



Decentring the Study of Migrant
Returns and Return Policies

Legal and Policy Infrastructures of Returns in Germany

Country Dossier (WP2)

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List of Abbreviations

AnKER	“Arrival, decision and return” facilities
AsylG	German Asylum Act (<i>Asylgesetz</i>)
AufenthG	German Residence Act (<i>Aufenthaltsgesetz</i>)
AufenthV	German Residence Ordinance (<i>Aufenthaltsverordnung</i>)
BAMF	German Federal Office for Migration and Refugees
BMI	German Federal Ministry of the Interior and Community
BMZ	German Federal Ministry of Economic Cooperation and Development
BICC	Bonn International Centre for Conflict Studies
BVerwG	German Federal Administrative Court (Bundesverwaltungsgericht)
CERC	Canada’s Excellence Research Chairs Program
CJEU	Court of Justice of the European Union
EU	European Union
GEAS	Common European Asylum System (<i>Gemeinsames Europäisches Asylsystem</i>)
GETZ	Joint centre for countering extremism and terrorism (Gemeinsames Extremismus- und Terrorismusabwehrzentrum)
GFFO	German Federal Foreign Office
GG	German Basic Law (<i>Grundgesetz</i>)
GIZ	German International Cooperation
GTAZ	Joint Counter -Terrorism Centre (Gemeinsames Terrorismusabwehrzentrum)
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
MP	Member of the German parliament (Bundestag)
OVG	Higher Administrative Court (Oberverwaltungsgericht)
SBC	Schengen Borders Code
TCNs	Third-country nationals
VG	Administrative Court (Verwaltungsgericht)
ZAB	Central Foreigners Authority (Zentrale Ausländerbehörde)
ZUR	Repatriation support centre (Gemeinsames Zentrum zur Unterstützung der Rückkehr)

Summary

This report focuses on the legislative and institutional frameworks, as well as the procedural infrastructure related to the return of rejected asylum seekers and other unauthorised migrants from Germany between 2015 and 2023. The analysis shows that the political rhetoric of ‘closing the deportation gap’ and improving returns through increased effectiveness has had important policy consequences since 2015 and has continued under the current coalition government formed in 2021. The so-called return offensive rhetoric has been translated into legal provisions to increase the number and effectiveness of returns as well as a growing emphasis on finalising international migration ‘partnership’ agreements. Beyond politics of return, the field of return governance in Germany is very dynamic and, at the same time, reveals structural deficiencies, operational shortcomings, heterogeneous practices and internal contradictions. There are clear gaps in at least six areas, including legislative structure, institutional framework, international cooperation, data collection/sharing, implementation and political communication.

In terms of legislative infrastructures, the report shows that Germany adopted the EU Return Directive since 2008, but its implementation at the federal level has been ambivalent. In contrast, the Court of Justice of the European Union (CJEU)’s case-law, which developed in its wake is having greater significance in enhancing protection and is widely used by lawyers and courts at the operational level. The authority and discretionary powers of judges in district and administrative courts, as well as of the street-level bureaucrats working in local migration agencies, have complicated the interpretation of legislation and procedures, as well as their outcomes. It is not uncommon for national rule-of-law-based return policymaking to be contrasted in practice with federal regulations and enforcement practices.

The report also highlights the extent to which Germany’s institutional infrastructure dealing with returns is highly complex due to the multi-level governance with discretionary powers of the *Länder* (*federal states*) and sub-national administrative actors (districts and municipalities) in the federal system. The parallel existence of international, EU, national and state legal frameworks also brings advantages and disadvantages for those affected by and those implementing return policies. In Germany, the 16 states and their subordinate administrative bodies and institutions (e.g., police) are solely responsible for enforcement, and there is a mix of cases where the states themselves are active policymakers, where they directly adopt EU law or where they follow national legal provisions.

In their analysis, the authors have identified some key legal gaps with regard to non-compliance with fundamental/human rights and the EU law:

- Although there are no official figures, there is ample evidence that detentions are mostly unlawful and thus, sometimes not used as a measure of last resort in the case of removal as foreseen in German jurisdiction. It is, therefore, necessary to review the judicial authority of the district courts and examine their independent handling of cases.
- The most significant discrepancy between EU law and national law concerns the monitoring of returns. Germany has neither a law nor provisions for systematic monitoring or the institution of an ombudsperson.
- There is increasing evidence of pushbacks at internal (Schengen) borders. Furthermore, the issuance of a post-deportation entry ban is not in line with EU law, and the fact that the decision is taken by a legislator instead of being reviewed officially or by a judge violates Art. 3.6 of the EU Return Directive (2008).
- The German legal framework for asylum law and reception conditions, which mirrors return legislation, seems to entail a compliance gap with EU law. The German framework is built on the decentralised implementation of EU and national law. In terms of procedures, it remains unclear who exactly is not complying and how.

- German authorities bend the law according to EU provisions, e.g., by preferring to apply the Schengen Borders Code for border controls and *Zurückweisungen* (refusals of entry) instead of the EU Return Directive. However, the successive extension of border controls with the argument of ever different but similarly defined security threats point to ambivalences and contradictions in EU law, which Germany, like other EU states exploits.

Keywords: return, deportation, voluntary departures, governance of returns.

The GAPs Project

GAPs is a Horizon Europe project that aims to conduct a comprehensive multidisciplinary study of the drivers of return policies and the barriers to and enablers of international cooperation on return migration. The overall aim of the project is to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by decentring the dominant, one-sided understanding of “return policymaking.” To this end, GAPs:

- examines the shortcomings of the EU’s return governance;
- analyses enablers of and barriers to international cooperation, and
- explores the perspectives of migrants themselves to understand their knowledge, aspirations and experiences with return policies.

GAPs combines its approach with three innovative concepts:

- A focus on return migration infrastructures, which allows the project to analyse governance gaps;
- An analysis of return migration diplomacy to understand how relations between EU member states and with third countries hinder cooperation on return; and
- A trajectory approach, which uses a socio-spatial and temporal lens to understand migrant agency.

GAPs is a three-year interdisciplinary research project (2023–2026), coordinated by Uppsala University and the Bonn International Centre for Conflict Studies (BICC) with 17 partners in 12 countries on four continents. GAPs’ fieldwork has been conducted in 12 countries: Sweden, Nigeria, Germany, Morocco, the Netherlands, Afghanistan, Poland, Georgia, Turkey, Tunisia, Greece and Iraq.

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1. Statistical Overview: Returns and Readmissions at the National Level

According to the German Federal Ministry of the Interior and Community (BMI), some 250,749 people were classified as having the obligation to leave Germany at the end of October 2023 (Tagesschau, 2023). Two hundred one thousand eighty-four of these were granted a temporary suspension of deportation/removal¹ (*Duldung*) which means that 49,665 people were potential enforceable returnees (Tagesschau, 2023). According to the same source, the new provisions of the Repatriation package coming into force in 2024 will (only) lead to an estimated 600 additional deportations/ removals per year from 2024 onwards, after Germany had deported around 12,000 people in 2021 and 2022 annually. It is well known that in recent years, Germany has stepped up the voluntary and coerced return of those migrants and asylum seekers from Georgia, North Macedonia, Albania, Moldova and Serbia, whose applications had been rejected. German media, citing statements by the BMI, report that deportations of failed asylum seekers increased by more than a quarter in the first six months of 2023 (Deutsche Welle, 2023). However, as in other European Union (EU) member states, the figures and statements on return rates and their nature are often disputed in Germany.

The full data table on return-related statistics, which is mainly based on the Eurostat database, can be found in **Annex I**. In addition to Eurostat statistics, there is a considerable amount of statistical data on returns available at the national level. However, due to the multiplicity of actors and the federal logic in Germany, the data sets are very complex and heterogenous. As the federal states (*Länder*) pursue their own programmes and implementation practices, they are not obliged to collect data according to the same standards, and consequently, the data is not comparable and cannot be added to provide reliable national figures (Bundesregierung, 2022, p. 137; Rietig & Günnewig, 2020, p. 13). Gaps in national databases are discussed in Section 6.4.

It should be acknowledged that various actors, in particular some political parties, have played an outstanding role in documenting or requesting data on returns through their parliamentary authority. Specifically, members of the party *Die Linke*² in the German parliament (*Bundestag*) have used the instruments of parliamentary minor inquiries (*Kleine Anfrage*) and major interpellations (*Große Anfrage*) to obtain data from the executive bodies on migration, asylum and return-related figures, how they are obtained and documented. Accordingly, in this report, the authors extensively consulted parliamentary inquiries from 2015 to 2022 to compile return statistics and allocated budgets. We also checked the websites of the relevant ministries at the federal and state level. Some of the figures presented are included in the relevant sections throughout the report.

An important numerical figure for interpreting return data is the number of asylum applications, which is relatively high in Germany. For example, according to EU sources, 243.835 first-time applications in the European Union, representing 25 per cent of all first-time applications in

¹ Deportation and removal terms are synonymous in the German context.

² Due to internal rifts in the party *Die Linke*, it lost its parliamentary group (faction) status in December 2023, and it remains to be seen whether the qualitatively different/ minor parliamentary group status remaining for the current parliamentary term will allow its members of parliament (MPs) to continue with the inquiries. If not, the German public faces a serious risk of a loss of transparency and increasing non-information about migration-related operational, legal and institutional developments in Germany and its embedding in the European migration and asylum/return landscape.

2022, were made in Germany.³ National data shows slightly higher figures for 2022, as shown in the table below.

Table 1. Asylum applications

Year	# Asylum applications
2015	476.649
2016	745.545
2017	222.683
2018	185.853
2019	165.938
2020	122.170
2021	190.816
2022	244.132

Source: Bundesamt in Zahlen Asyl, Migration und Integration, p. 17.

https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/BundesamtinZahlen/bundesamt-in-zahlen-2022.pdf?__blob=publicationFile&v=4. Accessed 02.02.2024.

In general, some of the statistics mentioned in the parliamentary questions are consistent with the Eurostat database (Annex I), while others show changes due to the use of different categories. For example, figures on the approximate number of irregular migrants,⁴ are not available in German statistics; however, it is possible to collect figures on illegal entries, persons obliged to leave the country and refusals at the borders, which together can give a rough idea of the proxy of stock of irregular migrants.

Table 2. Illegal entries

Year	#Illegal entries
2015	217.237
2016	111.843
2017	50.154
2018	42.478
2019	40.610
2020	35.435
2021	57.637
2022	91.986

Source: Migrationsbericht 2021, p. 138. <https://shorturl.at/gST36>

Table 3. Persons obliged to leave the country

Year	#Persons obliged to leave the country
2015	204.414
2016	207.484
2017	228.859
2018	235.957
2019	249.922
2020	281.143
2021	292.672
2022	304.308

Source: Illegale Einreisen im Zeitraum 1. Januar 2009 to 31. Dezember 2022, p. 8. <https://shorturl.at/bdDo3>

We checked the number of people refused entry at the border from the parliamentary inquiries for each year. However, the numbers of refusals at the border do not correspond to the Eurostat

³ Infographics, Asylum applications in the EU, <https://www.consilium.europa.eu/en/infographics/asylum-applications-eu/>. Accessed 03.01.2024.

⁴ Third country nationals (TNCs) found to be illegally present in the country.

statistics (Annex 1), as the German version also includes refusals of EU citizens. Nevertheless, it provides some proxy figures.

Table 4. TCNs/foreign nationals refused entry at the border (including EU citizens)

Year	Numbers	Sources
2015	8.913	Abschiebungen im Jahr 2015, p. 12. https://dserver.bundestag.de/btd/18/075/1807588.pdf
2016	20.851	Abschiebungen im Jahr 2016, p. 14. https://dserver.bundestag.de/btd/18/111/1811112.pdf
2017	12.370	Abschiebungen im Jahr 2017, p. 15. https://dserver.bundestag.de/btd/19/008/1900800.pdf
2018	12.079	Abschiebungen und Ausreisen im Jahr 2018, p. 15. https://dserver.bundestag.de/btd/19/080/1908021.pdf
2019	13.689	Abschiebungen und Ausreisen im Jahr 2019, p. 15. https://dserver.bundestag.de/btd/19/182/1918201.pdf
2020	19.690	Abschiebungen und Ausreisen 2020, p. 14. https://dserver.bundestag.de/btd/19/270/1927007.pdf
2021	13.183	Abschiebungen und Ausreisen im Jahr 2021, p. 12. https://dserver.bundestag.de/btd/20/008/2000890.pdf
2022	25.538	Berichte über Zurückweisungen von Schutzsuchenden an den Binnengrenzen, p. 3. https://dserver.bundestag.de/btd/20/056/2005674.pdf

Data is also available on sensitive issues such as the return of unaccompanied minors or readmitted citizens.

Table 5. Return of unaccompanied minors

Year	Deportation according to sec. 58 residence act (Abschiebung)	Deportation according to sec. 57 residence act (Zurückschiebung)	Source
2015	0	10	Abschiebungen im Jahr 2015, p. 23. https://dserver.bundestag.de/btd/18/075/1807588.pdf
2016	0	29	Abschiebungen im Jahr 2016, p. 29. https://dserver.bundestag.de/btd/18/111/1811112.pdf
2017	1	66	Abschiebungen und Ausreisen im Jahr 2017, p. 27. https://dserver.bundestag.de/btd/19/008/1900800.pdf
2018	0	56	Abschiebungen und Ausreisen im Jahr 2018, p. 27. https://dserver.bundestag.de/btd/19/080/1908021.pdf
2019	n/a	28	Abschiebungen und Ausreisen im Jahr 2019, p. 17. https://dserver.bundestag.de/btd/19/182/1918201.pdf
2020	n/a	40	Abschiebungen und Ausreisen 2020, p. 17. https://dserver.bundestag.de/btd/19/270/1927007.pdf
2021	n/a	86	Abschiebungen und Ausreisen im Jahr 2021, p. 14. https://dserver.bundestag.de/btd/20/008/2000890.pdf
2022	n/a	120	Abschiebungen und Ausreisen 2022, p. 15. https://dserver.bundestag.de/btd/20/057/2005795.pdf

2. Political Context/Framework

The German political context for return policy in the period 2015 to 2022 is, on the one hand, primarily characterised by continuity despite a change of government in 2021. On the other hand, it is a repetition of the migration policymaking and rhetoric of the first half of the 1990s.⁵ The persistent trend is for migration and return policymaking to be grounded in domestic factors, particularly the steady rise of right-wing populist political voices and political groups that rally against immigration. Populist rhetoric portrays immigrants as a burden on the German social welfare system; immigrants are accused of asylum fraud; municipalities and the state are portrayed as victims, and there is a tendency to associate immigrants with security risks, public disorder and criminality. As a result, restrictions, efforts at control, and a focus on return have dominated migration policymaking during the observation period, with more than 35 amendments to asylum and residence laws since 2015.⁶ The narrow political focus on rejected asylum seekers, who are considered deportable, is intended to demonstrate steering capacity. In contrast, other steering options remain limited, e.g., for the increasing number of rejected protection seekers who are tolerated by the authorities because they cannot be returned for various reasons (see Section 5.3). During the period 2015 to 2022, there was a significant shift in public perception occurred from the 'welcome culture' (*Willkommenskultur*), which the German public had displayed during what later became known as the 'refugee crisis'—the influx of more than one million migrants in 2015/16—to the de facto 'culture' of return and deportation, the first measures of which have their roots in the same period and continue to this day.⁷

The change of federal government in 2021 after 16 years of various coalitions under the leadership of the Christian (Social) Democrats (CDU/ CSU), to a coalition of Social Democrats (SPD), Greens (Bündnis 90/Grüne) and Liberals (FDP), led to the (*Ampel*-)⁸coalition's claim of a paradigm shift in migration policy. It is based on the idea of comprehensive migration agreements with countries of origin and the recognition that Germany is an immigration country and needs migrant workers. At the same time, a concerted effort for safe and effective returns and faster asylum procedures

⁵ Immigrants from countries of the global South in the early 1990s—a new phenomenon after the Cold War, when mainly 'good' dissidents from the East had sought refuge in large numbers in West Germany—were attacked by racist mobs in several German cities. The ruling politicians perceived the situation as a threat to public order and the rule of law, and interpreted the high numbers of immigrants as a reaction to the fundamental right of asylum, which was granted by Article 16 of the German Basic Law (GG). Subsequently, a constitutional amendment was discussed and presented as the only solution, with the so-called asylum compromise—the clarification in a newly added Article 16a that excluded immigrants from so-called safe third countries from the individual right to asylum in Germany. The change in asylum policy had an impact on German and European refugee law in the following years and is seen as a precursor to the concept of safe countries of origin both in Germany and in the European Union, the Dublin Regulations (1997, 2003) and the Airport Procedure (*Flughafenverfahren*), which allows entry refusals in the German national law. Moreover, the asylum compromise was accompanied by the enactment of the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*) in 1993, which limited social assistance payments to selected, mostly in-kind, benefits and lowered the subsistence level for protection seekers in comparison to other groups. The public debate in Germany about restrictions on immigration in 2022/23 is very similar, and the political demands of the opposition parties go in the same direction (restrictions and removals).

⁶ See Hruschka & Rohmann, 2020 and Hruschka & Schrader, 2021, p. 5. For examples, confer to the entries 'Asylum packages 1 (2015), 2 (2016), Integration Act 2016, First and Second Act to improve the enforcement of the obligation to leave the country 2017/ 2019' in the flow chart (Figure 1).

⁷ The number of deportations increased from 2015 onwards, with a focus on rejected asylum seekers from the Western Balkans (to Albania, Kosovo, and Montenegro until they were declared 'safe countries of origin', also in 2015).

⁸ The new coalition government is widely called '*Ampel*' ('traffic light') because of the colours associated with the coalition parties: red (Social Democrats), yellow (Liberals), green (Greens).

was announced.⁹ In 2023, the German government agreed on domestically highly controversial topics in the proposed legislation for a ‘New Pact on Migration and Asylum’ by the EU Council, which provides for a so-called border procedure (*Grenzverfahren*) at the EU’s external borders and a regulation on crisis and force majeure situations in migration and asylum (*Krisenverordnung*). In short, for the policy field of return in migration policy, the announced paradigm shift in 2021 does not bring about any significant changes but rather represents a continuation of the existing de facto repatriation offensive.

Figure 1: Flowchart Political context¹⁰

2015	2016	2017	2018	2019	2020	2021	2022	2023
European Migration Agenda Migration Summit in Valletta, Malta EU hotspots approach Launch of the EU Integrated Return Management System (IRMS)	UN 2030 Agenda enters into force EU Commission first proposed New Pact but no agreement (putative) closure of Balkan Route EU-Turkey refugee agreement Schengen Borders Code	EU Return Manual adopted together with the EU Action Plan Act to Improve the Enforcement of the Obligation to Leave the Country more than 200 baseless control raids by Bavarian police in migrant shelters (permitted by integration Act)*	Global Compact for Safe, Orderly and Regular Migration and Global Compact for Refugees counseling centers open in Nigeria and Iraq	New Regulation on Family Reunification Act Second Act to Improve the Enforcement of the Obligation to Leave the Country ('Law of orderly return', with temporary suspension of removal [Duldung] 'light')	EU Commission's Migration and Asylum Package: New Framework for long-Term Migration Management and Normalization of Migration OVG basic decision that migrant shelters are in accordance with Article 13 of the Basic Law (GG), prohibiting arbitrary raids	European Commission presents strategy on voluntary return and reintegration new Law on the Central Register of Foreigners (Ausländerzentralregister, AZR), extending access and type of stored data; new Regular Needs Assessment Act Coalition agreement of the new "Ampel" government promises a paradigm shift toward a "modern immigration country", incl. a "repatriation offensive"/ concerted effort on return.	Decision to activate Directive 2001/55/EC (mass influx and temporary protection) by the Council of the EU Emergency aid and one-time payment law with changes in residence and social law for war refugees from Ukraine as of 01.06.2022 BAMF-measures to accelerate decision-making for protection applications counseling center opens in The Gambia Migration and Mobility Agreement with India	EU Commission policy document: Towards an operational strategy for more effective returns New Pact on Migration and Asylum agreed betw. MS and EU Parliament on 20 Dec., incl. Regulation addressing situations of crisis and force majeure EU-migration agreement with Tunisia closed (July 2023), undone (Oct 2023), partly revived again (Dec 2023) ** CJEU-ruling on possibility of refugee status revocation for criminals who are potential threats for security (three cases BE, AU, NL), 6.7.23 Appointment of the new special representative for migration agreements 45 politically motivated attacks on asylum seekers' accommodation registered Jan-March 2023 (more than twice in comparison 1st qu. 2022) Agreement on new Repatriation Improvement Law and declaration of Georgia and Moldova as safe countries of origin (pending approval Upper House of Parliament/ Bundesrat in 2024) Joint Migration Agreement with Georgia
Asylum Package 1 (Asylum Procedure Acceleration Act): Albania, Kosovo and Montenegro declared safe countries of origin + Act Redefining the Right to Remain and Termination of Residence Admission of more than 1 mio. refugees Government Special Initiative 'Flight/ Displacement' active (launched in 2014) Law to change Asylum-Seekers' Benefits Act notion of 'prospect of staying' introduced in Germany: those without good prospects subject to return policy/ deportability	EU and D agreement with Afghanistan on forced and voluntary repatriation Government allocates €10 mio for voluntary return assistance programs (mainly REAG/GARF) Act on Facilitated Deportation of Delinquent Foreigners Asylum Package 2 Incl. Act on the Introduction of Accelerated Asylum Procedures Integration Act and Program for the admission of labor migrants from western Balkan states tolerated migrant kills 12 people, injures 48 in terrorist attack at Berlin Christmas market (19 Dec 2016)	Measures on return and reintegration come into force: "Perspektive Heimat", "StarthilfePlus", Joint Return Support Center (ZUR). Information on return and reintegration support when applying for asylum counseling centers open in Morocco, Tunisia, Ghana and Senegal	Masterplan Migration introduced by a government crisis. Third law amending the Asylum Act EU and International Germany Return	The Gambia and Pakistan included in the "Perspektive Heimat" programme	counseling centers open in Pakistan and Egypt			

⁹ At the time of writing (October 2023), these measures are being fleshed out in draft legislation, such as a new law to improve repatriation. In their political rhetoric, the opposition (CDU/ CSU) and even a coalition partner of the government (Liberals, FDP) are careful not to question the basic right to asylum but to claim that the return of undeserving immigrants makes it possible to protect those who are ‘really in need’, thus calling for all kinds of measures to restrict the freedoms and benefits of protection seekers to make Germany an unattractive destination in line with their assumption that most people come to commit and live from asylum fraud.

¹⁰ See the source for context 2017 (Germany)* “Razzien in Flüchtlingsunterkünften...”(2018); for context 2023 (EU) ** González & Hierro (2023).

3. Relationship Between National Law/ EU Law/ Public International Law

The relationship between international and supranational EU law and national law is governed by Articles 23, 24 and 25 of the German Basic Law (GG). Art. 59 (2) 1 GG states that international treaties requiring consent or participation have the status of federal law in the German legal system. One exception is the European Convention on Human Rights, which technically has the status of national law but is also used by the German Federal Constitutional Court as an instrument of interpretation.¹¹

The primacy of EU law is based on Article 24 of the GG; in 1992, Article 23 of the GG was amended for the transfer of sovereign powers to the EU (Gaja, 2018). The German Constitutional Court has referred to and ruled on the primacy of EU law in several judgements, and while it generally accepts the principle, it has also pointed out some limits to the primacy.¹² According to the Court, the primacy of EU law is conditional and ends when fundamental rights and principles of the German GG are violated (Herdegen, 2023, §10.24). However, since the protection of fundamental rights in the EU Charter of Fundamental Rights is more or less equivalent to that in the German GG, this dispute has little practical relevance (Skouris, 2021, EuR 3, 9). The more practical implications of the relationship between EU and German domestic law are the implementation of EU regulations and directives, the secondary EU law and their status in national law. Regarding the transposition of the EU return regime into German national law, the EU Return Directive was implemented in 2011¹³, the recast of the Qualification Directive in 2013, the Asylum Procedures Directive and the Receptions Conditions Directive in 2015 (Hoffmeyer-Zlotnik & Stiller, 2023).

Key UN human rights treaties ratified by Germany include ¹⁴

- International Covenant on Civil and Political Rights (ICCPR),
- International Covenant on Economic Social and Cultural Rights (ICESCR),
- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD),
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),
- Convention on the Rights of the Child (CRC),
- International Convention of the Protection of the Rights of all Migrant Workers and Members of their Family (ICMW),
- International Convention for the Protection of all Persons from Enforced Disappearance (CPED),
- Convention on the Rights of Persons with Disabilities (CRPD).

There are also optional protocols to some of these conventions, which offer more extensive protection or complaint procedures to the relevant monitoring body. Germany has also ratified all optional protocols except the one to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Germany ratified all Conventions without reservations, except the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment

¹¹ See Deutscher Bundestag/ Wissenschaftliche Dienste (WD), 2019, p. 4.

¹² BVerfGE 37, 271 (Solange I); BVerfGE 73, 339 (Solange II); BVerfGE 126, 286 (Lissabon-Urteil); BVerfGE 156, 340 (PSPP-Urteil).

¹³ Official Gazette I no. 59 of 22 November 2011, p. 2258.

¹⁴ UN OHCHR, 2023; Deutscher Bundestag/ WD, 2019, p. 6f.

(CAT), where a reservation was made to Art. 3 of the Convention, stating that it would only apply through EU law.¹⁵

With regard to the status of Public International Law in domestic law, Germany follows the dualist system. Thus, international human rights treaties must be incorporated into German domestic law by a separate act of ratification. The general rules of Public International Law include the norms of customary international law and *ius cogens*. For these rules to be directly applicable, they must be sufficiently specific and absolute (“self-executing”).¹⁶

Judgements of the European Court of Human Rights are legally binding on Germany under Article 46 of the EU Convention on Human Rights and Article 59 (2) (3) GG, if Germany is a party to the proceedings. In cases in which Germany is not a party, the judgements still have a factual orientation and guidance function (Herdegen, 2023, §3.75). The findings and observations of the monitoring bodies of the UN human rights treaties are not legally binding; however, they serve as guidance and orientation and are used for further developments and decisions (Oette, 2018).

¹⁵ See UN Treaty Collection (n.d.).

¹⁶ Jarass et al., 2022, Art. 25, Rn. 1-5, 14.

4. Institutional Framework and Operational Infrastructure

The German return governance landscape consists of a three-tier governmental hierarchy with policy and operational responsibilities and is flanked by courts and non-state actors at national and sub-national levels while embedded in the international return regime with EU regulations and operational support (e.g., from Frontex). Annex 1 lists the main actors and their competencies and responsibilities. Due to the complexity of the German federal system of governance, at the sub-national level, mainly categories of actors with a specific task/activity profile are included, without mentioning individual authorities in all locations, that is district courts as a generic category are listed, but not all existing district courts in the 16 federal states of Germany.¹⁷

Return policymaking is the responsibility of the federal government, with the Federal Ministry of the Interior and Community (BMI) taking the lead. It provides the guidelines and legal framework for return policy, negotiates bilateral admission and migration agreements and designs and finances return assistance programmes. The Federal Office for Migration and Refugees (BAMF), a higher federal authority, acts as the operational arm of the BMI. It is a multi-tiered authority with branch offices (*Außenstellen*) in the major migrant reception facilities and other relevant administrative divisions.¹⁸ The BAMF is the agency responsible for deciding on applications for protection (asylum) (see Section 5.3) and is also responsible for legal measures and decisions concerning aliens (§5.1 AsylG). Within this remit, the BAMF administers the entire asylum process before deciding on a protection status or rejection (including Dublin cases). Other actors at the federal level include the Federal Ministry for Economic Cooperation and Development (BMZ), which is mainly involved in financing reintegration and improving livelihood measures in countries of origin (with its implementing organization GIZ responsible for programme implementation), the German Federal Foreign Office (GFFO) and the Federal Police. The latter plays a key role in enforcing returns through removals. In 2023, the inter-ministerial position of a Special Representative for Migration Agreements was established with the office physically located at the BMI.

According to German Basic Law (GG), the implementation of federal policy is subject to the competences and organizational and political preferences of the federal states (*Länder*). Within the federal legal framework, the states enforce the repatriation of persons obliged to leave the country on the basis of different administrative structures and bureaucratic responsibilities within the states. Moreover, states may organize their own bilateral return programmes or

¹⁷ The same applies to return counselling centres, other civil society and advocacy organisations, various types of research institutions, and the so-called Foreigners Authorities (*Ausländerbehörde/-amt*) working at the municipal level. Despite different naming conventions in the federal states (authority vs. office), the authors use the term ‘Foreigners Authority’ throughout this Dossier for municipal level institutions (in addition to the Central Foreigners Authority [*Zentrale Ausländerbehörde*, ZAB] at district or higher level). See Annex 1 for an overview of authorities involved in migration return governance.

¹⁸ According to §5.3 AsylG (German Asylum Act), the opening of a BAMF branch office is mandatory where a local reception facility accommodates more than 1,000 persons but can also be established—in coordination with the states—in locations with lower numbers and outside of reception centres. In 2023, there were 60 local branch offices of the BAMF. See Annex 2 for further distinctions in the naming of BAMF branch offices; distinction is made between arrival centres, AnKER centres and decision-making centres. This is partly due to the current government’s rejection of the AnKER centre concept introduced by the previous government (2017–21) in 2018. The main idea, however, of bundling the competencies of all relevant agencies for the asylum process in one place, remains, albeit reformulated as ‘integrated refugee management’ (BAMF, 2018).

individual components.¹⁹ This results in a complex set of actors, especially at the third tier of government, where different municipal categories (urban vs rural districts, different types of municipalities) use different administrative structures (e.g. in the case of Foreigners Authorities) and procedures, e.g. regarding the responsibility for removal action, which may be the responsibility of either a state's police or state executive services or the Foreigners Authority (Rietig & Günnewig, 2020).

The local Foreigners Authorities are the main actors with the most executive power in the return process. The approximately 600 offices practically grant or revoke protection status, order expulsion, deportation and removal detention and enforcement, and ensure that the necessary documents (passports) are obtained. The discretionary powers of employees of that third tier of government have been the subject of discussion between advocacy groups in parliamentary inquiries and the government (BAMF and BMI) because of contrasting decisions resulting from the considerable leeway given to decision-makers.²⁰ Administrative courts play a key role in reviewing rejection decisions and can offer legal remedies; ordinary courts are responsible for issuing detention orders. Decisions are thus highly dependent on the municipality (as the local level) and the capacity and qualifications of the staff in the relevant institutions (court, Foreigners Authority).

Since 2015, the German return governance framework has been expanded to include intermediate coordination structures between the federal and state levels (federal–state interfaces). Inter-ministerial coordination at federal level and between the interior ministries of the states has also increased. As repatriation is the responsibility of the states but is in the interest of the Federation, the BMI has made efforts to support the states administratively (document procurement, migration agreements with countries of origin) and with training. The Repatriation Support Centre (ZUR) is the primary interface for the regular enforcement of returns, while two counter-terrorism exchange platforms (GETZ and GTAZ, see Annex 1) offer advice in the assessment and eventual removal of persons who potentially constitute a threat to internal security.

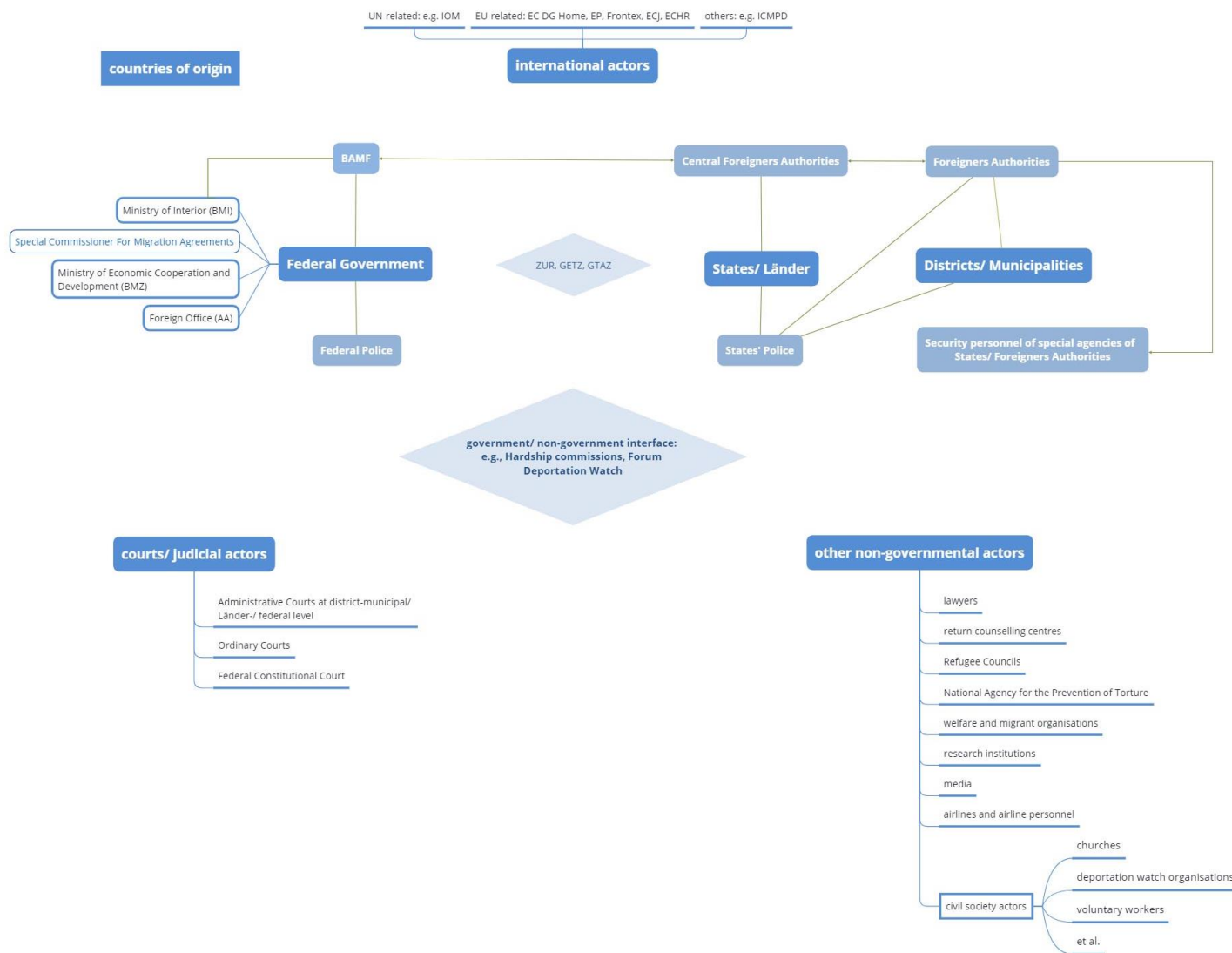
In addition, the importance of the states for policy-making at federal level and the pressure built up 'from below' should also not be underestimated. The above-mentioned federal–state interfaces provide an outlet for pressure and political advocacy by the states on the federal level. The intermediate structures thus serve a two-way vertical function (top-down and bottom-up) and facilitate horizontal exchange among the states, which is likely to facilitate mutual 'learning' about procedures and practices (imitation) that could have a positive or negative impact, depending on the political priorities of those in charge.

The return governance framework is complemented by non-government actors, mainly return counselling centres run by NGOs, which offer free individual and voluntary counselling on asylum procedures independently or based on government support (§12aAG). The Federal Ministry of the Interior's most recent approach to 'integrated refugee management' sees its task fulfilled accomplished in reception facilities (former AnkER-centres and functionally equivalent facilities) where various agencies are located on the same site or in the immediate vicinity: BAMF, Foreigners Authority, welfare associations, application offices of the administrative courts, the Federal Employment Agency as well as other non-governmental counselling and support providers and, at some locations, the state police and, if necessary, the Federal Police (especially in the case of Dublin III transfers).

¹⁹ For example, Bavaria and Hesse follow this approach; even municipalities have decided to grant voluntary return assistance (cf. Rietig & Günnewig, 2020).

²⁰ Among other factors, this is manifest in own fact-finding, inquiry and interpretation of information about the situation in the applicant's country of origin by the employee of the foreigners authority/ office.

Figure 2: German actor landscape: Migration return governance



5. National Legal Framework/ Return Infrastructure

The two main German laws governing return regulations are a) the Asylum Act (*Asylgesetz*, AsylG) and its amendments (including the recent laws on accelerated asylum procedures and on improving the enforcement of the obligation to leave the country (see Annex I) and b) the Residence Act (*Aufenthaltsgesetz*, AufenthG).²¹ In addition, the Basic Law (GG) provides for the right to political asylum in principle (Article 16a GG).²²

5.1 Definitions and Concepts

Return (*Rückkehr*) is not a legal term in German legislation; however, there are several concepts that denote the procedural variations that return/s may entail or comprise. The most important ones are the following:

- **Third-country national:** German law uses the term *Ausländer* (foreigner/alien) to refer to third-country nationals. Sometimes, the term *EU-Ausländer* is used to refer to nationals of EU member states.
- **Asylum:** According to the German Asylum Act (AsylG), the right to asylum can be realised through three forms of protection: the right to asylum, refugee protection, and subsidiary protection. In addition, a national ban on deportation can be issued if the other forms of protection do not apply based on the fact that the return to the destination country would violate the EU Convention on Human Rights or that “a considerable concrete danger²³ to life, limb or freedom exists in that country” (BAMF, 2018b) according to §60.5/ 7 AufenthG.
- **Refusal of entry at the border (Zurückweisung)** (§15 AufenthG) refers to the refoulement of attempted unauthorised entry at the border. It is a measure to prevent entry in accordance with international law. If a deportation order has been issued and cannot be enforced immediately, the foreigner can be detained by order of a court to secure his or her deportation (detention pending refoulement deportation: *Zurückweisungshaft*).
- **Expulsion (Ausweisung)** (§53 AufenthG) refers to an official administrative act (also known as a ‘return decision’ according to the EU Return Directive, Article 3(4)), which means the termination of the right of residence of foreign nationals in Germany and the commencing of their obligation to leave (*Ausreisepflicht*) according to §50 AufenthG. The persons concerned are requested to leave the territory of the Federal Republic of Germany by a certain date. If they do not comply with this request to leave, they are threatened with deportation. Expulsion is a prerequisite of the return procedure and is carried out by removal. Constitutive for the expulsion is the so-called interest in expulsion (*Ausweisungsinteresse*, §54 AufenthG), which is asserted to a different extent if the foreigner has been convicted of a criminal offence

²¹ In addition, the Residence Ordinance (*Aufenthaltsverordnung*, AufenthV) regulates detailed issues relating to entry and residence in Germany, fees and procedural requirements for the issuance and extension of residence titles.

²² See footnote 1 in Section 2 of this Dossier.

²³ This could be “for health reasons if a return would cause life-threatening or serious disease to become much worse,” see BAMF, 2018b. For more information on the different types of deportation bans, see below (Section 5.3, FN 40).

and has been detained, has concealed his or her identity or has committed other illegal acts (cf. §54 AufenthG, 1.1-1.5, 2.1-2.9).²⁴

- **Deportation²⁵ (Abschiebung)** (§58 AufenthG) is defined as the forcible removal of a foreigner from Germany if the foreigner does not have a valid residence title (such as toleration or an approved asylum application) or is no longer allowed to stay in Germany for other reasons. *Abschiebung* refers to the more extensive procedure that sets in when it becomes clear that the foreigner has not left voluntarily within the specified period provided for in the rejection of his/ her application for protection, which means that he/ she will be forcibly deported. It presupposes that the obligation to leave is enforceable and that supervision of the departure appears necessary. It is usually²⁶ preceded by the issuance of a so-called deportation warning (*Abschiebungsandrohung*), with the setting of a deadline of between seven (if the asylum application is rejected as manifestly unfounded) and 30 days (if the application is rejected outright) for voluntary departure to a specified destination country.²⁷ Deportation involves the physical transportation of the foreigner from Germany (often with the help of the state and federal police), which is sometimes more narrowly/ technically referred to as removal.
- **Deportation/ removal order (Abschiebungsanordnung)**
 - §58a AufenthG: A deportation order may be issued against a foreigner by a supreme state authority (*oberste Landesbehörde*) on the basis of a fact-based prognosis to avert a particular threat to internal security or a terrorist threat without prior expulsion. The deportation order contains an expulsion order and the relevant order of enforcement; it is, therefore, immediately enforceable by the Federal Police and does not require the prior announcement of a removal/deportation warning (*Abschiebungsandrohung*).
 - §34a AsylG: If a foreigner is to be returned to a safe third country or to a third country responsible for the asylum application of the person seeking protection (Dublin rule), a deportation order is issued once the deportation is enforceable. In these cases, a prior removal warning (*Abschiebungsandrohung*) is not necessary. If the deportation is not enforceable, i.e., if there are grounds for non-enforcement, a removal warning is issued for deportation to the country in question.

According to a recent Court of Justice of the European Union (CJEU) ruling²⁸, the non-enforcement of deportation orders under §34a AsylG has to be examined by BAMF alone, which has consequences for the lawfulness of the removal threat. Previously, the clarification of possible grounds for non-enforceability of deportation was divided between BAMF for the applicability of national deportation bans and the Foreigners Authority for the so-called other grounds for non-enforcement (*Vollstreckungshindernisse*). This has led to unlawful removal

²⁴ A related concept concerning the obligation to leave is used in the case when a foreigner is apprehended immediately after unauthorised entry and subjected to leave because under an enforceable obligation to leave (*vollziehbar ausreisepflichtig*).

²⁵ Authorities also speak of 'repatriation' as a synonym for the term deportation. 'Deportation' is the term used for removal in the translation of the German Residence Act (AufenthG). It has the same meaning as 'removal' as used in the EU Return Directive.

²⁶ A threat of deportation is not considered necessary when other administrative procedures connected to return have already provided the necessary information for the to-be deported person. Cf. §59.1 AufenthG.

²⁷ Exceptionally a shorter deadline may be set or a deadline waived if necessary according to public interest, cf. for details §59 Art. 1.1-1.2.

²⁸ CJEU ruling of 15 February 2023, C-484/22: Revocation of the return decision if family ties and the best interest of the children/ minor asylum seekers are violated.

threats for persons with family ties where the best interests of the child have to be taken into account.

- **Deportation detention²⁹ (Abschiebungshaft)** (§62 AufenthG) is ordered and enforced if there is a risk of absconding, in the case of unauthorised entry or if the deportation warning cannot be carried out immediately (§62.3 AufenthG). While other measures are preferred, and the detention should be as short as possible, it can be ordered for up to six months with a possible two-month extension.³⁰ Families with children and minors are to be exempted from detention (§62.1 AufenthG). Deportation detention is used for returns to origin countries and Dublin returns.
- **Pre-removal detention pending departure (Ausreisegewahrsam)** (§62b AufenthG) is the detention of a foreigner for up to ten days on the basis of a court order to ensure the feasibility of deportation under certain conditions (cf. §62b.1) irrespective of the risk of absconding.³¹ Detention pending removal can take place in the transit zone of an airport or in a facility near the border where the expulsion will be enforced. In some cases, these are the same detention facilities used for deportation detention (*Abschiebungshaft*).³²
- **Removal following unauthorised entry at/across the border into neighbouring countries (Zurückschiebung)** (§57 AufenthG) refers to the forced return of apprehended foreigners who entered Germany without permission (unauthorised). In line with EU regulation 2016/399 (Art. 2.2 [external border]), they are returned (removal) within a short period after their entry into their country of origin or deported back to the EU or Schengen country that is responsible for them.
- **Temporary suspension of deportation (Duldung)** (§60a-d AufenthG) is based on international law or humanitarian considerations or to safeguard the political interests of Germany. It can be used to prohibit the deportation of foreigners from/ to specific states for a maximum period of three months in cases where deportation is impossible for factual or legal reasons and no residence title is granted while the temporary presence of the person concerned on German territory is tolerated. A foreigner may be granted a temporary suspension if urgent humanitarian or personal reasons or substantial public interests require his or her temporary continued presence on the territory of Germany. There are various reasons for granting temporary suspension status, such as medical needs, unclear identity status, enrolment in vocational training, and work contract (see Section 5.6).

²⁹ Or *Sicherungshaft*, i.e. preventive detention.

³⁰ Absolute maximum for detention is 18 months (§62.4 AufenthG), including preceding so-called preparatory detention (§62c.1 AufenthG)—*ergänzende Vorbereitungshaft*—during the preparation of the deportation warning (§34 AsylG) or if the detainee poses a considerable threat to the public/ to domestic security, etc.

³¹ The newly agreed repatriation package (adopted in January 2024, to be in effect in first half of 2024) includes another law on improving returns (*Gesetz zur Verbesserung der Rückführung*), which foresees the extension of *Ausreisegewahrsam* (pre-removal detention pending departure) from 10 days to 28 days. See <https://www.bundestag.de/dokumente/textarchiv/2024/kw03-de-rueckfuehrung-986284>

³² Noted by migration lawyer Peter Fahlbusch in the podcast “Abschiebungshaft – Kritik an...” (2023).

5.2 Return at the Border

In compliance with the Schengen Borders Code (Art. 23), the German authorities refuse entry at the border to persons who do not fulfil the entry requirements (authorisation, visa, using an official border crossing point, etc.).³³ The so-called border procedure (*Grenzverfahren*) at land borders allows the police to refuse entry (*Zurückweisung*) to any person within a 30 km strip from the border because the person is considered not to have crossed the border yet (§2, Bundespolizeigesetz). This so-called legal figure (*Rechtsfigur*), otherwise known as fiction of non-entry (cf. §13.2.2 AufenthG), is used to circumvent the practical execution of the Dublin Regulation. A person attempting unauthorized entry is then returned to the bordering country.

The Federal Police (*Bundespolizei*) has applied this procedure at the German–Austrian border since 2015 with border controls which continue to this data. New stationary border controls at the Swiss, Polish and Czech borders began in mid-October 2023 (Migrationsbericht der Bundesregierung, 2022) in accordance with Art. 25-28 of the Schengen Borders Code (temporary reintroduction of border controls at national borders).³⁴ The latest available data shows a total of 25,538 refusals of entry for 2022 (19,142 of which at the land borders) and 12,589 (9,465 of which at the land borders) for the first half of 2023, including at the borders with Poland and the Czech Republic, Austria, Switzerland³⁵, France, Luxembourg, Belgium, the Netherlands and Denmark (Deutscher Bundestag, 2023i, p. 8).

There is no documentation on whether and how many removals in border procedures are (il)legal. However, there is increasing evidence of (internal Schengen) pushbacks: For example, at the border with Austria, persons have been returned to Austria without a regular asylum procedure being initiated, although they had repeatedly told German officials—even in the presence of interpreters—that they want to apply for asylum in Germany (Bayerischer Flüchtlingsrat, 2023).³⁶

³³ In accordance with Art. 2.2a of the EU Return Directive, Germany does not apply the directive to TCNs and instead subjects them to Art. 13 (on border surveillance) of the Schengen Borders Code. If a TCN is apprehended by the police near the border before reporting to a reception facility, a police station or an office of the Foreigners Authority and before having been issued an ‘arrival certificate’, the police are obliged—as part of the entry interview—to ask the TCN whether he/ she intends to apply for asylum. If this is the case, the police must refer the protection seeker to the relevant nearby authority (§18.1 AsylG). Upon arrival at the airport, undocumented migrants shall be given the opportunity to lodge an asylum application at the BAMF branch office affiliated with the border control post.

³⁴ Border controls at internal borders can be reintroduced for a maximum of six months (Art. 25.4 Schengen Borders Code), and are an option of last resort, conditional upon the existence of a serious threat to public policy or internal security in a member state (Art. 25.1 SBC). The continuous prolongation of border controls at the Austrian–German border is thus de facto unlawful but has been passed because of adjustments in the ‘threat’ description that justifies the extraordinary measure. Moreover, a CJEU ruling on removals at internal borders of 21 September 2023 that declared extended returns at the French Côte d’Azur to be unlawful is de facto irrelevant for Germany because of exceptional bilateral readmission agreements that Germany had already concluded with all neighbouring countries prior to the entry into force of the EU Return Directive in 2009 (Thym, 2023).

³⁵ Special bilateral legal arrangements with Switzerland dating back to 1961 (e.g., the most recent *Gemeinsamer Aktionsplan zur Vertiefung der grenzpolizeilichen und migrationspolitischen Zusammenarbeit*—joint action plan to strengthen border police and migration policy cooperation, unpublished) allow the Federal Police to carry out border police controls across the Swiss border (so-called *Zone*), during which German legal and administrative regulations, including those of the Residence Act, may apply. However, if asylum seekers who wish to apply for asylum in Germany are found on Swiss territory (*Zone*), the Dublin Regulations apply, and responsibility lies with the Swiss authorities. See Deutscher Bundestag (2023i, p. 21).

³⁶ The indicated source contains links to testimonies of those affected by pushbacks (defined as ‘informal cross-border expulsion without due process of individuals or groups to another country’) which the NGO

In 2022, there were also reports about refusals of entry and pushbacks at the Polish border (Deutscher Bundestag, 2022b; Hoffmann & Bachmann, 2022). According to ProAsyl (2023), several statistical peculiarities and reports lead to the conclusion that systematic returns without border procedures are taking place. These include, in particular, the discrepancy between the number of persons who entered Germany without authorisation (22,824 in 2022) and the number of persons who applied for asylum (only 2,771). (At the same time, more than 10,500 arrivals came from Afghanistan, Syria and Turkey.). Further indicators include the occurrence of asylum applications at different borders (e.g., only 17 per cent of those apprehended at the Austrian border had applied for asylum, compared to 50 per cent at the Czech, Polish and Swiss borders) and the increase in refusals of entry into Switzerland from 94 in 2021 to 3,664 in 2022, as well as the doubling of this type of returns to Austria within the same period (ProAsyl, 2023).

In the so-called airport procedure³⁷ (*Flughafenverfahren*, §18a AsylG), protection seekers arriving from a so-called safe country of origin (§29a) are prevented from entering Germany until the asylum decision has been taken (protection granted), and they are often housed on the airport premises.³⁸ The decision has to be made within two days according to the ‘principle of immediacy’; however, via the legal counselling and appeal option that foresees max. 14 days of legal summary proceedings, the overall stay in the airport premise can last up to 19 days (BAMF, 2023, p. 45). The airport procedure is in fact an instrument used by the Federal Police to circumvent the non-refoulement principle of the 1951 Refugee Convention because without it, “the Federal Police would have to allow any person who has destroyed their passport and applies for asylum to enter Germany” (BAMF, 2019).

Once the border has been crossed by unauthorised entry (Art 2.2 EU 2016/399), the Residence Act (§57a AufenthG) provides for *Zurückschiebung* (removal following unauthorised entry) if a person is apprehended within six months after entry. This applies to Dublin cases and entrants from so-called safe third countries. In 2022, 4,978 people were removed following unauthorised entry at the German land border, 31 at the sea border, and 171 at airports (Deutscher Bundestag, 2023b, p. 14).³⁹ They can be removed without warning and without granting a period for voluntary return (Hailbronner, 2017, p. 359).

5.3 Regular Procedure When Issuing a Return Decision

Rejected asylum application

During the asylum process in Germany, the Federal Office for Migration and Refugees (BAMF) examines whether the applicant fulfils the required conditions to be granted one of the four types of protection, i.e. political asylum, refugee status, subsidiary protection or national and federal

Pushback Alarm Austria has systematically documented; they are available at the website of the Border Violence Network, cf. <https://borderviolence.eu/>

³⁷ The procedures were based on EU Decisions 2015/1523 of 14 September 2015 and 2015/1601 of 22 September 2015, both since expired. Cf. BAMF, 2019.

³⁸ This is also the case if the inpatient treatment of an illness of the protection seeker prevents temporary housing on an airport premise. The BAMF has set up an airport branch office in Frankfurt and subordinate offices at the airports in Düsseldorf, Hamburg, Berlin and Munich (BAMF, 2023, p. 45).

³⁹ According to the same source, of the total number of persons removed at land borders and airports (5,149), 349 were minors, of whom 120 were unaccompanied. The Police Crime Statistics (*Polizeikriminalstatistik*, PKS) records cases of unauthorised entry and re-entry after removal. See Bundeskriminalamt, 2023.

deportation bans.⁴⁰ If an asylum application is rejected, the obligation to leave Germany arises from the notice of rejection issued by BAMF. Depending on whether the application is rejected outright (*unzulässig*) or is rejected as ‘manifestly unfounded’ (*offensichtlich unbegründet*), the person concerned is given a deadline to leave the country voluntarily, in the first case within 30 days, in the second within seven days. During this period, the rejected asylum seeker has one week to file an appeal (*Anfechtungsklage*) with legal assistance at the local administrative court (VG). While the appeal has suspensive effect in the case of ‘normal rejections’ (§75 AsylG), a separate request for suspensive effects must be filed within one week in the case of manifestly unfounded rejections. Once the action and the application for suspension have been filed, the person threatened with deportation cannot be removed until the court has made its decision. A negative court decision results in a new deadline to leave Germany within 30 days of the decision taking effect and must be communicated to the Foreigners Authority.

The notice of rejection also includes a deportation/ removal warning (§34.1 AsylG) if the deadline for departure is not met.⁴¹ The removal warning serves as a precondition for the initiation of the deportation proceedings, including removal, once the deadline has passed without the person concerned leaving the country. Under European law, a removal warning is considered equivalent to a return decision. The return decision is, therefore, an administrative act; it states that a person is staying in Germany irregularly and orders the person to leave the country.⁴² The return decision must be issued in writing and contain a statement of reasons as well as information on available legal remedies (*Rechtsbehelfsbelehrung*). Once issued, there is no time limit on the validity of the return decision.

Some indicative figures are as follows. Every year, more than 50 per cent of all rejected asylum applications are challenged before the local administrative courts (VG). In 2021, the figure was 57.2 per cent, compared with 2020, when 73.3 per cent of all rejections were challenged. Of the 106,137 local court decisions in 2021 on BAMF-rejections of first and second asylum applications, 18.6 per cent were granted protection status and 33.1 per cent of appeals were rejected (Migrationsbericht der Bundesregierung, 2022, p. 95). The total duration of the procedure up to

⁴⁰ Deportation bans can relate to an origin country to which removals are prohibited, they can cover a certain defined group of people who are persecuted in the country of origin and thus suspend the potential deportation of members of this group, or they can be issued for a certain time of the year (winter deportation ban) for humanitarian reasons and cover all potential deportees from a certain federal state: In 2023, Germany had national deportation bans for Afghanistan and Iran in place, but the latter expired on 31 December 2023 (Bachmann, 2024). Individual federal states introduced deportation bans for Yezidi women and children from Iraq, e.g., Thuringia on 4 January 2024 for three months, and North Rhine-Westphalia on 18 December 2023 for three months with the option of a further three month-extension (see Santos, 2024; Wolf, 2023). In 2023, Berlin (as a city-state) introduced a temporary general deportation ban during the winter months for the second time (after 2022) suspending deportations for two months from 22 December 2023 to 28 February 2024 (Peter, 2023). This unique humanitarian ban excludes, however, criminal offenders who have been sentenced to pay a fine of more than 50 daily rates and potential attackers/ ‘persons posing a threat to public safety’ (*Gefährder*). Critics argue that a fine of 50 daily rates is often given for petty offences („*Bagatelldelikte*“) which means that people who are caught fare dodging are categorized as criminals and thus become subject to deportation (Peter, 2023).

⁴¹ The deportation/ removal warning must specify the country to which the person concerned is to be removed, if necessary, and in such a way that the person concerned can also be removed to another state to which he/she is entitled to enter or which is obliged to admit him or her (§ 59.2 AufenthG).

⁴² In contrast to the EC Recommendation, the return decision does not contain the information that the person concerned has to leave the Schengen area or the EU to comply with the obligation to leave. See Flüchtlingsrat Thüringen e.V., 2016, p. 2.

the final adjudication, that is including the appeal and the decision by the administrative court, has increased over time (2016 = 8.7 months, 2018 = 17.6 months, 2020 = 25.9 months).⁴³

Expiry, withdrawal or revocation of a residence title

If a third-country national (TCN) is obliged to leave the country because his or her residence title has expired, been withdrawn or was lost, the competent Foreigners Authority issues a return decision (§50.1 AufenthG, §59.1 AufenthG in combination with §71.1 AufenthG). In another scenario, the BAMF revokes the recognition of asylum, the granting of refugee status, the granting of subsidiary protection or terminates national deportation bans (§60.5/7 AufenthG) if the conditions for these no longer exist or the criteria are no longer met. The protection status is withdrawn (a) if the persecution situation in the country of origin has changed permanently or is no longer applicable and the persons concerned would no longer be in danger if they were to return, (b) if it was granted on the basis of incorrect information or failure to disclose essential facts, (c) because the foreigner has become a criminal offender or represents a threat to domestic security and his/ her continued presence gives rise to a (serious/ particularly serious) interest in expulsion on the part of the authorities. (§54.1.2/4). The BAMF initiates a revocation assessment upon receipt of an investigation request from the responsible Foreigners Authority or other authorities.⁴⁴ The BAMF communicates the result of the revocation examination to the Foreigners Authority and notifies the person whose status has been examined. In the event of revocation or withdrawal, the foreigner can file an appeal against the decision; if successful, he or she can continue to enjoy the residence title ‘for other reasons’. Even if no revocation or withdrawal takes place after a review of the protection granted, subsequent attempts at revocation and enforcement are not ruled out.⁴⁵

5.4 Special Cases and Their Relation to the Obligation to Issue a Return Decision

Exceptional situations and interest in expulsion

As an exception for particularly dangerous situations (potential offenders), a removal order pursuant to §58a (AufenthG) contains an expulsion order and the corresponding enforcement order. It can serve as grounds for detention if the removal cannot be enforced immediately (§62.3.1a AufenthG). In the case of a refusal of entry or removal following an unauthorised entry at the border, no return decision is issued. Refusal of entry and removal following an unauthorised entry can be enforced without a preliminary warning or period for voluntary departure and are

⁴³ According to observers, this increase is mainly due to the high number of poor and flawed asylum decisions issued by the BAMF. Almost one-third of all decisions issued by the BAMF were found to be incorrect and unlawful by the courts following an appeal. Cf. Deutscher Bundestag, 2022a, p. 2.

⁴⁴ Since 2018, the protection status beneficiaries have to participate in the examination upon request of the BAMF (see BAMF, 2023).

⁴⁵ The number of annual revocation examinations has risen enormously over the period from 2016 to 2022. While their number was 3,170 in 2016, it rose to more than 77,000 in 2017, around 200,000 in 2018 and 2019, respectively, and 188,000 in 2020 (Deutscher Bundestag, 2018, 2021). However, actual revocations were very low in 2020 and 2019, at around 3.4 per cent each year. Critics question the justification for the increase in the number of BAMF staff dealing exclusively with asylum revocation procedures (268 employees in 2018 vs. 797 at the end of 2019 and 482 in 2021). The regular revocation reviews every three to five years are a unique practice in Germany and not common in other European Union member states. The current government has changed its policy to carry out ad hoc revocation reviews instead (Deutscher Bundestag, 2022a).

not covered by the provisions of the EU Return Directive (Hailbronner, 2017, p. 359). This de facto deprives people affected of their right to apply for asylum.

Accelerated asylum procedures and orderly return

Applicants from so-called safe countries of origin, those applying a second time (*Folgeantrag*), those who deceive the authorities by withholding identity information, those who refuse to be fingerprinted and those who pose a potential threat to internal security can be subject to accelerated asylum procedures (§30a AsylG), in which case, a decision is to be made within one week. However, the average duration in 2021 was 3.3 months; the share of accelerated procedures in the total number of decisions was 0.2 per cent (Deutscher Bundestag, 2023e).

Refusal of entry under the notion of ‘safe third countries’: Removal without issuing a return decision

In the case of refusal of entry or removal following unauthorised entry, no return decision is issued, and no entry ban is imposed. On the basis of administrative agreements and special administrative readmission programmes between the German Federal Ministry of the Interior (BMI), the Greek Ministry of Migration and the Spanish Ministry of the Interior on the refusal of asylum seekers (Deutscher Bundestag, 2023j, p. 34), the Federal Police in 2018 was able to refuse entry at the border to Austria and forcibly return persons to Greece and Spain within 48 hours if they had previously applied for asylum there (Hoffmeyer-Zlotnik, 2022).⁴⁶ This practice constitutes a means to avoid official Dublin transfers (comparable with refusals of entry from the territory of Germany’s neighbours, cf. Section 5.2 Return at the Border). Between August 2018 and May 2021, 46 persons were returned to Greece and four to Spain. As refusal of entry can only be enforced at borders with mobile/ temporary or stationary border controls, the statistics do not include cases of refusals of entry from the German–Polish border in connection with the humanitarian crisis at the Polish–Belarusian border in 2021/22, as these refusals of entry are illegal. Accordingly, apprehended TCNs were directed to reception facilities close to the border, and police controls focused on search operations to detect potential smuggling activities (Hoffmeyer-Zlotnik, 2022).

Return decisions for Dublin cases from Greece—at the end of 2022, approximately 41,000 persons⁴⁷ with a presumed protection status in Greece were residing as asylum seekers in Germany (Deutscher Bundestag, 2023d)—had been postponed in 2020 until April 2022. Court rulings clarified that it was not permissible to return people with refugee status from Germany to Greece due to the miserable housing and survival conditions and the exposure to discrimination and human rights violations. Nevertheless, Germany had sent 10,427 requests for Dublin transfers to Greece, but only one transfer took place (Hoffmeyer-Zlotnik, 2022) during that period, none in 2022 (Deutscher Bundestag, 2023d, p. 36). In 2022, there were 212 transfers from Greece to Germany, including 208 for ‘family reasons’ (Deutscher Bundestag, 2023d, p. 38). In new decisions on applicants from Greece since April 2022, BAMF reviews the protection status the applicants received in Greece. There are several cases in which applicants were granted subsidiary protection in Germany even though they had been granted refugee status in Greece

⁴⁶ After two forced returns were challenged before a Munich court, the Federal Police was obliged to return asylum seekers from Greece in two cases in 2019 and 2021. While further cases were pending, in May 2021, the court ruled in a temporary injunction that the Dublin Regulation had to be applied instead of the procedure foreseen by the Administrative Regulations Agreements, and that the removal could not take place without an examination by BAMF. By 2023, the court had rejected two summary judicial proceedings, causing the BMI to insist on its legal opinion. Cf. Deutscher Bundestag (2023i, p. 26).

⁴⁷ In 2021 alone, 29,508 persons applied for protection in Germany while holding a protection status in Greece.

(Deutscher Bundestag, 2023d). In three per cent of the applications reviewed, the cases were rejected (outright).

Dublin III transfers to/ from Poland (4,482 requests by Germany in 2022) are similarly controversial because the Polish authorities legalized and carried out pushbacks at the border with Belarus and detained protection seekers who had entered Poland under inhumane conditions and violations of their human rights (Deutscher Bundestag, 2023d).

5.5 Voluntary Departures

An emphasis on voluntary return is also one of the fundamental principles set out in the EU Return Directive. “Voluntary, assisted return is an integral part of migration policy and migration management in Germany” (Kothe et al., 2023, p. 14). German migration authorities seek ways to facilitate the voluntary departure of rejected asylum seekers and migrants in irregular situations. The German Residence Act gives priority to voluntary departure over deportation. The consensus for this prioritisation is that voluntary departures are low-cost and more humane than forced removals (Olivier-Mensah et al., 2020; Koch et al., 2023). This perspective was also confirmed by ministerial representatives the authors met in an exchange meeting. They underlined that the “focus should be on voluntary return rather than deportation, as the former is less costly, more legitimate and more humanitarian”; measures could be better if more development components could be integrated” (Stakeholder Expert Panel Notes, 12 December 2023).

Germany’s voluntary return landscape consists of multiple actors, their networks and variations in practice. Actors involved in voluntary return have discretionary powers and considerable scope for implementation (Grote, 2015). Besides government-assisted repatriation programmes, support for returns is also provided by the states and municipalities, creating multiple pathways for voluntary return but also challenges in coordination (Vollmer & Mencutek, 2023). Some return-related tasks, such as return counselling, are delegated to local or Foreigners Authorities and welfare associations. As a result, their implementation and outcomes vary (Feneberg, 2019). Since March 2017, to enable coordination, the Repatriation Support Centre (Gemeinsames Zentrum zur Unterstützung der Rückkehr, ZUR), which is part of the BMI, has been aiming to “improve operative coordination of the Federal and Land authorities in the area of voluntary and forced return” (Hoffmeyer-Zlotnik, 2017).

As ‘voluntary departure’ means compliance with the obligation to return within the time limit set for this purpose in the return decision (European Commission, 2008, p. 6), the question of time limits is critical but also quite technical and case-specific. In law, Germany complies with the EU Return Directive, which states that “a return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days” (Return Directive 2008, Article 7). However, the exact length of the voluntary departure period depends on the decision by the BAMF. If the asylum application is manifestly unfounded, the person concerned must leave the country within seven days (Section 36 subs. 1 AsylG); if the application is rejected for other reasons, the period is 30 days (Section 38 subs. 1 AsylG). However, the Foreigners Authority can decide on the person’s a quick departure if it is justified by a threat to the public interest, public safety or law and order. During determined time limits (7-30 days) period, the Foreigners Authorities can impose certain obligations on persons obliged to leave the country to ensure that they actually leave the country (Hoffmeyer-Zlotnik, 2017, p. 5). Even when a removal order under the Dublin procedure is issued, no time limit is set for leaving the country. Depending on the specific circumstances of an individual case, the period for voluntary departure can be extended,

for example in the case of children who needs caring of parent(s), an application to an assistance programme that often takes more than 30 days or appeals by legal representatives against the asylum procedure as well as if there is a suspicion that the person is the victim of human trafficking or illegal employment (Hoffmeyer-Zlotnik, 2017). A general criticism of the legislation and implementation is that the time period is too short to make an informed decision about voluntary departure and to prepare and implement a voluntary departure procedure (Grote, 2015). On the other hand, authorities are concerned about people absconding if longer periods for voluntary departure are granted. In October 2023, the German government presented a repatriation package, approved by the Cabinet, “which includes swifter deportation of criminals” (Bundesregierung, 2023). However, the package did not include an item on voluntary departures.

German return actors have several instruments at their disposal when it comes to voluntary departures. The dissemination of information to raise awareness is where many concrete tools have been put into practice. For example, one focus has been on raising awareness of the legal consequences of forced removal and absconding (e.g. longer re-entry bans and obligation to bear the repatriation costs). Several information channels are introduced to spread the message, such as hotlines or a sophisticated information portal on return, online counselling, a video explaining how voluntary return works, and the distribution of a return information package during the asylum application (Hoffmeyer-Zlotnik, 2017, p. 75).

As suggested in the EU Return Directive (2008, p.2), Germany seeks to provide enhanced return assistance as an incentive. The two main instruments offered by the German authorities to facilitate voluntary departures are counselling and financial assistance in the pre-return phase and reintegration assistance for the post-return phase. As with other return-related issues, there is considerable variation between the federal states in their return counselling and financial assistance programmes for return and reintegration. They include measures on ‘in-kind’ benefits at the place of return, such as housing assistance and reintegration support services, such as job search assistance or psychosocial services.

Voluntary return assistance programs are not new to the German migration landscape. The REAG programme, which covers travel costs and allowances, was launched in 1979 by the then Federal Ministry for Family Affairs, Youth and Health and has since been implemented by the IOM (Kothe et al., 2023, p. 14). Another programme, GARP, was introduced and financed by the Federal Ministry of the Interior in 1989 as an additional component to provide initial start-up assistance to people returning or moving on. In 2000, when the Federal Ministry of the Interior took over responsibility for both programmes, they were merged into the REAG/GARP programme, which is financed by the federal government and state governments. Different criteria, such as nationality, country of return, financial status or age, determine eligibility for support. StarthilfePlus was developed as a supplementary support programme for migrants who were returning within the framework of REAG/GARP. Since 2017, this BAMF-funded programme has supported the reintegration of people in the countries of return. The programme mainly addresses people who are awaiting a decision on their asylum application or whose application has been rejected. When the programme was developed in 2017, two funding levels were provided, depending on the timing of the return decision (Kothe et al., 2023, p. 15). To simplify the programme, it was further developed in 2019 and consisted of three components between 2019 and 2022, which—unlike the funding levels in 2017 and 2018—were linked to the countries of return (Kothe et al., 2023, p. 16). Since 2023, the StarthilfePlus programme has been continuously developed and monitored on the basis of the needs of returnees, internal evaluation reports and the situation in the countries of origin (Kothe et al., 2023, p. 17).

The current return and reintegration programme aims to assist a wide range of people. According to the official website [returningfromgermany.de](https://www.returningfromgermany.de) four categories of non-EU nationals can apply for voluntary return assistance. The categories include “1) those who are currently in the asylum procedure, 2) those whose asylum application has been rejected and are obliged to leave the country, 3) those who are entitled to asylum or have discretionary leave to remain, 4) those who have become victims of human trafficking or forced prostitution.”⁴⁸ Another category that can apply for assistance is EU nationals who have been victims of human trafficking or forced prostitution.⁴⁹ As can be seen from the wide range of categories, assisted return does not only target rejected asylum seekers; it is increasingly embedded in the earlier stages of the asylum procedure and in various categories. However, the Expert Council on Integration and Migration (Sachverständigenrat für Integration und Migration) and ProAsyl highly criticise the approach of offering a special bonus to persuade asylum seekers to withdraw their application a return (Hoffmeyer-Zlotnik, 2017, p. 23). It should be underlined that as of December 2023, returns to Afghanistan, Syria, Libya, Yemen or Ukraine are not supported, while voluntary return to Eritrea and Somalia has to be assessed on a case-by-case basis.⁵⁰ When a person decides on voluntary return, they need to apply for REAG/GARP through a counselling centre, independent (e.g. organisations/charities) or governmental counselling centres.

The budgetary costs of return and reintegration programmes are not systematically recorded at the national level in Germany. The federal states run their own funding schemes and are not obliged to share these costs nationally (Oomkens & Kalir, 2020; Rietig & Günnewig, 2020). Furthermore, in some federal states, municipalities run regional AVR programmes, which diffuses clarity on programmes' responsibility and budgetary issues (Oomkens & Kalir, 2020). Some available cost figures on the national level belong to the REAG/GARP and Starthilfe Plus programmes. For example, Rietig & Günnewig note that “in 2017 and 2018, Germany spent around 30 million euros on each of the REAG/GARP and Starthilfe Plus programs” (2020, p. 18). In response to parliamentary questions asked in November 2018, the federal government disclosed that the total financial allocation for the REAG/GARP schemes from 2013 to 2017 (including federal and state funding) was 78,454,955.13 Euro (Oomkens & Kalir, 2020, p. 71).

The German federal authorities pay special attention to return counselling as suggested in the EU Return Directive, on the assumption that counsellors can help migrants to familiarise themselves with the opportunities and challenges upon return to their origin country and with potential support to re-establish their lives. As of 2023, BAMF reports that “more than 1000 state and non-governmental return counselling centres support people interested in returning to make an informed return decision.” Despite ongoing efforts in various federal states, structural problems such as fragmented legal frameworks, insufficient resources and coordination problems among related stakeholders in the migrant destination and origin countries hinder the way to high-quality counselling. Also, current practices indicate that some counselling efforts often fail to address migrants' individual needs, receiving communities' complex characteristics and managing expectations of returnees in the process. There is still no consensus on the impact of the different counselling models/techniques (e.g. reintegration scouts, decelerating benefits model, training, motivational interview techniques) used and which are most effective (Mencutek, 2023). The content and quality of return counselling in Germany varies due to the complex and constantly changing return regime. As a result of the diverse counselling landscape, the federal

⁴⁸ See <https://www.returningfromgermany.de/en/>

⁴⁹ See <https://www.returningfromgermany.de/en/>

⁵⁰ See <https://www.returningfromgermany.de/en/>

and state governments have agreed on a standard guideline document (BMI & BAMF, 2023). Research has also shown that the offer of assisted return is not necessarily attractive to the many migrants from countries outside Europe who are obliged to leave the country, such as Iraqis, Afghans or West African migrants. Even if they are partial data, figures and investments on voluntary return in Germany show that investments in voluntary return programmes have increased slightly since 2017 in line with EC recommendations, while the number of returns has not increased significantly (Oomkens & Kalir, 2020).

The biggest challenge for the authorities is to verify whether departure is voluntary or not. A so-called border crossing certificate often verifies the voluntary departure. If this is not confirmed by the certificate or other means (e.g. a ticket), the police can use their search tools to locate and apprehend the person. The person may also be entered into the Schengen Information System. However, it is known that the German authority, the Central Register of Foreigners (Ausländerzentralregister, AZR), does not fully record the number of unassisted voluntary departures (Hoffmeyer-Zlotnik, 2017). According to practitioners, as of late 2023, there has been a better working system for the collection of ‘reliable’ data by the state authorities (Stakeholder Expert Panel Notes, 12.12.2023). The details and evaluation of all available assisted return and reintegration programmes at the federal, state and municipal level are beyond the scope of this mapping exercise. Actors, practices and materials used for assisted return programmes will be further explored in the GAPs’s work package on return infrastructure.

5.6 Forced Return/ Removal/ Exit

Two main categories of forced return/ removal can be distinguished in Germany. These are based on the type of stay and its legal basis (see Section 5.3 above).

On the one hand, **expulsion** (§53 AufenthG) (see Section 5.1 in this report) can be directed against **foreigners whose stay in Germany poses a threat to public order and domestic security**, irrespective of the residence status they enjoy (asylum seeker, refugee status, permanent residence permit, temporary tolerated status, etc.). A supreme state authority (oberste Landesbehörde) can issue a removal/ deportation order (“*Abschiebungsanordnung*” - §58a AufenthG) against a foreigner without a prior expulsion order on the basis of an objective prognosis to avert a particular threat to domestic security or a terrorist threat. The deportation order contains an expulsion order and the relevant order of enforcement; thus, it is immediately enforceable by the Federal Police and does not require prior announcement threatening deportation, i.e., a removal/deportation warning (*Abschiebungsandrohung*).

On the other hand, **rejected asylum seekers** whom BAMF considers not entitled to protection in Germany are subject to **forced return** if they do not leave the country voluntarily within the deadline specified in their removal warning and if they are deportable (§34.1 AsylG), i.e., if the obligation to leave the country can be enforced because there are no circumstances, which would require toleration in Germany (see below), and if it seems necessary to supervise their departure. As a rule, the removal warning is issued together with the rejection notice. A removal/ deportation order (*Abschiebungsanordnung*, §34a AsylG) is issued to a foreigner who is to be returned to a safe third country or for whom a third country is responsible for the asylum procedure, as soon as it is clear that the deportation is enforceable. If this is the case, a preceding removal warning is not necessary. If the deportation is not enforceable, only the removal warning (*Abschiebungsandrohung*) to the country in question will be valid—with the mentioning of a

deadline for departure and a listing of the countries into which deportation of the person is not permissible.

Both categories of removal are not permitted to a country in which the life or freedom of the deportee is threatened on account of their race, religion, nationality, membership of a particular social group or because of their political convictions, exposure to serious harm, persecution, etc. (§60.1-10 AufenthG). A foreigner threatened with deportation to such a state can invoke the prohibition of deportation under the refugee clause (application for refugee status), which is then examined by the BAMF in an asylum procedure (if such a procedure is not already underway at the time the obligation to leave the country is announced).

Remedies against a removal order: Temporary suspension of deportation (Duldung)

According to §60a AufenthG, the supreme state authority (oberste Landesbehörde) can temporarily suspend the deportation of foreigners from certain countries of origin or certain groups of foreigners for a maximum period of three months on grounds of international law, for humanitarian reasons or to safeguard political interests. This is known as temporary suspension of deportation (*Duldung*). It comes into effect when deportation cannot be enforced for legal⁵¹ or other⁵² reasons, including those related to the situation in the country of origin or transit, which is responsible for the protection seeker's asylum procedure and when, at the same time, the person does not qualify for any type of residence title (*Aufenthaltserlaubnis*) (§60a.2 AufenthG). What has remained constant in recent years is that about four out of five people who would be obliged to leave Germany by a BAMF decision have received a temporary suspension of deportation (*Duldung*), which means that they do not have a residence title but cannot be forced to leave as long as the reasons for the suspension remain unchanged. The suspension of deportation does not affect the obligation to leave the country (§60a.3 AufenthG). The suspension of deportation is documented by written notice (§60a.4 AufenthG), and the responsible Foreigners Authority can revoke a temporary suspension at any time and revoke or extend it at the latest before the end of a suspension period. The suspension will be revoked if the reasons preventing deportation no longer apply. If this is the case, the person will be deported

⁵¹ This may be the case if a suspension becomes necessary because the public prosecutor's office or the criminal court deem a person's temporary presence in Germany to be appropriate for criminal proceedings relating to a crime. In addition, the person cannot be deported for seven days after a failed deportation attempt or border removal and the non-application of deportation detention (§60a.2a AufenthG). A legal suspension is also necessary if the country of origin is unwilling to cooperate and readmit the person.

⁵² A foreigner may also be granted a suspension if urgent humanitarian or personal reasons or substantial public interests require their temporary continued presence in the federal territory, such as the notarisation of the acknowledgement of paternity, etc., for the duration of the court proceedings. Likewise, the deportation of a minor's parents and siblings with residence status according to §25a.1 AufenthG, who live as a family with the former is to be suspended (§60a.2b AufenthG). Moreover, if the deportee has medical proof that a deportation would deteriorate their state of health significantly or if the deportee is pregnant, the removal is to be suspended (§60a.2c-d). Pregnant migrant women whose status is unclear can apply for *Schwangerschaftsduldung* (temporary suspension of deportation on the grounds of pregnancy), e.g., in Berlin at the Foreigners' Authority three months before the expected birth, and suspension can last until three months after (cf. Suerbaum, 2021). If the child is born to a father of German nationality, the child can be granted German nationality, and the custodial mother is entitled to reside in Germany. The conditions for suspending deportation due to health concerns were made more restrictive by the 2017 Act to Improve the Enforcement of the Obligation to Leave the Country.

immediately upon expiry of the suspension of deportation without further warning or setting a deadline unless the suspension is renewed (§60a.5 AufenthG).⁵³

Often, a suspension is extended over several years, resulting in a series of renewals (*Kettenduldung*). Since 2020, more extended periods of suspension have been granted to those who are in vocational training (max. three years) (*Ausbildungsduldung*, §60c AufenthG) or are employed (two and a half years) (*Beschäftigungsduldung*, §60d AufenthG).⁵⁴ A newly introduced type of suspension is the so-called ‘*Duldung-light*’ for persons whose identity is not verified (§60b AufenthG), that is for those protection seekers who do not actively cooperate in clarifying their identity and do not present a personal identification document such as a passport that can be used as proof of identity.⁵⁵

The temporary suspension is discussed critically among academics. It denotes a non-status for very heterogeneous groups of people without regularising their presence in Germany, and, according to Schütze (2022), the interpretation of temporary suspension as a durable solution for non-deported migrants without international protection does not hold. Instead, restrictions outweigh the rights associated with the (non-)status of temporary suspension (Schütze, 2022, p. 426). In recent years, the rights of tolerated persons have been increasingly differentiated by successive new legal regulations. Newly introduced classification distinctions between deserving tolerated persons, those who are permanently excluded because their identity is unclear, and those who are undesirable because they come from so-called safe countries of origin have problematic consequences for those affected (see Nachtigall, 2020, p. 276ff). In particular, limbo situations (‘the politics of endless temporariness’) violate the human dignity of those concerned (Schütze, 2022, p. 423). Moreover, temporary suspension has increasingly been linked to security policy, as Schütze (2022, p. 421) notes, “In the debates, disenfranchisement of persons with a *Duldung* was often justified by a criminalisation discourse”, fuelling the political discourse on ‘persons posing a threat to public safety’, so-called *Gefährder* (Schütze, 2022, p. 422).

Operational enforcement of removal and modes of transport

In most cases, the state police authorities support the Foreigners Authorities in actual removal measures; in some cases, special state agencies (Lower Saxony) or the Foreigners Authority itself (Hamburg, Schleswig Holstein) organise and carry out the transport of the deportees to the German border or airport. At airports, the Federal Police take over. There are two types of removal

⁵³ If deportation has been suspended for more than one year, the deportation provided for by revocation must be announced at least one month in advance; the announcement must be repeated if the suspension has been renewed for more than one year (§60a AufenthG).

⁵⁴ According to Peitz (2023, p. 4), the 2023 Law on further skilled labour immigration (*Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung*) allows for *Ausbildungsduldung* resulting in a residence permit according to §16g AufenthG.

⁵⁵ Cf. Second Act to Improve the Enforcement of the Obligation to Leave the Country (‘Orderly Return Law’) (*Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht* [Geordnete Rückkehr-Gesetz], 2019). Persons with the “*Duldung light*” status are subject to the condition of having a fixed place of residence (*Wohnsitzauflage*). Of the 136,542 asylum applications submitted in 2022, 50.6 per cent were of unclear identity/ without identity papers (Deutscher Bundestag, 2023f). New legal provisions (2017 Act to Improve the Enforcement of the Obligation to Leave the Country - *Gesetz zur besseren Durchsetzung der Ausreisepflicht*), which allow a search on applicants’ data carriers (mobile phones, clouds, etc.) for the purpose of identity clarification, have not proved effective in clarifying identity, according to a parliamentary request (Deutscher Bundestag, 2023f), as, for instance, 69.9 per cent of the 4,278 approved data carrier checks and 3,726 results did not yield usable results, in 27 per cent of cases, the identity was confirmed, in 3.1 per cent of cases (117) the identity was proven to be false.

by air: accompanied by Federal Police⁵⁶ or airline security personnel or unaccompanied. In both scenarios, it depends on the deportees' ability to make the flight attendants aware of his/ her unwillingness to be deported to prevent the execution of the removal.⁵⁷

The operational dimension of deportations is not fully transparent, raising questions about human rights violations. There are reports of abuse of power by the police/ security personnel involved (Rietig & Günnewig, 2020), including police violence, family separation, shackling and forced medication (Deutscher Bundestag, 2023h, p. 1).⁵⁸ While it is legal to restrain deportees with so-called aids of physical violence (handcuffs, shackles, steel manacles and body cuffs) in cases of resistance, a recent analysis found that deportations to certain destination countries (Senegal, Algeria, Ethiopia) more often, even frequently used aids of physical violence (Deutscher Bundestag, 2023b). In 2022, however, the overall use of aids of physical violence documented by the authorities in charge amounted to six per cent of all deportations⁵⁹; for the period between 2015 and 2019, research found a huge increase in the use of violence, from 130 to almost 1,800 cases (Rietig & Günnewig, 2020). Return operations are carried out by scheduled or chartered flights, with the latter option being used for an increasing number of collective deportations in recent years⁶⁰, sometimes in cooperation with other countries. In 2021, Frontex financed 98.8 per cent of these deportations (5,394 out of 5,462 removals). Mini-charter flights for up to four deportees have become common since 2017, in particular for deportations to Turkey and for Dublin deportations.⁶¹ The use of the scheduled flights for deportations is based on bilateral agreements between the Federal Police (Central Bureau) and several airlines.⁶² Aircraft captains

⁵⁶ Federal police officers receive special training in accompanying deportees leaving the country by air. In 2022, 9,118 officers of the federal or state police or other authorities accompanied 4,620 deportees (of which, 8,721 Federal Police officers accompanied 4,406 deportees) in the framework of deportations (Deutscher Bundestag, 2023b). For a comparison, the number of deportations accompanied by airline security amounted to 1,637; the number of unaccompanied deportations amounted to 6,348.

⁵⁷ In such cases, the pilot as the authority ultimately responsible for the flight, refuses to take the deportee/s on the grounds that a deportee could compromise flight safety, resulting in the cancellation of the deportation on that day. For example, in 2017, pilots refused to take deportees on their flights in more than 200 cases (Leubecher, 2017). In 2018, 506 deportations failed due to pilot refusals (Litschko, 2019). While human rights advocacy groups praise the moral courage of the pilots, the Federal Police contests the pilots' decisions, arguing that in those cases where Federal Police officers accompany deportees, they ensure flight safety. The Federal Police also argues that the fixation of resistant deportees with shackles for immobilisation is done for flight safety (cf. Leubecher, 2017).

⁵⁸ The Council of Europe's Committee for the Prevention of Torture published a critical report by its delegation that accompanied a deportation flight from Munich to Kabul in 2019, see CPT, 2019. Further, the portal "Abschiebungsreporting NRW" project documents disproportionate deportations since 2021 for the State of North Rhine-Westphalia. See <https://www.abschiebungsreporting.de>

⁵⁹ In particular, a high incidence of the use of restraints has also been recorded in deportations to Nigeria, Afghanistan, and Ghana (Deutscher Bundestag, 2023b). Aids of physical violence were used in 716 deportation cases in 2021 (Deutscher Bundestag, 2023b) and in 800 cases in 2022 (Deutscher Bundestag, 2023h, p. 2).

⁶⁰ In 2021, collective/ group deportations in chartered flights accounted for 46 per cent of all deportations (2020: 37 per cent, 2019: 27 per cent). See Deutscher Bundestag, 2023b.

⁶¹ For details see Deutscher Bundestag, 2023b. For 2021, 23 group deportations in mini-charter flights are documented; in 2022, 91 persons were deported via 24 charter flights, of which Frontex led one operation at a cost of 20,875 EUR; Frontex may have been involved in other operations as well.

⁶² Since 2019, the German government has classified information on which airlines are used for deportations fearing public criticism and the subsequent withdrawal of airlines from transport contracts due to public pressure (Deutscher Bundestag, 2023b). Between 2017 and 2019, the German airline Lufthansa was the number one deportation carrier (Deutscher Bundestag, 2019). See information on charter deportation carriers for 2020 on these websites: <https://noborderassembly.blackblogs.org/abschiebe-alarm/> and for 2021: <https://deportationalarm.com/>

have the right to refuse to carry deportees if they fear consequences for travel safety during the flight; however, the number of cancelled flights related to this right has remained very low.

Forced return monitoring procedures

While the EU Return Directive (Article 8(6)) obliges member states to establish “an effective system for monitoring returns”, the German government claims to already have such a system in place with the judicial appeal system (courts), administrative checks and balances (Rietig & Günnewig, 2020, p. 42), as well as selective monitoring of deportation at airports by NGOs⁶³ and the National Agency for the prevention of torture (Nationale Stelle zur Verhütung von Folter).⁶⁴ The existing mechanisms do not fully comply with the standards of the EU Agency for Fundamental Rights (FRA); Germany has no return monitoring law and no systematic independent oversight over the entire deportation process⁶⁵ established (FRA, 2022). In the case of deportation flights organised by Frontex, the border agency’s ‘forced return monitors’ are present throughout the process. The rights of deportees are limited to lodging a complaint with Frontex; however, Frontex is responsible for assessing the complaint’s legitimacy.⁶⁶ An ombudsman institution does not yet exist in the German return system. The problems with monitoring and transparency raise questions about possible human rights violations in practice.

5.7 Return of unaccompanied minors

According to §58.1a AufenthG, before deporting an unaccompanied minor⁶⁷ (UAM), the returning authority must ensure that they are handed over to a family member, a person entitled to personal care or a suitable reception facility in the country of return. If these conditions cannot be met, removal is not legally possible and a suspension of removal must be granted. Nor can a removal warning and deportation order be issued if the examination has shown that there is no possibility for the UAM to be accepted in the country of origin or a safe third country.⁶⁸ Only in exceptional circumstances can a UAM be kept in deportation detention (§62 AufenthG), in which case compliance with Article 17 of the EU Return Directive (2008) concerning age-specific requirements has to be observed.

In 2022, around 120 unaccompanied minors were removed at the border crossing following unauthorised entry (*Zurückschiebung*) (Deutscher Bundestag, 2023b, p. 15) while in the same year, of a total of 7,277 unaccompanied minors apprehended at German borders, 1,945 were

⁶³ In Germany, there are currently independent deportation observers and mixed forums at the following airports: Berlin, Düsseldorf, Cologne/ Bonn, Hamburg, Frankfurt and Leipzig/ Halle. The Berlin ‘Forum’ monitoring deportation includes members of the Federal Police, federal and state authorities involved in deportation procedures, churches, welfare associations, UNHCR, Amnesty International and ProAsyl. See Caritas, 2023.

⁶⁴ Together with the Joint Commission of the States (*Länder*), it was designated the OP-CAT/ UN Treaty Against Torture’s National Preventive Mechanism. While the federal body deals with federal institutions, the states’ commission deals with states’ authorities. See the website of the UN National Preventive Mechanisms, Subcommittee on Prevention of Torture: <https://www.ohchr.org/en/treaty-bodies/spt/national-preventive-mechanisms>

⁶⁵ There is no monitoring at the pick-up of deportees from the shelters and during the flight.

⁶⁶ For further details, e.g., voluntary commitments of Federal Police and Frontex officers, see Rietig & Günnewig (2020, p. 43).

⁶⁷ In the German asylum procedure, children and young people under the age of 18 are considered minors.

⁶⁸ The German principle is ‘*Keine Abschiebungsandrohung ohne konkret-individuelle Aufnahmemöglichkeit*’ (‘No deportation warning without concrete, individualised possibility of admission’).

refused entry (*Zurückweisung*)⁶⁹, and 4,857 were handed over to the youth welfare office (*Jugendamt*) in accordance with §§42a to §42 SGB VIII (German Social Code Book 8/ *Achtes Buch Sozialgesetzbuch*) (Deutscher Bundestag, 2023i, pp. 13-16). Of the asylum applications submitted by unaccompanied minors in 2021-22, 269 were rejected in 2021, and 220 in 2022 (incl. removal warnings to countries of origin, such as Afghanistan in 2021:106, 2022: 4). In the case of forced return, unaccompanied minors may be granted reception assistance (meeting the minor at the gate, assisting them during entry controls and handing them over to the person authorised to meet them according to IOM (2018, p. 8). The authors were unable to identify other specific German provisions.

Unaccompanied minors in Germany are usually granted a suspension of deportation; as asylum seekers under the age of 18, they do not have the ability to act within the asylum procedure. Until adulthood, they are assigned a legal guardian who can submit an asylum application on their behalf in writing to BAMF. According to the 2017 Act to Improve the Enforcement to Leave the Country, the youth welfare office is to immediately submit an asylum application for the child/ young person immediately in cases where it can be assumed that international protection is required (§1.1.2 AsylG).⁷⁰ If asylum is not applied for before the minor reaches the age of 18, they lose protection from deportation on their 18th birthday, including all associated rights/ entitlements (Suerbaum, 2021, p. 29). The prospect of remaining in the country after reaching the age of majority determines the person's integration and protection options. For example, if an unaccompanied minor has been residing in Germany for at least six years without interruption on a tolerated or permitted basis or with a residence permit for humanitarian reasons and if it seems certain that they will be able to integrate, they may be granted a residence permit for humanitarian reasons in accordance with §23.1.1 AufenthG (§104a AufenthG). The person is also entitled to a temporary suspension of removal if they are enrolled in vocational training and a residence permit if employed.

According to EU law (Procedures Directive 2013/32/EU), a guardian should be appointed for the asylum process to comply with the requirements to consider the best interests of the unaccompanied minor. Unaccompanied minors above the age of five and up to the age of 13 can be heard; it should be clarified with the guardian whether s/he considers a formal hearing useful and possible. Alternatively, a written statement from the guardian may replace a hearing in an asylum procedure. From the age of 14, minors must be heard, but a hearing can be waived if the asylum application is accepted.

⁶⁹ It remains unclear to what extent unauthorised entries are counted more than once, as no personal data is obtained from those who are refused entry at the border (*Zurückweisungen*), see Deutscher Bundestag, 2023i, p. 18. Regarding the fulfilment of the overriding consideration of the best interests of the child, the German government claims that international protection regulations are fully taken into account. For example, the competent authorities of the country of destination must be informed in good time; the border authority ensures that the minor is handed over to a family member, a nominated guardian or a suitable reception centre, see Deutscher Bundestag, 2023j, p. 7.

⁷⁰ The youth welfare office is entitled and obliged to carry out all legal acts necessary for the welfare of the child or young person. BAMF employs trained special representatives for UAM hearings and is committed to safeguarding the best interests of the child at every step of the asylum procedure. Long-term limbo situations are to be avoided in the best interest of the child, according to government sources. However, the duration of an asylum procedure until a decision is made is considered to be very long and causes major stress (BMFSFJ, 2023, pp. 103, 105).

5.8 Entry bans

Delayed voluntary departures and forced removals/ deportations are subject to a re-entry ban of a maximum of five⁷¹ or, in exceptional cases, ten or twenty⁷² years, depending on individual circumstances (§11.1./7 AufenthG and §34/34a/35 AsylG). According to §11.1 AufenthG, an entry ban arises by deportation, i.e. by law in each case of deportation (*Abschiebung*). This contradicts Section. 3.6 of the EU Return Directive (2008), according to which an entry ban is an “official or judicial decision”, not a decision of a legislator (Oberhäuser, 2019, p. 12). Moreover, according to §11.7 AufenthG, TCNs from a safe country of origin whose asylum application has been rejected can be subject to a temporary re-entry ban even if they leave Germany voluntarily (BAMF, 2023a, section 3.2, p. 197).⁷³ The ban and the time frame have been decided and enforced by the Foreigners Authorities since 2019 (before the BAMF Federal office). In the case of the first order, the duration of the ban does not exceed one year. In the case of a second or subsequent unsuccessful application, the duration of the ban after deportation can be up to three years. Once in force, the ban is entered into the national police information system (INPOL), the Central Register of Foreigners (Ausländerzentralregister, AZR), and the Schengen Information System (SIS). According to BAMF (2018a), “As a matter of principle, the ban on entry and residence does not apply only to Germany, but in fact to the entire Schengen area, so that it is also entered in the Schengen Information System (SIS). This means that individuals can be prevented from entering the Schengen area. No entry, therefore, needs to be made in individuals’ passports.”

Re-entry bans with a duration of less than 20 years can be revoked or shortened on a case-by-case basis. Violations of a re-entry ban (both breach and attempted breach) is a criminal offence, punishable by up to three years of imprisonment or a fine. Entry bans are not issued without return decisions, that is, in the case of refusal or removal following unauthorised entry at the border (Hoffmeyer-Zlotnik, 2017).

There are several cases in Germany where deportations were not accompanied by an entry ban and were only issued after a person had re-entered Germany. It needs to be clarified whether a deportation can lead to an entry ban if it is only limited in time after the deportation, as the German Federal Administrative Court assumes (Oberhäuser, 2019, p. 14). The EU Return Directive (Art. 3.6) excludes such an interpretation, stating that the entry ban ‘accompanies’ the return decision and does not follow it.⁷⁴ This leads Oberhäuser (2019, p. 15) to conclude that §11.1 AufenthG violates EU law to a considerable extent and that the Federal Administrative Court

⁷¹ In line with and introduced by the EU Return Directive.

⁷² The time limit starts from the date of removal and can be up to ten years if the individual has been convicted of a criminal offence or has been found to be a danger to public safety and order. If a person has committed war crimes, crimes against humanity and peace, or poses a terrorist threat, the entry ban is 20 years (see BAMF, 2018a).

⁷³ Initially provided for in with the 2015 German Act Redefining the Right to Remain and Termination of Residence (*Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung*) and concretised in the 2019 Second Act to Improve the Enforcement of the Obligation to Leave the Country (2. *Gesetz zur besseren Durchsetzung der Ausreisepflicht*). Accordingly, a re-entry ban can be considered for persons from safe countries of origin whose asylum application has been rejected as “manifestly unfounded” and for persons whose subsequent or second application has been repeatedly rejected as inadmissible (§11.7.1-2 AufenthG). In addition, a ban on entry and residence can be ordered if a person who is obliged to leave the country is at fault for not leaving within the prescribed departure term.

⁷⁴ Oberhäuser (2019, p. 14-15) also questions that, if a time limit set after deportation results in an entry ban, whether this would then have to be the ‘return decision’ according to EU Return Directive Art. 11.1, although ‘entry ban’ and ‘return decision’ are different according to EU Return Directive Art. 11.1 and Art. 3.6, and the ordering of an entry ban being not related to the determination of an obligation to return in accordance with Art. 4.3 EU Return Directive.

would be well advised to refer the open questions to the CJEU instead of closing loopholes to the detriment of those affected.

5.9 Procedural safeguards

The deportation decision by BAMF may be confirmed by a court decision.

Legal status of persons during the return procedure

Throughout the asylum procedure, individuals are legally treated as protection/ asylum seekers. Before lodging an asylum application, individuals are considered as irregular migrants; after the asylum application has been rejected, they are obliged to leave the country (rejected asylum seekers). However, if their return is not possible their removal is temporarily suspended (they are ‘*geduldet*’), but this is not a legal (protection) status.

Review of deportation decisions

Unsuccessful asylum seekers can lodge an appeal against the BAMF’s decision to reject their application; however, the appeal must be lodged within a short period of time as a matter of principle.⁷⁵ Moreover, an appeal for annulment against a return decision does not automatically have a suspensive effect, but – if the application has been rejected as manifestly unfounded (*offensichtlich unbegründet*) – has to be filed together with a request for suspension.⁷⁶ The written notice of rejection contains information on legal remedies (*Rechtsbehelfsbelehrung*) concerning appeals and deadlines. Many NGOs and advocacy groups offer legal advice. Appeals can be lodged against both the removal warning and the rejection of an asylum decision. The court of first instance is the Administrative Court (Verwaltungsgericht, VG) where the person concerned may file an appeal against the negative BAMF decision (§34a.2 AsylG).⁷⁷ The VG rejects or confirms the BAMF decision; in the first case, it can oblige the BAMF to grant protection. If an appeal to the Higher Administrative Court (Oberverwaltungsgericht, OVG), on points of fact and law (*Berufung*) is sought, this is only possible if the OVG allows it upon application by the asylum applicant or the BAMF (§78.2-3 AsylG). The case is completely re-evaluated by the OVG, and legal representatives are required for all parties (§67.4-1 of the Code of Administrative Court Procedure/ Verwaltungsgerichtsordnung). The Federal Administrative Court (Bundesverwaltungsgericht – BverwG) is the third instance (appeal on points of law only, *Revision*) and is involved if a factual or legal issue of fundamental importance is at stake and requires clarification, if a judgement deviates from a supreme court ruling or if procedural errors have occurred in the second instance at the OVG. With a recent reform of the Federal Administrative Court, which entered into force on 1 January 2024, it is now also entitled to review facts, not just law. Rulings of the Federal Administrative Court cannot be appealed against in German administrative jurisdiction (§132.1-2/ §132 of the Code of Administrative Court Procedure). The CJEU in Luxembourg may be called upon by the lower administrative courts during ongoing proceedings to give a preliminary ruling in cases of doubt under Community Law (Treaty on the Functioning of the EU, Article 267). In the framework of the Federal Constitutional Court Act (Bundesverfassungsgerichtsgesetz – BVerfGG -§90ff), constitutional complaints can be

⁷⁵ A court action against a rejection of an asylum application has to be lodged within two weeks; if the application was rejected as manifestly unfounded, the deadline is one week (§74.1, §36.3 AsylG).

⁷⁶ Filing a suit against a removal warning for other reasons, e.g., because a residence title has expired, does also not have a suspensive effect in most States (*Länder*).

⁷⁷ It is not absolutely necessary for the litigant to have an attorney in the first instance court (Code of Administrative Court Procedure, *Verwaltungsgerichtsordnung*).

lodged with the Federal Constitutional Court of Germany if fundamental rights to asylum are affected. In addition, if all else fails, an application can be made to the European Court of Human Rights in Strasbourg if it is considered that a state measure or decision (of BAMF, VG, OVG, etc.) has violated the applicant's human rights (EU Convention on Human Rights Art. 34ff).

From a practitioner/ lawyer's perspective, invoking EU law in court cases is seen as an effective strategy to ensure that courts rule in favour of procedural safeguards.

Provisions regulating or facilitating the regularisation of non-returnable people

The temporary suspension of removal/deportation (*Duldung*) applies here (cf. Section 5.6: Temporary suspension of deportation). Obstacles to removal/ deportation arising from the situation in the country of destination are examined by the BAMF (§24.2 AsylG), including whether a removal to this country would violate the non-refoulement clause of the Geneva Convention or the rights under the EU Convention on Human Rights (§60.5 AufenthG). While the suspended foreigner is still obliged to leave the country, the Foreigners Authorities can issue a temporary residence permit after 18 months if the preconditions for deportability are unlikely to change in the near future and are not the foreigner's fault. Persons who have been found to be ineligible for deportation (*Abschiebeverbot*) in accordance with §60.5/7 AufenthG (danger to life and limb, deprivation of fundamental rights) should be granted a residence permit (§25.3 AufenthG) for at least one year (§26.1 sentence 4, AufenthG). For those whose removal has been suspended, such as minors or young adults with good integration perspectives (§25a-b AufenthG), there are several possibilities to legalise their stay in Germany, including the temporary suspension for the purpose of training (*Ausbildungsduldung*).

Vulnerabilities of certain groups addressed in law and policymaking on return

There is no legal definition of 'vulnerability' in the context of return. The Residence Act (AufenthG) contains safeguards for the deportation of unaccompanied minors (see Section 5.7 above) and detention criteria for other vulnerable persons. The federal states have so-called hardship commissions (Härtefallkommissionen), which can apply to the supreme land authority for a temporary residence permit in specific cases (§23a.1 AufenthG) on humanitarian and political grounds. Moreover, German law contains specific provisions on the forced return of minors and families of victims of human trafficking, as well as on removal bans on medical grounds (see 4.6 above).

5.10 Detention

The federal states are in charge of enforcing returns. Pre-removal detention is an administrative measure with a punitive dimension (Oomkens & Kalir, 2020, p. 37).⁷⁸ Detention decisions are subject to a judicial order by the district courts (Amtsgerichte, first instance of ordinary jurisdiction).⁷⁹ German residence law provides for several types of detention in the context of

⁷⁸ E.g., clearly, the detention for cooperation, see below.

⁷⁹ Droste & Nitschke (2022) use the case of ten deportees as an example to show how the *Amtsgerichte* (courts of ordinary jurisdiction, cf. Annex 1) generally follow the proposal of the Foreigners Authority ordering the detention, and thus 'adopt(ing) the perspective of the latter' (p. 146). The hearing is very short, and the detainee is usually not asked to explain him/herself and to contribute facts on the basis of which the decision for or against detention is made; instead, according to Droste & Nitschke's research, the decision seems to be 'pre-determined'. The apparent lack of serious consideration of the asylum seeker's

return⁸⁰, namely for (1) cases of unauthorised entry, (2) in cases related to the obligation to leave the country, and (3) in cases of irregular stay (Haberstroh, 2021, pp. 12–13).⁸¹ The legal bases for the different types of what can be summarised below as ‘deportation detention’ are national regulations; the detailed conditions of implementation are subject to sub-national/state laws on deportation detention and—where not (yet) regulated by law—to the ‘house rules’ (*Hausordnungen*) of the individual specialised facilities (Droste & Nitschke, 2022, p. 42).

(1) Detention for to unauthorised entry

Detention pending exit from the federal territory (***Zurückweisungshaft***, §15.5 AufenthG): In the case of an attempted unauthorised entry at the border, a person will be refused entry after detection (see Section 5.1 above). If a removal decision has been issued and cannot be enforced immediately, the foreigner can be detained by court order to secure the refusal of entry.

Enforcement of custody awaiting deportation (***Abschiebungshaft***, §62 AufenthG) and removal at/across the border to a neighbouring country after unauthorised entry (***Zurückschiebungshaft***, §57/ §62 AufenthG): To prepare for the removal of apprehended persons within a short period of time after their entry and to deport them to their country of origin or to the EU or Schengen country responsible for them.

The maximum period of detention in connection with unauthorised entry (both types) is 18 months, with an initial period of three, in some cases six months. An extension to a maximum of 12 months may be ordered if the removal cannot be carried out for reasons for which the person concerned is responsible.

(2) Detention in connection to the obligation to leave

Custody to prepare deportation (***Vorbereitungshaft***, §62.2 AufenthG)⁸²: Preparation for either deportation on the grounds of expulsion or for the enforcement of a removal order (§58a AufenthG, concerning potential criminal offenders) if a decision regarding expulsion or removal cannot be taken immediately and the deportation would be in danger of failing or would be considerably more difficult without a detention measure. This type of detention is restricted to a limited group of persons who are considered a threat to public safety and order (§58a AufenthG) and should not exceed six weeks.⁸³

Supplementary custody to prepare deportation (***ergänzende Vorbereitungshaft***) according to §62.c AufenthG applies when persons are apprehended residing in Germany despite an existing

perspective raises pertinent questions about the role of the courts of ordinary jurisdiction and their judicial independence (see also pp. 156f).

⁸⁰ Both, for Dublin transfers or following a return decision. Most federal states do not distinguish between detention in these two contexts (Hoffmeyer-Zlotnik, 2022, p. 130). Until at the time of writing, the fact that a person has applied for asylum, has prevented them from being detained; with the new Repatriation Package, which was adopted in January 2024 and will likely come into force in the first half of 2024, an asylum seeker can be detained during the asylum procedure, that is before the asylum application case is decided.

⁸¹ This section on detention and alternatives to detention is largely based on Haberstroh (2021), see there for further details on all topics related to detention in the context of to return.

⁸² This type of detention was created in 2020 with the Act to postpone the census until 2022 and to amend the Residence Act.

⁸³ In exceptional cases—if the issuance of the return decision is delayed for “special, unforeseeable reasons or if exceptional circumstances for which the foreigners authority is not responsible” render a decision on the return decision “impossible within six weeks” (Bavarian Higher Regional Court [Oberstes Landesgericht/ OLG Bavaria], ruling of 25 November 1993, margin no. 8)—longer periods in the first order or extension are possible.

entry and residence ban (§11.1.2 AufenthG) and without an entry permit (§11.8 AufenthG) or if they pose a significant danger to the life and limb of third parties or important legal interests of domestic security or if another serious interest for expulsion exists. Thus, the requirements for supplementary preparation detention are lower regarding the extent of the danger posed and the maximum detention period. Detention ends with the BAMF decision notification or at least four weeks after the asylum application has been submitted. If the asylum application is rejected as inadmissible (§29.1.4 AsylG) or manifestly unfounded and an application for temporary legal protection is filed, the detention can be extended in each case. If the application is rejected by the VG (administrative court), detention ends no later than one week after the court decision to enable a transition from supplementary preparation detention to detention pending deportation enforcement (cf. 3 below).

(3) Detention in connection with irregular stay/ illegal residence

Precautionary detention (**Sicherungshaft**), pursuant to §62.3 AufenthG: Initially three, maximum eighteen months⁸⁴ detention to secure removal if there is a risk of absconding. This applies to persons who are subject to an enforceable obligation to leave Germany due to unauthorised entry or if a removal order (§58a AufenthG) has been issued, which cannot be enforced immediately. If the removal is unlikely to be carried out within three months for reasons beyond the control of the person concerned, detention is not permitted. In exceptional cases, the authority responsible for the detention application may arrest a TCN and temporarily detain them without a prior court order. However, the foreigner must be brought before a judge immediately for a decision on the precautionary detention order.

Detention for failing to cooperate (**Mitwirkungshaft**, §62.6 AufenthG):⁸⁵ If TCNs who are obliged to leave Germany fail to comply with the obligation to cooperate with the authorities (§82.4 AufenthG)—that is to appear in person at identification appointments with the authorities or to undergo a medical examination to determine their fitness to travel—and have been warned about the possibility of detention in the event of non-cooperation, they may be detained for a maximum of 14 days without extension.

Custody to secure departure (**Ausreisegewahrsam**, §62b AufenthG): Detention pending removal to secure deportation regardless of the risk of absconding can be issued by judicial order in cases where a TCN's obligation to leave voluntarily has expired and removal is possible within a period of ten days maximum.⁸⁶ This requires that the removal can be enforced within the given time limit, and that the deportee can be expected to try to avoid or obstruct the removal procedure (corresponds to the grounds for detention under §15 (1)(b) EU Return Directive). Custody to secure departure can take place in the transit area of an airport or in an accommodation from which the deportee can leave the country without travelling a significant distance to a border crossing point (§62b.2 AufenthG). According to migration lawyer Peter Fahlbusch, this type of detention is questionable under constitutional law because it is excessive and disproportionate

⁸⁴ Usually three months for the first order, but up to six months possible, with a maximum extension of 12 months (§62.4 AufenthG). The maximum total period of detention of 18 months shall include the duration of any previous preparatory detention and/ or detention for cooperation.

⁸⁵ This type of detention evolved from the Second Act on the better enforcement of the obligation to leave the country (2019). It implemented §15.1b of the EU Return Directive.

⁸⁶ The duration of custody pending departure was extended from a maximum of four days to ten days in 2017 with the Act to improve the enforcement of the obligation to leave the country. With the new Repatriation Package that is due to enter into force in the first half of 2024, the duration of custody pending departure was extended to 28 days.

(see Fahlbusch, 2023). Foreign authorities use custody to secure departure mainly to carry out collective deportations (*Sammelabschiebungen*) by ensuring access to people's detention centres.

Alternatives to detention

The different types of custody awaiting deportation in connection with §62 (*Abschiebungshaft*, see sub-sections 2 & 3 in this section on detention) are de jure only permissible if the purpose of detention cannot be achieved by other (milder) means, that is alternatives to detention. When applying for a detention order, municipal authorities must explain why there are no alternatives to detention (Hoffmeyer-Zlotnik, 2017, p. 39). Haberstroh (2021, p. 21) lists the following alternative measures:⁸⁷

- Obligation to report regularly to the Foreigners Authority or police for residence monitoring (reporting obligation),
- Spatial restriction of residence,
- Obligation to stay in a place or accommodation designated by the Foreigners Authority,
- Night-time restriction/ house arrest at night/ availability order,
- Bail,
- Sureties,
- Electronic surveillance.

Persons who have been subject to alternatives to detention pending deportation ordered by the Foreigners Authorities may – if provided for by state law – lodge an objection within one month of notification and file an appeal against the ordered measures. If the objection is found well-founded, the Foreigners Authority will revoke the measure; if not, an objection decision will be issued, against which the person concerned can appeal with the VG (administrative court) within one month of notification (§§73-74 AufenthG) (Haberstroh, 2021, p. 32).

Rights of detainees

The duration of detention is to be limited as much as possible. In the case of minors, all possible alternatives must be considered together with the youth welfare office before detention is ordered. Thus, minors and families with minors may only be detained in special exceptional cases and only for as long as is appropriate, taking into account the best interests of the child. The special needs of minors (dependent on their age) and other vulnerable persons (unaccompanied minors, disabled, elderly, pregnant, single parents with minor children, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence) have to be taken into account in accordance with §17 of the EU Return Directive. During deportation detention, detainees have the right to contact legal representatives, family members, competent consular authorities and relevant assistance and support organisations who may also visit the detainees upon request to provide social and psychological support (§62a.2-4). In addition, detainees awaiting deportation must be informed of their rights and obligations and of the rules in the facility. Anecdotal evidence suggests that very restrictive rules are imposed on detainees in pre-removal detention centres (e.g. cf. Hoffmeyer-Zlotnik, 2022, pp. 149-150).

Despite the existence of these rights on paper, the practice of access to rights by detainees reflects a different reality. Often, persons are detained during scheduled meetings with the Foreigners Authority where they come to extend their temporary suspension of deportation (*Duldung*) (Droste & Nitschke, 2022, p. 135). There are still cases, where families with children are detained in deportation detention, which violates the principle of the best interests of the child (“Abschiebungshaft – Kritik an...”, 2023); however, usually, a mother is detained while her

⁸⁷ For the legal basis underlying these measures see Haberstroh, 2021, pp. 21-23.

children are placed under the supervision of the relevant youth welfare office (*Jugendamt*). Droste & Nitschke (2022, pp. 43-64, 87, 100-104, 211-249) have documented the experiences of detainees in the detention centre of Darmstadt-Eberstadt (Hesse) and Büren (North Rhine-Westphalia), including several rights violations in addition to isolation detention and lack of access to legal representation or even counselling. The lack of information on procedures, the position of detainees and the restriction of their rights and entitlements in detention is a serious shortcoming (p. 94).

Legal remedies against detention

The detainee or their legal representative may appeal against the decision of the district court (Amtsgericht) within one month of the written notification. However, in the absence of a court-appointed defence, it is often difficult for the detainee to contact a lawyer within a reasonable time if they did not have a lawyer's reference prior to detention. The next higher instance is the regional court (OVG), followed by the Federal Court of Justice as the third instance (see Annex 1). Legal representation is not mandatory in the first instance of appeal. The Family Procedure Act (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG) provides that the court may appoint a guardian ad litem to represent the interests of the person concerned (§419 FamFG). However, critics point out that the relevant law (FamFG) does not deal with the right of residence at all and that family courts would be largely uninformed. Moreover, the fact that different courts (see Annex 1) are involved in detention decisions contributes to legally unjustified detention rulings—confirming the suspicions of lawyers who document deportation detention cases in their area of expertise that most detentions are unlawful.⁸⁸ Indeed, the statistics compiled by migration lawyer Peter Fahlbusch on the detention cases he has been dealing with for 22 years show that about half of his clients have been detained unlawfully, with an average detention period of just under four weeks (Fahlbusch, 2023). This has been a constant (trend) for two decades, and although it is a legal scandal, the official authorities deny the figures, and at the same time, the states claim not to receive data on deportation detention.

In Germany, people on low incomes have the right to free legal assistance (advice), regardless of nationality. Legal assistance in removal cases includes legal counsel and, if necessary, representation; it does not depend on whether a case has a reasonable chance of success. Non-governmental organisations offer free legal advice in matters of residence law before detention while access to legal advice from within detention is theoretically possible but difficult in practice (see above 'rights of detainees').

Facilities of (pre-removal) detention

The authors of this report did not find any evidence of significant privatisation of pre-removal detention despite the fact that the law provides for the separation of pre-removal detainees from ordinary prisoners in specialised detention centres. Since 1 January 2022, there have been a total of 821 places in pre-removal detention centres in twelve states (Hoffmeyer-Zlotnik, 2022, p. 131), 14 specialised deportation detention facilities (*Abschiebehafteinrichtungen*) in the federal states as of 2019, with four more in the planning stage (Droste & Nitschke, 2022, p. 32). Many of these

⁸⁸ See the statistical documentation compiled by the lawyer Peter Fahlbusch (2023). Fahlbusch has been documenting his removal detention cases as a lawyer since 2001 and publishes information on the court decisions on a quarterly basis. According to the latest figures, he defended 2,458 people in deportation detention proceedings, (*Abschiebungshaftverfahren*), of whom 52.5 per cent were found to have been detained unlawfully for between one day and several months, with an average period of detention of 25.8 days.

are former prisons (*Justizvollzugsanstalten*) in Germany. The establishment of specialised pre-removal detention centres in all states was a consequence of the 2014 CJEU ruling based on the obligation in Article 16 (1) of the EU Return Directive; with few exceptions, they are managed by the prison authorities under the aegis of a state ministry of justice or state police (Oomkens & Kalir, 2020, p. 34).⁸⁹ From the perspective of the states, specialised detention facilities are rather unattractive because of the very high costs involved.⁹⁰ There have been calls for better training of staff in these centres (Oomkens & Kalir, 2020, p. 37). Measures to separate detainees pending deportation from ordinary prisoners were temporarily suspended until the end of June 2022 (Second Act to Improve the Enforcement of the Obligation to Leave the Country of 2019) because not enough places were available in these specialised facilities. Potential offenders should also be detainable in penal institutions (§62a.1 AufenthG). If families are detained for pre-removal detention in special deportation detention facilities, they are to be accommodated separately from other pre-removal detainees and shall be able to enjoy privacy (§62a.1 AufenthG).

5.11 Emergency situations

Article 18(1) of the EU Return Directive on emergency situations has been transposed into German law. As mentioned in the previous paragraph, the 2019 Second Act to Improve the Enforcement of the Obligation to Leave the Country temporarily suspended the separation of detainees pending deportation from ordinary prisoners until the end of June 2022 due to a lack of specialised detention facilities. Combined with the claim that there was a lack of capacity to accommodate persons in pre-removal detention, this provided the grounds for invoking an emergency situation for suspension.⁹¹

5.12 Readmission procedure

Germany has concluded 31 formal bilateral readmission agreements with 30 countries of origin as of January 2023, of which more than 50 per cent are with countries outside the European Union.⁹² Critical observers point out that the mere existence of agreements does not imply constructive cooperation in the area of return. Examples include the bilateral readmission agreement between Germany and Morocco in 1998 and the informal EU declaration with Afghanistan in 2016, which is often mistaken for a formal readmission agreement (Rietig & Günnewig, 2020). While the German government sent démarches to 17 uncooperative countries of origin⁹³ in 2016, the outcome is unclear as cooperation depends on many factors (Deutscher Bundestag, 2023c, p. 8). According to the German government, a country's obligation under international law to take back its citizens is unconditional and not linked to any *quid pro quo*, such as facilitated labour migration (Deutscher Bundestag, 2023c, p. 14). The current government intends not to make repatriation agreements subject to separate readmission programmes but to

⁸⁹ E.g., in Bavaria, the Bavarian State Office for Asylum and Returns (Bayerisches Landesamt für Asyl und Rückführungen) in Munich Airport Hangar 3.

⁹⁰ Discussion point during Expert Stakeholder workshop at BICC, 12 December 2023.

⁹¹ In retrospect, it became clear that the claimed lack of capacity was mere rhetoric and that the instrument of pre-removal detention was not used to the extent that existing capacity would have reached its limit. Notes, Expert Stakeholder Workshop, 12 December 2023, Bonn.

⁹² Cf. BMI (2023). A second agreement on the readmission of stateless persons was concluded with Romania in 1998.

⁹³ Besides Asian countries of origin, these included African states Algeria, Benin, Guinea-Bissau, Morocco, Niger, Nigeria, Senegal and Sudan.

include readmission components within the framework of other agreements, so-called comprehensive migration agreements (*ganzheitliche Migrationsabkommen*) (Bundesregierung, 2021). The model for such agreements is the Migration and Mobility Agreement concluded with India in 2022.⁹⁴ Germany reportedly signed a Joint Declaration of Intent between the Federal Republic of Germany and the Republic of Iraq on Cooperation in the Field of Migration in May 2023⁹⁵, another agreement with Georgia in December 2023 (BMI, 2023a), and agreed a close migration partnership with Morocco in January 2024 (BMI, 2024).

⁹⁴ The Agreement is classified, but a parliamentary question shows that the basic components of the bilateral agreement include legal migration, in particular the mobility of skilled workers and academics, and cooperation on returns. To facilitate returns, the agreement provides for the use of charter flights, biometric identification procedures and the observance of certain deadlines (Section 12 of the Agreement) (Deutscher Bundestag, 2023c, p. 13).

⁹⁵ See the text of the agreement on the website of the Refugee Council North-Rhine Westphalia: https://www.frnw.de/fileadmin/frnw/media/downloads/Themen_a-Z/EU-Politik/Joint_Declaration_of_Intent_Migration_Iraq.pdf (accessed 31 January 2024).

6. Gaps

Apart from outlining gaps in the legal, institutional and international cooperation frameworks, the authors have found few other areas of work where gaps are evident and need to be addressed. These are gaps in data, management, policy communication and research, amongst others. It is important to note, however, that some of the gaps identified below are ambivalent in terms of deriving policy recommendations because of ethical-normative concerns (see section 7 on policy suggestions for further elaboration).

6.1 Gaps in the legal framework

Gaps in the legal framework appear at two levels of the return governance regime. First, there are (albeit few) discrepancies between EU law and national law. For the other, national policies and laws coexist with subnational heterogeneous policy implementation and the implementation and making of own policies by states within the federal system. States act independently within their competencies, and some directly transpose EU law. Municipalities even organise and implement voluntary return programmes at the third level of return governance. The impact of national law on the implementation of state return policies is subject to negotiation and varies across the 16 federal states due to different institutional and actor arrangements for policy implementation. The ‘outcomes’ of these negotiations depend, among other things, on the political orientation of the responsible state government (ruling parties vs. opposition), the strength of civil society pressure groups and whether or not states share an EU border with neighbouring countries. For people who are subject to the return policies as asylum seekers, deportees or tolerated foreigners, the heterogeneity of the laws, and the complexity of the institutional landscape create a high degree of legal uncertainty.

The law is not well accessible because it is neither foreseeable nor easy to understand. Even decisions on asylum applications (or rulings on appeals against rejections) lead to contradictory results, as Foreigners Authorities at the municipal level and administrative court judges have considerable leeway to assess the situation of an applicant according to their understanding of his or her situation and the situation in the country of origin or a so-declared safe third country. The Federal Constitutional Court (BVerfG) ruled in 2017⁹⁶ that administrative courts have a general obligation to base their decisions on current knowledge and not merely refer to previous decisions and sources. However, in the absence of binding country-of-origin information⁹⁷ and given that the judicial panels of the administrative courts are usually overburdened, the reality is that lawyers dealing with asylum law have to be up to date and bring relevant information to the court proceedings to refer to it in each individual case (Naumann, 2019, p. 306). The administrative leeway is based on the fact that the municipalities, as the third level of government subject to state law, can implement their programmes, e.g. for voluntary return, with municipal regulations varying from location to location (e.g. the towns of Bonn vs Siegburg which are 20 minutes apart). Local Foreigners Authorities depend on the competence and attitude of the staff employed in their asylum and return decision-making (see Sections 5.3, 5.6).

The legal non-status of a temporary suspension of deportation (*Duldung*) in the German protection system occupies a middle ground between regular status and irregular stay⁹⁸ to the detriment of the chances of those affected to participate in society and to claim their entitlements.

⁹⁶ See: BVerfG, Decision of 27 March 2017, 2 BvR 681/17, asyl.net: M24951.

⁹⁷ BAMF issues non-binding country of origin-specific analyses (*Länderanalysen*), see <https://www.bamf.de/EN/Behoerde/Informationszentrum/Laenderanalyse/laenderanalyse-node.html>

⁹⁸ Interestingly, EU statistics count persons with a temporary suspension of the obligation to leave as not obliged to leave, whereas German statistics count them as obliged to leave.

The limbo situation and the exclusionary character of *Duldung* lead to a fiction of temporary residence. At the same time, there is a massive imbalance between the likelihood that the temporary suspension of deportation is lifted and the political rhetoric that emphasises improving the enforceability of returns, which is reflected in the intended increase in the number of people deported from Germany, leading to new acts to improve the enforcement and acceleration of returns. A series of renewals (*Kettenduldung*) is widespread, but so far does not allow the potential for regularisation to be exploited by linking recent new types of temporary suspension, such as suspension for the purpose of training or employment (*Ausbildungs- oder Beschäftigungsduldung*) with long-term naturalisation.

The most significant discrepancy between EU law and national law concerns the monitoring of returns. Here, Germany has neither a law nor provisions for systematic monitoring or the institution of an ombudsman. This is a matter of serious concern, as any deportation or removal procedure runs the risk of violating the human rights of a deportee (cf. Section 5.10 in this Dossier); the accumulating evidence of pushbacks at internal (Schengen) borders is only one indicator. Furthermore, the imposition of a post-deportation entry ban (cf. Section 5.8) is not in line with EU law, and the fact that the decision is taken by a legislator rather than being reviewed officially or by a judge violates Art. 3.6 of the EU Return Directive (2008). As the discussion during the Expert Panel (12 December 2023) showed, it can be argued that the German legal framework for asylum law and reception conditions (the mirror image of return legislation) contains a compliance gap with EU law based on the decentralised implementation of EU- and national law (which has largely adopted EU law, lest the exceptions mentioned above). As a result, it remains unclear who exactly is not complying and how.⁹⁹ In other cases, the German authorities bend the law according to EU rules, as shown by the preferential application of the Schengen Borders Code for border controls and *Zurückweisungen* (refusals of entry) and the continuous extension of border controls on the basis of ever different but similarly defined security threats. For example, border controls with Austria have continued since 2015 despite the prescribed maximum duration of six months (Section 5.6).

A more general observation concerns the role of EU law as a reference point for national policymaking and sub-national policy practice (enforcement of legal provisions) at the federal state levels. Accordingly, as standards in EU law fall, generous protection provisions in national law may disappear.¹⁰⁰ For example, it is conceivable that the New Pact on Migration and Asylum will open up more possibilities for restrictions, for instance with regard to access to legal counselling, and that a hearing will no longer be mandatory.¹⁰¹ This is linked to the EU Commission's shift towards a more restrictive approach to returns despite the EU Parliament's insistence that the emphasis on effectiveness in return policymaking and enforcement must comply with human rights standards.¹⁰²

⁹⁹ For this reason, the authors of this report refrain from suggesting enhanced compliance with EU law in section 7.

¹⁰⁰ It is noteworthy, though, that, e.g., the enforcement of the EU Return Directive from 2010 onwards in Germany initially also provided for major improvements in Germany's and States' handling of returns. For example, access of non-governmental organisations to detention facilities became possible and the separation of prisoners and deportees was introduced. Cf. Droste & Nitschke (2022, p. 31).

¹⁰¹ Outcome of the discussion at Stakeholder Expert Workshop on 12 December 2023 organised by BICC (Bonn).

¹⁰² See the EU Parliament's resolution on the implementation of the EU Return Directive (2008/115/EC) adopted on 17 December 2020 which signaled an attempt to align EU return policy provisions with international standards and to provide guidance for EU MS on how to reconcile legal/ protective safeguards and national return policies that usually focus on restrictive policies (detention of children, automatic entry bans, etc.) and increasing returns. Cf. Majcher (2021).

6.2 Gaps in the institutional framework

Gaps in the institutional framework reflect what has been said about the challenges of multi-level policymaking and implementation. The same tensions inherent in the federal system, i.e., between the federal and sub-national levels with the federal states and different types of municipalities (see Annex 1), exist and manifest themselves in a heterogeneous landscape of institutions and policy implementation actors. The academic literature reviewed for this Dossier confirms that the problem is well known. In Germany, several interface bodies and institutions have been established in recent years to bridge the gaps between the different levels of policymaking and implementation, particularly between the federal and state levels.

Another gap is the involvement of courts of different types of jurisdiction in decisions on deportation detention and their appeals, which are often found to be inconsistent with legal regulations (see Section 5.10 above). The relationship between civil society organisations and the political authorities, particularly the BAMF, is ambivalent. Since 2015, several communication formats have been created, such as annual conferences and workshops, to learn more about each other's perspectives and challenges as stakeholders in the return process. In doing so, both sides seem to engage with each other on the basis of mutual understanding that they are working towards the same goal: to improve and humanise return and asylum policies and their impact on protection seekers. Important instances of CSO participation have been facilitated in the framework of deportation monitoring groups (mixed forums) at German airports (cf. Section 5.6 on forced return deportation monitoring). In the process of law making and -amending, CSO participation is limited, and the time available to prepare positions for consideration in new draft laws is very short.¹⁰³ The media often does not seem to play a constructive role but rather helps to distort the public debate in which politicians argue for ever more restrictive approaches and the need to deport more TCNs based on false facts/ problematic data. Besides lacking investigative efforts, journalists and the media also fail to address structural problems and gaps.

6.3 Gaps in international cooperation

International cooperation is mainly discussed in the context of bilateral readmission agreements and soft laws. However, the implications of return policies and their unintended consequences for international cooperation, such as the social and political consequences in countries of origin, are often muted in these discussions. Koch et al. (2023) have recently pointed out why and how return policy needs to be seen in the context of larger international political structures of (non)cooperation, including foreign, development and security policy. Narrow return policies driven by domestic politics, which include the intention to conclude cooperation agreements with the countries whose citizens constitute the largest group of rejected asylum seekers, are unrealistic and often fail because origin countries have little interest in 'taking back' their citizens. If they are willing to engage, German policy often runs the risk of legitimising authoritarian regimes. Moreover, Koch et al. (2023) argue that there is a discrepancy between the foreign policy goal of stabilising fragile states or contexts and the fact that this is undermined by returns. Furthermore, the closure of soft law—informal migration agreements—undermines good governance standards such as democratic accountability and transparency in the other partner states. Another gap is the need for a sober debate on the conditionality of return policies and their implementation in the international arena (Walter-Franke, 2023). However, one interesting development in this field was the appointment of the Special Commissioner for Migration

¹⁰³ Point from discussion during Expert Stakeholder Workshop, 12 December 2023, Bonn.

Agreements in Germany by the governing coalition in February 2023. The Commissioner is expected to “provide important new ideas for shaping the external dimensions of migration policy. In doing so, he will closely coordinate with the federal ministries concerned.”¹⁰⁴

6.4 Gaps in databases

It is striking how the legal and institutional complexity seems to prevent a coherent collection of data on returns that could lead to a unified understanding of facts and figures in the German return regime. Data gaps are manifold, and only a few highlights can be mentioned here:

- The Federal Police and the BAMF do not reconcile and compare data on Dublin transfers (Deutscher Bundestag 2023b), i.e., for example, the Federal Police officers count the number of persons actually deported, while the BAMF counts the number of persons who were requested to leave Germany according to the Central Registry of Foreigners (*Ausländerzentralregister*, AZR) (Deutscher Bundestag, 2023g, p. 6);
- There is almost no published data on cooperation with third countries on return/s (cf. Section 5.12);
- There is no sound statistical database on voluntary return (neither assisted nor unassisted) on an annual basis, as the federal states and municipalities partly run their own voluntary return programmes, and there is no obligation to report to a single database according to common standards and criteria;
- The AZR¹⁰⁵ has been of limited use in the past, as it reportedly contains many incorrect data entries that are hardly detected or corrected; others are missing, such as information on actual employment based on permits issued to foreigners with residence titles (Deutscher Bundestag, 2023a, pp. 73f, 77);
- Rejections of asylum are not recorded with regard to the influence of family protection;
- No data is collected on the withdrawal of removal warnings based on BAMF or court decisions (following the CJEU ruling of 14 January 2021 C-441/19);
- Data on deportation (deportation orders, different types of detention and alternatives to detention, as well as the use/ existence of complaint mechanisms in deportation detention procedures) are not systematically collected (Hoffmeyer-Zlotnik, 2017, p. 34). This limits the ability to analyse detention versus alternatives and their respective impacts.

Furthermore, data on returns is difficult to access, and the public, media and politicians cannot rely on a sound database for informed public debate and decision-making.

It is important to note that with the notable exception of the (lack of) data on detention, the argument about gaps in databases here is not that the amount of data available is limited; on the contrary, the above elaborations should have made clear the complexity and heterogeneity of data sets due to the multiple actors and federal logic in Germany. The comparability of documented data across the states and their synthesis for informed national policy discussions remains a

¹⁰⁴ See <https://www.bmi.bund.de/EN/ministry/commissioners/specialcommissioner-migration-agreements/specialcommissioner-migration-agreements-node.html>. Accessed 06.02.2024.

¹⁰⁵ A new law on the reform of the AZR was adopted in 2021. Upon implementation, the scope of data and access to data for more users shall be realized (Hoffmeyer-Zlotnik, 2022, p. 14), albeit civil society organisations fear data misuse and show concern about data insecurity, while the government is still in the process of finding solutions (Deutscher Bundestag, 2023a, p. 74).

distant dream at least for two reasons: 1) the multiple rules and regulations for data collection and standards for datasets in the federal states and reporting by federal authorities (e.g. Federal Police); 2) strong legal concerns about the protection of personal data and provisions limiting the use of data to the original purpose for which they were collected,

In recent years, various actors have played a prominent role in documenting or requesting data on returns through their parliamentary authority. For example, deputies of the parliamentary faction *Die Linke*¹⁰⁶ have used the inquiry instruments of *Kleine Anfrage* (minor inquiry) and *Große Anfrage* (major interpellation) in the *Bundestag* to obtain data from the executive bodies on migration, asylum and return-related figures, their collection and documentation processes, etc., and thus to regularly scrutinise transparency in these areas. Equally important are the efforts of lawyers and NGOs, such as the association ‘Hilfe für Menschen in Abschiebehäft in Büren’ (support for people in deportation custody in Büren), mentioned above.

6.5 Gaps in implementation

The identified shortcomings in the legal and institutional framework reveal further ‘management’ gaps in the operational implementation and enforcement of return policies. The ambivalence resulting from the decentralised implementation of EU-, international and federal law by multiple actors and institutions was highlighted as having either positive or negative effects on migrants/returnees in different situations. Internal contradictions between what is presented as a solution to the politically defined problem of the deportation gap and the applied solutions perpetuate the antagonistic discourse with an emphasis on increasing the effectiveness of returns. Meanwhile the operational focus is kept on (re-introducing) border controls to apprehend migrants at or near the border, partly to avoid the initiation of asylum applications and official Dublin transfers. This is in stark contrast to the official discourse on the rule of law-based return policymaking pursued by the BMI. Moreover, the national rule of law narrative is in practice contrasted with subnational regulations and enforcement practices.

A related tangible tension (‘conflict of interest’) lies in the relationship between the domestic policy fields of integration, returns and internal security. A strategic approach with a long-term perspective that considers alternatives to return (e.g., regularisation) on the foundation of evidence-based analysis is lacking in national and sub-national return policymaking. Furthermore, a cost-benefit analysis (Koch et al., 2023) and comprehensive evaluations (e.g., of the voluntary return programmes) have not yet been carried out.

There is a lack of uniform and binding quality standards for return counselling. The limited funding available hinders the establishment of mandatory training for counsellors in governmental and independent return counselling centres. Moreover, funding for legal counselling is reportedly decreasing.

¹⁰⁶ Due to internal rifts in the party *Die Linke* (a democratic socialist political party in Germany), it lost its parliamentary group (faction) status in December 2023, and it remains to be seen whether the qualitatively different/ smaller parliamentary group status for the current legislative period will allow its members of parliament to continue with the requests. If not, the German public faces a serious risk of a loss of transparency and increasing non-information about migration-related operational, legal and institutional developments in Germany and its embedding in the European migration and asylum/ return landscape.

6.6 Gaps in political communication

The narrative of a deportation deficit has haunted German politics since 2015; it arises from the perceived discrepancy between rejected asylum seekers who are, theoretically, obliged to leave, and their continued stay in Germany due to the mostly ongoing ‘temporary’ suspension of deportation to the country of origin or a third country. The public debate is not based on factual information and solid databases. Rather, it is driven by opinions and distorted impressions based on incomplete data and their uptake in the media.

The distorted public debate is influenced by:

- a) The discrepancy between the discourses and the practical handling of protection. While the discourse is symbolic and generates pressure for highly restrictive return policies, the practical treatment of asylum seekers—partly conditioned by legal and bureaucratic requirements that hinder the smooth implementation of restrictive policies and the heterogeneous, decentralised implementation of EU and national legal frameworks—is in their favour. Appeals to the courts and years-long court cases, for example, give tolerated persons time to ‘integrate’ and to demonstrate documented integration success, which in the long run help their case for acceptance.
- b) A gap in the type of return emphasised in the public debate. The media hardly ever report on voluntary return and its significance in the overall field of migration policy. There is a noticeable contrast between the over-emphasis on deportation on the one hand and voluntary returns on the other. However, the number of voluntary returns is much higher than the small number of rejected asylum seekers who are forcibly returned. As voluntary (assisted) returns seem to be much more important for the effectiveness of returns than forced returns, that is deportations, the focus in the public debate is misleading.

At the same time, within the overall framework of (forced) migration, asylum and integration policies, critical observers question whether forced returns are the main problem in these areas—as successive legal restrictions and political and media discourse seem to suggest—given that of the total of 300,000 persons obliged to leave Germany according to the AZR, more than 250,000 are tolerated (having *Duldung* status), and between 30,000 and 50,000 are to be returned (Dublin countries or origin countries).¹⁰⁷ Thus, it can be concluded that the official rhetoric about effective returns is owed to

- c) symbolic policymaking—a style of policymaking that distracts from gaps and shortcomings in other policy areas (e.g. not necessarily detrimental municipal and sub-national discretionary powers, over-bureaucratisation of administrations, securitisation, lack of capacity in administrations). This tends to prioritise responding to right-wing pressures by introducing restrictions, criminalising rejected asylum seekers and focusing public rhetoric on deportations, rather than addressing structural gaps and shortcomings in migration-related policy fields, including development and economic/ trade cooperation.

¹⁰⁷ According to the BMI, at the end of October 2023, 250,749 persons were classified as having the obligation to leave Germany and the deportation of 201,084 of whom was temporarily suspended, which means that 49,665 persons were potential enforceable returnees (see Tagesschau, 2023). The same source mentions that the new provisions of the Repatriation package coming into force in 2024 will (only) lead to an estimated 600 additional deportations/ removals per year from 2024 onwards, after Germany had deported around 12,000 people per year in 2021 and 2022.

6.7 Gaps in scholarship

In the case of Germany, there is a gap between the rhetoric of forced return and the academic analysis of procedures,¹⁰⁸ coercive methods and the involvement of actors (Grawert, 2018). The desideratum for research on the German return regime is also reflected in the experience that the authors of this Dossier had to turn to the asylum debate to gather knowledge on policies of forced return and procedures piece-by-piece. As asylum and return scholarship are two sides of the same coin, we see asylum scholarship as a key reference for the analysis of return policies and practices. However, given the multi-faceted differentiation of the asylum system as a multi-level policymaking and implementation container with multiple-actors, it seems valid to establish return scholarship as its sub-field.¹⁰⁹ The discussion in the Expert Panel Workshop highlighted that the study of return is sometimes seen as unethical because it is implicitly assumed that scholars working in this field would not be concerned with the protection, the rights and dignity of individuals categorised as returnees and, more generally, would not be critical of the global political and economic inequalities, international legal and power constellations that underpin the international migration regime. We disagree with these assumptions and argue that return scholarship can make a significant contribution to ensure transparency that can ultimately reveal systemic violations of individuals' dignity and make an authoritative effort to develop alternatives to return.

Thus, while most of the scholarship to date has been confined to analysing the process of the asylum procedure and to address the protection and status of those who wish to have a perspective to remain, there is a desideratum regarding the treatment of those who are deemed ineligible or undeserving of the right to remain and reside in Germany. Moreover, the successive adoption of increasingly restrictive laws in Germany and in the framework of the Common European Asylum System (Gemeinsames Europäisches Asylsystem, GEAS) at the European level confirm, in our view, the need to systematically address (the rightfulness of) these laws, the dimensions of their enforcement and their explicit meaning, also and distinct for returns, as the political aim of increasing return effectiveness underlies legal reforms. Thereby, critical scholarship¹¹⁰ is tasked to challenge sovereign and government-centric notions such as 'rule of law-based return policies' and the common framing that merely corrective reforms are needed in the asylum and return regime ("to improve deportations in order to make them more 'humane'", Borrelli, 2023, p. 462) while state-induced return practices are assumed to be rightful in principle. Moreover, the gaps in data on returns can only be addressed by a community of scholars who systematically demand transparency and access to different data sets. To date, scholars have been concerned with inadequate access to timely data and the incoherence of the federal and state data collection approaches. On a practical level and as a form of transdisciplinary return research, collected evidence on return mechanisms and practices could help to rationalise the return decision-making processes from the bottom up, thus balancing the current dominant top-down push for efficiency (Feneberg, 2019).

¹⁰⁸ Research on voluntary return (programmes) is more common, e.g., the BAMF research centre conducted the project "Returning with 'Starthilfe Plus'" between 2017 and 2023. Cf. <https://bamf.de/SharedDocs/ProjekteReportagen/EN/Forschung/Migration/rueckkehr-starthilfeplus.html>

¹⁰⁹ Existing references to deportation scholarship (Leerkes & Van Houte, 2020), voluntary return scholarship and returnee networks show that the body of work on return is quite diverse and could also benefit from systematisation and state-of-the-art-elaborations to define the field and its way forward.

¹¹⁰ See Lemberg-Pedersen (2022) for an outline of deportation studies.

7. Policy suggestions

The field of return governance in Germany is very dynamic and, at the same time, reveals many gaps: structural deficiencies, operational shortcomings and heterogeneous practices due to the federal system. While it would be logical to present policy proposals by addressing each gap, a close analysis of the gaps revealed that details and practices matter. Also, deriving a broad policy proposal that addresses the identified gap in the institutional framework between different levels of policy and practice will at the same time be too broad to be helpful and will not do justice to the intricacies of the circumstances that condition/ frame and cause the different situations. Furthermore, as alluded to in the introductory paragraph of Section 6, ethical-normative concerns lead the authors to discuss possible policy solutions critically and to refrain from making straightforward suggestions that subscribe to the overall problematic drive for more effective returns at the expense of non-compliance with fundamental/ human rights.

Policy points concerning the legal framework:

- If the German government intends to adhere to deportations as a legitimate instrument of its ‘rule of law-based migration policy’, a legally defined robust control and monitoring system for transparency is needed to maintain the current focus on effective returns in compliance with fundamental/ human rights and thus legitimacy.
- An independent institution (ombudsman or similar) should be established to monitor pre-removal and detention. Detainees and deportees should have a complaint mechanism in case of human rights violations.
- The definition of public interest, (threats to) internal security and public order should be reviewed and provided with clear legal definitions as the current interpretations are used to legitimise exceptional measures (such as long-term border controls at Schengen borders, unlawful refusals of entry).

Policy points concerning the institutional framework:

- Provide access to a duty lawyer/ public defender/ court-appointed counsel for those subject to detention pending deportation.
- As a rule, provide detainees with information on removal procedures, their position, rights, and entitlements in detention.
- Require district courts (*Amtsgerichte*) to review cases independently of proposals from the Foreigners Authorities and to remedy deficiencies in hearings prior to detention decisions.

Policy points concerning data gaps:

- As far as the protection of personal data allows, the BMI, BAMF, the Federal Police, state administrations and the Repatriation Support Centre (*Gemeinsames Zentrum zur Unterstützung der Rückkehr*, ZUR) should endeavour to regularly collect, process and publish up-to-date, consistent data that is comparable and provides a solid basis for analysis and decision-making. This is particularly relevant for voluntary return, pre-removal detention, alternatives to detention, investigations into the reasons for failed deportations, illegal return of deportees, border protection, and the costs of pre-removal detention and return measures in general.
- The implementation of the reform of the Central Register of Foreigners (AZR) should be used as an opportunity to urge the BAMF to voluntarily and regularly publish available

data at the sub-national level as well as those data sets that have so far been obtained by the instrument of parliamentary questionnaires.

Policy points concerning international cooperation:

- Cooperation with countries of origin or safe third countries should be conducted in a more transparent and strategic manner, taking into account the conditions in the country (political will and benefits) and taking more seriously the values underlying German foreign and development policy (avoidance of double standards).

Policy points concerning management/ implementation:

- A cost-benefit analysis of return versus regularisation or other measures based on factual elaborations (evaluations) could contribute to shifting the focus in practice and public debate from the effectiveness of return to regularisation/ integration, from welfare burden to granting protection and rights, from racial profiling and framing of individuals as a risk to security and public order to reflecting on mechanisms of structural social exclusion present in the German return governance system (criminalisation of rejected asylum seekers and deportation detention).
- Provide legal counselling and long-term funding for state and independent return counselling centres.
- Provide mandatory training for counsellors and long-term funding for state and independent return counselling centres.
- Provide stable funding for court-appointed legal counselling and defence for persons subject to the various forms of deportation detention to reduce the number of unlawful detentions.

Policy point concerning communication/ public debate:

- A discussion on alternatives to return, such as regularisation, should enter the public debate, while different stakeholders are urged to analyse possibilities of regularisation. They should draw on previous regularisation programmes in Germany (e.g., in 1999) and international comparisons (Strban et al., 2018). The contradictory debates on the need for skilled labour immigration versus the deportation gap and more effective returns should be reconciled by exploring laborisation policies (Jonitz & Leerkes, 2022). First tentative steps in this direction have been taken with the instrument of temporary suspension for the purpose of training or work (*Ausbildungsduldung* and *Beschäftigungsduldung*), and the Law on further skilled labour immigration (*Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung*), which came into force in January 2024, promising to link the need for skilled labour immigration and the regularisation of those whose removal has been suspended with the prospect of obtaining a residence permit for selected groups (Peitz, 2023). However, these measures are not very present in the public debate, and various stakeholders (government, states, academics) could step up efforts to change the narrative.
- A critical discussion is also needed on the criteria according to which some are given certain rights and a perspective to stay, while others in need of protection are denied a perspective.

8. Conclusions

This report mapped out the legislative, institutional frameworks and procedural infrastructures related with the return of rejected asylum seekers and other unauthorised migrants from Germany with a focus on the period 2015 to 2023. It also outlined the three-tiered institutional framework to explain how existing structures and newly emerging interfaces lead to a complex landscape of legislations and policies. It explained the procedures for return at the border and from within the national territory, the return of the unaccompanied minors, forced and voluntary return to unpack the return processes. In addition to the special cases concerning the obligation to return, it also discussed entry bans, detention and safeguards to fully understand the procedural infrastructures. Sections 5 and 6 of the report also dealt with Germany's readmission efforts with EU and non-EU countries, including those preceding the implementation of the EU Return Directive from 2009 onwards. Finally, it identified other gaps besides those in the legislative, institutional and international cooperation frameworks, for example in relation to data bases, the management of returns (implementation), political communication, and in scholarship.

As the German institutional framework for returns is highly complex due to multi-level governance with discretionary powers of the federal states and sub-national administrative actors (districts and municipalities) in the federal system, an attempt is being made to create more coherence. Since 2015, the return governance framework has expanded to include intermediate coordination structures between the federal and state levels as well as inter-ministerial coordination at the federal level and between the state ministries of the interior. It remains to be analysed in detail what benefits this type of interactions brings and for whom.

The resulting authority and discretionary powers of judges in district and administrative courts, as well as of the individual 'decision-makers' of the third-level Foreigners Authorities are noteworthy in that they embody a heightened/ ethical responsibility to make well-informed decisions. They can only be challenged in higher administrative courts. It varies from court to court and municipality to municipality how decisions on return are justified at the local levels and how appeals are accepted or rejected. Moreover, the involvement of different types of courts (administrative vs. general jurisdiction) complicates the governance framework.

Taking into account the perspective of returnees, the authors of this report refrain from recommending a stricter harmonisation of policies as the influence of more restrictive EU legislation has lowered the protection standards for returnees/ deportees in Germany in some dimensions, while improving protection in others. Nevertheless, there are clear gaps in at least six areas discussed above (section 6), namely in legal framework, institutional framework, international cooperation, databases, implementation and political communication. The research findings have the potential to fill existing gaps not only in the legal but also in the practical shortcomings of return policy implementation processes. Thus, their analysis and clarification can improve return decision-making, increase transparency and inform the public debate, leading to a more factual discussion on migration and return in Germany.

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Annex 1. Statistics on Returns from Germany based on Eurostat Database

Year	Stock of irregular migrants and/or # TCNs found to be illegally present	# Asylum applications	# TCNs/foreign nationals* refused entry at the border	# TCNs/foreign nationals* ordered to leave Total	# TCNs/foreign nationals* returned following an order to leave (annual data)	# Third country unaccompanied minors returned following an order to leave	# TCNs/foreign nationals* who have left to the territory by citizenship	# TCNs/foreign nationals* returned following an order to leave, by type of return			
								# assisted 'voluntary' return	# assisted forced return	# non-assisted 'voluntary' return	# Total
2015	376.435	476.649	3.670	54.080	53.640	N/A	N/A	N/A	N/A	N/A	N/A
2016	370.555	745.545	3.775	70.005	74.080	N/A	N/A	N/A	N/A	N/A	N/A
2017	156.710	222.683	4.250	97.165	44.960	N/A	N/A	N/A	N/A	N/A	N/A
2018	134.125	185.853	5.175	52.930	29.055	N/A	2134	N/A	N/A	N/A	N/A
2019	133.525	165.938	6.730	47.530	25.140	N/A	N/A	N/A	N/A	N/A	N/A
2020	117.930	122.170	4.210	36.330	12.265	N/A	N/A	N/A	N/A	N/A	5015
2021	120.285	190.816	4.635	31.515	8.195	75	N/A	0	10.785	0	10.785
2022	198.310	244.132	5.970	32.865	7.725	110	N/A	0	13.135	0	13.135
2023		87.777									
Data sources:	eurostat	statistica.com	eurostat	eurostat	eurostat	eurostat	eurostat	eurostat			

Annex 2: List of authorities involved in migration return governance

Authority (En/ DE) ¹¹¹	Tier of govt (national-regional-local)	Type of organisation	Area of competence in the fields of return (role briefly explained)
FEDERAL GOVERNMENT (BUND) = 1st tier of government			
Federal Ministry of the Interior and Community (BMI) Bundesministerium des Innern und für Heimat (BMI) ¹¹²	Federal government ministry	National ministry	Migration and refugee policy, asylum and residence law, refugee protection, European harmonisation of asylum and migration issues, nationality and naturalisation matters; return policymaking: drafts legislation at the federal level, takes the lead in negotiating bilateral readmission agreements with countries of origin, designs and finances return assistance programmes (REAG-GARP, Starthilfe Plus)
Federal Government Special Commissioner for Migration Agreements (2023 newly established.) Sonderbevollmächtigter für Migrationsabkommen ¹¹³	Federal institution with supra-ministerial assignment	office assigned to the Federal Ministry of the Interior and Community (BMI)	promote the conclusion and implementation of migration agreements: initiate practical cooperative agreements with key countries of origin, taking into account human rights standards; provide new ideas for shaping the external dimensions of migration policy in close coordination with the federal ministries concerned
Minister of State in the Federal Chancellery/ Commissioner for Migration, Refugees, and Integration Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration ¹¹⁴	Federal institution	focal point under Chancellery with supra-ministerial assignment	est. 2005, first Commissioner, then Minister of State; compiles and submits a report (Report of the Commissioner for Migration, Refugees and Integration), in line with Section 94 (2) of the Residence Act, to the German Bundestag at least every two years; 2022 calling for faster and more pragmatic asylum procedures
Federal Office for Migration and Refugees (BAMF) Bundesamt für Migration und Flüchtlinge (BAMF) ¹¹⁵	Higher federal authority (national level) within the portfolio of the Federal Ministry of the Interior (BMI) with - multi-tiered organisational structure, broken down into Directorates-General, Groups and Divisions - decentralised locations, including branch offices (partly known as 'regional offices'), arrival centres and decision-	Federal office under the supervision of BMI	Asylum and Dublin procedures, resettlement and relocation, voluntary returns

¹¹¹ Authorities defined and authorised by the law are listed in this column, where the legal significance of return governance actors is not clear, they are listed in the second column, except for the entries concerning BAMF, BMZ and international agencies: here, the second column comprises sub-agencies of the superior/ umbrella authority listed in the line above.

¹¹² www.bmi.bund.de

¹¹³ <https://www.bmi.bund.de/EN/ministry/commissioners/specialcommissioner-migration-agreements/specialcommissioner-migration-agreements-node.html>

¹¹⁴ <https://www.integrationsbeauftragte.de/ib-de>

¹¹⁵ <https://www.bamf.de/EN/>

	making centres at the federal states' level (Bundesländer) and local level - cf. below sub-authorities:		
	AnKER ("arrival, decision and return") facilities (8?) <i>Anker(Ankunft, Entscheidung, Rückkehr)-Zentren</i> ¹¹⁶	Subordinated facility of BAMF at the municipal level	est. 2018-20 building on arrival centres; bundle all the functions and responsibilities – from the asylum application and the decision to the allocation to municipalities as well as the initial measures to prepare for the return of asylum applicants – through the presence of all authorities involved in situ, e.g. BMI has branch offices in nine AnKER facilities and eight functionally equivalent facilities
	Branch offices/ Außenstellen (54 [2021]/ 60 [2023], thereof 17 in arrival centres, 8 in AnKER facilities, 1 in authorities centre, 1 being BO and regional office)	Subordinated facility of BAMF at the municipal and district level	Decision-making on asylum applications, carry out asylum procedure (incl. filing of application, interview, decision on more complex cases)
	Decision-making centres <i>Entscheidungszentren</i>	Suboffice of BAMF at municipal/ district level	Decision-making on asylum applications of already interviewed applicants, esp. individuals from unsafe countries of origin such as Syria, Iraq and Eritrea. "The decision-making centres (...) take some of the strain from the arrival centres and branch offices."
	Arrival centres (18) <i>Ankunftsentren</i>	The subordinated facility of BAMF, similar to AnKER centres at the municipal level	"Integrated refugee management": usage of a nationwide core data system by all involved authorities, covering all steps in the asylum procedure, incl. registration in the respective Federal Land, health examination, recording of the personal data, identity check, application, the interview and the Federal Office's decision ('notice) on the asylum application, initial integration measures (e.g., "initial orientation courses"), initial advice on access to the labour market by a local employment agency
Federal Ministry of Economic Cooperation and Development <i>Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ)</i> ¹¹⁷	Federal government ministry		finances reintegration programmes („Perspektive Heimat“) since 2017; engaged in programming for mitigating living conditions in displacement contexts in the framework of the Special initiative 'Flight/ displacement' of the Federal government
	German International Cooperation <i>Gesellschaft für Internationale Zusammenarbeit (GIZ)</i> ¹¹⁸	Implementing the organisation of BMZ	implements reintegration programs, esp. "Perspektive Heimat"; builds and operates migration counselling centres; provides reintegration scouts; carries out qualification measures in preparation for reintegration in Germany and in country of origin.

¹¹⁶ Note: the current coalition government (SPD, the Alliance 90/The Greens and the FDP, in power since late 2021) decided not to continue establishing AnKER centres. Functionally equivalent centres were opened also in the previous government period (until mid-2021).

¹¹⁷ www.bmz.de

¹¹⁸ www.giz.de

German Federal Foreign Office (GFFO) Auswärtiges Amt (AA) ¹¹⁹	Federal government ministry		Compiles situation reports on and supports communication with countries of origin, also issuing of return documents/ IDs; German diplomatic missions may get involved in return examination procedure for unaccompanied minors
Federal Police Bundespolizei ¹²⁰	Federal/ national authority	Federal/ national authority	Police surveillance of borders and regions close to borders Support of Federal States in forced returns: responsible for the return and deportation of illegally entering aliens at national borders and airports, accompanies deportations and Dublin transfers, trains law enforcement officers to become air escorts (<i>Personenbegleiter Luft</i>), provides administrative assistance in obtaining substitute passports in individual cases
FEDERAL STATES (LAND/ LÄNDER) = 2nd tier of government			
State Ministries of Interior Landesinnenministerium State Ministry of Justice Landesjustizministerium			Issuing legal framework at State-level, e.g. <i>Länder</i> Reception Act, and relevant procedures
State Ministries of Social Affairs Landesministerium für Soziales			<i>Länder</i> are responsible for the accommodation and care of protection seekers in accordance with the <i>Länder</i> Reception Act (<i>Landesaufnahmegesetz</i>) on the initial reception procedure (<i>Erstaufnahmeverfahren</i>) and the associated implementing ordinances.
State Police/s Landespolizei/ Länderpolizeien	Sub-national <i>Länder</i> -jurisdiction	<i>Länder</i> -authorities of federal states	Removals: in charge of transporting deportees from the place of pick-up to the airport and handing them over to the federal police
	Bavarian Border Police Bayerische Grenzpolizei		
Central Foreigners Authority Zentrale Ausländerbehörde (ZAB)		Decision-making	

¹¹⁹ <https://www.auswaertiges-amt.de/en>

¹²⁰ www.bundespolizei.de

Key removal headquarters of a state Zentrale Abschiebestelle (ZAS)	e.g., in Thuringia, called as ZAS; in Baden-Württemberg located in the office (Regierungspräsidium, RP Karlsruhe) of one of the governmental districts (Regierungsbezirk) ¹²¹ in that particular state; in Bavaria called Bavarian State Office for Asylum and Repatriation Bayerisches Landesamt für Asyl und Rückführungen (LfAR)	Operational; implements ZAB-decision about return; Superior State Authority	Upon receipt of the personal files of the rejected applicant after the deportation order of the foreigners authority, the ZAS checks the requirements for deportation, obtains identification documents (passport procurement) and, for example, organises the removal operation (flight to the country of origin; for the day of the deportation foreigners authority, state police and federal police are notified regarding the details for implementation) ZAS (where existing) operate on behalf of the local foreigners authorities who are responsible in principle
BUND-LÄNDER INTERFACES (INTERMEDIATE COORDINATING STRUCTURES BETWEEN FEDERAL AND STATES LEVEL)			
Repatriation Support Centre Gemeinsames Zentrum zur Unterstützung der Rückkehr (ZUR)	federal-state cooperation platform under the leadership of the Federal Ministry of the Interior (BMI)	With different sub-sections, e.g., for passport replacement work or for collection and review of quantitative and qualitative return data	est. 2017 to coordinate work of federal and state governments and enhance cooperation between state governments in the area of return (through networking, workshops, and training; representatives of the federal states, the BAMF and the Federal Police perform return-related tasks, such as coordination to improve the utilisation of charter flights or the compilation of data; BMI supports in prioritised repatriation of foreign criminals and foreigners who pose a significant threat to public security (case processing is independent of residence status and comprises entire repatriation process, incl. status-legal questions, identity clarification, passport replacement procurement
	Working group on integrated return management Arbeitsgruppe Integriertes Rückkehrmanagement	at the level of the heads of unit (Referatsleitung) of the responsible ministries of the <i>Länder</i> as well as the BMI, BAMF, and the Federal Police	exchange twice a year
Anker-centres and functionally equivalent (FE) facilities Anker-Zentren und funktional äquivalente Einrichtungen	open reception facilities where various agencies are located in the same premise or its immediate vicinity: BAMF, foreigners authority, welfare associations, application offices of the administrative courts, the Federal Employment Agency, as well as other non-governmental counselling and support actors and, at some locations, the state police, plus federal police on demand (esp. in case of Dublin III-transfers)		Protection seekers – except UAM – are required to remain accommodated in the AnkerER/FE facilities until the conclusion of the asylum procedure; those whose applications have been rejected should, if possible, remain in these facilities until they leave the country or are deported; benefits are given in kind as far as possible; although open facilities, the presence of asylum seekers is consistently recorded aim is to optimise the asylum procedure in all phases of the process - from the arrival of the asylum seekers to their distribution to the local authorities or their return - through short distances and direct contact between the local agency representatives on the basis of a model administrative agreement of the federal government outlining the main fields of joint cooperation between the federal and state governments: e.g., responsibilities for accommodation, counselling and support services, identification and the asylum procedure, day structuring measures, return counselling, voluntary return and repatriation.
	Standing Conference of Ministers of the Interior ¹²² and Senators-Working		elaborated recommendations “to remove legal and actual obstacles pertaining to the return of potential offenders” to the IMK/ Standing Conference in 2018, e.g., amendments to the Residence Act (2019), to initiate a working group to elaborate how potential offenders can be held at prisons, for the reduction of the number of judicial authorities involved in removal orders concerning potential offenders, and for instilling an awareness in

¹²¹ Governmental districts are a subdivision of some of the 16 federal states in Germany.

¹²² <https://www.innenministerkonferenz.de>

	Group ‘Challenges related to repatriation of potential offenders’ Arbeitsgruppe der Innenministerkonferenz ,Herausforderungen im Zusammenhang mit der Rückführung von potenziellen Straftätern‘		the judiciary of diplomatic assurances in connection with removals regarding compliance with Art. 3 of the European Convention on Human Rights (Prohibition of torture in the country of destination)
Joint centre for countering extremism and terrorism (GETZ) Gemeinsames Terrorismus- und Terrorabwehrzentrum	Multi-agency exchange platform with representatives of BAMF, the Federal Office for the Protection of the Constitution, the Federal Intelligence Service, the Federal Office for the Military Counter-Intelligence Service, the Land Offices for the Protection of the Constitution, the Federal Criminal Police Office, the Federal Police, the European Police Office (EUROPOL), the Federal Public Prosecutor, the Central Customs Authority, the Land Criminal Police Offices, the Federal Office for Economic Affairs and Export Control		BAMF is the point of contact regarding politically motivated crime involving foreign, but not Islamist ideology based on its expertise in residence- and asylum-related issues and its status as a migration authority at federal level
Joint Counter-Terrorism Centre Gemeinsames Terrorismusabwehrzentrum (GTAZ)	Inter-agency platform of information exchange and support, participants include the Federal Office for the Protection of the Constitution (Verfassungsschutz), the Federal Criminal Police Office (Bundeskriminalamt), and the Federal Police (Bundespolizei), BAMF, BMI, and foreigners authorities.	Different working groups, e.g. Risk management, Status, Deradicalisation Working Groups	est. 2004, operates in the field of “monitoring and combating Islamist terrorism”, pools the expertise of the German security services, enhances federal/state cooperation for the repatriation of criminals and dangerous persons (who constitute a threat to domestic security); individual case assessments, e.g., to check revocation of protection status and legal actions pending following revocation; Foreigners Authorities and BAMF participate in the ‘Status-Related Accompanying Measures’ and BAMF in ‘Deradicalisation’ working group
DISTRICTS, MUNICIPALITIES (KOMMUNEN) = 3rd tier of government			
Foreigners Authorities Ausländerbehörden (ALB, ABH ¹²³), in some locations Foreigners Offices Ausländeramt (ALA)	rural and urban district-level (Landkreis, kreisfreie Städte in few fed states), larger cities belonging to districts also have their own foreigners authorities (e.g. in Hesse, all cities with a population of 50,000 or more)		Deportation order and enforcement: tasked with enforcing the law on foreigners; residential and passport measures, expulsion decisions/ deportation order: issue return decisions to all categories of third-country nationals
COURTS (GERICHTE)			
Federal Constitutional Court Bundesverfassungsgericht	Federal/ national court	Highest judicial authority	Administrative jurisdiction: constitutional complaints, appeals, revisions relating to the fundamental rights of asylum, e.g., Ruling on AsylbLG 2012

¹²³ Acronym depending on region in Germany.

Federal Administrative Court Bundesverwaltungsgericht ¹²⁴		Third instance court for appeals	<i>2022: discussion whether BVerwG should issue country guidance notes to support more transparent asylum decision-making of BAMF and courts in future</i>
Higher administrative courts <i>Oberverwaltungsgerichte (OVG)</i> (called <i>Verwaltungsgerichtshof</i> in few federal states)	Federal	Second instance/ highest court of administrative jurisdiction in German federal states	court of general administrative jurisdiction between the Administrative Court (VG) and the Federal Administrative Court (BVerwG) and usually decides in the second instance, in certain cases also in the first instance.
Administrative Court <i>Verwaltungsgericht (VG)</i>	district-level (Landkreis) and larger independent municipalities	First instance court	decide on the legality of the administrative decision on return and deportation
Federal Court of Justice ¹²⁵ <i>Bundesgerichtshof</i>	Supreme court of the federal government		court of appeal in administrative law matters against decisions of the higher administrative courts (OVG)
District courts <i>Amtsgerichte</i>	district-level (Landkreis) and larger independent municipalities		Order of detention pending deportation; the scope of the examination by the custodial judge on the existence of the obligation to leave the country and the conditions for return is limited to a formal examination.
NON-GOVERNMENTAL ACTORS (at national and sub-national/ local level)			
Return counselling centres <i>Rückkehrberatungsstellen</i>		government-funded or based on independent support	advise on return options and funding programmes, help those wishing to return to apply for funding
refugee councils <i>Flüchtlingsräte</i> ¹²⁶	State and municipal level, part of advocacy network 'Working Group for Refugees' by PRO ASYL		state refugee councils are independent representatives of the refugee self-organisations, support groups and solidarity initiatives active in the federal states; see it as the state's task to provide refugees with generous reception, effective protection, sustainable integration and a self-determined future in accordance with their displacement trajectory and humanitarian needs
	other civil society and advocacy organisations (e.g., welfare and migrant organisations)	various, e.g., nationwide working group for refugees PRO ASYL, deportation watch/ monitoring at airports	

¹²⁴ Administrative Jurisdiction (marked grey) is to be distinguished from ordinary jurisdiction (blue) in Germany. The administrative courts are responsible for public law disputes of a non-constitutional nature (§ 40.1 Rules of the administrative courts [VwGO]). The administrative jurisdiction is structured in three tiers: Federal Administrative Court, Higher Administrative Courts (called the Administrative Court (VGH) in Baden-Württemberg, Bavaria and Hesse) and the administrative courts. The demarcation to the civil courts of ordinary jurisdiction and to the social jurisdiction is sometimes quite complicated and also controversial.

¹²⁵ The ordinary court system of domestic courts in Germany is structured in four tiers: federal court of justice, higher regional courts, regional courts, district courts. Relevant for the issuing of orders of detention pending deportation are the district courts (*Amtsgerichte*).

¹²⁶ <https://www.fluechtlingsrat.de/>

	Lawyers		
	Research institutions (academia, think tanks, foundations, consulting agencies, etc.)	various	
National Agency for the Prevention of Torture Nationale Stelle zur Verhütung von Folter ¹²⁷	National institution and <i>Länder</i> agencies		independent agency to prevent inhuman conditions and treatment at places of detention; publishes annual report, e.g., 2022 ¹²⁸ with recommendations for standards concerning deportations, pre-removal detention, etc.
	media / social media		distort public debate on returns, rarely highlight structural and operational problems
INTERFACES BETWEEN GOVERNMENTAL AND NON-GOVERNMENTAL ACTORS			
	Hardship commissions in federal states Härtefallkommissionen	varying composition, including representatives of state and church agencies, welfare organisations and State refugee council	examines whether protection seekers who are already under an enforceable obligation to leave Germany, fulfil requirements for being granted residence permit for special humanitarian reasons; can propose granting of residence permit but not enforce; decisive criteria for examination is the degree of integration in Germany and hardship from uprooting the person newly through deportation
	Forum/s Deportation Watch Forum Abschiebebeobachtung	at various German airports, members from Federal police, State authorities, churches, welfare organisations, UNHCR, ai, Pro Asyl	deal with questions and problems in connection with the enforcement of deportations by air, e.g. family separations, communication challenges during deportation detention (de-escalation), lack of packed lunch/ supplies during individual case deportations
	Several institutionalised communication formats (symposia, expert conferences, e.g. for judges)	Dialogtagung etc. between BAMF and NGOs	exchange on challenges and procedural hick-ups and structural problems in the areas of asylum and return
INTERNATIONAL			
UN-related (various)			
	IOM		implements return assistance programs on behalf of countries worldwide
European			
	EC DG Home		drafts proposals for regulations and directives at EU level (e.g., Return Directive); negotiates EU readmission agreements with countries of origin
	EP		legislative function

¹²⁷ <https://www.nationale-stelle.de/en/the-national-agency.html>

¹²⁸ Nationale Stelle zur Verhütung von Folter (2023), pp. 25-29.

	Frontex		finances and supports German agencies in the logistical implementation of deportations with charter flights; Frontex return monitors accompany Frontex-organised deportation flights
	European Court of Justice (ECJ)		can be called on by the lower administrative courts of German administrative jurisdiction on asylum procedures whilst proceedings are pending to hand down a 'preliminary ruling' on cases of doubt under Community law
	European Court of Human Rights		application might be lodged based on the consideration that a state measure or decision in the asylum and appeal process has violated the human rights of the applicant as confirmed by the ECHR
	Non-governmental INGOs/ advocacy organisations (various)		
		ICMPD	supports EU MS in strengthening national return monitoring systems and supports Frontex in establishing a pool of return monitors
Countries of origin			identify their nationals and issue passport replacement documents; negotiate readmission agreements or arrangements to take back their nationals (or not); issue landing permits for charter deportation flights

Annex 3: International cooperation

Readmission Agreements with EU countries

State	Signature	Entry into force	Reference
Agreement between Belgium, Germany, France, Italy, Luxembourg, Netherlands and Poland	29.03.1991	01.05.1991	BGBL. II 1993, Nr. 23, S. 1099

Bilateral agreements for the implementation of multilateral readmission agreements

State	Signature	Entry into force	Reference
Poland (Warsaw Protocol on Determination on techn. Conditions)	29.09.1994	29.09.1994	BGBL. II 1994, Nr. 60, S. 3775

Annex 4: Funding return (budget) and related programmes

	Federal Budget Plan ¹	Budget for REAG/GARP ²			StarthilfePlus ²			Bund-Länder-Projekt URA ²		Promotion of voluntary departures to Syria, Yemen, Libya and Eritrea that were not processed via the REAG/GARP programme ²
	Subsidy for programs to promote voluntary departure in EUR	Budget according to the finance plan in EUR	Of that personnel- and administrative cost in EUR	Invoiced cost in EUR	Budget according to finance plan in EUR	Of that Personnel- and administrative cost in EUR	Invoiced cost in EUR	Federal government's share of invoiced expenditure in euros	Of that Personnel- and administrative cost in Euro	
2015	16.327.000,00									
2016	19.520.000,00									
2017	32.783.000,00	18.538.241,00	2.096.643,00	11.585.947,67	17.610.902,12	1.065.379,03	706.350,87	679.044,85	354.272,43	35.713,50
2018	32.707.000,00	21.859.776,53	2.391.179,14	9.462.376,22	32.767.803,30	4.836.347,15	19.933.131,70	264.234,55	249.343,95	517.035,76
2019	34.453.000,00	19.623.269,84	2.733.789,64	13.358.586,81	12.950.262,28	4.449.694,93	12.927.731,21	439.244,11	306.564,70	499.425,49
2020	27.602.000,00	13.993.674,41	2.634.616,17	8.179.064,52	20.436.880,17	4.942.125,52	12.663.434,91	509.588,29	321.915,33	112.191,10
2021	36.089.000,00	10.137.642,25	2.404.133,04	9.553.774,50	18.280.800,89	4.527.936,28	18.280.800,89	519.149,59	333.744,45	102.871,19
2022	39.057.000,00	13.756.658,92	2.552.744,27	ongoing	15.628.319,35	4.941.197,07	ongoing	536.785,86	337.065,14	85.950,72 (until 22 June 2022)
2023	38.100.000,00									

Source #1:

Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Inneren für das Haushaltsjahr 2015, p. 267.

<https://www.bundeshaushalt.de/static/daten/2015/ist/epl06.pdf#page=33>

Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Inneren für das Haushaltsjahr 2016, p. 262.

<https://www.bundeshaushalt.de/static/daten/2016/ist/epl06.pdf#page=36>

Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Inneren für das Haushaltsjahr 2017, p. 279.

<https://www.bundeshaushalt.de/static/daten/2017/ist/epl06.pdf#page=37>

Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Inneren, für Bau und Heimat für das Haushaltsjahr 2018, pp. 266-267.

<https://www.bundeshaushalt.de/static/daten/2018/ist/epl06.pdf#page=40>

Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Inneren, für Bau und Heimat für das Haushaltsjahr 2019, p. 278.

<https://www.bundeshaushalt.de/static/daten/2019/ist/epl06.pdf#page=42>

Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Inneren, für Bau und Heimat für das Haushaltsjahr 2020, p. 291.

<https://www.bundeshaushalt.de/static/daten/2020/ist/epl06.pdf#page=43>

Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Inneren, für Bau und Heimat für das Haushaltsjahr 2021, p. 307.

<https://www.bundeshaushalt.de/static/daten/2021/ist/epl06.pdf#page=43>

Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Inneren und für Heimat für das Haushaltsjahr 2022, p. 308.

<https://www.bundeshaushalt.de/static/daten/2022/ist/epl06.pdf#page=44>

Bundeshaushaltsplan 2022, Einzelplan 06 Bundesministerium des Inneren und für Heimat, p. 54.

<https://www.bundeshaushalt.de/static/daten/2022/soll/epl06.pdf>

Bundeshaushaltsplan 2023, Einzelplan 06 Bundesministerium des Inneren und für Heimat, p. 55.

<https://www.bundeshaushalt.de/static/daten/2023/soll/epl06.pdf>

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<https://dserver.bundestag.de/btd/20/008/2000890.pdf>

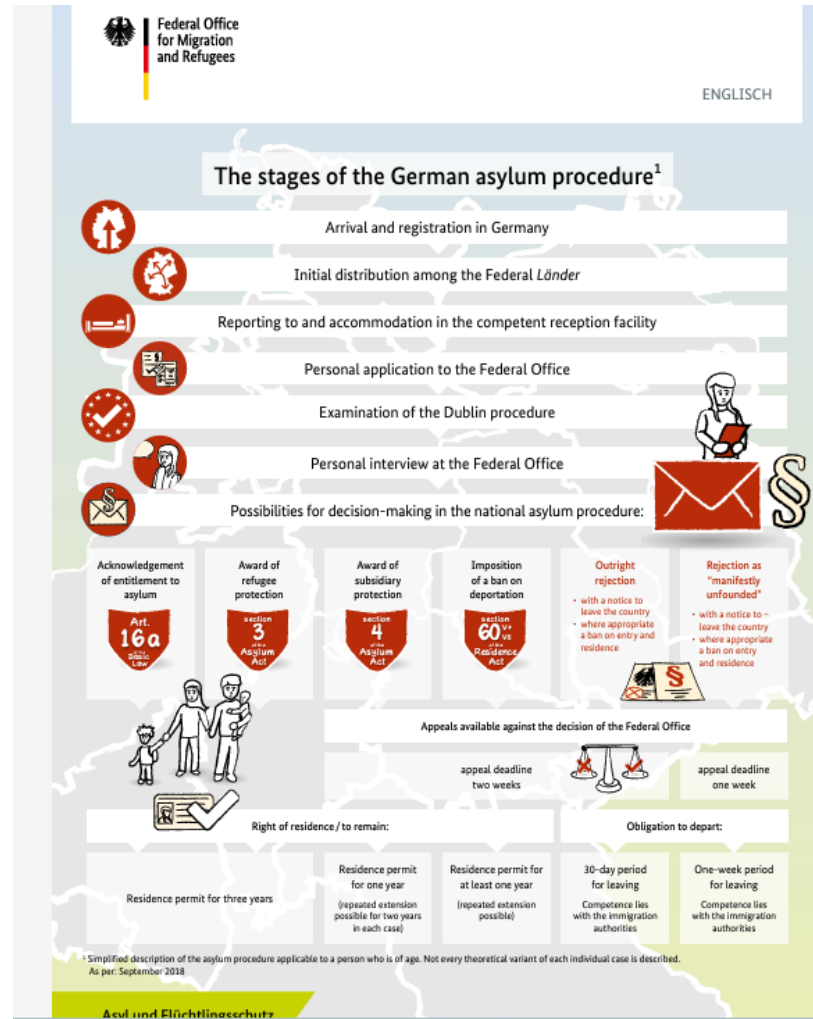
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Annex 5: Legislation mapping

The title of the policy/legislation in English	The title in the original language	Date
Nationality Act	Staatsangehörigkeitsgesetz/StAG	July 22, 1913
Law on Return Assistance	Rückkehrhilfegesetz	November 28, 1983
Germany: Return to 'Safe country of origin'	Art. 16a(2)-(3) Grundgesetz	June 28, 1993
Asylum Seekers' Benefits Act	Asylbewerberleistungsgesetz	November 1, 1993
Central Register of Foreigners Act	Gesetz über das Ausländerzentralregister (AZRG)	September 2, 1994
Act on the General Freedom of Movement for EU Citizens	Freizügigkeitsgesetz/EU	July 30, 2004
Regulation on the revision of the Asylum Responsibility Determination Regulation	Verordnung zur Neufassung der Asylzuständigkeitsbestimmungsverordnung	April 2, 2008
General administrative Regulation to the Residence Act	Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AVwVAufenthG)	October 26, 2009
Law on the Implementation of European Union Residence Directives and the Adaptation of National Legislation and the EU Visa Code	Gesetz zur Umsetzung Aufenthaltsrechtlicher Richtlinien der europäischen Union und zur Anpassung nationaler Rechtsvorschriften und den EU-Visakodex	Nov 22, 2011
Act to Improve the Rights of Persons Entitled to International Protection and Foreign Workers	Gesetz zur Verbesserung der Rechte von international Schutzberechtigten und ausländischen Arbeitnehmern	August 29, 2013
Act to classify further states as safe countries of origin and to facilitate access to the labor market for asylum seekers and tolerated foreigners	Gesetz zur Einstufung weiterer Staaten als sichere Herkunftsstaaten und zur Erleichterung des Arbeitsmarktzugangs für Asylbewerber und geduldete Ausländer	October 31, 2014
Guideline for nationwide return counselling	Leitlinie für eine bundesweites Rückkehrberatung	April 9, 2015
Act on the redefinition of the right to stay and the termination of residence	Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung	July 27, 2015
Asylum Act	AsylG	September 2, 2015 before Asylum Procedure Law which was announced August 1, 1982
Act on the Acceleration of Asylum Procedures (Asylum Package I)	Asylverfahrensbeschleunigungsg	October 20, 2015
Data Sharing Improvement Act	Gesetz zur Verbesserung der Registrierung und des Datenaustausches zu aufenthalts- und asylrechtlichhen Zwecken/Datenaustauschverbesserungsgesetz	February 2, 2016
"Asylum Package II", incl. Act on the Introduction of Accelerated Asylum Procedures	Gesetz zur Einführung beschleunigter Asylverfahren (Asylpaket II)	March 11, 2016
Act to Facilitate the Expulsion of Aliens with Criminal Records and to Expand the Exclusion of Refugee Recognition in the Case of Asylum Seekers with Criminal Records	Gesetz zur erleichterten Ausweisung von straffälligen Ausländern und zur erweiterten Ausschluss der Flüchtlingsanerkennung bei straffälligen Asylberwerben	March 11, 2016
Integration Act	Integrationsgesetz	July 31, 2016
Act to improve the enforcement of the obligation to leave the country	Gesetz zur besseren Durchsetzung der Ausreisepflicht	July 20, 2017
Law on the extension of the suspension of family reunification with beneficiaries of subsidiary protection	Gesetz zur Verlängerung der Aussetzung des Familiennachzuges zu subsidiär Schutzberechtigten	March 8, 2018

Act on the Reorganization of Family Reunification with Beneficiaries of Subsidiary Protection (Family Reunification Reorganization Act)	Gesetz zur Neuregelung des Familiennachzugs zu subsidiär Schutzberechtigten (Familiennachzugsneuregelungsgesetz)	July 12, 2018
Third Law amending the Asylum Act	Drittes Gesetz zur Änderung des Asylgesetzes	December 4, 2018
Law on toleration in training and employment	Gesetz über Duldung bei Ausbildung und Beschäftigung	July 8, 2019
Second Data Exchange Improvement Act	Zweites Datenaustauschverbesserungsgesetz (2. DAVG)	August 9, 2019
Second Act to improve the enforcement of the obligation to leave the country ('Law of orderly return', with toleration [Duldung] 'light')	Geordnete-Rückkehr-Gesetz Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht	August 15, 2019
Act to postpone the census until 2022 and to amend the Residence Act	Gesetz zur Verschiebung des Zensus in das Jahr 2022 und zur Änderung des Aufenthaltsgesetzes	December 3, 2020
Asylum Procedure Secretariat Instructions	Dienstanweisung AVS (Asylverfahrenssekretariat)	February 2022
Asylum Instructions	Dienstanweisung Asyl	February 4, 2022
Act on the acceleration of asylum court proceedings and asylum procedures	Gesetz zur Beschleunigung der Asylgerichtsverfahren und Asylverfahren	December 21, 2022
Law on the introduction of an opportunity residence law	Gesetz zur Einführung eines Chancen-Aufenthaltsrechts	December 21, 2022
Dublin Instructions	Dienstanweisung Dublin	February 2023
Law on further skilled labour immigration	Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung	2023
Agreement on new Repatriation Improvement Law	Gesetz zur Verbesserung der Rückführung	2023 (enters into force 2024)

Annex 6. Flow Chart on Asylum Procedure



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