



# Germany: The Development of Migration and Citizenship Law in Postwar Germany

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# Germany: The Development of Migration and Citizenship Law in Postwar Germany

*Jenny Gesley*  
*Foreign Law Specialist*

**SUMMARY** Postwar migration into Germany started in the 1950s with ethnic German resettlers who were fleeing discrimination or persecution in the former communist “Eastern block” on the one hand, and actively planned labor migration into Germany on the other. The Act on Foreigners of 1965 and the Act on Foreigners of 1990 regulated only the entry into Germany and the residence status of foreigners.

The rising number of asylum seekers and immigrants in the late 1980s made migration policy a focus of the federal elections in 1990. The discussion resulted in the “asylum compromise” in 1992, which amended the right to asylum for political persecution by introducing the concepts of safe third country and safe country of origin, and the airport procedure. In 2000, the lack of skilled workers in the IT-sector sparked another debate on reforming German migration policy, controlled migration, and Germany as an “immigration country,” which culminated in the adoption of the Migration Act in 2005. The Migration Act overhauled German migration policy and placed the focus on long-term residency for migrants, in particular for skilled workers, and on integration measures. The latest amendment to the migration framework, the Integration Act, entered into force in August 2016.

## I. Introduction

Germany has generally not been considered a “classical immigration country.” On the contrary, it is often classified as a typical example of a “labor recruiting country.”<sup>1</sup> Although the German government was aware that a large number of guest workers and foreigners in general opted to stay in Germany instead of returning to their home country, it was reluctant to admit that Germany had in fact become an immigration country. The integration of migrants was therefore lacking and there was no clear path to citizenship even for long-term resident migrants or their children. It was not until 2005 that the government formally recognized that Germany had indeed become an “immigration country.”

In 2015, Germany’s population increased by 978,000, to a total population of 82.2 million, a 1.2% increase. The population growth in 2015 represented the largest growth in population Germany has experienced since 1992 and resulted mainly from an increase in immigration.<sup>2</sup> In

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<sup>1</sup> RITA CHIN, THE GUEST WORKER QUESTION IN POSTWAR GERMANY 25 (2007).

<sup>2</sup> Press Release no. 295/16, Statistisches Bundesamt [Destatis] [Federal Statistical Office], 82,2 Millionen Einwohner am Jahresende 2015 – Bevölkerungszunahme durch hohe Zuwanderung [Population at 82.2 million at the End of 2015 – Population Increase Due to High Immigration] (Aug. 26, 2016), [https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2016/08/PD16\\_295\\_12411pdf.pdf?\\_\\_blob=publicationFile](https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2016/08/PD16_295_12411pdf.pdf?__blob=publicationFile), archived at <http://perma.cc/7Z96-PLMZ>.

fact, immigration to Germany was higher than ever before with a total of 2.14 million people immigrating to Germany in 2015, representing an increase of 46% compared to 2014. Forty-five percent of immigrants originated from Member States of the European Union (EU), 13% from other European countries, 30% from Asia, and 5% from an African country.<sup>3</sup> Without immigration, Germany's population would have declined.

Slightly over seventeen million people in Germany—accounting for 21% of the country's total population—have a “migrant background.” This represents a 4.4% increase compared to a year earlier.<sup>4</sup> A person with a “migrant background” is defined by the German Federal Statistical Office (Destatis) as someone who was not born a German citizen or who has at least one parent who was not born with German citizenship. This includes foreigners, naturalized Germans, ethnic German resettlers, and descendants of these groups.<sup>5</sup> A “foreigner” is defined as anyone who is not German within the meaning of article 116, paragraph 1 of the German Basic Law, the country's Constitution.<sup>6</sup> The definition includes anyone who only has a foreign passport but excludes people with dual citizenship, stateless persons, those with uncertain citizenship, and ethnic German resettlers.

## II. Postwar Migration into West Germany

Significant postwar migration into West Germany started in the 1950s. On the one hand, refugees, expellees, and emigrants were allowed to immigrate to West Germany because of their German heritage and because they were fleeing discrimination or persecution in the communist “Eastern block” (ethnic German resettlers).<sup>7</sup> On the other hand, there was actively planned labor migration into West Germany (guest workers) to address the labor shortage that resulted from the economic boom.

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<sup>3</sup> Press Release no. 246/16, Destatis, 2015: Höchststände bei Zuwanderung und Wanderungsüberschuss in Deutschland [2015: All-Time High for Immigration and Migration Surplus in Germany] (July 14, 2016), [https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2016/07/PD16\\_246\\_12421.pdf.pdf?\\_blob=publicationFile](https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2016/07/PD16_246_12421.pdf.pdf?_blob=publicationFile), archived at <http://perma.cc/3H9Z-RK2T>.

<sup>4</sup> Press Release no. 327/16, Destatis, Bevölkerung mit Migrationshintergrund auf Rekordniveau [Population with Migrant Background at a Record High] (Sept. 16, 2016), [https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2016/09/PD16\\_327\\_122.pdf.pdf?\\_blob=publicationFile](https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2016/09/PD16_327_122.pdf.pdf?_blob=publicationFile), archived at <http://perma.cc/6TRJ-J4FM>.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW], May 23, 1949, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 1, art. 116, para. 2, unofficial English translation at [http://www.gesetze-im-internet.de/englisch\\_gg/basic\\_law\\_for\\_the\\_federal\\_republic\\_of\\_germany.pdf](http://www.gesetze-im-internet.de/englisch_gg/basic_law_for_the_federal_republic_of_germany.pdf), archived at <http://perma.cc/55HB-NZ2Z>; Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet (Ausländergesetz - AuslG) [Act on Foreigners], July 9, 1990, BGBl. I at 1354, 1356, § 1, para. 1, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl190s1354.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl190s1354.pdf), archived at <http://perma.cc/3HEY-A8PH>.

<sup>7</sup> BASIC LAW, art. 116, para. 2; Gesetz über die Angelegenheiten der Vertriebenen und Flüchtlinge (Bundesvertriebenengesetz - BVFG) [Federal Act on Expellees], May 19, 1953, repromulgated on Aug. 10, 2007, BGBl. I at 1902, as amended, <http://www.gesetze-im-internet.de/bundesrecht/bvfg/gesamt.pdf>, archived at <http://perma.cc/R5M2-DZQW>.

## A. Resettlement of Ethnic Germans

Ethnic German resettlers are considered Germans within the meaning of article 116, paragraph 1 of the German Basic Law.<sup>8</sup> They are defined as people of German heritage from the successor states of the former Soviet Union and from other Eastern European States, as well as China.<sup>9</sup> Further requirements for acquiring “ethnic German resettler” status are that they were born before January 1, 1993; resided in the described territories either since the end of World War II, since March 31, 1952, or since their birth if a parent met one of the two record dates; left the described territories after December 31, 1992; submitted an application for recognition as an “ethnic German resettler”; and took up permanent residence in Germany within six months of leaving the designated territories.<sup>10</sup> People who are not from one of the successor states of the Soviet Union must also prove that they suffered disadvantages or discrimination because of their German heritage.<sup>11</sup>

Once someone has been recognized as an “ethnic German resettler,” he or she is automatically awarded German citizenship. Ethnic German resettlers have a legal right to attend free integration classes, which include language courses and courses about the German legal order, culture, and history.<sup>12</sup>

Since 1950, a total of 4.5 million ethnic German resettlers, including family members, have immigrated to Germany. The number includes ethnic German settlers who left the designated territories before the record date of January 1, 1993.<sup>13</sup> The numbers have been declining sharply since 2006. In 2014, Germany received 4,215 ethnic German resettlers.<sup>14</sup>

## B. Guest Workers

In 1955, West Germany signed the first labor recruitment treaty with Italy, which became a model for later agreements.<sup>15</sup> Several other bilateral labor recruitment treaties were concluded

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<sup>8</sup> Federal Act on Expellees § 4, para. 3; Basic Law, art. 116, para. 1.

<sup>9</sup> *Id.* §§ 4, 6.

<sup>10</sup> *Id.* § 4, para. 1.

<sup>11</sup> *Id.* § 4, para. 2.

<sup>12</sup> *Id.* § 9.

<sup>13</sup> Bundesamt für Migration und Flüchtlinge [BAMF] [Federal Office for Migration and Refugees], (Spät-)Aussiedler in Deutschland. Eine Analyse aktueller Daten und Forschungsergebnisse [Ethnic German (Re)settlers in Germany. An Analysis of Current Data and Research Results] 7 (Dec. 10, 2013), [http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Forschungsberichte/fb20-spaetaussiedler.pdf;jsessionid=707439FAB18258B0B9FBFB62085AE8C2.1\\_cid359?\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Forschungsberichte/fb20-spaetaussiedler.pdf;jsessionid=707439FAB18258B0B9FBFB62085AE8C2.1_cid359?_blob=publicationFile), archived at <http://perma.cc/P7LS-JBXX>.

<sup>14</sup> *Migration of German Citizens between Germany and Foreign Countries 1991 to 2015*, DESTATIS, <https://www.destatis.de/EN/FactsFigures/SocietyState/Population/Migration/Tables/MigrationGerman.html> (last visited Jan. 11, 2017), archived at <http://perma.cc/6TR5-QNBF>.

<sup>15</sup> Vereinbarung zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Italienischen Republik über die Anwerbung und Vermittlung von italienischen Arbeitskräften nach der Bundesrepublik Deutschland [Agreement Between the Government of the Federal Republic of Germany and the Government of the Italian Republic on the Recruitment and Placement of Italian Workers in the Federal Republic of Germany]

with Spain, Greece, Turkey, Morocco, Portugal, Tunisia, and the former Yugoslavia in the years between 1955 and 1968.<sup>16</sup> The guiding principle of the migration policy for guest workers in the 1950s and 1960s was a “rotation principle.” Migrant guest workers were expected to stay in Germany for a definite period of time and then return to their countries of origin once they were no longer needed.<sup>17</sup> As an example of that policy, the labor recruitment treaty with Italy initially provided for one-year work permits.<sup>18</sup> In reality, most guest workers stayed in Germany and were joined by their families.<sup>19</sup>

The labor recruitment programs were discontinued in 1973 due to the economic recession.<sup>20</sup> Guest workers were encouraged to return to their countries of origin, but most decided to stay and applied for visas for themselves and their families. At the end of the 1970s, West Germany first acknowledged the continuing presence of a large number of migrants in the country and started a formal policy of “integration.”<sup>21</sup>

### III. Overview of the Legal Framework

#### A. Act on Foreigners of 1965

The Act on Foreigners of 1965 regulated the entry into Germany as well as the residence status of foreigners.<sup>22</sup> Additional regulations were codified in the Implementing Regulation on the Act on Foreigners.<sup>23</sup> The Act did not specifically address guest workers or ethnic German resettlers. In fact, it did not differentiate at all between the different residence purposes, nor did it address questions of family reunification or social and political rights of foreigners. The courts and the administrative agencies filled in the gaps and developed guidelines and principles for the application of the Act.<sup>24</sup>

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[German-Italian Labor Recruitment Treaty], Dec. 20, 1955, BUNDESANZEIGER [BANZ] [FEDERAL GAZETTE] No. 11/56, Jan. 17, 1956, at 1, <http://www.italiener.angekommen.com/Dokumente/Abkommen.html>, archived at <http://perma.cc/3FMA-USQA>.

<sup>16</sup> Kay Hailbronner, *Die Rechtsstellung von Ausländern in der Bundesrepublik Deutschland* [The Legal Status of Foreigners in the Federal Republic of Germany], in DIE RECHTSSTELLUNG VON AUSLÄNDERN NACH STAATLICHEM RECHT UND VÖLKERRECHT [THE LEGAL POSITION OF ALIENS IN NATIONAL AND INTERNATIONAL LAW] 323, 329 (Jochen Abr. Frowein & Torsten Stein eds., 1987).

<sup>17</sup> CHIN, *supra* note 1, at 3.

<sup>18</sup> German-Italian Labor Recruitment Treaty art. 9, para. 4.

<sup>19</sup> CHIN, *supra* note 1, at 3.

<sup>20</sup> Hailbronner, *supra* note 14, at 329.

<sup>21</sup> CHIN, *supra* note 1, at 10.

<sup>22</sup> Ausländergesetz [Act on Foreigners], Apr. 28, 1965, BGBL. I at 353, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBL&jumpTo=bgbl165s0353.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBL&jumpTo=bgbl165s0353.pdf), archived at <http://perma.cc/ETG7-ELMS>.

<sup>23</sup> Verordnung zur Durchführung des Ausländergesetzes [DVAusIG] [Regulation to Implement the Act on Foreigners], Sept. 10, 1965, BGBL. I at 1341, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBL&jumpTo=bgbl165s1341.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBL&jumpTo=bgbl165s1341.pdf), archived at <http://perma.cc/2HPM-H2KR>.

<sup>24</sup> Hailbronner, *supra* note 14, at 331.

Every foreigner who took up residence in Germany needed to apply for a residence permit.<sup>25</sup> The Act provided that a residence permit should be granted if the “presence of the foreigner does not compromise the interests of the Federal Republic of Germany.”<sup>26</sup> The Federal Constitutional Court held that the term “interests of the Federal Republic of Germany” was not unconstitutionally vague, and was necessary to enable the Foreigners’ Agency to be flexible and react to changes in the economic situation or to changes in development or foreign policy.<sup>27</sup>

Children under sixteen years of age, refugees and displaced foreigners as defined in the Act on the Legal Status of Displaced Foreigners,<sup>28</sup> and foreigners covered under intergovernmental agreements were exempt from a residence permit.<sup>29</sup> Foreigners who had been present in Germany for five years and who were integrated into the economic and social life could apply for an unlimited residence permit.<sup>30</sup>

In addition, the Act on Foreigners of 1965 contained a short section on asylum law. Foreigners who were granted asylum had a legal right to a residence permit.<sup>31</sup> With regard to their legal status, it mostly referred back to the Convention Relating to the Status of Refugees of 1951.<sup>32</sup>

## **B. Law on EEC Residence of 1969**

In 1969, West Germany enacted the Law on European Economic Community (EEC) Residence to implement European Community (EC) law regarding freedom of movement for workers from EEC Member States, freedom of establishment, and freedom to provide services.<sup>33</sup> The rules were *lex specialis* to the general rules for foreigners contained in the Foreigner’s Act.<sup>34</sup> The Act contained provisions on the rights of movement and residence for workers,<sup>35</sup> the rights of entry and residence for their family members,<sup>36</sup> and the right to work. Section 3 codified the legal

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<sup>25</sup> Act on Foreigners § 2, para. 1.

<sup>26</sup> *Id.*

<sup>27</sup> Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], 49 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] [Decisions of the Federal Constitutional Court] 168, 182 et seq.

<sup>28</sup> Gesetz über die Rechtsstellung heimatloser Ausländer im Bundesgebiet [HauslG] [Act on the Legal Status of Displaced Foreigners], Apr. 25, 1951, BGBl. I at 269, as amended, <http://www.gesetze-im-internet.de/bundesrecht/hauslg/gesamt.pdf>, archived at <http://perma.cc/3PAX-XV2E>.

<sup>29</sup> *Id.* § 2, para. 2.

<sup>30</sup> *Id.* § 8, para. 1.

<sup>31</sup> *Id.* § 43.

<sup>32</sup> Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, <http://www.unhcr.org/en-us/3b66c2aa10>, archived at <http://perma.cc/B493-T5DY>.

<sup>33</sup> Gesetz über Einreise und Aufenthalt von Staatsangehörigen der Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft (AufenthG/EWG) [Law on EEC Residence], July 22, 1969, BGBl. I at 927, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl169s0927.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl169s0927.pdf), archived at <http://perma.cc/QV3F-J48W>.

<sup>34</sup> *Id.* § 15.

<sup>35</sup> *Id.* § 1, para. 1, § 2.

<sup>36</sup> *Id.* § 1, para. 2, § 7.

right to a five-year residence permit for persons belonging to a Member State of the EEC as long as the person was gainfully employed. The residence permit could be extended for another five-year period if the person was still employed.<sup>37</sup> In addition, there were similar rules to guarantee mobility of businesses and self-employed persons within the EEC.<sup>38</sup>

In 1970, citizens from EEC Member States made up around 25% of the total number of foreigners present in the Federal Republic of Germany.<sup>39</sup>

### C. Return Assistance Act

In 1983, West Germany enacted the Return Assistance Act.<sup>40</sup> The Act was part of the ongoing effort to encourage guest workers to return to their country of origin. It provided guest workers who came to West Germany as part of a labor recruitment program from a country outside of the EEC with “return assistance” in the amount of 10,500 Deutsche Mark. Requirements were that the guest workers could not be married to a German citizen; lost his or her job because the business or the main components of the business had been shut down or had gone bankrupt; had applied for return assistance by June 30, 1984; had been legally residing in Germany until the date of departure; and had permanently left Germany with his or her family between October 30, 1983, and September 30, 1984.<sup>41</sup> As a way to encourage swift return, the Act provided that if a guest worker did not leave until after January 1, 1984, the amount of the return assistance would be reduced by 1,500 Deutsche Mark for every additional month. No return assistance would be provided after seven months.<sup>42</sup>

Although the total numbers of foreigners dropped slightly, no measurable difference could be observed in the number of repatriations in 1983–1984 compared to previous years.<sup>43</sup>

### D. Act on Foreigners of 1990

The Act on Foreigners of 1990 mainly continued the policy codified in the Act on Foreigners of 1965.<sup>44</sup> It was passed on the premise that Germany was not an immigration country. It therefore

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<sup>37</sup> *Id.* § 3, para. 3.

<sup>38</sup> *Id.* § 1, para. 1, §§ 4–6.

<sup>39</sup> Table 12521-0002, *Foreigners: Germany, Reference Date, Sex, Country Groups/Citizenship*, DESTATIS, <https://www-genesis.destatis.de/genesis/online> (select 1970 as “reference date” and EEC-6 as “country group,” then retrieve value).

<sup>40</sup> Rückkehrhilfegesetz (RückHG) [Return Assistance Act], Nov. 28, 1983, BGBl. I at 1377, [http://www.gesetze-im-internet.de/bundesrecht/r\\_ckhg/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/r_ckhg/gesamt.pdf), archived at <http://perma.cc/44U3-4K3C>.

<sup>41</sup> *Id.* § 1.

<sup>42</sup> *Id.* § 2, para. 2.

<sup>43</sup> TRIADAFILOS TRIADAFILOPOULOS, BECOMING MULTICULTURAL: IMMIGRATION AND THE POLITICS OF MEMBERSHIP IN CANADA AND GERMANY 130 (2012).

<sup>44</sup> Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet (Ausländergesetz - AuslG) [Act on Foreigners 1990], July 9, 1990, BGBl. I at 1354, 1356, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl190s1354.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl190s1354.pdf), archived at <http://perma.cc/3HEY-A8PH>.

mostly codified decisions from the highest courts, introduced a system of different residence permits depending on the residence purpose, and tightened rules on expulsion. Goals of the Act were to provide legal certainty to migrants who were legally residing in Germany and to place limits on immigration from outside the EU. The explanatory memorandum to the Act provided that Germany's capacity to take in immigrants was not unlimited and preference had to be given to immigrants of German heritage, foreigners fleeing political persecution, and EU citizens taking advantage of their freedom of movement. It stated that "Germany would not be able to continue an open and liberal foreigner policy if every time-limited stay resulted in a permanent residence right."<sup>45</sup>

However, the Act on Foreigners of 1990 contained new rules on spousal and family reunification,<sup>46</sup> and on legal rights and naturalization for second-generation immigrants.<sup>47</sup> The children of foreigners who were born in Germany automatically received a temporary residence permit if the mother had such a permit, subject to extension. Once the child became an adult, the residence permit was converted into a permanent residence right.<sup>48</sup>

In addition, naturalization for young people between the ages of sixteen and twenty-three, as well as for immigrants who had been legally residing in Germany for a period of fifteen years, was simplified.<sup>49</sup> The law provided that naturalization requests from young people should in general be granted if they gave up or lost their old citizenship, had not been convicted of a crime, had been legally residing in Germany for eight years, and had gone to school for at least six years.<sup>50</sup> For immigrants who had been legally residing in Germany for fifteen years, the requirements were giving up or losing their old citizenship, no conviction for a crime, and the ability to provide for themselves and their dependents.<sup>51</sup>

Furthermore, the protection of spouses and children of those persecuted for political reasons was expanded and a "grandfather clause" for former asylum seekers whose deportation had been temporarily suspended was introduced.<sup>52</sup>

At the same time, though, the Act tightened the rules for deportation and the removal of foreigners, and expanded the discretion of the foreigners' offices with regard to rescinding residence permits.<sup>53</sup>

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<sup>45</sup> DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT-DRS.] 11/6321, at 41, <http://dipbt.bundestag.de/doc/btd/11/063/1106321.pdf>, archived at <http://perma.cc/86SX-G4XG>.

<sup>46</sup> Act on Foreigners 1990, §§ 17, 18, 20, 22.

<sup>47</sup> *Id.* § 21.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* §§ 85, 86.

<sup>50</sup> *Id.* § 85.

<sup>51</sup> *Id.* § 86.

<sup>52</sup> *Id.* § 100.

<sup>53</sup> *Id.* §§ 43, 45, 46, 49.

As the rules on freedom of movement for EU citizens take precedence over general foreigner's law, the Foreigners Act of 1990 did not contain any provisions on that topic, but retained the regulation in a separate law.<sup>54</sup>

### E. Asylum Compromise of 1992

From the late 1980s to 1992, the numbers of asylum seekers and immigrants in Germany steadily increased, in particular due to the war in the former Yugoslavia. In 1992, the number of immigrants reached an all-time high of 440,000.<sup>55</sup> The approval rate for asylum applications, however, was at 4.3%.<sup>56</sup> People in Germany felt that the government's migration and asylum policy was too liberal and taken advantage of, and racially motivated attacks increased.<sup>57</sup> Migration control and asylum therefore became key political issues in the election campaign in 1990.<sup>58</sup> In December 1992, the coalition government of the CDU/CSU and the FDP parties and the opposition party SPD agreed on the so-called "asylum compromise." As a result, in 1993 two acts entered into force that implemented the asylum compromise of the political parties.<sup>59</sup>

In order to reduce the number of immigrants and ensure that only those who were truly persecuted for political reasons were granted asylum, the compromise provided for an amendment to the Basic Law.<sup>60</sup> Until then, article 16 of the Basic Law had stated that anyone who was persecuted for political reasons had a right to asylum with no exceptions. The compromise introduced the concepts of "safe third country" and "safe country of origin," and the "airport procedure," to fight abuses of that right.

Applications for asylum were still assessed on an individual, case-by-case basis, but the compromise stipulated that applicants that arrived at Germany's borders from another EU country or another neighboring country did not have a right to asylum and could be refused entry (the safe third country principle).<sup>61</sup> In addition, a list was created that enumerated additional

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<sup>54</sup> BT-DRS 11/6321, *supra* note 46, at 43.

<sup>55</sup> BUNDESAMT FÜR MIGRATION UND FLÜCHTLINGE (BAMF) [FEDERAL OFFICE FOR MIGRATION AND REFUGEES], AKTUELLE ZAHLEN ZU ASYL [CURRENT ASYLUM NUMBERS] 3 (Jan. 2017), [http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/aktuelle-zahlen-zu-asyl-januar-2017.pdf?](http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/aktuelle-zahlen-zu-asyl-januar-2017.pdf?__blob=publicationFile) [blob=publicationFile, archived at http://perma.cc/9BX5-HM6Q.](http://perma.cc/9BX5-HM6Q)

<sup>56</sup> BT-DRS. 12/4125, at 3, <http://dipbt.bundestag.de/doc/btd/12/041/1204125.pdf>, archived at <http://perma.cc/5GC5-GGG7>.

<sup>57</sup> Stefan Luft & Peter Schimany, *Asylpolitik im Wandel [Changing Asylum Policy]*, in 20 JAHRE ASYLKOMPROMISS [20-YEAR ANNIVERSARY OF THE ASYLUM COMPROMISE] 11, 11 et seq. (2014).

<sup>58</sup> *Id.*

<sup>59</sup> Gesetz zur Änderung des Grundgesetzes (Artikel 16 und 18) [Act to Amend the Basic Law (Articles 16 and 18)], June 28, 1993, BGBl. I at 1002, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl193s1002.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl193s1002.pdf), archived at <http://perma.cc/N9GW-VUZE>; Gesetz zur Änderung asylverfahrens-, ausländer- und staatsangehörigkeitsrechtlicher Vorschriften [Act to Amend Provisions on Asylum Procedure, Foreigners, and Citizenship Law], June 30, 1993, BGBl. I at. 1062, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl193s1062.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl193s1062.pdf), archived at <http://perma.cc/8RKV-9TBD>.

<sup>60</sup> BT-DRS. 12/4125, *supra* note 56, at 3.

<sup>61</sup> Act to Amend the Basic Law (Articles 16 and 18) art. 1, no. 2.

“safe countries of origin” with democratic systems and respect for the rule of law, human rights, and the rights of minorities. Asylum seekers from these countries could also be refused entry.<sup>62</sup>

The “airport procedure” applied to asylum seekers from “safe countries of origin” and to those who did not have a passport or other valid travel documents upon arrival at the airport. Under the procedure, the asylum seeker stayed in the transit area and a decision whether to grant him or her entry to the territory and to the general asylum procedure was made under an expedited procedure. If the immigration officer found that the application was “manifestly unfounded,” the applicant was denied entry to the territory and deportation was threatened as a precautionary measure.<sup>63</sup>

## F. Migration Act of 2005 – Complete Overhaul of German Migration Policy

In the spring of 2000, the lack of skilled workers in the IT-sector again sparked a debate on reforming German migration policy, controlled migration, and Germany as an “immigration country.”<sup>64</sup> The government set up the “Independent Commission Migration,” which published its report in July 2001.<sup>65</sup> The Commission found, among other things, that Germany had become an “immigration country” and was in need of highly qualified immigrants to offset the labor market shortage.<sup>66</sup> The draft amendments to the new migration legal framework drew inspiration from the findings and suggestions of the report.<sup>67</sup>

The Migration Act entered into force on January 1, 2005. It amended the Nationality Act and introduced a new Residence Act.<sup>68</sup> For the first time, the focus was placed on long-term permanent residency for migrants, in particular for skilled workers, and on integration measures.<sup>69</sup>

In addition, the rules on migration that were spread out over several acts and regulations were consolidated in the new Residence Act.<sup>70</sup> It simplified and reduced the number of residence

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<sup>62</sup> *Id.*

<sup>63</sup> Act to Amend Provisions on Asylum Procedure, Foreigners, and Citizenship Law art. 1, no. 10.

<sup>64</sup> Jürgen Bast, Zehn Jahre Aufenthaltsgesetz [Ten-Year Anniversary of the Residence Act], 2013 DIE ÖFFENTLICHE VERWALTUNG 214.

<sup>65</sup> Unabhängige Kommission „Zuwanderung,“ Zuwanderung gestalten, Integration fördern [Framing Immigration Policy, Support Integration] (July 4, 2001), [http://www.bmi.bund.de/cae/servlet/contentblob/123148/publicationFile/9076/Zuwanderungsbericht\\_pdf](http://www.bmi.bund.de/cae/servlet/contentblob/123148/publicationFile/9076/Zuwanderungsbericht_pdf), archived at <http://perma.cc/7JPU-36GJ>.

<sup>66</sup> *Id.* at 12 et seq.

<sup>67</sup> Bast, *supra* note 33, at 214.

<sup>68</sup> Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz – ZuWG) [Migration Act], July 30, 2004, BGBl. I at 1950, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl104s1950.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl104s1950.pdf), archived at <http://perma.cc/4SAB-GN48>.

<sup>69</sup> BT-DRS. 15/420, at 60, <http://dipbt.bundestag.de/doc/btd/15/004/1500420.pdf>, archived at <http://perma.cc/MV54-ZYLU>.

<sup>70</sup> Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG) [Residence Act], in the version promulgated on Feb. 25, 2008, BGBl. I at 162, as

titles to two, a temporary residence permit and a permanent settlement permit,<sup>71</sup> and introduced the principle of “support and challenge.” Integration classes in which migrants learned the German language and culture were an integral part of that principle.<sup>72</sup>

In addition to the enactment of a new Residence Act, the Migration Act also codified changes to German citizenship law. In general, German citizenship can only be acquired through birth to a German parent.<sup>73</sup> The amended Nationality Act provided that if a child of foreign parents was born in Germany, he or she would acquire German citizenship if one parent had been legally resident in Germany for eight years and had been granted a permanent right of residence.<sup>74</sup>

The new legal migration framework that was introduced in the Migration Act was amended several times over the years, most notably in 2007 with the Act to Implement Migration and Asylum Directives of the EU,<sup>75</sup> the Work Migration Control Act of 2008,<sup>76</sup> the Second Act to Implement Migration and Asylum Directives of the EU in 2011,<sup>77</sup> and the Act to Implement the Highly Qualified Professionals Directive of the EU in 2012.<sup>78</sup>

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amended, [http://www.gesetze-im-internet.de/bundesrecht/aufenthg\\_2004/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/aufenthg_2004/gesamt.pdf), archived at <http://perma.cc/4J2Z-A4PA>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_aufenthg/englisch\\_aufenthg.pdf](http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.pdf), archived at <http://perma.cc/OTR3-SWEJ> (English version updated through Sept. 6, 2013).

<sup>71</sup> Residence Act §§ 7, 9.

<sup>72</sup> *Id.* §§ 43 et seq.

<sup>73</sup> Staatsangehörigkeitsgesetz (StAG) [Nationality Act], July 22, 1913, REICHTSGESETZBLATT [RGL.] [IMPERIAL LAW GAZETTE] I at 583, as amended, § 4, para. 1, <http://www.gesetze-im-internet.de/bundesrecht/rustag/gesamt.pdf>, archived at <http://perma.cc/6BFT-HVRD>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_rustag/englisch\\_rustag.pdf](http://www.gesetze-im-internet.de/englisch_rustag/englisch_rustag.pdf), archived at <http://perma.cc/9PL9-DUUK> (English translation updated through Nov. 13, 2014).

<sup>74</sup> Nationality Act § 4, para. 3.

<sup>75</sup> Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union [Act to Implement Migration and Asylum Directives of the European Union], Aug. 19, 2007, BGBl. I at 1970, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl107s1970.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl107s1970.pdf), archived at <http://perma.cc/CEG5-LPJJ>.

<sup>76</sup> Gesetz zur arbeitsmarktdäquaten Steuerung der Zuwanderung Hochqualifizierter und zur Änderung weiterer aufenthaltsrechtlicher Regelungen (Arbeitsmigrationssteuerungsgesetz) [Work Migration Control Act], Dec. 20, 2008, BGBl. I at 2846, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl108s2846.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl108s2846.pdf), archived at <http://perma.cc/2AF6-F72R>.

<sup>77</sup> Gesetz zur Umsetzung aufenthaltsrechtlicher Richtlinien der Europäischen Union und zur Anpassung nationaler Rechtsvorschriften an den EU-Visakodex [Act to Implement Migration Directives of the European Union and to Conform National Norms to the EU Visa Kodex], Nov. 22, 2011, BGBl. I at 2258, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl111s2258.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl111s2258.pdf), archived at <http://perma.cc/33QJ-YCR9>.

<sup>78</sup> Gesetz zur Umsetzung der Hochqualifizierten-Richtlinie der Europäischen Union [Act to Implement the Highly Qualified Professionals Directive of the EU], June 1, 2012, BGBl. I at 1224, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl112s1224.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl112s1224.pdf), archived at <http://perma.cc/2QNZ-GTPJ>.

## G. Integration Act of 2016

The latest amendment to the German migration framework entered into force on August 6, 2016. The Integration Act and the Regulation on the Integration Act aim to facilitate the integration of refugees into German society.<sup>79</sup> The basic idea behind the legislation is a continuation of the policy of “support and challenge” (*Fördern und Fordern*), which had been introduced in 2005 in the Migration Act. Refugees who show the potential to integrate and have a good chance of staying permanently in Germany are provided with easier and faster access to integration classes and employment opportunities, while refugees who refuse to cooperate face a reduction in benefits.<sup>80</sup>

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<sup>79</sup> Integrationsgesetz [Integration Act], July 31, 2016, BGBl. I at 1939, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl116s1939.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl116s1939.pdf), archived at <http://perma.cc/SF3C-MY53>; Verordnung zum Integrationsgesetz [Regulation on the Integration Act], July 31, 2016, BGBl. I at 1950, [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl116s1950.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl116s1950.pdf), archived at <http://perma.cc/FDS7-2XAA>.

<sup>80</sup> Jenny Gesley, *Germany: Act to Integrate Refugees Enters Into Force*, GLOBAL LEGAL MONITOR (Aug. 15, 2016), <http://www.loc.gov/law/foreign-news/article/germany-act-to-integrate-refugees-enters-into-force/>, archived at <http://perma.cc/56PH-5CL2>.