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Federal Office
for Migration
and Refugees



Documenting and Establishing Identity in the Migration Process

Challenges and Practices in the German Context

Focused study by the German National Contact Point
for the European Migration Network (EMN)

Working Paper 76

Julian Tangermann



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Summary

The present study addresses the topic of the documentation and establishment of identity within different migration processes: **asylum**, **forced return** and **issuance procedures for visas and residence permits**. It thereby examines legal and societal aspects of the topic as well as administrative practice.

Significance

Identity documentation and establishment is of different significance within different migration procedures: Within the area of **asylum**, the identity of asylum applicants is documented during registration, whereas during the personal interview the identity is established in order to verify the individual history of persecution of the person concerned. Regarding **deportation**, the establishment of identity is crucial for the issuance of passport substitutes, without which deportations cannot be carried out. Within the **visa procedure**, identity is documented and verified in order to clarify beyond doubt, whether the applicant is in fact the person that will enter Germany/the Schengen-area with the respective travel documents. In the process of **issuing a residence permit**, on the other hand, the verification of identity generally takes place during the filing of the application by presenting the passport.

Challenges

While with respect to **asylum**, the stronger asylum-related immigration from 2015 onwards posed great challenges to the actors involved, both with regards to the registration and the personal interview, the central problem for carrying out **deportations** is the lack of travel documents. The challenges posed with regards to the **issuance of visas** differ according to the country of origin and the quality of the administrative procedures regarding documents there. With regards to the **issuance of residence permits**, the purpose of issuance is decisive. For example, the establishment of identity during the application for a residence permit for the purpose of family reunification, of education or of economic activity is unproblematic.

Legal basis

Both the Asylum Act and the Residence Act contain provisions for documenting and establishing identity, as well as for data transmission, storage and exchange. These are supplemented by legal provisions from other laws (e.g. the Act on the Central Register of Foreigners).

Institutional framework and actors

In the different migration processes, different actors are in charge of documenting, establishing or verifying the identity of the person concerned. Central actors are the Federal Office for Migration and Refugees, the reception centres of the Länder, the foreigners offices, the German missions abroad, the border and police authorities as well as further security authorities.

Methods and documents

When discussing the methods used, a distinction has to be made between those methods used for the documentation of identity and those used for the establishment of identity. Methods in use are taking fingerprints and photographs, conducting personal interviews or analysing data carriers. Whereas for example within the **asylum** procedure all documents that can verify the personal history of persecution of the person concerned can be brought to the fore, when **applying for a residence permit**, only a passport is significant.

Databases

When documenting identity, biographical data (name, place of birth, etc.) and biometric data (fingerprints, photos, etc.) of persons concerned are stored in different national and European databases (i.a. AFIS-A/INPOL, VIS, AZR). For the establishment and verification of identity the competent authorities use these but also other databases, mostly by means of automatic queries.

Debate

Identity documentation and establishment of third-country nationals is debated intensively in the political arena but also within society at large. Thereby, both legal changes (e.g. the 'Act to Improve the Enforcement of the Obligation to Leave the Country') and concrete measures (e.g. documentation of children's identity) are time and again within the spotlight of parliamentary and media debates.

The European Migration Network

The European Migration Network (EMN) was launched by the European Commission in 2003 on behalf of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum at the European level. Since 2008, Council Decision 2008/381/EC forms the legal basis of the EMN and National Contact Points have been established in the EU Member States (with the exception of Denmark, which has observer status) plus Norway.

The EMN's role is to meet the information needs of European Union institutions, Member States' authorities and institutions as well as the wider public by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in these areas. The National Contact Point for Germany is located at the Federal Office for Migration and Refugees in Nuremberg. Its main task is to implement the annual work programme of the EMN. This includes the drafting of the annual policy report "Migration, Integration, Asylum" and of up to four topic specific studies, as well as answering Ad-Hoc Queries launched by other National Contact Points or the European Commission. The German National Contact Point also carries out visibility activities and networking in several forums, e.g. through the organisation of conferences or the participation in conferences in Germany and abroad. Furthermore, the National Contact Points in each country set up national networks consisting of organisations, institutions and individuals working in the field of migration and asylum.

In general, the National Contact Points do not conduct primary research but collect, analyse and present existing data. Exceptions might occur when existing data and information are not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all EU Member States plus Norway in order to achieve comparable EU-wide results. Furthermore, the EMN has produced a Glossary, which ensures the application of comparable terms and definitions in all national reports and is available on the national and international EMN websites.

Upon completion of national reports, the European Commission drafts a synthesis report with the support of a service provider. This report summarises the most significant results of the individual national reports. In addition, topic-based policy briefs, so-called EMN Informs, are produced in order to present and compare selected topics in a concise

manner. The EMN Bulletin, which is published quarterly, informs about current developments in the EU and the Member States. With the work programme of 2014, the Return Expert Group (REG) was created to address issues around voluntary return, reintegration and forced return.

All EMN publications are available on the website of the European Commission Directorate-General for Migration and Home Affairs. The national studies of the German National Contact Point as well as the synthesis reports, Informs and the Glossary are also available on the national website: www.emn-germany.de

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Introduction

The present study is an update and extension of the EMN-study “Establishing Identity for International Protection and Return Measures: Challenges and Practices” from 2012 (BAMF 2012). The focus is on the documentation and establishment of identity both within the asylum procedure and with deportations as well as during the issuance of visas and residence permits. Measures of identity documentation (i.e. ascribing previously collected biographical or biometric information to a name) as well as identity establishment (i.e., whether a person is also the person s/he claims to be personally or by presenting an identification document) are described.

The documentation and establishment of identity are thereby of different significance in the different migration processes described in this study: At the centre of the asylum **procedure**, the individual history of persecution of the asylum applicant is verified. The identity of the applying person is documented during registration, whereas the verification of his/her origin plays a central role in the personal interview in order to determine if a person is actually persecuted. With **deportations**, on the other hand, establishing identity is a central prerequisite for issuing passports or passport substitutes. If the identity cannot be established beyond doubt, this is often an obstacle for carrying out the deportation. In the course of **visa procedures**, it is central to clarify beyond doubt, whether the person applying for a Schengen or national visa is also the person that will enter Germany/the Schengen-area with the respective travel documents. As the issuance of a **residence permit** is generally preceded by a visa procedure, the verification of identity within an application procedure for a residence permit for the purpose of family reunification, of education or of economic activity mostly proves to be unproblematic and is carried out by presenting a passport when applying with the local foreigners authority.

The study at hand examines the topic of the documentation and establishment of identity in its legal, administrative and societal dimension: Chapter 1 depicts the legal and administrative framework, gives an overview of the challenges faced with respect to the documentation and establishment of identity and presents available statistics. Chapter 2 describes the methods used to document and establish identity and on which grounds these are used. Chapter 3 examines the significance of identity establishment within the decisions taken by the competent authority, whereas Chapter 4 discusses the legal and technical aspects of data exchange and data storage as well as access to data bases. Chapter 5 then

addresses the different current political and societal debates concerning identity documentation and establishment.

The study is based on different sources, the most crucial of which are legal texts and administrative regulations on the right of residence and on asylum law. Ministries and authorities provided key information on administrative practice, statistics and current planning. Further, responses by the Federal Government to parliamentary enquiries were used. Parliamentary minutes from the Bundestag, media reports and statements by central actors were used in order to depict the public and political debate.¹

1 We wish to thank Phuong-Ha Nguyen, Theresa Bernemann and Kristin Schulz for their research assistance during their internships at the Research Centre of the Federal Office for Migration and Refugees.

1 Legal and administrative framework

1.1 Challenges to identity management

1.1.1 Challenges to documenting and establishing identity

The challenges to processes of identity documentation and identity establishment differ according to the respective migration process.

Within the **asylum procedure** the documentation and establishment of identity play a role on two occasions: On the one hand, the identity of asylum seekers is documented by identification measures pursuant to Section 16 of the Asylum Act². The Länder are responsible for the accommodation of asylum seekers. Since 1992 the authorities of the Länder (the foreigners offices, the police, and the reception centres) are entitled and obligated to document the identity of persons seeking asylum by means of identification measures (Section 16 subs. 2 in conjunction with Section 19 of the Asylum Act). Especially in the period, in which a high number of asylum seekers arrived in Germany, all authorities struggled to document the identity of the newly arrived (cf. Chapter 1.1.2).

On the other hand, the issue of establishing identity plays a role when carrying out the personal interview with the asylum applicants themselves. During the asylum procedure, the decision-makers of the Federal Office for Migration and Refugees verify the history of persecution of each asylum applicant individually. The latter are requested to credibly substantiate their history of persecution, upon which a balance is drawn on basis of the Asylum Act and current information on the country of origin: To this end, specific knowledge, experience, and intuition are necessary. A central challenge in this regard in the years 2015/16 was the training and instruction of many new employees as decision-makers (or as hearers) of the Federal Office for Migration and Refugees. Within the asylum procedure the verification of citizenship can also come to be problematic, in case the asylum applicants do not or cannot present identity documents, in case the country of origin does not have a (fully) operational registration/administration and thus the applicants do not own the relevant documents, or in case the country of origin

faces heavy corruption or criminality, which can lead to an accumulation of forged documents (cf. BAMF 2012: 7).

The central issue with respect to establishing identity in the context of **deportations** is the lack of proof of identity of the person to be deported, as without travel documents at hand the deportation cannot be carried out. “The return of foreigners that are enforceably required to leave the Federal territory initially depends upon their individual decision to comply with this requirement voluntarily. In case they do not comply with the requirement voluntarily, their return is dependent upon the willingness of the countries of origin to cooperate on identification, on obtaining passport substitutes, and on logistics” (Deutscher Bundestag 2017f: 16). However, obtaining a travel document can be obstructed both by the person required to leave and by the country of destination of the deportation, “as the country of destination can bring forward doubts regarding the citizenship of the person required to leave if proof of his/her identity is lacking” (BAMF 2012: 6). On 30 April 2017 the Central Register of Foreigners (AZR) listed 50,180 persons that at that point were required to leave the Federal territory and whose deportation was suspended due to a lack of travel documents (Deutscher Bundestag 2017f: 8). Further, the federal structure of the Federal Republic accounts for differences in the organisation and infrastructure of the responsible authorities. In part, their mode of operation differs strongly, which leads to the fact that not all so-called clearing offices (cf. Chapter 1.4.1) are in an organisational and staff situation in which they are able to carry out identity establishment in the same intensity.

The central challenges with regards to **visa procedures** vary according to the country of origin of the applicants as well as the purpose of the visa. As, generally speaking, counterfeit or forged identity documents and supplementary documents can always appear, they are a central challenge for the verification of visa applications. The higher the security standards of the original documents are and the more difficult the conditions for forgery are in the country of origin, the easier forged or counterfeit documents are recognisable and less of such documents are to be expected. However, the Federal Foreign Office assesses that in countries, which are more intensively affected by corruption, genuine documents are often acquired with false data from staff in public administration. Thus, extensive verification is needed

² German: Asylgesetz.

within visa procedures. Thereby, particular challenges are deficient (central) public registers/administrations, lacking cooperation of the authorities of the country of origin with the German missions abroad, as well as the security situation in the country of origin or in specific regions. With regards to persons that because of a special situation (such as having had to flee or being part of a national minority) do not possess any or only insufficient identity documents and supplementary documents, the establishment of identity is generally very laborious.

The procedure for granting a **residence permit** for the purpose of family reunification, of education or economic activity generally requires a preceding visa procedure (Section 5 subs. 2 of the Residence Act³). The identity of the applicant is therefore already verified in the German mission abroad. Generally, the establishment of identity is unproblematic and takes place through presenting an identity document when the applicant physically lodges the application. Conversely, within the procedure for granting a residence permit under international law or on humanitarian or political grounds the establishment of identity can be problematic, if the applicant does not or cannot present any identity documents.

1.1.2 Increased asylum migration

The increase in asylum migration was felt in Germany from 2014 onward, but especially in 2015 with 890,000 asylum seekers entering Germany marking a historic peak. Due to this steep increase it was not possible to accept and process all asylum applications immediately following registration, allowing only 441,899 persons to lodge an application for asylum. This backlog was reduced in 2016, which led to a situation in which 280,000 asylum seekers arrived but a total of 722,370 asylum applications were lodged (EMN/BAMF 2017: 37).

In this context, challenges arose regarding the documentation and establishment of the identity of the asylum seekers (see above). In 2015/16 the increased number of persons seeking protection in Germany led to the logistical challenge that, in the course of the quickly emerging new locations of the Federal Office for Migration and Refugees, the technical infrastructure could not directly be provided nationwide.

As a reaction, the so-called waiting-rooms and processing-lines were opened where, with the help of staff from other authorities, asylum seekers were registered before they were distributed to the reception centres.

3 Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (German: Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet).

“In order to cope with the steep increase of asylum seekers, at the beginning of September 2015 so-called processing-lines were opened in collaboration with the Federal Police. In the processing-line asylum seekers and persons that have irregularly entered the Federal territory are i.a. registered and are subject to identification measures and medical examination. The data obtained subsequently are checked against police databases. If the results of this check are inconspicuous the asylum seekers are transferred to a reception facility” (BAMF 2016a: 17).

In the months in which exceptionally many asylum seekers reached Germany (especially in August to November 2015), there was a delay in applying the identification measures, without which it would have been possible to document the identity of the newly arrived beyond doubt. Often, the personal data was recorded according to an identity document at hand or according to the information provided by the person concerned him/herself. Thereby, most often the data was recorded in the systems of the Länder and not centrally, so that the information could not be exchanged between the authorities of different Länder. To safeguard the national implementation of identification measures in spite of the strong in-migration in 2015, the Federal Office for Migration and Refugees (supported by secondments of the Customs Authority and the Federal Armed Forces) dispatched about 200 mobile teams with fingerprint scanners and registration devices that made it possible to centrally store the data in the Asylum Procedure System of the Federal Office for Migration and Refugees (MARiS) as well as in the police data bases (INPOL). Thus, already at the peak of the asylum migration the nationwide registration of fingerprints was started. At the same time, a new security system was devised and the legal basis for the additional measures that had become necessary was created (cf. Chapter 1.3.2).

On 5 February 2016 the Data Sharing Improvement Act⁴ entered into force, which has become the foundation of a new security architecture. Its technical and organisational development was advanced within a short time-frame by all authorities concerned.⁵ From February to March 2016, 1,200 so-called PIK-stations⁶ were successively put into operation nationwide. The stations were provided by the Federal Government to all Länder reception centres in order to carry out

4 German: Gesetz zur Verbesserung der Registrierung und des Datenaustausches zu aufenthalts- und asylrechtlichen Zwecken.

5 The coordination project ‘Digitalisation of the Asylum Procedure’ of the IT Planning Council together with the Federal Ministry of the Interior, the Federal Office for Migration and Refugees, the Federal Criminal Police Office, the Federal Office of Administration, the Bundesdruckerei, all Länder and the municipal associations.

6 PIK is the abbreviation for the German ‘Personalisierungsinfrastrukturkomponenten’, meaning infrastructural components for personalisation.

a full registration of asylum seekers (including fingerprints, photos and personal data). Since mid-2016 the nationwide biometric registration of newly arriving asylum seekers is ensured by the Länder authorities and BAMF arrival centres as well as the processing-lines near the border. Subsequent registrations of asylum seekers already present in Germany but that had not been registered were completed according to the Länder in September 2016.

Using the PIK-stations, the personal data of asylum applicants is automatically stored simultaneously in MARiS as well as in the core data system (the Central Register of Foreigners). The fingerprint data is also simultaneously stored in the police database (AFIS/INPOL pursuant to Section 16 of the Asylum Act in conjunction with Section 89 of the Residence Act), which enables the reception centres of the Länder, the different branch offices of the Federal Office for Migration and Refugees as well as all police stations to carry out a comparison of fingerprints (so-called Fast-ID) when they are in contact with asylum seekers and by this distinct identity marker determine, if or where the person concerned has already been registered and e.g. where s/he can receive benefits for asylum applicants.

Another reaction was the introduction of the so-called 'proof of arrival' (German: *Ankunftsnachweis*, cf. Chapter 1.3.2). It is

“[...] issued in form of a paper-based document with unforgeable elements by the reception centres and the competent branch offices of the Federal Office for Migration and Refugees. Due to the platform, which has been available nationally since the end of May 2016, a definite identification of asylum seekers is possible from the first contact with authorities onwards” (BAMF 2016a: 17).

Every asylum seeker now is issued a personal document that features the same design nationwide and that is equipped with security features. He or she receives the document from the responsible reception centre as a proof of registration and the allocation to this reception centre. Social security benefits (e.g. accommodation or allowances) can directly be linked to the proof of arrival and distributed to the holder of the document within the district of the reception centre indicated on the document. The proof of arrival and especially the Central Foreigners Register number serve as an access key to the core data system, via which the different authorities can access the data of the asylum seeker concerned, even if the authority in question possibly cannot use the Fast-ID technology.

With the stronger asylum-related immigration the number of persons present in Germany and required to leave also grew. This development was not followed by an increase in the capacity of the authorities in charge (cf. Chapter 1.4.1),

leading to a lack of specialised staff, which increased the challenges faced in establishing identity and obtaining passport substitutes.

1.1.3 Acknowledgement of identity by the country of origin

Within the **asylum procedure** no contact is established with the authorities of the (supposed) country of origin of the applicants. The application is reviewed individually on the basis of the documents that were presented and checked by the physical and technical document examination (cf. Chapter 1.4.5) as well as the history of persecution that the applicant presented. If well-founded doubts about the stated country of origin exist, a language and text analyses can help to clarify the issue. To this end, an oral statement may be recorded on audio and data media (other than at the formal hearing/personal interview), if the person concerned was informed beforehand (Section 16 subs. 1 third and fourth sentence of the Asylum Act).

It is possible that applicants wilfully obfuscate their citizenship towards the German authorities and claim to be citizens of a different country of origin.⁷ Thus, for example, in recent years there were cases, in which applicants from different countries claimed to be Syrian nationals in order to profit from the high protection quota for Syrian asylum seekers. Should such a misrepresentation be discovered, the asylum application is to be rejected as manifestly unfounded (Section 30 subs. 2 no. 2 of the Asylum Act). It is not statistically recorded, if an asylum application is rejected due to the fact that the asylum applicant intended to deceive the Federal Office for Migration and Refugees.

When looking at the field of **deportation**, international law obliges States to take back their own citizens. If there are no documents available for a person required to leave and if the citizenship of that person is unknown, the first step is to determine the latter. To this end the cooperation with countries of origin is central at two points: in order to establish the identity and/or the citizenship of the person required to leave and in order to issue travel documents for the person concerned.

In the case of some countries of origin cooperation is problematic due to different reasons. Some States do not issue travel documents even after the identity of their own citizens has been established. The Federal Government follows the aim to enhance cooperation with important countries of origin through negotiations. “She thereby follows a coherent approach and includes the entire bilateral cooperation into the needed reconciliation of interests. The objectives are

⁷ On other situations and motives to cloud one's identity, cf. Table 1.

particularly improving the practice of issuing passport substitutes, using EU-laissez-passer and reducing administrative constraints [...]” (MPK 2017: 6). The Federal Ministry of the Interior has created a list of the most important countries of origin according to the number of persons required to leave that “also contains information on the willingness of these countries of origin to cooperate (e.g. accepting EU-laissez-passer; issuing passport substitutes; selecting the means of transport)” (Deutscher Bundestag 2017f: 16).

1.2 Statistical information

The following tables contain - as far as available - statistical information on identity documentation and establishment within the different migration processes and on the procedures and methods used, as well as (where applicable) explanations for the lack of data.

Table 1: Statistical information on asylum and deportation

	2012	2013	2014	2015	2016	Additional information
Number of asylum applications, for which the identity of the applicant was not verified at the time the application was lodged			Not available			The Federal Office for Migration and Refugees does not statistically record how many asylum seekers cannot present any documents. It is estimated that ca. 40 per cent of applicants present identity documents (Deutscher Bundestag 2016a: 19130; cf. Bittner 2017 and Simon 2017).
Number of asylum applications, for which the identity of the applicant was fully or partially established during the asylum procedure, thereby allowing the relevant authorities to reach a particular decision on the application for international protection (e.g. grant, refuse, defer)			Not available			Likewise, the applicants' motivation to not carry or present identity documents is statistically not recorded. The reasons for a lack of such documents can differ and do not necessarily suggest that the German authorities were wilfully deceived. The possible reasons include: <ul style="list-style-type: none"> ■ obfuscation of the country of origin in order to raise the chances of being recognised as a refugee or receiving other forms of protection; ■ obfuscation of identity in order to prevent a forced return; ■ criminal intentions; ■ unreliable registries/authorities in the country of origin as well as corruption; ■ lack of will of the authorities of the country of origin to issue documents to members of the opposition; ■ changing/destroying identity documents on order of traffickers or having identity documents taken away by authorities in transit countries, as well as ■ the possibility to leave the country of origin due to persecution there (cf. Deutscher Bundestag 2016a: 19130 and Bittner 2017).
Total number of positive decisions for asylum applicants whose identity was not verified at the time of application²			Not available			
Total number of positive decisions for asylum applicants whose identity was considered sufficiently established by the decision-making authorities			Not available			
Total number of negative decisions for asylum applicants whose identity was not verified at the time of application			Not available			If forged identity documents are used in order to flee the country of origin, in many cases this is reported by the applicants themselves to the Federal Office for Migration and Refugees (Simon 2017). The wilful deception of German authorities within the asylum procedure, however, is countered by regulations of the Asylum Act. If in the course of the asylum procedure it is determined that
Total number of negative decisions for asylum applicants whose identity was not considered to be sufficiently established by the decision-making authorities			Not available			<ul style="list-style-type: none"> ■ key aspects of the applicant's statements are unsubstantiated or contradictory, obviously do not correspond to the facts or are based on forged or falsified evidence; ■ the applicant misrepresents or refuses to state his or her identity or nationality in the asylum procedure; ■ s/he has filed another asylum application or asylum request using different personal data; an asylum application shall be rejected as manifestly unfounded (Section 30 subs. 3 no. 1-3 of the Asylum Act). ¹

Total number of deportations carried out	7,651	10,198	10,884	20,888	25,375	Data shows all deportations carried out without differentiating for the reasons of the decision on terminating the stay. Sources: Deutscher Bundestag 2013: 25; Deutscher Bundestag 2014: 25; Deutscher Bundestag 2015c: 31; Deutscher Bundestag 2016c: 28; Deutscher Bundestag 2017g: 34.
Total number of deportations for persons whose identity was established at the time of return						In general, deportations can only be carried out, if travel documents are at hand. If the identity of the person concerned is not clarified, no travel documents can be issued and, thus, the person concerned cannot leave (BAMF 2012: 5).
Total Number of deportations that could not be carried out due to the authorities of the (presumed) country of origin refusing to recognise their nationals or considering their identity as not sufficiently established³	Not applicable					

1 Asylum applications can be rejected as manifestly unfounded for other reasons, too (Section 30 subs. 3 no. 4-7 of the Asylum Act).

2 By presenting an identity document (ID card or passport) or other documents (e.g. drivers license).

3 E.g. if it was impossible for the authorities to identify third-country nationals formally by their nationality, last name, first name and date of birth and to prove this identification by providing the documents required by the third country in question.

Table 2: Statistical information on visa and residence permits

	2012	2013	2014	2015	2016	Additional information
Total number of visas applied for in consulates in third countries	2,095,104	2,279,154	2,298,879	2,302,859	2,329,388	Source: Visa statistics of the Federal Foreign Office. Only the definitely processed applications are depicted.
Total number of visas refused in consulates in third countries	138,682	194,941	131,837	139,945	156,197	Source: Visa statistics of the Federal Foreign Office.
Rejection quota in per cent	6.62	8.55	5.73	6.08	6.71	Source: Visa statistics of the Federal Foreign Office.
Total number of visas refused in consulates in third countries due to the applicant having presented a travel document which was false, counterfeit or forged	Not available					Although the rejection of visa application on the basis of false, counterfeit or forged travel documents is documented, (Section 29 subs. 1 no. 11 of the Act on the Central Register of Foreigners ¹), it is not statistically recorded.
Total number of residence permits refused due to the identity of the applicant not being considered sufficiently established	Not available					The Residence Act does not foresee an obligatory documentation requirement for the case that a residence title is denied due to the identity of the applicant not being considered sufficiently established. In general, a residence title cannot be granted if the identity of the applying person is not sufficiently clarified.

1 German: Gesetz über das Ausländerzentralregister.

Table 3: Statistical information on methods used

	2012	2013	2014	2015	2016	Additional information
Total number of cases in which language analysis was performed to establish the identity of the third-country national	735	764	762	431	1,405	The data presented pertains to the speech and text analyses carried out or commissioned by the Federal Office for Migration and Refugees itself or via the Office by way of administrative assistance for other authorities.
Total number of cases in which an age assessment was performed to determine whether the third-country national was a minor	Not available					Statistical information on the total number of cases in which an age assessment was carried out are not available. "The responsibility for age assessments pursuant to Section 42f of the Eighth Book of the Social Code of an alleged minor is with the youth welfare office. The Federal Police as well as the authorities tasked with border police controls inform the respective youth welfare office immediately in case of identifying (an alleged) minority of age, so that the office can meet its obligations to take the minor concerned into care (preliminarily) (Section 42 subs. 1 no. 3 in conjunction with Section 42a subs. 1 of the Eighth Book of the Social Code). The assessment of age of a young person belong thereunto (Section 42f of the Eighth Book of the Social Code)" (Deutscher Bundestag 2017a: 35f.). "At the Federal Office for Migration and Refugees no age assessments are carried out. The Office assumes that in the case of unaccompanied minors an age assessment [...] has been carried out before the asylum procedure in order to clarify if the respective person has to be taken into care as a minor" (Deutscher Bundestag 2015a: 73). The Federal Office for Migration and Refugees takes this assessment as a basis in the asylum procedure. Before carrying out any measures pertaining to Asylum or Residence Law against alleged minors, the Federal Police consults "suitable documents, records or other findings in order to assess the age. If thereafter doubts about the minority of age of a foreigner persist, preferentially enquiries with other domestic or foreign authorities are to be initiated. If also thereafter doubts remain, the age is generally assessed by the youth welfare office. Medical examinations of foreigners for age determination are initiated by the Federal Police only in exceptional cases. Legal basis for this is Section 49 subs. 2 of the Residence Act. These measures are not recorded statistically" (Deutscher Bundestag 2015a: 73).
Total number of cases in which a DNA analysis was used to establish the family relationship in family reunification cases	Not available					DNA analyses are used in the course of family reunification (cf. Grote 2017: 35f.). "In well-founded cases a DNA test can generally be presented in all countries in order to provide evidence on the family relationship in the context of an application for family reunification, if this family relationship cannot be proven otherwise. The DNA test gives a possibility to provide evidence on the family relationship as a requirement for granting the visa that was applied for, especially to those applicants with documents that cannot be legalised or checked and thus often do not suffice as proof. Within the visa procedure the applicant is obliged to put forward his or her interests and any circumstances in his or her favour (Section 82 of the Residence Act) and the principle of the free consideration of evidence, according to which every piece of evidence can be used to form the conviction of the authority (analogue to Section 438 of the Code of Civil Procedure). The Federal Government does not carry out an exhaustive evaluation on the use of different documentary evidence in the context of visa procedures" (Deutscher Bundestag 2017b: 7f.). The analyses are thus not statistically recorded.
Total number of cases in which interviews were used to determine probable country and/or region of origin	Not available					Interviews are used in the different migration processes. <ul style="list-style-type: none"> ■ An integral part of the asylum procedure is the personal hearing/interview of all applicants (cf. Chapter 1.4.3). In a conversation with staff of the Federal Office for Migration and Refugees all applicants explicate their personal history of persecution and are questioned about their country and region of origin. ■ For the area of deportations it can generally be ordered that the person concerned personally presents him- or herself to the authority in charge and to the mission or authorised staff of the State, whose citizenship he or she allegedly is in possession of. This order can also be carried out by force (Section 82 subs. 4 of the Residence Act). Statistical information is not available. ■ In the process of issuance of visas applicants are partially asked to appear personally when applying. The number of such personal interviews is no recorded statistically. ■ The personal application for the issuance of a residence permit with the respective foreigners authority does not primarily serve the establishment of the country of origin and is not statistically recorded.

1.3 Legal framework

1.3.1 Legal basis: asylum and deportation

Legal basis in the field of asylum

The authorities responsible for implementing the Asylum Act may collect personal data (Section 7 of the Asylum Act) and, as far as necessary to fulfil their duties in individual cases, special categories of personal data⁸ (Section 7 subs. 1 of the Asylum Act). In order to check the authenticity of the document or identity of the person concerned, the biometric and other data stored electronically within the passport, official passport substitute or other identity documents may be read, the necessary biometric data obtained and compared with the biometric data from the document. Biometric data in this respect include only fingerprints, a photograph and a scan of the iris (Section 16 subs. 1a of the Asylum Act).

Section 16 of the Asylum Act provides the legal basis for documenting the identity of asylum applicants:

“Identification measures are to be taken to verify the identity of foreigners requesting asylum. To do so in line with the first sentence they may only be photographed and the prints of all ten fingers be taken; foreigners below age 14 may only be photographed. In order to determine the foreigner’s country or region of origin, the foreigner’s oral statements may be recorded on audio and data media other than at his formal hearing. Such recordings may only be made if the foreigner is informed beforehand. These recordings shall be kept at the Federal Office” (Section 16 subs. 1 of the Asylum Act).

Applicants are required to cooperate in determining their identity (Section 15 of the Asylum Act). Among other things, they must present, hand over and surrender their passport or passport substitute to the authorities responsible for implementing the Asylum Act (Section 15 subs. 2 no. 4 of the Asylum Act), present, hand over and surrender all necessary certificates and any other documents in their possession to the authorities responsible for implementing the Asylum Act (Section 15 subs. 2 no. 5 of the Asylum Act), cooperate, if they do not have a valid passport or passport substitute, in obtaining an identity document (Section 15 subs. 2 no. 6 of the Asylum Act) and tolerate the required identification measures (Section 15 subs. 2 no. 7 of the Asylum Act). During every documentation of identity pursuant to Section 16 of the Asylum Act, the data will be stored in EURODAC, the

⁸ According to the Federal Data Protection Act, “special categories of personal data” include “information on a person’s racial or ethnic origin, political opinions, religious or philosophical convictions, union membership, health or sex life” (Section 3 subs. 9 of the Federal Data Protection Act).

European automated fingerprint identification system for asylum applicants and persons, who have entered the Federal territory or reside there without authorisation (cf. also Chapter 4.2).

In the case of unaccompanied minors, identification measures pursuant to Section 49 subs. 8 and 9 of the Residence Act are obligatory, regardless of whether the minors are taken into care (cf. Table 3), as these migrants do not necessarily intend to enter into an asylum procedure.⁹ Only after a legal guardian has been appointed, who can express an asylum claim and lodge an asylum application for the minor, the minor is legally capable of acting within the asylum procedure. In case an asylum application has been lodged, an identification procedure on the basis of Section 16 of the Asylum Act will be conducted.

Legal basis in the field of deportation

Pursuant to Section 49 subs. 1 of the Residence Act, the authorities responsible for implementing the Residence Act have the right to read the biometric and other data stored electronically within a document pursuant to Section 48 subs. 1 of the Residence Act¹⁰ and compare them with the biometric data obtained from the document holder. All other authorities which receive data from the Central Register of Foreigners pursuant to Sections 15-20 of the Act on the Central Register of Foreigners and the registration authorities are also entitled to take such measures to the extent that they are entitled to verify the authenticity of the document or the identity of the holder. Just like the Asylum Act (see above), the Residence Act exclusively defines fingerprints and photographs as biometric data, but not iris scans (Section 49 subs. 1 of the Residence Act). The person concerned is obliged to furnish the authorities with information on his or her age, identity and nationality (Section 49 subs. 2 of the Residence Act).

In principle, all measures necessary to establish and document the identity of a person shall be undertaken if the person is enforceably required to leave the Federal territory, insofar as removal or deportation come into consideration, or if the person concerned is to be refused entry and returned to a safe third country, or if he or she is to be removed to such country as specified in Section 26a subs. 2 of the Asylum Act (Section 49 subs. 5 nos. 3 and 4 of the

⁹ At the moment, identity documentation measures are often conducted by border or police authorities, which are either competent in their own right or act on behalf of the local foreigners authorities, as in general most of the latter will be provided with the technology to conduct measures to document identity pursuant to Section 49 subs. 8 and 9 of the Residence Act only from 2018 onwards.

¹⁰ These include: passports, passport substitutes, residence titles or documents confirming suspension of deportation.

Residence Act). Necessary measures include taking photographs and fingerprints, taking measurements and similar measures, including bodily intrusions undertaken by a doctor in accordance with prevailing medical standards in order to establish the age of the person concerned, provided that no ill effect on the latter's health is to be feared (Section 49 subs. 6 first sentence of the Residence Act). These measures are permissible on persons aged 14 or above; any doubts as to whether the person has reached 14 years of age shall be to his/her detriment (Section 49 subs. 6 second sentence of the Residence Act).

Since establishing the identity of a person is basically an encroachment on their fundamental rights, the Residence Act states clearly that the principle of proportionality must be respected:

“These measures shall only be permissible for the purpose of establishing the foreigner's identity if the identity cannot be established by other means, in particular via inquiries to other authorities, or if the identity cannot be established in time by such other means or if such other means would involve substantial difficulties” (Section 49 subs. 6 third sentence of the Residence Act).

Moreover, the Residence Act (just like the Asylum Act) permits the authorities to record the spoken word in order to determine the country or region of origin (Section 49 subs. 7 of the Residence Act). The person concerned is required to tolerate such measures (Section 49 subs. 10 of the Residence Act). The person concerned is also required to actively cooperate in the efforts to establish his or her identity, for example by submitting declarations in connection with the procurement of travel documents as are required by the diplomatic mission of the state whose nationality he or she possesses or putatively possesses and which are in line with German law (Section 49 subs. 2 of the Residence Act). If the person concerned does not possess a valid passport or passport substitute, he or she shall be obliged to cooperate in efforts to obtain an identity paper (Section 48 subs. 3 first sentence of the Residence Act). This may include reporting personally to the competent authority and to the diplomatic missions or authorised officials of the state whose nationality he or she putatively possesses (Section 82 subs. 4 of the Residence Act).

1.3.2 Legal changes: asylum and deportation

Against the background of increased asylum immigration since 2014, there have been several amendments to the Asylum and Residence Acts, which also affect the legal bases for the documentation and establishment of the identity set out in both residence and asylum law (the following summary is in chronological order).

The Act on Amendments to the Right to Stay and the Termination of Stay¹¹, which entered into force on 1 August 2015, allowed the authorities responsible for verifying, establishing and documenting the identity of third-country nationals under the Residence Act¹² to check the data carriers of persons concerned. For this purpose, the obligations to cooperate in case of non-possession of a passport or passport substitute set forth in Section 48 of the Residence Act were expanded. While the legal provisions initially only obliged the person concerned to cooperate in efforts to obtain an identity paper and to present, surrender to and leave with the authorities entrusted with enforcing the Residence Act all documents and other papers as may be of importance in establishing his or her identity and nationality and in establishing a possibility of returning him or her to another state and duly enforcing such a return, they now also oblige him or her to present, surrender or leave with the authorities any relevant data carriers (Section 48 subs. 3 first sentence of the Residence Act). In addition, if the person concerned fails to meet his or her obligation and if actual indications exist that he or she is in possession of data carriers (e.g. mobile phones, tablets etc.), the authorities can order a search of him or her and the objects on his or her person (Section 48 subs. 3 second sentence of the Residence Act). At the same time, the extent of the analysis of the data carriers has been limited:

“Analysis of the data carriers shall be permissible only insofar as this is necessary to establish the foreigner's identity and nationality and to ascertain and assert the possibility of his or her return to another state in accordance with the provisions of subsection 3 [see above; J.T.] and the purpose of the measure cannot be achieved by more lenient means. Where there are concrete indications to justify the assumption that analysing data carriers would provide only insights into the core area of private life, the measure shall not be permissible” (Section 48 subs. 3a first and second sentences of the Residence Act).

Moreover, the data carriers may be analysed only by employees who are qualified to hold judicial office (Section 48 subs. 3a fourth sentence of the Residence Act). Insights into the core area of private life¹³ that are acquired in the course of analysing data carriers may not be utilised, any records

11 German: Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung.

12 In this case, the foreigners authorities, the authorities charged with policing cross-border traffic and the police forces of the Länder (Section 71 subs. 4 first sentence of the Residence Act).

13 “According to the Federal Constitutional Court, the core area of private life includes all internal processes such as feelings or personal views, expressions of sexuality etc. [...] The Federal Constitutional Court has decided that electronic records and communications, for example with family members, clerics etc., concerning such issues come under the range of the protection provisions” (Kluth/Heusch 2017: § 48 AufenthG Rn. 44.1).

thereof shall be deleted immediately and a written record shall be made of the fact of their acquisition and deletion (Section 48 subs. 3a fifth to seventh sentences of the Residence Act). Once personal data acquired in the course of analysing data carriers are no longer necessary for the purposes set out above, they shall be deleted immediately (Section 48 subs. 3a eighth sentence of the Residence Act).¹⁴

The obligation to cooperate was also expanded in that the person concerned must provide the access data (e.g. passwords, access codes etc.) required for the permissible analysis of data carriers (Section 48 subs. 3a third sentence of the Residence Act). For the case of the person concerned refusing to provide the access data needed to analyse the devices, Section 48a of the Residence Act was introduced (by the 'Act on Amendments to the Right to Stay and the Termination of Stay'), which enables the authorities to obtain access data from telecommunications providers.

Section 49 of the Residence Act, which deals with the verification, establishment and documentation of identity for residence law purposes, was amended as well. The 'Act on the Acceleration of Asylum Procedures'¹⁵, which entered into force on 24 October 2015, and the Data Sharing Improvement Act¹⁶, which entered into force on 5 February 2016, amended subsections 8 and 9 to the effect that the identity of third-country nationals who have unlawfully entered the country and have not been removed or who are residing in Germany without the requisite residence title shall be documented in all cases. "The former version of subsection 8 included the precondition that the person concerned must have entered Germany from a third country, and the former version of subsection 9 required indications that the person concerned had already filed an asylum application in an EU Member State before identification measures could be taken. Both preconditions were deleted. Unlawful entry or residence without the requisite residence title are the only remaining preconditions" (Hofmann 2016: § 49 AufenthG Rn. 39). In addition, the range of identification measures was expanded; the documentation of identity now not only includes taking fingerprints, but also taking a photograph. The identity of foreigners that have not reached the age of 14, the identity is to be documented only by taking a photograph (Section 48 subs. 8 third sentence and subs. 9 third sentence of the Residence Act).

The Data Sharing Improvement Act also led to amendments of the Asylum Act. Now, the identity of children below 14

years of age who apply for asylum is to be documented as well. Before, children up to 14 years of age were exempt from all identification measures. With the legislative changes, the legislator introduced a provision allowing the documentation of identity of children below the age of 14 by taking a photograph (Section 16 subs. 1 of the Asylum Act).¹⁷ Persons below the age of 14 are still exempt from having their fingerprints being taken (for a further discussion of the issue cf. Chapter 5.1.4).

The Data Sharing Improvement Act also introduced the proof of arrival for foreigners who have requested asylum and been photographed and fingerprinted in line with the provisions of the Asylum Act or of the Residence Act, but have not yet filed an asylum application (Section 63a of the Asylum Act). This document has replaced the 'registration certificate for asylum seekers' (German: Bescheinigung über die Meldung als Asylsuchender, "BüMA"), which had been an informal document with different features in every Land and is issued according to nationwide standards and includes security features (BAMF 2017a). The proof of arrival contains administrative information as well as biographical and biometric identity features. Section 63 subs. 1 of the Asylum Act lists the following items of information which shall be visibly displayed on the document:

- **Biographical information:** surname and first names, maiden name, date of birth, place of birth, abbreviation of the nationality, note stating the surnames and first names of accompanying minor children and young persons
- **Biometric information:** sex, height and eye colour, holder's signature and photograph
- **Administrative information:** responsible reception centre, serial number of the proof of arrival document (proof of arrival document number), issuing authority, date of issue, duration of validity, extension note, file number issued by the registration authority (Central Register of Foreigners number), note that the items of information are based on information furnished by the holder, note stating that the document does not suffice to meet the holder's obligation to have and present identification papers, a machine-readable zone and a barcode.

In addition, the new act authorised the Federal Ministry of the Interior to set rules, by statutory instrument with the consent of the Bundesrat, to assure the quality of identification measures and to govern the recording of data derived from identification measures for the certificate confirming permission to remain pending the asylum decision (Section 63 of the Asylum Act) or the proof of arrival document

¹⁴ Legal experts have been discussing and criticising several aspects of this new norm and even called into question its constitutionality (cf. for example Kluth/Heusch 2017: § 48 AufenthG Rn. 40-47; Huber 2016: § 48 AufenthG Rn. 19-33; Hofmann 2016: § 48 AufenthG Rn. 51-56).

¹⁵ German: Asylverfahrensbeschleunigungsgesetz.

¹⁶ German: Datenaustauschverbesserungsgesetz.

¹⁷ At the same time, a provision was introduced that allows photographing of unlawful entrants and residents below age 14 (Section 49 subs. 8 and 9 of the Residence Act).

for asylum seekers (Section 63a of the Asylum Act) (Section 88 subs. 2 of the Asylum Act). “This provision aims to ensure the high quality of the data stored in the Central Register of Foreigners; the reception centres and the branch offices of the Federal Office for Migration and Refugees will have to meet certain technical and organisational requirements when collecting the information needed for issuing certificate proof of arrival document” (Kluth/Heusch 2017: § 88 AsylG Rn. 5).

The Data Sharing Improvement Act also led to amendments of the Act on the Central Register of Foreigners. While the Central Register of Foreigners used to store the same data for asylum seekers, persons who entered the Federal territory unlawfully or who reside in the Federal territory without the requisite residence title as it does for all other foreign persons, it is now permitted to store a much larger number of data for these three groups, including extended personal data, height and eye colour, the address and the reference number of the fingerprint as a unique feature linked to biometric data (cf. Chapter 4.2). These measures are complemented by the Ordinance on Proof of Arrival Documents for Asylum Seekers¹⁸ of 5 February 2016, which fleshes out the provisions concerning the proof of arrival documents and contains requirements to ensure the quality of photographs and fingerprints taken for the proof of arrival document.¹⁹

The ‘Act on the Introduction of Fast-Track Asylum Procedures’, which entered into force on 17 March 2016, enabled the Federal Office for Migration and Refugees to conduct fast-track asylum procedures for certain groups of applicants at branch offices assigned to special reception centres. This applies, for example, if the person concerned refuses to have his or her fingerprints taken and thus to allow for a EURODAC comparison to be carried out (Section 30a subs. 1 no. 6 of the Asylum Act).

The adoption of the Act to Improve the Enforcement of the Obligation to Leave the Country²⁰ by the Bundesrat on 2 June 2017 implemented the decisions taken at the meeting of the Chancellor with the Prime Ministers of the Länder on 9 February 2017, which included, among other things, the statement that the Federal Office for Migration and Refugees “may demand and analyse data stored on mobile devices and SIM cards in order to document, establish and verify the identity and nationality of asylum seekers” (MPK 2017: 3).

The Federal Office for Migration and Refugees now has similar scope in analysing data carriers as the foreigners authorities (see above). The obligations to cooperate during the asylum procedure were extended accordingly; asylum applicants now have to present, surrender to or leave with the authorities responsible for implementing the Asylum Act all data carriers which may help to establish their identity and nationality and which are in their possession on request. An analysis of these data carriers is only permitted to the extent that it is necessary to establish the identity and nationality of the asylum applicant and it is impossible to achieve this end by less intrusive means. Further, a possibility was created for the Federal Criminal Police Office to transmit data that it obtains in the course of the establishment of identity of applicants carried out in administrative assistance to the responsible authorities in third countries with the exception of the country of origin of the person concerned as well as with the exception of third countries in which the person concerned must fear persecution or serious harm (BGBl 2017).

1.3.3 Legal basis: visa and residence permit

Preconditions

As a rule, residence titles (pursuant to Section 4 subs. 1 of the Residence Act this term covers visa and residence permits as well as other types of residence titles) can only be issued if certain preconditions are met. Two of these preconditions refer to the identity of the applicants. First, as a general rule, the identity and, if the applicant is not entitled to return to another country (e.g. in the framework of a transfer to the country responsible under the Dublin Regulation), the nationality of the foreigner must be established (Section 5 subs. 1 no. 1a of the Residence Act), and second, as a general rule, the passport obligation must be met (Section 5 subs. 1 no. 4 of the Residence Act). In principle, the identity of the applicant is established as follows: “As a rule, the presentation of a valid passport or passport substitute serves to establish the identity and nationality of the applicant. If no such document is available, the identity and nationality shall be established by other suitable means (e.g. birth certificate, other official documents)” (5.1.1a of the General Administrative Regulation to the Residence Act).

Regular documentation and establishment of identity

The Residence Act lists several situations which require establishing and documenting the identity of the applicants. These include, among others, the application for a national visa (Section 49 subs. 5 no. 5 of the Residence Act).²¹ In such

18 German: Verordnung über die Bescheinigung über die Meldung als Asylsuchender.

19 Several guidelines of the Federal Office for Information Security (BSI) explain the technical features of the document in more detail: https://www.bsi.bund.de/DE/Themen/Digitale-Gesellschaft/ElektronischeIdentitaeten/Ankunftsnachweis/ankunftsnachweis_node.html (4 July 2017).

20 German: Gesetz zur besseren Durchsetzung der Ausreisepflicht.

21 Other situations in which such measures are to be undertaken are:

“1. if the foreigner intends to enter or has entered the federal ter-

situations, such measures are to be taken “even if there is no current doubt about the identity or nationality of the foreigner and even if they are not necessary for any measures due under immigration law” (49.5.1. of the General Administrative Regulation to the Residence Act). If a document (e.g. a residence permit) is to be issued, the applicant shall, on request, submit a recent photograph or have his or photograph taken and agree to being fingerprinted. This photograph and the fingerprints may be incorporated in the documents and processed and used by the responsible authorities to document and subsequently establish the applicant’s identity (Section 82 subs. 5 of the Residence Act).

Measures to document and establish identity

The measures which may be taken to document and establish identity and the limits to these measures are clearly defined (see also above in the explanations on deportations):

“Necessary measures include taking photographs and fingerprints, taking measurements and similar measures²², including bodily intrusions undertaken by a doctor in accordance with prevailing medical standards in order to establish the foreigner’s age, provided that no ill effect on the latter’s health is to be feared” (Section 49 subs. 6 first sentence of the Residence Act).

These measures are only permissible for the purpose of establishing the identity of the person concerned, if the identity cannot be established by other means, in particular via inquiries to other authorities, or if the identity cannot be established in time by such other means or if such other means would involve substantial difficulties (Section 49 subs. 6 third sentence of the Residence Act). Due to this, a written record must be made at the time of collecting the

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- ritory with a forged passport or falsified passport or passport substitute;
 - 2. if there are other reasons to believe that the foreigner is intending to re-enter the federal territory unlawfully, following refused entry or the termination of a stay in the federal territory;
 - 3. in the case of foreigners who are enforceably required to leave the federal territory, insofar as removal or deportation come into consideration;
 - 4. if the foreigner is to be refused entry and returned to a safe third country, or if he or she is to be removed to such country as specified in Section 26a subs. 2 of the Asylum Act; [...]
 - 6. when temporary protection is granted in accordance with Section 24 and in the cases covered by Sections 23 and 29 subs. 3 [of the Residence Act];
 - 7. if a reason for refusal pursuant to Section 5 subs. 4 [of the Residence Act] has been established” (Section 49 subs. 5 of the Residence Act).
 - 22 “Similar measures are those which also serve to determine ‘permanent personal features’. These include, for example, handprints or prints of other body parts, handwriting samples or the taking of videos for recognition by third parties. Genetic examinations are not possible, however, [...] because they are not authorised by the Residence Act” (Kluth/Heusch 2017: § 49 AUFenthG Rn. 33).

data indicating whether the measure serves to establish or to document identity or to do both (49.6.1 of the General Administrative Regulation to the Residence Act). In principle, these measures are only permissible on persons aged 14 or over; any doubts as to whether the person has reached 14 years of age are to the detriment of the the person concerned (Section 49 subs. 6 second sentence of the Residence Act).²³

For the purpose of an application for a national visa, only photographs and fingerprinting are permitted in order to document and establish the identity (Section 49 subs. 6a of the Residence Act).

Establishment of identity in case of doubts

If a residence title is to be issued and there are any doubts about the identity, age or nationality of the person concerned, the law explicitly states that the measures necessary in order to establish his or her identity, age or nationality shall be undertaken (Section 49 subs. 3 of the Residence Act). The General Administrative Regulation to the Residence Act explains that these measures are meant to establish, not to document identity, and describes the procedure:

“In order to establish the identity, age or nationality pursuant to subsection 3, the foreigner shall first be interviewed about his or her identity and past history in order to obtain starting points for further inquiries (e.g. interviews with witnesses, inquiries to other domestic and foreign authorities, bringing the foreigner before a diplomatic mission of the presumed country of origin or interviews with authorised civil servants of the presumed country of origin). The foreigner shall be requested to provide suitable proof (e.g. documents) for his or her statements” (49.3 of the General Administrative Regulation to the Residence Act).

1.4 Institutional framework

1.4.1 Responsibility for asylum and deportation (and changes since 2013)

The legal responsibilities for identity documentation and identity establishment measures during the **asylum procedure** (see above) have not changed in the last few years. Pursuant to Section 16 subs. 2 of the Asylum Act, they rest

²³ The General Administrative Regulation to the Residence Act explains: “If the purpose of the measure is to establish the age of the applicant, this purpose may not be undermined by a simple claim on the part of the young person that he or she is younger than 14. In these cases, the restriction spelled out in subsection 6 second sentence shall apply only if the child is visibly not yet 14 years old” (49.6.2 of the General Administrative Regulation to the Residence Act).

with the Federal Office for Migration and Refugees and, if the asylum applicant requests asylum there, also with the border authorities (Section 18 subs. 5 of the Asylum Act), the police or the foreigners authorities (Section 19 subs. 2 of the Asylum Act) and the reception centre where the person concerned registers. The Federal Criminal Police Office gives administrative assistance in evaluating the data obtained for the purpose of establishing identity (Section 16 subs. 3 first sentence of the Asylum Act in conjunction with Section 89 subs. 1 of the Residence Act). The Federal Office for Migration and Refugees may also involve the Federal Office of Administration in the process of establishing identity; the data obtained for purposes of establishing the identity or nationality of the person concerned may be transmitted to the Federal Office of Administration in order to compare them with data of the database for found documents (Section 16 subs. 4a of the Asylum Act in conjunction with Section 89a of the Residence Act).

With the introduction of the proof of arrival document by the Data Sharing Improvement Act for people having arrived in Germany but who have not been able to file their asylum application, the reception centres, to which the persons concerned are allocated, became responsible for issuing these documents to the persons concerned. It is also the reception centres which are responsible for including changes of address on the documents and for extending them. This includes identification measures, unless a branch office of the Federal Office for Migration and Refugees located at the reception centre undertakes identification measures or processes the personal data of the person concerned (Section 63a subs. 3 of the Asylum Act).

While the Federal Office for Migration and Refugees as well as customs officers and members of the Federal Armed Forces provided extensive support in 2015 (see above), all reception centres in Germany were supplied with standardised data recording stations during the first half of 2016 and can now undertake most identification measures themselves (cf. Chapter 1.1.2). Using the PIK-stations the personal data is automatically stored in MARIs and in the Central Register of Foreigners. Since the fingerprints are stored at the same time in the police database (AFIS/INPOL), the reception centres of the Länder, the branch offices of the Federal Office for Migration and Refugees and all police stations can compare the fingerprints when they are in contact with asylum seekers ('Fast-ID').

In addition, practices at those bodies responsible for verifying documents were changed (cf. Chapter 2.3.4).

The responsibility for carrying out **deportations** rests with the Länder and ultimately the (central) foreigners authority for the administrative district in which the person who is obliged to leave the country regularly resides. This

responsibility includes the duty to establish the identity of the foreigner. "The foreigners authorities of the Länder are therefore responsible for requesting foreigners to participate in interviews with the purpose of establishing their nationality and bringing them before the appropriate boards" (Deutscher Bundestag 2015b: 1).

"Several Länder have established clearing offices in order to deal with upcoming difficulties concerning the establishment of identity and obtaining passports" (BAMF 2012: 9). These clearing offices will be involved especially in those cases, in which the identity of the person concerned is not established or not established without doubt, in which the readmission requests are refused by the (presumed) country of origin or in which the result of presenting the person concerned to the diplomatic mission is negative. These clearing offices are organised differently by each Land, which means that they each take on different tasks in the field of verifying identity and obtaining passport substitutes. Pursuant to Section 1 subs. 2 of the Federal Police Act²⁴ in conjunction with Section 71 subs. 3 no. 7 of the Residence Act, the Federal Police shall provide administrative assistance in procuring documents (Deutscher Bundestag 2015b: 1). A unit for passport substitute procurement has been established in order to support the work of the clearing offices. It is responsible for procuring passports in a list of countries agreed upon with the Länder. The clearing offices and the Federal Police work closely together on this issue. However, the passport substitute procurement efforts by the Federal Police are not complemented by identity verification measures; they only aim at procuring travel documents from the country of origin.²⁵ In order to improve the coordination of the return efforts, the Return Support Centre (German: Zentrum zur Unterstützung der Rückkehr, ZUR) was established in March 2017 (cf. Chapter 1.4.5).

1.4.2 Responsibilities: visa and residence permit

Responsibilities differ for the **visa procedure**, when applying for a Schengen or for a national visa. In case of a Schengen visa, the German and the other Schengen diplomatic missions abroad are responsible for identity documentation and establishment. External service providers may be involved in the procedure (Art. 13 subs. 6 of the Visa Code²⁶). In case of a national visa, only the diplomatic missions authorised by the Foreign Office may document and establish identity (Section 71 subs. 4 third sentence of the Residence Act).

²⁴ German: Gesetz über die Bundespolizei.

²⁵ The Federal Police procures passports for 15 western African countries and for eight other countries if the latter do not issue travel documents despite given proof of the identity of the person concerned (Landtag Rheinland-Pfalz 2016).

²⁶ Regulation (EU) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

Document and visa advisors of the Federal Police support the staff of the diplomatic missions at locations where the number of forged identity documents is particularly high.

If a **residence permit** is to be issued, the responsible foreigners authority verifies the identity of the applicant. If measures pursuant to Section 49 subs. 1 and 2 of the Residence Act need to be taken to establish the identity or nationality of the applicant, the foreigners authority generally initiates these. The authorities charged with policing cross-border traffic and the police forces of the Länder are responsible as well (Section 71 subs. 4 first sentence of the Residence Act).

Other authorities are involved during the visa procedure or during the issuance or extension of residence permits. Section 73 of the Residence Act sets out which authorities must

be consulted and which data may be transferred for which purposes (for more details cf. Chapter 4.1.1). In addition, Section 72a of the Residence Act sets out the responsibilities of other actors during a security check of visa application data (cf. Chapter 4.1.1).

1.4.3 Steps taken in identity documentation and establishment

In each of the migration processes analysed in this study, identity documentation and establishment plays a different role. As a result, the procedures for documenting and establishing identity differ as well. The table below gives an overview of the individual steps the responsible actors undertake.

Table 4: Steps taken in the procedure to document and establish the identity of third-country nationals during different migration processes

Steps taken in the identity documentation and establishment procedure	
Asylum	<p>The identity of asylum seekers or asylum applicants is documented and verified at two stages during the asylum procedure: at the registration and during the personal interview.</p> <p>If a person requests asylum in Germany, he or she will have to undergo identification measures carried out by members of the Federal or Land police forces, employees of the Federal Office for Migration and Refugees at one of its branch offices or arrival/registration centres or Länder employees at reception centres, foreigners authorities or arrival/registration centers (cf. BAMF 2017a). A biometric photograph and, if the applicant is above 14, prints of all ten fingers will be taken at one of the so-called PIK stations. These data, together with basic personal data¹ and further personal data² obtained from the passport or from information furnished by the person, as well as other biometric identity data (sex, height, eye colour) and procedural data (e.g. date of entry, date of registration) will be stored in the Central Register of Foreigners (Sections 2 and 3 of the Act on the Central Register of Foreigners). During the registration process, the data are checked against the database of the Central Register of Foreigners and security-checked against the database of the Federal Criminal Police Office, which serves as national EURODAC access point and checks whether there is a EURODAC hit. Moreover, the data are transmitted via the Federal Office of Administration to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Office for the purpose of ascertaining any grounds for refusing a visa pursuant to Section 3 subs. 2 or Section 4 subs. 2 of the Asylum Act or to Section 60 subs. 8 first sentence or Section 5 subs. 4 of the Residence Act or for the purpose of investigating other security reservations (Section 73 subs. 1a of the Residence Act).</p> <p>This procedure takes place during the initial registration of asylum seekers, unlawful entrants and persons who are residing in the federal territory without the requisite residence title in the Central Register of Foreigners and during all subsequent relevant data changes in the Central Register of Foreigners. The security and intelligence services inform the Federal Office of Administration immediately of any grounds for refusing a visa or any security reservations. The Federal Office of Administration shall make this information promptly available to the Federal Office for Migration and Refugees and to the authorities responsible for decisions on residence matters (Section 73 subs. 3a first and second sentences of the Residence Act).</p> <p>If the data of the asylum applicant have not been collected and a photograph and his or her fingerprints have not been taken yet, this procedure will take place at the personal interview at the latest. The interviewee is obliged to hand over his or her passport or any other documents which can help to establish his or her identity (Section 15 subs. 2 and 3 of the Asylum Act). The original documents presented will be subjected to a multi-stage physical and technical examination (cf. Chapter 2.3.4; cf. also BAMF 2016b: 11).</p> <p>During the personal interview, the applicant will be questioned about his or her person, origin, family and travel route. He or she will explain the personal circumstances and experiences which, from his or her vantage point, may justify his or her application for asylum on the grounds of political persecution or give rise to a suspension of deportation. To corroborate his or her statements, he or she may provide additional documents and evidence to support the persecution; any additional proof will also be subjected to the physical and technical examination. If there are any doubts about the applicant's country or region of origin, the Federal Office for Migration and Refugees will carry out an analysis of the spoken and written language in order to check the statements. For this purpose, the applicant's oral statements may be recorded outside the formal hearing after he or she has been informed of the recording (Section 16 subs. 1 third and fourth sentences of the Asylum Act). External language experts will be involved in this examination. "Any such cases will be reported to the Federal Office's internal security division, which [...] cooperates closely with the Joint Centre for Countering Extremism and Terrorism (GETZ) and the Joint Counter-Terrorism Center (GTAZ)" (BAMF 2016b: 15).</p>

Deportation	<p>As the clearing offices of the individual Länder work differently (see above), it is impossible to make general statements about the cases in which the clearing office or the responsible foreigners authority carries out measures to establish identity and obtain a passport substitute.</p> <p>Cases in which the identity of those persons who are obliged to leave the country is unknown and/or in which these persons do not have any travel documents tend to be highly individual and often complex, which is why there is no standard procedure. In a first step, the foreigners authority/clearing office can carry out the necessary measures to collect biographical and biometric data of the person concerned. These include one or several interviews with the person concerned, the taking of fingerprints and photographs for a comparison with national and international databases or the registers of the presumed country of origin and the search of data carriers in possession of the foreigner (cf. Chapter 2.4). If these measures are not sufficient to clarify the identity, the authorities can request the Federal Office for Migration and Refugees for administrative assistance in the form of a language analysis (Section 49 subs. 7 of the Residence Act). In addition, interviews with the diplomatic mission or in front of representatives of the (presumed) country of origin may be organised. The Foreign Office may be involved as well and ask trusted lawyers of the German diplomatic missions abroad to conduct further research.</p> <p>If these measures result in coherent and credible information about the identity and nationality of the foreigner, a request for travel documents will be made to the authorities of the country of origin.</p>
Schengen visa	<p>When a foreigner applies for a Category C visa for a short-term stay (Schengen visa), the identity comparison is carried out by comparing the personal information entered in the visa application with the personal information given in his or her travel document. If fingerprints can be copied from the Visa Information System (VIS), the identity is established by comparing the personal data already stored in the VIS with the personal data provided in the application and the travel document. If fingerprints cannot be copied from the VIS, the applicant needs to file the application in person. In that case, his or her identity is established by comparing the biometric passport photograph, which is to be provided for the application, with the person who is fingerprinted. If an external service provider is involved, this service provider shall make the comparison and record the fingerprinting procedure on video.</p> <p>If there is any doubt, applicants will be asked to provide their fingerprints again and take part in a personal interview and/or provide other documents to prove their identity (birth certificate, national identity cards etc.). If there are doubts about the authenticity of the provided documents, a document and visa expert of the Federal Police will be involved, if possible.</p>
National visa	<p>“Section 49 subs. 5 no. 5 of the Residence Act stipulates that identity documentation measures may be undertaken in case of applications for a national visa. These identity documentation measures include taking photographs and fingerprints (Section 49 subs. 6a of the Residence Act). For the purpose of establishing the applicant’s identity, the fingerprints will be transmitted to the Federal Criminal Police Office, which will check them and store them for ten years (Section 89 subs. 3 of the Residence Act). In principle, fingerprints shall be taken for every application for a Category D visa. Only children aged below 14 are exempt, with any doubts about the age being to the detriment of the applicant (Section 49 subs. 6 of the Residence Act). Persons not covered by the provisions of the Residence Act (diplomats accredited in Germany, including their service staff, as well as family members which enjoy the freedom of movement) will not be fingerprinted either, as there is no legal basis for such steps. RK-Visa [an automatic data processing system, J.T.] stores fingerprints and transmits them to the Federal Criminal Police Office whenever a visa application is made. The Federal Criminal Police Office usually notifies the Federal Office of Administration within one hour about a database hit. The Federal Office of Administration informs the foreigners authority, which may be involved, of the result of the check, and the diplomatic mission abroad will receive the result together with the final opinion of all authorities involved” (Auswärtiges Amt 2017: 97).</p>
Residence permits for family reasons, for study purposes or for the purpose of remunerated activities	<p>As a rule, a visa procedure (see above) precedes the procedure for the issuance of a residence permit for the different purposes of residence. The issuance of a residence permit presupposes that the necessary information was already provided during the visa procedure (Section 5 subs. 2 first sentence of the Residence Act).</p> <p>During the application procedure, the passport shall be presented to the responsible foreigners authority and compared with the information already provided. If necessary, biometric data shall be taken and compared with the data stored electronically within the passport. In addition, the data are automatically transmitted to the Federal Criminal Police Office to be checked.</p>

1 Surname, maiden name, first names, spelling of the names under German law, date of birth, place and district of birth, sex, nationalities.

2 Different spelling of the name, other names, former names, aliases, marital status, information concerning the identity document, last place of residence in the country of origin, voluntary information concerning religious affiliation and nationality/nationalities of the spouse or registered partner.

1.4.4 Extraordinary migratory movements

In view of experiences made with the significant immigration since 2014, the Integration Act, which entered into force on 6 August 2016, created legal options to respond to extraordinary migratory movements. Other authorities may

temporarily support the Federal Office for Migration and Refugees in conducting hearings:

“If and when a great number of foreigners request asylum at the same time, making it impossible for the Federal Office to conduct hearings in temporal proximity to

the filing of applications, the Federal Office may temporarily have the hearings conducted by another authority discharging tasks defined in this Act or in the Residence Act. Hearings may only be conducted by specially trained public employees. Public employees may not wear uniforms during the hearing” (Section 24 subs. 1a first to third sentences of the Asylum Act).

1.4.5 Central competence centre

Germany does not have a central competence centre for identity documentation or identity establishment issues. However, the physical and technical examination (German: physikalisch-technische Untersuchung, PTU) located at the the Federal Office for Migration and Refugees plays a key role in checking documents and the Return Support Centre (“ZUR”) holds a central role in obtaining travel documents for return purposes.

Physical and technical examination by the Federal Office for Migration and Refugees

The physical and technical examination of original documents is of major importance during the document examination process. In the framework of the **asylum procedure**, this examination is conducted by a specialised division of the Federal Office for Migration and Refugees, which also provides administrative assistance to other authorities when the latter need original documents of third-country nationals examined.²⁷ Physical and technical forensic methods which leave the documents in tact as much as possible are used to examine documents of all kinds in the document laboratory, for example through using high-resolution microscopes or comparing the documents with a comprehensive collection of comparable documents.

Since 2013, this central division has not only changed the examination procedure (cf. Chapter 2.3.4) but also been provided with the latest technology. Among other things, an up-to-date video spectral comparator was obtained for document examination purposes, a high-resolution microscope was improved further and online access to international databases with comparable original documents (iFADO, DISCS) was provided. The physical and technical examination division at the Federal Office for Migration and Refugees uses several databases which contain information on the characteristics of original and counterfeit documents. This helps to recognise counterfeits. These data bases are:

- **ISU:** “Informationssystem Urkunden”, the comparison database of the Federal Police and the Federal Criminal Police Office
- **ARGUS:** the comparison database of the Austrian document issuing authorities
- **DOKIS:** the comparison database of the Bavarian Land Criminal Police Office (LKA)
- **DISCS:** comparison database on the basis of EDISON (Electronic Documentation and Information System on Investigation Networks), a database which contains examples of authentic travel documents

The physical and technical examination division of the Federal Office for Migration and Refugees examines a broad range of documents, with several types of documents being subject to examinations more often than others. The table below gives a breakdown of the physical and technical examinations at the Federal Office for Migration and Refugees by type of document.

Table 5: Frequency of document examinations by the physical and technical examination division at the Federal Office for Migration and Refugees

Type of document	Relative frequency of examinations by the physical and technical examination division at the Federal Office for Migration and Refugees
Passports	25%
Identity cards	40%
Nationality certificates	7%
Register excerpts	6%
Birth certificates	5%
Drivers' licences	3%
Military documents	ca. 3%
Marriage certificates	2%
Family registers	1%
Divorce certificates	< 1%
Qualification certificates	< 1%
Informal documents (e.g. UNHCR registration documents)	<1 %
Other documents	5%

Source: Physical and technical examination division at the Federal Office for Migration and Refugees, as of 11 May 2017.

In 2016, a total of 491,097 documents were examined. 12,789 of them were found to be forgeries, and no final evaluation was possible for 7,730 others (Deutscher Bundestag 2017c: 82; cf. Chapter 3.1.2 for more details on the categorisation).

The documents are examined in a three-stage procedure. In the first step, specialists of the Asylum Procedure Secretariat conduct an initial examination of the documents handed

²⁷ Administrative assistance for non-police Länder authorities has been suspended since 2015.

over the branch offices and arrival centres (in particular machine-readable documents and for documents from nine important countries of origin). Any documents which are suspected to be counterfeit are sent on to the central division or one of three regional examination centres, where specially trained staff examines them in detail. If there are still grounds for suspicion, a final examination, whose results can be used in court, is conducted by document experts at the main seat of the Federal Office for Migration and Refugees. These experts have been trained for several years by the Federal Criminal Police Office and have specialised on examining documents (BAMF 2016c).

Return Support Centre (“ZUR”)

Based on the decision of the Chancellor and the Prime Ministers of the Länder of 9 February 2017, the Return Support Centre was established at Berlin to “ensure the operative coordination of the Federal and Länder policies concerning return and repatriation” (MPK 2017: 5). The Return Support Centre started work on 13 March 2017 and is led by the Federal Ministry of the Interior. Its staff consists of employees of the Federal Office for Migration and Refugees and of the Federal Police as well as one representative for each Land (Bundesregierung 2017b; Deutscher Bundestag 2017f: 3). “The Return Support Centre is based on existing structures (Federation-Länder Coordination Agency for Integrated Return Management; Working Group on Returns; passport substitute procurement office of the Federal Police)” (Deutscher Bundestag 2017f: 3) and consists of five main divisions: passport substitute procurement, security, voluntary return, optimisation and operative return issues (ibid.).

The main task of the Return Support Centre is to maintain regular contact with the diplomatic missions of the countries of origin and to determine identities of persons. It “acts in difficult cases to procure the necessary travel documents for persons who are obliged to leave Germany” (MPK 2017: 5).

2 Methods for documenting and establishing identity

2.1 Definitions of ‘identity’

For each of the migration processes described in this study, different legal bases define which biographical or biometric features of a person make up the term ‘identity’.

In the framework of the **asylum procedure**, the Asylum Act states that the identity of a person requesting asylum is to be documented by taking photographs and prints of all ten fingers²⁸ (Section 16 subs. 1 second sentence of the Asylum Act). Moreover, the oral statements by the person concerned may be recorded in order to determine his or her country or region of origin (Section 16 subs. 1 third sentence of the Asylum Act). If data stored electronically within an identity document are used to establish identity, iris scans may be used as well (Section 16 subs. 1a first sentence of the Asylum Act).

The identity of asylum seekers is included in the arrival certificate even before the asylum procedure as such begins. The proof of arrival document contains a number of biometric and biographical data taken from the passpart or information given by the person him- or herself (Section 3 of the Act on the Central Register of Foreigners; cf. Table 4). During the asylum procedure, in particular at the hearing, all identity-related data are important which may support the applicant’s claim of persecution, e.g. religious affiliation, ethnic origin, the profession or the native language.

In the area of **deportation** there is no explicit definition of ‘identity’ (BAMF 2012: 11). The person concerned is obliged to furnish the authorities entrusted with enforcing the law concerning foreigners with information on his or her age, identity and nationality and to submit such declarations in connection with the procurement of travel documents as are required by the diplomatic mission of the state whose nationality he or she possesses or putatively possesses and that are in line with German law (Section 49 subs. 2 of the Residence Act). Identity information includes “[...] the surname, first name(s), maiden name, date of birth, place of birth and place of residence” (49.2.4 of the General Administrative Regulation to the Residence Act). “As a rule, the identity of a person is only regarded as established sufficiently in

order to carry out a deportation, if official travel documents are available to prove it” (BAMF 2012: 11).

The general preconditions for the issuance of residence titles set out that a residence title (including a **visa** and a **residence permit**) can, as a rule, only be issued if the identity and, if the holder is not entitled to return to another state, the nationality of the applicant are established (Section 5 subs. 1 no. 1a of the Residence Act). Neither the Residence Act nor the General Administrative Regulation to the Residence Act clarify what the term ‘identity’ means in this context. According to legal commentaries, the establishment of identity includes the establishment of personal identity, i.e. the name and date of birth, and of historical identity, i.e. of whether the applicant is the person for which a file has been created (Kluth/Heusch 2017: § 5 AufenthG Rn. 3 et seq.).

During the **visa procedure**, identity is regarded as established if, after an examination using the tools mentioned above, there is no reasonable doubt about the identity of the applicant and of the holder of the documents which have been provided and examined for their authenticity and if a mistake can be excluded.

2.2 Guidelines

In Germany, there is no general guideline or collection of best practices for the establishment of identity or for the use of different methods for establishing identity. However, individual chapters in the guidelines for different migration processes deal with the question of which methods should be used to establish identity.

The two main guidelines for the **asylum procedure** (the “Asylum Instruction”²⁹ and the “Asylum Procedure Secretariat Instruction”³⁰) contain chapters which explicitly describe the individual steps of the procedure (e.g. of the identification procedure). Moreover, the user manual of the PIK-stations describes the proceedings in the identification procedure in detail (including the collection of personal data, the taking of fingerprints and photographs and the issuance of the proof of arrival document).

28 With one exemption: “foreigners below age 14 may only be photographed” (Section 16 subs. 1 second sentence of the Asylum Act).

29 German: Dienstanweisung Asyl.

30 German: Dienstanweisung AVS.

The General Administrative Regulation to the Residence Act contains provisions for **deportations** and the issuance of **residence permits**. There is no other uniform guideline at the federal level.

With a view to the **visa procedure** the visa handbook of the Federal Foreign Office (as amended) contains a description of the methods used to establish identity (Auswärtiges Amt 2017). It includes a chapter on 'Biometric data' which describes the individual steps during the fingerprinting procedure and the requirements for photographs.

2.3 Documents

2.3.1 Accepted documents

The table below gives an overview of the documents accepted by the authorities involved during the different migration processes.

Table 6: Documents accepted in establishing identity

Type of document	(a) Asylum applicants	(b) Deportation	(c) Applications from third-country nationals for visa or residence permits on family grounds, for the purpose of education or for the purpose of remunerated activities
Official travel documents: passports, identity cards	Yes. All documents which serve to illustrate a history of persecution can be used during the asylum procedure. All original documents will be subject to a physical and technical examination.	Investigation: During their investigation to clarify identity, the responsible foreigners authorities/clearing offices will use a broad range of documents which may help to clarify identity (e.g. police reports, court decisions, applications for a toleration of stay, files of the Federal Office for Migration and Refugees, files of registry offices etc). Proof to the country of origin: "It is not possible to state in general which documents can be used to prove identity in a satisfactory way to the country of origin and thus to enable a deportation; the necessary documents vary for each country of origin. In general, i.e. depending on the country of origin's willingness to cooperate, original identification documents will suffice. Other documents which include comprehensive personal data, such as school or training certificates, may support the claim" (BAMF 2012: 11).	Visa (Schengen and national visa): Yes, a passport or identity card are regarded as sufficient. Residence permit: Yes, a passport or passport substitute are regarded as sufficient.
Other documents: birth certificates, driver's licences, divorce certificates, marriage certificates, qualification certificates, family registers, etc.	Yes. All documents which serve to illustrate a history of persecution can be used during the asylum procedure. All original documents will be subject to a physical and technical examination.		Visa (Schengen and national visa): Yes, birth certificates, driver's licences, divorce certificates, marriage certificates, qualification certificates, family registers etc. are regarded as supporting the claim. Residence permit: If no passport can be presented, official documents with a photograph may be used in place of a passport under exceptional circumstances.
Informal (residence) documents, such as UNHCR registration documents	Yes. All documents which serve to illustrate a history of persecution can be used during the asylum procedure. All original documents will be subject to a physical and technical examination.		Visa (Schengen and national visa): Yes, informal documents are regarded as supporting the claim. Residence permit: No.

2.3.2 Copies

If copies of documents can help to lend credibility to the applicant's history of persecution, they may be used during the **asylum procedure**. However, they cannot be examined for their authenticity by the physical and technical examination division of the Federal Office for Migration and Refugees.

During the identity clarification procedure for **persons who are obliged to leave the country**, copies may indicate the identity and/or nationality of the person. However, the key issue for the passport substitute procurement procedure is whether the (putative) country of origin accepts copies as proof of nationality.

During the **visa procedure**, copies may be accepted if a presentation of the original document is not possible for plausible reasons, but there are no doubts about the applicant's identity on the whole. This applies in particular if the copies have been attested or legalised. However, in all cases the original of the valid travel document must be presented. During the **residence permit** procedure, no copies are recognised.

2.3.3 Issues concerning the determination of the authenticity of documents

According to the experts at the physical and technical examination division at the Federal Office for Migration and Refugees (cf. Chapter 1.4.5), the main problems are the collection of and access to specimens for comparison purposes

and the availability of background information about issuance techniques and about the possibilities of procuring documents in the different countries of origin. Recognising forgeries in a way that they can be used in court may take time, but is necessary to secure the identity of the asylum applicants and is therefore absolutely necessary.

2.3.4 Changes of issues and resolution approaches in comparison to 2013

Increased asylum migration and the related increase in the number of cases in which examinations of original documents needed to be carried out during the **asylum procedure** resulted in a restructuring of the examination activities of the physical and technical examination division at the Federal Office for Migration and Refugees. While, up to 2015, all original documents were examined at the seat of the Federal Office for Migration and Refugees, the first step of the examination procedure for documents from the most important countries of origin was shifted to the branch offices and arrival centres. Staff at the branch offices were comprehensively trained for this initial examination step by experts from the seat of the Federal Office for Migration and Refugees. The document examination procedure has been organised in three stages:

- First stage: initial examination of the documents by trained staff at the branch offices or arrival centres.
- Second stage: more detailed examination of documents thought to be manipulated by trained staff at the seat of the Federal Office for Migration and Refugees.³¹
- Third stage: final examination by document experts at the seat of the Federal Office for Migration and Refugees of documents thought to be manipulated. Only this examination is final and can be used in court.

In addition, passport readers were introduced nationwide, so that machine-readable documents can be examined automatically by the branch offices and arrival centres. New microscopes needed for the examination of documents were procured for all stages of the examination.

Since 2015, official assistance has been suspended for non-police Land authorities, which means that any documents submitted by such authorities are currently not being examined by the physical and technical examination division at the Federal Office for Migration and Refugees. The specialists responsible for the third examination stage are continuing to train examiners at all stages.

³¹ Three regional examination centres are currently being established; they will conduct second-stage examinations for countries of origin not covered by the initial examination at the branch offices (as of July 2017).

According to the Foreign Office, the number of problems concerning the authenticity of documents produced during the **visa procedure** has not increased globally. Only in some countries does the quality of the documents vary. The number of forged documents presented during the **residence permit** procedure has not increased either. Over the last few years, most countries have started to issue machine-readable passports, which means that it has become considerably easier to use passport readers at the foreigners authorities.

2.3.5 Frequency of forged documents

Since there is a lack of statistical data concerning the frequency of detected forgeries (cf., for example, Chapter 1.2, Table 2), it is impossible to say at what stage of the migration procedure (e.g. entry, during the asylum procedure etc.) the highest number of forged documents is detected. In 2016, a total of 491,097 documents were examined by the physical and technical examination division at the Federal Office for Migration and Refugees. 12,789 of them were found to be forgeries, and no final evaluation was possible for 7,730 others (Deutscher Bundestag 2017c: 82).

2.3.6 Exemptions from the obligation to present a passport

In justified individual cases, the Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior³² may, pursuant to Section 3 subs. 3 of the Residence Act, permit exemptions from the passport obligation **before the foreigner enters the federal territory for the purpose of crossing the border, and for a subsequent stay of up to six months** or, if the necessary preconditions are met, permit the issuance of a travel document for foreign nationals. In addition, if a person neither possesses a passport or passport substitute nor can reasonably be expected to obtain one, it shall be sufficient for the purposes of the obligation to have and present identification papers to carry the certificate confirming a residence title or the suspension of deportation, provided that such document contains the foreigner's personal details and a photograph and is marked to indicate that it is a substitute identity document (Section 48 subs. 2 of the Residence Act).

As a rule, the passport obligation pursuant to Section 3 of the Residence Act is one of the preconditions for the **issuance of a residence title** (including a visa or a residence permit) (Section 5 subs. 1 no. 4 of the Residence Act). If a residence title is issued pursuant to

- Section 24 of the Residence Act (Granting of residence for temporary protection),

³² Since 2010, this has been the Federal Office for Migration and Refugees.

- Section 25 subs. 1 to 3 of the Residence Act (Residence on humanitarian grounds – recognised asylum entitlement, recognised refugees or beneficiaries of subsidiary protection, deportation ban pursuant to Section 60 subs. 5 or 7 of the Residence Act),
- Section 25 subs. 4a of the Residence Act (Residence on humanitarian grounds – victims of human trafficking, victims of exploitation) or
- Section 25 subs. 4b of the Residence Act (victim of a crime pursuant to Section 10 subs. 1 or Section 11 subs. 1 no. 3 of the Act to Combat Clandestine Employment³³ or pursuant to Section 15a of the Act on Temporary Employment Businesses³⁴)

this precondition shall be waived (Section 5 subs. 3 first sentence of the Residence Act). In all other cases in which a residence title is granted pursuant to Chapter 2 Part 5 of the Residence Act (Residence under international law or on humanitarian or political grounds) the application of the preconditions may be waived (Section 5 subs. 3 second sentence of the Residence Act).

If a residence title is granted even though no recognised passport or passport substitute is presented, the potential holder shall be examined thoroughly first.

“This is in line with the fact that such a decision shall be taken only in exceptional cases, which require that a usually mandatory reason to refuse a residence title (even in cases where applicants should normally be entitled to being granted a residence title) is set aside. Even if applicants are entitled to a residence title, the obligation to present a recognised passport or passport substitute may be waived only in exceptional cases, for example if there are no reasonable doubts about the applicant’s willingness, readiness and entitlement to return or if they are entitled to permanent residence, if there are important grounds to allow them permanent residence and there is no reason to believe that their residence might be terminated or reasons to deport them should arise in the short to medium term. [...] Since, ultimately, there will be no possibility to deport the applicant due to his or her being without a passport, general migration policy considerations shall be taken into account. In the end, the authorities should avoid a situation in which an applicant without a passport enjoys a more secure residence in Germany than an applicant with a passport even though their general living circumstances are comparable“ (5.1.4.3.1 of the General Administrative Regulation to the Residence Act).

During the regular visa procedure only the diplomatic mission responsible for issuing the visa will be responsible for filing an exemption application. This exemption application will be made by the Foreign Office to the Federal Office for Migration and Refugees, which is the responsible authority designated by the Federal Ministry of the Interior.

“In justified individual cases (e.g. if the person lost his or her passport on the plane) the Federal Police may apply for an exemption from the passport obligation before entry. The authority which has applied for the exemption (diplomatic mission abroad or Federal Police) shall furnish the foreigner with the decision of the Federal Ministry of the Interior [since 2010: the Federal Office for Migration and Refugees; J.T.] or the visa issued by the responsible Federal Police Authority on a separate sheet which exempts the foreigner from the passport obligation for at most six months. The exemption from the passport obligation is an administrative act which is separate from the visa decision” (3.2 of the General Administrative Regulation to the Residence Act).

2.4 Measures taken in case of a lack of identity documents: asylum and deportation

2.4.1 Overview of currently used methods and planned methods in asylum and deportation

The following tables give an overview of the methods which are currently used and those intended to be used in the future to document and/or establish identities during the **asylum procedure** and during the preparation and implementation of **deportations** if no identity documents are available.

33 German: Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung.

34 German: Gesetz zur Regelung der Arbeitnehmerüberlassung.

Table 7: Currently used methods: asylum and deportation (I)

Method	Asylum applicants	Deportation of refused asylum applicants
Language analysis to determine probable country and/or region of origin	An analysis of the language of the applicant to determine his or her probable country or region of origin is a measure foreseen by the Asylum Act, provided that the applicant is informed of this beforehand (Section 16 subs. 1 third and fourth sentences of the Asylum Act). A language analysis is not mandatory, but may be used if there are reasonable doubts about the identity of the applicant. Cases in which it is used are reported to the security division of the Federal Office for Migration and Refugees (BAMF 2016b: 15).	An analysis of the language of the applicant to determine his or her probable country or region of origin is a measure foreseen by the Residence Act, provided that the applicant is informed of this beforehand (Section 49 subs. 7 of the Residence Act). This method is not mandatory. Any use of it must be necessary to prepare measures under residence law. The applicant may be informed orally or in writing about the recording of his or her statements (49.7 of the General Administrative Regulation to the Residence Act). The recording shall be deleted after ten years (Section 89 subs. 3 no. 4 of the Residence Act). ¹
Age assessment to determine probable age	In principle, the youth welfare offices are responsible for assessing and establishing the age of youths who claim that they are minors, in the course of taking them into care (Section 42a of the Eighth Book of the Social Code): "In the framework of taking into care a foreign person pursuant to Section 42a, the youth welfare office shall determine his or her being a minor by examining his or her identification papers or, if necessary, assess and establish his or her age with the help of qualified staff" (Section 42f subs. 1 of the Eighth Book of the Social Code). In this context, the youth welfare office shall initiate a medical examination in order to determine the age of the applicant at the request of the applicant, his or her legal representative or ex officio. In case a medical examination is to be carried out, the person concerned shall be comprehensively informed about the examination method and the potential consequences of the age determination procedure. The examination may only be conducted with the consent of the applicant or his or her legal representative (see Section 42f of the Eighth Book of the Social Code). ² As a rule, the age determination by the youth welfare office is accepted by the Federal Office for Migration and Refugees.	If a person is enforceably required to leave Germany and may be removed or deported, the foreigners authorities may determine his or her age. This may be done by taking measurements and similar measures, including bodily intrusions undertaken by a doctor in accordance with prevailing medical standards in order to establish the age of the person concerned, provided that no ill effect on the latter's health is to be feared (Section 49 subs. 6 first sentence of the Residence Act). These measures are only permissible on persons aged 14 or over; any doubts as to whether the person has reached 14 years of age shall be to his or her detriment (Section 49 subs. 6 second sentence of the Residence Act). "The age determination is particularly important if a person is enforceably required to leave Germany, as minors may only be removed if it is certain that they are taken into care by a person possessing the right of care and custody in the country of origin (Section 58 subs. 1a of the Residence Act)" (BAMF 2012: 12).
Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity)	The personal hearing/interview is the key component of the asylum procedure. Its purpose is to "learn about the individual grounds for flight, gain deeper insight and resolve contradictions. The case officers are familiar with the situation in the applicants' countries of origin" (BAMF 2016b: 14).	If the documents at hand are not sufficient to obtain a passport substitute, the applicant may be obliged to report (regularly) to the competent foreigners authority for questioning (pursuant to Section 82 subs. 4 of the Residence Act). "If the Länder have enacted provisions to that effect, the foreigner may be allocated to a departure facilities in order to determine his or her identity" (Kreienbrink 2006: 135).
Identity related paper and e-transactions with the authorities (e.g. tax, social benefits)	If applicants provide such evidence to support their history of persecution, the documents may be used in the framework of the asylum procedure. There are no legal grounds for forcing applicants to provide such documents against their will.	If such documents are available, they may be used to determine the identity of the person who is obliged to leave the country.
Identity related paper and e-transactions with the private sector (e.g. bank)	If applicants provide such evidence to support their history of persecution, the documents may be used in the framework of the asylum procedure. There are no legal grounds for forcing applicants to provide such documents against their will.	There are no legal provisions for this case.
Identity related e-transactions in connection with social media	If applicants provide such evidence to support their history of persecution, the documents may be used in the framework of the asylum procedure. There are no legal grounds for forcing applicants to provide such documents against their will.	There are no legal provisions for this case.
Analysis of data on smartphones and other digital appliances	If applicants provide such evidence to support their history of persecution, the data may be used in the framework of the asylum procedure. The 'Act to Improve the Enforcement of the Obligation to Leave the Country' has entitled the Federal Office for Migration and Refugees to analyse data carriers in order to establish the identity and nationality of an asylum applicant. The Federal Office for Migration and Refugees is currently testing different technical methods to do so.	The foreigners authorities are entitled to analyse data carriers. This method is optional (cf. Chapter 1.3.2).

<p>Other (e.g. cooperation with or contacts to third countries, for example via diplomatic missions)</p>	<p>It is possible to have a trusted lawyer conduct investigations into the identity of the person concerned in the country of origin. “This procedure gives no hints of an ongoing asylum procedure or of the person of the applicant, which means that the investigations will not result in post-flight grounds for granting protection” (BAMF 2012: 14).</p>	<p>Two procedures are used to establish nationality in cooperation with the putative countries of origin:</p> <p>(a) interview in the presence of representatives of the diplomatic or consular mission of the putative country of origin</p> <p>“Such interviews can take the form of individual or collective interviews, either at the premises of the diplomatic mission or at a building provided by the organising authority” (Deutscher Bundestag 2011: 2).</p> <p>(b) interview in the presence of delegations from the putative country of origin</p> <p>“Within the responsibilities of the Federal Police, delegations are invited via the diplomatic channels and notified and sent out by the contacted countries of origin. [...] These official delegations regularly consist of representatives of the authorities responsible for immigration issues or of other ministries/institutions” (ibid.).</p>
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- 1 Speech recordings and analyses are a subject of debate among legal experts. While some of them argue that speech recordings have proven that they are good methods to determine the origin (cf. Bergmann/Dienelt 2016: § 49 AufenthG Rn. 16), others believe that they are not very informative (for example because family speech patterns may prevail over regional speech patterns) and should only be used as circumstantial evidence (cf. Huber 2016: § 49 AufenthG Rn. 49).
- 2 It is not possible to determine the age exactly by medical methods. The methods used are criticised, sometimes heavily, from a medical vantage point (cf. for example Nowotny/Eisenberg/Mohnike 2014).

Table 8: Currently used methods: asylum and deportation (II)

Method	Asylum applicants		Deportation of refused asylum applicants	
	National database	European database	National database	European database
<p>Fingerprints for comparison with national and European databases</p>	<p>Taking fingerprints is a standard procedure for applicants aged 14 and older. At the national level, they are compared with the national fingerprint database AFIS/INPOL (automated fingerprint identification system) (cf. BMI 2017a).</p>	<p>Taking fingerprints is a standard procedure for applicants aged 14 and older. They are compared with EURODAC and VIS.</p>	<p>Fingerprints can be compared with the Central Register of Foreigners and other national databases. However, the procedure may be different according to the responsibilities and will not be conducted in all cases (cf. BAMF 2012: 12). Fingerprints taken pursuant to Section 49 of the Residence Act may be analysed by the Federal Criminal Police Office, which provides administrative assistance pursuant to Section 89 of the Residence Act, and thus be compared with the Federal Criminal Police Office’s databases. Pursuant to Section 89a of the Residence Act, fingerprints may be transferred to the Federal Office of Administration in order to be checked against the database for found documents.</p>	<p>Fingerprints can be compared with the VIS and other European databases. However, the procedure may differ according to the responsibilities and will not be conducted in all cases (cf. BAMF 2012: 12). Fingerprints are taken and checked against the biometric data stored in the putative country of origin (BMI 2016).</p>

Photograph for comparison with national and European databases	Photographs are taken as a standard measure and stored in the Central Register of Foreigners. However, they are currently not checked against databases.	Photographs are taken as a standard measure and stored in the Central Register of Foreigners. However, they are currently not checked against databases.	Pursuant to Section 89a of the Residence Act, photographs may be transferred to the Federal Office of Administration in order to be checked against the database for found documents.	Photographs can be checked against European databases. Whether such a check is conducted, depends on the responsibilities (BAMF 2012: 12).
Iris scans for comparison with national and European databases	No. Under the current legal provisions, the iris may only be scanned for comparison with biometric information stored electronically within passports or similar documents (see above).	No.	No.	No.
DNA analysis	No.	No.	There are no legal provisions for taking DNA.	There are no legal provisions for taking DNA.
Other	No.	No.	No.	No.

Table 9: Planned methods: asylum and deportation (I)

Method	Asylum applicants	Deportation of refused asylum applicants
Language analysis to determine probable country and/or region of origin	The Federal Office for Migration and Refugees has started a project on the digital recognition of dialects (cf. Chapters 4.4.3 and 5.1.3).	No changes planned.
Age assessment to determine probable age	No changes planned.	
Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity)	The Federal Office for Migration and Refugees is currently working on a programme which will provide intelligent interview support to staff of the Federal Office for Migration and Refugees. It will offer them specific information on the region and country of origin during the interview and thus enable them to ask targeted questions concerning aspects of identity (cf. Chapter 4.4.3).	
Identity related paper and e-transactions with the authorities (e.g. tax, social benefits)	No changes planned.	
Identity related paper and e-transactions with the private sector (e.g. bank)	No changes planned.	
Identity related e-transactions in connection with social media	No changes planned.	
Analysis of data on smartphones and other digital appliances	The 'Act to Improve the Enforcement of the Obligation to Leave the Country' has entitled the Federal Office for Migration and Refugees to analyse data carriers in order to establish the identity and nationality of an asylum applicant. The Federal Office for Migration and Refugees is currently testing different technical methods to do so.	
Other (e.g. cooperation with or contacts to third countries, for example via diplomatic missions)	The Federal Office for Migration and Refugees is currently testing automated name transliteration and analysis of Arabic names into the Latin alphabet. The aim is to ensure early on that the spelling of the name is uniform and unequivocal. In addition, an analysis of the name may help to give hints of the potential origin of the applicant.	

Table 10: Planned methods: asylum and deportation (II)

Method	Asylum applicants		Deportation of refused asylum applicants	
	National database	European database	National database	European database
Fingerprints for comparison with national and European databases	No changes planned.	No changes planned.	No changes planned.	No changes planned.
Photograph for comparison with national and European databases	The Federal Office for Migration and Refugees is currently testing a biometric crosscheck of newly taken photographs with photographs already stored in the asylum database MARiS in order to prevent double registrations (image-based biometrics).	No changes planned.	No changes planned.	No changes planned.
Iris scans for comparison with national and European databases	No. This is an encroachment on fundamental rights which is not justified by law.	Not applicable.	No. This is an encroachment on fundamental rights which is not justified by law.	Not applicable.
DNA analysis	No. This is an encroachment on fundamental rights which is not justified by law.	Not applicable.	No. This is an encroachment on fundamental rights which is not justified by law.	Not applicable.
Other	No changes planned.	No changes planned.	No changes planned.	No changes planned.

2.4.2 Crosscheck of asylum applicants in the VIS database

“The Visa Information System (VIS) is a system for the exchange of visa data between the Schengen Member States which became operative on 11 October 2011. [...] The VIS database contains information about the issuance of a visa and the related decisions of all Schengen Member States. The data can be retrieved in order to examine visa applications and related decisions, to implement border controls and check the identity of the visa holder and/or the authenticity of the visa, to identify and remove illegal migrants and to facilitate the decision of the Member State which is responsible for processing an asylum application” (BAMF 2014: 10).³⁵

Rights and responsibilities concerning VIS inquiries are set out in the ‘Act on Access to the VIS’³⁶. During the **asylum procedure**, fingerprints taken from the asylum applicants may be automatically compared to the data stored in the VIS. This crosscheck has been made regularly since March 2013 (BAMF 2014: 10). In 2016, there were a total of 7,947 so-called

VIS hits (Deutscher Bundestag 2017: 36). The result of each query is stored in the electronic file for the relevant asylum procedure (so-called MARiS file).

2.4.3 Changes in methods

In the framework of the **asylum procedure** the analysis of data carriers is the only change concerning the methods used to document and establish identity. The legal basis for this measure was created by the ‘Act to Improve the Enforcement of the Obligation to Leave the Country’ (cf. Chapter 1.3.2); so far, the concept has not yet been implemented in practice. The same applies to the methods used in the context of **deportations**. The basis is formed by the ‘Act on Amendments to the Right to Stay and the Termination of Stay’, which entered into force on 1 August 2015 (cf. Chapter 1.3.2).

2.4.4 Changes in the context of the increase of asylum-related immigration

In the context of the increase of asylum-related migration since 2014, several organisational changes concerning identity documentation and establishment in the area of **asylum** were made (for example the introduction of the standardised ‘PIK’ stations or the issuance of the proof of arrival documents). However, the methods used to document and establish identity have not changed much. The introduction of the ‘Fast-ID’ fingerprint crosscheck ahead of the fingerprint

³⁵ See also ‘Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)’.

³⁶ German: Gesetz über den Zugang von Polizei- und Strafverfolgungsbehörden sowie Nachrichtendiensten zum Visa-Informationssystem.

taking at the registration of asylum seekers (cf. Chapter 4.4.1) or at the filing of the application with the Federal Office for Migration and Refugees and empowering the foreigners authorities and the Federal Office for Migration and Refugees to analyse data carriers of certain applicants (cf. Chapter 1.3.2) are noteworthy practical and legal amendments to the use of certain methods.

2.5 Overview of currently used methods and planned methods in visa and residence permit procedures

The following tables give an overview of the methods which are currently used and those intended to be used in the future to document and establish identities during the **visa procedure** and during the **residence permit procedure**.

Table 11: Currently used methods: visa and residence permit

Visa		
Method	National database	European database
Fingerprints for comparison with national and European databases	Yes, fingerprinting for the purpose of crosschecks with national databases is an integral part of the visa procedure. The fingerprints are compared with the databases of the Central Register of Foreigners, the visa database, the visa alert database and the protected border-crossing records.	Yes, fingerprinting for the purpose of crosschecks with European databases is an integral part of the visa procedure. The fingerprints are compared with the VIS and SIS II databases.
Photograph for comparison with national and European databases	Yes, taking a photograph/accepting a photograph provided by the applicant is an integral part of the visa procedure. The photograph is stored in the Central Register of Foreigners and not used for comparison purposes with national databases.	Yes, taking a photograph/accepting a photograph provided by the applicant is an integral part of the visa procedure. The photograph is stored in the VIS database.
Other	No other methods used.	No other methods used.
Residence permits for family reasons, for study purposes or for the purpose of remunerated activity		
Method	National database	European database
Fingerprints for comparison with national and European databases	Yes, fingerprints are taken at the time of the application.	No. Fingerprints are taken at the time of the application for a residence title, but they are not crosschecked against European databases.
Photograph for comparison with national and European databases	Yes, a photograph is taken and stored in the Central Register of Foreigners at the time of the application.	No. A photograph is taken at the time of the application for a residence title, but it is not crosschecked against European databases.
DNA analysis	DNA analyses may be used to establish the family relationship in the case of family reunification (cf. Grote 2017: 35 et seq.). However, they are not crosschecked against databases.	DNA analyses may be used to establish the family relationship in the case of family reunification (cf. Grote 2017: 35 et seq.). However, they are not crosschecked against databases.
Other	No other methods used.	No other methods used.

Table 12: Planned methods: visa and residence permit

Visa		
Method	National database	European database
Fingerprints for comparison with national and European databases	There are currently no plans to use other methods in the visa procedure.	
Photograph for comparison with national and European databases		
Other		
Residence permits for family reasons, for study purposes or for the purpose of remunerated activity		
Method	National database	European database
Fingerprints for comparison with national and European databases	There are currently no plans to use other methods in the procedure for the issuance of residence permits.	
Photograph for comparison with national and European databases		
Other		

3 Decision-making procedure

3.1 Status and weight of different methods and documents used to determine identity

3.1.1 Weighting and consistency of the results

The outcome of the **asylum procedure** rests on an assessment of the applicant's history of persecution, which must be presented in a plausible and credible way. The applicants may have concealed their identity or assumed another identity for good reasons during their flight (cf. Chapter 1.1.3). That is why establishing the identity of the applicant beyond doubt is not the only decisive factor in the decision about protection (cf. BAMF 2012: 14 et seq.).

However, original documents obviously carry significant weight. All original documents are examined, first at the branch offices of the Federal Office for Migration and Refugees and then, if there are grounds to believe that they may have been manipulated, by a physical and technical examination division at the seat of the Federal Office for Migration and Refugees. A report on this examination is prepared (cf. Chapter 2.3.4). "The result of the examination is documented in an examination report and will be taken into account for the asylum decision" (BAMF 2012: 15).

Moreover, the crosscheck of fingerprints against the databases mentioned above or against the identity documents provided during the procedure is important. A positive result of the comparison with the VIS (cf. Chapter 2.4.2) is important as well, as it proves that original documents were provided in the responsible embassy.

In order to carry out **deportations**, the nationality of the person concerned must be clear. "During the preparation of deportations, some clearing offices do not doubt the results of Interpol queries, whereas the credibility of other methods depends on the circumstances of the individual case" (BAMF 2012: 15).

During the **visa procedure** there is no specific weighting attached to the individual methods. The impression given by all circumstances of the respective case is decisive. However, any risk of confusion about the identity of a person must be excluded. Minor contradictions, such as different spellings of the name of the applicant, are harmless if they can be plausibly explained. During the **residence permit procedure** the presentation of the passport at the time of application is key.

3.1.2 Grading system for identity establishment

Several countries use a grading system to determine to what extent the identity of a person is regarded as established. Germany does not use such a grading system during the migration processes presented in this study.

The physical and technical examination division of the Federal Office for Migration and Refugees, however, uses a scale to categorise the authenticity of the documents it examines as follows: fake, not issued by an official authority, falsified, no final assessment possible (because no specimens are available for comparison or because the state of the document does not allow for an assessment) or authentic.

3.2 Establishment of identity in the decision process

3.2.1 Results of the establishment of identity in decisions on asylum

The decisive question in granting protection is whether the applicant is persecuted in his or her country of origin. The asylum procedure aims to determine whether the applicant is indeed a victim of persecution. If the applicant's statements concerning his or her identity do not (or not fully) fit with the identity documents issued by his or her country of origin, the asylum decision will not necessarily be negative.³⁷ Asylum applicants often claim before or during their interview with the Federal Office for Migration and Refugees that their documents were falsified in order to enable their flight or that certain statements are not true.

However, the Asylum Act says that an unfounded asylum application shall be rejected as manifestly unfounded if the applicant, in the framework of the asylum procedure, misrepresents or refuses to state his or her identity or nationality (Section 30 subs. 3 second alternative of the Asylum Act). "The foreigner [...] can be expected to state his or her identity or nationality or give information on these issues at the latest to the Federal Office, which is responsible for taking the decision in his or her case" (Deutscher Bundestag 1993: 22).

³⁷ Neither the Convention Relating to the Status of Refugees of 28 July 1951 nor the Protocol Relating to the Status of Refugees of 31 January 1967 include the concept of identity verification (cf. UNHCR 2015).

3.2.2 Impact of increased asylum immigration on asylum decisions

The surge in asylum migration registered from 2014 onwards has impacted the ability to decide quickly on asylum procedures (cf. Chapter 1.1.1). However, the methods to document and establish identity described above have not been abandoned.

3.2.3 Results of the establishment of identity in deportations

If the person to be deported does not hold a passport or passport substitute, “the establishment of his or her identity [...] is a precondition for carrying out the deportation, as the diplomatic missions of the countries of origin will not issue any travel documents as long as the identity is not established. Such travel documents are, in turn, needed in order to carry out the deportation” (BAMF 2012: 16). An unclarified identity thus represents an obstacle to enforcing deportation, which may lead to a suspension of the deportation (German: Duldung).

3.2.4 Using the results of the identity establishment measures carried out in the framework of the asylum procedure for deportations

The data collected under the Asylum Act, including data concerning the identity of asylum applicants, may for the purposes of enforcing the Residence Act “be transmitted to the public bodies in charge of these measures and be processed and used by them, as far as this is necessary for them to perform the tasks for which they are responsible” (Section 8 subs. 3 of the Asylum Act). These public bodies (i.e. the clearing offices of the foreigners authorities or the police forces which provide administrative assistance) usually contact the diplomatic mission of the country of origin (provided that the country of origin can be determined) to organise a travel document. “Whether the identity established by the German authorities is recognised by the authorities of the country of origin differs depending on the country of origin” (BAMF 2012: 16).

3.2.5 Results of the identity establishment in issuing residence titles

The issuance of a residence title (i.e. a visa or a residence permit) usually presupposes that the identity of the applicant is established (Section 5 subs. 1 no. 1a of the Residence Act). In addition, all other general preconditions set out in Section 5 subs. 1 of the Residence Act as well as the special issuing preconditions must be met. In principle, none of these preconditions is more important than the others. For exceptions cf. Chapter 2.3.6.

4 Databases and data procedures

4.1 Exchange of personal data

4.1.1 Legal basis

There are comprehensive legal provisions concerning the exchange of personal data in the framework of the migration processes subject to this study. Key provisions are set out in the Asylum Act, the Residence Act and the Act on the Central Register of Foreigners.³⁸

4.1.1.1 Asylum Act

The Asylum Act states that public bodies shall upon request inform the authorities responsible for the implementation of the Asylum Act of any circumstances that have come to their knowledge, provided that this does not conflict with particular legal provisions on the use of such information or with the overriding legitimate interests of the data subject (Section 8 subs. 1 of the Asylum Act).³⁹

In general, the data collected under the Asylum Act may also, for the purposes of enforcing the Residence Act and for the health care of asylum applicants as well as for criminal prosecution measures and, upon request, for the prosecution of administrative offences, be transmitted to the public bodies in charge of these measures and be processed and used by them, as far as this is necessary for them to perform the tasks for which they are responsible (Section 8 subs. 3 first sentence of the Asylum Act). In addition, the data may be transmitted to the bodies mentioned in Section 35 subs. 1 of the First Book of the Social Code⁴⁰, and processed and

used by them as far as necessary to identify and prosecute the unjustified receipt of benefits under the Twelfth Book of the Social Code, of health and accident insurance benefits or of unemployment benefits or subsistence benefits under the Second Book of the Social Code, and where there are actual indications as to such unjustified receipt of benefits (Section 8 subs. 3 second sentence of the Asylum Act). Furthermore, the data collected under the Asylum Act may be transmitted to and processed and used by the Federal Employment Agency to the extent that this is necessary for it to fulfil its tasks pursuant to the Third Book of the Social Code (Section 8 subs. 3 third sentence of the Asylum Act). The provisions of the Residence Act concerning the transfer of data in the case of special statutory regulations on the use of data (Section 88 subs. 1 to 3 of the Residence Act) shall apply accordingly to data collected under the Asylum Act (Section 8 subs. 3 fourth sentence of the Asylum Act). The data recorded during the asylum procedure may also be transmitted and processed to the extent necessary for a decision by the Federal Office for Migration and Refugees to admit the foreigner to an integration course or to job-related language training pursuant to the Residence Act (Section 8 subs. 4 of the Asylum Act).

Section 16 of the Asylum Act specifically deals with the **transmission of personal data collected in the framework of documenting, establishing and verifying a person's identity**: The fingerprints and photographs taken pursuant to Section 16 subs. 1 first sentence of the Asylum Act may be transmitted to the Federal Criminal Police Office, which provides administrative assistance in evaluating the data (Section 89 of the Residence Act). In doing so, the Federal Criminal Police Office may also use identity records it has stored. However, it may not inform other authorities of

³⁸ The Federal Data Protection Act forms the basis for the collection, storage and transfer of personal data. Pursuant to Section 1 subs. 3 first sentence the Federal Data Protection Act works as “a kind of default law” (Erbs/Kohlhaas 2017: § 1 BDSG Rn. 18), meaning that the provisions of the Federal Data Protection Act are used whenever there are no other Federal legal provisions are applicable to personal data. The Federal Data Protection Act is not dealt with in the following.

³⁹ Particular legal provisions apply for data on criminal proceedings (Section 8 subs. 1a of the Asylum Act), on physical, psychological, mental or sensory impairment (Section 8 subs. 1b of the Asylum Act), on requests for extradition or arrest (Section 8 subs. 2 of the Asylum Act), on benefits under the Act on Benefits for Asylum Applicants and on the granting, expiry, revocation or rescinding of work permits (Section 8 subs. 2a of the Asylum Act).

⁴⁰ “No person’s social data (Section 67 subs. 1, Book Ten) may be collected, processed or used by the social security institutions without justification (protection of social data). The protection of social data also obliges the social security institutions to ensure that, even in internal procedures, social data are only available or transmitted to those who are authorised to use them. Social

data of the employees and their families may not be accessible to persons who take or are involved in human resources decisions and may not be transmitted to them by people who have access to them. This right extends to associations of social security institutions, working groups of the social security institutions and their associations, the data centre of the pension system, the public-sector associations mentioned in this Social Code, joint services centres, integration centres, the social security institution for artists, Deutsche Post AG to the extent that it is responsible for calculating or paying out social security benefits, the customs authorities to the extent that they undertake tasks pursuant to Section 2 of the Act to Combat Clandestine Employment and Section 66 of Book Ten, the insurance offices and local authorities, the recognised adoption centres (Section 2 subs. 2 of the Adoption Act) to the extent that they undertake tasks implementing this Act, and bodies which undertake tasks pursuant to Section 67c subs. 3 of Book Ten” (Section 35 subs. 1 first to fourth sentences of the First Book of the Social Code).

the reasons why these records were stored (Section 16 subs. 3 of the Asylum Act). Data on the fingerprints taken from asylum seekers or foreign nationals must be stored separately from other identity records (Section 16 subs. 4 of the Asylum Act). The photographs and fingerprints may also be transmitted to the Federal Office of Administration, for example for a crosscheck against the database for found documents (Section 16 subs. 4a of the Asylum Act in conjunction with Section 89 of the Residence Act).

Fingerprints, photographs and audio records may also be processed and used outside the asylum procedure to establish the identity or to identify evidence for purposes of criminal prosecution and threat prevention. The data may furthermore be used in order to identify unknown or missing persons (Section 16 subs. 5 of the Asylum Act).⁴¹

4.1.1.2 Residence Act

Section 73 of the Residence Act (Other consultation requirements in visa procedures, in public register and asylum procedures and in the issuance of residence titles) sets out which data may be transmitted to which bodies for crosschecks in the framework of the different migration processes. According to the Residence Act, **data collected for the purpose of documenting, establishing and verifying the identity of persons pursuant to Section 16 subs. 1 first sentence of the Asylum Act and Section 49 of the Residence Act within the meaning of Section 2 subs. 1a of the Act on the Central Register of Foreigners**⁴² may be transferred via the Federal Office of Administration to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Office for the purpose of ascertaining any grounds for refusal⁴³ or in order to investigate any other security reservations⁴⁴. For these purposes, a crosscheck against other datasets at the Federal Office for Administration is permissible as well (Section 73 subs. 1a of the Residence Act). The security and intelligence

services inform the Federal Office of Administration immediately of any grounds for refusal or any security reservations, and the Federal Office of Administration shall make this information promptly available to the authorities responsible for the asylum procedure or decisions on residence matters. Any transfers of data between the security and intelligence services and the authorities responsible for the asylum procedure or decisions on residence matters may take place via the Federal Office of Administration. The authorities may store and use the data transmitted to them to the extent that this is necessary to fulfil their statutory tasks. The Federal Office of Administration shall store the transmitted data for as long as this is necessary for the purposes of the security check (Section 73 subs. 3a first to fifth sentences of the Residence Act).⁴⁵

Data collected during the **visa procedure** by the German diplomatic mission or by the diplomatic mission of another Schengen Member State which is responsible for accepting the visa application concerning the visa applicant, the inviting party or the persons who, by a declaration of commitment or in another way, guarantee the applicant's subsistence or otherwise become reference persons in Germany, may be transmitted via the Federal Office of Administration to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Office for the purpose of ascertaining any grounds for refusing a visa pursuant to Section 5 subs. 4 of the Residence Act (see above) or for the purpose of investigating other security reservations. The procedure pursuant to Section 21 of the Act on the Central Register of Foreigners (see below) shall remain unaffected. If the authorities charged with policing cross-border traffic issue exceptional visa and passport substitute documents (Section 14 subs. 2 of the Residence Act), they may transmit the data collected in the visa application procedure to the authorities mentioned above (Section 73 subs. 1 of the Residence Act).

Ahead of the **issuance or extension of a residence title, a suspension of deportation or a permission to remain** the foreigners authorities may transmit any personal data of persons concerned they have stored via the Federal Office of Administration to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Office, the Land Office for the Protection of the Constitution, the Land Criminal Police Office or the competent police authorities for the purpose of ascertaining any grounds for refusal pursuant

41 See the discussion about changes to the purpose of using the data and data transmission, for example Bergmann/Dienelt 2016: § 16 AsylG Rn. 22.

42 "A foreigner's data may be stored if the foreigner 1. has filed an asylum application, 2. has entered Germany irregularly or 3. is irregularly residing within the jurisdiction of this Act" (Section 2 subs. 1a of the Act on the Central Register of Foreigners).

43 Pursuant to Section 3 subs. 2, Section 4 subs. 2 of the Asylum Act and Section 60 subs. 8 first sentence, Section 5 subs. 4 of the Residence Act.

44 The term 'security reservations' is not clearly defined in the Residence Act. "However, the context of the provision makes clear that these are public security interests which go beyond the grounds for refusal of a visa [...]. The available legal provisions do not help to clarify the law, which is ominously unclear about the circumstances under which a processing of the data is permitted" (Hofmann 2016: § 73 AufenthG Rn. 13 et seq.; see there for a more detailed discussion).

45 "Provisions regulating the transmission of data pursuant to other acts shall remain unaffected" (Section 73 subs. 3a sixth sentence of the Residence Act).

to Section 5 subs. 4 of the Residence Act⁴⁶ or in order to investigate any other security reservations. The Federal Office for the Protection of the Constitution may provide technical support for the transfer of data to the Land Offices for the Protection of the Constitution (Section 73 subs. 2 of the Residence Act) and provide technical support for the transfer of communications from the Land Offices for the Protection of the Constitution regarding enquiries from the foreigners authorities (Section 73 subs. 3 first sentence second half-sentence of the Residence Act).

If data are transmitted in the framework of a visa procedure or ahead of the issuance or extension of a residence title, a suspension of deportation or a permission to remain, the security authorities and intelligence services shall notify the Federal Office of Administration forthwith as to whether grounds for refusal (pursuant to Section 5 subs. 4 of the Residence Act, see above) or any other security reservations apply.⁴⁷ The German diplomatic missions abroad and foreigners authorities shall communicate forthwith to the security authorities and intelligence services the length of validity of the residence titles which have been issued or extended. If the security and intelligence services obtain knowledge of grounds for refusal (pursuant to Section 5 subs. 4 of the Residence Act, see above) or other security reservations during the period of validity of the residence title, they shall duly notify the competent foreigners authority or the competent diplomatic mission abroad forthwith. The authorities may store and use the data transmitted to them to the extent that this is necessary to fulfil their statutory duties. Provisions regulating the transmission of data pursuant to other acts remain unaffected (Section 73 subs. 3 of the Residence Act).

In addition, Section 72a of the Residence Act regulates the security check of **visa application data**. Data collected by a German diplomatic mission abroad in the course of the visa procedure on the person applying for a visa, the inviting party, persons guaranteeing that the applicant's subsistence will be ensured by way of a declaration of commitment or

by other means, or on other reference persons in Germany are transmitted to the Federal Office of Administration for a crosscheck with the so-called Anti-Terrorism Database (cf. Section 72a of the Residence Act).

4.1.1.3 Act on the Central Register of Foreigners

The Act on the Central Register of Foreigners defines the public bodies that may transmit personal data to the registration authority (Sections 6-9 of the Act on the Central Register of Foreigners). It also defines the data from the general data collection of the Central Register of Foreigners that may be requested by, transmitted to or processed by these bodies for a given range of purposes on request (Sections 10-27 of the Act on the Central Register of Foreigners).

Any transmission of data to an administrative authority is only permissible if this authority needs to know the data for the purpose of discharging its duties. Any request for a data transmission needs to state the purpose of the transmission, unless it refers only to the basic data pursuant to Section 14 subs. 1 of the Act on the Central Register of Foreigners⁴⁸ (Section 1 subs. 1 first and second sentences of the Act on the Central Register of Foreigners).

If there are doubts about the identity, the request may be made based on the photograph or the fingerprints (unless the foreigner is an EU citizen). If there are doubts about the authenticity of identity documents or residence titles or if such documents have got lost, the request may be made based on information concerning the identity document or residence title. If the data specified in the request for data transmission do not match the stored data, a transmission is not permitted, unless there are no doubts about the identity (Section 10 subs. 2 second and third sentences of the Act on the Central Register of Foreigners).

If the registration authority cannot unequivocally determine the identity of the person concerned, it shall, for the purpose of verifying and establishing the identity, transmit information about the file-keeping foreigners authorities, the file number issued by the Central Register of Foreigners, the basic personal data, the other personal data apart from former names, which may only be transmitted at a specific request, and the photographs of similar persons. If the identity cannot be established on the basis of these data alone, other data may be transmitted to the prosecuting authorities if it

46 "A residence title shall be refused if there is a public interest in expelling the foreigner within the meaning of Section 54 subs. 1 no. 2 or no. 4 [of the Residence Act]. Exemptions from sentence 1 may be approved in justified individual cases, if the foreigner divulges said activities or allegiances to the competent authorities and credibly distances himself or herself from his or her actions posing a threat to security. In justified individual cases, the Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior may permit exemptions from sentence 1 before the foreigner enters the country for the purpose of crossing the border, and for a subsequent stay of up to six months" (Section 5 subs. 4 of the Residence Act).

47 "Any insights on which this assessment is based may not be transmitted, unless this transmission can be justified by other legal provisions (e.g. Section 19 subs. 1 of the Act Regulating the Cooperation between the Federation and the Federal States in Matters Relating to the Protection of the Constitution and on the Federal Office for the Protection of the Constitution)" (Hofmann 2016: § 73 AufenthG Rn. 17).

48 "All administrative authorities shall, on request, receive the following data including the relevant file number issued by the Central Register of Foreigners (basic data) on foreigners who are not EU citizens entitled to the freedom of movement: 1. basic personal data, 2. photograph, 3. indication of the file-keeping foreigners authority, 4. information on entering or leaving the country or death, 5. transmission bans" (Section 14 subs. 1 of the Act on the Central Register of Foreigners).

is likely that these data will help to establish the identity of the person concerned. The requesting authority must delete all data not pertaining to the person concerned immediately and destroy any records kept (Section 10 subs. 3 of the Act on the Central Register of Foreigners).

With a view to the **visa database**, which is part of the Central Register of Foreigners but there kept separately, there are legal provisions concerning the bodies which may transmit personal data (Section 30 of the Act on the Central Register of Foreigners), concerning the provisions which they must comply with (Section 31 of the Act on the Central Register of Foreigners) and concerning the bodies to which these data may be transmitted (Section 32 of the Act on the Central Register of Foreigners).

4.1.2 Cooperation agreements

Only for the **visa procedure** has an agreement on the exchange of personal data been signed between the Foreign Office and the International Organization for Migration (IOM). The IOM explains the family reunification procedure to persons who want to join Syrian and Iraqi beneficiaries of protection in Germany in the framework of a project. The agreement covers, among other things, the transmission of data of the applicants by the Foreign Office to the IOM for the purpose of making contact.⁴⁹

4.2 Storage of personal data in national databases

Personal data of persons who apply for asylum, a visa or a residence permit or who are to be deported are stored not only in European databases (for example in the VIS if they apply for a Schengen visa or in EURODAC during the initial registration of asylum seekers), but also in national databases.

During the **asylum procedure** the data of the persons concerned are stored in the Central Register of Foreigners. Storage of such data is permitted for persons who have requested asylum, have irregularly entered Germany or are residing on federal territory without the requisite residence title (Section 2 subs. 1a of the Act on the Central Register of Foreigners), who have filed an asylum application or who have been readmitted to Germany on the basis of a decision taken under the law of the European Community or under an international agreement concerning the implementation of an asylum procedure (Section 2 subs. 2 no. 1 of the Act on

the Central Register of Foreigners). Pursuant to Section 3 subs. 1 and 2 of the Act on the Central Register of Foreigners, the procedural data and the following information on such persons is stored:

- Surname, maiden name, first names, spelling of the names under German law, date of birth, place and district of birth, sex, nationality/nationalities (basic personal data),
- different spelling of the name, other names, former names, aliases, marital status, information concerning the identity document, last place of residence in the country of origin, voluntary information concerning religious affiliation and nationality/nationalities of the spouse or registered partner (other personal data),
- a photograph,
- fingerprint data with the according reference numbers,
- height and eye colour,
- the serial number of their proof of arrival document pursuant to Section 63a of the Asylum Act, its date of issue and its duration of validity,
- surnames and first names of accompanying minor children and young persons, parents, spouses and registered partners,
- the country from which the person has directly entered Germany,
- the address in Germany,
- information about the allocation pursuant to Section 15a of the Residence Act,
- voluntary information about telephone numbers and e-mail addresses,
- the responsible Land, the responsible reception centre and foreigners authority, for unaccompanied minor children and young people the youth welfare offices which initially and ultimately take care of the children and young people,
- the completion of the medical examination pursuant to Section 62 subs. 1 of the Asylum Act and the examination for contagious pulmonary tuberculosis pursuant to Section 36 subs. 4 of the Infection Protection Act, both including the place and date of the examination,
- a confirmation of vaccinations including the type, place and date of the vaccinations.

If persons have asked for asylum, have filed an asylum application or have been readmitted to Germany on the basis of a decision taken under the law of the European Community or under an international agreement concerning the implementation of an asylum procedure, information on their education, university education, vocational training, profession and language skills, on their participation in an integration course pursuant to Section 43 of the Residence Act or in job-related language training pursuant to Section 45a of the Residence Act may be stored as well (Section 3 subs. 3 of the Act on the Central Register of Foreigners).

⁴⁹ The family support programme, which is financed by the Foreign Office and implemented by the IOM under this agreement, foresees service centres run by the IOM. The IOM supports the filing of visa applications for family reunification purposes and biometric registration in selected services centres (IOM 2016: 2).

Data collected on persons who are obliged to leave Germany in connection with the preparation of **deportations** may also be stored in the Central Register of Foreigners (Section 2 subs. 2 third alternative of the Act on the Central Register of Foreigners). Data collected pursuant to Section 49 subs. 3 to 5 and 8 and 9 of the Residence Act and transmitted to the Federal Criminal Police Office for the purpose of verifying identity may be stored at the Federal Criminal Police Office, but must be kept separate from other identification data (Section 89 subs. 1 of the Residence Act). In order to enable deportations, biographical and biometric data of found identification documents which cannot be matched to a person are stored in the database for found documents at the Federal Office of Administration (Sections 49a and 49b of the Residence Act).

During a **visa application procedure**, data are stored at the European level in the VIS and at the national level in the visa database. Section 28 of the Act on the Central Register of Foreigners provides that the storage of personal data is permissible if a foreigner applies for a visa. Pursuant to Section 29 subs. 1 of the Act on the Central Register of Foreigners, the following biographical and biometric data are stored in the visa database:

- the so-called basic personal data (pursuant to Section 3 subs. 1 no. 4 of the Act on the Central Register of Foreigners, these are: surname, maiden name, first names, spelling of the names under German law, date of birth, place and district of birth, sex, nationality/nationalities),
- other personal data (pursuant to Section 3 subs. 1 no. 5 of the Act on the Central Register of Foreigners, these are: different spelling of the name, other names, former names, aliases, marital status, information concerning the identity document, last place of residence in the country of origin, voluntary information concerning

- religious affiliation and nationality/nationalities of the spouse or registered partner) and
- a photograph.

For reasons of national security, it is possible to store – in addition to the data listed above – the type of passport, the passport number and the issuing state in the case of visa applications filed by nationals of certain states, which are determined by the Federal Ministry of the Interior in consultation with the Foreign Office (Section 29 subs. 2 of the Act on the Central Register of Foreigners). In addition, the visa alert database stores data on the “visa applicant, the inviting party, the person who has given a declaration of commitment or other persons involved in the visa procedure (so-called reference persons) if they have been sentenced for certain crimes related to the visa procedure, for cross-border crimes or specific other offences, in particular false claims during a visa procedure” (BMI 2017b).

If a person applies for a residence permit, his or her basic and other personal data and a photograph will be stored in the Central Register of Foreigners in addition to the data related to the procedure (Section 2 subs. 2 no. 3 of the Act on the Central Register of Foreigners).

4.3 Use of databases to establish identity

4.3.1 Use of databases

During the migration processes described in this study, a number of different national and international databases, monitoring lists and reference instruments are used to verify the identities of foreigners. The table below gives an overview of the use of databases during the different migration procedures.

Table 13: Use of databases in different migration procedures

	VIS	SIS II	EURODAC	National databases and monitoring lists
Asylum	Yes	No	Yes	Central Register of Foreigners, automated fingerprint identification system (AFIS/INPOL), MARiS. Optional crosschecks with the following databases: <ul style="list-style-type: none"> ■ the identification data stored at the Federal Criminal Police Office (Section 16 subs. 3 second sentence of the Asylum Act). ■ the databases of the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Office for the purpose of ascertaining any grounds for refusal or in order to investigate any other security reservations. For these purposes, a crosscheck against other datasets at the Federal Office for Administration is permissible as well (Section 73 subs. 1a of the Residence Act). ■ the database for found documents (pursuant to Section 89a subs. 6 no. 1 of the Residence Act).
Deportation	Yes	No	No	Central Register of Foreigners, automated fingerprint identification system (AFIS/INPOL), database for found documents. If data are collected pursuant to Section 49 of the Residence Act (for example in case of doubts about the identity of the applicant (cf. Section 49 subs. 3 of the Residence Act)), the Federal Criminal Police Office renders administrative assistance in assessing the data. It may use the identification data it has stored in the discharge of its duties for this purpose (Section 89 subs. 1 second sentence of the Residence Act).

Visa	Yes	Yes	No	Central Register of Foreigners, visa database, visa alert database, protected border-crossing records.
Residence permits for family reasons, for study purposes or for the purpose of remunerated activity	Yes	Yes	Depending on the case	Central Register of Foreigners, INPOL. Optional crosschecks databases of the following bodies may take place: <ul style="list-style-type: none"> ■ the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office, the Customs Criminological Office, the Land Office for the Protection of the Constitution, the Land Office of Criminal Police or the competent police authorities for the purpose of ascertaining any grounds for refusal or in order to investigate any other security reservations (Section 73 subs. 2 of the Residence Act). ■ If data are collected pursuant to Section 49 of the Residence Act (for example in case of doubts about the identity of the applicant (cf. Section 49 subs. 3 of the Residence Act)), the Federal Criminal Police Office renders administrative assistance in assessing the data. It may use the identification data it has stored in the discharge of its duties for this purpose (Section 89 subs. 1 second sentence of the Residence Act).

4.3.2 Rights of access to EU databases

During the migration procedures described in this study, employees of the competent authorities enjoy different rights of access to EU databases, which may help to establish identities.

- **Asylum:** EURODAC queries are conducted via the Federal Criminal Police Office, queries to other databases, for example the VIS, via the Federal Office for Administration. Rights and responsibilities concerning EURODAC searches are set out in the Ordinance Amending the Ordinance on Determining Asylum Jurisdiction; rights and responsibilities concerning VIS searches are set out in the Act on Access to the VIS. Since communication with the relevant interfaces is always electronic, the employees who conduct the asylum procedure do not have direct access to the databases, but receive evaluations of the queries conducted by the responsible authorities.
- **Deportation:** The employees of the foreigners authorities can access the results of searches in the VIS, the SIS II and EUODAC. VIS searches are conducted via the Federal Office for Administration.
- **Visa:** All searches are conducted via the Federal Office for Administration; employees at German visa authorities do not have direct access to the databases. Any questions will be sent on to the Federal Office for Administration via employees at the Foreign Office in Berlin.
- **Residence permits:** The employees of the foreigners authorities can access the results of searches in the VIS, the SIS II and EUODAC. The searches are conducted automatically.

4.3.3 Responsibility for the maintenance of identity databases

Responsibilities for the maintenance of the different databases used to document and establish identity are as follows:

- **Central Register of Foreigners:** The Central Register of Foreigners is kept by the Federal Office for Migration and Refugees, which acts as registration authority (Section 1 subs. 1 first sentence of the Act on the Central Register of Foreigners). The Federal Office for Administration processes and uses the data on behalf of and according to orders by the Federal Office for Migration and Refugees to the extent that the Federal Office for Migration and Refugees does not process and use the data itself (Section 1 subs. 2 second sentence of the Act on the Central Register of Foreigners). More than 13,000 authorities have access to the Central Register of Foreigners.
- **Visa database:** The visa database is a separate database within the Central Register of Foreigners (Section 1 subs. 1 third sentence of the Act on the Central Register of Foreigners). Again, the Federal Office for Migration and Refugees acts as registration authority. The German diplomatic missions abroad, the authorities charged with policing cross-border traffic and the foreigners authorities provide data for this database (Section 30 subs. 1 of the Act on the Central Register of Foreigners).
- **Visa alert database:** The visa alert database is kept by the Federal Office for Administration (BMI 2017b).
- **Database for found documents:** The Federal Office for Administration maintains the database for found documents, which stores information on identification documents issued by foreign public authorities for their nationals which have been found in Germany (Section 89a of the Residence Act).
- **EURODAC:** In Germany, the Federal Criminal Police Office serves as national access point to EUODAC.
- **VIS:** In Germany, access to VIS is regulated by the Act on Access to the VIS. "The Federal government and the Länder determine which police authorities, prosecution authorities and intelligence services are entitled to access to the visa information system for the purpose of preventing, discovering and investigating terrorist or other serious crimes" (Section 2 subs. 1 of the Act on Access to the VIS).

4.4 Current situation and planned developments

4.4.1 Current situation

Only recently, new data collection options were introduced in the areas of **asylum** and **deportation** (cf. Chapter 1.3.2).

According to the Foreign Office, the data collected in the course of the **visa procedure** are sufficient. The Foreign Office explains in its visa handbook:

“Data may only be collected to the extent that is necessary to discharge legal duties pursuant to Section 4 subs. 1 and Section 13 subs. 1 of the Federal Data Protection Act. In this connection, the data protection principles of data reduction and data economy (Section 3a of the Federal Data Protection Act) play a particular role, as underlined by the Federal Commissioner for Data Protection. In any case, unnecessary double requests or the collection of superfluous data or documents (which may be due to simple precautions) must be avoided” (Auswärtiges Amt 2017: 108).

4.4.2 Changes concerning the processing of personal data

In the field of **asylum migration** the nationwide introduction of the standardised ‘PIK’ registration stations in the reception centres of the Länder and the arrival centres of the Federal Office of Migration and Refugees and the introduction of the proof of arrival documents were key changes for identity management in 2016. Since then, the authorities have been able to store biometric data even before the asylum application as such is filed.

“This improves the administrative process during the reception procedure considerably and prevents multiple registrations and abuse. [...] The arrival certificate enables the authorities (e.g. foreigners and registration authorities or the Federal Employment Agency) to quickly access the relevant data (personal data, language skills etc). In turn, this facilitates planning the accommodation of asylum seekers in the Federal Länder, makes the asylum procedure easier and ensures a smoother labour-market integration” (BAMF 2016a: 17).

Together with the PIK-stations, the registration authorities were broadly provided with fast fingerprint crosscheck facilities (so-called Fast-ID). This is a logistical amendment to identification procedures (cf., for example, Bundesregierung 2016).

The application PassTA (passport tracking application) was developed to make it easier to track the status and storage

location of passports kept for identity establishment purposes. This internal database at the Federal Office for Migration and Refugees enables employees to track original documents at any time during the asylum or document examination procedure and determine whether they were sent on to foreigners authorities or police offices.

In the area of **deportation** the foreigners authorities have been permitted since 2015 to analyse data carriers for identity establishment purposes (cf. Chapter 1.3.2). However, this option is used only rarely (Kampf 2017).

Identity documentation and verification measures during the **visa procedure** have changed insofar as nationwide fingerprinting was introduced for applications for a Schengen visa (so-called VIS roll-out) by 2 December 2015 (European Commission 2015) and that RK-Visa was introduced as a central electronic database for the German diplomatic missions abroad by March 2013.

4.4.3 Planned (pilot) projects

The Federal Office for Migration and Refugees is currently testing several projects in the area of **asylum migration** and asylum procedures, for example concerning the analysis of data carriers held by asylum applicants, the automated crosscheck of newly taken and stored photographs (image-based biometrics), the automatic transliteration of names from the Arabic to the Latin alphabet and digital automated dialect recognition (for points of criticism cf. Chapter 5.1.3). The methods tested in these projects may in some cases infringe upon basic rights (e.g. analysis of mobile phone data), which is why they require the creation of legal bases (such as the one set out in the ‘Act to Improve the Enforcement of the Obligation to Leave the Country’), if these do not exist yet.

In addition, a programme to provide intelligent interview support to employees of the Federal Office for Migration and Refugees is currently being developed. It will offer interviewers specific information on the region and country of origin during the interview and thus “guide them in a structured way from each question to the next during the asylum procedure and point out contradictions” (BAMF 2017b).

5 Debate and evaluation

5.1 Positions in and development of the national debate

During the first half of 2017, several aspects connected to the documentation and establishment of identity were subject to a partly very controversial political and public discourse in Germany. The discussion focused both on planned measures and on the issue of documenting and establishing identity as such.

5.1.1 General issues concerning the documentation and establishment of identity

The case of ‘Franco A.’ raised the question of identity documentation and establishment in the framework of the asylum procedure and triggered a political and public discussion. An extremist right-wing soldier of the Federal Armed Forces had passed himself off as a Syrian refugee. He gave a false name and was granted subsidiary protection in the asylum procedure. Franco A.’s false identity was discovered neither at the time of his registration, when his biometric data were collected (again under his false name), nor at his interview in November 2016 (cf. Flade 2017; BAMF 2017c).

When the public learned about the deception in April 2017, a broad public discussion about the quality of the identity establishment measures during the asylum procedure ensued. There were charges that asylum applications had been processed “not with sufficient care, too quickly” (cf. for example Reimann 2017) and calls to give the Federal Office for Migration and Refugees more extensive legal and technical options to establish the identity of applicants who cannot provide identification papers (cf. for example Leubecher 2017). In the end, the Federal Ministry of the Interior ordered an examination of the case and had 2,000 asylum decisions with a similar profile re-examined. For the case of Franco A., the conclusion was that, during the processing of the application at the Federal Office for Migration and Refugees, “problems concerning the establishment of identity should have been recognised and resolved” (BAMF 2017b).

In contrast, the re-examination of 2,000 other cases showed that there were errors concerning the plausibility of asylum decisions, but there was no second case with similar procedural errors. Identification measures were used in all 2,000 cases. As a consequence, several quality-control measures were introduced (BAMF 2017b). In particular, already planned technical improvements in the area of identity establishment were brought forward (cf. Chapter 4.4.3).

5.1.2 Analysis of data carriers

One of the core provisions of the ‘Act to Improve the Enforcement of the Obligation to Leave the Country’ provides the Federal Office for Migration and Refugees with a legal basis for the analysis of data carriers held by asylum applicants, even without their consent (cf. Chapter 1.3.2). The Federal government, which introduced the bill, argued that this was a necessary supportive method, as it often took much time to establish the identity of persons who asked for asylum, but could not provide identity documents and as the results were prone to mistakes (Deutscher Bundestag 2017d: 23). The reasons given in favour of the bill explain:

“Analysing data carriers, such as mobile phones, tablets or laptops, may be an important help during the identity verification procedure. Relevant indications can come not only from mobile phones, but also from other data carriers owned by the persons concerned. For example, the address data or call details stored on the mobile phone of a foreigner who is obliged to leave Germany may give key indications of his or her potential nationality in the form of the country code” (ibid).

The opposition party DIE LINKE (The Left) described the measure as “an infringement on citizen’s rights, seeing that mobile phones could be analysed without a court order even if there was no suspicion of a crime” (Deutscher Bundestag 2017e: 22525). The opposition party Bündnis 90/Die Grünen (Alliance 90/The Greens) criticised that the authorities’ scope concerning the analysis of the data carriers was not sufficiently defined (Deutscher Bundestag 2017e: 22528).

PRO ASYL and Paritätischer Gesamtverband⁵⁰ voiced data protection and constitutional concerns on the side of civil society (PRO ASYL 2017a: 4, 17), described the measure as disproportionate and underlined the importance of the relationship between the applicant and the Federal Office for Migration and Refugees: “It is unclear how, after such drastic measures, traumatised refugees are expected to fully describe their history of persecution during the interview [at

50 The arguments of PRO ASYL and Paritätischer Gesamtverband, which were invited as experts to the public hearing of the Bundestag Committee on Interior Affairs, are displayed here, as they raise representative points of criticism. The churches, several NGOs and international organisations also commented on the issue.

the Federal Office for Migration and Refugees, J. T.]” (Der Paritätische Gesamtverband 2017: 9).⁵¹

5.1.3 Language biometrics software

The Federal Office for Migration and Refugees is currently testing a language biometrics software which analyses the audio records of asylum applicants, matches them with a language and a dialect and thus gives the responsible decision-makers of the Federal Office supplementary indications concerning the geographic origin of asylum applicants (BAMF 2017b).

The media criticises the project i.a. because such programmes would not be able to recognise certain dialects accurately enough; first, the programmes themselves would not be sufficiently precise yet, and second, people may develop regional, familial or social language variants within their dialect (e.g. youth language) which may make it more difficult to match their language with certain regions of origin. Moreover, dialects are often used across national borders, particularly Arabic dialects, which would make it even more difficult to match a language with a nationality (cf., for example, Biselli 2017; n-tv 2017; Hummel 2017).

The Federal Office for Migration and Refugees regards the software to be only an assistant system, which is to “help employees to establish the identity of asylum applicants” by providing indications that make it easier to determine their origin.

5.1.4 Identity documentation in the case of children

The Data Sharing Improvement Act, which entered into force on 5 February 2016, changed the provisions concerning the documentation of identity of persons who are not yet 14 years old. While, until then, no biometric data were used to document the identity of babies and children up to that age, the Residence Act and Asylum Act were amended and now contain provisions to the effect that the identity of children who have irregularly entered Germany, reside in Germany without the requisite residence title or ask for asylum in Germany is to be documented by a photograph (cf. Chapter 1.3.2). During the discussion of the bill in the Bundestag Committee on Interior Affairs experts pointed

out that the amendment created more red tape and that the photograph would soon lose its informative value as children grew and changed quickly (cf. Deutscher Bundestag 2016b: 25 and 46). Identity documentation measures conducted at several branch offices of the Federal Office for Migration and Refugees after the change to the legal basis met with similar criticism from NGOs, which claimed that, as children’s photographs were soon out of date, they did not deliver informative biometric data. The measure was therefore “neither useful nor an improvement of security” (PRO ASYL 2017b).

NGOs also criticise the planned amendments included in a bill for an Updated Data Exchange Improvement Act⁵² drafted by the Federal Ministry of the Interior (Bundesregierung 2017a) and brought into the procedure of participation with the Länder and associations in March 2017. According to this draft, which is based on a draft for a new EURODAC Regulation according to which fingerprints are to be taken from age six on (Bundesregierung 2017a: 18), the minimum age for fingerprinting for identity documentation purposes is to be reduced to six and the responsibility is to be shifted to the reception centres and the branch offices of the Federal Office for Migration and Refugees (DIJuF 2017, von Bullion 2017). The reasons given in the draft state that the age reduction would “make it easier to establish or at least verify the identity of children and young people aged between 6 and 14 particularly for their own protection” (Bundesregierung 2017a). In its comment, the Federal Association for Unaccompanied Minor Refugees (German: Bundesfachverband unbegleitete minderjährige Flüchtlinge, BumF) rejected the draft, saying that children aged less than 14 lacked the legal capacity to participate in proceedings and could not complain about the procedure accordingly. In addition, the association criticised that the registration including the age estimate was to take place before the children were taken into care by the youth welfare office. It claimed that the administrative authorities lacked the necessary qualifications which would mean that national and European standards for the well-being of children would be undermined (BumF 2017). The amendments set out in the Federal Ministry of the Interior’s draft of an Updated Data Exchange Improvement Act are to be pursued further during the upcoming legislative period.

The ‘Permanent Conference of Ministers and Senators for the Interior of the Länder’ decided at its meeting on 12-14 June 2017 that “for the purpose of identity verification of asylum applicants, fingerprints may be taken already from children aged between 6 and 14” (Deutschlandfunk 2017).

51 So far, one aspect has not yet been discussed in Germany, namely the assessment of data related to terrorist organisations, such as the so-called Islamic State, which are found on mobile data carriers. While such data may indicate that the owner of the device comes from one of these regions, Norwegian experts have pointed out that they do not necessarily mean that the foreigner is a member of a terrorist organisation. Rather, he or she may have been forced to store such data on the device in order to be able to flee from the region, as mobile phones are often searched for content that indicates loyalty to the regime at controls (Nettavisen 2015).

52 German: Entwurf eines Gesetzes zur Fortentwicklung der Registrierung und des Datenaustausches zu aufenthalts- und asylrechtlichen Zwecken.

5.2 Assessment by experts

During the legislative procedure for the ‘Act to Improve the Enforcement of the Obligation to Leave the Country’ particular attention was given to the analysis of data carriers during the asylum procedure by data protection and migration law experts.

The Federal Commissioner for Data Protection and Freedom of Information in her statement before the Bundestag Committee on Interior Affairs doubted that the measure was constitutional. She said that such an infringement of basic rights was not necessarily justified, as the measure might give an indication of the identity or nationality at best. In addition, the measure was not proportionate, as it might potentially lead to an investigation of the personal domain of the persons concerned and involve third parties who were in contact with these. This was not justified by a weighty reason. In addition, the Federal Commissioner criticised that the core area of private life was not sufficiently protected (Bundesbeauftragte für den Datenschutz und die Informationsfreiheit 2017). This criticism did not affect the outcome of the legislative process; the adopted version remains unchanged from the draft with a view to these aspects (BGBl 2017).

In contrast, migration law expert Prof. Daniel Thym argued that the measure would make sense as it “facilitated a better quality of the decisions about whether a removal was admissible” (Thym 2017: 10). The provision would be in line with the constitution, as the measure was not taken secretly and was a measure of last resort, seeing that the person concerned was able to provide information before the measure was enacted. Migration law expert Dr. Carsten Hörich emphasised in his statement that the measure only extended to data used to establish the identity and nationality of the foreigner and that it would be an infringement of basic rights to use the data stored on the data carriers for the purpose of understanding and verifying flight routes and reasons for protection (Hörich 2017: 16).

6 Conclusion

The issue of the documentation and establishment of identity within the areas of asylum and deportation as well as during the processes of issuing visas and residence permits proves to be complex. Not only does the significance of identity documentation and establishment differ between the different migration processes; the challenges faced by the respectively competent authorities are different ones as well: with the intensified asylum-related immigration from 2014 onwards more challenges were posed to the measures of identity documentation and establishment, which were addressed by logistical, administrative and legal changes, for example by implementing the standardised data collection stations, introducing the proof of arrival or expanding the verification of the authenticity of documents in the branch offices of the Federal Office for Migration and Refugees.

Regarding deportations, due to the higher number of persons, whose asylum application has been rejected, a rise in the number of cases of persons, whose deportation cannot be carried out due to lacking and non-obtainable identity documents, can be observed. In the procedures for the issuance of visas and residence permits, on the other hand, the challenges prove to be less urgent.

The legal framework was thereby changed time and again, enlarging the possibility of the competent authorities to document and establish identity, intensifying the obligation for the person concerned to cooperate and simplifying the exchange of personal data for the purpose of establishing and verifying identity.

Whether the collected data is sufficient depends on the migration process considered: While e.g. according to the Federal Foreign Office the data collected within the visa procedures suffices, within the area of asylum there are plans to generate further data.

In relation to the higher levels of immigration of the past years new methods to establish identity were and are developed, which are in parts already covered by a legal basis (e.g. the analysis of data carriers by the foreigners authorities and the Federal Office for Migration and Refugees), but that, in parts, are still in development (e.g. the software to automatically recognise language and dialects of asylum applicants, so-called voice-biometrics).

Finally, the debates on the topic in general but also on specific measures (as for example the documentation of children's identity or the planned voice-biometric software within the asylum procedure) show that there is no political or societal consensus on how to deal with issues of identity documentation and identity establishment.

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Annex - Authorities involved

In the following table, the national authorities and bodies marked by “X” are involved primarily with the identity establishment or documentation procedures in the migration

processes concerned. Authorities and bodies that are not generally involved or only involved in certain cases are marked by “(X)”.

Table 14: National authorities/bodies that are involved with the different procedures of establishing or documenting identity

	Asylum	Deportation	Visa	Residence permits for family purposes	Residence permits for the purpose of education	Residence permits for the purpose of remunerated activities
Consulates/ Embassies		(X)	X	(X)	(X)	(X)
Immigration authorities		Foreigners authorities	(Foreigners authorities)	(Foreigners authorities)	(Foreigners authorities)	(Foreigners authorities)
Asylum authorities	X	(X)				
Police	(X)	(X)		(X)	(X)	(X)
Border guard	(X)		(X)	(X)	(X)	(X)
Security services	(X)		X	(X)	(X)	(X)
Identification centre	No such centre exists in Germany.					
Other		(Authorities of the supposed country of origin)				

Abbreviations

Abbreviation	German term	English term / translation
AFIS	Automatisiertes Fingerabdruckidentifizierungssystem	Automated fingerprint identification system
AsylG	Asylgesetz	Asylum Act
AufenthG	Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet	Residence Act
AZR	Ausländerzentralregister	Central Register of Foreigners
BAMF	Bundesamt für Migration und Flüchtlinge	Federal Office for Migration and Refugees
BGBl	Bundesgesetzblatt	Federal Gazette
BMI	Bundesministerium des Innern	Federal Ministry of the Interior
BSI	Bundesamts für Sicherheit in der Informationstechnik	Federal Office for Information Security
BüMA	Bescheinigung über die Meldung als Asylsuchender	Registration certificate for asylum seekers
CDU	Christlich Demokratische Union	Christian Democratic Union of Germany
Cf.		Compare (<i>confer</i>)
CSU	Christlich-Soziale Union	Christian Social Union in Bavaria
EC		European Community
Ed./eds.		Editor/editors
e.g.		For example (<i>exempli gratia</i>)
EMN	Europäisches Migrationsnetzwerk	European Migration Network
et seq.		And the following (<i>et sequentes</i>)
EU	Europäische Union	European Union
GETZ	Gemeinsames Extremismus- und Terrorismusabwehrzentrum	Joint Centre for Countering Extremism and Terrorism
GTAZ	Gemeinsames Terrorismusabwehrzentrum	Joint Counter-Terrorism Center
i.a.		Among other (things) (<i>inter alia</i>)
i.e.		that is (<i>id est</i>)
IOM		International Organization for Migration
NGO		Non-Governmental-Organization
No.		Number (<i>numero</i>)
p.		Page
PTU	Physikalisch-technische Untersuchung	Physical and technical examination (of documents)
REG		Return Expert Group
SPD	Sozialdemokratische Partei Deutschlands	Social Deomcratic Party of Germany
Subs.		Subsection (of a legal act)
UNHCR	Hoher Flüchtlingskommissar der Vereinten Nationen	United Nations High Commisioner for Refugees
VIS	Visa-Informationssystem	Visa Information System
VO	Verordnung	Ordinance
ZUR	Zentrum zur Unterstützung der Rückkehr	Return Support Centre

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