EU was negotiating an agreement

¹⁰ Abkommen zur Erleichterung der Rückkehr ausreisepflichtiger Ausländer, April 2017: https://www.aktionbleiberecht.de/blog/wp-content/uploads/2018/02/R%C3%BCck%C3%BCbernahmeabkommen_Deutschland.pdf

with Afghanistan¹¹, Germany led simultaneously bilateral talks leading to the readmission deal on October 2nd, 2016. The document, formally called “Joint Declaration of Intent on Cooperation in the Field of Migration” was never made public. Since that date, Germany is deporting Afghan nationals regularly, although the country is still on the verge of civil war and even the German Ministry of Foreign Affairs was recently describing its security stage as “concerning and highly unstable”.¹²

Official 2017 deportation numbers

In the year 2017, Germany deported 23.966 individuals, which is less than the year before. In 2016, 25.000 were deported. Germany also “transferred” 7.102 individuals to Member States countries in the frame of the Dublin legislation, of which 1.208 minors. 2.110 individuals were sent back to Italy. Finally, 29.600 “chose” the “voluntary return” in 2017. In 2016, 54.000 individuals opted for this alternative.

The ten countries with the higher number of deported nationals in 2017 are¹³:

Albania	3.445
Kosovo	2.749
Serbia	2.360
Macedonian	1.534
Moldaviac	750
Marocco	724
Georgia	643
Algeria	618
Irak	549
Nigeria	530

Development aid as means of pressure

Since the Valletta Plan of 2015, Germany has been conducting persuasive development diplomacy while relying on the European Union to negotiate economic partnerships with the countries of origin of migrant populations. A glaring example is the action plan to "save" Africa, the Marshall Plan with Afrika 2017. Initiated by German Development Minister Gerd Müller in 2017, it is a reformulation of European policy, and aims to develop partnerships between Germany and Africa to promote peace, democracy, and economic growth. Funded through the European Emergency Fund for Africa, it was created to carry out six programmes in North Africa to improve the governance and management of migration movements and address the roots of illegal migration. In practical terms, 9.7 billion euros should be invested on the African continent by the end of 2019. Of course, the funded projects aim to stem the phenomenon of migration in the country of origin by supporting local economic activity. In return, the country must control migration.

In addition, Germany is making massive investments in security under the umbrella of development aid. In 2016, several millions of euros were made available by the German Minister

¹¹The EU-Afghanistan Partnership and Development Cooperation Agreement was signed by the EU and Afghanistan in February 2017: <https://urlz.fr/cumK>

¹² To find out more : « Afghanistan : comment l’Allemagne justifie les expulsions vers un pays en guerre », 03.08.2018 : <https://medialibre.info/echanges-partenariats/afghanistan-comment-lallemagne-justifie-les-expulsions-vers-un-pays-en-guerre/>

¹³ Detailed report with countries where people have been deported to, nationality of deported, and other useful statistics per Land: Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hah, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE. – Drucksache 19/800 – Abschiebungen und Ausreisen im Jahr 2017

of Defense and Minister of Foreign Affairs to help some African countries improve their surveillance systems. Tunisia has received €20 million to install surveillance equipment along its borders with Libya, as well as to train its border police. In 2017, the partnership goes further, with an additional €40 million and German officers sent to assist with training. Since 2012, the GIZ, the German Federal Agency for Development, has created police reform programmes in Mauritania, Niger, Chad and Nigeria, sponsored by the Ministry of Foreign Affairs. These projects benefit from a funding of €26 million. Huge sums have also been invested in the fight against traffic of human beings and “smugglers”. In 2016, eighteen countries received a total of 1.8 million for projects financed in this way. The GIZ has also launched an initiative, “Better Migration Management”, whose objective is to support East Africa in better managing migration movements. This project has received 40 million from the European Union, and 6 million from Germany, and benefits Djibouti, Kenya and Somalia, but also Ethiopia, Sudan and Eritrea.¹⁴

VI. Civil Uprise

In Germany there is a very lively and active alternative left-wing scene, especially as small groups and far-right parties are becoming more and more present in the public space and in political debates. Berlin has a rich support network for migrants, organised for many years to provide legal advice, medical consultation, or other types of assistance. In addition, self-organized groups have been created and maintained by the exiles themselves to provide mutual assistance and support, such as CoRaSol (against racism solidarity), a group of people mainly from Cameroon, and Women in Exile, a group of refugee women.

In response to the increase in violent racist acts and prevailing xenophobia, the initiative “We’ll come united” was launched in early 2017 to bring together all anti-racist groups. “We’ll come united” has succeeded in creating a grand coalition by bringing together refugee support associations, self-organized refugee groups, sea rescue associations, anti-fascist groups, solidarity cities, but also academic networks working on migration. In total, more than 400 organisations have signed their call, and today form an active network throughout Germany. The second edition of the network’s major anti-racism parade, which took place on 29 September 2018 in Hamburg, brought together 30,000 people.

This summer, as Italy closed its harbours to rescue boats at sea, the “Seebrücke movement” was born in Germany, calling for bridges to be built to safe places rather than continuing with the policy of exclusion pursued by Interior Minister Seehofer. This movement, born of indignation and spontaneous action by isolated individuals, succeeded in a few months in mobilizing massively in several large German cities by providing logistical support to citizens wishing to organize local actions themselves. In Berlin, the first Seebrücke event on July 7th, 2018 brought together 12,000 people. Since then, events have multiplied, and the initiative is trying to internationalize the movement.

Finally, to fight against the European logic of confinement and externalisation of detention centres beyond the borders of the EU, the organisation Pro-Asyl launched the “Nicht meine Lager” campaign in September 2018, (Not my camps). On their website¹⁵ is a documentation with news about closed centres, communication material and a petition.

October of 2018

¹⁴ Migration Control : page « Germany », Christian Jakob : <https://migration-control.taz.de/#en/countries/germany>

¹⁵ <https://www.nichtmeinelager.de/>