RESPOND

# Working Papers

## Global Migration: Consequences and Responses

Paper 2019/21, June 2019

# Border Management and Migration Controls

# Germany Report

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**Reference:** RESPOND D 2.2

This research was conducted under the Horizon 2020 project "'RESPOND Multilevel Governance of Migration and Beyond (770564).

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Horizon 2020
RESPOND: Multilevel Governance of Migration and Beyond (770564)

Co-funded by the Horizon 2020 programme of the European Union

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## List of Abbreviations

| | |
|---|---|
| **AA** | Auswärtiges Amt (Federal Foreign Office) |
| **AsylG** | Asylgesetz (Asylum Act) |
| **AZR** | Ausländerzentralregister (Central Register of Foreign Nationals) |
| **BAMF** | Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) |
| **BGS** | Bundesgrenzschutz (Federal Border Guard) |
| **BKA** | Bundeskriminalamt (Federal Criminal Police Office) |
| **BMIBH** | Bundesministerium des Innern, für Bau und für Heimat (Federal Ministry of the Interior, Building and Community) |
| **BPolG** | Gesetz über die Bundespolizei (Act on the Federal Police) |
| **CEAS** | Common European Asylum System |
| **EC** | European Commission |
| **EES** | Entry/Exit System |

| | |
|---|---|
| **ERRIN** | European Return and Reintegration Network |
| **EUAM** | European Union Advisory Mission |
| **EUBAM** | European Union Border Assistance Mission |
| **EUCAP** | European Union Capacity Building Mission |
| **EULEX** | European Union Rule of Law Mission in Kosovo |
| **EUMM** | European Union Monitoring Mission |
| **EUPOL COPPS** | European Union Police Mission – Coordinating Office for Palestinian Police Support |
| **EURODAC** | European Asylum Dactyloscopy Database (European fingerprint database) |
| **EUROSUR** | European Border Surveillance System |
| **EUTF** | EU Emergency Relief Trust Fund |
| **FRONTEX** | European Border and Coast Guard Agency |
| **GIZ** | Deutsche Gesellschaft für internationale Zusammenarbeit (German Corporation for International Cooperation) |
| **GPPT** | German Police Project Team |
| **GUA** | Grenzpolizeiliche Unterstützungsbeamte Ausland (Border Police Support Officers Abroad) |
| **IOM** | International Organization of Migration |
| **JHA** | Justice and Home Affairs Council |
| **MINUJUSTH** | United Nations Mission for Justice Support in Haiti |
| **MINUSMA** | United Nations Multidimensional Integrated Stabilization Mission in Mali |
| **OSCE** | Organization for Security and Cooperation in Europe |
| **PNR** | Passenger Name Record |
| **SBC** | Schengen Borders Code |
| **SchwarzArbG** | Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung (Act to Combat Undeclared Work and Unlawful Employment) |
| **SDÜ** | Schengener Durchführungsübereinkommen (Convention Implementing the Schengen Agreement) |
| **SIS** | Schengen Information System |
| **SMM** | Special Monitoring Mission |
| **UNAMID** | United Nations Hybrid Operation in Darfur |

| | |
|---|---|
| **UNMIK** | United Nations Mission In Kosovo |
| **UNSOM** | United Nations Assistance Mission in Somalia |
| **VB BPOL** | Verbindungsbeamte der Bundespolizei (Liaison Officers of the Federal Police) |
| **VIS** | Visa Information System |
| **ZUR** | Zentrum zur Unterstützung der Rückkehr (Centre for Return Assistance) |

# Acknowledgements

We would like to express our great appreciation to Lena Karamanidou and Helge Schwiertz for their concise and helpful review of the report and to Matthew Rees for the careful English proofreading.

# About the Project

RESPOND: Multilevel Governance of Mass Migration in Europe and beyond is a comprehensive study of responses to the 2015 Refugee Crisis. One of the most visible impacts of the refugee crisis is the polarization of politics in EU Member States and intra-Member State policy incoherence in responding to the crisis. Incoherence stems from diverse constitutional structures, legal provisions, economic conditions, public policies and cultural norms, and more research is needed to determine how to mitigate conflicting needs and objectives. With the goal of enhancing the governance capacity and policy coherence of the European Union (EU), its Member States and neighbours, RESPOND brings together fourteen partners from eleven countries and several different disciplines. In particular, the project aims to:

- provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research;
- critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

The countries selected for the study are Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey and the United Kingdom. By focusing on these countries, RESPOND studies migration governance along five thematic fields: (1) Border management and security, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. These fields literally represent refugees' journeys across borders, from their confrontations with protection policies, to their travels through reception centers, and in some cases, ending with their integration into new societies.

To explore all of these dimensions, RESPOND employs a truly interdisciplinary approach, using legal and political analysis, comparative historical analysis, political claims analysis, socio-economic and cultural analysis, longitudinal survey analysis, interview based analysis, and photo voice techniques (some of these methods are implemented later in the project). The research is innovatively designed as multi-level research on migration governance now operates beyond macro level actors, such as states or the EU. Migration management engages meso and micro level actors as well. Local governments, NGOs, associations and refugees are not merely the passive recipients of policies, but are shaping policies from the ground-up.

The project also focuses on learning from refugees. RESPOND defines a new subject position for refugees, as people who have been forced to find creative solutions to life threatening situations and as people who can generate new forms of knowledge and information as a result.

# Executive Summary

This country report analyses the border management and migration control policies of the Federal Republic of Germany in relation to the policies and regulations of the European Union. It outlines Germany's hegemonic position within the European Union regarding migration management and border policies. We argue that the securitized perspective on migration policies – including the externalization strategy prevalent in the EU – is to a substantial degree rooted in discourses, policies, legislation and practices of Germany closely interwoven with European policies.

The hegemonic position of the Federal Republic of Germany has expressed itself in both the political developments since 2011 outlined in the report, and the increasingly restrictive German legislation on migration control. In several cases, German legislation has been transmitted to the European level.

Furthermore, there is a dominant narrative by federal ministries conceptualizing border security as an essential part of an "integrated migration management approach". This perception has been strongly driven by the securitization of migration as response to migration movements to Europe, especially in the course of 2015 which were collectively perceived as a "refugee crisis". The notion of "integrated migration management" expresses a perceived need to regulate migration through the close cooperation of actors on different levels and in different policy fields (economic cooperation and development, internal security, integration, foreign policy, police cooperation with other national and EU-external border officers, data exchange, as well as return and reintegration policies). In addition, exceptional measures such as the reintroduction of national border controls were implemented.

However, the report stresses that Germany's border management cannot be reduced to policies at its national borders. What is more relevant is the vast number of externalization measures, both within and beyond the European Union. Through bilateral and multilateral police agreements as well as migration/readmission agreements with Member States, countries of origin and transit countries, Germany has significantly advanced the European Union's externalization of migration management. The German police are also actively involved with FRONTEX, the European Border and Coast Guard Agency.

In addition, the report outlines Germany's restrictive border policies in the fields of pre-entry and internal controls (such as visa policies, carrier sanctions and veil searches), as well as in the field of detention and return. We analyse how the national policies to enforce speedy procedures and swift returns leads to a rise of encampment, detention and readmissions; the effects of these policies can be seen in EU policies that also endanger legal safeguards.

# 1. Introduction

The second work package of RESPOND deals with the issue of border management and migration control policies. Due to the highly communitarized character of these policy fields, the project has already produced an overview report that focused on EU legislation and policies (Karamanidou and Kasparek 2018). This report provides an overview of German arrangements concerning border management and migration control, from the perspective of legislation as well as of implementation. While the legal framework in particular is largely determined by the relevant and applicable EU legislation, the report also contains an exploration of key narratives on borders and migration, with a focus on the government's positions that ultimately feed back into the policymaking process in Brussels.

The Federal Republic of Germany is a founding member state of the European Union and its predecessors. Geographically, it is located rather centrally, within the wider area that defines the current European Union, and is mostly bordered by other EU Member States that are members of the Schengen Area (Netherlands, Belgium, Luxembourg, France, Austria, Czech Republic, Poland and Denmark). The notable exception is Switzerland to the southwest of Germany. However, due to Switzerland's associated status concerning the Schengen Agreements and its close association with the EU, for the purposes of this report we can state that Germany does not maintain any land border that can be considered an external EU border under the definitions of the Convention Implementing the Schengen Agreement (*Schengener Durchführungsübereinkommen*, SDÜ). The only external borders under the jurisdiction of the German state are thus international airports, most notably Frankfurt/Main and Munich, as well as seaports on the North and Baltic Seas.

Germany was also one of the five original states (the others being France, Belgium, the Netherlands and Luxembourg) to conclude the first Schengen Agreement in 1985, and was generally seen as one of the strongest advocates driving the creation of a more Europeanized policy field for Justice and Home Affairs through the Maastricht Treaty (1992/1993), and particularly the Amsterdam Treaty (1997/1999) (Zaiotti 2011; Brouwer 2008). The latter ultimately gave rise to the migration and border policies of the European Union, particularly through the incorporation of the Schengen Agreements (the original agreement of 1985 and the SDÜ of 1990) into the body of treaties that formed the foundation of the European Union.

A comprehensive discussion of the precise interplay between policy formulation in the national German context and its transmission to the European level is beyond the scope of this report. It is nevertheless predicated on a general hypothesis seeing Germany playing a hegemonic role within the European Union as a whole (Baumann 2006). Therefore, we assume that there is close alignment between European Union policies in the respective fields and the political rationales developed within the national political context of Germany.

The report is structured in the following manner. After we introduce our methodology, we present an overview of key developments since 2011. We then detail the legislative framework in Germany, with special reference to EU legislation. This section is followed by a description of the correspondence between EU and German legislation. We then present key findings concerning narratives on border and migration, and close the report with a reflection of the implementation of these policies in Germany.

# 2. Methodology

For the legal and policy analysis presented in first half of the report, we draw heavily on primary sources, such as legislative acts, and to some degree on legal commentary. In order to follow the enactment of legislation, we particularly draw on the Official Journal of the Federal Republic of Germany, as well as extensive documentation of the Bundestag, i.e. the German legislature and its primary legislative chamber. Where possible, we also draw on academic literature and related research projects, reports and position papers.

Our narrative analysis is based on three rounds of interviews which were conducted in various ministries of the federal government in Berlin in the second half of 2018. A list of interview partners is provided below (see 8. appendix). Due to ethical considerations and agreements with interviewees, we are not always able to reveal their exact position within the federal government. However, officials are generally only cited in a context that concerns their professional area of expertise.

Concerning the implementation of legislation and policy, we also studied the federal government's official responses to "parliamentary inquiries", an oversight mechanism used in Germany. Additionally, we conducted interviews with members of NGOs.

In order to address the complexity that characterizes the federal system of Germany, interviews with ministries of state governments (i.e. the *Länder*) were also conducted. However, we do not draw on this material systematically, but rather to highlight differences between federal-level and state-level policy.

# 3. Key Developments since 2011

## 3.1. The Dublin Regulation

For the scope of this report, the year 2011 began with an important case being heard at the German Constitutional Court (*Bundesverfassungsgericht*), which had started with oral arguments in late October 2010. An asylum seeker from Iraq sought an injunction against his deportation to Greece under the Dublin Regulation, citing substantial shortcomings in the Greek asylum system (Bundesverfassungsgericht, 2010). The fact that the Constitutional Court – the highest German court, only ruling on constitutional matters – had accepted the case was unprecedented; the legal arguments focused on a key legal construction for the German asylum system known as "normative assumption" (*normative Vergewisserung*). In short, this concept had allowed for the "normative assumption" of comparable asylum standards throughout the EU by German authorities, and had played a central role in the Constitutional Court's 1996 upholding of drastic changes to asylum laws in Germany from 1993. The case of the Iraqi asylum seeker thus marked the first time that the Constitutional Court had revisited the issue of the constitutionality of the German asylum system in conjunction with the Common European Asylum System (CEAS). Ultimately, the court did not render a verdict, since the German authorities withdrew their decision to deport the plaintiff to Greece. However, only a few weeks later, the European Court of Human Rights handed down a judgement in the landmark case of MSS vs. Belgium and Greece, and all Dublin transfers from Germany to Greece were suspended until 2016.

## 3.2. Temporary Border Controls after the Arab Spring

April 2011 saw a discussion over the reintroduction of border checks at the German border with Austria (tagesschau.de, 2011). The Interior Minister of the State of Bavaria cited the increased arrival of Tunisians after the successful revolution in the North African country, and threatened to reimpose border controls. Ultimately, this did not happen, but the incident played an important role in the following deliberations on the revision of the Schengen Borders Code (SBC), in which the German government took a hard stance against further transfers of competences concerning the reintroduction of border controls to the European Commission. However, plans by the Danish government to permanently reintroduce border controls on the Denmark-Germany border were also criticized by the federal government (faz.net, 2011).

## 3.3. Refugee Protests

Between 2012 and 2013, refugees themselves staged protests all over Germany. In January 2012, an Iranian asylum seeker committed suicide in the northern Bavarian town of Würzburg. After several local demonstrations, the protests spread all over Germany, leading to hunger strikes, marches and occupations of buildings. While these protests were largely about living conditions and asylum policies, they also coincided with protests by refugees who had arrived from Italy, and who were threatened with deportation under the Dublin Regulation. One effect of the protests was to increase the visibility of asylum and migration policies in the national public discourse.

The heightened public contention of Dublin returns led to the resurgence of a particular form of resistance: church asylum. Churches, although not specifically protected by law, would by convention not be entered by the police without the agreement of the local church authorities. In the 1990s, there existed a practice of granting church asylum in order to prevent deportations of asylum seekers to their countries of origin. This practice was revived in the context of Dublin and returned on a massive scale. In conjunction with Dublin relevant deadlines (six and 18 months) and the regulation's sovereignty clause, the particular practice of church asylum proved effective in thwarting Dublin returns. After the two shipwrecks at Lampedusa in October 2013, the political debate shifted to including the humanitarian effects of the European border and migration policies, resulting in a strong sea rescue movement led by civil society organizations, with three to four ships operating in the Mediterranean Sea (Cuttitta 2014, 2016).

## 3.4. Safe Countries of Origin

With already rising numbers in 2014, a new discussion on safe countries of origin ensued, focusing on the countries of the West Balkans. In October, a German law entered into force designating Bosnia-Herzegovina, Macedonia and Serbia as well as Ghana and Senegal as safe countries of origin (*Gesetz zur Einstufung weiterer Staaten als sichere Herkunftsstaaten und zur Erleichterung des Arbeitsmarktzugangs für Asylbewerber und geduldete Ausländer*; AsylVfGuaÄndG 2014; 31.10.2014, BGBl. I, p. 1649). The law sought to address the rise in asylum claims from citizens of the West Balkans, and public debate on the issue continued well into spring of 2015.

## 3.5. The Migrations of 2015 and Temporary Internal Border Controls

Nevertheless, the main development of the year 2015 was the – well-known – large-scale arrival of refugees in and after September 2015. Given the fact that in June 2015, the G7 Summit had been held in Germany, during which Germany had reintroduced internal border controls, a debate ensued

on the possibility of either closing Germany's border to Austria, or at least reintroducing border controls. This did indeed take in mid-September 2015, and internal border checks have been carried out since then. The federal government through the Ministry of the Interior has switched its justification to do so twice according to the relevant articles of the Schengen Borders Code, initially citing Art. 25 (as a threat to public policy or internal security), then switching to Art. 29 (exceptional circumstances putting the overall functioning of the area without internal border controls at risk) and then back to Art. 25. The available notification letters are summarized in the following table, referencing the notifications by the date they were distributed by the Council of the European Union, the number of the document as assigned by the Council, and the reason cited.

***Table 1* – Notifications: Temporary Internal Border Controls**

| Date (Council) | Document Number (Council) | Reason (SBC) |
|---|---|---|
| 14.9.2015 | 11986/15 | Art. 25 |
| 13.10.2015 | 12985/15 | Art. 25 |
| 30.10.2015 | 13569/15 | Art. 25 |
| 12.2.2016 | 6048/16 | Art. 25 |
| 25.11.2016 | 14880/16 | Art. 29 |
| 13.5.2017 | 8930/16 | Art. 29 |
| 13.2.2017 | 6255/17 | Art. 29 |
| 12.5.2017 | 9145/17 | Art. 29 |
| 9.6.2017 | 10186/17 | G20 Summit in Hamburg |
| 12.10.2017 | 13142/17 | Art. 25 |
| 15.12.2017 | 15828/17 | Art. 25 |

The reintroduction of border controls by Germany did not affect all borders, rather focusing on the land border with Austria – particularly three highways crossing the border – as well as flights originating in Greece.

North of Germany, border controls were also introduced by Denmark, Sweden and Norway in September 2015.

## 3.6. Temporary Suspension of the Dublin Regulation for Syrian Nationals in 2015

The decision of the federal government not to close Germany's border towards Austria to asylum seekers in early September 2015 touched off a debate that confusingly has taken place under the general heading of "the opening of Germany's border". Legally, Germany's land borders – and particularly its borders with Austria – are Schengen internal borders, i.e. border controls are not allowed under the Schengen Borders Code. The fact that the vast majority of asylum seekers that entered Germany from Austria in September 2015 and the following months presumably did not possess a valid visa (and were thus legally barred from entering Germany) is invalidated by their asylum claim, which has higher legal precedence. Even if another EU member state was responsible for the processing of the asylum applications under the Dublin rules, the Dublin system specifically does not preclude a second (or third, etc.) application for asylum in Germany. Therefore, under all applicable international, EU and national legislation, the borders of Germany were already open in September 2015, and were not "opened" by the Merkel government. Counterfactually, elements of public debate in Germany characterized the government's position as opening the border for asylum seekers, which was then heavily criticized from the political right wing. Probably, the debate was often conflated with the fact that in August 2015, the Federal Office for Migration and Refugees, the federal agency responsible for processing asylum applications, had already declared that it would not enforce returns under the Dublin system for Syrian nationals, which the public subsequently (mis-)characterized as an invitation to Syrian asylum seekers (Spiegel Online, 25.08.2015). A third, albeit more legally based strand of the debate concerned the legal issue if under applicable legislation, closing the border to asylum seekers could have been justified. This issue was, however, never resolved, since the government instead opted to reintroduce border controls on the border with Austria in late September 2015.

## 3.7. Relevant Legislative Developments

Since 2011, numerous changes have been made to the legislation relevant to this report. While these changes did not affect the essential substance of the underlying system of German legislation concerning border and migration – the last major overhaul took place in 2005 – they did make the overall system more restrictive. Nevertheless, we wish to point out one particular concept that was introduced in October 2015: the Act to Accelerate Asylum Procedures. This act introduced a new categorization of asylum seekers, classifying them into those with a higher probability of being recognized as a refugee or in need of international protection ("*gute Bleibeperspektive*") and those that would not ("*schlechte Bleibeperspektive*"). This categorization was based on the nationality of the asylum seeker. If the overall protection quota of all asylum seekers of a particular nationality – measured twice a year – is above 50% percent, asylum seekers with this nationality will be considered to have a "good chance to remain" in Germany. Many subsequent factors in the asylum process, such as accommodation in special centres, access to integration courses, and a work permit, are then based on this categorization.

In April 2011, the Act to Transpose Regulation (EC) 380/2008 Amending Regulation (EC) 1030/2002 Laying down a Uniform Format for Residency Permits for Third-Country Nationals into German Law (*Gesetz zur Anpassung des deutschen Rechts an die Verordnung (EG) Nr. 380/2008 des Rates vom 18. April 2008 zur Änderung der Verordnung (EG) Nr. 1030/2002 zur einheitlichen Gestaltung des*

*Aufenthaltstitels für Drittstaatenangehörige*; BGBl.[1] I, p. 610) was passed. With this act, a plastic ID card capable of storing digital information replaced the previous stickers that were added to foreigners' passports in order to document their residency permit. In June 2011, the Act to Combat Forced Marriages and for Better Protection of Victims of Forced Marriage and Additional Amendments of Provisions concerning Residency and Asylum Law (*Gesetz zur Bekämpfung der Zwangsheirat und zum besseren Schutz der Opfer von Zwangsheirat sowie zur Änderung weiterer aufenthalts- und asylrechtlicher Vorschriften*; BGBl. I, p. 1266) was passed. It created a new criminal offence to combat forced marriage, locating the offence in proximity to crimes such as criminal coercion, human trafficking and abduction. The annulment of unlawful marriages was simplified, and the deadlines for obtaining an independent residency permit stemming from a marriage were – paradoxically – extended. This part of the act can thus be interpreted as creating new mechanisms of migration control reaching into families, with its provisions enacted extraterritorially and through new actors such as institutions offering language courses (see Gutekunst 2015). Obligations to participate in integration courses while still in the country of origin were coupled more tightly with residency permits, while residency obligations for asylum seekers were eased.

In November 2011, the Act to Transpose EU Directives concerning Residency and to Adjust National Provisions to the EU Visa Code (*Gesetz zur Umsetzung aufenthaltsrechtlicher Richtlinien der Europäischen Union und zur Anpassung nationaler Rechtsvorschriften an den EU-Visakodex*; BGBl. I, p. 2258) was passed. It enacted changes in the areas of minimum standards for the return of foreigners who were obliged to leave the country, maximum limits on entry and the number of residency permits, rules on detention pending deportation, and rules regarding the deportation of unaccompanied minors. Another goal of the legislation was to reduce incentives for illegal employment through amendments penalizing employers and the introduction of a temporary residency permit for illegal workers who were willing to testify in court against employers.

In December 2011, the Bundestag passed the Act to Implement a [National] Visa Warning File and to Amend the Act on Residency (*Gesetz zur Errichtung einer Visa-Warndatei und zur Änderung des Aufenthaltsgesetzes*; BGBl. I, p. 3037). This was supposedly intended to improve the prevention of human trafficking and smuggling, as well as to speed up visa application procedures by establishing a central, automated database at the Federal Office of Administration for inviting persons, obligation providers and other listed individuals found guilty of criminal offences in visa matters. An additional provision allowed for the automated comparison of data from the visa warning database with anti-terrorist databases.

In August 2013, the Bundestag passed the Act to Improve the Rights of Beneficiaries of International Protection and of Foreign Employees (*Gesetz zur Verbesserung der Rechte von international Schutzberechtigten und ausländischen Arbeitnehmern*; BGBl. I, p. 3484). The act included amendments for the transposition of Council Directive 2003/109/EC of 25 November 2003 into national law; that EC directive dealt with the status of third-country nationals who were long-term residents, and adjusted the definition of "international protection".

In July 2015, the Act to Readjust the Right to Stay and Termination of Residency (*Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung*; BGBl. I, p. 1386) was passed. It introduced an age-independent and deadline-independent right to residency in case of suitable

[1] The BGBl. refers to the *Bundesgesetzblatt*, the official journal of the Federal Republic of Germany. Legislative acts only enter into force once they are officially announced in the *Bundesgesetzblatt*.

integration[2]. Further provisions concerned the reorganization of the laws on expulsion along the lines of balancing the interests of private residency and public expulsion (combating crime, extremism and terrorism), monitoring of persons for reasons of internal security; and legal amendments to speed up the enforcement of decisions on the right of residency in the case of foreigners who are obliged to leave the country. Another provision laid the legal foundation for a permanent resettlement mechanism.

In October 2015, the Act to Accelerate Asylum Procedures (*Asylverfahrensbeschleunigungsgesetz*; BGBl. I, p. 1722) was passed. It constituted the first legislative response to the migrations of 2015, and included wide-ranging provisions, such as measures to speed up the asylum procedure, to ensure the accommodation of asylum seekers and refugees, to simplify the enforceable return of asylum seekers, to eliminate so-called false incentives for unjustified asylum applications, and to improve the integration of people with the new category of "good chance to remain". Furthermore, it included the classification of Albania, Kosovo and Montenegro as "safe countries of origin", and extended the accommodation period in initial reception facilities from three to up to six months, in the case of applicants from safe countries of origin up to the conclusion of the asylum procedure. The law also reduced the possibility of "Temporary Suspension of Deportation" (known as a "*Duldung*") from six to a maximum of three months; prohibited notifications of deportation; and introduced temporary exemptions in building and zoning laws for refugee accommodation. It purported to eliminate "perverse incentives for unjustified asylum applications" by replacing cash benefits with benefits in kind during the first reception period, reducing benefits for those who were enforceably obliged to leave the country, limiting the advance payment of cash amounts to a maximum of one month, and banning employment for asylum seekers from safe countries of origin. Concerning the integration of asylum seekers with "good chances of remaining", the act introduced the opening of integration courses, job-related language support, relaxation of the temporary employment ban, and active promotion of employment. Concerning the improvement of medical care, measures included the establishment of electronic health insurance card, vaccination coverage, and integration of asylum seekers with medical training into primary medical care. Provisions of criminal law concerning penalties against smugglers were tightened.

In February 2016, the Act to Improve the Exchange of Data (*Datenaustauschverbesserungsgesetz*; BGBl. I, p. 130) was passed. It provided for the creation of a central data system for the registration of asylum and protection seekers in the Central Register of Foreign Nationals (*Ausländerzentralregister*; AZR); this system was supplemented by basic personal data along with identification data, including information on health examinations, vaccinations and educational qualifications. Applicants were required to be registered in this data system upon first contact with the authorities; the act also mandated security checks and an obligation on all authorities to transmit data to the AZR it they were authorized to do so. The law established a fingerprint rapid comparison system (Fast ID), and authorized public authorities to retrieve data from the data system during the fulfilment of their duties. It introduced a certificate of registration as asylum seeker ("proof of arrival") and the authorization of the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*; BAMF) to transmit data stored in the AZR to research institutions.

In March 2016, the second Act to Introduce Accelerated Asylum Procedures (*Gesetz zur Einführung beschleunigter Asylverfahren*; BGBl. I, p. 390) was passed. It featured the introduction of accelerated asylum procedures for applications with "little chance of success", and promised to ensure compliance of refugees with state decisions on local residency (residency obligation), dismantle

[2] Suitable Integration is here especially linked to language skills that have to be proven with a language test of A2;

obstacles to deportation for alleged health reasons and improve the protection of refugee minors. Accelerated asylum procedures were mandated for applicants from safe countries of origin, follow-up applicants, cases of identity or nationality deception, wilful removal of an identity or travel document, refusal of identification measures or threats to public order. Administrative proceedings were to take place within one week in special reception facilities and appeal proceedings within two weeks. The act allowed for the cessation of asylum proceedings in cases of violations of the territorial limitation of residency permits and linked the registration, distribution and issuing of proof of arrival with the receipt of asylum seeker benefits. It also included the suspension of family reunification for beneficiaries of subsidiary protection for two years, mandated the submission of extended certificates of good conduct by persons working in reception centres in the care of minors and clarified the general conditions for the preparation of medical certificates in connection with deportations. Further provisions concerned the procurement of travel documents by the Federal Police.

Also in March 2016, the Act to Facilitate the Expulsion of Delinquent Foreign Nationals and to Facilitate the Prevention of Delinquent Asylum Seekers from Refugee Recognition (*Gesetz zur erleichterten Ausweisung von straffälligen Ausländern und zum erweiterten Ausschluss der Flüchtlingsanerkennung bei straffälligen Asylbewerbern*; BGBl. I, p. 394) was passed, strengthening expulsion laws through a redefinition of the conditions and a reduction of penalties for the existence of a serious or particularly serious interest in expulsion or for the refusal of recognition as a refugee.

In July 2016, the Integration Act (*Integrationsgesetz*; BGBl. I p. 1939) was passed, improving the integration of those entitled to protection into society and the labour market, in particular in the areas of acquiring the German language and vocational qualification. It created work opportunities on the basis of the “Refugee Integration Measures” (*Flüchtlingsintegrationsmaßnahmen*; FIM) Labour Market Programme, facilitating access to educational support services, as well as access to services for the long-term unemployed. The law also imposed an obligation to participate in integration measures and set out consequences under benefit law in the event of a violation of the obligation to participate. It granted settlement permits depending on the integration services provided, limited the right to participate in an integration course to one year and extended the obligation to participate. Also, it created legal certainty for persons with a “*Duldung*” during and after successful completion of vocational training, established temporary allocation of residency, clarified a uniform regulation on the creation of residency permits with issue of proof of arrival, and put a limitation of the period of validity of a declaration of obligation to assume the costs of a foreigner's livelihood.

In July 2017, the Act to Improve the Enforcement of the Obligation of Departure (*Gesetz zur besseren Durchsetzung der Ausreisepflicht*; BGBl. I, p. 2780) was passed. It dealt with expanding the circumstances for “deportation detention” as well as residency law monitoring (ankle bracelets) concerning enforceably deportable foreigners, in particular for reasons of internal security; the possibility of spatial restriction of residency for persons with a *Duldung* in the event that they refuse to cooperate in the removal of obstacles to departure; the abolition of the one-month revocation period for a *Duldung* if it has been valid for more than one year; an extension of the maximum permitted duration of Exit Custody to 10 days; the possibility of officials retaining foreign travel documents, as well as those issued by German states; the possibility of transferring special documents; the possibility of a residency permit for persons holding a *Duldung* in the event of a refusal to cooperate in the removal of obstacles to departure. The law also introduced the possibility for officials to obtain data from mobile phones during the asylum procedure to secure, establish and verify the identity and nationality of asylum seekers, and it made it possible to hold asylum seekers with a “poor chance to remain” in initial reception facilities for a longer period of time. This was in addition to additional restrictions of fundamental rights concerning the freedom of the person.

To summarize, the political intention to tighten migration controls and restrict the rights of asylum seekers and migrants does not correspond directly with the events of 2015. But the events of 2015 have been used as an opportunity for an accelerated tightening of the asylum system and for further restrictions such as the introduction of migration-specific databases, restrictive interpretations of the notion of integration, as well as expanded powers concerning deportations and returns.

# 4. The Legal Framework

## 4.1. Migration Control

### 4.1.1 The Residency Act: Pre-entry, At the Border, Return

The main piece of legislation touching both on borders and migration control is the Act on the Residency, Economic Activity and Integration of Foreign Nationals on Federal Territory (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet*; AufenthG). Given the existence of a single act that contains the vast majority of regulations concerning both border management and migration control, we have opted to first offer a comprehensive summary of the act itself.

The act entered into force on the 1 January 2005 and replaced the previous Act on Foreign Nationals (*Ausländergesetz*; AuslG), dating back to 1965. The Residency Act does not address the rights and obligations of EU citizens, for which there exists separate legislation, the Act on the General Freedom of Movement of Union Citizens (*Gesetz über die allgemeine Freizügigkeit von Unionsbürgern*; FreizügG/EU).

Art. 1 of the Residency Act stipulates that its purpose is the **management** (*Steuerung*) and **limitation** (*Begrenzung*) of immigration of foreigners to Germany. The law is further divided into ten chapters.

Chapter 1 covers entry and residency. Its Part 1 contains general provisions, *inter alia* the obligation to carry a passport (Art. 3), the requirement to be in possession of a residency permit (Art. 4), conditions for the issuing of such permits (Art. 5), conditions for the issuing of visas (Art. 6), permission of sojourn (Art. 7), permission of residency (Art. 9), residency permits for asylum seekers (Art. 10) and entry bans (Art. 11).

Part 2 of Chapter 1 covers conditions of entry, such as the definition of what constitutes the precise act of crossing a border and lawful entry (Art. 13), unlawful entry (Art. 14) and refusal of entry (Art. 15).

Part 3 covers residency permits for students, Part 4 covers residency permits for employment, and Part 5 covers residency due to reasons of international law, humanitarianism or political considerations. Part 5 also covers family reunification.

Chapter 3 covers integration, while Chapter 4 contains specific provisions of police law, such as the obligation to cooperate with measures undertaken by authorities enforcing the Law on Residency (Art. 47a) or the obligation to produce a passport to such authorities (Art. 48).

Chapter 5 covers all aspects of the termination of residency, as well its enforcement through deportation.

Chapter 6 covers liabilities and fees, specifically carrier sanctions (Art. 63, Art. 64, Art. 65).

Chapter 7 covers procedural processes, while Chapter 8 defines the legal foundation for the Office of the Federal Commissioner for Migration, Refugees and Integration (*Bundesbeauftragte für Migration, Flüchtlinge und Integration*).

Chapter 9 covers criminal aspects, specifically illegal residency (Art. 95), trafficking of foreigners (Art. 96), and organized crime in these areas (Art. 97).

The Residency Act is also supplemented by addition regulation, i.e. a more administrative legislative document, the Ordinance on Residency (*Aufenthaltsverordnung*; AufenthV). This contains more specific clauses on entry and residency, as well as clauses on fees and administrative offenses.

The Residency Act is thus indeed the central piece of legislation concerning third country nationals, covering all aspects from entry to residency, as well as deportation.

Germany has a strict visa policy, requiring visas for all non-EU foreigners staying in Germany. A visa is not required for visits of up to 90 days during a 180-day period for nationals of those countries for which the European Community has abolished the requirement for a visa (Auswärtiges Amt, 2019a).

The "Consultation Procedure" was introduced as part of the visa procedure as a security policy instrument, which enables German missions abroad to carry out security checks on visa applicants prior to issuing a visa (Art. 73 (1), (3) AufenthG). The Federal Office of Administration transmits the visa applicant's data to federal security authorities. This security alignment procedure is carried out for certain groups of cases, e.g. for citizens of certain states; in all other cases, the data alignment procedure is applied according to Art. 72a AufenthG. In addition, the "Data Comparison Procedure" also takes into account the security policy interests in the visa procedure for persons who are not covered by the consultation procedure (Art. 72a AufenthG).

Art. 63 of the Residency Act prohibits transport enterprises from transporting foreign nationals to Germany if they do not hold a required passport and residency permit. If the company does not comply with the ban, a penalty of €1,000 to €5,000 for each foreigner transported can be assessed. This standard implements European legal requirements from the Schengen Agreement and Directive 2001/51/EC.

### 4.1.2 The Asylum Act: at the Border, Return

Asylum seekers are dealt with more specifically in the Asylum Act (*Asylgesetz*; AsylG), previously the Asylum Procedures Act (*Asylverfahrensgesetz*; AsylVfG). For the scope of this report, the most relevant clauses are in Subchapter 2, entitled Initiating the Asylum Procedure, since they define the **procedures at the border**, including grounds for refusal of entry for asylum seekers.

Article 18 details grounds for refusal at land borders, which may include entry via a safe third country, indications that another state may be responsible for processing the asylum application (i.e. under the Dublin Regulation), or if the applicant poses a threat to the general public.

Article 18a details the "**Airport Procedure**", i.e. the processing of an asylum application before granting entry into Germany in case the port of entry is an airport.

Germany conducts a special fast-track procedure for asylum seekers entering the country by air. The procedure is based on Article 18a of the Asylum Act (AsylG). An amendment to the German Basic Law (*Grundgesetz*) had to be adopted in order to comply with the principle of non-refoulement that is part of the 1951 Refugee Convention. This took place in 1993, and Germany amended Article 16 of the Basic Law; the right to asylum was reformulated in Article 16a.

The remaining sections of the legislation detail the transfer of the asylum seeker from the police to the appropriate authorities, usually a reception centre under the jurisdiction of the Federal Office for Migration and Refugees (BAMF).

### 4.1.3 The Act to Combat Undeclared Work and Unlawful Employment: Internal Control

Another relevant act is the Act to Combat Undeclared Work and Unlawful Employment (*Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung – Schwarzarbeitsbekämpfungsgesetz*; SchwarzArbG). Part 2 covers inspections at sites of employment. Part 3 covers administrative fines and criminal penalties, i.e. sanctions affecting the employers of persons without a work permit or residency permit (Sec. 10), or those employing victims of human trafficking (Sec. 11).

The act is supplemented by an ordinance on the Employment of Foreign Nationals (*Verordnung über die Beschäftigung von Ausländerinnen und Ausländern*; BeschV).

### 4.1.4 The Act on the Central Register of Foreign Nationals: Pre-entry, At-the-Border, and Internal Controls

Germany maintains its own national database on foreigners, the Central Register of Foreign Nationals (*Ausländerzentralregister*; AZR). The operation of the register was established through the Act on the Central Register for Foreign Nationals (*Gesetz über das Ausländerzentralregister*; AZRG). It is operated by the Federal Office for Migration and Refugees (BAMF) in cooperation with the Federal Office of Administration (*Bundesverwaltungsamt*) and the Federal Criminal Police Office (*Bundeskriminalamt*; BKA). The purpose of the register is to enable the administration of immigration policy; it also contains a national database on visas. The AZR is mainly used by civil servants in Foreigners' Offices across Germany, although police and customs authorities also have access to the system.

### 4.1.5 Relevant EU Legislation

Following the system described by Bergmann und Dienelt (2018) regarding the actual application of law in Germany, the following legislative acts of the European Union play a practical role in addition to the aforementioned national legislation:

- Council Regulation (EC) 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
- Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (the Visa Code);
- Regulation (EU) 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast); and

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

## 4.2 Border Policing

Germany is a federal state, and executive policing powers generally lie with the states (*Länder*). One exception is the Federal Police (*Bundespolizei*), which was called the Federal Border Guard (*Bundesgrenzschutz*; BGS) until 2005. Among its many tasks is the policing of Germany's national borders. The *Länder* may also found their own state-level border protection forces as well, which e.g. Bavaria did in 2018.

Controls at the German borders facilitate both refusals of entry (*Zurückweisungen*) and expulsions (*Zurückschiebungen*). Refusals of entry take place before the person has entered German territory (Art. 15 AufenthG), while expulsions (Art. 57 AufenthG) take place if a person is found to have entered German territory without a visa and did not claim asylum, or had a re-entry ban.

### 4.2.1 Act on the Federal Police

The Act on the Federal Police (*Gesetz über die Bundespolizei*; BPolG) governs the powers and obligations of the Federal Police. Part 1 defines its tasks and deployment; Art. 2 of Part 1 defines border protection as the first – and main – task. However, the remainder of the act deals with the specific powers of this police force, and does not prescribe how borders are to be managed in Germany.

Further references to the powers and tasks of the Federal Police exist in the Residency Act and the Asylum Act.

### 4.2.2 Relevant EU legislation

Due to the high degree of Europeanization in border management, and with Germany being a founding signatory of the Schengen Agreements, the specific provisions for border management in Germany include:

- The Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (*Schengener Durrchführungsübereinkommen*; SDÜ); and
- Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)

## 4.3 Correspondence between EU and German Legislation

### 4.3.1 Pre-entry Controls

***Table 2* – Pre-entry Controls**

| **EU Legislation** | **German Legislation** |
|---|---|
| Regulation (EC) 539/2001: Visa<br><br>Regulation (EC) 810/2009: Visa | Art. 6 AufenthG |
| Regulation (EC) 767/2008: VIS | No legislative correspondence due to direct applicability of EU regulations |
| Directive 2001/51/EC: carrier sanctions | Articles 63–65 AufenthG |
| Directive 2004/82/EC: PNR<br><br>Directive (EU) 2016/681: PNR | Passenger Name Record Act (*Fluggastdatengesetz*) – FlugDaG |
| Regulation (EC) 377/2004: liaison officers<br><br>Regulation (EU) 1168/2011: FRONTEX<br><br>Regulation (EU) 2016/1624: FRONTEX | No legislative correspondence due to direct applicability of EU regulations |

### 4.3.2 At-the-Border Controls

***Table 3* – At-the-Border Controls**

| **EU Legislation** | **German Legislation** |
|---|---|
| Regulation (EU) 2016/399: SBC | No legislative correspondence due to direct applicability of EU regulations |
| Regulation (EU) 2017/458: databases | No legislative correspondence due to direct applicability of EU regulations |
| Regulation (EU) 2017/2226: EES | No legislative correspondence due to direct applicability of EU regulations |
| Regulation (EC) 1987/2006: SIS II | No legislative correspondence due to direct applicability of EU regulations |
| Regulation (EU) 603/2013: EURODAC | No legislative correspondence due to direct applicability of EU regulations |
| Facilitators Package:<br><br>Directive 2002/90/EC | Art. 95 AufenthG<br><br>Articles 96, 97 AufenthG |

| | |
|---|---|
| Decision 2002/946/JHA | |
| Regulation (EU) 1052/2013: EUROSUR | No legislative correspondence due to direct applicability of EU regulations |
| Regulation (EU) 2016/1624: FRONTEX | No legislative correspondence due to direct applicability of EU regulations |

### 4.3.3 Internal Controls

***Table 4*** **- Internal Controls**

| **EU Legislation** | **German Legislation** |
|---|---|
| Directive 2011/95/EU: Qualification/CEAS | Act on the Transposition of Directive 2011/95/EU |
| Directive 2013/33/EU: Reception/CEAS | Not transposed, directly valid since 2015 |
| Directive 2013/32/EU: Procedures/CEAS | Not transposed, directly valid since 2015 |
| Regulation (EU) 604/2013: Dublin Regulation/CEAS | No legislative correspondence due to direct applicability of EU regulations |
| Directive 2008/115/EC Return/CEAS | Act to Transpose EU Directives concerning Residency and to Adjust National Provisions to the EU Visa Code, 22.11.2011, BGBl. I, Nr. 59, p. 2258 |
| Directive 2009/52/EC: employer sanctions | Act to Transpose EU Directives concerning Residency and to Adjust National Provisions to the EU Visa Code, 22.11.2011, BGBl. I, Nr. 59, p. 2258 |
| Regulation (EC) 767/2008: VIS | No legislative correspondence due to direct applicability of EU regulations |
| Regulation (EC) 1987/2006: SIS II | No legislative correspondence due to direct applicability of EU regulations |
| Regulation (EU) 603/2013: EURODAC | No legislative correspondence due to direct applicability of EU regulations |

### 4.3.4 Return, Detention for Return, and Readmission

***Table 5* – Legal Bases for Detention**

| Form of Detention | Stipulated in | Conditions | Maximum Duration of Detention |
|---|---|---|---|
| Imprisonment for Rejection<br>(*Zurückweisungshaft*) | Art. 15 Para. 5 AufenthG | Rejection decision issued but cannot be enforced immediately | Up to six months; in exceptional cases up to 18 months |
| (Preparatory Detention)<br>*Vorbereitungshaft* | Art. 62 Para. 2 AufenthG | Readmission is intended, but cannot be decided immediately; without detention, subsequent deportation would be thwarted or substantially impeded. | 6 weeks |
| Preventative Detention<br>(*Sicherungshaft*) | Art. 62 Para. 3 AufenthG | Enforceable obligation to leave the country and simultaneous existence of grounds for arrest (see below) | Up to six months; in exceptional cases up to 18 months |
| Administrative Custody<br>(*Behördlicher Gewahrsam*) | Art. 62 Para. 5 AufenthG | Urgent suspicion of reasons for detention (see below), court order cannot be obtained beforehand and well-founded suspicion that the person intends to evade deportation | a few hours until the demonstration at the magistrate's court is possible |
| Exit Custody () | Art. 62b AufenthG | Departure deadline has expired and the person's behaviour is likely to make deportation more difficult or prevent it. | 10 days |
| Custody Pending Transfer<br>(*Überstellungshaft*) | Art. 28 Dublin III Regulation | Presence of a significant risk of absconding | 12 weeks |

Source: Keßler, 2019

***Table 6* – Return, Detention, Readmission**

| **EU Legislation** | **German Legislation** |
|---|---|
| Directive 2008/115/EC: Return/CEAS | Gesetz zur Umsetzung aufenthaltsrechtlicher Richtlinien der Europäischen Union und zur Anpassung nationaler Rechtsvorschriften an den EU-Visakodex, 22.11.2011, BGBl. I, Nr. 59, p. 2258 |
| Regulation (EC) 2007/2004: FRONTEX | No legislative correspondence due to direct applicability of EU regulations |
| Regulation (EU) 1168/2011: FRONTEX | No legislative correspondence due to direct applicability of EU regulations |
| Regulation (EU) 2016/1624: FRONTEX | No legislative correspondence due to direct applicability of EU regulations |
| Regulation (EU) 2016/1953: travel doc. | AufenthG |
| Directive 2003/110/EC: removal by air | AufenthG |

# 5. Key Narratives and Themes

Interviews with 24 key actors in the field of border affairs presented several widespread narratives surrounding the field of border affairs. Ten of the interviews – primarily from the Federal Ministry of the Interior and the Federal Ministry for Economic Cooperation and Development – have been analysed in-depth regarding narratives on border management and migration control.

Interview partners from state institutions included representatives from the Federal Ministry of the Interior, Building and Community (Departments of Affairs of the Federal Police International Border Police Affairs; Leadership and Operational Matters of the Federal Police; Return Department; as well as from the Unit of Migration, Refugees, European Harmonization), the Federal Ministry for Economic Cooperation and Development (Department of Flight and Migration, Crisis Prevention and Management and Refugee Policy [DFMCPMRP] – Section Return and Reintegration) and the Chancellor's Office. Furthermore, officials from Refugee Councils from different federal states and NGO members were interviewed (see 8. appendix.

## 5.1. Securitizing Migration: The Narrative of Border Control as an Essential Element of Integrated Migration Management

The dominant discourse that nearly all federal ministry employees explicitly referred to is the notion of border controls as an integral part of an "integrated migration management-strategy".

One interview partner pointed out that migration is a thematically "cross-cutting issue" and stressed the necessity of a coherent "multi-level approach to migration", "an approach that brings together the different policy aspects" (Interview B). This should include national and European instruments, including economic cooperation and development, internal security, integration, foreign policy, legal and police cooperation with national and EU-external border controls, and data exchange, as well as return and reintegration policies. Another ministerial representative stressed that the whole "migration cycle" has to be considered if a coherent migration policy is to be achieved (Interview A).

Although the narrative of "integrated migration management" has slowly developed over time, the practical implementation of close cooperation in the field of migration policies in the German context goes back to the securitization of the migration movement of 2015: Politicians and media perceived the events as a "refugee crisis" – a state of exception posing a threat to the German state and the European Union, requiring exceptional measures to defeat the crisis. As one interviewee explained, "The refugee crisis that came in late summer 2015 was a kind of paradigm shift.… It was important to bring together the different areas and give a coherent answer." Retrospectively, he considered this paradigm shift as a window of opportunity to improve the coordination and reach of a common approach to migration policy, perceiving the "crisis" as a trigger for "progress" (Interview B).

He described the main rationale of the Ministry of Interior's approach to security policy in this way:

> Migration is ultimately about not overstretching the willingness and capability of society and the state to receive immigrants. Because doing so leads to a destabilization of the community.… So if we do not succeed in securing or maintaining social cohesion, let me say now, we can pack our bags.… That is the ultimate goal behind everything. To preserve social cohesion (Interview B).

The understanding of (flight) migration as a threat to social cohesion was accompanied by a number of similar narratives. On the one hand, interviewees stressed a narrative that argued there would be a limited reception capacity of the (nationally perceived) society that could be "overstretched" (Interview B,E). On the other hand, officials stressed a state-theoretical perspective, considering persons without legitimate residency status who could not be deported as a threat to the state's authority (Interview F).

The fear of terrorism is also manifested in the figure of the "Gefährder" (person posing a potential future threat to public safety). This narrative is predominantly directed at Muslims who are under suspicion to be Islamic fundamentalists (Interviews D, E, F).

Furthermore, interviewees connected the topic of migration to the possibility of an "influx" of cross-border crime, especially regarding the eastern border of Germany (Interviews D, E). This narrative played a significant role, especially for officials working in the field of border affairs and dealing with both crime prevention and irregular migration. One public official claimed,

> The border will always play a role, because it simply already plays on the perception of law.… With crime in the border area… it would not have been possible at all to sell the population on the idea that from one day to the next, the federal police force would retreat" (Interview E).

## 5.2. European versus National Migration Management and Border Controls

In summer 2018, Germany witnessed an intense political controversy within and among the conservative parties in the government coalition. That controversy has typified the ongoing debate about the significance of national border controls within the Schengen Area since 2015. While the German chancellor stressed the importance of the "protection of the EU's external borders" and a common approach to migration management by the EU, the Ministry of the Interior pushed for national border controls and national "solutions" to address migration. The conflict culminated in the presentation of the "*Masterplan Migration: Measures for Order, Control and Limiting Immigration"* by the Minister of the Interior on 4 July 2018 (BMIBH, 2018a). The document is symbolic for the intensification of restrictive migration policies in Germany, which had already started in 2016.

The Ministry of the Interior focused on the interplay of both national as well as the EU-external border security. While some public officials stressed the significance of European integration and were highly concerned about the hardening of nationalist positions within the EU (Interview B), others generally approve of the Schengen regulations, but nevertheless stressed the importance and advantages of national border controls (Interview E).

### 5.2.1 National Border Policies and Bilateral Governance Approaches

National border controls stand in stark contrast to the general notion of the EU Schengen Agreement creating a space of uncontrolled borders. However, public officials spoke in favour of national border controls. Some see a greater "flexibility" and a "greater reach" through national and bilateral measures such as policing treaties, claiming "simply forcing in this European model, with such a large common consensus, is often perhaps not so effective" (Interview D). As implicitly expressed, bilateral arrangements were also preferred to EU regulations because such arrangements do not restrict national sovereignty.

One of the main arguments used to justify national border controls was the perceived "pressure" put on the German state in the light of secondary migration within the EU. As one interview partner put it: "Secondary migration is a permanent topic for us in Germany… everyone wants to go to Germany" (Interview B).

Rejections (*Zurückweisungen*) and expulsions (*Zurückschiebungen*) at the German border are therefore considered to be an important measure of bordering. However, officials note that in fact they rather form a symbolic act: "We only have four control points at the German-Austrian border – so in practice, quantitatively it is not relevant" (Interview D).

### 5.2.2 Externalization as a Necessary Complementary Strategy

Besides national border controls, respondents also stressed the necessity of EU-external border controls (Interviews B, D, E). Beyond that, the externalization of border controls and cooperation with third countries is perceived important (Interviews B, D, E, F). Public officials believed that securing the German borders cannot be conceptualized without considering the EU-external borders and bordering practices in third countries, referred to as an "externalization strategy" (*Vorverlagerungsstrategie*):

> One of the greatest ideas is precisely the overlooked cooperation with third countries. So I think it is also existentially important… that a great deal more is being done in this area…. I would say that this is one of the points that is extremely important. Standardized, Europeanized deployment in third countries, even those that do not always border Europe. I believe that this is one of the most important pillars of the future" (Interview D).

In this regard, interviewees stressed the importance of the close cooperation of liaison officers from Germany, including both federal and state police, as well as liaison officers from FRONTEX, the EU Commission and other nation states. However, one interview pointed out that in certain strategic countries, such as Jordan, there were already a large number of different liaison officers deployed "who are stepping on each other's feet…. And on the other hand, of course everyone has their own agenda" (Interview D).

Cooperation with third countries is furthermore described as a long, challenging process, only proceeding in "micro steps" (Interview D).

The notion of externalization also encompasses the narrative of crime prevention. One interviewee described crime as a threat coming from the outside, which is therefore connected to migration policies:

> The idea is to fight crime where it arises, where it comes from. At the root, so to speak, at the place of origin, if you take the local component now, with the goal that it never reaches Germany in the first place (Interview D).

## 5.3 Filtering, Dividing, Returning: Enforcing Speedy Procedures and Swift Returns

Besides the stress placed on border security, one of the core narratives expressed by authorities is the perceived need to filter incoming migrants in a timely way, and distinguish between those who deserve refugee status and others who "are not in need of protection" in order to swiftly return them. The dominant features of the *Masterplan Migration* are the demands to increase deportations, and therefore to filter asylum seekers based on recognition rates, concentrate them in centres referred to as "*Ankerzentren*" in order to accelerate the asylum procedures, and immediately return rejected asylum seekers (BMIBH, 2018a).

### 5.3.1 Transit Centres and "Anker Centres" and Pre-Removal Detention

The narrative around the partially implemented concept of the so-called "Anker Centres"[3] in Germany was described by one interview partner as "the need to bring all functions of refugee management together spatially" (Interview F). One of the narratives connected to this is what another interviewee called "the runway (*die Rollbahn*)": Anker centres are justified in light of the need to quickly facilitate returns by swiftly dividing migrants into "refugees" and "returnees" (Interview C). The goal is to enforce control during the whole asylum procedure. This argumentation legitimizes the lodging of a growing number of asylum seekers for the whole period of their stay in half-open camps. Interviewees made a discursive distinction between the concepts of *Anker Centres* on the national

[3] "*Anker*", which translates as "anchor", is an acronym for arrival (**Ank**unft), decision (**E**ntscheidung) and return (**R**ückführung). It is a special type of consolidated refugee camp.

level, the *Hotspot Approach* at the EU-external border, and the *Control Centres*, which have been proposed as measures by the EU (Interviews D, F).

Detention was conceptualized similarly, as a measure to ensure that returns could be carried out in a timely way. For this reason, the interviewees stressed the need to significantly expand detention capacities. One spokesperson pointed out,

> It's simply because of the large number of people who go underground for a variety of reasons. The odds are poor when it comes to picking up people. We need to be able to apply for deportation custody. Here, we simply have to see that in recent years, this has been done very little, also for political reasons. So there was no capacity at all, even if you wanted to. For a country of the size of Germany, we are actually extremely poorly equipped with detention centres for deportees (Interview F).

### 5.3.2 Secondary Migration and Returns to EU Countries

Respondents found the current Dublin Regulation to be inadequate when addressing the challenge of secondary migration. One official described the regulation as a huge effort with only little effect (considering that its goal has been to return more migrants than are received) (Interview F). However, he has seen improvement since the efforts to return migrants to third countries within Europe began to notably increase:

> We are very deficient in the Dublin area, although we have significantly increased the return rate.… It is, of course, sort of, if you like, a switching yard for trains. We take in a lot and we also send a lot to other Member States. But I believe that this is the first time [2018] that we have had a positive case, in that we have returned more people than we actually took in (Interview F).

To respond to the perceived challenge of secondary migration, there have been additional bilateral agreements negotiated with Greece, Spain and Italy. The goal is to return people directly at the border without even starting the Dublin Procedure in order to ensure returns and speed up procedures. As one official explained,

> So these agreements with Spain and with Greece arise from the knowledge that the normal Dublin transfer simply takes time. And not just hours, but days, weeks and even months. Sometimes it doesn't work out at all and then it tips over. …) We are now entering into agreements with these states, according to which we will quasi act before the official Dublin Procedure begins (Interview E).

Legally, the returns were justified by referring to Article 36 of the Dublin Regulation, but at the same time, they were described as something beyond international law, as mere "administrative arrangements between the Federal Police and the Greek Border Police…. We're not talking about international treaties or conventions. We are talking about purely administrative agreements" (Interview E).

However, officials were also clear about the mere symbolic importance of these administrative arrangements in terms of "setting an example", since the return numbers remain very low. One representative even claimed, "In fact, this whole thing is a sham discussion (*Scheindiskussion*)" (Interview B).

### 5.3.3 Return Agreements with Non-EU Countries

Return agreements with countries of origin beyond the EU have repeatedly been described as an important field of bordering, and a number of readmission agreements are currently beginning to be negotiated. However, the requirements have shifted to the ideal of an *integrated migration management approach* in the field of return agreements as well. One interview partner described this shift in approach, noting

> So normally, in the past it was like this, you went somewhere and said, "We want to conclude a readmission agreement with you now – that means you have to take back your citizens who left the country." Today we are told that we are not going to conclude readmission agreements at all, but the only thing we can talk about is a "migration agreement". In other words, they say, "If we take back our citizens, then at the same time you must give our citizens legal access. Education, work, study, and so on." (Interview F).

## 5.4 Border Policies between Neoliberal and Humanitarian Narratives

Migration management policies in the field of border controls and return policy are wrapped up in narratives of economic development cooperation and fighting the causes of flight, as well as voluntariness. Indeed, even human rights narratives can be harmonized with border controls.

### 5.4.1 Voluntary Returns

The concept of "voluntary returns" has gained significant importance, especially on a narrative level. It is described as a future-oriented measure in the *Masterplan Migration* (BMIBH, 2018a). A public poster campaign under the title *Returning from Germany: Your Country. Your Future.* (BAMF, 2018a) led to controversial debates. "Voluntary return" works on the one hand through economic incentives including "reintegration measures" such as short-term apprenticeships, and on the other hand through the threat of a possible forced deportation. Therefore, the two elements of *coercion* and *economic incentives* are closely interwoven in what is understood as *voluntariness*.

As one official described it,

> The measures to prepare for reintegration are in a tense relationship between the individual's obligation to leave the country on the one hand, and the idea of providing people with better qualifications and then sending them on their way on the other (Interview A).

### 5.4.2 The Reduction of Causes of Flight and Development Cooperation

The concept of development cooperation became closely linked to migration management in several areas. For example, the reintegration field is often entangled with development measures carried out in countries of origin e.g. by the GIZ (German Corporation for International Cooperation) on behalf of the Federal Ministry for Economic Cooperation and Development (BMZ*).* Similarly, development aid plays a role in negotiating "migration agreements" with regard to returns, but also in the externalization of border controls involving third countries. Therefore, international migration agreements have been discursively conceptualized as aid for both the "cooperation partner" (often from the Global South) and the migrant him-/herself (especially when "benefiting from reintegration

measures") (Interviews A, F). Another discursive strand conceptualizes development aid to third countries generally as one way to fight the root causes creating the need to migrate (Interviews D,F).

### 5.4.3 Human Rights

Narratives on human rights do not necessarily contradict border narratives, but instead they can also be connected. For example, officials pointed out that well-trained border personnel could significantly improve the human rights situation at the borders and in third countries. "So, for example, through the training of FRONTEX personnel, you could also do much more from my point of view concerning human rights" (Interview D).

The German border police were generally described as well-trained, having internalized human rights requirements, while doubts are expressed about the actions of border guards from other countries (Interview D).

However, border practices were also conceptualized as something completely distinctive from the field of human rights discourses, e.g. through claiming that "purely administrative agreements" for returns at the border do not have the status of "international agreements or conventions" (Interview E).

Furthermore, it was pointed out by one official that "political demands should not always be buried with human rights guarantees, which allegedly exist, but which do not exist from a legal point of view". And it has been critically noticed that the "bubble of Brussels", especially the European Parliament, has a "special orientation… and this epic, which is, so to speak, emphasized in human rights terms, is very strong.… Also for the European Commission, the return to sensible, balanced migration management was a learning process" (Interview F).

# 6. Implementation

## 6.1. Key Actors

Several different actors are involved in the field of border security. On a policy level, the Ministry of the Interior, Building and Community is particularly influential, and heads an inter-ministry working group on migration management. Furthermore, the Chancellor's Office also established an Office for Refugees and Integration, putting a high priority on the topic of migration. Due to Germany's federal structure, the interior ministries of each state also have an influence over the policies of their respective states.

In the field of pre-entry restrictions, the Federal Foreign Office (Auswärtiges Amt), German consulates and embassies are involved concerning visa applications.

On the border, the most influential actor is the German Federal Police (Bundespolizei), cooperating with the Federal Customs Service (*Bundeszollverwaltung*), and in some cases with the State Police (*Landespolizei*). Since administrative police treaties, including bilateral and multilateral arrangements with other countries, are an integral part of Germany's border policies, cooperation with foreign police forces also plays a significant role in German border protection. The focus of the German government on externalization policies in the field of migration highlights the importance of FRONTEX, the European Border and Coast Guard Agency, and other joint operations. Many

German police officers are deployed as liaison officers, both in FRONTEX or EU missions, in EU as well as in non-EU countries.

In the field of return policies, a variety of actors are involved, depending on the respective state-level policies and particular local situations. The execution of forced returns is carried out by Federal and/or State Police forces, and in some cases private contractors. Before deportations, in some cases the migrant is subjected to deportation custody, which can lead to the involvement of the Department of Justice, courts and prison staff.

Other institutions in the field of voluntary return include the GIZ, (German Corporation for International Cooperation, *Deutsche Gesellschaft für internationale Zusammenarbeit*), a federal development organization, and the International Organization of Migration (IOM), often cooperating with charity organizations.

## 6.2. Pre-entry

### 6.2.1 Visa Policies

Germany's strict visa policy poses a major barrier for migrants to physically enter German territory. This in effect also significantly limits the ability to apply for protection and forces them to use illegalized routes where migrants are subjected to controls at several borders before they reach the country.

The possibility to be granted a visa was further limited though the security political instruments mentioned above (the Consultation Procedure, Art. 73 (1), (3) AufenthG, and the Data Comparison Procedure, Art. 72a AufenthG). To this end, a special organizational unit was set up at the Federal Office of Administration, which is tasked with automatically comparing data from the visa procedure with certain data from the anti-terror database. The automated comparison enables the security authorities to report back to the visa authorities if persons from terrorist environments intend to enter Germany (BMIBH, 2019a).

In 2018, Germany issued 1,870,822 short-stay Schengen visas (transit, visits, business, tourism, etc.) (2017: 1,894,433) and 300,945 national visas (usually for longer stays and stays leading to employment) (2017: 305,802). German missions rejected 241,796 visa applications in 2018 (2017: 205,345) (Auswärtiges Amt, 2019a).

### 6.2.2 Carrier Sanctions

For carrier sanctions, as explained above (Art. 63 of the Residency Act), a particular legal interpretation exists that claims that carrier sanctions even apply to taxi drivers. In an information sheet of 31 August 2011 entitled "Information from the Federal Police for Taxi Drivers", the Federal Police explicitly warned against "transporting unauthorized persons" or aiding and abetting their entry (Bundespolizeipräsidium, 2013). According to the Federal Police, two bus companies were subject to prohibition orders in 2014, and threats of periodic penalty payments. One of the bus companies concerned took legal action against the accusation. While the complaint failed before the Potsdam Administrative Court, the Berlin-Brandenburg Higher Administrative Court ruled in favour of the bus company (Werdermann, 2015).

The carrier sanctions also affect airline companies. In a parliamentary request, the German government specified the amount of periodic penalties levied pursuant to Section 63(2) of the Residency Act (AufenthG) on air carriers: 2011: €1,917,500; 2012: €2,348,500; 2013: €2,602,000 (Deutscher Bundestag, 2014a).

Nevertheless, according to legal experts, the legality of carrier sanctions has been challenged by a ruling by the European Court of Justice (C-444/17) concerning a case on the French-Spanish border (Hruschka, 2019).

## 6.3 At the Border

### 6.3.1 The Reintroduction of Border Controls

Since autumn 2015, Germany has carried out border controls in the territory bordering Austria. They were recently prolonged until mid-May 2019. The controls mainly take place at four checkpoints along the Bavarian-Austrian border; three of them are located on motorways, and one at the Salzburg train station, which has served as a starting point to monitor railway transport. Since border-crossing points had been removed due to the Schengen Agreement and there is a high volume of traffic between the two countries, reintroducing controls has in practice been difficult. Officials explained,

> We have not, however, established a border-crossing point, because the purpose of designating or establishing border-crossing points is to channel traffic in order to control it. As a rule, however, this has a direct impact on the mode of transport, and that is the problem in the border-free area. That just means that at the beginning of 2015, we had some problems with the railways, trains were running, freight trains were supposed to run. Everything has slowed down.… And there have been accidents, because people were hit in traffic jams. Then there are a lot of commuters who work in Austria, live in Germany or vice versa, who are stuck in traffic jams every day. Then they complained. Then we hear regularly that the local economy suffers. And so on… (Interview E).

In order to avoid significantly disrupting traffic flows, the Federal Police have preferred to stay flexible while carrying out checks, arguing,

> It has to be said that these are not border crossing points, they are checkpoints at four points.… And these were just our considerations, also from the point of view of proportionality, which must always be taken into account that we do not designate border crossing points, simply in order to allow traffic to flow.… But also in between, on the other quasi-federal roads, state roads, other traffic routes, they can be checked at any time, and border control can be carried out. And that means that the Federal Police has the right to control the entire German-Austrian border.… If you stand for a certain time above at the federal highway for one hour or two, and control there – I don't want to say that doesn't stand out – but you simply don't really notice it (Interview E).

Besides the controls at the border, the federal police can carry out veiling search (general event-independent, situation-oriented people checks) within a certain territory around the border:

> There is this 30-kilometre strip that is legally defined. Within it, we can do a veil search. And this is also done in different forms with different emphases. So if there is a hint there could be something, then it is checked (Interview E).

### 6.3.2 Refusal of Entry and Expulsions

In 2015, 8,913 people were refused entry at the German border (land: 4,689; air: 4,205; sea: 19). This figure rose to 21,851 in 2016 (land: 16,562; air: 4,233; sea: 56), thus exceeding the numbers of 2015 by 145.2% (Flüchtlingsrat Niedersachsen, 2017). In autumn 2015, border controls were reintroduced along the border between Germany and Austria. In 2017, the number of refusals to entry dropped, as the number of arrivals significantly declined as well. That year, there were 12,370 refusals to entry (land: 7,504; air: 4,744; sea: 122), while in the *first half* of 2018, entry into German territory was refused to 6,691 people (land: 2,844; air: 2,839; sea: 8) (Deutscher Bundestag, 2018b).

The number of expulsions in 2015 was 1,481 (land: 1,444; air: 30; sea: 7); in 2016, the figure amounted to 1,279 (land: 1,220; air: 47; sea: 12) and was thus slightly down (-13.6%) from the previous year's figures (Flüchtlingsrat Niedersachsen, 2017). In 2017, the total number of expulsions was 1,707 (land: 1,663; air: 38; sea: 6), higher than the previous years. The trend seemed to continue in 2018, where in *the first half* of the year alone, 1,101 people were affected (land: 1,053; air: 48; sea: 0) (Deutscher Bundestag, 2018b).

By far, most of the refusals of entry concerning the overland route were imposed on the southern border with Austria.

***Table 7* – Refusals of Entry and Expulsions at Land Borders, 2018**

| Land Border | | | |
|---|---|---|---|
| **Border with** | **Total Number** | **Refusals of Entry** | **Expulsions** |
| Austria | 2,968 | 2,844 | 124 |
| Czech Republic | 318 | 0 | 318 |
| Poland | 285 | 0 | 285 |
| France | 160 | 0 | 160 |
| The Netherlands | 93 | 0 | 93 |
| Switzerland | 55 | 0 | 55 |
| Denmark | 10 | 0 | 10 |
| Belgium | 8 | 0 | 8 |
| Luxembourg | 0 | 0 | 0 |
| **Total** | **3,879** | **2,844** | **1,053** |

Source: Deutscher Bundestag, 2018b

### 6.3.3 Airport Procedure

The Airport Procedure laid down in Section 18a of the Asylum Act applies before a person is legally allowed to enter Germany, if the applicants are unable to identify themselves with a valid passport or replacement passport after having orally requested protection, or if they come from a safe third country.

It is only carried out at airports which can accommodate asylum applicants on the airport's premises while the respective person is still kept in the transit area. Currently, Airport Procedures are officially conducted at the airports of Berlin-Schönefeld, Düsseldorf, Frankfurt/Main, Hamburg and Munich.

The Federal Office must interview applicants subjected to the airport procedure within two days of receiving the asylum application (principle of immediacy). If their application is rejected as "manifestly unfounded", they are immediately returned by plane to their country of origin, or to the place they departed via plane.

If the application is rejected, applicants are allowed three days to submit an application for temporary legal protection to an administrative court. Thereafter, they are supposed to receive legal advice. The administrative court can grant an additional four days to submit grounds for the request. If the administrative court approves the emergency application or does not rule on it within 14 days, the asylum applicant can enter the country. Therefore, the total duration of the airport procedure is 19 days, during which the asylum seeker has to remain in custody at the airport (BAMF, 2016).

### 6.3.4 Germany's International Police Missions in the Field of Border Affairs

Germany is involved in several international police missions, both in countries of the European Union and in EU-external countries.

While some of the missions are part of FRONTEX, the European Border and Coast Guard Agency, others take place under the aegis of EU border assistance, advisory or monitoring missions, or under a UN mandate.

As part of the "Externalization Strategy" (*Vorverlagerungsstrategie*) (Deutscher Bundestag, 2016a) the German government has provided resources for and has implemented various measures with countries on the EU's periphery – especially states of the MENA region (Middle East and North Africa; specifically in this case Egypt, Tunisia, Libya and Morocco) and Turkey. These include resources such as police capacity-building and training, assistance in reforms of the security sector, counterterrorism, border management, and exports of equipment for police/military forces and border security (Rosa Luxemburg Stiftung, 2018). Perhaps the most prominent of these measures include e.g. the training and equipping of the "Libyan Coast Guard" (e.g. under the EU's EUNAVFOR MED/Sophia mission) or financial assistance and equipment transfers under the EU-Turkey Statement (European Council, 2016).

Furthermore, cooperation regarding border protection focuses on the Sahel, a belt consisting of the southernmost MENA states and the Sahara desert (Mauretania, Chad, Niger, Mali and Sudan). As the German government declared in 2017,

> Supporting the countries of the Sahel region in the education and training of border officials to strengthen internal security and combat smuggling and human trafficking is a particular concern of the Federal Government. For this reason, the Federal Government, together with France, is planning to provide experts to support the establishment of a regional school for the training of internal security officers in a Sahel country (Deutscher Bundestag, 2017).

Germany e.g. has supported the "Force Conjointe" police unit of the G5 Sahel States and has supported and promoted the surveillance and control of their land borders in Niger and Mali (Deutscher Bundestag, 2017).

Some border security projects, such as the “Better Migration Management” project in the Horn of Africa are partly funded with development funds, including from the EU Emergency Relief Trust Fund for Africa (EUTF) under a consortium led by the GIZ (Deutscher Bundestag, 2016a).

The following is a listing of the different international police missions with the involvement of the German Federal Police and/or state police forces. While many of the operations are explicitly border-assistance missions, others do not primarily focus on border security (Bundespolizei, 2019a).

Police missions with a mandate from the European Union are:

- European Union Border Assistance Mission to Moldova and Ukraine (EUBAM Moldova/Ukraine)
- European Union Border Assistance Mission in Rafah (EUBAM Rafah)
- European Union Border Assistance Mission in Libya (EUBAM Libya)
- European Union Capacity Building Mission in Mali (EUCAP Sahel Mali)
- European Union Capacity Building Mission in Niger (EUCAP Sahel Niger)
- European Union Advisory Mission in Ukraine (EUAM Ukraine)
- European Union Rule of Law Mission in Kosovo (EULEX Kosovo)
- European Union Monitoring Mission in Georgia (EUMM Georgia)
- European Union Police Mission – Coordinating Office for Palestinian Police Support (EUPOL COPPS)

Missions under a mandate from the United Nations (UN) are:

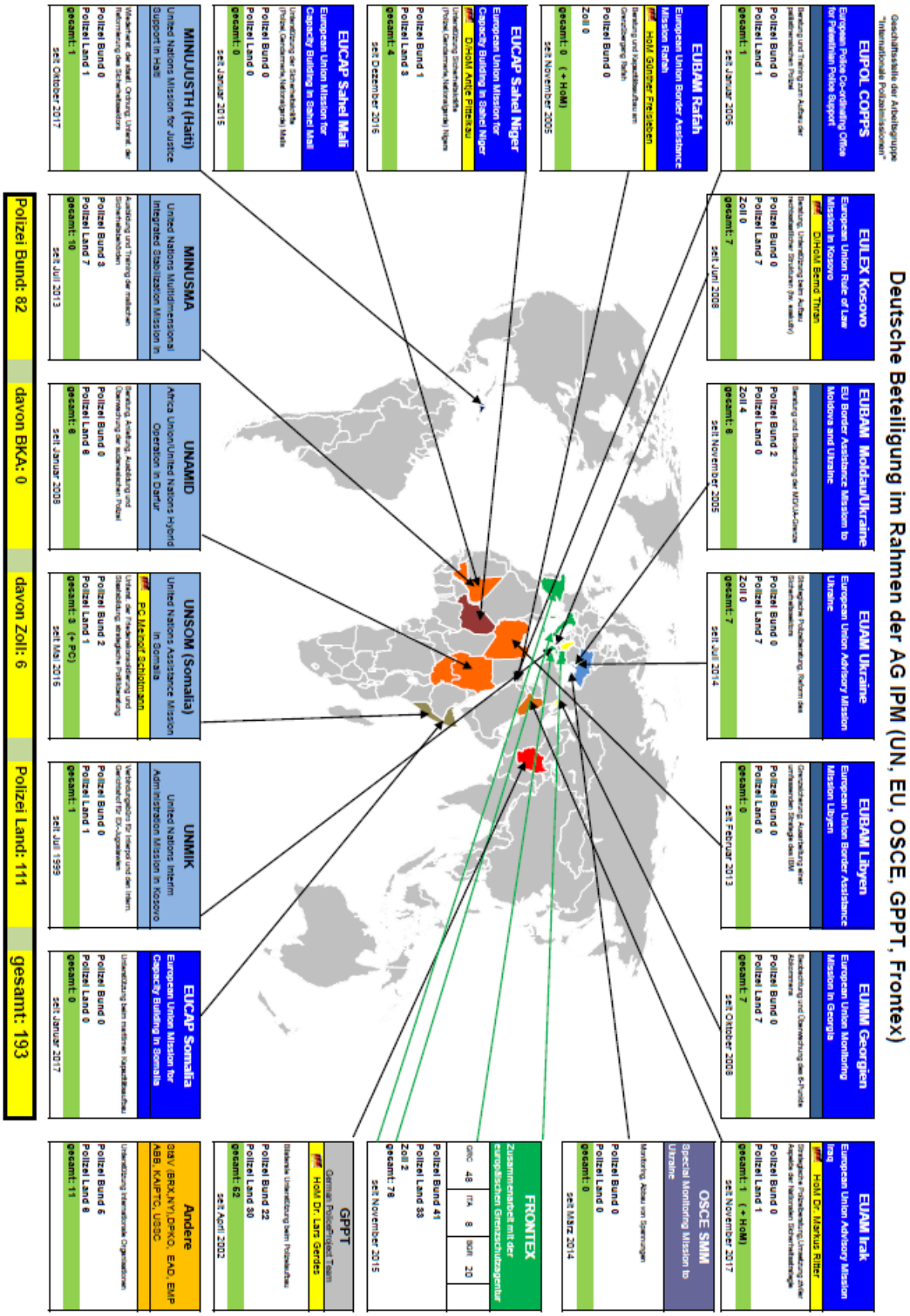
- United Nations Assistance Mission in Somalia (UNSOM)
- United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA)
- United Nations Mission In Kosovo (UNMIK)
- United Nations and African Unions Hybrid Operation in Darfur (UNAMID)
- United Nations Mission for Justice Support in Haiti (MINUJUSTH)

Furthermore, Germany participates in the OSCE’s (Organization for Security and Cooperation in Europe) Special Monitoring Mission to Ukraine (OSCE SMM). On the bilateral level, Germany has a German Police Project Team (GPPT) stationed in Afghanistan.

Beyond the afore mentioned police missions, the Federal Police deploys “Border Police Liaison Officers” in 20 countries. In 12 additional countries, liaison officers (*Verbindungsbeamte*) from the Federal Police (VB BPOL) are accredited as part-time staff. According to the Federal Police, they are deployed as observers, which includes monitoring the situation on the EU’s external borders and measures to combat crime, in particular internationally organized smuggling (Bundespolizei, 2019b).

Furthermore, the Federal Police deploys about 150 “border police support officers abroad” (*Grenzpolizeiliche Unterstützungsbeamte Ausland*, GUA) every year. They both participate in missions at EU internal borders – within the framework of bilateral agreements with other EU Member States – and in FRONTEX operations on the EU’s external borders. According to the Federal Police, they work with other national border policing agencies as advisory “experts” in the fields of Schengen rules and regulations, as well as in combating irregular migration, and document and vehicle thefts (Bundespolizei, 2019c). According to one media report, the German Federal Police e.g. stopped over 6,500 passengers at the Athens airport who were trying to travel to Germany (Süddeutsche Zeitung, 2019).

***Figure 1* – Germany's International Police Missions**




Source: Bundespolizei, 2019a

## 6.4 Return and Deportation

### 6.4.1 Deportations

The Dublin III Regulation (Regulation (EU) 604/2013) is what currently provides the legal framework for readmissions and relocation among the Member States of the European Union, and also EFTA countries and Switzerland. It lays out the basis for cooperation in the field of return between Germany and other EU member states located along the EU's external borders. In addition, there are readmissions from Germany to countries of origin beyond the European Union.

Since 2013, the number of deportations from Germany has been constantly rising – both in terms of deportations under the Dublin Regulation and in terms of deportations to non-EU countries. In 2014, 10,884 people were deported, while in the following year 20,888 deportations were carried out. In 2016, the number of forced returns rose to 25,375 (including 3,968 Dublin returns) and in 2017 to 31,068 (including 7,102 Dublin transfers) (Deutscher Bundestag, 2018a).

Likewise, the number of Dublin returns from Germany to other EU Member States has grown significantly (from 2,902 returns in 2011 to 7,102 returns in 2017). In 2015 and 2016, the number of Dublin returns dropped slightly from the previous year. In total, 30,137 Dublin deportations were carried out from 2011 until 2017. During this period, Germany received slightly more migrants under the Dublin III relocation scheme (30,854) than were returned (30,137) (Deutscher Bundestag, 2018a). 2018 was the first year where the country returned more people than it received.

The number of return requests sent to other EU Member States (and Switzerland) has also constantly risen (9,075 in 2011 to 64,267 in 2017) and has been much higher than the number of returns actually carried out. Requests exceeded the actual returns more than eightfold (requests between 2011 and 2017: 255,788; returns: 30,137). The most requests were filed in the countries of Italy, Bulgaria, Poland, Hungary, Switzerland and France. Conversely, Germany only approved 30,854 out of 86,339 relocation requests it received from other EU Member States (Deutscher Bundestag, 2018a).

Most returns were sent to the West Balkan states (Albania, Bosnia-Herzegovina, Kosovo, the Former Yugoslav Republic of Macedonia, Montenegro, and Serbia) that, along with Ghana and Senegal, had been declared "safe countries of origin". In addition, the number of deportations to Afghanistan has significantly risen. Most of the readmissions from Germany to EU Member States under the Dublin Procedure were sent to Italy, Poland, Spain, France, Hungary and Sweden (ECRE, 2019, Flüchtlingsrat Niedersachsen, 2016).

### 6.4.2 The European Union's Readmission Agreements

The European Union itself has negotiated readmission agreements with non-EU countries, which are also valid for Germany. There are readmission agreements with Albania, Armenia, Azerbaijan, Bosnia-Herzegovina, Cabo Verde, Georgia, Hong Kong, Kazakhstan, Macao, North Macedonia (FYRM), Moldova, Montenegro, Pakistan, the Russian Federation, Serbia, Sri Lanka, Turkey, and Ukraine (BMIBH, 2018b, see appendix).

With The EU-Turkey Statement, a readmission arrangement was implemented that was not based in law and was only communicated through a press release by the European Council (European Council, 2016).

In many cases, Germany has played a significant role in the EU's negotiation of readmission agreements. Currently, bilateral agreements for readmission by Germany are often negotiated in coordination with the European Commission. As one interview partner explained,

> The Commission has clearly changed its position here and is playing a very supportive role. We also divide up the countries of origin a little. Sometimes (we) have to drive parallel.… So that is a supporting function that the Commission plays by making certain procedural agreements for all the Member States. Where, of course, we are also involved in development. For Germany, I mean our advantage is, if we appear somewhere, we are convincing, and then such a state does it (Interview F).

On the EU level, there is also a programme in place for "voluntary return" called "ERRIN" (European Return and Reintegration Network). However, officials pointed out that exchange between this platform and the German state is still very limited.

### 6.4.3 Germany's Bilateral Readmission Agreements

Germany has also concluded a variety of bilateral readmission agreements, both with EU and non-EU countries. The process of negotiating readmission agreements can be connected to the categorization of a country as a "safe country of origin". For "safe countries of origin", the "default presumption" applies that there is no risk of persecution. Germany currently considers the following countries to be "safe countries of origin": the Member States of the European Union, Albania, North Macedonia (formerly the Former Yugoslav Republic of Macedonia), Bosnia-Herzegovina, Kosovo, Montenegro, Serbia, Senegal, and Ghana.

Readmission agreements have been ratified with the following countries: Albania, Algeria, Armenia, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, the Czech Republic, Croatia, Denmark, Estonia, France, Georgia, Guinea, Hungary, Kazakhstan, Kosovo, Latvia, Lithuania, Luxembourg, Morocco, the Netherlands, North Macedonia, Norway, Poland, Romania, Serbia, Slovakia, South Korea, Sweden, Switzerland, Syria and Vietnam.

Furthermore, Germany is part of multilateral readmission agreements with Belgium, France, Italy, Luxembourg, the Netherlands and Poland.

In addition, Germany negotiated transit agreements allowing the passage through countries in the fields of forced and voluntary return with Albania, Bulgaria, North Macedonia and Poland (forced return), and with Albania, Austria, Croatia, Hungary, Italy, Luxembourg, North Macedonia, the Netherlands, Slovenia and Switzerland (voluntary return) (BMIBH, 2018b, see appendix).

### 6.4.4 Administrative Readmission Arrangements with Greece, Italy and Spain

Beyond the common Dublin Regulations, Germany negotiated arrangements with Greece, Italy and Spain for the readmission of migrants on a strictly administrative basis. Based on these agreements, the EURODAC database can be checked at the German border checkpoints, and in case of a "EURODAC1-hit", the respective person is to be immediately returned. As officials explained,

> We do not carry out a Dublin transfer, but basically before Dublin, there is simply – in the context of the fiction of non-entry – a return more or less to Greece or Spain.… In our view, it is a matter, in a nutshell, of making the procedure for determining jurisdiction in Greece possible.… I have not yet heard of any more [than four deportations to Greece]. But even if

there were a few more, it is not quantitatively relevant. But it was a signal: You cannot just come on your own – that is the message – but, if you apply for asylum, you must at least wait for the Greek authorities to examine Dublin (Interview E).

Lawyers and NGOs have criticized the practice of enforcing returns before the Dublin Procedure is even started as illegal (Pro Asyl, 2018b, Hruschka, 2018), and legal disputes are ongoing (Hruschka, 2019).

### 6.4.5 "Voluntary Returns"

The estimated numbers of "voluntary returns" vastly exceed the number of deportations, although this figure is decreasing.

There are several programmes for "voluntary return" combined with "reintegration" in the form of financial incentives or short-term training programmes on federal and state level. While there is no official data collected including all return programmes, estimated numbers for 2015 are 48,531 participants; for 2016, this was 68,148; for 2017, this was 36,671; and for 2018 (first half), the figure was 10,669 (ARD, 2018).

The Bundesamt für Migration und Flüchtlinge (BAMF) counted 54,006 departures in 2016 and 29,587 departures in 2017 through the biggest return programmes, REAG and GARP (Reintegration and Emigration Programme for Asylum Seekers in Germany and the Government Assisted Repatriation Programme) (BAMF, 2018b). In addition to these, there have been "voluntary departures" supported by the German states as well as voluntary departures without support, which are not officially counted.

A variety of information centres give advice on "voluntary returns". In the first reception camps constructed as Anker Centres, the return consulting is supposed to be carried out by the BAMF, the same governmental ministry involved in the evaluation of asylum applications and in procedural advice on the asylum process. Information on voluntary return and reintegration has recently been made more accessible through a multilingual online platform called "Returning from Germany" (BAMF, 2018a), which also offers advice by telephone. The online campaign was accompanied by a state-run poster campaign costing €500,000 that advertised "voluntary return" (Deutscher Bundestag, 2018b). Reintegration also includes programmes for so-called "Enhanced Return Assistance" (*Erweiterte Rückkehrhilfen*) (BAMF, 2018c) granting higher benefits if applicants withdraw their asylum claims.

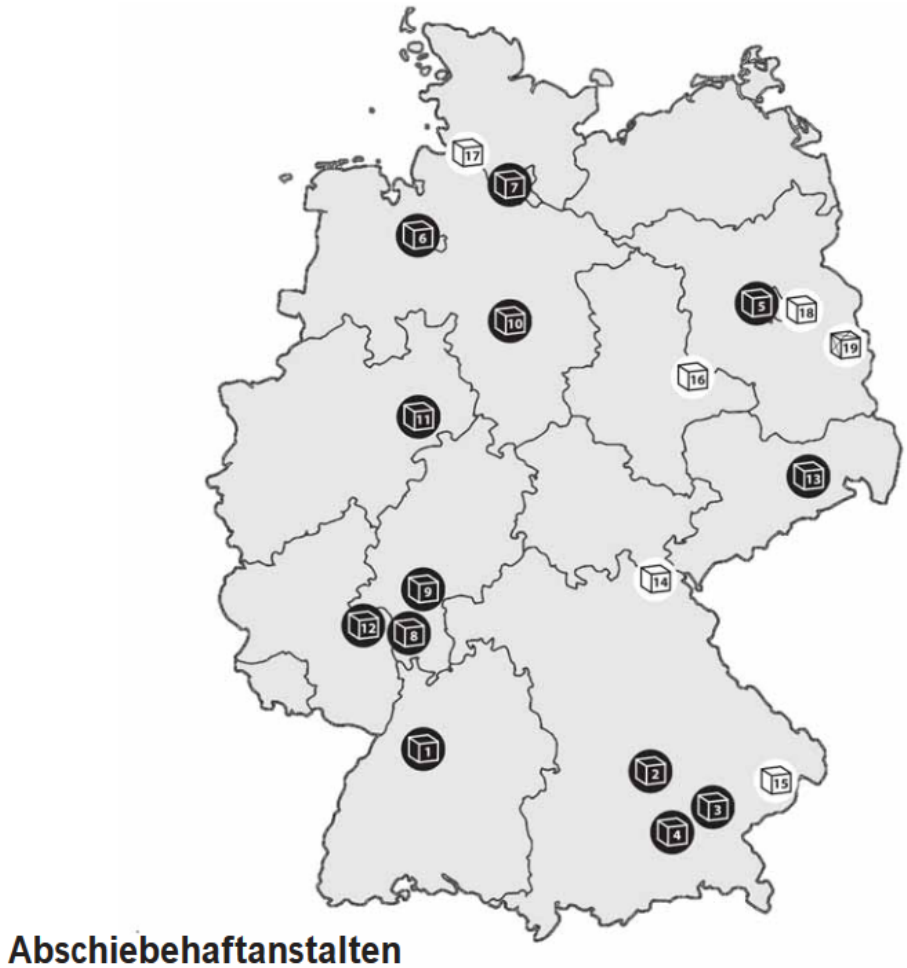
### 6.4.6 Detention

Germany has currently migration detention capacity for 528 individuals (2018) (Jesuiten-Flüchtlingsdienst Deutschland, 2018); compared to other EU countries, this number is rather low. The *Masterplan Migration*, NGO reports and the interviewees described that the capacity of detention facilities for migrants in Germany is supposed to be expanded. New detention places for 272 persons are planned, and six new detention centres are to become operational (ibid.). The *Masterplan Migration* even contains plans to suspend regulations from the EU Return Directive, declaring a "state of emergency" in order to expand detention capacities:

> The use of all resources for detention pending deportation: In order to counter the current state of emergency regarding detention cells pending deportation, the separation of detainees awaiting deportation from other detainees, which was only introduced on the basis

of the EU Return Directive, is temporarily suspended in accordance with Article 18 of the EU Return Directive (BMIBH, 2018a, p. 22).

***Figure 2*** **– Deportation Detention Facilities in Germany**




Source: Öztürkyilmaz, 2019, p. 22. Graphic: Agnes Andrae

Even with the existing detention capacities, lawyers who challenged detention orders found that in many cases, detention was not legal. As Peter Fahlbusch, an attorney from Hannover, explained,

[As of 30.08.2018], since 2001 I have represented a total of 1,627 clients in deportation detention proceedings nationwide. 823 of these clients (i.e. about 50%) were illegally detained according to the legally binding decisions available here (some “only” for one day, others for months). Taken together, the 823 clients have twenty-one thousand five hundred thirty-eight (in figures: 21,538)

unlawful days of imprisonment (that is about 59 years of unlawful imprisonment!). On average, each client was unjustly detained for just under 4 weeks (26.2 days) (Jesuiten-Flüchtlingsdienst Deutschland, 2018, p. 1).

## 6.5 Cooperation among Subnational, National and Supranational actors

### 6.5.1 Bilateral Cooperation at the German Border

Border controls at the land borders of Germany are carried out through bilateral and multilateral cooperation. Based on the SDÜ, police forces agreed on "Schengen compensatory measures", e.g. concerning visa procedures, information exchange and operational matters. Furthermore, the implementation agreement contains an opening clause calling for more far-reaching bilateral cooperation, often in form of police treaties. As one interview partner explained:

> Since Germany is now good friends with the neighbouring countries, we agree on bilateral police cooperation that goes beyond what is regulated in the SDÜ. With more generous rules about how far one can enter the territory of the respective neighbour, etc. (Interview E).

Common operations are coordinated at a police cooperation centre in Passau:

> There is an exchange with the partner authorities from Austria. What does it look like, where do you check? It doesn't necessarily make sense that on one side the Austrians check, and 100 metres further the Federal Police, and then the Bavarian border police again, and then the Federal Customs Service, and then the Federal Office for Goods Transport, and so on and so forth. Instead that must be embedded somewhere sensibly in a coordinated procedure. And I believe that is why there is a police cooperation centre in Passau. Exactly. Where, basically, the local security authorities are sitting at the same table to coordinate. Where should controls be? And you agree with your common partners, since there are also common patrols (Interview E).

### 6.5.2 Extended Trilateral Police Cooperation

As early as 2014, after ministerial negotiations with Germany and Austria Italy agreed to the establishment of trilateral police cooperation to identify migrants on international trains. Since then, a police patrol consisting of two Italian civil servants and one person each from the Austrian police and the German Federal Police has been operating along the train line between Verona and the Brenner Pass.

At the time of the creation of trilateral police cooperation in 2014, there were no national border controls carried out within Europe, so cooperation initially focused on identification and taking fingerprints for the EURODAC database in order to stabilize the Dublin system.

While the German Bundestag claimed that the role of the German police was a mere "observer status" (Deutscher Bundestag, 2014b), activists and a researcher found that German and Austrian officials also checked IDs on trains together with their Italian colleagues (Schmidt-Sembdner, 2018).

Additionally, since February 2015, two officers of the Federal Police have been active in personal controls on trains between Hungary and Germany, in cooperation with Hungarian and Austrian authorities (BMI, 2015).

### 6.5.3 Cooperation with FRONTEX, the European Border and Coast Guard Agency

There is a close relationship between the Federal Ministry of the Interior, the German Federal Police and FRONTEX, the European Border and Coast Guard Agency. Similarly, liaison officers of the Federal Police deployed in third countries closely cooperate with FRONTEX liaison officers.

As the German Federal Police explains on its website,

> At the heart of European border police cooperation is cooperation with FRONTEX, the European Border and Coast Guard Agency. The individual member states of the European Community work together to protect the Schengen external border and provide each other with technical and operational support. The Border and Coast Guard Agency coordinates this cooperation.
>
> Within the framework of this coordination, Federal Police forces support other member states in controlling their external borders. In this case, they act as police or border guards of the respective state in which they are deployed – not as Federal Police officers or as "FRONTEX officers", as some media outlets mistakenly claim. The same applies to guest officers from other Member States who are deployed in this way to support the Federal Police at German airports and seaports (Bundespolizei, 2019d).

In addition to personnel, the Federal Police provides (technical) resources for FRONTEX operations such as police helicopters, patrol vehicles and service dogs. Furthermore, FRONTEX supports the Member States in the training of national border guards, in the preparation of risk analyses, in monitoring the results of research relevant to the control and surveillance of external borders and by assisting in the organization of joint return operations for third-country nationals who are obliged to leave the EU (Bundespolizei, 2019d).

Germany deploys staff of the Federal Police and the State Police as well as customs in FRONTEX missions. In 2017, Germany was the largest per-capita donor for FRONTEX missions, with daily participation in an average of 114 task forces (Deutscher Bundestag, 2018c).

***Table 8* – Deployment of German Police in FRONTEX Missions**

| **Year** | **Federal Police** (Bundespolizei), **Federal Criminal Police Office** (Bundeskriminalamt), **Customs** (Zoll) | **State Police** (Polizeien der Länder) |
|---|---|---|
| 2014 | 106 | No participation |
| 2015 | 217 | 11 |
| 2016 | 680 | 243 |
| 2017 | 718 | 235 |

Source: Deutscher Bundestag, 2018c, p. 2

The task of German staff deployed in FRONTEX missions covers the whole spectrum of border police activities, including the surveillance of land and sea borders, checks at border crossing points, deployment as document experts, the combatting of international auto theft, participation in the registration and debriefing of irregular migrants in Hotspots (Italy and Greece) and coast guard tasks (in particular sea rescue) (Deutscher Bundestag, 2018c).

German staff is involved in FRONTEX missions in Spain, Italy, Greece and Bulgaria. For 2019, participation in missions in Albania, Montenegro, Kosovo and Serbia is planned (ibid.). The legal basis of these deployments is Regulation (EU) 2016/1624 of the European Parliament and the Council of 14 September 2016.

The German government explained it in this way:

> In the future, operational cooperation will be possible with third countries not bordering the European Union. Cooperation will be based on a status agreement between the EU and the third country concerned. Important elements will be, for example, an improved exchange of information and greater cooperation on repatriations (Deutscher Bundestag, 2018c, p. 5.).

The federal government supports a major increase in FRONTEX personnel, up to a “Standing Corps” of 10,000 persons (Deutscher Bundestag, 2019). This expansion of FRONTEX is also supposed to strengthen German externalization policies in the field of migration. As the German government explains,

> The strong goal is to strengthen FRONTEX in favour of better and more effective management of external borders, including for the control of illegal migration and better coordination of return activities. Increasing the effectiveness of the European external border management system will also play a role in returning to a Schengen Area without temporary internal border controls (Deutscher Bundestag, 2019, p. 3).

### 6.5.4 Cooperation among Subnational Actors

After the migration movements of 2015 that were perceived as a “refugee crisis”, policymakers argued that there was a need for closer cooperation in the field of migration management on a national scale was to provide a coherent response to the new situation. As mentioned above, this cooperation was described as an “inter-ministerial approach”, considered a “paradigm shift” in the light of the migration of the developments of 2015. An inter-ministerial working group on the topic of migration under the lead of the Interior Ministry was subsequently set up on the federal level.

In a similar vein, officials explained that the cooperation between federal state and state governments, which had initially been pervaded by conflict, improved significantly when migration was understood as a common challenge in the period following the so-called “refugee crisis”.

The return process involves several different actors. Readmissions from Germany are carried out by various police forces. While some of them are carried out by the German states, there are also national collective deportations coordinated by the Federal Police (often in cooperation with local police units) as well as EU collective deportations. In 2016, 53.1% of all deportations from Germany were national collective deportations. In the same year, Germany took the lead role in more than 50% of EU collective deportations that it was involved in itself (Flüchtlingsrat Niedersachsen, 2017).

Due to the federal structure of Germany, return practices vary within different states depending on the federal government policies. Since 2015, there have also been efforts to improve coordination among federal and state actors with respect to returns. While expert meetings between the federal

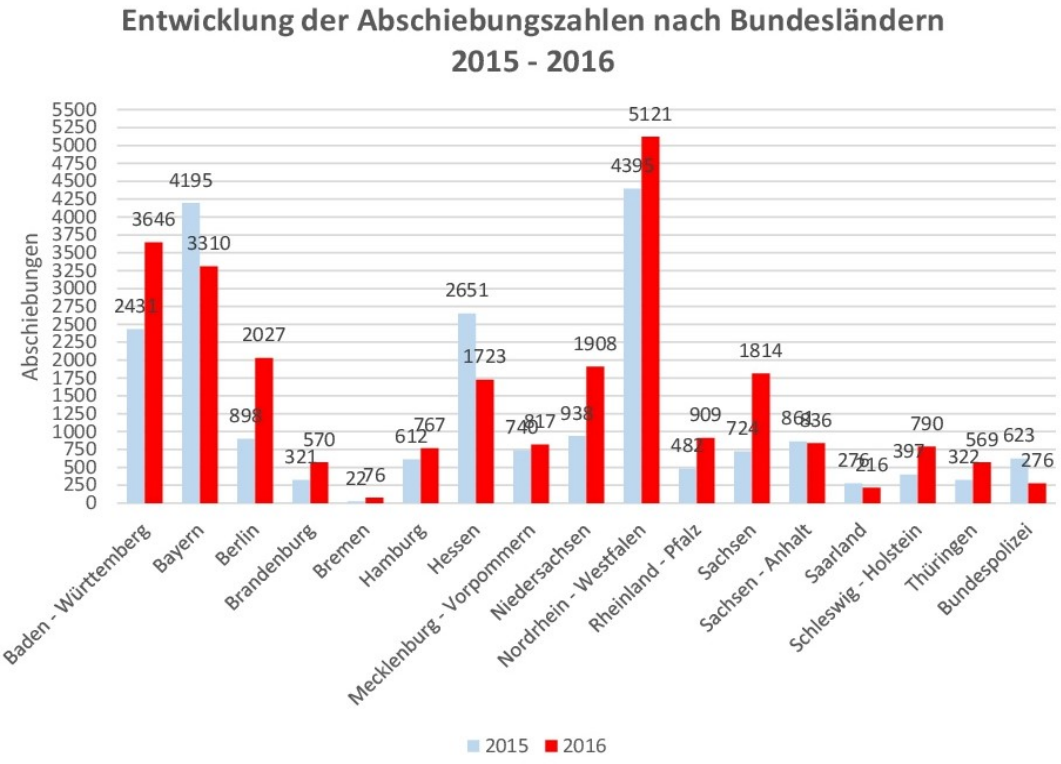
and state governments used to take place every three or six months via the "AG-Rück" working group, cooperation eventually became daily business. To further improve this coordination, the Centre for Return Assistance (*Zentrum zur Unterstützung der Rückkehr, ZUR*) was created in 2017 (BMIBH, 2017). While the states are responsible for the termination of residency, the federal ministry is charged with speeding up readmission procedures:

> We feel responsible, although we are not responsible in the legal sense. And, so to speak, we chase after the cases and make sure that the person who is really responsible does his or her job quickly and properly (Interview F).

Still, the execution of deportations differs significantly within the states. In some states, the State Reception Authority (*Landes-Aufnahme-Behörde*) or the reception centres are directly involved in the deportation process, employing their own staff. In Lower Saxony, the State Reception Authority e.g. employs temporarily employed "administrative execution officers" who only receive a brief training before executing deportations. The police are only involved if resistance against the deportation operation is expected.

The following figures reveal the differences in deportation practices in Germany's federal states:

***Figure 3*** **– Numbers of Deportations according to Germany's States**




Source: Flüchtlingsrat Niedersachsen, 2017

In the "voluntary return sector", cooperation between the different ministries has also deepened, and NGOs and the International Organization for Migration (IOM) are also involved. As one official explained,

> There is a Germany component where we offer, for example, measures to prepare for return, where we work very intensely with the structures of the Ministry of the Interior – i.e. BAMF and the state interior ministries or state social ministries, depending on who is responsible for migration. We also talk to IOM about networking these approaches. We have appointed so-called "reintegration scouts" that provide information with the return counselling centres in the states and advice on reintegration options in the country of origin, because the return counselling centres are often purely a support facility for applying for this exit assistance.… This department-coherent approach – I would say that we live it. This can also be seen in staff assignments – there is a GIZ employee at the BAMF in the Department for Voluntary Return. These reintegration scouts are not only with civil society return counselling centres – i.e. AWO, Diakonie, Rafaels Werk – but also with government agencies (Interview F).

## 6.6 Critical Views on Germany's Border Enforcement Implementation

### 6.6.1 Externalization of Responsibility

While the "refugee crisis" has been used as an opportunity to deepen Europeanization, the current model of Europeanization is nevertheless characterized by the strengthening of the executive and rising de-democratization (Kasparek, 2018). The aforementioned European Externalization Policy, which has been strongly driven by the German state, has been heavily criticized. One German NGO, Pro Asyl, stated,

> According to the motto "Out of sight, out of mind", Europe's policy of externalization aims to invisibilize refugees and migrants, the rights violations committed against them and the actual causes of flight and expulsion (Pro Asyl, 2016).

NGOs argue that military dictatorships have been deliberately strengthened through this cooperation in the field of border security. At the same time, the externalization of border protection has also led to the externalization of responsibilities regarding human rights violations, especially when European migration management is already enforced in countries of origin or in transit countries such as Niger and Mali. Several incidents have been documented where the involvement of foreign police forces and militias in border protection missions has led to the death of refugees, in particular through the operations of militias from the Libyan Coast Guard (Forensic Oceanography, 2018). The researchers, Maurice Stierl and Sandro Mezzadra, have talked about the development of a "refoulement industry" in the Central Mediterranean Sea (Stierl, Mezzadra, 2019). Other authors have critically analysed and pointed out how development cooperation is co-opted to prevent irregular migration and ensure border security in third countries (cf. Gerloff, 2018).

### 6.6.2 Renationalization

Parallel to the externalization policies, a renationalization of German border policies has developed (Schmidt-Sembdner, 2018). The reintroduction of border controls within the Schengen Area serves as a countermovement to the common Europeanization process opposing the idea of a shared zone of free movement and economic cooperation. The border security measures taken on the German border with Austria in particular have been heavily criticized (Pro Asyl, 2015). The returns of migrants to Greece based on an administrative police arrangement are also questionable from a legal perspective. As Hruschka (2019) noted, one recent decision by the European Court of Justice had

“made it clear that the ‘fiction of non-entry’ was inapplicable’ to EU-internal borders, and that the measures on the German border were unlawful.

### 6.6.3 The Rise of Detention

Refugee Councils and NGOs have been deeply concerned about the rising number of pre-removal detention facilities all over Germany. They have critically noted that detention is considered an appropriate method when carrying out deportations, and that both numbers of and capacities for detention are growing (Öztürkyilmaz, 2019). Moreover, they have stressed that the conditions of detention are in some places – such as the detention centre of Ingelheim – deteriorating e.g. in terms of reduced courtyard recreation time and security construction measures. The medical treatment has been criticized as inadequate, and many detainees do not have legal representatives (Andrae, 2019).

Detention orders have often been found to be illegal. The “Beratung in Abschiebehaft” [Advice in Deportation Custody] project established by the Refugee Council of Lower Saxony found that in 47% of 124 cases in the period of August 2016 to July 2017, detention had been imposed unlawfully. The “Hilfe für Menschen in Abschiebehaft Büren e.V.” [Help for Human Beings in Deportation Custody Büren Assn.] association found that between May 2015 and December 2017, 60% of detention orders were revoked as unlawful during the appeals process (Öztürkyilmaz, 2019).

### 6.6.4 Expanding Deportations

The rising numbers and rigorous methods of deportations as well as the extension of destination countries for deportations have also been strongly criticized.

The call from the German Chancellor for a “national effort to increase deportations” from 2017 has provoked strong counter reactions among civil society and NGOs. It has since been pointed out that illegal deportations have become more and more frequent and, in some cases, deportees have even had to be returned back to Germany after their deportation because it was found to be unlawful by courts. Furthermore, deportations are often carried out in the middle of the night without prior notifications, and there have even been cases where people have been deported directly out of hospitals, schools or kindergartens (Pro Asyl 2018c).

One particularly controversial aspect concerns collective deportations to Afghanistan, a country for which the Federal Foreign Office of Germany has itself issued travel warnings (Auswärtiges Amt, 2019b). There have been cases of people who were persecuted in Afghanistan after their deportation from Germany, managed to flee again, and are now stranded in Greece (Pro Asyl, 2018a).

Migrant solidarity movements, Refugee Councils, churches and NGOs who have criticized the deportation practices warn that their work is being put under increasing political pressure. They have been labelled as an “anti-deportation industry” by a politician from the conservative government, and legal proceedings have been opened against pastors providing church asylum (Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche, 2019). Recently, the Ministry of the Interior proposed an “Orderly Return Act” (*Geordnetes-Rückkehr-Gesetz*) (BMIBH, 2019b) that would provide for criminal sanctions if the date of a deportation is disclosed to a deportee by a state official. Refugee Councils and law practitioners therefore speak about the criminalization of consultation practices (Pichl, 2019).

# 7. Conclusion

The Federal Republic of Germany occupies a hegemonic position within the European Union, a claim that not only holds true concerning migration and border controls, but also for other, unrelated policy areas. For this reason, we can observe a high level of correspondence between EU and national legislation, and often, German legislation is transmitted to the European level through the political process of the EU, particularly through the MHA Council.

Generally, Germany is a strong driving force of the EU externalization policy. The securitized perspective on migration prevalent in EU policy and legislation can thus also be traced to German preoccupations with migration. As we have shown in the key developments since 2011 – and which could have well been extended back into the 1990s – migration has not simply been an ever-present issue in the national political debate. Rather, specific and highly heterogeneous migratory movements are connected to Germany, and thus motivate the presence of the political issue, and the prominence of restrictive policies in Germany.

This nexus between the movements of migrations and policies aiming to control them is especially evident in the material and analysis we presented in the section on narratives. There exists a dominant narrative conceptualizing border security as an essential part of an integrated migration management approach. This approach is deemed even more necessary after the events of 2015, which are perceived as a crisis that pose a threat to the state. However, there is a tension concerning the precise direction of the integrated approach, as the discourse vacillates between on the one hand favouring national border controls and on the other hand Europeanized border controls at the EU-external borders and beyond. Generally, discourses showed a strong goal to conduct speedy procedures and enforce readmissions. The development discourse plays into the discourse of border management especially in the field of flight cause reduction and the implementation of externalization, voluntary return and reintegration measures.

On the operational level, German policies are also closely in line with EU legislation and policy. At the level of pre-entry measures, Germany has implemented a highly restrictive visa policy and relies on the effect of carrier sanctions to reduce the numbers of irregular entries. Following the summer of migration, border controls were reintroduced at the border with Austria, and since then, the number of expulsions and refusal of entries has continued to rise. This has generally been permitted by the Commission. Detention of migrants and deportations have been more strictly carried out, detention capacities have been expanded and the number of both deportations and “voluntary returns” have been rising.

Germany is deeply involved in implementing border controls at a variety of levels: in third countries, along the southern external EU border, within the Schengen Area through multilateral police cooperation, along Germany’s border and through surveillance mechanisms focused on domestic German territory. In addition, a large number of German police forces operate abroad as liaison officers and in EU and UN police missions, as well as in FRONTEX operations.

Given the findings of this report, we propose the following policy recommendations:

- Laws, policies and their implementation must adhere to international, domestic and human rights regulations.
- Legal ways to entering German territory must be augmented and practical impediments must be removed in order to provide the possibility for refugees to apply for asylum.
- National border controls within the Schengen Area should be closely examined in terms of legality and proportionality, and thorough monitoring must be implemented to ensure that

procedural guarantees within the framework of the non-refoulement requirements are strictly recognized at the German borders and beyond.

- Cooperation with third countries in the context of externalization policies must be ended immediately if their border security activities violate international and/or human rights law.
- The appropriateness and legality of the rising detention figures must be critically examined. Administrative detention should be strictly limited and only be used as a last resort.
- Returns and readmissions from Germany should be strictly limited and abolished if countries are unsafe for the respective individual. The post-deportation situation must be closely monitored to ensure that returnees can live a safe and dignified life after their return.

# 8. Appendix

***Table 9* – Interviews**

| Number | Institution | Department |
|---|---|---|
| 1 | **Chancellor's Office** | Refugee Department |
| 2 | | Office for Integration |
| 3 | **Federal Ministry of the Interior, Building and Community** | Migration, Refugees, European Harmonization |
| 4 | | Return |
| 5 | | B: Affairs of the Federal Police |
| 6 | | B2: Leadership and Operational Matters of the Federal Police |
| 7 | | B4: Border Police Affairs |
| 8 | **Federal Ministry for Economic Cooperation and Development** | Department of Flight and Migration, Crisis Prevention and Management – Section Return/Reintegration |
| 9 | **Federal Ministry of Labour and Social Affairs** | Migration and Integration Policy Unit |
| 10 | **German Parliament (Bundestag)** | Parliamentary Group Die Linke, focus area of migration |
| 11 | | Parliamentary Group Die Linke, focus area of migration |
| 12 | **Ministry of the Interior of Lower Saxony** | Department 11: Central Refugee Reception, subject-specific supervision Lower Saxony State Reception Authority |
| 13 | **Refugee Reception Authority Lower Saxony** | Management |
| 14 | **Lower Saxony Refugee Council** | Management |
| 15 | | Procedural advisor for migrants in deportation detention |
| 16 | | Procedural advisor for migrants in deportation detention |
| 18 | **Hessian Refugee Council** | Management |
| 19 | **Pro Asyl (NGO)** | Department of Legal Policy |
| 20 | | Expert Round Table |

***Table 10* – Abbreviations of Cited Interviews**

| Lettering | Date | Place | Number of People |
|---|---|---|---|
| **A** | 25.09.2018 | Berlin | 1 |
| **B** | 28.09.2018 | Berlin | 1 |
| **C** | 30.11.2018 | Frankfurt | 1 |
| **D** | 03.12.2018 | Berlin | 2 |

| | | | |
|---|---|---|---|
| **E** | 19.12.2018 | Berlin | 4 |
| **F** | 09.01.2019 | Berlin | 1 |

**Agreements Facilitating the Return of Aliens Subject to Exit Obligations**
Status: June 2018 (Source: BMIBH, 2018b)

***Table 11* – Germany's Bilateral Readmission Agreements**

**State Signature Date of Entry into Force Source**

| Staat | Unterzeichnung | Inkrafttreten | Fundstelle |
|---|---|---|---|
| **Albanien** | 18.11.2002 | 01.08.2003 | BGBl. II 2003, Nr. 7, S. 194 |
| **Algerien** | 14.02.1997 | 12.05.2006 (Anwendung seit 01.11.1999) | BGBl. II 2004, Nr. 1, S. 16 |
| **Armenien** | 16.11.2006 | 20.04.2008 | BGBl. II 2006, Nr. 33, S. 1405<br>BGBl. II 2008, Nr. 12, S. 469 |
| **Benelux** | 17.05.1966 | 01.07.1966 | BAnz. 1966, Nr. 131 |
| **Bosnien u. Herzegowina** | 20.11.1996 | 14.01.1997 | BGBl. II 1997, Nr. 12, S. 742 |
| **Bulgarien** | 01.02.2006 | 01.05.2006 | BGBl. II 2006, Nr. 8, S. 259 |
| **Dänemark** | 15.05.1954 | 01.06.1954 | Banz. 1954, Nr. 120 |
| **Estland** | 16.12.1998 | 01.03.1999 | BGBl. II 2000, Nr. 12, S. 570 |
| **Frankreich** | 10.02.2003 | 01.07.2005 | BGBl. II 2006, Nr. 4, S. 99 ff. |
| **Georgien** | 06.09.2007 | 01.01.2008 | BGBl. II 2007, Nr. 40, S. 1962 |
| **Guinea** | 05.01.2018, noch nicht in Kraft getreten | vorl. Anwendung seit 05.01.2018 | |
| **Kasachstan** | 10.12.2009 | | BGBl. II 2010, Nr. 3; S. 63 |
| **Kroatien** | 08.03.2012 | 14.11.2012 | BGBl. II 2012, Nr. 35 S. 1340 |
| **Kosovo** | 14.04.2010 | 01.09.2010 | BGBl. II 2010, Nr. 9, S. 259 |
| **Lettland** | 16.12.1998 | 01.02.1999 | BGBl. II 2000, Nr. 12, S. 579 |
| **Litauen** | 16.12.1998 | 01.02.2000 | BGBl. II 2000, Nr. 12, S. 588 |
| **Marokko** | 22.04.1998 | 01.06.1998 | BGBl. II 1998, Nr. 23, S. 1148 |
| **Mazedonien (EJRM)** | 24.06.2002 | 01.05.2004 | BGBl. II 2002, Nr. 38, S. 2526 |
| **Norwegen** | 18.03.1955 | 18.03.1955 | Banz. 1955, Nr. 84 |
| **Österreich** | 16.12.1997 | 15.01.1998 | BGBl. II 1998, Nr. 3, S. 80 |
| **Polen** (Warschauer Protokoll über Festlegung zu techn. Bedingungen) | 29.09.1994 | 29.09.1994 | BGBl. II 1994, Nr. 60, S. 3775 |
| **Rumänien** | 24.09.1992 | 01.11.1992 | BGBl. II 1993, Nr. 8, S. 220 |
| **Rumänien** (Rückübernahme von Staatenlosen) | 09.06.1998 | 01.02.1999 | BGBl. II 1999, Nr. 7, S. 172 |

| | | | |
|---|---|---|---|
| **Schweden** | 15.05.1954 | 01.06.1954 | Banz. 1954, Nr. 120 |
| **Schweiz** | 20.12.1993 | 01.02.1994<br>(Anwendung seit 01.02.1996) | BGBl. II 1996, Nr. 26, S. 945 |
| **Serbien** | 16.09.2002 | 01.04.2003 | BGBl. II 2002, Nr. 41, S. 2762 |
| **Slowakei** | 19.02.2003 | 20.05.2003 | BGBl. II 2003, Nr. 12, S. 446 |
| **Südkorea** | 10.12.2004 | 22.03.2005 | BGBl. II 2005, Nr. 6, S. 193 |
| **Syrien** | 14.07.2008 | 03.01.2009 | BGBl. II 2008, Nr. 21, S. 811 |
| **Tschechien** | 03.11.1994 | 01.01.1995 | BGBl. II 1995, Nr. 5, S. 133 und 141 |
| **Ungarn** | 01.12.1997 | 01.01.1999 | BGBl. II 1999, Nr. 5, S. 90 |
| **Vietnam** | 21.07.1995 | 21.09.1995 | BGBl. II 1995, Nr. 27, S. 743 |

***Table 12*** **– Germany's Multilateral Readmission Agreements**

| | | | |
|---|---|---|---|
| **Multilaterale Rückübernahmeabkommen Deutschlands** Abkommen zwischen **Belgien**, **Deutschland**, **Frankreich**, **Italien**, **Luxemburg**, **Niederlande** und **Polen** | 29.03.1991 | 01.05.1991 | BGBl. II 1993, Nr. 23, S. 1099 |

**Table 13 –** ***Transit Agreements (Forced Readmission)***

**Countries** **Signature** **Date of Entry into Force** **Source**

| **Länder** | **Unterzeichnung** | **Inkrafttreten (vorl. Anwendung)** | **Fundstellen** |
|---|---|---|---|
| **Albanien** (Durchbef. Jugosl. Staatsangeh. In das Kosovo) | 27.01.2000 | (01.04.2000) | |
| **Mazedonien (EJRM)** (Durchbef. Jugosl. Staatsangeh. In das Kosovo) | 11.10.1999 | (11.10.1999) | |
| **Polen** (Durchbeförderung von Dritt-staatsangehörigen) | 23.03.2006 | 01.08.2006 | |
| **Bulgarien** (Durchbeförderung von Dritt-staatsangehörigen) | 07.11.1996 | 30.04.1997 | BGBl. II 1998, Nr. 44, S. 2725 |

***Table 14* – Transit Agreements (Voluntary Return)**

**Countries** **Signature** **Date of Entry into Force** **Source**

| **Länder** | **Unterzeichnung** | **Inkrafttreten (vorl. Anwendung)** | **Fundstellen** |
|---|---|---|---|
| **Mazedonien (EJRM)** (Durchreise von jug. Staatsangeh. In das Kosovo) | 11.10.1999 | (11.10.1999) | |
| **Albanien** (Durchreise jug. Staatsangeh. In das Kosovo) | 27.01.2000 | (01.04.2000) | |
| **Kroatien, Österreich, Schweiz, Slowenien** (Durchreise+ Durchbeförderung von bosn. Kriegsflüchtlingen nach BiH) | 29.05.1996 | 01.07.1996 | BGBl. II 1996, Nr. 49, S. 2656 |
| **Albanien** (nur bzgl. Pers. Alb. Herkunft), **BiH, Italien, Kroatien, Österreich, Schweiz, Slowenien, Un-garn, Niederlande, Lu-xemburg** (Durchreise nach Jugoslawien) | 21.03.2000 | 20.04.2000<br>11.08.2001<br>Beitritt NL, LUX | BGBl. II 2001, Nr. 15, S. 536 |

*Table 15* – **Readmission Agreements with the European Union**

**State** **Signature** **Date of Entry into Force** **Source**

| **Staat** | Unterzeichnung | Inkrafttreten | Fundstelle |
|---|---|---|---|
| **Albanien** | 14.04.2005 | 01.05.2006 | Amtsblatt der Europäischen Union Nr. L 124 v. 17/05/2005 S. 0021-0040 |
| **Armenien** | 19.04.2013 | 01.01.2014 | Amtsblatt der Europäischen Union Nr. L 289/13 v. 31.10.2013 S. 0013-0029 |
| **Aserbaidschan** | 28.02.2014 | 01.09.2014 | Amtsblatt der Europäischen Union Nr. L 128 v. 30/04/2014 S. 0017-0042 |
| **Bosnien-Herzegowina** | 18.09.2007 | 01.01.2008 | Amtsblatt der Europäischen Union Nr. L 334 v. 19/12/2007 S. 0066-0083 |
| **Cabo Verde** | 18.04.2013 | 01.12.2014 | Amtsblatt der Europäischen Union Nr. L 282 v. 24/10/2013 S. 0015-0034 |
| **Georgien** | 22.11.2010 | 01.03.2011 | Amtsblatt der Europäischen Union Nr. L 44/1 v. 18/02/2011 |
| **Hongkong** | 27.11.2002 | 01.03.2004 | Amtsblatt der Europäischen Union Nr. L 17 v. 24/01/2004 S. 0025-0039 |
| **Kasachstan** | am 10.12.2009 abgeschlossen, noch nicht in Kraft getreten | | |
| **Macao** | 13.10.2003 | 01.06.2004 | Amtsblatt der Europäischen Union Nr. L 143 v. 30/04/2004 S. 0099-0115 |
| **Mazedonien (ERJM)** | 18.09.2007 | 01.01.2008 | Amtsblatt der Europäischen Union Nr. L 334 v. 19/12/2007 S. 0007-0024 |
| **Moldau** | 10.10.2007 | 01.01.2008 | Amtsblatt der Europäischen Union Nr. L 334 v. 19/12/2007 S. 0149-0167 |
| **Montenegro** | 18.09.2007 | 01.01.2008 | Amtsblatt der Europäischen Union Nr. L 334 v. 19/12/2007 S. 0026-0044 |
| **Pakistan** | 26.10.2009 | 01.12.2010 | Amtsblatt der Europäischen Union Nr. L 287 v. 4/11/2010 S. 0052-0067 |
| **Russische Föderation** | 25.05.2006 | 01.06.2007 | Amtsblatt der Europäischen Union Nr. L 129 v. 17/05/2007 |

| | | | |
|---|---|---|---|
| | | | S. 0040-0060 |
| **Serbien** | 18.09.2007 | 01.01.2008 | Amtsblatt der Europäischen Union Nr. L 334 v. 19/12/2007 S. 0046-0064 |
| **Sri Lanka** | 04.06.2004 | 01.05.2005 | Amtsblatt der Europäischen Union Nr. L 124 v. 17/05/2005 S. 0043-0060 |
| **Türkei** | 16.12.2013 | 01.10.2014 | Amtsblatt der Europäischen Union Nr. L 134 v. 07/05/2014 S. 0003-0027 |
| **Ukraine** | 18.06.2007 | 01.01.2008 | Amtsblatt der Europäischen Union Nr. L 332-07 v. 18/12/2007 |

***Table 16*** **– Bilateral Implementation Protocols of EU Readmission Agreements**

**State** **Signature** **Date of Entry into Force** **Source**

| **Staat** | **Unterzeichnung** | **Inkrafttreten** | **Fundstelle** |
|---|---|---|---|
| **Bosnien und Herzegowina** | 15.01.2014 | 5.12.2014 | BGBl. II 2014, Nr. 5, S. 156 |
| **EJR Mazedonien** | Notenwechsel: 17.05.2013/ 26.08.2013 | 13.09.2014 | BGBl. II 2014, Nr. 11, S. 314 |
| **Hongkong** | 28.10.2004 | 19.01.2006 | |
| **Moldau** | 21.09.2010 | 13.12.2010 | BGBl. II 2011, Nr. 2, S. 70 |
| **Montenegro** | 20.04.2012 | 22.01.2013 | BGBl. II 2012, Nr. 23, S. 721 |
| **Serbien** | 29.03.2011 | 22.11.2011 | BGBl. II 2011, Nr. 34, S. 1367 |
| **Russische Föderation** | 19.07.2011 | 21.02.2012 | BGBl. II 2011, Nr. 25, S. 945 |

***Table 17*** **– EU Mandates for Readmission Agreements – Ongoing Negotiations**

**State** **Mandate Received** **First Round of Negotiations** **Second Round of Negotiations**

| **Staat** | **Mandat erhalten** | **Erste Verhandlungsrunde** | **Letzte Verhandlungsrunde** |
|---|---|---|---|
| **Marokko** | September 2000 | April 2003 | 20. Januar 2015 |
| **Weißrussland** | 28. Februar 2011 | 30. Januar 2014 | 11. März 2015 |
| **Tunesien** | 15. Dezember 2014 | 12. Oktober 2016 | 12. Oktober 2016 |
| **Nigeria** | 20. September 2016 | 24.-25. Oktober 2016 | 24.-25. Oktober 2016 |

***Table 18*** **– Open EU Mandates for Readmission Agreements – Negotiations not yet Begun**

| **Staat** | **Mandat erhalten** |
|---|---|
| **China** | November 2000 |
| **Algerien** | November2011 |
| **Jordanien** | 11. April 2016 |
| **Belarus** | 28. Februar 2011 |

# 9. Literature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