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Working papers

Refugees welcome? Federalism and asylum policies in Germany

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1. Introduction: Asylum – a top issue on the political agenda

Much like many other European countries, Germany is currently confronted with high numbers of asylum-seekers. In 2014, more than 200,000 people applied for asylum in Germany. Compared to the year before, the number increased by more than 90,000. For 2015, the Federal Office of Migration and Refugees expects 800,000 asylum applications.¹ Such a high influx of refugees has made asylum policies a prominent issue in the public sphere. Currently, in the summer of 2015, asylum is the top issue on the political agenda in Germany. The lack of adequate accommodation structures, cases of mistreatment of refugees by private security companies, the resistance of local populations to asylum-seekers living in their neighbourhoods, attacks by groups of the extreme-right on asylum-seekers' accommodations and anti-asylum mobilizations by the right wing populist movement "Pegida" are some aspects of the current debate. However, many instances of local solidarity, the emergence of new civil society groups supporting asylum-seekers, and demands for an easier access of refugees to the German labour market are also part of the ongoing discussions and politics. The public opinion on the issue is divided: while 51 percent of the population think that Germany could welcome more asylum-seekers, 40 percent think that the limit has been reached (Thränhardt 2015: 2).

At the same time, asylum policies and the administration of asylum are not homogenous across Germany. Generally, the federal structure of the German political system has an influence on various aspects of migration policies, such as the granting of citizenship or the acceptance of religious diversity in the field of education. This is also true for the field of asylum, where the federal states are actors in several ways and have various ways of influencing admission policies and above all the living conditions of asylum-seekers. This paper aims at analyzing this influence of the federal structure of the political system on politics and policies of asylum in Germany. What differences exist in the implementation of asylum policies and in the management of asylum claims among the German *Länder*, and what accounts for these differences? To what extent does the federal structure of the German state lead to diverging political approaches and outcomes in the field of asylum

¹ The new estimation is based on the following criteria and factors: the number of refugees currently registered in the distribution system EASY; the increasing number of refugees using the route across the Balkans that is already used by 70 percent of the refugees who reach Germany; the deteriorating situation in Syria; a continuously high influx of asylum-seekers from the West Balkans. See Prognoseschreiben des Bundesamtes vom 20.08.2015, <http://www.bamf.de/SharedDocs/Meldungen/DE/2015/20150819-BM-zur-Asylprognose.html>.

policies, and how are these to be judged with view to an effective and human-rights based approach to asylum and to people seeking protection in Germany? These are the questions that this paper aims to address.

2. Federalism and migration

The importance of federal structures in migration policies has, compared to other research fields, been rather neglected by migration research (Seidle/Joppke 2012). Research overwhelmingly focuses on the national decision-level or on local approaches. It often implicitly assumes that the conditions among regions within one nation-state are the same (Thränhardt 2001: 27): “The institutional state structure of receiving countries and the relevance of the sub-national level has been widely neglected (...), although the majority of countries that has experienced immigration after 1945 is federally organized” (Henkes 2008: 114). However, most recently, a new strand of research is emerging that addresses this research gap and focuses on migration as a field of multi-level governance (Hepburn/Zapata-Barrero 2014).

As Seidle/Joppke (2012) have pointed out, federal settings raise the question of policy coherence in the field of migration, especially with view to inequities in rights and benefits (Seidle/Joppke 2012: 6). In the German case, the federal state structure indeed has an impact in the field of migration. The political order of the Federal Republic of Germany is “built from the federal states” (Wehling 2006: 7). German federalism is characterized by its joint decision-making (Scharpf 2006) but also by the strong influence of the federal states on national policy. The *Länder* have several ways of influencing policies on the national level. Legislative projects by the federal government must first be presented to the *Bundesrat*, the representation of the federal states. Via the *Bundesrat*, federal states can introduce their own legislative projects. The *Bundesrat* must approve those laws that have a direct effect on the financial or administrative structure of the *Länder*. Furthermore, it can veto all other laws, although this veto can be overridden by the national parliament. The German *Länder* have a high degree of autonomy both regarding their institutional structure and in some policy fields (Hildebrandt/Wolf: 2008: p. 11). Because of the specific distribution of competences in the federal nation-state, the central state has a higher influence on determining migration policies, i.e. the policies and the legal framework for the entry and stay of foreigners. However the sub-national level may

have a significant influence on the implementation of policies. Thränhardt (2001) has highlighted the relevance of the sub-national level for generating differing policies in the field of migration. This is for example true in the field of citizenship. Despite consistent federal regulations on citizenship, significant differences exist among the German federal states regarding their naturalization quotas (Dornis 2001). Furthermore, Henkes (2008) has pointed out regional differences regarding the cultural dimensions of integration policies, such as differing regulations regarding the admittance of Islamic symbols in public institutions and on Islamic religious education in schools.

In the field of asylum, German policies and politics also reflect the country's system of administrative federalism, in which in general the national level has legislative competences while the regions have administrative ones. Regarding asylum policies, the federal states' influence is comparatively limited on policies of admission, but they have a high influence on the actual living situation of asylum-seekers in Germany. The *Länder* have various direct or indirect ways of playing a role in asylum issues. In the following, after providing a general introduction to the German asylum system, I will outline the role and the influence of the federal states regarding several dimensions of asylum politics and policies, such as access control, determination procedures, living conditions and integration measures (Thielemann 2004).

3. Asylum policies in Germany – the general context

The right to political asylum in Germany is based on Article 16 of the German Basic Law (Art. 16 Grundgesetz (GG)). It grants victims of political persecution an individual right to asylum. This legal provision was a reaction to the experience of national-socialism and one of the first attempts to address the country's past. The decision to establish the right to asylum as a constitutional right in 1949 was influenced by the fact that many European countries had not given refugees protection against the national-socialist terror. However, in 1992, in an increasingly restrictive political climate on asylum, the generous legal provision was restricted by an amendment of Art. 16 GG and by the introduction of a clause (Art. 16 (2) GG) that restricted the scope of protection for asylum-seekers by excluding those entering via "safe" third states.

The admission procedure for asylum seekers is governed by the Asylum Procedure Act (*Asylverfahrensgesetz*). Asylum seekers who are permitted to enter the Federal Republic

of Germany or who are in the country without a residence permit are transferred to the nearest reception centre of the federal state that they are in. This initial distribution of asylum-seekers is done by the dispersal system known through the acronym EASY (*Erstverteilung von Asylbegehrenden*). Asylum-seekers are distributed to the various *Länder* based on the so called "*Königsteiner Schlüssel*", a quota system which attributes a specific number of asylum-seekers to each federal state according to its population numbers which account for 1/3 of the quota, and the tax revenues of the federal state that accounts for 2/3 of the quota. On the basis of these numbers, the quota is set up on a yearly basis. The system was designed in 1949 to create a fair way of distributing the cost of national research institutions among the *Länder*. It is not only applied in the field of asylum but is also used in other policy fields where the relationship between national and sub-national level is an issue. For example, the *Königsteiner Schlüssel* also defines the liability of the national level and federal states in the case of breaches of international law.

Asylum applications are then evaluated by the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) which has regional branches in the sixteen federal states.² Asylum seekers receive a certificate – the permission to reside, – which grants a preliminary right to stay in the Federal Republic of Germany during the asylum procedure. The decision on the asylum application is based on an interview and possibly on further investigations where needed. If the asylum application is accepted, persons granted asylum status according to § 16 Basic Law and those granted refugee status according to the Geneva Convention receive a temporary residence permit and are given the same status as Germans within the social insurance system. They are entitled to social welfare, child benefits, child-raising benefits, integration allowances and language courses. If neither asylum nor refugee protection are granted, the BAMF examines in the course of the asylum procedure whether there are grounds for a deportation ban.

In 2014, the main countries of origin of asylum-seekers in Germany were Syria, Kosovo and Serbia, Albania, Afghanistan and Irak. In total, in January 2015 45, 1 percent of the applicants received some form of protection and residence status. Recognition forms range from full recognition as beneficiary of constitutional asylum according to Art. 16

² The following paragraph is based on the description of the asylum procedure by the Federal Ministry of the Interior: http://www.bmi.bund.de/DE/Themen/Migration-Integration/Asyl-Fluechtlingsschutz/Asyl-Fluechtlingsschutz/asyl-fluechtlingsschutz_node.html;jsessionid=362B8B1328C0C63DFF59AFA7A1AE9066.2_cid295

Basic Law to the granting of a so called toleration (*Duldung*) that is not a residence status, but only a suspension of deportation due to humanitarian reasons or practical obstacles. The biggest percentage of applicants for asylum gets recognized as a refugee according to §3 Abs. 1 AsylverfG, based on the Geneva Convention. Also, in 2014, approx. one third of the applicants in Germany were rejected for formal reasons because under the Dublin Regulation, they had to make their asylum application in another EU member state.

Table 1: Residence titles and recognition rates of asylum-seekers

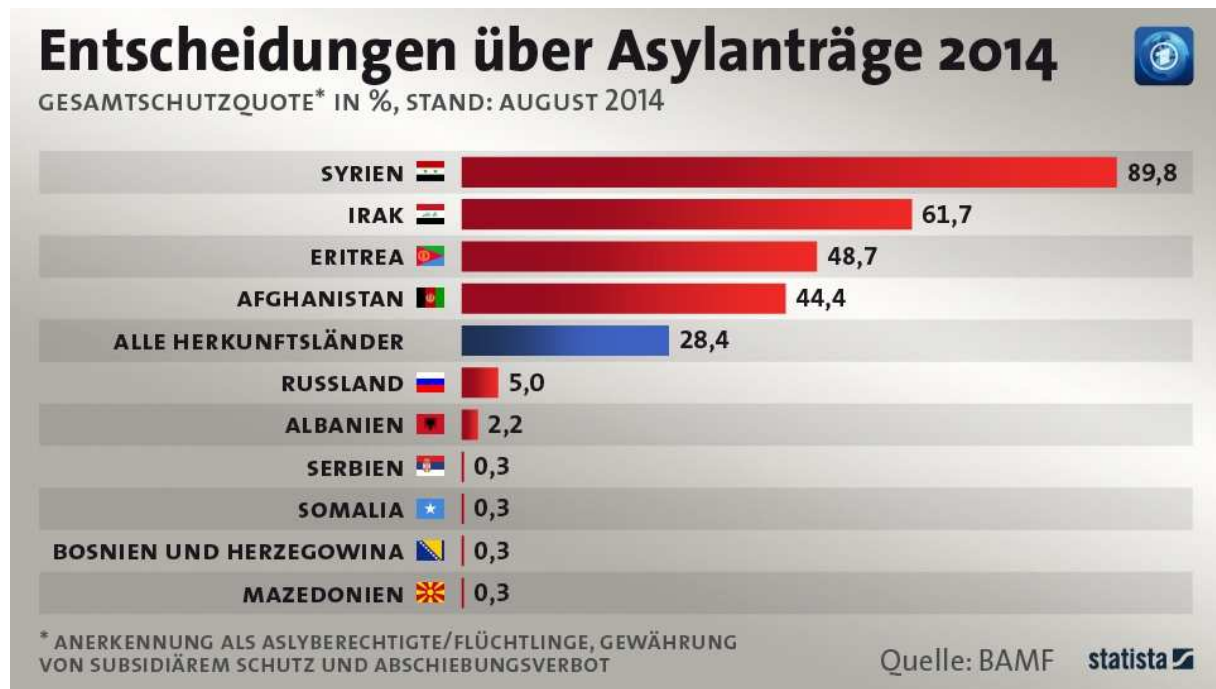
Year	Decisions on asylum applications												Formal decisions ³	
	Decisions on cases													
	Total	Recognition as asylum-seeker, Art. 16a GG and family asylum		Recognition as a refugee according to §3 Abs. 1 AsylverfG		Subsidiary protection according to § 4 Abs. 1 AsylverfG		Prohibition of deportation according to §60 abs. 5 or 7 AufenthG		Rejections of asylum claims				
2006	30.759	251	0,8 %	1.097	3,6 %	144	0,5 %	459	1,5 %	17.781	57,8 %	11.027	35,8 %	
2007	28.572	304	1,1 %	6.893	24,1 %	226	0,8 %	447	1,6 %	12.749	44,6 %	7.953	27,8 %	
2008	20.817	233	1,1 %	7.058	33,9 %	126	0,6 %	436	2,1 %	6.761	32,5 %	6.203	29,8 %	
2009	28.816	452	1,6 %	7.663	26,6 %	395	1,4 %	1.216	4,2 %	11.36	39,4 %	7.73	26,8 %	
2010	48.187	643	1,3 %	7.061	14,7 %	548	1,1 %	2.143	4,4 %	27.255	56,6 %	10.537	21,9 %	
2011	43.362	652	1,5 %	6.446	14,9 %	666	1,5 %	1.911	4,4 %	23.717	54,7 %	9.97	23,0 %	
2012	61.826	740	1,2 %	8.024	13,0 %	6.974	11,3 %	1.402	2,3 %	30.7	49,7 %	13.986	22,6 %	
2013	80.978	919	1,1 %	9.996	12,3 %	7.005	8,7 %	2.208	2,7 %	31.145	38,5 %	29.705	36,7 %	
2014	128.911	2.29	1,8 %	31.025	24,1 %	5.174	4,0 %	2.079	1,6 %	43.018	33,4 %	45.33	35,2 %	
Jan 2015	17.835	251	1,4 %	7.529	42,2 %	124	0,7 %	137	0,8 %	4.679	26,2 %	5.115	28,7 %	

Source: BAMF 2015.

While some countries show generally high recognition rates, applications from other countries are almost always rejected. As illustrated in the table below, in 2014, 89,9% of applications were successful in the case of Syrians; while for Iraqis it was 61,7%; 48,7% for Eritreans; 44,4% for Afghans and so on.

³ I.e., due to European law another country is responsible for dealing with the asylum application.

Table 2: Decisions on asylum-applications by country



Source: http://www.tagesschau.de/ausland/unhcr-asylbewerber-101~magnifier_pos-0.html

Recently, debates have centered around the high influx of asylum-seekers from the Balkan countries whose applications usually are rejected, and around the long processing time for asylum applications in general. Although the federal government in November 2014 defined Serbia, Bosnia-Herzegovina and Macedonia as “safe states”, in January 2015 applications from these countries did not decrease but actually increased. Also, at the beginning of 2015 there was a new wave of asylum applications from Kosovo. According to the German embassy in Kosovo, these applications were motivated by the long duration of the asylum procedures in Germany, that enable the applicants to at least spend several months in Germany (Thränhardt 2015). In fact, in a European comparative perspective, Germany has by far the highest amount of asylum decisions pending. While in the first month of 2015, in countries such as France, Italy and Sweden between 30.000 and 50.000 applications were still in the process of being evaluated, in Germany the large number of 221.195 applications was pending.

Against the background of a generally high influx of refugees and of the low recognition numbers for refugees from the Balkans, the conservative government of the free state of Bavaria has decided to set up special camps for refugees from the Balkans and to speed up their asylum processes (Sirleschtov 2015). Although this measure was strongly

criticized by the Social-democrats and the Green party, politicians of these parties most recently to have started to demand that more Balkan states should be defined as “safe states”, too, and the social-democratic integration commissioner of the federal government has expressed some sympathy for the Bavarian approach (Tagesschau 2015). Most recently, the social democratic minister of foreign affairs Steinmeier has demanded more rapid deportations of applicants from the Balkan states (Süddeutsche Zeitung 2015). Thus it appears that the idea of a differential treatment of asylum-seekers according to their origin seems to become consensual among political elites.

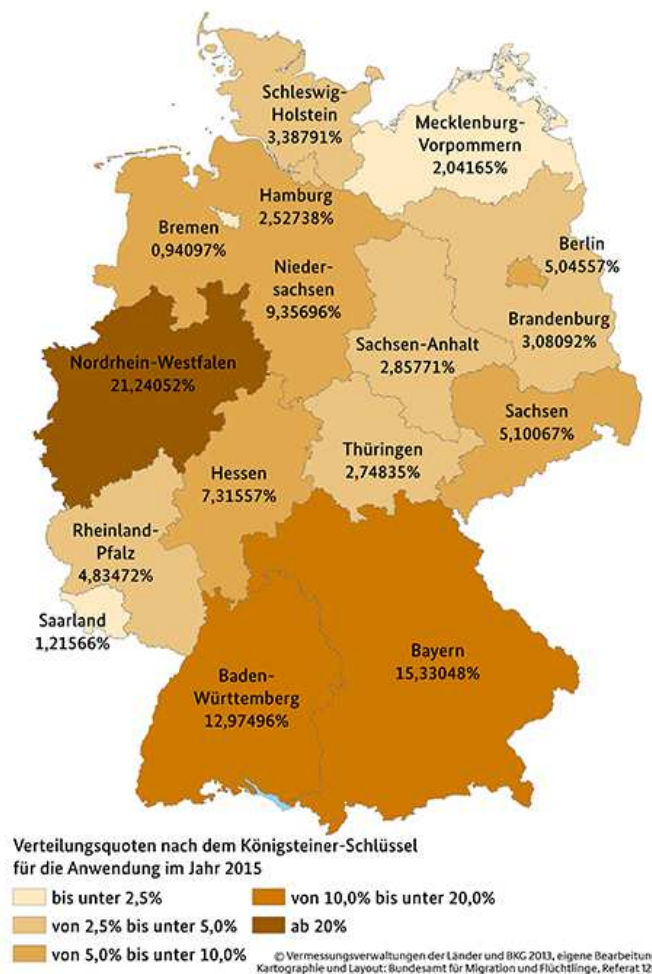
On the other hand, most recently, at the end of August 2015, the Federal Office for Migration and Refugees has issued a directive suspending the Dublin agreement for Syrian refugees. Already before, in the first half of 2015, the Dublin agreement was factually not applied to Syrians. Only 131 Syrian refugees were send back to another EU country. Also, without any formal regulation, the BAMF has stopped to apply the Dublin agreement for refugees who have entered the EU via Greece (Der Spiegel 2015). It is interesting to note that in this case, it is a renationalization of asylum policies that leads to a more generous treatment of refugees.

4. Living conditions and the integration of asylum-seekers

4.1 The distribution of asylum-seekers

Upon their arrival in Germany, asylum-seekers are distributed according to the quota system “*Königsteiner Schlüssel*”, already described above. Table 4 shows the regional distribution of asylum seekers:

Table 4: Distribution of asylum-seekers in Germany



Source: BAMF (2015)

Although the conditions for the evaluation of asylum claims and the conditions for granting asylum are defined by national legislation and are uniform across Germany, recognition rates in general and recognition rates for specific nationalities vary among the German regions. The reason for this appears to be divergences in the practices of the BAMF regional offices in the federal states. In Thuringia, for instance, 47,6 of the Afghan applicants are accepted, while in Saarland only 23,5 are recognized as asylum seekers. In Baden-Württemberg, 40,4 percent of applicants from Iraq are accepted whereas in Bavaria only 28,7 percent (Maisch 2015).

However, these differences in recognition rates can at least partly be attributed to several factors relating to the biographical and ethnic profiles of refugees. As such, Afghan refugees applying for asylum in the federal states of Hamburg and Bremen are often single

men, and their protection rate is generally significantly lower than that of families or single women. Also, the ethnicity of refugees has an influence on asylum decisions: in the case of Pakistani asylum seekers, the protection rate depends on the number of Ahmaddiyah among them, in the case of Iranian refugees the presence of Christian converts affects the outcomes and so on. Also, the Dublin regulation may play a role, i.e. refugees of the same nationality may have had different travelling routes that determine that they have to apply for asylum in another EU country. Finally, since asylum procedures always are individualized, the individual situation or regional factors (i.e. from which region does a refugee originate) may play a role in the decision process and may lead to differing recognition rates within a national group (email Interview BAMF 08.07.2015).

4.2 The accommodation of asylum-seekers

One of the main competences of federal states is their responsibility for the accommodation of asylum-seekers. § 44 Abs. 1 AsylVerfG states that federal states are obliged to establish and maintain reception centers for asylum seekers and to provide sufficient places for refugees, according to their quota. With the exception of Saarland and Bavaria, all the German territorial states have transferred the task to organize the accommodation of asylum-seekers to the municipalities (*Kommunen, Landkreise, kreisfreie Städte*). The funding systems differ; in general, 15-30 percent of the costs are covered by the municipalities and the rest by the federal state. In Bavaria, Berlin, Hamburg and Bremen, the federal states are directly responsible for the accommodation of refugees.

Every new asylum-seeker has to stay three months in the initial reception center. There, he or she is subject to a certain amount of restrictions. These refugees do not have the possibility to cook, they are subjected to entrance controls and their living space is strongly restricted; they are entitled to seven square meters per person. However, on 01. January 2015, the residence requirements (*Residenzpflicht*) for asylum-seekers were abolished. These required asylum-seekers to stay in a local or regional territory defined by the authorities. Before the national revision of that provision, the federal states Berlin and Brandenburg changed their regional asylum procedure laws in order to enable asylum-seekers to apply for a permit and move to another federal state. These changes acted as an incentive for other federal states: "The changes in the *Residenzpflicht* in Berlin

and Brandenburg led to a chain reaction in other federal states. (...) One federal state parliament after the other decided to extend the geographical mobility of asylum-seekers” (Wendel 2013). However, there are exceptions from the extension of mobility rights: these are suspicion of terrorism, criminal offenses, or if a deportation is planned and the asylum-seeker does not cooperate.

Regarding the accommodation of asylum-seekers, three different systems exist among the federal states: (1) single-level accommodation system: the federal state is directly responsible for the reception and accommodation of asylum-seekers; (2) two-level accommodation system: asylum-seekers are distributed from the initial reception center into municipalities that are responsible for the accommodation; (3) three-level accommodation system: accommodation can be centralized or ‘decentralized’, the latter meaning private accommodation in flats or apartments.

Although the AsylverfG states in §53 1 that in general, asylum-seekers should live in shared accommodation, the form of accommodation that asylum-seekers encounter after the initial three months in a central accommodation is decided by each federal state. Accommodation structures range from shared accommodation to accommodation in apartments, and they strongly differ among the federal states (Wendel 2014). The chosen forms of accommodation reflect to a certain extent the aims of the asylum policies of the federal states. While Saxony and Bavaria have shared accommodation systems that aim at deterring asylum-seekers, other federal states such as Rheinland-Pfalz traditionally opt for decentral accommodation forms aiming at offering fairly normal living conditions to refugees (Wendel 2014: 6).

4.3 Access to the labour market

Until 2014, asylum-seekers’ access to the labour market was restricted to up to five years. In November 2014, this provision was changed and asylum-seekers were given access to the labour market after three months. However, for fifteen months, they are subject to a priority check and can only take up an employment if no national or EU worker is available. This is the case although asylum-seekers are overwhelmingly in a productive age and often are well qualified. Indeed, 63 percent of the asylum-seekers that came to Germany in 2014 were between 18 and 60 years old (Thränhardt 2015: 6). Still, within the last five years, barriers of access of refugees to the dual training system have been

lowered. Since the beginning of 2009, refugees who want to take up dual training are not subjected to the priority test anymore. Since 2013, tolerated refugees as well are not subjected to waiting periods anymore (Thränhardt 2015: 7). Most recently, the federal government has decided that young asylum-seekers and tolerated refugees can start an internship without needing the Federal Employment Agency's approval first (Der Bundesregierung 2015). The issue of refugees' access to the labour market has become the object of several federal states' initiatives in the *Bundesrat* too. For example, Rheinland-Pfalz brought an initiative to the *Bundesrat* and demanded a right to stay for young tolerated refugees. Those who have started their training should be granted a secure residence status for that particular time period. Northrhine-Westphalia brought an initiative to the *Bundesrat* to ease the access of tolerated young refugees to training and universities. Also, several federal states headed by prime ministers of the Green party, the Social democrats and the Conservative party, respectively - Rheinland-Pfalz, Baden-Württemberg and Hessen - in a common letter to chancellor Angela Merkel demanded that young asylum-seekers should be granted a secure residence right during the period of their training (Ibid.).

4.4 Access to integration measures

At the same time, the integration of asylum-seekers is increasingly becoming an issue in the political sphere. Political parties, employer organizations and other economic actors increasingly make demands for language courses for asylum-seekers. Since 2013, the conference of the federal ministers of integration has demanded the introduction of language courses for asylum-seekers. However, up until now, the national government has not opened the national language programs for asylum-seekers. As a consequence, several federal states, such as Bavaria, Brandenburg, Rheinland-Pfalz, Sachsen-Anhalt, Hamburg and Schleswig-Holstein have implemented their own language programs for refugees (Thränhardt 2015: 9). Northrhine-Westphalia spends 1.000.000 Euro for language projects for refugee children. The free state of Saxony intends to offer German language courses in its initial reception centers (MDR 2015). Also in Saxony, in February 2014 a working group of the ministry of the Interior suggested to offer vocational training-related language courses to ease asylum-seekers' access to the labour market and to decentralised accommodation.

5. Deportation

Federal states are responsible for the deportation of rejected asylum-seekers. The numbers of deportations vary among the *Länder*. Relative to the number of asylum seekers present on their territory, the federal states of Northrhine-Westphalia, Saxony, Mecklenburg-Vorpommern and Hesse deport the highest numbers of asylum seekers. Lower-Saxony and Baden-Württemberg deport the lowest number of rejected asylum-seekers.

Table 5: Deportations by the Länder

	Deportations by years				Relative*	Distribution system Königsteiner Schlüssel	Difference	Ranking
	2011*	2012*	2013*	First half of 2014*				
Total (persons)	7 917	7 651	10 198	5 743				
Baden-Württemberg		717	975		9,97	12,93	-2,96	16
Bavaria		931	1 297		13,26	15,22	-1,96	13
Berlin		343	487		4,98	5,07	0,09	8
Brandenburg		100	195		1,99	3,07	-1,07	12
Bremen		15	11		0,11	0,93	-0,81	11
Hamburg		239	319		3,26	2,77	0,49	7
Hesse		854	823		8,41	7,30	1,11	4
Mecklenburg-Vorpommern		166	312		3,19	2,06	1,13	3
Lower Saxony		544	631		6,45	9,40	-2,95	15
North Rhine-Westphalia		2 025	2 499		25,55	21,22	4,33	1
Rhineland-Palatinate		277	255		2,61	4,81	-2,20	14
Saarland		159	179		1,83	1,22	0,61	5
Saxony		451	863		8,82	5,14	3,68	2
Saxony-Anhalt		185	293		2,99	2,91	0,08	9
Schleswig-Holstein		187	312		3,19	3,36	-0,17	10
Thüringen		123	330		3,37	2,77	0,60	6
Federal Police		335	417					

Source: Sächsisches Staatsministerium des Innern, information by email 14.06.2015

There are clear variations in the deportation practices of the various federal states that cannot be attributed to their respective governments. Both Northrhine-Westphalia and Saxony, in 2013 governed by a left-wing and a conservative coalition respectively, have a high deportation rate. The influence of humanitarian concerns on deportations also varies among the *Länder*. Thus in the winter 2014/2015 Schleswig-Holstein and Thuringia did not deport during the winter months. Also, the practices of the federal states regarding the granting of a long-term humanitarian residence rights to long-term refugees greatly

vary. During the last years, 1770 refugees were granted a residence title as part of the so called “Altfall-Regelung” (grandfather clause). More than half of them lived in Northrhine-Westphalia, while only 46 of them lived in Baden-Württemberg (Thränhardt 2015: 22). The federal states have some important competences regarding admission policies, too. With regard to individual cases, they can implement commissions (*Härtefallkommissionen*) who decide on a humanitarian right to stay (Schammann 2015). These commissions are bodies of the ministry of the interior of the *Land*, and its members are representatives of welfare organizations, the churches and the ministry of the Interior. All sixteen *Länder* have *Härtefallkommissionen*. The numbers of humanitarian residence titles granted by these commissions vary among the *Länder*: During the last years, Berlin granted four times more residence titles than Bavaria (Thränhardt 2015: 22).

6. Asylum as an issue of conflict between the regional and the national level

In particular, two issues are controversial between the national government and the federal states: the responsibility for funding in the field of asylum and the – in the view of the federal ministry of interior – inadequate practice of deportation by the federal states. In 2013, the German state spent 1,5 billions for benefits for asylum seekers under the law pertaining to benefits of asylum applicants. This were 38 percent more than in 2012 (De Statis 2015). Against the background of the strongly rising numbers of asylum-seekers in Germany, in 2015 a debate emerged between the federal states and the national government concerning the funding of the needs of asylum-seekers. In general, between 2014 and 2015, the spending of the federal states in the field of asylum has doubled or even tripled. Generally, the federal states’ funding volume for asylum matters differs. Bavaria, Saarland, Thuringia, Mecklenburg-Vorpommern fund more than ninety percent of the costs that arise in the municipalities. Baden-Württemberg, Brandenburg, Saxony pay more than seventy-five percent. Hesse, Lower Saxony, Schleswig-Holstein, Rhineland-Palatinate and Saxony-Anhalt pay two-thirds of the costs. Northrhine-Westphalia funds less than half of the costs that arise in its municipalities.

Recently federal states have increasingly demanded a higher financial commitment by the federal government. The head of the conference of the federal prime ministers, Woidke, said that due to the large numbers of asylum-seekers, spending of the municipalities had

increased four times, and that the federal government had to increase its contribution (Land Brandenburg 2015). He stated that his federal state, Brandenburg, in 2015 would need 160 million Euro and would only receive 15 million Euro from the federal government. The prime minister of Baden-Württemberg demanded that the federal government should contribute to the accommodation costs of asylum-seekers if the determination procedure took longer than three months. Indeed, the financing of asylum policies is an issue of tension between the *Länder* and the federal government. However, the federally-based distribution system is not questioned by *Länder* or national actors. Also, in June 2015, the federal government decided to double its contribution to the costs of asylum in the federal states, from 500 millions to one billion. Also, the federal government committed itself to permanently contribute to the arising costs from 2016 onwards. In August 2015, minister of finances Wolfgang Schäuble announced that with view to the still dramatically rising numbers of asylum-seekers, the federal government was prepared to further increase its financial contribution to the *Länder* and the municipalities (Süddeutsche Zeitung 2015b).

At the same time, the federal government criticizes the federal states for not deporting refugees and thus increasing the number of refugees present in Germany. Thus in spring 2015, the federal minister of the Interior Thomas de Maizière sharply and repeatedly criticized the federal states for not fulfilling their administrative obligations to deport rejected asylum-seekers (Frankfurter Allgemeine 2015).

7. Politicizing asylum: Initiatives of the federal states in the *Bundesrat*

During the last years, the federal states have brought a number of legal projects to the *Bundesrat*, thereby trying to influence policy-making on asylum in Germany. A look at the thematic focuses and the issues addressed by these legal initiatives shows that the federal states try to intervene in admission policies, in the integration of migrants, and in the administration of asylum-seekers.

Overview: Initiatives of the federal states in the *Bundesrat*, 2013-2015

Topic	Date	Title	Proponent
Legal proposal for the access of foreigners to integration courses.	02.10.2013	<i>Gesetzesantrag der Freien Hansestadt Bremen. Entwurf eines Gesetzes über den Zugang von Ausländerinnen und Ausländern zu den Sprachkursmodulen der Integrationskurse. Drucksache 716/13,</i>	<i>Bremen</i>
Legal proposal for the access of refugees to integration courses	05.11.2013	<i>Entwurf eines Gesetzes zur Öffnung der Integrationskurse für EU-Bürgerinnen und EU-Bürger, Ausländerinnen und Ausländer mit humanitären, völkerrechtlichen oder politischen Aufenthaltserlaubnissen sowie für Flüchtlinge im laufenden Asylverfahren und Geduldete Gesetzesantrag der Länder Schleswig-Holstein, Bremen und Rheinland-Palatinat, Drucksache 756/13.</i>	<i>Bremen and Rheinland-Palatinat</i>
Legal proposal for the classification of additional countries as „safe states“	24.02.2015	<i>Gesetzesantrag des Freistaats Bavaria. Entwurf eines Gesetzes zur Einstufung weiterer Staaten als sichere Herkunftsstaaten. Drucksache 24/15.</i>	<i>Bavaria</i>
Legal proposal for a new immigration law	25.2.2015	<i>Antrag des Landes Rheinland-Palatinat. Entschließung des Bundesrates. "Einwanderung gestalten – Einwanderungsgesetz schaffen". Bundesrat, Drucksache 70/15</i>	<i>Rheinland-Palatinat</i>
Legal proposal for measures in construction to ease the accomodation of refugees	30.09.2014	<i>Entwurf eines Gesetzes über Maßnahmen im Bauplanungsrecht zur Erleichterung der Unterbringung von Flüchtlingen. Drucksache 419/14</i>	<i>Hamburg</i>
Proposal for the distribution of unaccompanied minors	30.09.2014	<i>Antrag des Freistaat Bavaria. Entschließung des Bundesrates zur bundesweiten Verteilung der unbegleiteten ausländischen Minderjährigen. Drucksache 444/14</i>	<i>Bavaria</i>
Legal proposal for changes in the Asylum Seekers Benefits Law	28.04.2015	<i>Gesetzesantrag des Freistaates Bavaria. Entwurf eines Gesetzes zur Änderung des Asylbewerberleistungsgesetzes. Drucksache 190/15</i>	<i>Bavaria</i>

8. Summary: The importance of the federalist state structure in the field of asylum

The federal structure of the German state has both an influence on the situation of asylum-seekers coming to and living in Germany, and on the politics of asylum of the nation-state in general. A system of distribution based on the federal state structure determines (and limits) the freedom of movement and the chances for societal participation of people seeking asylum in Germany. The federally based distribution system has an influence on where asylum-seekers live, and in turn, on which living conditions they encounter. Regional asylum regimes vary with regard to the forms of accommodation that asylum-seekers encounter, and regarding the ways asylum-seekers are autonomous in spending their benefits. Also, although asylum policy is a competence of the national level and recognition processes are centralized, because of the federal structure of the recognition authority (BAMF); recognition rates for specific nationalities vary among German regions. Most importantly, deportation practices and numbers vary among regions, too.

Overview: The influence of the federal system on asylum matters

Direct competence of Laender	Form of accommodation Form of payment of benefits (money or vouchers) Implementation of deportations Granting of humanitarian residence rights
Indirect influence of the federal structure	Differing recognition rates due to federal structure of recognition authority (BAMF)
Political competence	Introduction of legislative projects in the <i>Bundesrat</i>

The federal system leads to inequalities, but also to opportunities for asylum-seekers. Being assigned to a specific federal state determines if the asylum-seeker is forced to live in mass accommodation or is allowed to live in a private apartment, if he or she obtains his or her benefits in cash or as vouchers, if he or she can take part in a language course and to what extent he or she has to fear deportatation. At the same time, the *Länder* act as a motor for the – albeit cautious – process of integration of asylum-seekers by strongly advocating an easier access of asylum-seekers to the labour market.

Asylum regimes generally encompass differing degrees of ‘welcoming’ or deterrence measures. In a historical perspective, the German asylum regime and asylum as a topic in the public and political sphere has undergone several phases, recently resulting in an, albeit slow and careful, change from a system of deterrence towards a system of integration. The 1990s were characterized by polarized and intense debates on asylum that resulted in the restriction of the right to asylum by the introduction of a constitutional amendment (the introduction of third-country clause). The asylum issue was consciously politicized by the conservative political parties who in their discourses focused on an alleged ‘abuse of the right to asylum’ and depicted asylum-seekers in a derogative way as having purely economic motives or as ‘bogus asylum-seekers’ (*Wirtschaftsflüchtlinge, Scheinasylanten*) and painted a threatening picture of mass immigration misusing the asylum system (Bade 2015). After the constitutional reform, the 1990s went on to be a phase of restriction (Bosswick/Borkert 2011). The 1990s also were a period of minimal

recognition rates (ibid: 111). From the middle of the 1990s, the asylum issue lost salience in the public debate and in the political sphere, but a consensus on a restrictive stance on asylum persisted. The German asylum regime was until recently aimed at the deterrence of asylum-seekers and “(...) offered hardly any incentives for asylum-seekers to feel comfortable in Germany” (Thränhardt 2015: 7). Only after a hunger strike by refugees in Bavaria, in 2013 the passage of the Bavarian asylum procedure law (“*Asyldurchführungsverordnung*”) stating that the living conditions of asylum-seekers should encourage the willingness of asylum-seekers to return to the country of origin, was abolished (Thränhardt 2015: 7).

Presently, in summer 2015, the German asylum regime is characterized by conflicting and contradictory tendencies. For one, since the year 2010 the rejection rate has continuously decreased, from almost 60 percent in 2010 to less than 40 percent in 2014 (BAMF 2014: 46). Compared to twenty years ago, polls show that German society is more open towards asylum-seekers (Bosch-Stiftung 2014). 66 percent of the German population say that they would personally be willing to support asylum-seekers. However, from spring 2015 onwards, attacks on asylum-seekers’ accommodations and hostile acts against asylum-seekers have sharply increased. In the first six months of 2015, 150 attacks on accommodations took place, an increase of 75 percent compared to 2014 and of 680 percent compared to 2013 (Lobo, 2015a). Some commentators have started to qualify this development as a new form of terrorism. In an editorial of the online magazine “Der Spiegel”, journalist Sascha Lobo writes: “Terrorism has reached Germany – and it must be called this by politicians and in the media. Finally start to call those people who burn asylum-seeker homes, terrorists.” (Lobo 2015b). Also, the lack of infrastructure for the high influx of refugees has become a problem in many parts of Germany and sometimes leads to unacceptable living conditions for refugees. In Dresden, Saxony, asylum-seekers are living in tents and in problematic hygienic conditions that encourage the spread of diseases and that the doctors present qualify as worse than the conditions that they have seen in African refugee camps (Zeit Online 2015). In many other accommodations, too, asylum-seekers have to live in overcrowded, makeshift accommodations and have to deal with the hostility of anti-immigration groups and groups of the extreme-right.

On the other hand, between 2012 and 2015, civil society engagement in the field of asylum has increased by 70 percent, and according to polls, the solidarity with refugees is increasing (Liebscher 2015). Many people take in refugees in their private homes,

organize the collection of clothing and other needed items, organize the schooling of refugee children, and invite refugees into their sports associations (Artist 2015). Also, at least in the field of labour, the German asylum regime is slowly shifting from a system of deterrence towards the integration of refugees (Thränhardt 2015: 9). Indeed, the most important change towards an integration regime takes place in the field of labour. Here, the general trend towards a more open labour migration regime and the acknowledged need for significant labour immigration seems to have a spill-over effect into the field of asylum.⁴ As in labour migration policies in general, the federal states are the actors that are more directly confronted with labour shortages and the realities of the lack of qualified workers, and consequently become political actors in this field. Within this context, the federal states' initiatives have been contributing to a shift of the image of refugees as unwanted migrants to a group that may be beneficial for the German society and that should be integrated. Also, the introduction of integration measures such as language courses by several federal states shows that the growing climate towards the integration of asylum-seekers comes to a significant extent from the federal states.

To sum up, the influence of the federal state structure on asylum is problematic since it creates unequal living conditions for refugees. However, because of the role of the federal states as advocates for the labour market integration of refugees, federalism overall contributes to encouraging the development of German asylum policies towards an integration regime. However, it remains to be seen how German society will react in the long run to the high influx of people seeking its protection.

⁴ For the recent developments towards a liberal labour migration regime in Germany, see Laubenthal (2014) and Kolb (2014).

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Appendix

Table: Number of pending asylum applications in the European countries, 2014/2015

	2014M09	2014M10	2014M11	2014M12	2015M01	2015M02	2015M03	2015M04	2015M05	2015M06
European Union (28 countries)	434,165	455,820	477,165	488,720	506,030	528,660	529,435	534,055	525,970	114,125
Belgium	15,590	15,670	15,740	15,415	15,315	14,920	14,160	13,835	14,120	14,805
Bulgaria	5,190	5,780	6,130	6,750	6,900	7,255	7,585	7,645	7,405	7,840
Czech Republic	510	510	490	535	505	535	605	565	550	:
Denmark	7,125	8,005	8,240	8,245	7,435	6,465	5,445	4,720	4,460	:
Germany (until 1990 former territory of the FRG)	190,520	200,735	212,335	221,195	231,070	243,820	260,515	274,645	288,070	:
Estonia	80	100	95	100	110	115	130	140	125	130
Ireland	3,890	3,840	3,670	3,635	3,820	3,615	3,820	3,995	3,835	:
Greece	41,535	41,340	41,410	31,930	31,345	30,210	30,135	30,225	29,780	:
Spain	6,375	6,695	7,380	7,525	8,175	8,215	8,830	9,605	11,020	:
France	37,800	38,360	37,660	36,520	37,305	37,860	37,935	37,480	36,960	:
Croatia	160	170	155	120	130	125	110	95	:	:
Italy	31,960	37,710	42,630	45,750	45,120	47,045	47,495	47,805	49,410	:
Cyprus	1,755	1,745	1,810	1,775	1,755	1,690	1,635	2,185	:	:
Latvia	295	290	250	255	245	235	235	235	225	:
Lithuania	110	115	160	175	175	115	95	100	80	90
Luxembourg	1,340	1,360	1,400	1,370	1,300	1,245	1,225	1,190	1,170	:
Hungary	3,505	3,890	7,850	15,685	14,295	26,900	14,180	5,900	13,975	24,430
Malta	940	875	675	695	665	800	740	755	795	:
Netherlands	:	:	:	:	7,595	5,940	5,100	4,955	6,415	8,095
Austria	:	:	:	:	:	:	:	:	:	:
Poland	3,150	3,040	2,855	2,685	2,525	2,500	2,395	2,480	2,375	2,470
Portugal	35	35	55	30	40	70	55	70	:	:
Romania	540	545	430	390	410	395	465	535	505	:
Slovenia	110	120	100	110	90	100	105	105	105	95
Slovakia	190	205	215	220	205	185	180	175	185	160
Finland	2,605	2,550	1,680	1,795	1,790	1,780	1,845	1,850	:	:
Sweden	47,715	50,415	51,910	54,325	56,075	55,430	54,470	53,355	54,400	56,005
United Kingdom	31,135	31,720	31,835	31,495	31,650	31,100	29,945	29,400	:	:
Iceland	175	180	190	210	210	220	205	220	220	:
Liechtenstein	30	25	30	40	35	35	40	40	50	65
Norway	4,270	4,335	4,445	4,480	4,285	3,990	3,440	3,340	3,840	4,085
Switzerland	19,925	20,125	19,820	19,210	18,470	17,645	16,610	15,820	15,905	17,545
Total	458,565	480,495	501,650	512,655	529,030	550,550	549,730	553,475	545,985	135,820

Source: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyencntzm&lang=en