

Intra-European legal migration

**An overview
of current
legal tools**



What is it about?

This brochure presents information about the only current mechanism for intra-European legal migration for displaced people with a European residence permit. We highlight the different visa applications available for apprenticeships and voluntary services which offer alternative pathways for safe and legal migration.

We will put forward explicitly and practically the appropriate conditions needed, the different steps involved, and specific information required about EU and German legal framework. Legal migration through the visa procedure may be a promising alternative to the Dublin procedure or staying in Germany illegally. With this brochure, we aim to inform more people of current routes of legal migration available and thereby allow more refugees to take advantage of these routes.

Who is this brochure for?

This brochure is targeted primarily at people who support refugees in the EU (social workers, activists, legal assistants and experts, social agencies, as well as family and friends), who wish to contribute to the legalisation or permanent stabilisation of said person's stay and who want to get familiar with the legal framework, conditions and requirements of the visa procedure in accordance with §§ 16a, 19c, 19e AufenthG. In addition, refugees should also be able to obtain information about their rights and other opportunities within this brochure.

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Definition of target group

Who can benefit from intra-european migration?

Legal migration through the visa procedure can be offered to three main target groups ❶ refugees in the Dublin procedure in Germany, in accordance to the current Dublin-Regulation (Dublin-III, more information about the law is provided in the upcoming section) or in accordance to §29 Sec. 1 Nr. 2 German Asylum Code (for refugees with international protection in another EU-state), to which another member state is responsible. Additionally, the target group consists of ❷ refugees who live in Germany irregularly, meaning they do not have a German residence permit but are also considered to be treated under the Dublin-III-Regulation, as well as ❸ refugees who are still living in their first country of asylum but would like to migrate to another member state of the European Union.

Important

For the alternative legal pathways described in this brochure, refugees must already obtain a residence permit from the first country of asylum and hold valid travel documents.

Initial Situation

Dublin-III-Regulation and its consequences on the lives of displaced people

The Dublin Regulation uses a hierarchical criteria to determine which Member State is responsible for the examination of an asylum application. In most cases it is the first state people entered when crossing a border into the European Union. EU-states on the south coast such as Spain, Greece and Italy are primarily affected, since they do not have a sufficient system in place to protect refugees, highly limiting their opportunities.

Many see themselves forced to move to other Member States for these and other personal reasons and hence apply for (further) asylum there. This leads to the activation of the Dublin Regulation, which means that the application is not reviewed in respect of content, but rather they investigate the responsible state and attempt to deport the person back to said responsible state.

In most cases, bans on employment are imposed under the §60 a VI AufenthG and access to social services (dt. Leistung) are shortened. Hence, many people in the Dublin Regulation are often not allowed to work. These employment restrictions also lead to the impossibility of legalisation through employment. Since the com-

mencement of the new »law on toleration in education and employment (dt. Gesetz über Duldung bei Ausbildung und Beschäftigung)« in 2019, it is almost impossible for displaced people completing an apprenticeship under the Dublin Regulation to receive access to education grants and financial support. The visa application process is the only option to participate in an apprenticeship in Germany.

In the cases of displaced people who have obtained international protection in another EU-state and do not fall under the Dublin Regulation, the asylum application is rejected under §29 I Nr. 2 AsylG instead. The few protective mechanisms or rather the possibilities of adopting responsibility under the Dublin Regulation, cannot be applied to a refugee, hence the situation of this refugee could be described as even more uncertain.

Alternative

Legitimate Intra-European migration via the visa procedure can be a promising alternative to a (renewed) asylum procedure or an irregular path to a live in Germany.

Legal Migration

What possibilities are there for legal migration?



The aim of this brochure is to describe different pathways for legal migration and to make them more accessible. The following possibilities differ in duration and in legal requirements so each specific case would need to take in consideration which possibilities would be most realistic and fit best to the refugees' desires.

During a voluntary service, a person works in a social or educational institution or in another institution (e. g. church). The average duration is one year but it can vary between 6 to 24 months. Volunteering is not vocational training, but can be used to

learn the language and build up a network. In addition, it is often easier for unskilled workers to get a voluntary job first and then start vocational training.

An apprenticeship lasts two to three years and is completed with qualifications specific to a profession. Once the training has been completed, it is quite likely that in most industries the person will find a job. However, in most apprenticeships basic language skills (mostly B1) are required in order for trainees to be able to follow the school lessons and pass the written exams.

Voluntary Service

The voluntary service is particularly suitable for refugees whose German language skills are not yet good enough for an apprenticeship and/or those who do not yet have the necessary network in Germany to complete an apprenticeship.

Characteristics of voluntary work

- **Duration:** usually 12 months (officially possible time frame: 6–24 months)
- Usually full-time employment with entitlement to regular vacation
- Offers various training seminars for the volunteers
- Social insurance is provided by the employer
- Pocket money of up to 414 € is provided
- Accommodation can be provided, but it is not guaranteed

Characteristics for granting of a visa

- The German national voluntary service is defined in §19c AufenthG (German Residence Act) and refers to the Employment Ordinance. In addition, the following applies: If accommodation and pocket money (and work clothes) are available, the person's livelihood is deemed to be secured.
- According to §14 BeschV (German Employment Regulation), no proof of precedence (dt. Vorrangprüfung) is carried out
- Formally, no language skills are required

Special Case: Voluntary services in the framework of the European Solidarity Corps (ESC)

The ESC offers fully financed voluntary services lasting between 2 and 12 months long and can be offered by accredited institutions. The legal basis for this is §19e AufenthG (German Residence Code). Similar conditions have to be met regarding the requirements and characteristics. Nonetheless, German Law does not make the ESC accessible to refugees with international protection. In this case, refugees are only allowed to participate a voluntary service lasting 2-3 months as there is the possibility of entering without a visa.

Important

For a voluntary service a visa is issued for the entire duration of the service instead of the usual three-months visa.

Therefore note: Passport and residence permit (or proof of renewal request) must be valid on entry for the duration of the voluntary service plus an additional 6 months!

Apprenticeship

Vocational training pursues the transfer of practical skills, knowledge and applicable skills to pursue a particular profession. It is particularly suitable for people who already have basic language skills and who already know what job they want to pursue later in life.

Characteristics of apprenticeship

- **Duration:** varies between 1 and 3.5 years
- Usually full-time employment with regular vacation entitlement
- The apprenticeship is both theoretical and practical, so work is carried out in the company and in the enlisted vocational school.
- Most, but not all training is reimbursed (e.g. Kindergarten teachers). The amount of wages varies depending on the organisation.
- Social security is provided by the employer.
- Accommodation is not provided in most cases.
- This section does not only apply to the classical three-year training (»qualified training«), but also for short-term training courses (e. g. education as nursing assistants).

Characteristics of residence permission

- The livelihood can be proven by an apprenticeship contract, a part time (or temporary) work contract, a blocked account, a letter of commitment and/or

a written confirmation that parts of the livelihood are otherwise taken over.

- In the case of a blocked account, only the missing amount must be paid. Here within, the amount of money must remain in their account for the entire duration of the training so that it is readily available or can be regularly paid (pg. 19: Practical example).
- The livelihood is considered secured if access to at least 744€ (after tax/net) or 929€ (pre-tax/gross wage) per month can be proven.
- A proof of precedence is carried out by the Federal Employment Agency (BfA) in accordance with §39 AufenthG (German Residence Code). In the past, the BfA have usually been very generous in regards to apprenticeships.
- Language skills at a B1 level need to be proven unless the apprenticeship employer has already verified them or if a preparatory German language class has been planned.

Important

If the person has a preceding national voluntary service, the visa application is not needed as this type of application can be directly transferred into a residence permit through the local foreigners office. The previously mentioned requirements (especially language skills and livelihood) are often not or less strictly examined in this case.

Job-shadowing (Hospitationspraktikum)

So-called »Hospitationspraktika« (observation internships) in Germany are especially interesting for refugees who still live in their first country of asylum and therefore often have little knowledge of the German language, no support network, and do not know the German state of affairs.

Characteristics of an internship

Duration: a maximum of 3 months. The internship can therefore be completed as part of a visa-free stay in accordance with the Schengen Borders Code. This sets the criteria for the so-called Schengen visa, which allows third-country nationals to move to the Schengen area for 3 months (to be precise: 90 days within 180 days). Third-country nationals with a residence permit from one of the Schengen Member States can move visa-free according to the regulations in the Schengen area.

Requirements: Within this maximum of 3 months, no profitable employment may be pursued (an internship counts as gainful employment).

One solution to this problem is the »shadowing internship« (Hospitationspraktikum): it does not count as employment and can therefore be completed as part of a visa-free stay. »Assisting« (German: hospitieren) means that the assistant gets to know the operating procedure and looks over the employees' shoulder. In principle, interns are not allowed to perform any activities themselves.

Advantages

Easy access as there is no need to go through the visa procedure.

Disadvantages

There is no occupational accident insurance, since it is not an official employment. There is no remuneration for the work.

These three months can therefore be used for orientation into life in Germany, to improve language skills, to network and thus also to open up other opportunities after the internship (e. g., a voluntary service). An additional visa application can be made for entering the first country of asylum and thus a longer stay in Germany can be planned. Completing this kind of internship within the framework of a three-month visa-free stay is only possible if the originally responsible Member State is part of the Schengen area.

Important

In specific cases the internship can be financed by the ESC and is then officially considered as a voluntary service.

The visa procedure

How does the visa procedure work?
What are the requirements?



In order to make a stay possible through the visa procedure, the applicant must be in the member state, which holds initial responsibility for applications, when the asylum application is being reviewed. Persons who are already (irregularly) in Germany must return to this Member State to apply for a visa for Germany from there.

Specifics for refugees who already reside in Germany*

Refugees in the Dublin procedure have to make their departure clear to the responsible immigration office. The departure must be registered as »voluntary departure« by the immigration office, so that no re-entry lock is imposed according to §11 AufenthG (German Residence Code), as in the case of deportations. With re-entry barriers, people are not allowed to return to Germany for a certain period of time. This should be prevented.

Here, a so-called pre-approval of the immigration authority should be received in accordance with §31 AufenthV in order to reduce the risk of rejection when applying. The required positive decision of the priority review (see p. 14/15) by the Federal Employment Agency should preferably be requested directly there and subsequently submitted to the immigration office.

Explanation

The consent of the immigration office is always required for a refugee within the Dublin process if the person »either has previously received a residence permit, a tolerated stay permit [dt. Duldung] or a residence title for a specific purpose within a Federal territory or if against a non-negotiated termination of residence has taken place, residence-ending measures have taken place« (§31/32c AufenthV).

When applying for a visa, the embassy must therefore submit the application to the immigration office and ask for their assessment. If prior consent has been given, the immigration office will give its written consent before applying for a visa, which can then be submitted according to the application. In the country holding original responsibility, an appointment for a visa application must be arranged with the German Embassy. Since it can take up to a week to get an appointment the appointment should be made as early as possible.

If necessary, a brief interview will be conducted as part of the application to test language skills, motivation and readiness to return. The readiness to return is an important aspect for the German foreign agencies regarding rather short stays, such as voluntary services. The information gathered in the interviews will be used to determine if the applicant is likely to leave after their planned stay.

Price

The price for a visa application is around 75€ (since 01.12.2019).

* Refugees in the Dublin procedure/Refugees in the procedure under §29 sec. 1 nr. 2 AsylG-German Asylum Code

The embassy reviews the application according to §5 AufenthG and, if applicable, will involve the Federal Employment Agency to examine how much of a priority the application is and the foreign immigration office to check if the person has stayed in Germany before. It is important a secure livelihood is ensured and maintained during the visa procedure.

After processing the application and if accepted, the visa will be issued, and the person is allowed to enter the country. When in Germany, the visa can then be converted into a German residence permit (exception: voluntary service).

Documents that need to be submitted to the embassy:



National passport or travel document as passport substitute for refugees

on entry it has to be valid for at least 6 months, and cannot be older than 10 years



Residence permit from the Member State with initial responsibility

important: the proof of application for an extension is sufficient.



Proof of a secure livelihood

depending on the purpose of stay. See p. 14



Work or training contract

depending on the purpose of stay.



Proof of language skills, if necessary



Proof of qualifications, if applicable



In order to facilitate legal migration to Germany, it is of great advantage to know the legal situation. Only then can a person be efficiently supported. For example, there are many ways to prove a livelihood without having a large sum of money in advance. How it works and what is meant by »securing a livelihood« is explained next.

Additional information

What does »securing a livelihood« mean?

According to §5 AufenthG, the livelihood must be secured in order for a visa to be granted. The person must demonstrate that they (and their family) can provide for oneself (themselves) and will not need governmental support. As a rule, the cost of securing a livelihood is based on the standard of SGB II (German Social Security Code – social financial aid). There are exceptions (see also: voluntary service and apprenticeship).

The amount of evidence needed to prove a secured livelihood depends on the residence purpose and can either need:

- Work contract or apprenticeship contract
- Written confirmation
- Declaration of Commitment; other parts of the living will be provided (free accommodation, meals at work, etc.)
- Blocked account for apprenticeship and study



More information on the blocked account: kurzelinks.de/haoa

Declaration of Commitment to secure a livelihood

A guarantor agrees to be responsible for the livelihood of the person during their stay and to pay for any costs (possibly also the cost of Deportation). The declaration of Commitment is valid for a period of 5 years and remains active within an

asylum application. It is a significant legal obligation, which can be expensive.

How does the proof of precedence work?

In many cases where a person does not have a European passport, the Federal Agency must give its consent to their employment. The Agency examines the application to the following aspects in regards to §39 II AufenthG:

- Would the person's stay have negative consequences on the job market?
- Compared to the applicant are there other people who are legally equal in terms of employment available for the job? Or do other people stand under the law of the European Union and have a right to priority access to the labor market?
- Should the requesting person be on equal terms as comparable German employees when hired? Will they for example, be paid less than people with a German passport who do this job?



Exceptions for proof of precedence work are defined in the employment ordinance (BeschV).

Are there other reasons for residency?

This information brochure focuses on the path of legal migration for voluntary service or apprenticeship. There are, of course, many other possible reasons for residency (§§ 16ff. AufenthG, study, employment,

etc.). But these are all associated with high requirements, such as recognized higher education qualification or a recognized training occupation, which many refugees can not show. Often, these degrees, if they exist, are not acknowledged in Germany.

In principle, the German Residence Act does not grant permits for employment which do not require qualified vocational training (§18 AufenthG). However, for most apprenticeship occupations and voluntary services, no formal qualification is required. For people, who have the appropriate qualifications, it is worth reading the rest of the regulations on the other similar purposes.

Labour Immigration Law 2020 – What has changed?

The new German Labour Immigration Law (German: Fachkräfteeinwanderungsgesetz), commenced on 01/03/2020, implements important changes which makes it easier for specific groups with third country nationalities to gain access to legal migration. For example, the proof of precedence for people with qualified vocational training and an existing working contract will be abolished so that they can come to and work in Germany without an examination.

These changes, however, do barely affect the target group of this info-brochure since they normally do not possess a respective vocational qualification.

There is merely an upcoming possibility to

obtain a residence permit for the search for apprenticeships which before was not the case - instead, larger obstacles are put in place implemented, especially concerning the proof of livelihood.

For supporters

How can I support refugees in the process of legal migration?



How can supporters (e. g. social worker, friends, activists) specifically support a person in their legal pathway to Germany?

Of course, the type of support needed varies from person to person, but usually help is required in two areas: in the search of a voluntary service/apprenticeship and/or securing a livelihood. The following chapter will give further explanation on how to efficiently support in these areas.



Search for voluntary service/ apprenticeship

Finding voluntary service or an apprenticeship as a refugee is often difficult. If this involves the process of legal migration via the visa procedure, it often becomes too complicated for many voluntary service and apprenticeship providers and they refuse to give their consent. It is therefore extremely important to be able to explain the mechanism of legal migration in simple terms and, above all, to show that the visa procedure does not entail extra work for the voluntary service or apprenticeship provider. For many, it is also important to have some support available in the background to give extra advice and let the refugee know they have help throughout the experience.

The most successful route to obtaining a voluntary service is often via personal contacts, because there is already a relationship of trust and the other person is often more willing to get involved in the project. But of course »cold calling«, eg. a regular application form, is an option. The outreach for positions are more likely to be successful, when the visa procedure and related steps are mentioned at the first meeting in person, not on the phone.

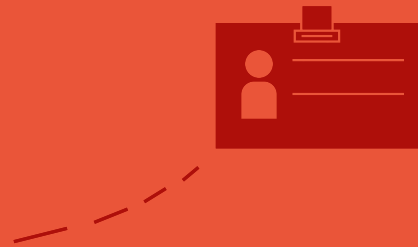


Support in securing a livelihood

Moreover the support has a key role in ensuring the livelihood is secure, as the apprenticeship salary will not cover the full livelihood. Therefore, the missing balance has to be secured. If there is someone within the support team who could offer a room and be happy to provide a written confirmation, accommodation would no longer have to be proven as monetary value. Or the missing amount can be applied via a blocked account, to which different people pay a donation amount. Crowdfunding or fundraising events are also a good option here.

We, as an association would only recommend the Declaration of Commitment if there is a strong relationship of trust with the refugee. If that is the case and a supporter meets the requirements (and thus earns enough), the letter of commitment is certainly the least complex option.

Practical Examples



01 Legal migration as an alternative to illegal migration or another asylum procedure

Person A. is from Mali has an Italian residence permit and a Malian national passport. Since they have been in Italy for many months now without a steady job, they do not see a long-term stable future there and want to migrate to Germany. First A. completes a 3 month internship in a social institution and learns about the working environment in Germany. They do not need a visa for this stay because they can travel visa-free for 90 days in the Schengen area. After the 3 months, the head of the facility is so pleased with the work of A. that they are offered to do a further one-year voluntary service. To do so A. must leave Germany again and then apply for a visa in the German Embassy in Rome.

As there are special arrangements for voluntary services, no priority check will be carried out and the voluntary service and accommodation contract will be sufficient to secure their livelihood. A. returns with their visa to Germany. Since the visa is issued to the volunteer for the duration of the voluntary service, they do not have to go to the immigration office to convert the visa into a residence permit.

02

Legal migration outside of the Dublin procedure

Person B. is from Syria and has a Spanish residence permit. However, since they did not find work in Spain and has family in Germany, they moved on to Germany where they filed a second asylum application due to lack of alternatives.

The BAMF (Federal Office for Migration and Refugees) has initiated a Dublin trial on the basis of a »EURODAC-strike«, rejected their application as inadmissible and wants to deport B. back to Spain. B. however, has learned the language very well during the months in Germany and has an apprenticeship offer in mechatronic technician. The immigration office rejects their application for a work permit, as is often the case with refugees in Dublin procedures.

So the only option for B. is to follow the visa procedure. With the apprenticeship contract, B. gets in contact with the Federal Employment Agency which consequently carries out the proof of precedence and brings the positive result to the foreigners authority, which, last but not least, gives B. a written consent. Before B. leaves Germany officially, they agree to a voluntary departure with the foreigners authority.

This does not impose an entry ban, as it does in the case of deportation. Back in Spain, B. submits their application for a visa for apprenticeship purposes.

B. proves his secured livelihood as follows:

- Net salary of 350 €
- Written confirmation of accommodation for the duration of the apprenticeship costing 250 €
- blocked account with an amount of 1728 € (explanation: there are still 144 € missing per month to prove their livelihood. Normally this sum must be proven for the whole duration of the training, but given that the blocked account has a maximum validity of one year, in this case 12 x 144 € = 1728 € is sufficient.

The embassy is pleased with the application so B. can soon enter with their visa afterwards. In Germany, B. goes to the local immigration office, which converts the visa into a residence permit for apprenticeship purposes.



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**Who can move freely
across borders in Europe?
Who cannot? Who do the
border restrictions in the
Schengen Area apply to?
And who can simply ignore
them?**

moveurope! is a project by migration_miteinander e. V. Our goals are to make the living situation of refugees in Europe visible and to protect the rights of refugees to freedom of movement of refugees within the European Union. We have worked out an alternative pathway for legal migration, in which refugees with a residency title from one EU country can under training purposes apply for a visa in another Member state.

If you are an advocate for the freedom of movement of all people, contact us – our association is always happy to receive any support!