

## Germany's Immigration Policy: From Refusal to Reluctance (ARI)

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**Theme:** Germany is a country of immigration, but its society and political leaders still seem reluctant to accept this.

**Summary:** After deciding in 1973 to end the recruitment of foreign workers, Germany has received 3 million new immigrants, most of them ethnic Germans from Eastern Europe. The difficulties encountered to integrate second-generation immigrants, mostly of Turkish origin, the widespread fear of radical Islam and the protection of a privileged job market and of the financial health of the welfare state, have made Germany one of Europe's most reluctant States to accept immigration and therefore to oppose the European Commission's attempts to develop a common immigration policy.

### Analysis:

#### *From Guest Worker-programmes to Country of Immigration*

During the political reorganisation of post-war Europe, the still recovering German states were faced with millions of ethnic German refugees expelled from Eastern Europe and the Soviet Union. During this wave of immigration 11.5 million people entered what is now the Federal Republic of Germany, so that in 1950 15.7% of West Germans and 19.6% of East Germans were immigrants. In spite of this enormous inflow of population, the lack of manpower resulting from the Second World War was an obstacle to economic recovery and hence the German government<sup>1</sup> decided to promote immigration. As a result, between 1955 and 1968 it signed labour recruitment agreements with Mediterranean countries such as Italy, Spain, Greece, Turkey, Morocco, Portugal, Tunisia and the former Yugoslavia. During this period Germany's foreign population (excluding ethnic Germans who arrived in the late 1940s) grew from half a million (0.9% of the total population) to almost 4 million (6.4%). These so-called 'guest workers' were mainly engaged in low-skilled and labour-intensive sectors of the economy, like coal and iron mining, steel and the automobile industries and city and house cleaning. Germany's active recruitment policy was scrapped in 1973 following the world economic crisis.

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<sup>1</sup> This only makes reference to West Germany; immigration to the German Democratic Republic (GDR) mainly consisted of members of the Soviet Army and their families and temporal contract workers from other communist countries. According to official sources they accounted for up to 1% of the employed population (BMI, 2008, p. 18).

At that time German society considered its immigrants to be temporary, hoping that they would leave the country once their labour was no longer needed. When the guest workers decided to stay despite the crisis, the German authorities and society misjudged the situation and made very little effort to help them settle and refused to consider them enduring members of German society. Immigrants often lived in poorer neighbourhoods, where they created their own subcultures over the years. The educational success of the second generation was limited, access to skilled work was difficult and naturalisation policies restrictive. Most analysts consider that the failure to integrate immigrants is one of the factors responsible for the problems arising from the existence of so-called 'parallel societies'.

Recruitment stopped in 1973, but immigration did not: only its nature changed. From 1973 to 1988 the inflow of foreigners mainly comprised family members of guest workers, asylum seekers (generally Asian refugees) or ethnic Germans from Poland and Rumania. But the net immigration effects were small. The total foreign population in West Germany increased between 1973 and 1988 from 4 million to 4.8 million, a figure that would have probably been much smaller without the relatively high fertility rates of the foreign population.

A new period began in the late 1980s, when immigration increased rapidly. Apart from the ongoing family reunifications, the number of ethnic Germans from Eastern Europe rose sharply after 1989 (2.4 million between 1990 and 2004), as did the number of asylum seekers. The inflow peaked in 1992 with 1.2 million foreigners, 438,000 of them asylum seekers. The increase was partly due to conflicts in Central and Western Africa, the war in the former Yugoslavia and the clashes between Turks and Kurds in south-eastern Turkey.<sup>2</sup> Furthermore, from 1991 up to 209,226 Jewish immigrants from the former Soviet Union moved to Germany as a result of the policy of supporting the reconstruction of Germany's Jewish community (BMI, 2008, p. 138). All these categories –Eastern Germans, Jews and asylum seekers– enjoyed the right to basic income and housing, putting great pressure on local governments, who were responsible for providing these services.

The large number of asylum seekers decreased rapidly after the constitutional and legal reforms of 1993 that excluded those from another EU state from the right to apply for asylum and greatly reduced the social benefits they received. The generous provision of social benefits and financial help, established in the post-war period, had become a significant attraction factor for foreigners. Reform of the asylum regime was undertaken in an environment characterised by frustration about the economic burden of reunification and a very high level of unemployment, especially in East Germany. The growing racism, frequently degenerating into pure violence, of radical right-wing party members was exploited by populist politicians to create the impression that it was vital to close the country's borders by limiting the right to political asylum. From 1993 onwards, it was impossible for an immigrant to obtain asylum if he entered Germany from a country of origin that was considered to be 'safe'. The legal reforms were highly successful: in 2006 there were only 21,000 applications, the lowest level since 1983.

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<sup>2</sup> Around 345,000 people arrived Bosnia-Herzegovina alone, most of whom have already returned to their home country (BMI, 2008, p. 17).

The number of new arrivals of ethnic Germans from Eastern Europe was also cut back by legal changes in the late 1990s, including the introduction of language tests in 1996 and the requirement to prove ethnic anti-German discrimination in the country of origin. In 2006 only 7,747 individuals entered Germany for that reason, while during the 1990s the average annual figure was 200,000. Ethnic-German immigrants received German nationality immediately, often without speaking German, while naturalisation was difficult for second-generation immigrants of other origins, irrespective of the fact that their parents had paid taxes and social security for decades and that they spoke German fluently. These discrepancies were considered unjust by sections of German society and fuelled the internal discussion about immigrant status.

In 2007 6.74 million foreign nationals lived in Germany, concentrated in the former Western Germany and in the larger cities. They comprised 8.9% of the German population, a percentage that had remained relatively stable since 1995. This did not include immigrants who had obtained German citizenship, such as the ethnic Germans from Eastern Europe and the former Soviet Union and naturalised immigrants. Finally, irregular immigrants do not appear in the national census and there is no generally accepted estimate of their number (Cyrus, 2009).

Because of these difficulties, the term 'persons of immigrant background' is used in the political discourse and in sociological surveys. The Federal Statistical Office included this category in the micro census for the first time in 2005. For 2006 it was observed that 15.1 million people, or 18.4% of the German population, fell into that category (Statistisches Bundesamt, 2006).

The biggest national group of immigrants (without German citizenship) are the Turks (1,764,000), followed by Italians (541,000), Serbs (297,000), Poles (327,000) and Greeks (310,000). Considered globally, it is an old migrant population: one in five foreigners is German-born, 70% have been resident for at least eight years and around two-thirds have a permanent residency permit. Compared with other European countries, in 2006 Germany received the second-largest share of foreigners, after Spain, and came third in the number of naturalisations.

However, despite these large numbers, it is still difficult for politicians and society to consider Germany a country of immigration.<sup>3</sup> In fact, the Christian Democrats kept denying this fact until the late 1990s.<sup>4</sup> When the first red-green coalition (Socialists and Ecologists) came into office in 1998 there was a very significant change in German self-definition as regards immigration, since the Green Party had traditionally defended migration-friendly positions, supporting double nationality, antiracism policies and the concept of a multicultural society.

#### *Citizenship Reform of 2000 and the 'Green Card'*

Although the red-green coalition's ambitious plan to allow double nationality was finally unsuccessful, the reform of Germany's citizenship law in 2000 was a significant step forward. It was the first integrative, standardised regulation of naturalisation in Germany.

<sup>3</sup> An important symbolic step was the creation of the post of Commissioner for Foreigners in 1978. The first incumbent, Heinz Kühn, was the first official to recognise that Germany was a country of immigration in his memorandum of 1979.

<sup>4</sup> Overall, the sentence 'Germany is not a country of immigration' was used 158 times during the election campaign in 1998 (Drieschner, 2006). Even the current Minister of the Interior reaffirmed the slogan (Dernbach, 2006).

Before, it had been regulated by many different decrees that afforded significant discretionary powers to the administration in each individual case. With the reform Germany has given up its relatively strict concept of nationality based on *ius sanguinis* by establishing certain norms of *ius soli*, although fiercely contested by certain factions within the CDU.<sup>5</sup> Since the year 2000, children born with at least one parent living in Germany for a minimum of four years and with a permanent residence permit automatically receive German citizenship. They also receive the nationality of their parents, which means that *ius soli* and *ius sanguinis* are applied simultaneously. The new citizenship law establishes the so-called option-model. It allows double nationality to children born in Germany, but obliges them to select one between the ages of 18 and 23.<sup>6</sup> Furthermore, the law provides for entitlement to naturalisation for immigrants who have been living for at least eight years in Germany with a permanent residence permit.<sup>7</sup> German citizenship was taken up by 124,566 people in 2006, most of them Turks. From 2008, after a lengthy controversy and in a move aimed at defusing Islamist radicalism, an obligatory citizenship test was introduced, making it necessary to prove not only an adequate knowledge of the German language but also notions of Germany's culture and Constitution.

The turn of the century also saw the first and only German attempt to create a proactive policy to attract immigrants. In 2000 the red-green coalition implemented the German 'Green Card' programme to attract foreign IT experts which, despite the high level of unemployment, could not be recruited in the German labour market. The programme offered residence and work permits for five years to up to 20,000 third-country national. A prerequisite was a degree in information or communication technologies or a minimum income of €51,000/year before tax guaranteed by the employing company. The 'Green Card' also provided work permits for spouses after a one-year stay and was also available to foreign students of corresponding academic subjects, making it easier for them to stay in Germany immediately after ending their studies.

Between 2000 and 2003 14,876 people applied for a 'Green Card', most of them from India and Eastern Europe. A possible explanation for the programme's relatively limited use by big multinational companies in the IT-sector is that even if it offered an accelerated procedure to contract third-country nationals, it nevertheless continued to be easier for them to use their internal channels for the transfer of human resources (Kolb, 2005). Another important drawback was that no permanent residence permits were on offer, in a clear contrast with the US Green Card system after which it was named. Following the decline of the IT industries in the first years of the decade, the programme was halted in 2004, although its short existence greatly contributed to the debate in Germany about immigration and to the new Law approved in 2004. Around the same time Germany resolutely opposed the European Commission's first attempt to adopt a common European Migration Policy (Economic Migration Directive, 2001) due to the pressure of various domestic professional associations and trade unions.

#### *The German Immigration Law of 2004*

The demand for IT experts and the report prepared in 2001 by an independent commission appointed by the Interior Ministry established for the first time since 1973 that there was a need for foreign labour to resolve some of Germany's structural demographic

<sup>5</sup> The most famous incident was a campaign against the bill initiated by Roland Koch (CDU), currently Minister President of the Hesse, during the election campaign in Hesse in 1999.

<sup>6</sup> Paragraph 12 of the German Citizenship Law provides a list of cases in which it is possible to maintain double nationality (eg, EU and Swiss citizens).

<sup>7</sup> Since 1 September 2008 naturalisation also requires passing a citizenship test.

problems. The perception of this need was also reinforced by a programme adopted in 2002 to recruit foreign nurses to help care for old people. Accordingly, the red-green government prepared a draft of an Immigration Law designed to fully overhaul the 1990 Foreigners' Law. The law was to have been one of the red-green coalition's leading reform projects, but its first draft coincided with the events of September 11, that had a sharp impact on its discussion, as earlier public opinion polls among young Turkish immigrants revealed that a significant number sympathised with Islamic fundamentalism. What had been planned as a major project for modernisation became a discussion on internal security, terrorism and the clash of civilisations. After a long and stormy process, which took five years, the law was finally approved in 2004 as the 'Law for managing and containing immigration and for the regulation of residence and integration of EU citizens and foreigners'. Due to technicalities the law only came into force in January 2005.<sup>8</sup>

The law's main features were recognising that immigration is not necessarily a temporary phenomenon and closing the door to unskilled workers. The reform was largely a matter of centralising and standardising a number of laws and administrative rules in the new Residence Law, leading to a reduction in the types of residence permit, and establishing regulations for work-related immigration. However, it hardly encouraged new forms of access to the German labour market although it did make it easier for students to obtain residence permits if they wanted to stay and work in Germany after the completion of their studies. To ensure the integration of new immigrants the law introduced compulsory courses on German culture and language. It also included persecution by non-state actors and gender-related persecution as justification for obtaining refugee status. Furthermore, it authorised the governments of the *Länder* to create so-called hardship commissions, empowered to request residence permit for those who would otherwise be deported if the law were to be strictly interpreted. In addition, the pre-eminence of security concerns has caused deportation rules to be tightened and added human trafficking as a reason for deportation. Contrary to the first draft, the law has not established a points-based system and has not abolished the 'exceptional leave to remain' status, that had been criticised for years by immigration-related organisations such as Pro Asyl (Cyrus & Vogel, 2005).

The legal regulation of access to the German labour market for citizens of new EEU member states and third-country nationals is now based on two main premises. The first is the priority of German workers, meaning that work-related immigration should only be promoted if there is a lack of Germans in a specific sector. Accordingly, a permanent residence and work permit has been included in the 2004 law for highly-qualified workers, ie, improving the conditions offered by the 'Green Card' programme. The second premise is the avoidance of any kind of dumping, ie, work-related immigration must not lead to lower wages or reduced work conditions or social standards. There is currently demand for unskilled workers in agriculture, cleaning, gastronomy and domestic care and for highly skilled employees in information technology and telecommunications. Bilateral agreements with some 14 Central and Eastern European countries signed in the 1990s aim at the recruitment of workers in the first group. This kind of Eastern immigration is 'circular' in the sense that most of the immigrants stay in Germany for only a few months working in seasonal jobs –harvesting and tourism–, then return to their home countries and subsequently move back to Germany a few months later.

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<sup>8</sup> Some reforms were approved in 2005 and 2007 to implement European directives on residence and asylum, to combat forced and fictitious marriages, to facilitate the immigration of company founders and to encourage the integration of legal immigrants.



In the European arena, Germany's prevailing restrictive immigration practices have led it to obstruct any attempt to develop a common migration policy. After opposing the Economic Migration Directive in 2001, Germany was also against the 'Blue Card', a work permit for highly-skilled migrant workers to be valid throughout the EU. The national prerogative and the wages to be received by these skilled workers were the main concerns of the German government, that feared losing the power to regulate and limit work-related immigration in accordance with national demands and wage and social security standards. Before the world economic crisis that broke out in 2008, the German population was already concerned about relatively high unemployment and the reduction of public services undertaken in previous years due to the financial stress caused by reunification. The defence of a more open immigration policy was a vote-loser for all political parties, although there were differences in degree, with socialists, greens and liberals far more in favour of making work-related immigration easier. Ultimately, guarantees regarding national prerogatives and minimum salaries (1.7 times the average gross wage in the host country) allowed Germany to acquiesce.

**Conclusion:** It has taken Germany many years to accept that immigration is unavoidable and that legal channels should be opened to regulate the inflow and to foster the integration of immigrants. However, even now public opinion is reluctant to accept immigration, while immigrants are still viewed by a substantial part of society as a source of social problems, whether as Islamic fundamentalists, consumers of social benefits or competitors in the labour market. The recent history of Germany's progress towards regulation is full of doubts, about-turns and apparent changes. The Immigration Law of 2004, for instance, was more the systematisation of a partly disordered legal situation than a substantial reform. The Naturalization Law, in contrast, can be considered a real reform as it has put an end to the exclusion from German citizenship of those who are not ethnic Germans. All in all, German immigration policy is characterised by continuity more than by any change. The protection of the internal labour market to prevent competition between German and foreign workers, to maintain high salaries and good working conditions, and the defence of the welfare state are the policy's main priorities. Germany has traditionally an opponent of any attempt to diminish state sovereignty in this respect and is thus still a significant obstacle to the creation of a common European migration policy.

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