AccessIN
Social Inclusion and Access to Basic Services of Third-Country Nationals

Social Inclusion and Access to Basic Services of Third-Country Nationals (AccessIN)

Country report for Germany

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1 Introduction

The political discourse on the connection between migration and social policy in the Federal Republic of Germany is peculiarly double-faced and divided. The inflows of refugees after 2014, the 1 million people from Ukraine residing in Germany in 2023 and the rising numbers of asylum seekers are viewed either as a humanitarian obligation, a potential economic gain or as a "burden" on the social security systems.

Debates on the so-called abuse of social security systems have been particularly articulated recently when it came to subjecting the Second Book of the Social Code (SGB II) to its most extensive reform since its introduction in 2005. This basic security for jobseekers, which is supposed to "allow those entitled to it to lead a life in keeping with human dignity" (§ 1 SGB II), couples job-seeking and social assistance. In the context of the reform debates, the German daily newspaper with the largest circulation ran the headline "More and more foreigners on welfare". "Influx" into the social security systems and "abuse" of benefits by foreigners are recurring themes that characterise the political form that Etienne Balibar (2010) called the national social state. However, these kinds of discourses seem to recur at regular intervals and attain legal and even material shape in the form of restrictions on access to social benefits. In 1993, the Federal Republic introduced an independent social code for asylum seekers with the Asylum Seekers' Benefits Act. This happened at the height of the debates about the flight from the war zones in the former Yugoslavia. Racist violence accompanied the asylum law reform, which was passed "in the smoke of burning bombs", as the historian Ulrich Herbert (2010) wrote. It brought about both symbolic and material disadvantage for those seeking protection compared to the social entitlements of citizens. The legislator justified his action by saying that a high level of benefits would provide false incentives to apply for asylum in the Federal Republic (Bt-Drs. 12/4451, p. 5).

However, social policy as an instrument of migration control (Attaç & Rosenberger 2019) through restricted access to social benefits is only one side of the coin. Alongside are the discourses that argue in terms of the national economy, thus emphasizing with one voice that persistently high immigration rates are necessary to sustain the welfare state. According to the Institute for Employment Research (IAB), the demographic change in Germany requires a net immigration of 400,000 people every year (Fuch et al 2021). Since 2005 at the latest, politicians have also become increasingly interested in the migrant workforce. The federal government, the "Länder" and local authorities are increasingly trying to facilitate and accelerate the integration of foreigners in Germany, with language courses and numerous educational and labour market policy measures. Promoting diversity is becoming a central programme of personnel and organisational development in both the public and private sectors. This discursive simultaneity of opening and closing is observed not only in social and political discourses, but also reflected in the legislation.

The manner and extent of inclusion (or exclusion) of third-country nationals (TCNs) in the Federal Republic of Germany is essentially regulated in the Residence Act (AufenthG). This Act was passed in its current structure in 2005 and has been amended countless times since then. Most recently, a comprehensive package of laws was introduced in 2023 to facilitate the immigration of skilled workers from third countries. Regulations were also introduced to enable persons with rejected asylum applications who have been living in the FRG for many years as tolerated persons to work out a perspective for obtaining a permanent residence title. The central objective of the Residence Act has been to "manage and limit" immigration. This steering is oriented towards "the capacities for admission and integration and the interests of the Federal Republic of Germany in terms of its economy and labour market. At the same time, the Act also serves to fulfil Germany's humanitarian obligations" (Art. 1 AufenthG.) The "capacity for admission and integration" can be interpreted either culturally or functionally. It stands alongside the requirements of the economic needs of the labour market, economic interests and alongside the humanitarian obligations of the FRG. The word "limitation" was deleted from the objective of the law. The liberal opening, which is oriented towards economic usability, is unrelated to the numerous closures, such as the extension of the duration of detention pending deportation or the numerous attempts to speed up asylum procedures. Legislation in migration law is not simply becoming more liberal, but also more selective and thereby increasingly complex. It creates openings for some migrants and tightens the mechanisms of rejection for others. In this process, the exclusion of social rights proves to be an instrument with which political control attempts to manage migration in the desired direction.

Especially against the background of the growing number of third-country nationals in Germany, it is therefore important to have an overview of the areas of social policy in which access to (and exclusion of) TCNs exists.

2 Social Inclusion and Access to Basic Services of Third-Country Nationals in Germany

The Residence Act links immigration and access to social rights through the allocation of residence permits. They are listed in full in section 4 of the Residence Act: a visa pursuant to section 6 (1), no. 1 and (3); a temporary residence permit (section 7); an EU Blue Card (section 18b (2)); an ICT Card (section 19); a Mobile ICT Card (section 19b); a permanent settlement permit (section 9) or; an EU long-term residence permit (section 9a).

TCNs who hold permanent residence permits have full access to the labour market and all welfare benefits. Access to work and social security can be restricted for persons with a temporary residence permit, which can be issued for various purposes: for education (§§ 16-17b AufenthG); for economic activity (§§ 18-21 AufenthG); for "reasons of international law, humanitarian or political grounds" (§§ 22-26 AufenthG) or for family reasons (§§ 27-36a AufenthG). Access to employment for people

without a permanent residence permit is regulated by the Employment Ordinance (Beschäftigungsverordnung, BeschV), which is the responsibility of the Federal Ministry of Labour and Social Affairs- in contrast to the Residence Act, for which the Federal Ministry of the Interior (BMI) is responsible. These two organisations are the major players in the field of migration and social policy. This organisational arrangement also reflects the tension between economic interests and migration control oriented towards integration capacity.

As the following sections will highlight, persons with a regular residence title have almost unrestricted access to the labour market and to social security services in the fields of employment, education, healthcare and housing in Germany. Nonetheless, TCNs are often confronted with non-legal hurdles accessing equal participation.

2.1 Employment

In 2013, the OECD already noted that the Federal Republic has created numerous opportunities for the immigration of skilled workers. Over the past decade, the federal legislation has continued to reform TCNs' opportunities to access the labour market. This applies to both the legislation on skilled labour immigration and the regulations concerning the access of refugees to employment. First, the level of qualification required to take up employment in the Federal Republic was lowered, and an immigration pathway has been recently introduced for TCNs in search for work in Germany. New opportunities were created also for refugees and even for those with rejected asylum applications (their deportation is, in some cases, suspended for many years, but now they have access to the labour market and vocational support). This is a real paradigm shift that allows asylum seekers to successively change the purpose of their stay even after their asylum application has been rejected through success in education and in the labour market.

The number of foreigners working in Germany has doubled over the past 10 years, reaching 5.6 million people. More than half of them come from third countries (BA 2023a). The Western Balkans regulation, which gave a privileged access to the German labour market, was also significant in terms of labour market policy (Brücker et al 2020).

After 2015, most employment policy measures in Germany focused on the labour market integration of refugees. Between 2015 and 2020, 1.3 million people went through the federal government's language support programmes, the integration courses. The BA and the local jobcentres, but also other actors such as local migrant organisations and chambers of crafts, have implemented numerous programmes at the local level to enable refugees to quickly enter the German labour market. Around 500,000 people from the most important countries of origin for asylum (Syria, Afghanistan, Eritrea) are now employed in the Federal Republic. In 2012, this figure was only 100,000. Particularly successful were not the

standardised training programmes from the BA's portfolio, but projects that, with the involvement of migrant organisations and local business associations, provide highly individualised and job-related skills that lead directly to usable certificates or already take place with an employer.

In many respects, the federal government's activating employment policy did not remain without consequences. Never before have so many people worked in the Federal Republic and never before has the employment rate been so high. Yet, what initially sounds like a success story also has downsides. Employment statistics show that the labour market for TCNs is highly under-classified (BA 2023, Tab 5). A disproportionately large number of third-country nationals work at low qualification levels in neither materially nor symbolically recognised occupations. Moreover, many refugees have been placed in temporary contracts (BA 2022).

The next steps in the employment policy should aim less at further reforming employment promotion than at regulating migrantised (Birke 2022) labour markets. This concerns the practices of temporary and agency work, of employment in mini-jobs, as well as wage levels. Especially in precarious employment, there are often fluid transitions from formal to informal work. It is important to create more individual counselling services and legal support services for TCNs, also in their mother tongues. It is also important to create organisations to articulate interests, which can point the way to improved political and economic participation.

From an economic perspective, the integration of TCNs into the German labour market has been very successful in recent years. However, labour market integration can be successful only if the labour market offers decent jobs and prospects for workers and their families. Political action on labour market structures should be the focus of the employment policy in the coming years and is a prerequisite for equal participation opportunities, especially given the expected increase in the number of TCNs living, studying, and working in the Federal Republic.

2.2 Education

At first glance, there is no federal German educational system, but 16 "Länder" laws that regulate school organisation and access to higher education. Central framework conditions differ, such as the length of compulsory schooling (which varies between 9 and 12 years), the duration of primary school, the spread of different types of secondary schools, etc. For children from third countries, however, a decisive factor is that school attendance is compulsory in all cases and, conversely, that there is a right to schooling irrespectively of residence titles. However, this does not apply to secondary and pre-vocational educational programmes, nor to the opportunities to study. For this, TCNs must have a residence permit for the purpose of education or be recognised as refugees. Accordingly, it is rightly stated that educational success in Germany depends on residence titles (Söhn 2014).

In addition, relevant reports show that success at school in the Federal Republic of Germany has been very strongly dependent on social and national origins (e.g. SVR 2023). At the latest since the refugee migration after 2014, more activities have been implemented to better allow schools in making use of the skills and knowledge brought along by TCNs for their educational success. These include, among others: counselling services for newly arrived families[1]; programs for the recognition of teacher training acquired abroad, with the aim of increasing the proportion of teachers from third countries[2]; or the implementation of mother-tongue bilingual teaching[3].

The schools, however, are still at the beginning of a longer development process. While multilingualism has become the norm in German schools, the organisational approach to it is still in an exploratory phase and dependent on individual schemes and temporary support. Equally important for opening up the school system to TCNs is adequate basic provision in schools.

Cities and municipalities have relatively little influence on the development of schools and universities. Analogous to the developments of an integration infrastructure, a local education administration has also emerged in the last 20 years, which sees its tasks primarily in networking the numerous local education actors, especially at the transitions in the life course (Bakoben & Schlee 2023).

The transition rates of TCNs from the German school system to higher education seem low, although there is limited data on this. In 2019, only 3,000 people from the most important origin countries for asylum took up studies in the FRG (Hochschulrektorenkonferenz 2020), although universities and colleges offer numerous programs and counselling infrastructures.[4] The relatively low number of refugees enrolled in a degree programme in Germany is primarily due to the lack of funding opportunities. There is a broad, yet confusing, funding landscape that offers third-country nationals ways to finance their studies. However, the most important educational policy funding instrument, a loan under the Federal Training Assistance Act (Bundesausbildungsförderungsgesetz, BaföG), is not available to TCNs who have already earned a degree abroad. This applies even if this degree is not recognised as equivalent in Germany and can thus lead to an occupation appropriate to the qualification. This exclusion prevents the target-oriented further development of the degrees of highly qualified foreigners in Germany and is related to the fact that foreigners often work in Germany at a level below the qualifications they brought with them. This is even more surprising given that the shortage of skilled workers is a central issue in the German labour and educational policy discourse.

[1] In the state of Hesse: https://schulaemter.hessen.de/schulen-und-lehrkraefte/paedagogische-unterstuetzung-von-schulen/schulische-integration [accessed 25.09.2023]
[2] In the state of Hesse: https://lehrkraefteakademie.hessen.de/ausbildung-von-lehrkraeften/internationale-lehramtsabschluesse
[3] https://schulaemter.hessen.de/schulbesuch/unterricht-in-der-herkunftssprache
[4] E.g. at the Goethe University Frankfurt: https://www.frankfurt-university.de/de/studium/international-office/incomings/angebote-fuer-gefluechtete/

There is also still great untapped potential in the recognition of foreign educational qualifications. The Vocational Qualifications Assessment Act (Berufsqualifikationsfeststellungsgesetz, BQFG), which was passed in 2012 and followed in subsequent years by corresponding regulations on the recognition of professions regulated by state law, created a legal entitlement to a procedure for determining the equivalence of vocational qualifications acquired abroad. A total of 240,000 procedures have been completed since then. 40% of them were submitted from abroad, i.e. before immigration; and approximately 90% were from third countries. They mostly refer to regulated professions, i.e. professions for the practice of which the existence of a recognised training (or the determination of its equivalence) is required (Böse & Schmitz 2021). Although the total potential of occupational recognition cannot be estimated well, it is likely to be far from exhausted in view of the high net migration of recent years. The expansion and bureaucratic acceleration of recognition procedures are an important opportunity to open up better economic and also symbolic participation for TCNs.

2.3 Healthcare

There are two ways of looking at the access of TCNs to the German healthcare system. On the one hand, it is about the healthcare-related services that migrants receive but, on the other hand, it is also about the labour force of migrants in the German healthcare system. Over the last 10 years, the number of doctors practising in Germany has more than doubled- almost 60,000 persons without German citizenship, while 5,000 doctors practising in the country come from Syria. Every eighth care worker comes from abroad. More than 200,000 foreign care workers are now working in Germany - about three times as many as in 2013. The number of TCNs employed in the care sector in particular has been rising sharply in recent years (SVR 2022).

At the same time, the vast majority of TCNs in Germany have full access to the healthcare system and are compulsorily insured in a statutory or private health insurance scheme. This also applies to seasonal workers from third countries. The Federal Labour Agency has concluded agreements with Moldova and Georgia. It is possible to exempt them from compulsory social insurance if their employment lasts less than 90 days. However, employers must guarantee health insurance coverage for seasonal workers and either insure them themselves or provide proof of insurance coverage abroad (BA 2023). While the FRG's healthcare system covers broad segments of the population, not all are covered equally. Asylum seekers do not necessarily receive the full range of medical services. They are still covered by the Asylum Seekers' Benefits Act, the implementation of which is in the hands of the local authorities. The healthcare benefits they receive varies across the Federal Republic, while also depending on the practices of local administrations (Gottlieb & Schüle 2021). Another important factor are local health infrastructures that are becoming increasingly differentiated due to unequal economic and socio-spatial development.

The Federal Statistical Office puts the number of people living in Germany without health insurance coverage at 60,000 (Statistisches Bundesamt 2020). This concerns both undocumented migrants from third countries and EU citizens who work in precarious or short-term jobs or have lost their jobs. At this point, the municipalities have some room for manoeuvre and also the obligation to guarantee equal health protection for all people. The municipality of Frankfurt a.M. is proving to be a comprehensive actor in dealing with this problem with its own policies within the legal framework. However, this does not include more extensive treatment or major and cost-intensive medical interventions. The Frankfurt Health Department organises a humanitarian consultation[5] that is also perceived internationally as a best-practice model (Delvino & Spencer 2019). It is run by staff of the Health Department in cooperation with the NGO Maisha - Association of African Women in Germany. Twice a week, there is a general medical consultation and once a week a paediatric and gynaecological consultation for people without health insurance. Treatment is free of charge and confidential. In addition to medical treatment, social counselling by Maisha is an essential part of the service. In other municipalities - such as Offenbach -, welfare organisations are also active in providing basic medical care for people without insurance coverage, which, of course, does not guarantee further medical treatment and cost-intensive medical interventions.[6]

2.4 Social Assistance

The introduction of the Second Book of Social Legislation in 2005 closely coupled social assistance, as previously regulated in the Federal Social Assistance Act, to job placement. In addition to the reduction of payments from the statutory unemployment insurance (SGB III) and the lowering of the reasonableness thresholds for taking up work, this coupling was an essential step towards an activating labour market policy.

There are three ways for TCNs to receive social assistance in Germany. In 1993, the Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz) introduced a separate social welfare law for asylum seekers, which provides significantly lower benefits for persons who apply for asylum in the Federal Republic, as well as for persons who are tolerated in the FRG as rejected asylum seekers. The Federal Constitutional Court also forced the legislator to guarantee the minimum requirements for the SGB II in the Asylum Act by means of a rather complicated calculation.

All persons with a residence title who are capable of working receive benefits under the second book of the social code. The benefits consist of a minimum income to cover needs, which is determined in

[5] https://frankfurt.de/service-und-rathaus/verwaltung/aemter-und-institutionen/gesundheitsamt/humanitaere-sprechstunden (Accessed: 25.09.2023).
[6] https://www.malteser-offenbach.de/dienste-und-angebote/weitere-angebote/medizin-fuer-menschen-ohne-krankenversicherung.html

accordance with the Regelbedarfsermittlungsgesetz (German Act on the Determination of Regular Needs), benefits for housing and heating and, under certain circumstances, benefits for education and participation of children and young adults. Persons whose earning capacity is limited receive benefits from Book 12 of the Social Code, which has an analogous security logic.

Receiving social benefits is not equally relevant for all third-country nationals in order to gain access to permanent residence in Germany or even access to citizenship. For persons entering the Federal Republic for humanitarian reasons, less stringent economic conditions apply than for persons residing for educational or economic reasons. The situation is similar with regards to family reunification. While recognised refugees must prove that they are able to support themselves and their family members "predominantly" from their own resources, persons who are in the Federal Republic for the purpose of gainful employment must prove that they are fully able to support themselves without recourse to social assistance under SGB II or XII.

With this multi-layered system of social assistance, TCNs with regular residence in the Federal Republic have equivalent protection against social risks. Often, however, it is bureaucratic hurdles that make access to social benefits more difficult. The transition from SGB II to AslyblG is time-consuming and creates gaps in benefits. The administrative science dealing with these calls for the abolition of the administratively burdensome and ineffective differentiation of different social codes for different status positions (Bogumil et al 2020). A broad locally differentiated counselling infrastructure has emerged for the lengthy and complicated processes of application. It consists of the nationally funded migration counselling centres, state programmes such as the WIR program in Hesse, locally active voluntary initiatives, as well as professionals offering counselling and accompaniment to authorities. The calculation of benefits is particularly complicated for families in need who have different residence titles and social entitlements. It is possible that one person in a family receives benefits under Book II of the Social Code (SGB II), one person receives benefits under the AsylblG, or one person receives benefits under the Unemployment Insurance Act (SGB III). In addition, child benefit payments can be made and funds from the education and participation package can be applied for. TCNs are not the only ones who are overwhelmed by the numerous forms (in German language), the documents required and the administrative procedures. It is also becoming more and more apparent that the authorities are not fulfilling their duties of verification. It is not uncommon for TCNs to fall out of employment and social benefits because the municipal migration office does not extend the residence permit in time (Schlee et al 2023). Equal access to social assistance fails not because of legal, but because of bureaucratic hurdles.

2.5 Housing

The access of TCNs to the housing market is not subject to specific subsidies but must be considered in the context of the development of housing policy and rental prices, as well as the support services

that exist in SGB II and SGB XII. As long as people receive benefits from the AsylblG, the municipality assumes responsibility for housing refugees. The risk of TCNs to become homeless is relatively low compared to other groups of people who do not have access to social benefits (especially EU citizens). In addition to the public design of the housing market, persons can receive benefits for housing from SGB II or also from the Housing Subsidy Act (Wohngeldberechtingungsgesetz). Municipalities can also issue housing entitlement certificates, which allow individuals to live in socially subsidised housing. In principle, all third-country nationals with residence titles are entitled to these benefits.

Particularly in the case of mediated and short-term employment, there are opportunities for exploitation of workers who are housed in overpriced and poor accommodation. The fact that, especially for temporary TCNs and seasonal workers, there is a high risk of exploitation due to a linkage between wages and accommodation costs is only indirectly hinted at by the Employment Agency by regulating the conditions of accommodation for seasonal workers Accommodation must comply with the rules for workplaces, may not be directly deducted from wages and must be made transparent in (bilingual) rental contracts (BA 2023b, p. 3f.).

Housing policy in the Federal Republic has long been neglected. For example, the federal government initially dropped out of active housing policy, leaving the playing field to the individual federal states and municipalities. Around the turn of the millennium, numerous municipalities rashly sold municipal property for short-term considerations. The city of Frankfurt, for example, threw a total of almost 14,000 housing units onto the private market at the beginning of the millennium, although the housing policy problems (rapid increase in rents for new tenants, housing shortage, decline in socially subsidised housing) were already foreseeable at that time. The number of flats in social housing in Frankfurt a.M. has more than halved since the beginning of the 1990s, from 69,000 to just 29,000. There is no reversal of this trend in sight. In a national comparison, the privatisation rates of public property in Frankfurt are still below other large cities such as Düsseldorf, Berlin or the cities of the Ruhr region (Holm 2013, p. 48).

Today, it can be said that privatisation in different regions has led either to massive price increases and displacement or to disinvestment and segregation. In any case, the promised privatisation returns of the municipalities are unlikely to have been as high as the price increases in the housing market over the last 20 years. They are the central factors for making access to affordable housing difficult for people in low and middle income brackets in urban locations. This also affects refugees who, regardless of whether they receive SGB II benefits or become active in the labour market, still live in municipal shelters or homeless shelters because they cannot access the housing market. The difficult situation for TCNs is exacerbated by the frequently documented discrimination in the housing market (ADS 2020), which is mainly recorded by the Federal Anti-Discrimination Agency (ADS) and dealt with by local counselling centres. It is not the legal access to support, but politically-induced undesirable

developments in the housing market and discrimination that exclude TCNs from adequate housing conditions.

3 Conclusions

TCNs with regular residence in the Federal Republic of Germany are largely on an equal footing with German nationals in terms of access to social rights. The system of differentiation of social rights, which has developed further in recent years, already begins before the receipt of a regular residence title and affects asylum seekers, rejected asylum seekers with tolerated stay, but also EU citizens who only have limited access to social rights. Despite the extensive equality of TCNs under social and labour law, there are a number of exclusion mechanisms from central areas of the social life.

- The German labour market is proving to be very receptive to TCNs, to refugees but also to skilled workers who are expected to come to the Federal Republic in growing numbers. At the same time, the labour market has a high number of jobs in low-wage sectors, in temporary work or in fixed-term work. These jobs (in the sectors of care, constructions, agriculture, logistics, etc.) are poorly recognised both materially and symbolically, while also being disproportionately filled by foreigners. The measures to promote employment have been very successful in terms of numbers in recent years. Now it must also be a matter of developing frames for decent employment.
- Since 2014, the educational system has taken important steps towards adapting its staff and organisations to a more diverse audience. Particularly in the area of recognition of vocational qualifications acquired abroad, as well as in the promotion of foreign students, there are good opportunities to attract the skilled workers so urgently needed in the Federal Republic, who have so far often worked in Germany far below their qualifications.
- TCNs with a residence permit have full access to healthcare. The financing of interpreters is in need of regulation. Cities and municipalities are in demand as they must also provide adequate healthcare to the growing number of persons with precarious residence, EU citizens, asylum seekers and tolerated persons.
- TCNs' access to the various social support services is done through local organisations and bureaucratic processes. Not only applicants, but also the administrations, are overburdened to manage the distrust against misuse of benefits. Here, it is necessary to reduce the obligation to check and to make the paths to the administration as well as its decisions more transparent for those affected. Especially the Asylum Seekers Benefit Act (AsylblG) is bureaucratically burdensome and differentiates claim groups for symbolic political reasons. The regulations on dealing with Ukraine refugees provide a blueprint for the immediate inclusion of refugees in the labour market and in the welfare state's standard benefits and leads to a reduction in

bureaucracy. Clarity must also be established regarding access to social support and the financing of translations.

- The housing policy has been a long neglected issue of social policy. Privatisation and the withdrawal from social housing over the last 20 years have made it more difficult for TCNs to access affordable housing. Nevertheless, examples are developing in some places of how municipality and civil society organisations can actively shape the housing policy. Together with the GrünBau gGmbH, the city of Dortmund renovates properties that it supplies to the social housing market. The city of Dortmund first makes use of the possibilities offered by building regulations to order repairs, security measures to avert and eliminate hazards in order to improve the condition of these properties, which are in poor constructional conditions. If necessary, however, the properties are also acquired. The Real Estate Office is tasked with buying up and developing problematic houses for the municipal portfolio. Some of the properties are then leased to Viertelwerk gGmbH. The subsidiary of GrünBau gGmbH takes over the problematic houses, refurbishes them with social housing funds and with the inclusion of employment measures with immigrants, and then acts as a social landlord. By the end of 2021, 26 properties had been developed in this process. Another 18 are currently redeveloped.

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