



Mixed migration

Challenges and options for the ongoing project of German and European asylum and migration policy

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Foreword

Migration to Europe and Germany has grown strongly in the last two years – so strongly that it has become one of the defining issues in the current public debate. Many figures expressing the extent of these migration flows have been circulated: In 2015, for example, the Federal Republic recorded net inward migration of 1,139,000 people – a new high in the time since the country’s foundation. Another high point was reached with the 1,164,269 asylum applications submitted in Germany in 2015 and 2016 – in the European Union as a whole, this figure was 2,461,310. Over the course of these two years, 1,370,439 people crossed the Mediterranean in order to reach Europe. In 2016, a total of 5,098 people lost their lives during this crossing of the Mediterranean.

However, the figures alone fail to provide a complete picture of the current migration events. For example, they exclude the diversity of motivations for migration, as well as the mixing between migration motives and migration paths. The intermixture of refugee flight and voluntary migration, however, is a major challenge for policymakers and administrations in many receiving countries. Many migrants are trying to attain residency permission in destination countries by seeking asylum. As a consequence, asylum systems in receiving countries are seriously overburdened, as they were not designed for numbers of this magnitude.

German and European policymakers have also contributed to this unclear and sometimes confusing migration picture, as since the very strong rise in the number of protection seekers in mid-2015, they have sought frantically and inconsistently to gain short-term control of the situation through various crisis-management measures. Particularly with regard to reform of the European asylum system, which has long been recognized as insufficient, as well as agreement on solidarity-based European solutions, these efforts have failed on a grand scale. Right-wing populists

on both sides of the Atlantic have proven skilled in using this state of affairs to their own benefit, fanning the public mood against migrants and refugees in order to facilitate democratic backsliding and illiberalism in society.

In order to manage migration proactively and sustainably, it is important to adapt legal migration channels as much as possible to migrants’ genuine motivations – with reference to economic, political and social absorption capacity. This is the focus of the current study by Steffen Angenendt, David Kipp and Amrei Meier. It attempts to depict mixed-migration flows qualitatively and quantitatively on the basis of existing data, and to call attention to approaches by which policy can better deal with mixed migration.

The figures cited in the study indicate that the 173,846 rejected asylum applications by Germany in 2016 represented 25 percent of the total initial applications. This suggests that in 2016, the maximum possible share of (voluntary) migrants in the mixed-migration flows, most of which can be attributed to labor-related migration, was one-quarter. This figure illustrates the need for action and the challenge associated with the phenomenon of mixed migration. The study’s authors identify various areas for action suited to addressing this challenge. One important insight here is that policymakers and administrations must be supported by civil society and the business sector.

At the institutional level, the creation of an independent Federal Ministry for Migration, Refugees and Integration would make sense. Such a ministry, in which all issues associated with immigration would be combined and coordinated – thus, from asylum to immigrants’ labor-market integration – would have more freedom to develop and implement coherent concepts.

A further area of action identified is the creation of legal migration paths for refugees, in part in cooperation with the

countries of origin. In addition to the provision of support for first-arrival countries, resettlement programs are of particular interest here. Since the political will for a robust resettlement program at the European level is currently lacking, the German federal government could also proceed with its own quantitatively meaningful national program, possibly along with a number of partner states. If successful, such an initiative could later be translated into a European program. An effective return policy that accords with human rights standards and has a focus on voluntary return programs could be a complementary element of a holistically conceived asylum policy.

Creating transparent access opportunities for labor migrants could provide a further contribution to the disentanglement of mixed-migration flows. Presently, there are more than 50 different options for immigration to Germany with employment as the goal. This cannot be effectively communicated either to would-be immigrants who are third-country nationals, or to domestic companies. A point system as proposed by the study's authors, or alternatively a reform within the existing system with the EU Blue Card as a central pillar, would be a step in the right direction of making the German immigration system more easily comprehensible.

The authors also identify the transition between asylum and (non-refugee) migrant status as a mechanism that could help disentangle mixed-migration flows. For example, it must be ascertained whether asylum seekers could under certain conditions shift during the asylum process or following the rejection of their asylum application to a residence permit enabling employment or participation in a training program. Finally, the study demonstrates that the data sources used to capture the phenomenon of mixed migration must be improved.

If asylum and migration policies are to be proactively designed with long-term viability in mind, policymakers must harmonize immigration channels with migration motives as much as possible. Only in this way can policymakers leave short-term crisis management behind, strengthen popular trust in the successful management of migration, and remove the basis for right-wing populist agitation.

We hope this study will provide policy and administrative leaders with the impetus to take on this challenging task. We offer our heartfelt thanks to the study's authors for addressing the complex issue of mixed migration, and for

bringing new analytical clarity to how this phenomenon is handled. Additional thanks go to the participants in the expert panel at which Carola Burkert, Christian Hanelt, Tillmann Löhr, Matthias Neske, Andrea Riester and Jan Schneider discussed a draft version of the study, as well as to Bernd Parusel, who provided written comments on the draft version.

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Executive summary

Cross-border migration is increasing worldwide. International organizations and governments are reporting record numbers of refugees and migrants. For many destination countries, these migration patterns represent a major political challenge. The increasing mixture of forced displacement and migration presents particular difficulties. Many migrants try to establish residence in destination countries by seeking asylum. One consequence has been a heavy burden placed on asylum systems in the host countries. In fact, the motives and paths of refugees and migrants are increasingly difficult to differentiate. This is problematic, because all signatories to the Geneva Refugee Convention (GRC) are obliged to provide protection to refugees, but are able to decide how to handle migrants in a largely sovereign manner. This intermixture complicates the protection of refugees, as well as the development of effective and development-friendly migration policies.

Two developments in particular have contributed to this interlinkage between flight and migration: First, since the adoption of the GRC in 1951, the causes of refugee flight have changed – from a primarily individual or group-specific persecution to a flight from general or gender-specific violence, or one driven by the destruction of economic and environmental necessities for life. Second, refugees and migrants are increasingly using the same (irregular) migration routes, with the help of human smugglers. The most important reason here is that most industrialized and emerging countries do not offer sufficient legal migration options for refugees and migrants. Indeed, many destination countries have in recent decades become increasingly restrictive with regard to visa issuance.

This is true of Germany as well. New concepts must be found to enable the country to cope more effectively with mixed-migration flows. Initial approaches are already in place, such as the opportunities created by the Employment Regulation (§ 26 para. 2) for immigrants from West Balkan

states who have returned to their home countries to apply for jobs in Germany from there. However, further efforts are necessary for the effective handling of mixed migration.

Civil society and the business sector can make an important contribution to managing mixed-migration flows. During the most recent surge of migration to Germany, civil society actors have demonstrated that they play an indispensable role in refugee and migration policy. This is also true of businesses. This demand will only increase in the future, in part due to the need to integrate the refugees and migrants who have come to Germany.

There is also need for reform at the **institutional level**. This is necessary particularly because the current structures at the federal level as well as between the federal and state governments are not sufficiently aligned, thus making political agreement and coordination more difficult. One possibility would be the creation of an independent Federal Ministry for Migration, Refugees and Integration, which would collect and coordinate all migration-linked issues, from asylum policy to the labor-market integration of immigrants.

With regard to the **protection of refugees**, more legal and safe migration pathways for refugees into the EU must be created in the context of a common European asylum policy. Also, the situation of refugees outside the EU needs to be improved. In this regard, the improvement of cooperation with origin and transit countries is a key goal. Moreover, refugees' initial arrival countries must be given much more support than has previously been the case, and the programs for the acceptance of refugee quotas from initial arrival countries (resettlement) must be expanded. Human-rights and development-policy issues need to be systematically considered in any debates on the protection of refugees outside the EU.

In the area of **migration policy**, regulations for employment-related migration, which are today too complicated, insufficiently transparent and often ineffective, must be reformed. Currently, labor migrants have more than 50 different options for migration to Germany. This is impossible to communicate either internally or externally; the number of recruited workers as a share of total immigration is correspondingly low. If Germany is to meet the long-term demographic and economic demand for migration, further immigration-law reforms are needed. Most helpful would be the introduction of a points system that could be designed either to supplement existing regulations or as a comprehensive system. Almost all federal parliamentary party groups are engaging in discussions of this kind. However, this alone will not be enough; an expansion of administrative capacity is also needed.

New approaches are also necessary with regard to the possibility of **opening up legal channels for asylum seekers**. For example, under certain conditions, applicants for asylum should have the opportunity to change their status. On the one hand, this could enable asylum seekers to receive a work-related residence permit even during the course of their asylum process. On the other hand, rejected asylum seekers too could engage in work or training if they were accorded “toleration status” in Germany – in other words, if they were granted a temporary suspension of deportation due to humanitarian or related grounds. At the same time, the **return** of those obligated to leave the country must take on a greater significance. The federal government should in particular strengthen voluntary-return programs. In cases when departure from the country does not take place voluntarily, an effective return policy – though one that fundamentally respects human-rights standards and obligations – must be implemented. In this regard, a greater development-policy commitment to reintegration of these people in their countries of origin is essential.

A fundamental problem in dealing with mixed migration is the **lack of reliable data**. Flow data would be especially important in capturing the dynamics of mixed migration. The statistics currently available are in this respect insufficient, as they are unable to give a precise indication of the scope of mixed migration and its trends over time. However, destination countries’ recognition rates could provide one point of reference. Under the assumption (one that should be given critical scrutiny) that asylum decisions are correct, and that those who are genuinely in

need of protection are in fact recognized as such, this could contribute to estimating the share of refugees in mixed-migration flows.

The asylum statistics show that more than half of the asylum applicants in Germany receive protection status. In 2015, this was true of 140,915 asylum applicants (total protection rate 49.8%), followed by 433,920 applicants in 2016 (total protection rate 62.4%). In 2015, 91,514 asylum applications were rejected (32.4%), followed by 173,846 applications in 2016 (25%). These figures could be interpreted as indicating that in 2016, ordinary migrants accounted for no more than a quarter of the mixed-migration flow.

1 The phenomenon of mixed migration

Cross-border migration continues to increase worldwide. Reports by the High Commissioner for Refugees (UNHCR) show an unbroken upward trend with regard to refugees and displaced persons.¹ The same is true for migrants – that is, people who have left their homelands for reasons other than to seek protection, for example for work purposes. Their numbers too have reached a historic high in recent years according to United Nations (UN) estimates.² Managing migration flows is among the greatest political challenges of the moment for many developed countries, as well as for many emerging and developing countries.

The increasing intermingling of flight and migration poses particular problems for governments. In fact, the migration motives and migration routes of refugees and migrants have long been difficult to distinguish, in part because asylum is also used for migration purposes. However, the distinction is important, because the signatories to the 1951 Geneva Refugee Convention (GRC) have committed themselves to the protection of refugees. In contrast, the reception of migrants and their admission to the labor market is an interest-based and sovereign decision of the receiving country.

Forced and voluntary migrations cannot be clearly delimited; in the related research literature, the term “mixed-migration flows” (in German: “gemischte Wanderungsbewegungen”) is often used.³ This phenomenon is in no way limited to Europe or Germany. According to the UNHCR, mixed migration is becoming increasingly common in the Mediterranean region, in the area around the Gulf of Aden, in Central America and the Caribbean, in Southeast Asia, and in the Balkans.⁴ However, the World Bank notes that while the distinction between refugees and migrants is certainly important from the point of view of the countries involved, it is not necessarily so from the perspective of the affected individuals. For example, except in extreme humanitarian emergencies, economic factors would generally also play a role for refugees.⁵

In many countries, the intermixture of flight and migration places already-burdened asylum systems under additional pressure, and ultimately delegitimizes asylum and migration policy alike – the latter because abuse of the asylum law for immigration purposes creates doubts

1 See United Nations High Commissioner for Refugees (UNHCR) (2016). *Global Trends. Forced Displacement in 2015*. Geneva: 6.

2 See United Nations Department of Economic and Social Affairs (UN DESA) (2015). *International Migration Report 2015. Highlights*. New York: 5. www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf.

3 “Mixed migration is a relatively new term used to describe a long-standing reality: that people of different status and motivations will often migrate in similar directions, using the same migration infrastructure. Maritime movement across the Mediterranean has long been a case in point. Migrants with divergent histories and experience travel side by side, facing very different outcomes in the European immigration system. Some have been compelled to move because of persecution and will seek asylum, others move for economic reasons; some do not know that their movement is a carefully choreographed step in their eventual exploitation.” See Carling, Jørgen, Anne T. Gallagher und Christopher Horwood (2015). “Beyond Definitions. Global migration and the smuggling-trafficking nexus.” RMMS Discussion Paper No. 2: Beyond Definitions, Regional Mixed Migration Secretariat (RMMS), Nairobi, November 2015: 1. www.regionalmms.org/images/DiscussionPapers/Beyond_Definitions.pdf.

4 See UNHCR. *Mixed Migration. A 10-Point Plan of Action*. www.unhcr.org/mixed-migration.html.

5 See World Bank (2016). “Forcibly Displaced – Toward a development approach supporting refugees, the internally displaced, and their hosts.” <https://openknowledge.worldbank.org/bitstream/handle/10986/25016/9781464809385.pdf?sequence=2&isAllowed=y>.

regarding the government's capacity to manage migration.⁶ The problems are well-known to the governments and international organizations that deal with refugees and migration. At the same time, there is in practice a lack of conceptual and practical approaches that would enable refugee and migration flows to be disentangled so as to preserve refugee protection while still fulfilling the migration-policy interests of origin and receiving countries.

In Germany, these difficulties are clearly visible due to the strong surge in immigration since 2015 - which has in large part been due to the lack of responsibility-sharing between the EU member states. The pressure to act is immense, precisely because parts of the public have come to see the policy as incoherent and ineffective. The practical difficulties associated with the reception of and care for refugees are substantial, as are the integration-policy challenges. In conjunction with increased security concerns, this has buoyed populist forces and strengthened internal polarization around immigration so significantly as to threaten to undermine the previously great public support for refugee protection and the reception of migrants. However, since Germany will probably continue to experience - and due to unfavorable demographic trends also needs - significant immigration, the development of more coherent, more effective and more sustainable political approaches to the management of mixed migration is becoming increasingly important.

The present study focuses on the situation in Germany. The study begins with a short overview of the current state of German asylum and migration policy, analyzing the drivers and trends, the legal means of distinguishing between the two, and the data on mixed migration. Against this background, the study then describes and evaluates existing and new approaches to disentangling and managing the two forms of migration, and finally discusses necessary regulatory frameworks and political reform needs in three core areas:

1. Action area "Actors": The future role of non-state actors

To what extent can and must new approaches in refugee and migration policy be supported by civil society activity as well as by an active role on the part of companies, employers' associations and labor unions?

2. Action area "Polity": Institutional and administrative reform needs at the federal and state levels

What reforms are needed at the federal, state and municipal levels? Are current responsibilities and coordination structures sufficient? What institutional reforms and what horizontal and vertical cooperation models among political actors would be necessary? Are a migration law and migration ministry necessary to ensure coherent policy?

3. Action area "Policies": Building blocks of a coherent asylum and migration policy

What asylum and migration policy concepts are necessary in order to manage the mixed-migration flows? Do new forms of refugee protection have to be developed, moving away from an individual asylum right and toward a resettlement policy? Are such approaches mutually exclusive or compatible? What further migration-policy reforms are needed? In particular, must transition paths between asylum and migration be created? Must transitions between asylum and migration in particular be created? What opportunities and risks would be associated with such reforms?

⁶ In this regard, it should be noted that mixed migration is not a new phenomenon. The mixture of voluntary and involuntary migration began drawing attention both in research and policy spheres in conjunction with the global rise in refugee movements at the beginning of the 1990s. In the course of the 2000s, the concept of "mixed migration" was increasingly used by international organizations and international forums such as the United Nations General Assembly and the European Union's High Level Working Group on Asylum and Migration (HLWG), often also under the broader term of "asylum and migration nexus."

2 Looking back: Mixed migration policies in Germany and Europe

For the last quarter century, German asylum and migration policy has resembled a continuous construction site. In this regard, refugee flight and migration have been intermingled at all times, without coherent approaches to handling this entanglement being developed, however.

2.1 Asylum and refugee policy

By the 1980s, complaints were being heard in many EU countries about the supposed increase in “asylum abuse” by “economic refugees”; even then, the intermixture of flight and migration was a key issue, and gradually led to the introduction of visa requirements for common countries of origin.⁷ A significant portion of the asylum-policy reforms made in EU countries since that time can be seen as an attempt to overcome this problem. Thus, many member states tightened their asylum laws in the early 1990s following the strong increase in refugee flows particularly from the former Yugoslavia. In 1992, Germany too, following fierce internal disputes, restricted the previously unrestricted fundamental right to asylum under Article 16 of the Basic Law (GG), with the expressly stated goal of limiting the “improper use of asylum.”⁸

The Asylum Seekers Benefits Act of 1993, which reduced benefits for asylum applicants to a level below the minimum subsistence value (until the Federal Constitutional Court found this to be impermissible in 2012), served the same purpose. Afterward came the Dublin Agreement, which since 1997 has been intended to prevent efforts to apply for asylum in multiple EU member states, doing so by defining responsibility for asylum applicants coming to Europe, and

assigning such responsibility to the EU states in which the applicant for asylum enters the EU for the first time.⁹ In practice, the responsibility for asylum seekers was thus allotted to the EU’s external border states. Overall, despite numerous problems – for instance, Greece and Italy have for years complained about the disproportionate burden placed on them and the lack of support from the broader EU – this regulation functioned reasonably well as long as the number of asylum seekers was relatively low.

In fact, these numbers declined significantly in Germany over the course of the 2000s; in 2008, their total amounted to just one-fifth of the high point of 438,000 people registered in 1992.¹⁰ These low numbers took pressure off the asylum system, and offered room for improving refugee protections. Thus, the migration law passed in 2004 extended grounds for recognition to non-state and gender-related persecution, and improved the legal status accorded to asylum-seekers’ families.

Since 2010, the number of asylum seekers in the EU and in Germany has again risen significantly. One cause has been the deterioration in conditions in war and crisis zones such as Somalia, Iraq, Syria and Afghanistan; another factor has been the increasing lack of economic opportunity in many areas of the world such as the Balkan countries and North and sub-Saharan Africa. In the 2013 coalition agreement, the CDU, CSU and SPD government coalition agreed to categorize Bosnia and Herzegovina, Macedonia, and Serbia

7 On this “lexically manifesting defensiveness,” see Bade, Klaus J. (2015). “Zur Karriere und Funktion abschätziger Begriffe in der deutschen Asylpolitik.” *APUZ* 25 2015: 3–8, here: 6 f.

8 See also the German Federal Constitutional Court ruling on the change of Article 16 GG. Bundesverfassungsgericht, Urteil vom 14.5.1996. Az.: 2 BvR 1516/93.

9 This rhetorical defensiveness regarding refugees and asylum applicants also includes the term “asylum shopping,” a concept still in use by the European Commission today. For example, First Vice President of the EU Commission Frans Timmermans, in an April 2016 press statement. See European Commission. Press release. “Commission presents options for reforming the Common European Asylum System and developing safe and legal pathways to Europe.” Brussels, 6 April 2016. http://europa.eu/rapid/press-release_IP-16-1246_en.htm

10 See Bundesamt für Migration und Flüchtlinge (BAMF) (2015). *Das Bundesamt in Zahlen 2015*: 8.

as safe countries of origin in order to be able to process unpromising asylum applications from these nations more quickly, and thus end temporary residency grants more swiftly. After protracted negotiations, and after the federal government's pledge to improve living conditions for asylum applicants in Germany, this assessment was adopted by the Bundestag and Bundesrat in 2015.

Because the quantity of asylum applicants continued to increase further despite this new regulation, the Grand Coalition passed another legislative package in October 2015. This time, the list of safe countries of origin was extended to include Albania, Kosovo and Montenegro. In addition, asylum applicants were allowed to be housed in the initial reception facilities for six instead of the previous three months, cash payments were again increasingly replaced by benefits in kind, and cash allowances were decreased still further. Rejected asylum seekers that did not leave the country would now receive only emergency medical care. Deportations too were to be completed more quickly.

All these restrictive instruments were more or less explicitly aimed at reducing "migration incentives" and at deterring people who wanted to use the asylum right for migration purposes. The desire for a more effective distinction between refugees and migrants thus runs as a common theme through German and European asylum policy to the present day.

2.2 Migration policy

In comparison to refugee policy, the intermingling of flight and migration has received considerably less attention within German migration policy. This is surprising, because this policy area has been subject to reforms as fundamental as those in the area of asylum policy over the last 25 years. Until the late 1990s, the official watchword was that Germany was not a country of immigration. The reform process was initiated by the red-green (SPD-Greens) coalition government with the Law on Citizenship of 2000 and the "Green Card" of 2001, and continued by all subsequent governments.¹¹ In this regard, although all major reforms were politically controversial, compromises were ultimately found in each case – a crucial prerequisite for policy change in this "toxic political field" (Peter Sutherland,

Special Envoy of the United Nations for Migration), which risks political polarization as do few others.

According to the Organization for Economic Cooperation and Development (OECD), Germany today has particularly generous rules in international comparison for the immigration of skilled workers with previous vocational training and highly skilled university graduates.¹² At the same time, the EU Blue Card offers nearly unlimited possibilities for immigration among the highly skilled, and foreign graduates of German universities are given facilitated access to the German labor market.

In addition, skilled workers who have received their training abroad can now work in Germany if their training is equivalent to that provided in Germany and a job offer has been made. However, approval from the Federal Employment Agency must be obtained, or an established regional, economic or labor-market-policy interest in the specific worker must be demonstrated. For example, this is the case when the job contributes to the region's or a company's economic development.¹³ Finally, since August 2012, highly skilled individuals with a university degree recognized in Germany or a comparable foreign qualification can come to Germany to seek work for a period of up to six months (Art. 18c. of the Residence Act).

With these reforms – which were supplemented by additional new immigration opportunities – Germany is today well positioned in the international migration-policy competition. Nevertheless, the reforms have not been completed in at least three respects, complicating the task of dealing with mixed migration.

First, the rules for work-related immigration are still oriented primarily toward current labor-market needs. However, Germany needs long-term and permanent immigration for demographic reasons. Opportunities to come to Germany for a job search are to date available primarily for the highly skilled. This makes immigration more difficult for the lower skilled, many of whom choose irregular access and a detour through an asylum application in order to obtain work opportunities. The

11 See Angenendt, Steffen and Imke Kruse (2004). "Migrations- und Integrationspolitik in Deutschland 2002/03 – der Kampf um das Zuwanderungsgesetz." In Klaus J. Bade et al. (Ed.). *Migrationsreport 2004: Fakten – Analysen – Perspektiven*. Frankfurt am Main: 175–202.

12 See Organisation for Economic Co-operation and Development (OECD) (Ed.) (2013). *Zuwanderung ausländischer Arbeitskräfte: Deutschland*: 15.

13 See Sachverständigenrat der deutschen Stiftungen für Migration und Integration (SVR) (2016). *Zuwanderung zum Zweck der Erwerbstätigkeit. Wichtige Regelungen im Überblick*. Berlin: 3. www.svr-migration.de/wp-content/uploads/2016/06/160616_Zuwanderung-zum-Zweck-der-Erwerbst%C3%A4tigkeit.pdf.

questions associated with this low-skilled immigration are particularly difficult to answer, because both the theoretical and empirical knowledge needed is lacking: For example, on the one hand, it could be expected that creating immigration opportunities for low-skilled individuals could make a significant contribution to the disentanglement of mixed-migration flows. On the other hand, this immigration is politically very unpopular, because it can raise the risk of displacing jobs in the short term; additionally, in the German context, it raises the question of the degree to which there is genuinely any additional demand for low-skilled workers, given the current inflow refugees and the (already difficult) integration of these refugees in the labor market. For example, the Federal Employment Agency's (IAB) Institute for Employment Research reported for the fourth quarter of 2015 that nationwide in Germany there were a total of about 200,000 open jobs for which no vocational certification was needed; it also estimated the number of open jobs for which refugees could be considered at about 154,000, primarily within the cleaning, transportation, logistics, and building trades.¹⁴

Second, while immigration opportunities have indeed been expanded, these have not been sufficiently implemented or explained. The relatively low share of labor migrants as a proportion of all third-country migration to Germany despite the far-reaching reforms – in 2015, only 3.4 percent of arriving third-country nationals held a residence permit allowing them to work¹⁵ – demonstrates that simply passing reforms and adopting relevant laws and regulations is not enough. At least as important are the implementation and communication of these policies both internally and externally. To date, this has not taken place to a sufficient degree.

The government has not adequately explained to citizens, businesses or even its own administration the fundamental change that Germany has undergone in recent years, from a (supposedly) non-immigration country to a country that is instead open to migration. The same is true with regard to the communication of these reforms abroad. Moreover, the political margin of discretion in managing migration flows is limited. This also applies to efforts to create incentives for the immigration of skilled workers, for whom economic and sociopolitical conditions are very important, for example.

14 See Weber, Enzo (2016). "Schätzung der Zahl der für Flüchtlinge relevanten Arbeitsstellen." Institut für Arbeitsmarkt- und Berufsforschung (IAB). *Aktuelle Berichte* 12, 2016: 2. http://doku.iab.de/aktuell/2016/aktueller_bericht_1612.pdf.

15 See BAMF (2016). *Wanderungsmonitoring: Erwerbsmigration nach Deutschland. Jahresbericht 2015*. Nuremberg, June: 2 f.

Such issues can include the ability to combine family and career, actual working conditions, career and earning opportunities, the quality of public and social services, innovation and technology policies, and the degree of support provided to science.¹⁶

Third, despite the decades of failings, there have in fact been significant successes in integrating migrants. Yet precisely because more permanent immigrants are needed over the long term, integration efforts in the political, business and societal spheres must be strengthened. In the context of the issues discussed in this study, it is crucial that this apply not only to people who come to Germany for work purposes and their family members, but also to refugees. For too long, refugees have been perceived not as individuals bringing their own capabilities and knowledge, but rather as recipients of aid; accordingly, they have been denied or given only limited access to the labor market. This has changed only recently given the strong refugee flows and improvements in labor-market conditions. The Federal Employment Agency now systematically registers refugees' skills; in addition, labor-market access for refugees has been improved. Yet despite this progress in terms of legal conditions, practical opportunities for those refugees who can and want to work remain insufficient. This is primarily due to the large number of associated procedures and responsibilities, which are often difficult to understand.

An important aspect in the discussion regarding further migration-policy opening is the demography-driven need for immigration. The problems here have long been well known: In comparison to other developed countries, the German population is aging and contracting particularly quickly. The number of deaths annually exceeds that of births by more than 200,000 people; moreover, this excess mortality rate will continue to increase. According to estimates by the Federal Statistical Office, the German population, even under the assumption of an average net immigration of 200,000 people per year, will annually shrink by up to 500,000 people through 2050. At the same time, average age will go up substantially as life expectancy increases.¹⁷

16 See Kolb, Holger (2012). *Die zwei Seiten staatlicher Fachkräftepolitik: Verringerung dauerhafter Abwanderung und Förderung qualifizierter Zuwanderung*. Berlin: 47. www.svr-migration.de/wp-content/uploads/2012/03/Studie_Die-zwei-Seiten-staatlicher-Fachkraeftepolitik.pdf.

17 See Statistisches Bundesamt (2015). *Bevölkerung Deutschlands bis 2060*. 13. koordinierte Bevölkerungsvorausberechnung: 15–17. www.destatis.de/DE/Publikationen/Thematisch/Bevoelkerung/VorausberechnungBevoelkerung/BevoelkerungDeutschland2060Presse5124204159004.pdf?__blob=publicationFile.

This contraction and aging will have serious impact on the proportion of people of working age, and thus on the labor market. For example, the number of people of working age will decline significantly beginning in 2020. Even if federal-government estimates do not as yet attest to national-level or general skilled-worker shortages, some individual regions and professions – particularly the health care sector, engineering professions, and food service and tourism – are already today seeing insufficient numbers of skilled workers.

The precise development of labor-market and skilled-worker requirements – for example, by individual professions and economic sectors – cannot be predicted. However, it can be expected that the labor scarcity will increase in the coming decades. This will increase the costs of labor and social insurance. Demographic aging will in particular increase the demand for caregivers and domestic services. According to the Federal Ministry for Economic Affairs and Energy, there are a number so-called bottleneck occupations in which there has already been a skilled-worker shortage for years. Among these are health care; social services and education; construction and building technology; and mechatronics, energy, and electrical engineering.¹⁸

The extent and consequences of the demographic change have long been known. However, it is only in recent years that population shifts have been taken systematically into consideration in the context of migration policy. For example, in June 2011, the federal government adopted a concept for ensuring skilled-worker availability that identified demographic change as the dominant challenge of the coming years. The starting point of the strategy was the determination that the labor force would shrink by up to 6.5 million people in the next 15 years in the absence of countermeasures. To this end, the strategy called for utilizing and supporting the domestic potential labor force; however, it noted, it will also be critical to expand this through greater immigration of skilled individuals from abroad.¹⁹

This attention to demographic aging and contraction is new. Previously, immigration was assigned only a minor role in the management of demographic change. The discussion was instead primarily aimed at increasing productivity and

making better use of domestic potential, especially among the unemployed, women, older individuals, and immigrants already resident in the country. Additional migration to Germany was regarded as a secondary option of limited utility. This was particular true as applied to refugees; they have long played little role in the debates over migration and demographic change – although even before the most recent surge in refugee flows, it had been recognized that refugees coming to Germany were significantly younger than the resident population, and therefore in principle held demographic potential.²⁰

Even assuming that productivity continues to rise, there is a consensus among economic-research institutes that Germany will need significantly more immigration than in the past decade in order to ensure its growth and welfare, and to guarantee care for the quickly rising number of older people.²¹ Only in the last two years, thanks to the influx of refugees, has a net immigration rate been achieved that in quantitative respects could balance the demographic deficits. However, it should be noted that despite the strong inward refugee flows, a significant share of immigrants – about 38 percent in 2015 – still comes from other EU countries. Experience shows that intra-European immigration is strongly dependent on short-term economic developments. The free movement of labor within the European Union facilitates migration to other member states, and has also been actively supported by Germany's federal government.²² However, return migration is also easy under conditions of free movement, and it is doubtful whether immigration from other member states will be permanent enough to be able to compensate for demographic deficits over the long term.

20 This is even more true of the age structure of recently arrived refugees. For the age structure of refugees arriving in Germany since 2015, see Fuchs, Johann, and Enzo Weber (2016). "Effekte der Flüchtlingsmigration auf das Erwerbspersonenpotenzial." Institut für Arbeitsmarkt- und Berufsforschung (IAB). *Aktuelle Berichte* 22, 2016.

21 See Fuchs, Johann et al. (2015). *Zuwanderungsbewarf aus Drittstaaten in Deutschland bis 2050. Szenarien für ein konstantes Erwerbspotenzial – unter Berücksichtigung der zukünftigen inländischen Erwerbsbeteiligung und der EU-Binnenmobilität*. Bertelsmann Stiftung, Gütersloh.

22 For example, in 2013 the German Federal Ministry of Labor and Social Affairs launched the special program "Promotion of vocational mobility of young people from Europe interested in vocational training" (MobiPro-EU). The program is intended to reduce barriers that often interfere with the mobility of young adults from other EU countries seeking positions within the German vocational-training or labor markets. It is expected to make a contribution to reducing the regionally high youth-unemployment rates within the EU, while also helping to fulfill skilled-worker demands within Germany. Bundesagentur für Arbeit (BA) (2013). *Förderprogramm MobiPro – EU*. www3.arbeitsagentur.de/web/content/DE/dienststellen/rdnrw/paderborn/Agentur/Detail/index.htm?dfContentId=L6019022DSTBAI529388.

18 Bundesministerium für Wirtschaft und Energie (2014). *Fachkräfteengpässe in Unternehmen*. Berlin: 21 f.

19 See Bundesministerium für Arbeit und Soziales (2011). *Fachkräfte-sicherung. Ziele und Maßnahmen der Bundesregierung*. Berlin, June 2011: 7 f. www.bmas.de/DE/Themen/Arbeitsmarkt/fachkraefte-gewinnen-wohlstand-sichern.html.

Nor can the sustainability of inflows from non-EU states be predicted. Here, it is unclear what share of these individuals will elect to live and work in Germany permanently; this is true particularly of the refugees who have arrived in recent years. Historical analogies and comparisons with previous waves of refugees are methodologically and empirically problematic. The example of the former Yugoslavian refugees, however, shows that many refugees return to their home countries once conditions there improve. For example, an estimated three-quarters of Yugoslavian refugees ultimately left Germany, primarily because they had no long-term prospects of staying.

Under such conditions, and with the return of peace to refugees' home countries, the probability of return remains high, and the influx of refugees cannot generally be regarded or depended upon as a permanent contribution to the amelioration of demographic deficits. With regard to the demographic effects of the refugee flows, the fact that there are relatively few skilled workers among the refugees also cannot be discounted. This is of little substance with regard to demographics, but does play a significant role from the point of view of labor-market policy.

To alleviate the need for skilled workers, the federal government has set up number of pilot projects promoting migration among skilled workers. This includes projects in Asia and North Africa, through which migration programs are to be developed – with the participation of local labor-market institutions – that benefit Germany, the origin countries and the migrants themselves.²³ A key consideration here is that any sustainable migration policy requires fair and partnership-based cooperation with origin countries, to prevent damage from being done to them through recruitment, and also to prepare migrants for work and life in Germany – and not least, to reduce the use of asylum for immigration purposes by providing legal migration pathways. In addition, language training and updates to professional skill sets are often necessary.

Even if they have to date involved only small programs, and no comprehensive evaluation has been performed, these pilot projects offer valuable evidence regarding the efficacy of migration-policy instruments, and serve as reference points for future migration-policy design. Overall, the pilot projects have helped give Germany a series of instruments

23 See Brennan, Janina and Anna Wittenborg (2015). *Gemeinsam zum Triple Win – Faire Gewinnung von Fachkräften aus Entwicklungs- und Schwellenländern. Kriterien und Länderbeispiele zur Identifizierung geeigneter Herkunftsländer*. Bertelsmann Stiftung, Gütersloh.

that also make migration beneficial for countries of origin and the migrants themselves: from preparation for the time abroad to integration in the receiving country to the potential provision of support for returns and reintegration assistance.

Currently, any considerations of further German immigration-policy reform remain overshadowed by the consequences of recent refugee flows. Nevertheless, all parliamentary party groups are examining possible continuations of the past reforms. It is apparent that the existing German regulations are quite liberal in international comparison, but are too complex to be communicated to the public, to domestic and origin-country governmental administrations, to employers, or to potential migrants themselves. For example, depending on how they are counted, there are currently 50 to 79 different means by which one can come to Germany for purposes of employment.²⁴

For this reason, even parliamentarians continue to call for a comprehensive, transparent and effective immigration policy. Discussions currently focus especially on whether the introduction of a point system could create this kind of transparency. Various options are being discussed, from the supplementary introduction of a point system to the transfer of all existing regulations into such a point system.

In sum, with regard to the state of the migration-policy debate in Germany, it can be stated that the past decade has seen significant reform efforts and greater control over migration flows. However, it is currently unclear whether there would be public support for a substantial expansion of immigration. It can be presumed that an increase at the orders of magnitude needed to arrest the demographic contraction and aging would currently be politically impracticable.²⁵

24 See Hunger, Uwe and Sascha Krannich (2016). "Neukonzeption der Einwanderungsregelungen in Deutschland." FES, Münster and Siegen: 6 (unpublished manuscript).

25 No current forecasts regarding demographic immigration needs are available. However, some notion of the order of magnitude – even given all justified criticism of the calculation methods and data sources – is still offered by the reflections of the UN Population Division: Population Division, Department of Economic and Social Affairs. United Nations Secretariat (2001). "Replacement Migration: Is It a Solution to Declining and Ageing Populations?" *ST/ESA/SER.A* 206. New York.

3 Forms, legal issues and trends in mixed migration

Two trends in particular contribute to the increasing difficulty in distinguishing between flight and migration as cited above. First, the causes of refugee flight have, on the one hand, changed since World War II. Due to its historical background, the Geneva Convention on Refugees is primarily aimed at individual or group-specific persecution by state actors; however, other causes for flight – particularly flight from general and gender-related violence – have today gained in significance. On the other hand, more people are fleeing their homelands because their economic livelihoods or natural environments have been destroyed. However, such causes of flight are not included in the existing international legal-protection system; rather, they are considered to be reasons for migration.

The second change is that refugees and migrants are increasingly taking the same (irregular) migration routes with the help of human smugglers. The primary reasons for this are that in most developed and emerging countries, legal immigration opportunities for refugees and migrants are not well-known, are absent or are simply not used, as well as the fact that governments generally try to reduce additional immigration.

For example, opportunities for refugees to use legal entry paths in their search for protection have been limited by increasingly restrictive national asylum laws. This is true in the European Union, but also in many other regions of the world. There have also been similar efforts to tighten borders against migrants, despite the experiments with greater openness in some EU countries. To be sure, the international community has in recent years repeatedly committed itself to supporting legal migration. However, the reality has been different: In practice, such immigration opportunities are lacking in most developed countries, with governments pursuing restrictive immigration policies for migrants even when they have a demographic and economic need for immigration. Many migrants thus try to establish

residence in destination countries by seeking asylum. One consequence of this mixture of forms is heavily burdened asylum systems in receiving countries. In addition, many citizens come to feel that their governments cannot manage migrant flows, which further reduces trust in official policy capacities and erodes support for refugee protection and open migration policies.

3.1 Causes of and paths taken in mixed migration

According to the European Border and Coast Guard Agency (Frontex), more than a million people reached European shores in 2015 across the Mediterranean Sea alone. In 2016, this number dropped to about one-third of its previous level (356,400 new arrivals).²⁶ By contrast, the number of people who died on the way across the Mediterranean increased. According to International Organization for Migration (IOM) estimates, the number of deaths rose from 3,770 in 2015 to 5,079 the following year.²⁷ Many people continue to take this risk, often using smugglers that demand high fees, in the hope of being able to begin a new life after a safe arrival in Europe.²⁸

The reasons for the dangerous journeys are diverse and complex; they range from persecution, violent conflicts and human-rights violations to weak statehood and economic crises to national catastrophes and environmental changes

26 In total, Frontex registered 1.82 million illegal border crossings in 2015, followed by 503,700 in 2016. See Frontex (2017). *Fewer migrants at EU borders in 2016*. <http://frontex.europa.eu/news/fewer-migrants-at-eu-borders-in-2016-HWnC1J>. For a more detailed consideration of the data, see Chapter 3.3.

27 See for this the IOM's "Missing Migrants Project," with its ongoing reporting on deaths at external EU borders. <http://missingmigrants.iom.int>.

28 See Griesbeck, Michael (2015). "Steuerung, Flüchtlingsschutz und Entwicklung." *Politische Studien* 459. Hanns Seidel Stiftung Januar-Februar 2015: 28 ff. www.hss.de/fileadmin/media/downloads/Themenseiten/Migration_Flucht/PS_459_Griesbeck.pdf.

FIGURE 1 Typology of migration movements

Type of migration	voluntary	involuntary
regulated	A	B
unregulated	D	C

Source: Angenendt (2014)

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in the countries of origin.²⁹ The distinction between voluntary and forced migration depends on the motivation and the degree of voluntariness that drives each decision to migrate. In the political discourse, this dichotomy is reflected in the contrast between refugees, who are forced to migrate, and economic migrants, who migrate voluntarily.³⁰

In reality, the reasons driving a decision to migrate are often difficult to distinguish clearly from each other; the transitions are fluid, and must be understood as a continuum. Often, different motives for migration occur simultaneously, standing side by side or overlapping with one another, or even changing during the migration process.³¹

3.1.1 Migration types and causes

Migration movements can fundamentally be mapped onto a four-field matrix along the two dimensions of “voluntariness” and “degree of regulation.” Voluntariness refers to how the decision to migrate was made, while degree of regulation encompasses the involvement by state or other actors in the migration process.³²

Various forms of migration can be assigned to fields A through D as ideal types:

- A: Migration in the context of a recruitment program, promotion of immigration among highly skilled individuals, return assistance, family-reunification programs, etc.
- B: Refugee immigration in the context of humanitarian reception or resettlement programs, or in the context of forced displacement due to infrastructure programs, etc.
- C: Refugee movements and internal displacement due to individual and group-specific persecution or generalized violence.
- D: Irregular immigration by labor migrants; irregular family reunification.

With this categorization, it is quickly clear that the various types of migration each pose different policy challenges, and also differ with regard to the degree to which they can be controlled. For example, oversight opportunities are by definition present in the case of voluntary, regulated migration, for instance when workers are recruited abroad and given support domestically in the context of labor-migration programs. By contrast, such opportunities are minimal for involuntary, unregulated immigration, particularly in the case of irregular immigration. In addition, the development-policy impacts of migration types – an increasingly important aspect of migration policy – vary: The most significant development impacts are to be expected from migration type A, and the least significant from migration type C.

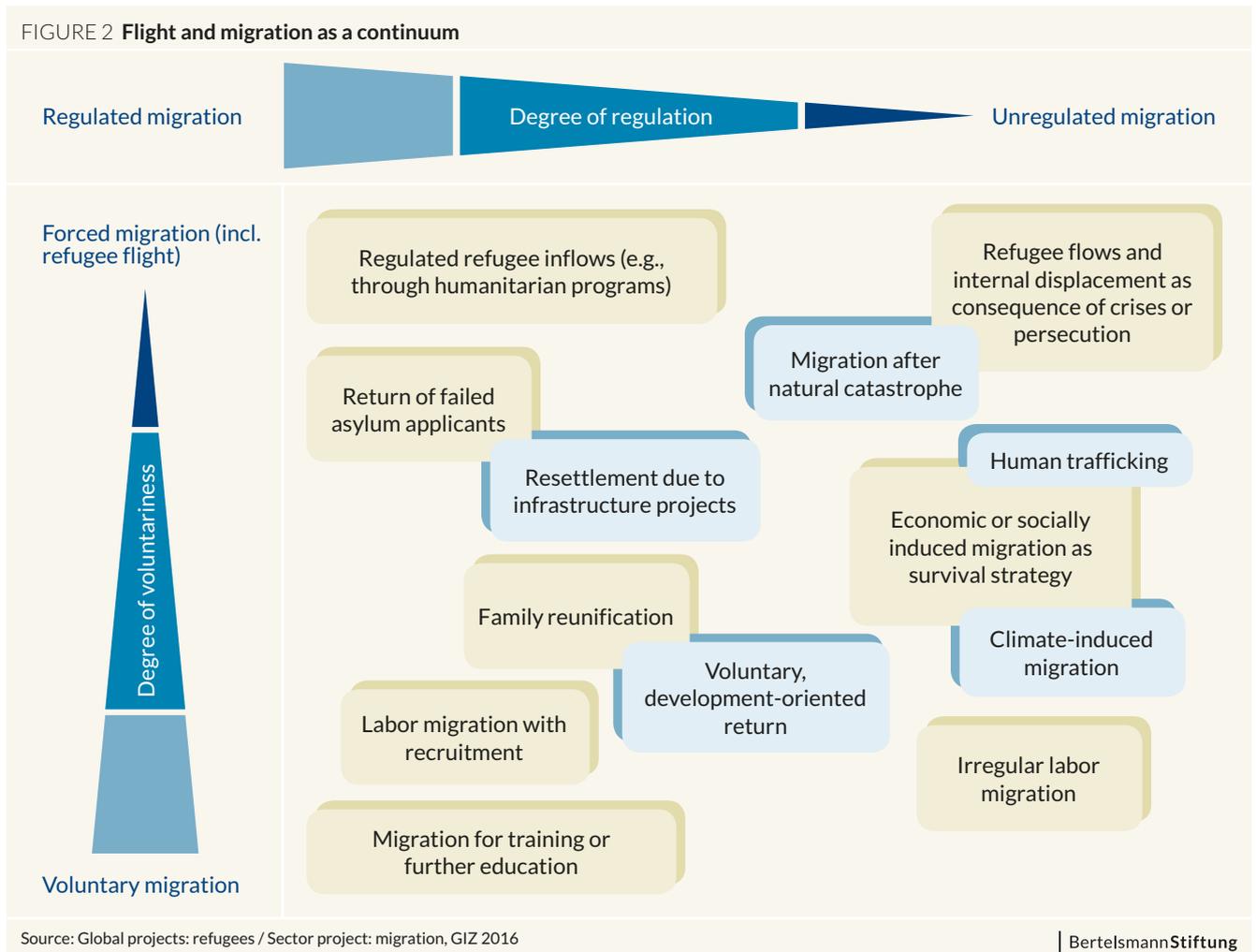
In practice, most migration flows are in fact a mixed form, which can be located along a continuum structured by the two axes (from voluntary to involuntary, and from regulated to unregulated).

29 See Deutsches Institut für Entwicklungspolitik. *Flucht und Migration*. www.die-gdi.de/flucht/.

30 See Scholz, Antonia (2013). *Warum Deutschland? Einflussfaktoren bei der Zielstaatsuche von Asylbewerbern*. Bundesamt für Migration und Flüchtlinge, Forschungsbericht 19: 19f. www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Forschungsberichte/fb19-warum-deutschland.pdf?__blob=publicationFile.

31 See Brücker, Herbert et al. (2016). *Geflüchtete Menschen in Deutschland: Eine qualitative Befragung*: 9 and 11. www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Studien/201609-iab-forschungsbericht.pdf?__blob=publicationFile.

32 See Angenendt, Steffen (2015). “Migration, Flucht und Entwicklung: Zusammenhänge und politische Handlungsmöglichkeiten.” Hintergrundpapier für die ressortübergreifende Unterarbeitsgruppe 3 “Migration und Entwicklung” des Staatssekretärsausschusses Migration. Berlin (unpublished manuscript).



Particularly in the case of unregulated migration, the reasons for leaving the country of origin – that is, the reasons driving a decision to migrate – are often not clearly distinguishable. For example, political persecution, violent conflicts and human-rights violations can all drive people into flight. But economic crisis and the consequent unemployment, poverty and lack of prospects can also lead people to see themselves as being forced to leave their homeland in order to find a better or safer life elsewhere. In addition, natural disasters and a loss of the natural resources needed to sustain livelihoods, or in the broadest sense climate change and the associated profound changes in people's living conditions, could also be grounds for opting for emigration.

These different motives often make it difficult to distinguish between refugees who are forced to migrate, and who are thus entitled to protection under international law, and

migrants who in the broadest sense are migrating voluntarily and on economic grounds. Both groups have in common that there is a lack of legal immigration opportunities to Europe or Germany, or these are for individual persons impractical, for example because of insufficient financial resources or a lack of documents. Accordingly, both groups use the same irregular routes, structures and networks in order to reach Europe and Germany; often, they also use the services of human smugglers in doing so.

This form of migration not only entails risks for the individuals involved, it also poses major challenges for the receiving countries. Despite all the similarities with regard to migration routes and networks, and despite the difficulties in clearly identifying migration motives, there do exist differing responsibilities and competences: For instance, EU states are bound not only by international law to provide protection to refugees, but also by European and national

law. Thus, refugees and migrants are to be distinguished if only for legal reasons.

This differentiation is also necessary from a development-policy perspective: Refugee flows must be averted in a preventative sense to the greatest degree possible, because they are always a humanitarian catastrophe. By contrast, voluntary migration is an important driving force for development. If it is well-regulated, based on fair agreements between origin and receiving countries, and the rights of migrants are respected, it is in the interest of all parties – the origin and destination countries as well as the migrants themselves (a so-called triple win).³³ For this reason, the members of the United Nations, in the Agenda 2030 and the Sustainable Development Goals (SDGs), decided to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.”³⁴

3.1.2 Migration routes

Many migrants residing illegally in the EU and in Germany fly to the EU using valid travel documents and visas, but then remain upon expiration of their visas instead of returning to their home countries. Once their visas have expired, their residence is illegal. However, it is almost impossible for most would-be immigrants from developing countries or crisis regions such as Syria or Iraq to obtain a visa legally.³⁵

Most immigrants reaching Europe irregularly today come along one (or more) of seven sea and land routes. Which route is used depends on the migrant’s country of origin. In addition, smugglers play a significant part in determining which path the irregular immigration into the EU follows.³⁶ In 2015, the three most heavily used routes were the eastern Mediterranean route (via Turkey to Greece), the Western

Balkan route (from Greece through Macedonia and Serbia to Hungary and Croatia), and the central Mediterranean route (via Libya to Italy).³⁷

Frontex reported about 885,000 illegal border crossings to Greece in 2015, seven times the amount in 2014, which was itself already a record year. The strong increase in EU entries through Greece had a direct effect on the migration route through the western Balkans. For example, a majority of the migrants that entered the EU through Greece – a total of about 764,000 people in 2015 – sought to travel further to Western Europe through Macedonia, Serbia, Hungary and Croatia.

At 170,760, Frontex also registered record numbers of irregular border crossings on the central Mediterranean route from Libya to Italy in 2014. Although these declined slightly in 2015 (154,000 irregular border crossings), the numbers remain high overall. With the adoption of the EU-Turkey Agreement and the closing of the Balkan route in early 2016, the situation changed. According to the UNHCR, few asylum-seekers have reached the EU using the eastern Mediterranean route since that time. Instead, the central Mediterranean route represents the key migration route to Europe for refugees and migrants. For example, Frontex recorded record numbers of irregular border crossings here in 2016, with a total of 181,136.

Under the still-valid Dublin system, refugees must apply for asylum in the EU state in which they have first entered the EU. However, given the strong rise in refugee numbers, some countries have allowed migrants to travel on in a largely uncontrolled manner since the summer of 2015. Thus, in 2015, of the nearly 1.3 million EU-wide asylum applicants, more than a third were submitted in Germany, although the vast majority of migrants had entered the EU through Greece or Italy.³⁸

A mandatory part of asylum procedures is to check whether each applicant has a claim to protection in Germany – thus, whether he or she qualifies as a refugee or a migrant. In complex individual asylum procedures, previously mixed-migration flows must be separated into those in need of protection and migrants without a claim to protection in Germany.

33 See Angenendt, Steffen (2015). “‘Triple-Win’ – Ein neues Paradigma der Migrationsgestaltung?” Bertelsmann Stiftung (Ed.). *Migration gerecht gestalten. Weltweite Impulse für einen fairen Wettbewerb um Fachkräfte*. Gütersloh: 55–72.

34 See UN General Assembly (2015). *Transformation unserer Welt: die Agenda 2030 für nachhaltige Entwicklung*. A/70/L.1: 23.

35 This can have various grounds, including the lack of (valid) travel documents, the lack of resources sufficient to provide a means of subsistence in the EU, or insufficiently demonstrated intention to return. For the requirements regarding awards of visas to third-party nationals, see Art. 5 of the Schengen Borders Code. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A14514>

36 See Scholz, Antonia (2013). *Warum Deutschland? Einflussfaktoren bei der Zielstaatsuche von Asylbewerbern*. Bundesamt für Migration und Flüchtlinge. Forschungsbericht 19: 113 ff. www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Forschungsberichte/fb19-warum-deutschland.pdf?__blob=publicationFile.

37 See Frontex. *Migratory Routes Map*. <http://frontex.europa.eu/trends-and-routes/migratory-routes-map/>.

38 See Eurostat. *Asylum statistics*. http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

3.2 Legal framework

In dealing with mixed migration, the legal framework and the legal status of the individuals involved are of key significance. With regard to the international framework, the requirements of the Geneva Refugee Convention (GRC) are crucial, while for the European Union, the Common European Asylum System (CEAS) and its relevant regulations and directives are key, along with migration-law directives particularly on the issues of family reunification, the immigration of highly skilled individuals, and seasonal workers. Both jurisdictions bind Germany's handling of refugees and migrants, and are supplemented by the German Residence Act (AufenthG) and other laws and regulations.

3.2.1 International legal requirements

The 1951 Geneva Refugee Convention (GRC) defines the international legal framework under which determinations whether applicants have claims to protection against persecution or not are made.³⁹ The convention initially addressed the European refugee problem following the Second World War, and was transformed into a global instrument of protection only through an expanded protocol in 1967, which also recognizes countries such as Pakistan and India that have not themselves signed the convention.⁴⁰

Today, it is evident that 65 years after coming into effect, the convention is by no means a static document. The policy has been supplemented by multiple further protection concepts, and continues to form the core of the international refugee regime. In 1969 and 1984, the Organization of African Unity (OAU; today the African Union, AU) and the Organization of American States (OAS) added a claim of protection for people who were forced to flee due to dangers related to civil wars and violent conflicts.⁴¹ In 2004, the EU introduced the right to subsidiary protection, with its directive on standards

for the recognition of third-country nationals as persons needing international protection (Qualification Directive). This is to be granted if, in their country of origin, the person is at threat of serious harm such as the death penalty, torture, inhuman or degrading treatment or punishment, or if they are exposed to "serious and individual threat to ... life ... by reason of indiscriminate violence in situations of international or internal armed conflict."

The GRC has also been further developed through international and regional human-rights treaties. For example, the prohibition on the expulsion and return of refugees, under Art. 30, para 1 of the GRC (non-refoulement), has also become a binding principle of international law even outside countries' sovereign territories, for instance at sea.

Despite this further development of refugee law, numerous structural weaknesses exist. For example, the convention is based on the concept of individual persecution, which provides states considerable room for interpretation in reviewing asylum applications. Whether protection from persecution is in fact granted in practice depends strongly on the individual national context, and particularly on how the receiving countries assess safety conditions in the countries of origin. Thus, recognition rates vary even among the EU member states, although the EU Qualification Directive provides for uniform criteria in applying the refugee definition.⁴² In May and July 2016, the European Commission presented proposals aimed at reducing these differences through a reform of the Common European Asylum System (CEAS).⁴³

Another problem is that changed patterns of persecution and reasons for flight are only partially captured by the convention. To be sure, the UNHCR and many states have since the beginning of the 2000s also considered non-state and gender-related persecution.⁴⁴ However,

39 According to the Geneva Refugee Convention, a refugee is a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." See Art. 1a Para.2 GRC.

40 See Kälin, Walter (2011). "Wer verdient Schutz? Der Flüchtlingsbegriff im Lichte aktueller Herausforderungen." *Asyl. Schweizerische Zeitschrift für Asylrecht und -praxis*: 27.

41 See Marx, Reinhard (2011). "Die Genfer Flüchtlingskonvention: Errungenschaften und Herausforderungen aus europäischer Perspektive." Presentation at the 11th Berlin Refugees Symposium on 20 June 2011: 11. www.eaerlin.de/nachlese/chronologisch-nach-jahren/2011/europa-hat-verantwortung-fuer-fluechtlinge/reinhard-marx-fluechtlingschutz-in-europa-2011.pdf.

42 On the different assessments, see Leerkes, Arjen (2015). *How (un) restrictive are we? "Adjusted" and "expected" asylum recognition rates in Europe*. Ministerie van Veiligheid en Justitie. Amsterdam 2015. Parusel, Bernd (2015). "Solidarity and fairness in the common European asylum system – failure or progress?" *Migration Letters* (12) 2: 124–36.

43 See the proposal for a revision of the EU recognition directive (KOM (2016/466)). http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_beneficiaries_of_international_protection_-_subsidiary_protection_eligibility_-_protection_granted_en.pdf

44 In 2002, the UNHCR released guidelines specifying criteria for international protection in cases of gender-specific persecution (HCR/GIP/02/01). These criteria were integrated into the European Qualification Directive (Art. 9 (2) f) and the German Asylum Law (§ 3) along with additional criteria for protection in cases of non-state persecution.

from the perspective of international law, this is a non-binding supplement to the convention. Particularly given the increasing incidence of refugee-producing situations in fragile states, the idea of refugee flight still seems to be too state-centered.⁴⁵ Alexander Betts has described state failure, environmental disasters, climate change and the loss of natural resources necessary for livelihoods as falling under the umbrella of “survival migration”; these issues are not covered under the current refugee concept, but their inclusion should serve to ground an expanded concept of protection, he argues.⁴⁶

Fundamentally, the protection of refugees in accordance with the GRC and its above-mentioned expansions has considerably stronger international anchoring than do the rights accorded to migrants. Individual states make their own policy decisions on the recognition and reception of migrants. For the purposes of their work, the International Organization for Migration (IOM) defines an international migrant as a person who has spent at least a year outside the country in which their regular residence is located. The term thus includes labor migrants, education migrants, and individuals moving due to family reunification.

In general – unlike in regional contexts such as the European Union – there is overall no international migration law with a binding definition of what is meant by a “migrant.” Clarification within the existing international legal framework is possible only by implication, through contrast with the definition of a refugee contained in the Geneva Refugee Convention. In this case, all those who do not fall under the convention’s narrow criteria would be considered migrants instead of refugees – a categorization that ignores many of the above-outlined and in reality often-encountered grounds for migration, and which additionally supports no changes over the course of time.

In practice, however, it is increasingly common for refugees to become migrants over the course of their lives, and vice versa. In some cases, these status changes are even promoted by the asylum and migration policies of the origin and receiving countries. For example, Finland and Sweden grant (rejected) asylum seekers who have pursued a job for more than four months the opportunity of obtaining a residence permit as a labor migrant. In Belgium, Austria, the Czech Republic, Lithuania, Poland and Germany too, failed asylum seekers who cannot be deported can under

45 See Kälin (2011). op. cit. (Fn. 41): 29.

46 See Betts, Alexander (2010). “Survival Migration: A New Protection Framework.” *Global Governance* 16: 361–382.

certain conditions be awarded toleration status or receive permission to remain on other humanitarian-related grounds.⁴⁷

The most comprehensive guideline for the protection of labor migrants is the International Labor Organization’s International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990.⁴⁸ In addition, in the context of United Nations’ global sustainability goals (SDGs), member states have committed themselves to strengthening the rights of migrants, and in sub-goal 10.7, to the creation of safe migration opportunities. However, it remains unclear how these objectives can be implemented.⁴⁹

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status defines a migrant, as opposed to a refugee, as “a person who voluntarily leaves her country.” This is particularly deemed to be the case if the person has emigrated based on economic motives. However, the UNHCR also notes as a limiting factor that it is sometimes difficult to distinguish between an emigrant driven by economic motives and a refugee; the perspective from which to distinguish between political and economic conditions in the applicant’s country of origin is also often unclear.⁵⁰

It is these gray areas beyond the legal categories that make the distinction between flight and other migratory flows so difficult in reality. To date there are no international agreements aimed at addressing the reality of mixed migration. Only individual proposals have been formulated. Among these has been a 10-point UNHCR action plan in 2007.

This called for the creation of systems that would make it possible, working jointly with the affected states and regional and international organizations, to identify

47 See European Migration Network (2016). *Synthesis Report – Changes in immigration status and purpose of stay: an overview of EU Member States’ approaches*. 12. http://emn.ie/files/p_201608161223422016_emn_synthesis_change_of_status.pdf. For a more detailed discussion of the issue of status change, see Chapter 4.3 of this study.

48 See United Nations General Assembly (1990). *Internationale Konvention zum Schutz der Rechte aller Wanderarbeitnehmer und ihrer Familienangehörigen*.

49 See Paragraphs 23, 25 and 29 of the Policy Statement, as well as 8.8, 10.7, 10c and 17.18 of the sub-goals of the Global Goals for Sustainable Development. www.globalgoals.org/de/.

50 See UNHCR (2013). *Handbuch über Verfahren und Kriterien zur Feststellung der Flüchtlingseigenschaft*. www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=526632914.

protection needs within mixed-migration flows.⁵¹ Under this proposal, refugees and migrants would be distinguished in the course of a review procedure, and both groups would be presented with opportunities for legal migration or voluntary return. The 10-point plan was discussed in regional conferences until 2011, but was not developed further.⁵²

3.2.2 Distinction between flight and migration in German law

European and German legal frameworks are based on the above-noted international basis for distinguishing between refugees and migrants. The European Union's Treaty of Lisbon, the EU Charter of Fundamental Rights and the German Asylum Act (§ 3 Para 1 AsylG) are all anchored in the Geneva Refugee Convention. In Germany, Article 16 of the Basic Law additionally creates an individual right to asylum, although this applies in a more narrowly defined way to political persecution. This is regularly made reference to in the course of the asylum process, but plays only a subordinate role in the asylum decisions.

In practice, it is critical to note that even in the case of non-recognition as refugees, many people remain in Germany for a long period of time because deportation cannot be carried out. For those receiving toleration status lasting years, the Bundestag in July 2015 passed an indefinite residence-right provision (§ 25b AufenthG) as a part of the Residence Act, which enables secure residence prospects as long as the individuals in question have lived in Germany for at least eight years and have integrated sustainably into the local living environment.⁵³

The numerous other changes that have recently been made to the asylum law cannot be traced in detail here. However, it is important to stress that the Integration Act that took effect on 6 August 2016 expanded integration and language courses and facilitated refugees' access to vocational training and the labor market. Recognized refugees receive an unrestricted work permit (§ 31 Employment Ordinance, BeschV).

51 See UNHCR (2007). *op. cit.* (Fn. 3): 29. In December 2016, the 10-point plan was updated. However, this should be understood as a collection of best practices rather than as a strategy for addressing mixed migration. See UNHCR (2016). "UNHCR updates protection 'toolkit' for a world on the move." www.unhcr.org/news/latest/2016/12/584177814/unhcr-updates-protection-toolkit-world-move.html.

52 See Howe, Tim (2012). "Refugee Protection and International Migration: Achievements, Challenges and Lessons Learned from UNHCR's 10-Point Plan Project." www.refworld.org/docid/4f2654362.html.

53 See Act for the Redefinition of the Right of Abode and the Termination of Residence of 27 July 2015. *Bundesgesetzblatt Teil I* 2015 (32). 31 July 2015: 1386.

For asylum seekers and those with toleration status, this will continue to be issued only after four years of residence in Germany. However, since November 2014, they have also had the opportunity to take a non-self-employed job after three months. The Integration Act has improved employment prospects for this group, because the Employment Agency – independently of regional labor-market conditions – can set aside the priority test that allows employment only if no German or EU national with the same qualifications is available. The priority test has been suspended until August 2019 with the exception of Mecklenburg-Western Pomerania, and regionally in Bavaria and North Rhine-Westphalia.⁵⁴

In past years, asylum seekers with "good prospects of remaining" were already given preferential treatment during the asylum procedure, with their applications given a higher priority.⁵⁵ However, the question of whether and if asylum applicants, those with toleration status, and those eligible for subsidiary protection or asylum are allowed access to the labor market still differs depends on residence status.

Legal provisions relating to labor migration are generally oriented toward the needs of the labor market, economic demands and demographic developments. With regard to the mixed-migration relationship considered here, the crucial question is how the shift between types of residence permit and purposes of residence in Germany is handled. In the German Residence Act, five kinds of residence permit are distinguished: the visa, the limited residence permit, the permanent settlement permit, the permanent residence permit (EU), and the Blue Card (EU).⁵⁶ Excluding international-law and humanitarian grounds, the purposes of residence, which are of critical importance for the grant of a residence permit, fall into three categories: familial grounds, educational purposes, or employment.

In any effort to change residence permits, the requirements associated with the permit type that is the goal of the change are crucial. Provided that the requirements for the

54 See Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender (GGUA) (2016). "Zugang zur Beschäftigung mit Duldung." www.ggua-projekt.de/fileadmin/downloads/tabellen_und_uebersichten/Zugang_zu_Arbeit_mit_Duldung_November_2014.pdf.

55 This applies to applicants from Eritrea, Iraq, Iran and Syria, whose recognition rate was over 50 percent in 2014. See Robert Bosch Stiftung (Ed.) (2016). "Chancen erkennen – Perspektiven schaffen – Integration ermöglichen." Bericht der Robert Bosch Expertenkommission zur Neuausrichtung der Flüchtlingspolitik: 36 f.

56 See Grote, Janne and Michael Vollmer (2016). "Wechsel zwischen Aufenthaltstiteln und Aufenthaltswegen in Deutschland. Fokussstudie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN)." Working Paper 57. Bundesamt für Migration und Flüchtlinge.

grant of a residence permit are met, change is typically possible even without leaving the country. However, this does not apply for asylum seekers and those with toleration status. However, since travel to their country of origin and a subsequent return is in most cases impossible for these people, they cannot in practice change their status. Nevertheless, numerous statutory exceptions have been created in recent years that grant asylum applicants and those with toleration status some access to the labor market. Among these is the provision in the Integration Act that gives those with toleration status the right to pursue vocational or academic education throughout their entire stay. This regulation has been in place since 21 July 2016, but has been implemented differently in the various federal states. In Bavaria, it is being interpreted very restrictively. For follow-on training-related employment, a residence permit is extended for an additional two years (the so-called 3+2 rule). Even if no direct follow-on job is found, a further extension of toleration status for six months is possible in order to allow a job search.⁵⁷ However, these rules do not apply to asylum seekers from safe countries of origin who were registered in Germany after 31 August 2015 and whose asylum application has already been rejected.

3.3 Current data on mixed migration

Due to the lack of clarity in the term “mixed migration,” capturing it in quantitative terms is also difficult. As the boundaries between forced and voluntary migration are fluid, the magnitude of mixed migration can only be estimated. Moreover, it must first be noted that refugees make up only a small share of the estimated 244 million people internationally living outside their homelands; (voluntary) migrants, at more than 90 percent, are by far the larger group.⁵⁸ The majority of these migrants live in developed countries, with more than half resident in Europe or North America. By contrast, according to the UNHCR, 86 percent of refugees are to be found in developing or emerging countries.⁵⁹

57 See Pro Asyl. “Anspruch auf Ausbildung: Informationen zur neuen Rechtslage für Geduldete.” <https://www.proasyl.de/news/anspruch-auf-ausbildung-informationen-zur-neuen-rechtslage-fuer-geduldete/>.

58 See UN DESA (2015). *International Migration Report 2015. Highlights*. www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf.

59 The 3.2 million asylum seekers worldwide in 2015 are not included in the UNHCR’s refugee statistics. See UNHCR (2016). *Global Trends. Forced Displacement in 2015*.

When seeking to describe mixed migration from a statistical perspective, a distinction must be made between current stocks and flows. The two types of data are based on different data sources and methods; thus, they can be difficult to compare or set into relation with one another. For example, flow data is often based on statistics drawn from irregular border crossings or tracking systems that estimate migration flows through a combination of various data sources and methods.⁶⁰ Such data are indeed better suited than stock data to determining current migration dynamics, but generally provide no ability to distinguish between refugees and migrants. For this, (stock) data on asylum procedures is necessary; however, this exists only when an application is made and processed.⁶¹

These data problems are of a fundamental nature, and a quantitative determination of mixed migration can thus take place only through the use of workarounds. Most useful here is the so-called total protection rate, which counts how many applicants have actually received protection.⁶²

However, asylum statistics should not be misunderstood as an objective basis for the distinction between voluntary and forced migration. Asylum procedures depend on too many factors of influence, as a comparison of asylum statistics within EU countries shows. Four such factors are particularly relevant with regard to restricting the reliability of such analyses: First, the recognition rates for certain countries of origin vary within the EU, in some cases by a

60 See World Bank (Global Program on Forced Displacement). *Stocktaking of Global Forced Displacement Data* (unpublished manuscript): 41 f. Eurostat also collects flow data on residence permits issued and categorizes these based on citizenship, purpose of immigration (family reunification, education, work, and “other”), and length of stay granted (1–5 months, 6–11 months, longer). The “other” category can be further differentiated into subcategories including “international protection status,” “refugee characteristics or subsidiary protection,” and “humanitarian grounds.” The data is of questionable reliability, however. A spot check for Germany revealed values that were too low in comparison to the corresponding BAMF figures for 2015. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resfirst&lang=en.

61 It should be noted that definitions and survey methodologies used always differ strongly from each other for refugee statistics too. While refugee statistics in most developing countries are based on data collected by the UNHCR when registering refugees, in most developed and emerging countries such data are based on the often-fragmentary information provided by the ministries or institutions responsible for refugees. See Angenendt, Steffen, David Kipp and Anne Koch (2016). “Viele Flüchtlinge, wenige Daten. Die fluchtbezogene Entwicklungszusammenarbeit braucht bessere Daten.” *SWP-Aktuell* 45. www.swp-berlin.org/fileadmin/contents/products/aktuell/2016A45_adt_kpp_koh.pdf.

62 “The total protection rate is calculated from the number of asylum recognitions, refugee recognitions, subsidiary-protection grants, and determinations of non-refoulement relative to the total number of decisions in the relevant time frame.” BAMF (2015). *Das Bundesamt in Zahlen*: 35.

considerable amount. For example, according to Eurostat, only 5 percent of Afghan asylum seekers were recognized in Bulgaria in 2015, as opposed to 95.6 percent in Italy. Similar differences in recognition practices could also be observed for Iraqi asylum seekers, 36.5 percent of whom received recognition in Sweden in 2015 as compared to 98.3 percent in Germany.⁶³ Second, the Eurostat statistics show inaccuracies attributable to double counting and the differing definitions used by the various member states.⁶⁴ In addition, the EU data does not always match the national statistics.⁶⁵ Third, every state's recognition practices, even given high procedural standards, will always be influenced by domestic political factors.⁶⁶ Fourth, even for people from origin countries with low recognition rates or from safe countries of origin, there could be reasons for flight that are not taken sufficiently into account in the asylum procedures.

3.3.1 Mixed migration in the European Union

Using asylum decisions to make a quantitative distinction of mixed migration is based on the assumption that these decisions are always correct. Although this is in reality not always the case, they can provide guidance. The Eurostat database on asylum decisions in EU provides the following overview: In 2015, EU member states recorded a total of 1.26 million asylum applications, and processed 593,000 applications, resulting in 308,000 positive and 285,000 negative decisions.⁶⁷ Numerous asylum seekers who

arrived in the EU in 2015 were not able to submit their asylum application until 2016. Therefore, the number of asylum applications in the first three-quarters of 2016, at 988,000, remained at a similarly high level. At the same time, significantly more asylum decisions were made in 2016 than in the previous year. In the first three-quarters of 2016, around 756,000 asylum decisions were made, of which 459,000 were positive and 297,000 negative.⁶⁸

In 2015, the largest numbers of asylum seekers came from Syria (362,800), Afghanistan (178,200) and Iraq (121,500). While Syrian applicants with a recognition rate of 97.2 percent, Eritrean with a rate of 89.8 percent, and Iraqi applicants with a rate of 85.7 percent had the highest likelihood of achieving protection status, the recognition rate for the 118,390 applicants from the West Balkan states was the lowest among all countries of origin (less than 3 percent). Several proportionally significant countries of origin showed recognition rates of below 50 percent in 2015, and thus made a particular contribution to mixed-migration flows (see Table 1).

3.3.2 Asylum trends in Germany

In 2015, a total of 441,889 asylum applications were submitted in Germany, followed by 722,370 in 2016. This was the highest number of asylum applicants ever recorded in Germany. Only in 1992 was the number of asylum applications at a level comparable to that of 2015, although the total protection rate at that time was considerably lower. This latter rate rose sharply over the course of the 2000s. This development can be explained by the entry into force of the EU Qualification directive in 2004; in the subsequent years, its provisions were integrated into decision-making practices, and resulted in subsidiary protection being offered to those fleeing civil wars in Iraq (and since 2011, Syria), among other outcomes. Previously, the asylum applications of those fleeing wars, for example during the Yugoslavian war in the 1990s, were typically rejected, with applicants often granted only a toleration status.⁶⁹

63 See Eurostat. Asylum statistics. http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

64 See Kleist, Olaf (2015). "Warum weit weniger Asylbewerber in Europa sind, als angenommen wird: Probleme mit Eurostats Asylzahlen." *ZAR – Zeitschrift für Ausländerrecht und Ausländerpolitik*. 9 2015: 294–299. For this reason, the following analysis of mixed-migration flows to Germany will use the more reliable BAMF statistics.

65 On the basis of BAMF statistics, for example, rejected asylum applications can be distinguished from asylum applications that are not given a positive decision because another EU member state is responsible for them under the framework of the Dublin III regulation. See Chapter 3.3.3.

66 In the German context, this can be observed with Afghanistan, currently the second-most-common country of origin. For example, Victor Pfaff poses the thesis that the federal government – more or less directly – has sought to influence the BAMF's recognition practices with the reference to domestic alternatives to becoming a refugee. See Pfaff, Victor (2016). "Sind Schutzquoten manipulierbar? Das Beispiel Afghanistan." Presentation at the 16th Berlin Symposium on Refugee Protection on 20 June 2016, as well as Mielke, Katja, and Elke Grawert (2016). "Warum Afghanistan kein sicheres Herkunftsland ist." Bonn International Center for Conversion (BICC). 16 February 2016. www.bicc.de/uploads/tx_bicctools/BICC_Policy_Brief_1_2016.pdf.

67 In addition, in 2015, a further 26,000 people received a protection status through a final decision on appeal. See Eurostat. "EU-Mitgliedstaaten erkannten im Jahr 2015 über 330 000 Asylbewerber als schutzberechtigt an." 20 April 2016. <http://ec.europa.eu/eurostat/documents/2995521/7233422/3-20042016-AP-DE.pdf/caf97549-b14d-45f3-bf91-20cf5e6f072>.

68 Approximate values. See Eurostat. "First instance decisions on applications by citizenship, age and sex." Quarterly data. <https://data.europa.eu/euodp/en/data/dataset/yfVvUmczZf2jCXc8xFVGNQ>

69 For the statistical data on tolerations in Germany, see Chapter 4.4 on return and reintegration policy.

TABLE 1 Total applications and total protection rates of asylum seekers from selected countries of origin in the EU-28 in 2015, according to Eurostat^a

	Total applications	Total protection rate in %
Sub-Saharan Africa		
Nigeria	18,090	24.5
Mali	10,470	29.2
Gambia	9,535	33.6
Senegal	6,310	27.9
Guinea	6,175	37.5
Ivory Coast	3,940	31.7
Ghana	3,275	26.0
North Africa		
Algeria	3,670	6.1
Morocco	2,055	12.7
Asia		
Pakistan	18,905	26.5
Bangladesh	11,090	16.1

a) See Eurostat. Asylum statistics. http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

3.3.3 Mixed migration to Germany

In 2015, a total of 1.8 million foreign nationals moved into Germany, while 568,639 departed. In this regard, in comparison to the previous year, the number of foreign-national arrivals rose by 57.6 percent, and the number of departures by 20.4 percent. In 2015, the net migration balance was positive at 1.2 million people, up from 677,000 in the previous year. In 2014, EU nationals still accounted for more than half (54.8 percent) of all foreign migrants. In 2015, this relationship reversed; at 62.1 percent, the largest share of migrants came from non-EU states.⁷⁰

In considering the share of stated residence purposes for incoming residents from non-EU states, it is clear that a majority of the immigration to Germany takes place through asylum.⁷¹ Of a total of 890,000 asylum seekers who arrived in Germany in 2015, not all were able to immediately submit an application due to the overloading of the Federal Office for Migration and Refugees (BAMF).⁷² While 441,899

70 See BAMF (2016). *Wanderungsmonitoring: Erwerbsmigration nach Deutschland*. Jahresbericht 2015. Nuremberg, June: 8.

71 See BAMF (Ed.) (2016). op. cit. (Fn. 10).

72 Originally, about 1.1 million asylum seekers were assumed. According to the federal government, the overestimate was due to double and faulty registrations as well as further migration into other EU countries. See Federal Ministry of the Interior. "890.000 Asylsuchende im Jahr 2015." Press release, 30 September 2016. www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2016/09/asylsuchende-2015.html

TABLE 2 Total protection-rate trends in Germany, 1999–2016^a

Year	Total protection rate
1999	9.1 %
2000	12.4 %
2001	24.4 %
2002	6.2 %
2003	5.0 %
2004	4.9 %
2005	6.5 %
2006	6.3 %
2007	27.5 %
2008	37.7 %
2009	33.8 %
2010	21.6 %
2011	22.3 %
2012	27.7 %
2013	24.9 %
2014	31.5 %
2015	49.8 %
2016	62.4 %

a) See Federal Office for Migration and Refugees (BAMF) (2016). *Schlüsselzahlen Asyl 2016*. www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Flyer/flyer-schlüsselzahlen-asyl-2016.html?nn=1694460. For the total protection rate from 1999 through 2005, see the Federal Government of Germany's Reply to a Small Survey posed by Die Linke Parliamentary Party Group on 8 January 2008: Bundestagsdrucksache 16/7687 (Answer to Question 6). According to the federal government, there is no reliable data on the issue for the period before 1999 (Answer to Question 3).

applications for asylum were made in 2015, and 282,726 asylum applications received decisions, 2016 saw 722,370 applications submitted for the first time, along with 695,733 decisions. This increase was largely made possible by reform efforts within the BAMF that increased the efficiency of the asylum system. Additionally, the number of asylum seekers who actually arrived in Germany in 2016, at about 280,000, was significantly lower than in the previous year.⁷³

In 2015, a total of 140,915 asylum applicants were accorded protection status (total protection rate: 49.8 percent). In 2016, this rose sharply to 433,920 (total protection rate 62.4 percent; see Table 2). By contrast, 91,514 of all asylum applications (32.4 percent) were rejected in 2015; in 2016, this was 173,846 (25 percent; see tables 3 and 4). The high number of other procedural conclusions for some countries

73 See Federal Office for Migration and Refugees (BAMF) (2016). *Schlüsselzahlen Asyl 2016*. www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Flyer/flyer-schlüsselzahlen-asyl-2016.html?nn=1694460.

TABLE 3 Top 20 countries of origin for asylum applications with decisions in absolute figures, total protection rates, rejections, and other procedural conclusions for asylum seekers, as well as visa rejection rate, 2015^a

	Country of origin	Asylum applications	Decisions	Total protection rate	Rejections	Other procedural conclusions	Visa refusal rate ^b
1.	Syria	158,657	105,620	96 %	0.0 %	4.0 %	-
2.	Albania	53,805	35,721	0.2 %	51.4 %	48.4 %	19.8 %
3.	Kosovo	33,427	29,801	0.4 %	87.7 %	11.8 %	20.8 %
4.	Afghanistan	31,382	5,966	47.6 %	13.7 %	38.6 %	27.0 %
5.	Iraq	29,784	16,796	88.6 %	0.8 %	10.6 %	3.6 %
6.	Serbia	16,700	22,341	0.1 %	60.9 %	39.0 %	9.9 %
7.	unknown	11,721	4,128	80.2 %	8.5 %	11.3 %	-
8.	Eritrea	10,876	10,099	92.1 %	0.4 %	7.5 %	-
9.	Macedonia	9,083	8,245	0.5 %	67.7 %	31.8 %	20.4 %
10.	Pakistan	8,199	2,015	9.8 %	41.9 %	48.3 %	19.7 %
11.	Iran	5,394	2,664	59.6 %	10.4 %	30.0 %	11.0 %
12.	Russian Federation	5,257	4,832	8.3 %	19 %	72.7 %	2.7 %
13.	Nigeria	5,207	1,149	6.6 %	15.8 %	77.5 %	29.7 %
14.	Somalia	5,126	2,038	39.7 %	9.0 %	51.3 %	-
15.	Bosnia-Herzegovina	4,634	6,500	0.2 %	51.4 %	48.4 %	9.9 %
16.	Ukraine	4,569	1,008	5.4 %	4.2 %	90.5 %	6.2 %
17.	stateless	3,886	2,158	91.5 %	1.2 %	7.3 %	-
18.	Montenegro	3,233	2,297	0.3 %	80.8 %	18.9 %	12.8 %
19.	other Asian	3,201	21	84.9 %	5.1 %	9.9 %	-
20.	Gambia	2,993	603	2.7 %	9.0 %	88.4 %	-

a) See Federal Office for Migration and Refugees (BAMF) (2016). Antrags-, Entscheidungs- und Bestandsstatistik für das Jahr 2015. Federal Government of Germany's Reply to a Small Survey Posed by Die Linke Parliamentary Party Group (2016): *Visaerteilungen im Jahr 2015*. Bundestagsdrucksache 18/9477.

b) Visa statistics are available only for those countries in which Germany maintains the appropriate consular missions.

of origin is striking; other such outcomes include the withdrawal of asylum applications and the suspension of the proceedings under the terms of the Dublin III Regulation. Overall, the statistical breakdown of the reasons for the suspension or dismissal of proceedings is insufficient; such information would be urgently needed for a better understanding of the overall picture.⁷⁴

Regionally disaggregated, about 90 percent (81,677) of the rejections concerned applicants from the six West Balkan countries, whose total protection rates were all under 0.5 percent (see Table 3). The number of asylum applications from these countries declined sharply in 2016. Only Albania,

⁷⁴ Notable here are the high numbers of other procedural conclusions for some countries of origin. In addition to application withdrawals and other procedural discontinuations, procedural suspensions attributable to the Dublin III Regulation presumably play a particularly large role here. A more precise statistical breakdown of the grounds for procedural discontinuation would be necessary for a better understanding of the decision-making process. See Bundesamt für Migration und Flüchtlinge (2016). op. cit. (Fn. 72).

with 14,859 new applications, showed a larger number of asylum seekers in 2016 (making it the sixth-largest country of origin).⁷⁵ The countries of origin whose nationals received a protected-status rate of less than 50 percent in 2016 included Pakistan, Nigeria, the Russian Federation, Gambia, Turkey and Armenia.

The granting of visas is also relevant for the analysis of mixed migration to Germany. In 2015, Germany granted approximately 2.15 million visas, about as many as in the previous year. The most significant countries of origin were China (with 394,259 applications processed), Russia (313,854 applications) and Turkey (171,550 applications). Most people came using Schengen visas and stayed for only a short time. Due to family reunification of Syrian refugees, the number of visas for spouses and family reunification rose sharply, from about 50,000 (2014) to 73,000 (2015).

⁷⁵ See Bundesamt für Migration und Flüchtlinge (2017). op. cit. (Fn. 72).

TABLE 4 Top 20 countries of origin with asylum applications and decisions in absolute numbers, total protection rates, rejections, and other procedural conclusions for asylum applications, 2016^a

	Country of origin	Asylum applications	Decisions	Total protection rate	Rejections	Other procedural conclusions
1.	Syria	266,250	295,040	98.0 %	0.1 %	2.0 %
2.	Afghanistan	127,012	68,246	55.8 %	36.4 %	7.8 %
3.	Iraq	96,116	68,562	70.2 %	20.8 %	9.0 %
4.	Iran	26,426	11,528	50.7 %	33.0 %	16.2 %
5.	Eritrea	18,854	22,160	92.2 %	0.6 %	7.2 %
6.	Albania	14,853	37,673	0.4 %	79.7 %	19.9 %
7.	unknown	14,659	15,371	84.4 %	7.7 %	7.8 %
8.	Pakistan	14,484	12,935	3.3 %	63.4 %	33.3 %
9.	Nigeria	12,709	3,786	9.9 %	47.2 %	42.9 %
10.	Russian Federation	10,985	12,799	5.2 %	44.6 %	50.2 %
11.	Somalia	9,851	6,882	71.1 %	8.6 %	20.3 %
12.	Serbia	6,399	24,178	0.3 %	58.7 %	41.0 %
13.	stateless	5,707	5,965	91.2 %	5.0 %	3.8 %
14.	Gambia	5,656	1,131	6.5 %	48.5 %	45 %
15.	Turkey	5,383	1,837	8.2 %	38.4 %	53.5 %
16.	Lebanon	5,202	4,071	8.4 %	70.1 %	21.5 %
17.	Armenia	5,185	2,626	7.2 %	67.9 %	24.9 %
18.	Kosovo	4,978	18,920	0.8 %	78.4 %	20.9 %
19.	Macedonia	4,835	14,712	0.3 %	62.4 %	37.3 %
20.	Azerbaijan	4,573	2,722	16.9 %	63.4 %	19.7 %

a) See Federal Office for Migration and Refugees (BAMF) (2017). *Antrags-, Entscheidungs- und Bestandsstatistik für das Jahr 2016*. (unpublished).

Overall, 140,000 visa applications were rejected in 2015, representing a refusal rate of 6.1 percent.⁷⁶ In considering the issuance of visas for the top 20 countries of origin of asylum applicants in Germany, an above-average rate of rejection is evident in many cases. This correlation can be explained by the fact that Germany diplomatic missions in these countries often assume that visa applicants lack a “familial or economic rooting” in the origin country, and thus a “lack of willingness to return” is present. This is particularly true for Afghanistan and Nigeria, and other sub-Saharan African countries.

In summary, a consideration of the asylum statistics shows that the share of refugees in mixed-migration flows to the EU and Germany is higher than that of (non-refugee) migrants. This is primarily due to the high number of asylum applicants from the war zones of Syria and Iraq who came to the EU using the eastern Mediterranean

route. Migration flows on this route declined substantially in 2016, but have remained at a high level on the central Mediterranean route. Should this trend persist, the share of (non-refugee) migrants would probably increase, as people using the central Mediterranean route to reach the EU are generally less likely to be granted recognition as refugees.

⁷⁶ See Federal Government of Germany’s Reply to a Small Survey Posed by Die Linke Parliamentary Party Group (2016). *Visaerteilungen im Jahr 2015*. Bundestagsdrucksache 18/9477.

4 Approaches to managing mixed migration

Mixed migration represents an international challenge, and demands closer cooperation between countries of origin and receiving countries. Such approaches, however, must be based on a coherent national policy; without an appropriate national asylum and migration policy, no progress will be possible at the international level either. The national-state level plays a crucial role, with a significant range of policy-design options possible. For the German discussion of mixed migration, four sets of issues – all of which are already the subject of active policymaking – are particularly important:

- (1) The search for new directions in refugee policy;
- (2) The further development of migration policy through new approaches that promote labor-market-related immigration and help manage other voluntary immigration flows;
- (3) The effort to enable new transitions between asylum and migration, particularly the question of whether and how a status change can be possible, and what processes for ascertaining newly arrived refugees' skills and knowledge would be reasonable and desirable; and
- (4) The increasing significance of return policy for refused asylum applications, including the question of how Germany can play a stronger role in the reintegration of these people in their countries of origin.

4.1 Refugee protection

Various trends with regard to handling mixed-migration flows have been evident in Germany and the EU as a reaction to the sharp increase in refugee numbers since 2014. In Germany, the federal government has declared the West Balkans to be safe countries of origin, and has additionally sought to extend this approach to

Maghreb countries. It has also imposed new restrictions on refugee policy in other ways. As a reaction to the refugee catastrophes in the Mediterranean in May 2015, the EU Commission published its European Agenda for Migration. This provides for the protection of Europe's external borders, the reduction of irregular immigration, a reform of the Dublin system and the expansion of legal immigration pathways to Europe.⁷⁷ Various measures have been discussed as a part of this agenda. With regard to the protection of refugees, a desire to externalize this process has been evident.⁷⁸

4.1.1 Safe countries of origin

The concept of safe countries of origin is defined in Article 16a of the Basic Law (GG), as well as in §29a of the Asylum Act (AsylG), and aims at reducing “migration incentives” by declaring countries to be safe “in which ... it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists.” In these cases, asylum seekers' applications can be rejected as “plainly unfounded” unless they can prove that they face the threat of political persecution in their home countries. The appeal period is limited to a single week and has no suspensive effect, so that asylum applicants thus affected can be deported even if they are contesting the decision.

After the Western Balkan countries were declared safe countries of origin in 2014 and 2015, the number of applications from there fell sharply. This can be explained in part by the fact that waiting and processing times were

77 See European Commission. “Die europäische Migrationsagenda.” 13 May 2015. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_de.pdf.

78 See Angenendt, Steffen, David Kipp and Anne Koch (2016). “Grenzsicherung, Lager, Kontingente: Die Zukunft des europäischen Flüchtlingsschutzes?” *SWP-Aktuell* 30. www.swp-berlin.org/fileadmin/contents/products/aktuell/2016A30_adt_kpp_koh.pdf.

reduced, with asylum applications from these countries processed with a higher priority in special arrival centers. This has been accompanied by a corresponding repatriation policy. In the first half year of 2016, 75 percent of all repatriations from Germany had the Western Balkan countries as their destination (a total of 10,300 of 13,700 deportations), as did the majority of financially supported voluntary departures (20,400 of 30,600).⁷⁹ The regulation adopted by the federal government for labor migrants from the Western Balkans as a part of the asylum-procedure acceleration law (§ 26 Para. 2 of the Employment Regulation) enables migrants who have concrete jobs or vocational-training offers in Germany to obtain visas in their countries of origin, assuming the Federal Employment Agency has approved the hiring company's contract. To qualify, migrants may not have received benefits under the Asylum Seekers Benefits Act in the last two years, must have withdrawn their applications for asylum, and must have left Germany voluntarily before the regulation took effect in October 2015.⁸⁰

Based on this experience, the federal government decided in early 2016 to declare Algeria, Morocco and Tunisia to be safe countries of origin as well.⁸¹ However, the consent by the Bundesrat required to finalize this decision is still pending. The finding that recognition rates from these countries were also very low was pivotal in the federal government's decision. However, in an opinion on the draft bill, the Federal Office for Migration and Refugees (BAMF) noted that their statistics were not sufficiently reliable.⁸²

79 See Federal Government of Germany's Reply to a Small Survey Posed by Die Linke Parliamentary Party Group (2016). Bundestagsdrucksache 18/9173. 8 August 2016.

80 The new regulations are showing early effects. For example, a total of 15,500 work visas were issued between January and September 2016 in the German consular representations in Albania, Kosovo, Serbia, Macedonia, Bosnia-Herzegovina and Montenegro. For companies, the offer is evidently attractive. In the first half year of 2016 alone, according to the Federal Agency for Employment, a total of 17,182 approvals had already been issued - predominately within the construction (53.2%) and hospitality (12.6%) sectors, as well as the area of "other economic services" (9.2%). See *ZEIT Online*. "15,500 Visa für Arbeitsmigranten vom Westbalkan." 25 October 2016. www.zeit.de/wirtschaft/2016-10/arbeitsmigration-migranten-westbalkan-asyllbewerber-arbeitsvisa-arbeitsministerium. Burkert, Carola and Haase Marianne. "Westbalkanregelung: ein neues Modell für die Migrationssteuerung?" *WISO direkt* 02/2017, Friedrich-Ebert-Stiftung. <http://library.fes.de/pdf-files/wiso/13156.pdf>.

81 An important factor driving these measures was the public debate over the sexual assaults in Cologne on New Year's Eve 2015/2016, in which Moroccan and Algerian citizens were particularly numerous among the accused.

82 See Gräfin Praschma, Ursula. "Stellungnahme des Bundesamtes für Migration und Flüchtlinge in einer öffentlichen Anhörung im Innenausschuss des Deutschen Bundestages am 25.4.2016." Bundestagsdrucksache 18/8039. www.bundestag.de/bundestag/ausschuess18/a04/anhoeerungen/79-sitzung-inhalt/419476.

According to the agency, it has been difficult to persuade asylum seekers from these countries to submit applications. One probable reason for this is that these asylum applicants generally have only a low chance of recognition. The total protection rate in 2015 was just 0.2 percent for Tunisia, and respectively 1.6 percent and 3.7 percent for Algeria and Morocco. According to the BAMF statement, the safe-origin-country discussion alone had already reduced the number of applications, from 3,356 registrations in January 2016 to 480 in March of that year. In June, a total of just 276 applications came from citizens of these three countries.

A 2015 study concluded that the classification of countries as safe countries of origin significantly reduced the number of asylum applications from the countries so described.⁸³ This relationship between the classification of the countries as safe and the decline in the numbers must nonetheless be examined in more detail, particularly as the instrument is also gaining significance elsewhere in the EU; indeed, all member states with the exception of Italy and Sweden are already today using (different) lists of safe countries of origin. The legal requirements set out by the EU Asylum Procedures Directive for the creation and maintenance of lists of safe countries of origin apply in all cases. In practice, however, not all countries are following these guidelines, which is why the European Commission recently proposed a unification of the various national lists after a transitional period of three years.⁸⁴

Separately, another pressing question with regard to mixed migration and the significance of the Maghreb countries is whether these countries can be persuaded to engage in more significant readmission of their own nationals. A slight increase has been evident in recent years: While in 2015, only 136 nationals were repatriated to these countries, this had gone up to 166 nationals by the end of the first six months of 2016.

4.1.2 Extraterritorial protection

One of the four main objectives of the EU migration agenda is the reduction of incentives for irregular migration. The agenda provides for increased cooperation with countries of origin and transit countries with the aim of better

83 See Braun, Sebastian and Richard Franke (2015). "Ausweitung sicherer Herkunftsstaaten: Folgen für die Zahl der Asylträger." *Wirtschaftsdienst* 95: 752.

84 See European Parliament. "Asylum: EU list of safe countries of origin to replace national lists in 3 years." 7 July 2016. www.europarl.europa.eu/news/en/news-room/20160707IPR36205/asylum-eu-list-of-safe-countries-of-origin-to-replace-national-lists-in-3-years.

managing migration flows to Europe. For example, the Commission supports migration centers in such countries. In Niger, a center of this kind has been established in cooperation with the IOM, the UNHCR and local agencies. The center is intended to “provide local protection and create resettlement opportunities for people in need,” and to contribute to “painting a more realistic picture of the chances of success for migrants on the way to Europe, and to supporting irregular migrants in the process of voluntary return.”⁸⁵

This pilot project is reminiscent of earlier calls for facilities in transit countries. Proponents of this idea see various advantages in the concept: First, mixed-migration flows could in theory be disentangled before migrants’ arrival in the EU. Only those migrants whose application for asylum was approved in the welcome centers would be allowed to enter the European Union. People from safe third countries, by contrast, could be supported in returning to their homelands, for example through the provision of financial incentives. In this way, the asylum systems in German and Europe could be relieved, and faster and better-informed decisions on the acceptance or rejection of migrants made, which ultimately would lead to better protection of refugees. In addition, this form of facility could help prevent dangerous journeys across the Mediterranean, cutting off smugglers’ income sources. An additional argument centers on the possibility of creating a common and uniform EU-wide system, thus using resources more efficiently.⁸⁶

The idea of creating transit-country centers for the regulation of migration flows is not new. Indeed, it has always been raised when large numbers of migrants have arrived irregularly in the European Union. For example, similar concepts were called for in Denmark and the Netherlands in the 1980s and 1990s. In 2003, then-UK Prime Minister Tony Blair, as a part of his “new vision for refugees,” made what was at that time the most concrete proposal to date for the extraterritorial review of asylum seekers’ protection requests. Although the proposal was discussed at various EU meetings, and the governments of individual member states certainly expressed interest in it, Germany and Sweden in particular were critical of the

proposal, and it was ultimately dropped. However, only a year later, then-German Interior Minister Otto Schily raised the idea anew, saying that the EU should establish “safe zones” or “reception camps” in North Africa. Migrants who were picked up in the Mediterranean would be sent back and brought to extraterritorial centers, where a preliminary examination could be used to decide which asylum seekers should be allowed to travel to the EU, and which should be repatriated to safe countries.

Even though various forms of extraterritorial transit, welcome or reception centers have been repeatedly discussed around the EU in recent years, neither the EU nor any of its member states today make decisions on asylum applications extraterritorially – in contrast to other countries such as the United States or Australia, which have already pursued such concepts on at least a temporary basis.⁸⁷ This is primarily because the establishment of such centers in third countries raises fundamental questions: For example, it must first be clarified whether the asylum procedures meet fundamental- and human-rights standards, and whether an asylum procedure in a third country would be even be feasible under German law. In addition, certain organizational and institutional conditions would have to be in place. The lack of binding EU refugee-distribution mechanisms has also thus far hindered the establishment of extraterritorial asylum centers.⁸⁸

In addition, numerous normative and ethical questions remain unanswered: Can autocratic states known for human-rights violations really be legitimate partners in a humane asylum and migration policy? To what extent are policy responses to European refugee-protection crisis simply being outsourced to states that are themselves being destabilized by conflicts or crises, and are considerably less prepared to deal with large numbers of refugees? Such outstanding issues make it doubtful whether extraterritorial centers with any authority beyond offering advice and information to refugees will be able to be created in the near future, despite calls by various EU interior ministers and an intensifying public debate on the issue.⁸⁹

85 European Commission. *Die europäische Migrationsagenda*. 13 May 2015: 7. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_de.pdf.

86 See Léonard, Sarah and Christian Kaunert (2016). “The extraterritorial processing of asylum claims.” *FMR* 51. www.fmreview.org/destination-europe/leonard-kaunert.html.

87 For example, in the course of the “Pacific solution” between 2001 and 2008, Australia transferred protection-seekers apprehended on the Pacific Ocean to extraterritorial reception centers in Nauru and Manus (Papua New Guinea). After a five-year pause, this practice was reintroduced in 2012 due to the rise in refugee numbers.

88 See Scientific Services, German Bundestag (2015). *Zur verfassungsrechtlichen Zulässigkeit extraterritorialer Asylverfahren in Drittstaaten*. www.bundestag.de/blob/405480/b2a14865fb4ccff21e61853ccd7bb892/wd-3-058-15-pdf-data.pdf.

89 See Léonard, Sarah and Christian Kaunert (2016). “The extraterritorial processing of asylum claims.” *FMR* 51. www.fmreview.org/destination-europe/leonard-kaunert.html.

4.1.3 Resettlement

Another form of externalizing refugee protection lies in the resettlement of refugees in a third country. While the admission of refugees to other countries such as the United States, Canada or Australia through the UNHCR resettlement program has a long tradition, European states have not or have only very reluctantly participated in this program in the past. For example, Germany makes only about 500 admission places available through the UNHCR program,⁹⁰ while the United States alone set a 2016 goal of admitting 85,000 refugees.⁹¹

However, Germany has gathered experience with the relocation of large numbers of refugees in the context of earlier humanitarian admission programs: For example, Germany took in around 2,500 refugees from Iraq in 2008, and since 2013 has admitted nearly 42,000 Syrians from the states bordering the civil-war-torn country. However, the federal government has not established any further humanitarian admission programs since that time. This has been due to the sharp rise in refugee numbers in 2015, as well as the unwillingness of other EU member states to support the approach and convert it into a comprehensive and coordinated European admissions program.⁹²

A discussion of relocation possibilities for refugees emerged once again in 2016. Given the high number of refugees, Austria introduced an upper limit for admissions in February 2016. Other EU countries followed suit, leading to a series of border closures along the Balkan route. A backlog of asylum seekers subsequently formed at the Greek-Macedonian border. At the same time, a discussion flared regarding the relocation of Syrian refugees from Turkey, then the primary transit country for refugees traveling to the European Union. Given the many deaths on the Mediterranean, and the inability of EU member states to agree on a means of distributing refugees within the EU, this orderly resettlement appeared to be an attractive alternative to uncontrolled immigration. These discussions ultimately resulted in a preliminary conclusion in the form of the EU-Turkey Declaration of 18 March 2016.

90 See German Federal Ministry of the Interior: *Humanitäre Aufnahmeprogramme des Bundes*. www.bmi.bund.de/DE/Themen/Migration-Integration/Asyl-Fluechtlingschutz/Humanitaere-aufnahmeprogramme/humanitaere-aufnahmeprogramme_node.html.

91 U.S. Department of State. *Refugee Resettlement in the United States*. www.state.gov/r/pa/pl/249076.htm.

92 See Angenendt, Steffen, David Kipp and Anne Koch (2016). op. cit. (Fn. 83).

Under this agreement, all refugees entering the EU irregularly from Turkey to Greece were as of 20 March 2016 to be sent back to Turkey. For every Syrian sent back to Turkey from Greece in this way, a person needing protection would conversely be relocated from a Turkish refugee camp to an EU member state. A maximum of 72,000 places are available for this 1:1 relocation procedure; participation by individual EU member states is voluntary.⁹³ Germany initially committed itself to admit 1,600 vulnerable individuals under the program within two years.⁹⁴

Supporters see in the agreement the prospect of significant relief for the European asylum system. In addition, by accepting refugees that are “pre-sorted” on the basis of transparent selection criteria, and by thus disentangling mixed-migration flows, popular acceptance for the admission of refugees could be strengthened.⁹⁵

However, there are serious risks associated with the agreement. For example, the detention of asylum seekers in Greece in so-called hotspots raises human-rights questions. It is doubtful whether those seeking protection will be accorded adequate legal assistance in these camps, or sufficient protection in Turkey. Although there is broad consensus that Syrian war refugees are accorded the appropriate protection status in Turkey, the UNHCR continues to assess the Turkish state’s asylum-policy capacities as deficient overall, and human-rights organizations have reported on illegal deportations of Afghan nationals. In addition, the reduction in the number of migrants arriving in the European Union does not produce a genuine reduction in flight and migration flows. Rather, it can be assumed that migrants will simply be transferred to other countries, thus producing foreign and security policy challenges there. Critics accuse the participating countries both of outsourcing and eroding refugee protection, arguing that the agreement is primarily about securing borders rather than protecting refugees. In this regard, “the character of resettlement [is changed from] a humanitarian instrument for vulnerable refugees

93 See European Council. *EU-Turkey Statement*. 18 March 2016. www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/.

94 See German Federal Ministry for the Interior. *Humanitäre Aufnahmeprogramme des Bundes*. www.bmi.bund.de/DE/Themen/Migration-Integration/Asyl-Fluechtlingschutz/Humanitaere-aufnahmeprogramme/humanitaere-aufnahmeprogramme_node.html.

95 For refugee-protection trends in Europe, see Angenendt, Steffen, David Kipp and Anne Koch (2016). “Grenzsicherung, Lager, Kontingente: Die Zukunft des europäischen Flüchtlingsschutzes?” *SWP-Aktuell* 30. www.swp-berlin.org/fileadmin/contents/products/aktuell/2016A30_adt_kpp_koh.pdf.

used strategically to address difficult refugee situations to a migration-policy instrument for the prevention of irregular flight migration to Europe.”⁹⁶

Although the agreement has led to a reduction in migration flows, the number of Syrians relocated under its terms remains small to date; indeed, by 5 December 2016, only 2,761 individuals had been moved.⁹⁷

Beyond the agreement with Turkey, the EU Commission presented an additional proposal for a common resettlement program in July 2016. The goal of this EU Resettlement Framework is to establish uniform processes and a common framework for such resettlements, for example through standard procedures for the selection and handling of resettlement candidates. However, member states would still be free to decide how many individuals they wanted to admit each year. For each person a member state admitted under this new framework, it would receive EU financial support of €10,000.⁹⁸ Assuming this proposal is ultimately implemented, it remains to be seen whether member states will be willing to accept more vulnerable individuals through the resettlement quotas based on the new framework’s provisions.

Overall, resettlement always poses the risk that states will seek to free themselves from further humanitarian responsibilities by honoring limited relocation quotas, thus replacing the legal claim to asylum with the controlled admission of refugees through fixed programs – particularly if, as in the case of the EU-Turkey Agreement, those arriving irregularly are set off against the refugees given managed resettlement. Sweden, for example, has decided to augment its resettlement program, while at the same time introducing new restrictions on asylum and access rights.⁹⁹ It is clear that resettlement programs’ contribution to the disentanglement of mixed migration depends on their scope. It can be assumed that only sufficiently large

programs – for the EU today, at least an estimated 100,000 people – would be able to act as “communicating vessels,” and thus be able to render a correspondingly meaningful contribution.

4.2 Migration-policy reforms

In comparison to asylum policy, German migration policy still lacks coherence, transparency and efficiency, despite the past years’ reform efforts. The existing proliferation of migration-policy regulations is the result of decades of ad hoc responses to short-term challenges. As a result, the regulations are not well-suited to shaping labor migration so that the skilled workers needed can be recruited without major hurdles. Relevant indicators here include the still very small number of skilled immigrant workers from third countries, and their small share as a proportion of all immigration to Germany. At this low volume, today’s legal labor migration to Germany is not sufficient to make a contribution to the disentanglement of mixed-migration flows.

These deficits are perceived not only within the business and academic sectors, but also within the political sphere. All Bundestag parliamentary groups are currently considering how the reforms can be continued. This includes debate over “small” reform proposals largely aimed at improving the existing system; however, broader approaches are also being considered. These primarily aim at the introduction of a point system that would allow would-be immigrants to apply for a work permit providing long-term immigration prospects. Here again, two variants are being discussed, which in essence differ on the basis of whether they are meant to supplement or replace existing migration regulations.

4.2.1 Further development of existing regulations

Existing German regulations on labor migration are oriented toward differentiation and the most detailed and precise assessment possible of individual applicants’ situations. The system is thus extremely complex by international standards, and – according to the cited analysis by Hunger and Krannich – includes more than 50 different possibilities for immigration under different criteria and conditions.¹⁰⁰ Contributing to the opacity are the facts that relevant

96 See Kleist, Olaf (2016). “Die europäische Flüchtlingskrise und die Zukunft des Resettlements.” *bpb Kurzdossier*. www.bpb.de/gesellschaft/migration/kurzdossiers/230521/zukunft-des-resettlements.

97 See European Commission (2016). “Kommission berichtet über die ihm Rahmen der Europäischen Migrationsagenda erzielten Fortschritte.” 8 December 2016. http://europa.eu/rapid/press-release_IP-16-4281_de.htm.

98 See European Commission (2016). “Enhancing legal channels: Commission proposes to create common EU Resettlement Framework.” 13 July 2016. http://europa.eu/rapid/press-release_IP-16-2434_en.htm.

99 See www.migrationsverket.se/English/About-the-Migration-Agency/News-archive/News-archive-2016/2016-09-30-The-Swedish-Migration-Agency-is-preparing-for-an-increased-refugee-quota.html.

100 See Hunger, Uwe and Sascha Krannich (2016). *Neukonzeption der Einwanderungsregelungen in Deutschland. Münster und Siegen*. FES (unpublished manuscript).

regulations are distributed unsystematically between numerous laws and ordinances, and that key terms and concepts are not made clear. Moreover, various institutions are responsible for statistically recording specific groups, and some groups – such as stage assistants or journalists – are statistically recorded only in grouped categories, not in individual categories. Further development of the existing system must therefore start with systematization, integration, and a general improvement in internal (relative to businesses and the public) and external (relative to potential migrants and partner-country governments) clarity, as well as a restructuring of existing legal and regulatory provisions.

Such improvements to the existing system are possible at many points. With regard to mixed migration, four aspects are of particular urgency:

(1) Improving entry and residence options for highly skilled individuals.

In order to make immigration more attractive for the highly skilled, entry for family members could be facilitated. For example, partners of highly skilled individuals could be offered an independent right of residence. In addition, language-skill requirements could be lowered, with no need for the completion of language courses before entry.

(2) Expanding entry opportunities in the absence of firm job commitments.

The rules governing temporary migration for the purpose of seeking work (§18c AufenthG) could be extended. To date, they have applied to foreign university graduates and to migrants who have completed a vocational-training program in Germany. They could be extended to include non-academic occupations, and migrants could be allowed to engage in minimal employment in order to defray living expenses while looking for a permanent job.

(3) Facilitating permanent residence

Germany could increase its attractiveness as a country of immigration by granting permanent settlement permits after three years to highly qualified individuals and skilled workers. In addition, naturalization could be rendered easier.¹⁰¹

(4) Improving administrative performance

Visa issuance has been a particular weakness of the regulations to date. Waiting times for applicants are generally much too long, in large part because many embassies and consulates are chronically overworked thanks to the detailed processing – often duplicative of the work performed by German social agencies and immigration authorities – of applications for family reunification. Additionally, would-be immigrants to Germany in practice have no access to consulates in many countries, because these are too far away or because the consulates lack the necessary structural and other infrastructures. Solving these problems would require furnishing embassies with better infrastructure and more personnel, as well as relieving consulate employees of tasks that administrative bodies in Germany can take care of. In addition, it would be helpful for businesses to establish a central pool of applications that could register would-be immigrants along with their qualifications and skills. Administrative procedures and cooperation between the various administrative bodies could be improved at numerous places.

¹⁰¹ Currently, foreigners living in Germany have a claim to naturalization if they have a permanent residence permit, an EU Blue Card, or a temporary residence permit that can lead to a permanent residence permit. In addition, they must take a citizenship test, must have lived legally in Germany for eight years (or seven years after successful completion of an integration course, or six years in the case of special integration performance), and be able to secure their own livelihood (and that of dependent family members) without recourse to social or unemployment benefits. In addition, they must demonstrate sufficient German-language knowledge, and cannot have been convicted of a criminal offense. A commitment to respect the basic constitutional order of the German Federal Republic is also necessary, as well as relinquishment of the applicant's old nationality (with some exceptions by country of origin). In addition to this path to naturalization, there is also a discretionary naturalization under which the naturalization agency can approve naturalization if there is a public interest in the naturalization, and if certain minimum requirements are additionally met. If they are born in Germany, children of foreign parents acquire German citizenship along with their parents' citizenship if one of their parents has legally lived in Germany for at least eight years and holds a grant of permanent residence. After his or her 21st year, the child must choose between the German and foreign citizenship (option obligation) unless he or she has grown up in Germany or is a citizen only of another EU state in addition to Germany. See Commissioner for Migration, Refugees and Integration (2015). *Die deutsche Staatsbürgerschaft*. Berlin, December 2015. www.bundesregierung.de/Content/Infomaterial/BPA/IB/Die%20deutsche%20Staatsb%C3%BCrgerschaft.pdf?__blob=publicationFile&v=18.

All of these reforms could be realized within the framework of the existing system. However, they alone are unlikely to be enough to overcome the fundamental weaknesses of the German immigration regulations, or to stimulate legal labor-related migration at a large enough scale to make a contribution to the disentanglement of mixed migration.

4.2.2 Supplementary point system

One broader reform would be to supplement the existing regulations with a point system. The starting point of such proposals is always a look at the German labor market and its needs, and particular the idea that in order to cover the medium- and long-term demand for skilled workers and highly qualified individuals, the most generous possible procedures for permanent immigration need to be found. For these migrants, no significant obstacles to immigration should exist. To this end, a human-capital-oriented approach should be employed, aimed at the long-term and structural need for qualified immigrants.

Migrants' qualifications play a central role in this system for enabling permanent immigration. All labor-market analyses indicate that skilled immigrants' labor-market integration prospects are better than those for low-skilled workers. For example, studies by the Institute for Employment Research (IAB) have long showed that within Germany's general population, skill-level-specific unemployment rates have continually diverged; the risk of becoming unemployed among workers without a vocational certification is significantly higher than the same risk among persons with a university or technical-college degree.¹⁰² A point system would start from the assumption that a good, labor-market-relevant occupational certification is a definite prerequisite for integration in the labor market, and that on this basis, proof of a job offer as a condition for immigration can be eliminated.

The proposals for supplementary point systems discussed to date differ with regard to details, but have several common features.

(1) Determination of an upper limit

Point systems typically envision a target amount in the form of an upper limit or quota. This must be a political decision made with reference to economic

¹⁰² Here, at a quite early date: Klaus F. Zimmermann et al. (2008). *Studie über die soziale Eingliederung und Arbeitsmarktintegration ethnischer Minderheiten*. IZA Research Report 16: 6.

and demographic needs, as well as social absorption capacity. Ceilings must be regularly – for example, annually – adjusted to reflect economic and social conditions.¹⁰³

(2) Criteria

Permanent immigrants should be selected using a transparent point system that evaluates applicants on the basis of defined criteria. They must meet a minimum point score in order to be considered for immigration. The traditional immigration countries that use a point system typically specify a minimum point score of 65 to 75 percent of the maximum number of points, and expect that immigrants with such a high number of points will integrate successfully into the labor market and society.

From these candidates, those with the highest point scores each year are selected. If the ceiling is higher than the number of applicants that fulfill the minimum point score, places remain free that may be filled the following year out of a larger pool of qualified applications. The minimum point score must be regularly reviewed on the basis of impact and utility. The criteria that serve as the basis for the award of points must be simple and transparent.

(3) Labor market

Current labor-market needs should play only a subsidiary role in the point system; the focus of the criteria should be on the applicants' personal characteristics and qualifications. However, some countries do consider such current labor-market needs, and award points for particularly high-demand occupations and skills, as well as for actual job offers.

(4) Age, language skills, family, previous stays

Age is an important criterion for integration into the labor market. The traditional immigration countries specify relatively low age limits, such as 45 years for Australia. Fundamentally, age limits should reflect employment and labor-market trends, as there may also be changes in these areas over the course of time. For example, the glimmerings of a greater appreciation for

¹⁰³ A point system was discussed very specifically in relation to the 2004 Residence Act, particularly by the Independent Commission on Integration (Süssmuth Commission) that was called in the process of preparing the Act. The Commission made proposals intended for inclusion in the Residence Act, including estimates of scale. The relevant regulation was then deleted in the course of the lawmaking process – even today, the Act has an empty space at this point (§ 76 AufenthG).

older workers can be seen in some countries, in part due to the need to raise the retirement age currently being discussed in many countries.

Another criterion is language skills, as these are of significant importance for successful integration, as well as for flexibility within the labor market. There are multiple meaningful tests for this assessment. It is worth discussing whether points should be given only for German or also for other, generally English language skills. In some economic sectors, English is increasingly spoken in daily operations; therefore, knowledge of this kind would be helpful for labor-market integration at least within these sectors.

If demographic factors are to play a role, points could be also awarded for children and partners; finally, points could also be received for occupational certifications. Earlier stays in Germany could also contribute to a positive rating. Applicants from EU accession countries could be granted a bonus in anticipation of the free movement that will be forthcoming following the transition period.

(5) Qualifications

In all point systems, applicants' qualifications play a crucial role. In general, the assessment of qualifications acquired abroad is difficult. Often, educational and vocational training courses cannot be transferred without additional work; in addition, certifications acquired and used abroad sometimes cannot be used within Germany. Thus, it is often suggested that the review of qualifications focus on training and personal qualities, and only secondarily on the occupation practiced and any specialized knowledge. The modern working world's changing qualifications and job descriptions also speaks for this practice.

A number of states have already introduced supplementary point systems. Even Germany has gathered some experience in this area. For example, there has long been a point system for Jewish immigrants, which according to the BAMF has proved useful. At the regional level, Baden-Württemberg is also planning a supplementary point system; its Points-Based Model for Skilled Foreign Workers (PUMA) is intended to offer skilled foreign workers an additional and transparent means of access to Baden-Württemberg's labor market.¹⁰⁴

¹⁰⁴ See BMAS (2016). *Punktebasiertes Modellprojekt zur Fachkräfte-zuwanderung ab Herbst 2016*. www.bmas.de/DE/Presse/Pressemitteilungen/2016/punktebasiertes-modellprojekt-zur-fachkraeftezuwanderung.html.

Although these proposals may be groundbreaking, the fundamental question remains as to whether additional regulations beyond the existing immigration options might not ultimately increase the complexity and opacity of Germany's body of regulations in this area. However, for the purpose of disentangling certain mixed-migration flows, a point system with additional geographic priorities – for instance for people from crisis areas – is conceivable.

4.2.3 Comprehensive point system

One alternative to a supplementary point system would be a major reform that integrated all existing immigration regulations into a comprehensive points-based system. In this regard, it must be remembered that even countries such as Canada that have long utilized integrated point systems of this kind continually adapt their systems to current economic and societal needs. For example, the Canadian government has incorporated demand-side elements into the point system so that it can react more flexibly to changing economic conditions.¹⁰⁵ In addition, the system would have to take European legal guidelines such as the EU Blue Card into account.

Hunger and Krannich have examined the advantages and disadvantages of an integrated approach. In their findings, they propose a hybrid model with both demand- and supply-side elements. The fundamental idea here is the replacement of the current system, which is oriented toward groups of people, with a criteria-based

¹⁰⁵ Canadian migration policy offers various paths at the federal level to a permanent residence permit. Key here is the Express Entry System, an electronic approval process that utilizes a point system. Various criteria are individually assessed, and the applicants with their respective total point figures are placed in a pool from which the best candidates are regularly selected. This point system is used in three programs: (1) The Federal Skilled Worker Program demands at one year of work experience in a recognized occupation within relevant fields of activity. In this regard, the applicant must have held a managerial position in the occupational activity, must have an academic qualification, or must be a credentialed skilled worker. In addition, the applicant must obtain 67 points in a separate admissions test. Language skills and recognition of qualifications obtained abroad are also required. If no job offer is available, the applicant must demonstrate sufficient personal financial resources. (2) The Federal Skilled Trades Program enables skilled workers to obtain permanent residence in Canada. The applicant must have more than two years of experience in an occupation with skills shortages. The current list includes the construction, transport, agriculture, mining, manufacturing and food sectors. The language-skills requirements are lower than in the case of the Federal Skilled Worker Program. (3) For the province of Quebec, there is also the Canadian Experience Class, which requires applicants to have worked for at least a year in Canada in a managerial position, in a highly skilled occupation, or as a skilled worker. A corresponding language competence is also necessary. For more on the scope of these programs see Government of Canada (2016). *Express Entry Year-End Report 2015*. 24 May 2016. www.cic.gc.ca/english/resources/reports/ee-year-end-2015.asp.

model. Regulations for more than 50 different groups of persons (highly qualified, performers, unskilled laborers, business people, etc.) would no longer be presented either domestically or externally; instead, only the criteria used by Germany to define its labor-migration program would be used.

These criteria would not need to be newly developed, but could instead be drawn from Germany's current labor-migration rules – specifically the provisions of the Residence Act and the Employment Regulation. These include issues of age, country of origin, training or education, work experience, sector, special skills, presence of a job offer (in turn requiring the provision of information on likely income and the job description), previous stays in Germany, receipt of social benefits or ability to live independently, language knowledge, familial relationships, and purpose of residence, and can include a possible priority check (ensuring no German or EU nationals are available for a particular job). Overall, the authors propose 12 criteria, all of which are included in the current regulations.

Following the Canadian Express Entry System model, the points in the new system would be awarded in two stages. During the first stage, applicants would provide personal information, along with information on their professional credentials, their academic qualifications and any connections to Germany. Points would be awarded within each of these areas. At this stage, applicants would already recognize whether or not they will reach the necessary number of points, and be considered as immigrants. A second stage would ascertain whether applicants are pursuing a residence purpose covered by existing legal channels, for example whether they are intending to enter as Blue Card holders, au pairs or stage assistants, and fulfill the relevant requirements. In this case, extra points would be awarded which could result in the immediate issue of residence permits. All other applicants would be put initially into the applicant pool.

The size of the quota could be adjusted every year, depending on how other forms of migration to Germany develop. For example, if in a given year Germany admits a large number of refugees who to some extent can also be integrated into the labor market, the quota for immigration through the point system could be accordingly reduced, and vice versa. In this way, the various immigration regulations would be coordinated with one another.

According to the authors, the weighting of points and determination of the quotas should be performed by an advisory council composed of representatives of relevant social groups including migrant organizations, which in turn would be advised by an academic advisory board. An accompanying scientific evaluation would also reveal the system's failures and problems, and make concrete suggestions for improvement. This would be of particular importance regarding the labor-market integration of immigrants who come to Germany without concrete job commitments.

Since the new system provides for the integration of the various paths for immigration to Germany (labor migration, migration as a refugee, etc.), it would be logical to use the reform to more closely link responsibility for the issues of migration and integration, possibly even in a newly created Federal Ministry for Immigration and Integration. This would offer the opportunity to tie immigration management more tightly to the promotion of integration. For example, it would make particular sense to use a point system to integrate immigration management closely with labor-market integration efforts, especially since in Germany a comprehensive set of instruments for the integration of the unemployed is already available. Here, "welcome centers" such as those already established in Hamburg, Baden-Württemberg and Berlin, could play a special role.

It remains an open question as to whether the political majorities necessary for this extensive reform proposal could be found. Nevertheless, the integrated solution described – precisely because of the opportunity to combine various migration flows – represents a promising approach to better handling the challenges raised by mixed migration. At their core, these proposals aim at creating connective pathways between labor migration and refugee flows. This aim is also served by recent deliberations over so-called lane changes, or status transitions, between the two areas.

4.3 Transitions: From refugee to migrant

A "lane change" in status can be in the interest of the receiving state as well as of the refugees and migrants themselves. In this regard, the key issue is whether the change in status is decided upon before or after entering the country. If refugees were able to enter legally as labor migrants due to their qualifications, they would not have to embark on life-threatening illegal migration routes. Yet

even if non-humanitarian immigration opportunities have great potential, the issue of status change is primarily being discussed today with regard to asylum seekers who are already in Germany.

4.3.1 Labor migration as a durable solution for refugees

The share of refugees who attained a UNHCR-designated “durable solution” in 2015 was under 2 percent worldwide.¹⁰⁶ Such durable solutions include admission through a resettlement program, voluntary repatriation and local integration. However, particularly in protracted refugee situations in developing countries, these outcomes are very difficult to realize.¹⁰⁷ For many, legal restrictions and a lack of future prospects stem from the refugee status itself. Even if these individuals have appropriate qualifications, they cannot meet the legal requirements for application to labor-migration programs. Often, the only way out of these hopeless refugee situations is irregular onward migration.

Katy Long has developed a model indicating how labor mobility for refugees could be developed into a new “durable solution”¹⁰⁸ in the interests both of receiving countries and the refugees themselves. She also starts from the assumption that refugees able to enter legally as labor migrants on the basis of their qualifications would be spared the need for flight, while the destination country could simultaneously fulfill its humanitarian responsibilities and satisfy its own interests in regulated labor migration.

In its Migration Outlook 2016, the OECD used the example of the Syrian refugee crisis to criticize the fact that the great potential of non-humanitarian immigration options is nowhere near being exhausted. For example, in the five years since the outbreak of the Syrian crisis, only 18,200 work permits, 15,300 student residence permits and 72,000 family-reunification permits have been granted in

the 35 OECD member states.¹⁰⁹ The OECD recommended utilizing these alternatives in a more systematic matter, and proposed three concrete approaches with regard to labor migration: First, access to existing labor-migration alternatives should be facilitated by providing relevant, targeted information to recruitment agencies and employers. Second, incentives should be created for employers to consider refugees more strongly in their recruitment efforts. This could be supported by awarding additional points for refugee status in the context of a point system. Third, (temporary) mobility programs for the recruitment of refugees from heavily burdened countries of first refuge could be conceivable.

In any such approach, financial barriers (such as high visa fees) and legal requirements must still be considered. For example, one common problem is that refugees do not have travel documents, and no replacement documents are issued to them, even though this is provided for by the GRC. Even if refugees are given a so-called convention travel document, countries concerned often refuse to recognize this as a valid passport, and thus decline to issue a visa.

Fundamentally, labor mobility probably represents a legal way out of (protracted) refugee situations for only a small number of well-qualified refugees. Greater potential is evident in approaches that open access to the labor market to asylum applicants already living in a receiving country, or which allow them to shift from asylum to labor migration. This idea was also discussed during the recent reform of the EU Blue Card. However, the UNHCR proposal to use the Blue Card as a new legal means of access for refugees from outside the EU found no political support.¹¹⁰ By contrast, the EU Commission proposed allowing refugees recognized in the EU who also have work permission to benefit from the Blue Card if they also fulfill the other conditions for its issuance.

4.3.2 Labor-market integration and status change

Until recently, few studies had been published on refugees’ qualifications and skills, future expectations, or intentions with regard to duration of stay. However, in the context of recent years’ strong refugee flows, some individual

106 See World Bank (Global Program on Forced Displacement). *Stocktaking of Global Forced Displacement Data* (unpublished manuscript): 31.

107 A refugee situation is deemed protracted for the purposes of UNHCR statistics when, due to a conflict, at least 25,000 people of the same nationality have lived outside their own country for at least five years without prospect of a permanent end to their refugee situation. In 2015, according to the UNHCR, this applied to 41 percent of all refugees, with the average length of a protracted refugee situation being 26 years. In 1993, this measure was only nine years. Even though the World Bank has estimated a considerably lower average duration of 18 years, these figures leave no doubt that many people must persevere as refugees for extraordinary lengths of time. See *ibid.*:33 ff.

108 See Long, Katy (2015). *From Refugee to Migrant? Labor Mobility's Protection Potential*. Migration Policy Institute.

109 OECD (2016). *International Migration Outlook 2016*. OECD Publishing, Paris. http://dx.doi.org/10.1787/migr_outlook-2016-en.

110 See UNHCR. *UNHCR's Contributions to the EU's New European Policy on Legal Migration and the Review of the “Blue Card” Directive*. http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2015/docs/consultation_029/contributions/unhcr_en.pdf.

studies and pilot projects have been carried out. The “Early Intervention – Every Person Has Potential” project, developed jointly by the BAMF and the Federal Employment Agency (BA), for example, researched the qualifications and employment prospects of refugees in nine cities, with the aim of supporting their labor-market integration.¹¹¹

Since July 2016, the Federal Employment Agency has integrated refugees’ labor-market integration into its regular reporting. In June 2016, a total of 297,000 refugees were registered as job seekers with the Employment Agency or job center.¹¹² Of these, a total of 213,000 were already recognized refugees with residence permits, another 78,000 were asylum applications with a temporary residence permit, and 6,000 had been granted toleration status. The unemployment rate among recognized refugees, at 48 percent, was higher than among asylum applicants or tolerated-status individuals, among whom a respective 34 percent and 37 percent were registered as unemployed.

An important question regarding refugees’ labor-market access involves institutional responsibilities, and particularly the relationship of the Federal Employment Agency to the agencies responsible for refugee recognition and integration. While the job centers handle recognized refugees, the employment agencies are responsible for asylum applicants and individuals with toleration status.

The influx of refugees has been politically exploited in past years by various sides of the political spectrum. Critics of a liberal admission policy have pointed to refugees’ lack of qualifications, while proponents emphasize both the humanitarian responsibility for refugee admission and refugees’ potential to close the skilled-worker shortage. The truth probably lies somewhere between these positions. According to initial Federal Employment Agency (BA) findings, 26 percent of refugees looking for work had not completed secondary school, and 74 percent have no formal vocational training. Therefore, expectations that refugees

might close the skilled-worker gap in the short term should be kept in check; rather, investments should be made in education and training for these individuals, 70 percent of whom are under 30 years of age. According to BA estimates, about 15 percent of refugees are immediately qualified for skilled-worker or specialist activities, while just 4 percent are immediately qualified for expert activities.¹¹³

This also has consequences for the status-change debate, since a majority of refugees are at least in the short term not qualified for skilled-worker positions. However, even without a status change, these people will have an impact on the labor market, provided that they are recognized as refugees. Presented with comprehensive language-instruction, integration and skills-development offerings, they can make a positive contribution to the labor market over the medium to long term, and thus help improve the overall economic situation. The Integration Act helped create legal certainty for employers and especially for asylum applicants and tolerated individuals who wish to pursue vocational training by providing toleration status that lasts for the entire duration of a training program. Upon successful completion of the training, the toleration is extended for another six months for the purposes of a job search. An individual who finds a job after successfully completing a training program receives a residence permit for an additional two years.

Advocates contend that asylum applicants able to find a job using existing channels should be empowered to pursue a status change in part on economic and demographic grounds. Also being discussed is whether rejected asylum seekers with the appropriate qualifications should be given an opportunity to change their status, as is the case in Sweden and Finland.¹¹⁴ Particularly for asylum seekers for whom no need for protection is likely to be identified, this appears to be a way to obtain a chance of remaining. At the same time, it would relieve pressure on the asylum system, and could help avoid significant repatriation-related expenditures. However, the possible downstream effects of such a policy have been criticized. Even some refugee organizations have been skeptical of this approach, seeing it as a potential risk to the foundations of refugee

111 See German Federal Employment Agency (no year). *Modellprojekt: Jeder Mensch hat Potenzial – Arbeitsmarktintegration von Asylbewerberinnen und Asylbewerbern*. www3.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mtm4/-edisp/16019022dstbai752888.pdf.

112 With the June 2016 reporting month, the German Federal Employment Agency began systematically to consider residence status in their statistics, and to report on the labor-market integration of “persons in the context of refugee migration.” See Bundesagentur für Arbeit (2016). *Hintergrundinformationen – Geflüchtete Menschen in den Arbeitsmarktstatistiken – Erste Ergebnisse*. <http://statistik.arbeitsagentur.de/Statistischer-Content/Statistische-Analysen/Statistische-Sonderberichte/Generische-Publikationen/Gefluechtete-Menschen-in-den-Arbeitsmarktstatistiken.pdf>.

113 See German Federal Employment Agency (2016). op. cit. (Fn. 106).

114 See Parusel, Bernd (2014). “Spurwechsel im Migrationsprozess – Erfahrungen aus Schweden.” *Zeitschrift für Ausländerrecht und Ausländerpolitik*. (3) 2014:115–122; European Migration Network (2016). *Synthesis Report – Changes in immigration status and purpose of stay: an overview of EU Member States’ approaches*. http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00.emn_study_on_the_change_of_status_final.pdf.

protection insofar as more people could come into the country ostensibly seeking protection, while in fact simply wanting to work.

4.4 Return and reintegration

Due to the sharp rise in the number of asylum applications processed in Germany in 2015 and 2016, the number of rejections has also increased. Because the possibility of a status change is available – if at all – to only a few rejected asylum applicants, the importance of repatriation, return and reintegration has also increased.

Calls for a more consistent repatriation policy received considerable new impetus after the Berlin terror attack of December 2016. In addition to possible security-policy failures in dealing with potential attackers, the incident also exposed problems with the enforcement of deportation orders. The attacker's asylum application was refused in June 2016 as manifestly unfounded; however, the documents from Tunisia needed for the deportation were not available.¹¹⁵ Following the attack, the prospect of giving the federal level greater responsibility for the implementation of repatriations was discussed. While a federal-level agency, the Federal Office for Migration and Refugees (BAMF), makes decisions on asylum applications, responsibility for rejected asylum applicants falls to local immigration authorities and the state police after the decision. A key argument was that it would be more efficient to pool competences at the federal level, and enable the federal police force to carry out the repatriations in their own right.¹¹⁶ Although this demand has not yet been implemented as a matter of policy, the federal chancellor agreed with the prime ministers of the individual federal states on 9 February 2017 on the establishment of a joint federal-state Repatriation Support Center (ZUR).¹¹⁷

Similar plans for repatriations are also being discussed at the EU level. For example, the Frontex European border agency is to be furnished with an intervention unit with 700 repatriation experts tasked with providing member states direct support in this area. Member states appear to be greatly interested in the program, having already named 400 possible experts.¹¹⁸

4.4.1 Challenges of repatriation and return

The return of people obliged to depart Germany to their countries of origin has risen strongly in past years, from 28,000 people in 2014 to 80,000 in 2016. Of these, a total of 55,000 (about 70 percent) returned voluntarily to their home countries with the aid of financial assistance, while 25,000 were forcibly repatriated.¹¹⁹ The total number of people living in Germany who are officially obliged to leave cannot be determined from the available statistics. Only the stock data provided by the Central Register of Foreign Nationals (AZR) provides approximate values.¹²⁰

Using the AZR data as a basis, it appears that at least 215,000 people officially obliged to leave were living in Germany at the end of July 2016.¹²¹ These were primarily rejected asylum applicants (66 percent) and irregular migrants (23 percent) who had not filed an asylum application or had stayed in Germany despite an expired visa (“visa overstayers”). About 75 percent of those technically obliged to leave (165,000) had obtained toleration status; their repatriation had thus been suspended due to obstacles of some kind. Conversely, this means that just under a quarter of the people technically obliged to leave, or about 50,000 individuals, did not have toleration status, and thus fulfilled the legal requirements for a repatriation.

The grounds for the high number of tolerated-status grants are recorded statistically in the AZR, but are not broken down sufficiently. For example, according to the AZR, 67 percent of the tolerated-status grants were issued on the basis of “other reasons,” which does not allow precise conclusions to be drawn. What is known is that 22 percent

115 See *Süddeutsche Zeitung*. “Amri, die Behörden und Kontaktmann VP-01.” 16 January 2017. www.sueddeutsche.de/politik/attentaeter-von-berlin-amri-die-behoerden-und-kontaktmann-vp-1.3333579.

116 See *Frankfurter Allgemeine Zeitung*. “Bundespolizei-Chef fordert Bundeszuständigkeit für Abschiebungen-2.” 22 January 2017. www.faz.net/aktuell/politik/inland/einwanderung-bundespolizei-chef-fordert-bundeszustandigkeit-fuer-abschiebungen-14724981.html.

117 See the Federal Government of Germany. “Federal Chancellor Meeting with the Heads of Federal-State Governments on Repatriation Policy.” 09 February 2017. https://www.bundesregierung.de/Content/DE/_Anlagen/2017/02/2017-02-09-abschlussdokument-treffen-bund-laender.pdf?__blob=publicationFile&v=1.

118 See *Telepolis*. “Frontex und McKinsey: Mehr Druck bei den Abschiebungen.” 12 January 2017. www.heise.de/tp/features/Frontex-und-McKinsey-Mehr-Druck-bei-den-Abschiebungen-3594402.html?view=mail.

119 See *Süddeutsche Zeitung*. “Zehntausende Asylbewerber kehren freiwillig in Heimat zurück.” 28 December 2016. www.sueddeutsche.de/politik/fluechtlinge-freiwillige-rueckkehr-statt-abschiebung-1.3311238.

120 See McKinsey & Company (2016). *Rückkehr – Prozesse und Optimierungspotenziale* (Unpublished final report).

121 See *ibid.*

of the tolerated-status grants were identified as being due to a lack of travel documents, or – considerably less often – were granted on humanitarian, family or medical grounds.

However, a report by business consultancy McKinsey on behalf of the Federal Office for Migration and Refugees suggested that in many cases, obstacles to deportation were fictitious or self-imposed. This assumption is not convincingly demonstrated, and can also be interpreted as an attempt to find arguments justifying a higher number of expulsions. Ultimately, the main message of the report is that the current number of deportations is not sufficient to balance the growing population of people technically obliged to leave the country. This is substantiated by the forecast that the number of those with an official obligation to leave would increase to a total of 570,000 people by the end of 2017.

In order to increase the number of departures, McKinsey recommended in particular that the federal government be more restrictive in granting toleration statuses. People with toleration status who breach their obligations to cooperate should be limited to receiving in-kind benefits or should have their benefits reduced, the report argued. In addition, it called for the implementation of procedural and operational measures should be implemented, particularly a centralization of responsibilities and an expansion of immigration-authority offices staffs. McKinsey also advocated promotion of voluntary return, in part because it is more cost-effective than forced repatriation.

However, McKinsey also said that the proposed measures would be effective only if they were implemented all at once.¹²² The new “return management” additionally presupposes shortening asylum procedures and strengthening repatriation policy. According to McKinsey, the probability of departure decreases the longer a person obliged to leave lives in Germany; about the same number of people leave in the first six months after the obligation has been imposed as in the following two years.¹²³ Therefore, the report argued, the repatriation deadline should be brought forward from its current 12 months after the departure obligation is imposed to just six months; in addition, the

122 “Voluntary return is only attractive if there is otherwise a serious threat of deportation. This in turn can only follow if no toleration and no obstacles to deportation exist. At the same time, the voluntary return must be supported in such a way that it is perceived as a better alternative than a ‘tolerated’ stay in Germany.” See *Welt Online*. “Die McKinsey-Ideen für optimierte Abschiebepolitik.” 11 January 2017. www.welt.de/politik/deutschland/article161059266/Die-McKinsey-Ideen-fuer-optimierte-Abschiebepolitik.html.

123 See *ibid*.

time granted for voluntary return should be shortened from the current six to four weeks after the statement of willingness to return.

Some of the measures proposed by McKinsey would probably contribute to an improvement of the return procedures and an increase in voluntary departures. However, the assumption that all those with toleration status can be repatriated is fundamentally questionable. Toleration status is often granted because the situation in the country of origin is not safe.

Cooperation with the country of origin represents an additional challenge for repatriation and return. In many cases, countries do not agree to the readmission of their citizens (or do so only very reluctantly), or do not provide the substitute travel documents necessary for the repatriation. Moreover, bilateral agreements and readmission agreements with the EU have to date been able to increase countries’ willingness to cooperate only in part. However, this approach is currently being intensified with selected African countries in the context of EU migration-framework partnerships.¹²⁴ Cooperation with repatriations is increasingly becoming a priority for the EU in its relations with relevant third countries. Development-cooperation measures and trade policies are intended to create incentives aimed at increasing willingness to allow readmission. In return, the EU calls on these countries to accept group deportations by charter flight or to accept the readmission of rejected asylum applicants with an EU *laissez passer*.

Even if strengthening cooperation on return policies is a legitimate interest for EU states, the goals, instruments and partners associated with this cooperation must be chosen very carefully. The cooperation must also be evaluated on an ongoing basis in order to prevent it from working at cross-purposes with the European Union’s foreign, security and development-policy goals, for instance by hampering promotion of the rule of law, good governance or the fights against corruption and poverty.

124 See European Commission (2016). *Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration*. 7.6.2016. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf.

4.4.2 Challenges of reintegration

In return policy, one central challenge often fails to be taken sufficiently into account: the reintegration of rejected asylum seekers and irregular migrants in their countries of origin. For example, there is no internationally shared understanding of what defines sustainable reintegration, or how this can be measured. Without such a consensus, however, it is virtually impossible to design and review reintegration processes over the long term.

The International Organization for Migration (IOM) has proposed a definition that has not yet achieved consensus support: “The individual has reintegrated into the economic, social, and cultural processes of the country of origin and feels that they are in an environment of safety and security upon return.” An initial evaluation showed that only 37 percent of 273 individuals surveyed in 15 countries of origin were sustainably reintegrated based on these criteria.¹²⁵

In the context of mixed migration, it should be noted that the original motive for flight or migration strongly influences the ability to reintegrate. Someone who has left their home country for political reasons or due to poor security conditions has a lower chance of reintegrating than do migrants who have left the country primarily on economic grounds.¹²⁶ The question of where the person returns to, and whether he or she has existing personal links and networks there, is also critical.

Germany has little experience with the promotion of voluntary return and reintegration. Previously, return was supported primarily within the context of the so-called REAG/GARP (Reintegration and Emigration Program for Asylum-Seekers in Germany / Government Assisted Repatriation Program). Here, money for travel costs, a travel allowance and funding intended help jump-start a basic life in the recipient’s home country was provided. The federal government has announced the creation of additional programs in this area. For example, with its new €40 million StarthilfePlus program, it is seeking to create incentives for the withdrawal of asylum applications, as well as for voluntary returns.

The BMZ’s €150 million Migration for Development program is explicitly intended to provide support for reintegration in countries of origin.¹²⁷

In general, reintegration should be understood as a multidimensional challenge. Measures must be oriented toward the needs of returnees and host communities, and could be either time limited or accessible over the long term. The situation in the country of origin must be carefully analyzed in order to design reintegration measures effectively. If a serious deterioration in security conditions is observed, there is a danger that a large number of returnees will once again take flight either within the country or outside its borders. If the situation in the country is generally stable, a development-promoting reintegration policy can be implemented that directly supports communities with significant numbers of returnees with structure-building measures. Most fundamentally, territorial approaches should be pursued when providing reintegration assistance, and support measures should always also benefit the local population.

125 See Koser, Khalid, and Katie Kuschminder (2015). “Comparative Research on the Assisted Voluntary Return and Reintegration of Migrants.” 66. www.iom.int/files/live/sites/iom/files/What-We-Do/docs/AVRR-Research-final.pdf.

126 See *ibid.*: 56.

127 See *Frankfurter Allgemeine Zeitung*. “Wie der Staat die freiwillige Rückkehr unterstützt.” 28 December 2016. www.faz.net/aktuell/politik/inland/wie-der-staat-die-freiwillige-rueckkehr-unterstuetzt-14594787.html.

5 Reform needs and action areas

All these developments suggest that mixed migration will continue to pose a major challenge to asylum and migration policy in Germany and Europe alike and that many citizens will judge their governments based on their ability to design and manage migration flows. In order to cope effectively with mixed migration, both the EU and its constituent national governments will need to reform their asylum and migration policies. Expanding legal forms of immigration and creating opportunities to transition from asylum to migration – notwithstanding the need to distinguish the two – represent two areas with considerable leverage in terms of disentangling the different forms of migration. New approaches in return policies for those obligated to leave the country and in supporting the reintegration of those returning to source countries is also of growing importance. However, these policy reforms alone will not suffice; they must be accompanied by institutional reforms at the national and state levels. In addition, it is imperative that Germany involve non-state actors more thoroughly than to date in the development and design of integration policy.

5.1 Action area “non-state actors”: involve civil society and the private sector

The rising number of refugees in recent years triggered a strong show of support and readiness to help among the German population. Through a variety of initiatives, projects and programs, civil society and the private sector have contributed to efforts to ease refugees’ arrival in Germany that have been instrumental to Germany’s refugee policy. However, given the current state of affairs and the dominance of refugee inflows, it should not be forgotten that non-state actors have always played a key role in Germany’s migration policy.

Germany’s historical experience with immigration has been deeply affected by church, trade union, corporate and non-profit activity. Non-state actors have taken on several tasks in the area of integration that state institutions have not recognized or have even eschewed. Civil society and private-sector activity in this area is therefore not new. However, in the context of recent developments, it has become all the more evident just how dependent the state is – and has been, even under considerably less exceptional conditions – on this support. There are three action areas within this field to consider:

(1) Strengthen approaches for civil society engagement

Initial studies suggest that the current migration inflows have strengthened civil society activity. This was the finding of a 2015 study showing that the number of volunteers in refugee-related work has grown by 70 percent in Germany in the last three years,¹²⁸ which contrasts with the numbers for civic or volunteer work in Germany more generally.¹²⁹ This trend is ongoing, as illustrated by a summary analysis of volunteer initiatives in various German municipalities. Private engagement here ranges from educational initiatives to local neighborhood programs to professional advisory offerings.¹³⁰

Existing volunteer initiatives designed to help refugees find jobs should be expanded. This includes mentoring or “angel” programs, interpretation services, support in working with labor agencies, as well as efforts to

128 See Karakayali, Serhat, and Olaf J. Kleist (2015). *Strukturen und Motive der ehrenamtlichen Flüchtlingsarbeit (EFA) in Deutschland*: 5. www.bim.hu-berlin.de/media/2015-05-16_EFA-Forschungsbericht_Endfassung.pdf.

129 See Broich-Han, Minsun (2015). *Engagement in der Flüchtlingshilfe – eine Erfolg versprechende Integrationshilfe*. www.bpb.de/apuz/203551/engagement-in-der-fluechtlingshilfe?p=all.

130 See, for example, Pro Asyl. *Ehrenamtliches Engagement für Flüchtlinge*. <https://www.google.com/maps/d/viewer?mid=1SHp13afz2lzUyrPqFYouMbPgtF4>.

initiate or establish internet portals such as “Work for Refugees” or “work.de”. Educational and job platforms of this nature bring together refugees and potential employers, helping both to find an appropriate match.

Most civil society engagement activities are organized as initiatives. Programs and projects are often born of an extant need and are designed to address the gaps where the state falls short. Many of those involved are aware that their volunteer activity can only supplement and not replace state activity.¹³¹

(2) Strengthen involvement of Chambers of Industry and Commerce (IHKs) and Chambers of Crafts

The Chambers of Industry and Commerce and Chambers of Crafts have demonstrated a strong willingness to contribute to the integration of refugees and migrants. Most recently, they have been very active in issues regarding refugees’ vocational qualification. Projects here range from providing advisory and information to firms interested in hiring or providing a training slot to refugees, to creating networking opportunities for firms and refugees (e.g., job-speed dating events and job information fairs for refugees and asylum applicants) to providing integration or professionally oriented language courses.

Germany’s Chambers of Crafts often work together with other players in the labor market. In the city of Marburg, for example, the local craftsmen association “Kreishandwerkerschaft Marburg” has teamed up with the local job center and employment agency to launch the “Voice Competence” initiative which combines skills identification, language courses and internships with sociocultural guidance counseling. The goal of the initiative is to expedite refugees’ entrance into the vocational training and labor market. In 2016, 600 refugees reportedly participated in the program.¹³²

In another program, Germany’s Federal Association of Craftsmen, the Federal Employment Agency and the federal government are working together in order to get up to 10,000 young refugees qualified for vocational training in a craft by 2018. Whereas the Federal

Association of Craftsmen is committed to providing the requisite training positions, the federal government and employment agency are committed to supporting language skills development and steering refugees on a path toward the dual system. In 2015, some 17,000 vocational training positions went unfilled. The initiative is thus hailed as an opportunity for handicraft businesses. The federal government has therefore allocated €20 million for the program.¹³³

(3) Support private sector engagement

In many cases, companies are also showing great commitment to refugee aid. Many firms have offered financial support, material donations and facilities to refugees and refugee organizations.¹³⁴ And although, according to a survey conducted by the FAZ, 30 DAX companies had hired only 54 refugees by June 2016, the willingness to do so seems to be much higher than these numbers would suggest.¹³⁵ However, in most cases, this willingness is focused not on regular full-time jobs but rather on internships or vocational training positions. ThyssenKrupp, for example, expressed its willingness to provide some 150 vocational training and 230 internship positions by 2017. Since the fall of 2016, Deutsche Telekom has created an additional 100 vocational training positions for refugees. In addition to creating some 100 internships for refugees, software corporation SAP has established 10 positions for a dual (i.e., practical and theoretical) course of study in information systems that are slated specifically for refugees.¹³⁶ Small and medium-sized companies in particular contribute significantly to the integration of refugees into the labor market.¹³⁷

Given Germany’s projected decline in its active labor force and imminent shortages in regional, professional and skilled labor, many companies emphasize the potential borne by the influx of refugees. However,

131 See Karakayali, Serhat, and Olaf J. Kleist (2015). op. cit. (Fn. 135): 5

132 See Aumüller, Jutta (2016). *Arbeitsmarktintegration von Flüchtlingen: bestehende Praxisansätze und weiterführende Empfehlungen*. Bertelsmann Stiftung, Gütersloh: 30 f. www.bertelsmann-stiftung.de/fileadmin/files/Projekte/28_Einwanderung_und_Vielfalt/Studie_IB_Arbeitsmarktintegration_Fluechtlinge_2016.pdf.

133 See German Federal Government. *Aus Flüchtlingen werden Auszubildende*. www.bundesregierung.de/Content/DE/Artikel/2016/02/2016-02-05-bm-wanka-handwerksinitiative.html.

134 See *Frankfurter Allgemeine Zeitung*. “Wie deutsche Unternehmen den Flüchtlingen helfen”. 9.9.2015. www.faz.net/aktuell/wirtschaft/unternehmen/wie-deutsche-unternehmen-den-fluechtlingen-helfen-13792175.html?printPagedArticle=true#pageIndex_2.

135 See *Frankfurter Allgemeine Zeitung*. “Dax-Konzerne stellen nur 54 Flüchtlinge ein”. 4.7.2016. www.faz.net/aktuell/wirtschaft/unternehmen/welcher-konzern-stellte-fluechtlinge-ein-14322168.html.

136 See Aumüller, Jutta (2016). op. cit. (Fn. 130): 33.

137 See Federal Government Commissioner for Migration, Refugees and Integration (2015). *Charta der Vielfalt. Flüchtlinge in den Arbeitsmarkt!* www.charta-der-vielfalt.de/fileadmin/user_upload/beispieldateien/Bilddateien/Publikationen/Fl%C3%BChtlinge_in_den_Arbeitsmarkt_-_Charta_der_Vielfalt_2015.pdf.

the challenges to employing refugees must also be addressed. Clarifying refugees' legal status, improving procedures for recognizing educational or professional qualifications and language acquisition often pose major obstacles. As a result, many companies have called on policymakers to expedite asylum procedures, provide for the timely recognition of refugees' and migrants' qualifications, support language acquisition, establish prospects for permanent residency among refugees during and after vocational training and to support companies with integration efforts. To some extent, the Integration Act of July 2016 implements these points.¹³⁸

There are several measures that could be taken to render more effective companies' existing activities. For one, companies could be more heavily involved in regional cooperation efforts targeting labor market integration.¹³⁹ In addition, given the advantages of in-company training measures which, in contrast to standardized programs, provide qualifications tailored to workplace needs, these measures should be met with greater support and consideration. Finally, advisory and information resources for small and medium-sized enterprises should be increased.¹⁴⁰

5.2 Action area "polity": Institutional-reform needs at the federal and federal-state levels

During the recent strong refugee-migration flows to Germany, and the at times significant difficulties in arranging initial reception for these new arrivals, it again became clear that refugee and migration policies are politically cross-cutting tasks that must be organized accordingly, and must above all be assigned to effective institutions. This is particularly evident for integration policy, which is equally as important in dealing with mixed migration as the management of these flows.

Integration-policy functions have been incorporated more strongly into many agencies' and ministries' tasks in recent years. This is true at all levels within the federal system,

138 See German Federal Government Legislation Proposal. "Entwurf eines Integrationsgesetzes". www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/entwurf-integrationsgesetz.pdf?__blob=publicationFile.

139 See Aumüller, Jutta (2016). op. cit. (Fn. 130): 33 f.

140 See Blaschke, Astrid et al. (2015). *Flüchtlinge in Arbeit und Ausbildung. Potenziale für Wirtschaft und Gesellschaft*: 16. www.mamba-muenster.de/fileadmin/mamba/dokumente/PDF/2015-05-21_Bilanzpapier_Bleiberechtsnetzwerke_WEB.PDF.

but particularly for the federal states, which in some cases have fundamentally transformed their structures. In many state governments, units tasked with responsibility for integration-policy issues have existed for decades. A number of federal states have now also introduced the concept of "integration" into the name of the ministries responsible for the issue. In most states, responsibility for the issue is assigned to the labor ministry and/or the ministry for social affairs. Nevertheless, crucial areas of jurisdiction relevant to migrants' legal situation – such as immigration and residence law – are found outside these ministries' responsibilities.¹⁴¹

In some federal states, the position of integration commissioner has also persisted alongside the ministries, even if these commissioners have largely lost their distinctive profile following the establishment of integration ministries. However, there is still a conference of integration commissioners, and since 2006, also an integration ministers' conference. Depending on the profiles of responsibility in the individual states, participants may be the social affairs, interior or justice ministers of each federal state.¹⁴²

An integration commissioner's office has also been established at the federal level (the Commissioner for Migration, Refugees and Integration), and is situated within the Federal Chancellery. However, this institutional relationship has led to various problems. For example, the Chancellery is responsible for coordinating policy between ministries. This makes it difficult for the integration commissioner to engage in open conflict with line ministries. In addition, while the officer of the commissioner is involved in legal initiatives, and can make proposals to the federal government, it does not have sufficient independent resources to implement programs or initiatives. In practice, the office does not have operational responsibilities for the design of integration policy.¹⁴³ This is for practical purposes determined by the Federal Ministry of the Interior (BMI), which holds responsibility for immigration and residence law as well as citizenship law.

141 The state of Rhineland-Palatinate is an exception. Here, the ministry responsible for integration is also responsible for legal issues associated with immigration and residency.

142 See Thränhardt, Dietrich (2014). "Governance von Migration und Integration – Internationale Erfahrungen und Empfehlungen für Deutschland." Bertelsmann Stiftung (Ed.). *ReformKompass Migration. Einwanderungssteuerung, Willkommenskultur und Beteiligung*. Gütersloh: 48–60, here 55.

143 See Filsinger, Dieter et al. (2013). "Perspektivenwechsel in der Einwanderungsgesellschaft Deutschland. Grundlagen für eine neue Migrations- und Integrationspolitik." FES. *WiSo Diskurs*: 30.

The Federal Office for Migration and Refugees (BAMF) is subordinate to the BMI, and is assigned a multiplicity of operational tasks in this area. For example, the BAMF is responsible both for conducting asylum procedures and for the conception and implementation of integration classes. In addition, the BAMF provides information and support services promoting voluntary return.¹⁴⁴

Other migration- and integration-policy aspects are distributed between ministries. For instance, the Federal Ministry of Labor and Social Affairs is responsible for immigrant labor-market issues; the Federal Ministry of Education and Research for the university access of foreign students¹⁴⁵; the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety for the creation of new refugee housing; and the Federal Ministry for Economic Cooperation and Development for the amelioration of situations leading to refugee flight and the relationship between migration and development. Overall, almost every ministry deals with issues having to do with the general area of migration, refugee flight or integration. For this reason, creating seamless policy is possible only with great difficulty.¹⁴⁶

Generally speaking, structures are adequately aligned neither at the federal level nor between the federal and federal-state levels. This complicates coordination and leads to problems particularly when one institution makes decisions but another bears the costs. One such example is offered by the decisions on asylum applications, and particularly the processing backlog that in fact considerably predates the post-2012 rise in the volume of applications. While the federal level is responsible through the BAMF for processing asylum applications, providing asylum seekers with accommodation in intake facilities is the responsibility of the federal states and municipalities, which accordingly bear the related costs. Given the extended length of proceedings, states and municipalities have incurred significant costs particularly in the last two years, leading to repeated revenue-sharing disputes between the federal and state governments.¹⁴⁷

¹⁴⁴ See Schneider, Jan (2012). "Die Organisation der Asyl- und Zuwanderungspolitik in Deutschland." Studie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN). BAMF. Working Paper 25: 15.

¹⁴⁵ The federal states' education ministries are responsible for schools in the federal system.

¹⁴⁶ See Schneider, Jan (2012). op.cit. (Fn. 154): 14 f.

¹⁴⁷ See Thränhardt, Dietrich (2014). op. cit. (Fn. 152): 56.

These points make clear the need for institutional reform at both the federal and state levels. In this regard, various options are possible:

(1) Reorganization of ministerial responsibilities

One reform proposal focuses on removing responsibility for integration from the Federal Chancellery and giving it instead to an independent department in an existing ministry such as the Federal Ministry of Labor and Social Affairs (BMAS).¹⁴⁸ This ministry is logical not only because social participation and integration in Germany take place primarily through economic inclusion in the labor market, but also because the allocation of responsibilities would in this way correspond to that at the state level, which could improve coordination between federal and state governments, and facilitate work processes.

In addition, the BMAS has the necessary clout within the federal government, as well as the influence to ensure that the issue of integration policy is taken seriously. With this restructuring, the integration commissioner's office would also be eliminated. In its place, the federal Anti-Discrimination Agency could be expanded and assigned portions of the tasks previously carried out by the integration commissioner. Under this model, issues related to immigration and residence law would remain with the BMI. The structure of the BAMF would also have to be changed accordingly: While it would retain responsibility for issues related to asylum and refugee protection, the units responsible for integration policy would be relocated to a new Federal Office for Integration that would report to the BMAS.

(2) Creation of an independent Ministry for Migration, Refugees and Integration

An alternative would be the creation of an independent Federal Ministry for Migration, Refugees and Integration, as has been repeatedly proposed by figures such as Aydan Özoguz, the current federal integration commissioner, and Norbert Röttgen, chairman of the Bundestag's Committee on Foreign Affairs.¹⁴⁹ In such a ministry, all issues related to immigration could be

¹⁴⁸ See Filsinger, Dieter et al. (2013). op. cit. (Fn. 153): 31 f.

¹⁴⁹ See, for example: Zeit Online. "Röttgen fordert Ministerium für Integration und Flüchtlinge." 1 January 2016. www.zeit.de/news/2016-01/01/migration-roettgen-fordert-ministerium-fuer-integration-und-fluechtlinge-01045003; Frankfurter Allgemeine Zeitung. "Özoguz: Eigenes Ministerium für Migration schaffen." 25 July 2016. www.faz.net/agenturmeldungen/dpa/oezoguz-eigenes-ministerium-fuer-migration-schaffen-14356281.html

combined and coordinated, from asylum to migrants' labor-market integration. The proposal to create an independent ministry for migration also complements the call to transfer sole responsibility for the execution of asylum and refugee law to the federal government. Today, these responsibilities are divided between the federal and state governments. For example, the states' immigration authorities are responsible for residence and termination-of-residence (deportation) issues. However, changes would have to be made to the Basic Law for any reorganization this comprehensive, a prospect for which no political will is presently evident.

The disentanglement of mixed migration flows will likely be the most important asylum- and migration-policy task of the coming years. From this perspective, there is a need for solutions strengthening the state's management and performance capacities, which are today constrained by numerous factors. Uniting asylum-, migration- and integration-policy competences within a single ministry could contribute to better policy coordination. However, the new ministry would also have to be given the corresponding regulatory responsibilities, as well as the necessary financial and staff resources.

(3) Strengthen municipal and district competences

Even given such a concentration of competences at the federal level, decisions regarding the practical challenges of accommodating, provisioning and integrating refugees and migrants would still be made by the municipalities and administrative districts. Although cities, districts and municipalities appear in this regard to be constrained by a large corpus of guidelines, laws and regulations, an examination of local practices shows that considerable policy-shaping leeway continues to exist, and is in fact utilized in quite different ways. This also means that local refugee-management practices can in no way be regarded as representing a seamless, coherent policy, but instead must be viewed as a kind of patchwork.¹⁵⁰

The scope of action accorded to local governments differs across three kinds of tasks, with an increasing degree of policy leeway; these include compulsory regulation-based tasks such as executing residence rights or providing social benefits; local administrative

tasks such as enforcing and implementing the compulsory education law; and voluntary administrative tasks such as implementing intercultural interaction or exchange projects. The nature of voluntary services in particular depend in large part on local finances, as well as local political interest in taking action in this field.

With the increase in the number of asylum seekers in recent years, local administrative districts and municipalities too have seen challenges expand significantly. Many were not or were only inadequately prepared. Nevertheless, the overwhelming majority of municipalities contacted in a January 2016 survey reported that they had the tasks of accommodating and providing care for asylum seekers under control, even if the situation was becoming increasingly difficult in many localities, with no more than temporary solutions often possible.¹⁵¹ Asked to specify their greatest challenges, local governments identified the organization of appropriate and permanent accommodation; a lack of staff and financial resources; planning uncertainties; opposition by local populations; and – more generally – the disjuncture between the need to act quickly and the duration and structure of planning and approval processes.

Various federal-government actions could help local authorities address these challenges. On the one hand, federal entities could carry out their own tasks more efficiently. For example, a shorter processing time for asylum procedures would directly help municipalities. In addition, the utility and practicality of primarily symbolic regulations such as the focus on a “good prospect of remaining” could be reviewed, as these often make practical integration work more difficult at the local level, while ultimately having little impact. In general, the federal government should take the needs of local governments more strongly into account. In addition, closer cooperation between the federal, state and local governments is necessary.¹⁵²

¹⁵⁰ See Schammann, Hannes and Boris Kühn (2016). *Kommunale Flüchtlingspolitik in Deutschland*. <http://library.fes.de/pdf-files/wiso/12763.pdf>: 4.

¹⁵¹ See Institut für Demoskopie Allensbach (2016). *Situation und Strategien in den Kommunen. Zum Umgang mit der aktuellen Zuwanderung von Asylsuchenden*. www.bosch-stiftung.de/content/language1/downloads/Situation_und_Strategien_in_den_Kommunen_zur_Zuwanderung.pdf: 9 and 17.

¹⁵² See Schammann, Hannes and Boris Kühn (2016). op. cit. (Fn. 160): 4.

5.3 Action area “policies”: 10 building blocks of a coherent asylum and migration policy

The most important cause of mixed migration lies in the lack of legal migration opportunities, or the impression that what opportunities do exist are insufficient. This applies to refugees as well as to migrants: Refugees are unable to gain legal access to organized asylum processes, while migrants see no plausible legal migration opportunities for themselves. Thus, both groups resort to similar, dangerous irregular routes, while people who want to migrate on economic grounds make use of the right of asylum for immigration purposes. This in turn overloads asylum systems, makes it more difficult to protect those who are actually being persecuted, and undermines the credibility of national and international asylum and migration policies.

To cope with the increasing challenges posed by mixed migration, more legal migration opportunities must be created, for refugees as well as for migrants. In this regard, national governments do have some scope of action open to them: For refugees, such legal pathways could include protected entry procedures or resettlement, while migrants could be offered relaxed visa policies and migration- and mobility programs. EU countries are acting here within a policy area regulated at the European level, especially with regard to refugee policy. However, there remains considerable room for national policy flexibility, even in Germany. Yet this requires a more coherent asylum and migration policy.

In general, even after 15 years of reforms, the policy area still resembles a permanent construction site, with the continuing need for reform obvious in many areas. Refugee protection must be improved overall, as must the management of work-related immigration. In addition, migration and development policies must be coordinated, and both social dumping and the displacement of local residents must be prevented. Finally, new avenues of integration policy must also be found.

Ten fields of action are relevant to the disentanglement of migration flows and the development of a coherent asylum and migration policy. The first five can be viewed as having particular leverage with regard to disentangling mixed migration.

(1) Strengthen refugee protection

The first element of a coherent policy consistent with the Federal Republic’s humanitarian obligations

is the effective protection of refugees. To be sure, immigration and refugee policies are in principle different policy areas, each shaped by specific international legal rules and commitments, but their substance is necessarily linked. An insufficient and ineffective refugee-protection system, paired with a lack of opportunities to come legally to the EU and apply for asylum, worsens refugees’ human-rights situation, reduces the efficacy of immigration policies, and thus hinders the disentanglement of mixed-migration flows. Further improvements are urgently necessary particularly at the European level.

The problem areas are well-known: the overdue implementation of the Common European Asylum System with a harmonization of agreed-upon standards for asylum procedures and the reception, care and accommodation provided to refugees; a fair distribution of burdens associated with the reception of refugees and the relief of the burdens faced by the EU’s external border states; and greater efforts to create secure access routes to the EU for refugees, particularly through resettlement programs.

In Germany, there is particular need for action with regard to preserving existing protection standards – especially in light of the debate over expanding the list of safe countries of origin – as well as in managing integration for the most recent wave of refugees.

(2) Promote immigration using a point system

An effective and long-term oriented migration policy should regulate all work-related immigration as a whole, and should thus include coordinated rules for the recruitment, employment and integration of highly skilled, skilled and low-skilled workers. In this regard, the variety of tasks ranges widely: While the need for highly skilled workers will in all probability remain urgent over the long term, the need for skilled workers is likely to show sector- and occupation-specific increases. Moreover, the precise scope and needed qualifications are difficult to forecast.

By contrast, due to the recent refugee flows, there is no current need for low-skilled immigrants in the EU – though there is disagreement within the research community as to whether highly developed industrial countries in fact tend to show an increasing need for low-skilled labor that cannot be covered by the domestic labor pool. However, at least within the context of the

recent wave of refugee immigration to Germany, this latter question is not relevant from a policy perspective. For the often only low-skilled refugees, the primary issues are rather protection and the creation of new life and employment prospects.

Within this broad spectrum of immigration-policy tasks, Germany must also settle upon sustainable rules and procedures, and eliminate the non-transparent regulations that to date have been difficult to understand and implement for companies and government administrations alike. Clear and transparent immigration regulations are a prerequisite for the disentanglement of mixed-migration flows.

Several options for such a reform and for immigration-policy regulations are currently being discussed in Germany. Particular focus here has been placed on point systems; however, there is as yet no agreement as to whether a point system should be designed to complement or replace existing regulations for work-related immigration. Which option is preferable depends not only on how one evaluates the existing rules and their weaknesses, but also on the objective of any such reform.

However, if such a change is to make an effective contribution to disentangling mixed-migration flows, special emphasis should be placed on creating a truly comprehensive or “cut from one cloth” immigration policy that is comparatively easy to communicate both internally and externally, makes clear to would-be immigrants that legal migration pathways to Germany do exist, and specifies the requirements such migrants must meet in order to take advantage of such routes. A comprehensive point system would be a strong signal to would-be migrants that they should not attempt to gain access to Germany through irregular migration routes or by using the right of asylum.

(3) Streamline asylum procedures and bolster the BAMF's capacities

It will never be possible to prevent mixed-migration flows altogether. It is thus important to use flexible policy instruments to manage them to the greatest degree possible, transforming irregular migration into regulated forms of immigration as much as possible. The long-sought shortening of asylum procedures would represent a fundamental contribution to reducing incentives for irregular migration. BAMF reforms should

be continued with the aim of shortening the average process length to three months. In this regard, it must be ensured that optimizing the process does not come at the expense of asylum-decision quality.

(4) Strengthen voluntary return and reintegration

Faster asylum procedures would also contribute to increasing the probability that asylum seekers who are not recognized ultimately return to their country of origin. In cases in which this does not take place voluntarily, an effective repatriation policy – but one fundamentally consistent with human-rights standards and obligations – must be implemented. This consensus is also a prerequisite for better cooperation between the federal and state governments in the context of the planned Repatriation Support Center (ZUR).

Voluntary return is generally preferable not only on ethical grounds, but also for practical reasons. Voluntary-return programs should thus be expanded, and combined with efforts to facilitate returnees' reintegration in their countries of origin.

German development-cooperation initiatives should here develop incentives for the reintegration of returnees in their countries of origin or host communities, instead of imposing short-term sanctions against origin countries that are reluctant to cooperate on the readmission of those obliged to leave Germany.

(5) Enable status changes for asylum seekers and tolerated individuals

New approaches are needed with regard to the possibility of transition between asylum and migration. Thus, asylum seekers should under certain circumstances be granted a change in status. On the one hand, they could be given the opportunity to obtain a work-related residence permit during the asylum process. On the other, even rejected asylum applicants, if they are receiving tolerated status, that is, a suspension of deportation from Germany on humanitarian or related grounds, should not be denied a status change. The already-improved legal regulations could facilitate a transition to stable residency for them through the channels of training and employment. Fundamentally, it remains important to consider the people for whom no need for protection has been determined, but who for various reasons will probably stay in Germany for some time.

(6) Give migration programs a development-policy orientation

Since demographic developments mean that (old and new) EU member states are expected over the medium and long term to lose their previous significance as countries of origin for immigration to Germany, and many emerging countries are themselves now competing for migrants, a growing number of immigrants will in the future come from developing countries. This inevitably raises the question of whether a meaningful connection between migration and development policies can be established, especially in the design of migration programs.

It is clear that labor migration can have mixed development-policy consequences for countries of origin. While migration can provide countries of origin with development opportunities, especially in the form of returnees' transfers of money and newly acquired knowledge, there are also risks. Some good development-cooperation approaches are already enabling migration's development impact to be improved and put to use. The same is true of efforts to prevent brain drain, particularly in the health care sector. To prevent errors of the kind that arose in earlier guest-worker recruitment programs, procedures must be developed that facilitate return for the migrants (counseling on voluntary return, reintegration programs) and avoid deteriorations in skills due to activity abroad that does not correspond to individuals' qualifications (training and continuing-education measures by companies and the government).

(7) Prevent social dumping and the displacement of local workers

In order to win public support for immigration policy, it must be shown that negative migration-related effects on the local workforce are being prevented. This applies particularly to the fears of being displaced by migrants held by many local residents, as well as anxieties regarding social dumping or downward pressure on wages, deterioration in employment standards, and increased competition for affordable housing and education. To be sure, experience shows that such fears recede in phases of economic growth, but even then they remain latent. In the current climate, for example, this applies to low-skilled local workers who see the recent wave of refugees as new competition.

These worries must be taken seriously, with the risks minimized through effective legal regulations and administrative action. This should include stricter monitoring of working conditions and occupational safety standards, and the containment of illegal work and insecure or precarious labor contracts, including false self-employment and the illegal supply of temporary workers. However, such measures are effective only to the extent that those trapped in such illegal work conditions can be offered alternative legal employment opportunities. New such forms of employment must be found particularly for refugees, as this is vital for their labor-market integration. Training and continuing-education initiatives will play an increasingly important role here; however, employment programs must also be considered.

The instruments for this are already in place in Germany, but must be implemented in a more consistent manner. For example, low-skilled local workers are best protected against displacement or social dumping through sector-specific or economy-wide minimum wages, while for skilled migrants, a reasonable proof of shortages in the local labor market generally offers sufficient protection.

(8) Strengthen integration and social participation

Many of Germany's federal states did not accompany earlier guest-worker recruitment programs with integration measures. Today, remedying these failures at best requires great effort, and indeed is often impossible. Therefore, refugees and temporary labor migrants should be presented with specific integration programs from the beginning. As yet, no "temporary integration" concepts have been presented; however, they will be indispensable in developing a comprehensive approach. Despite previous integration-related achievements, certain immigrant groups continue to show significant, in some cases even expanding integration deficits. Unemployment rates are high particularly among low-skilled individuals with a migrant background (as is also the case for equally poorly skilled people without a migrant background).

Integration policy is therefore to be regarded as an urgent task for the future, especially in the educational sector. Above all, it is vital to avoid a situation in which refugees and migrants are permanently excluded from participation in key areas of life (work, education, political participation), and instead seek alternatives

in their ethnic communities, withdrawing into ethnic enclaves. Political efforts and financial resources must be focused on this task. In creating policy, it must be remembered that the immigrant population resident in Germany is becoming more heterogeneous. Therefore, integration measures must be specifically targeted in order to enable their full effect to be felt. In this regard, integration promotion should not be limited to language-learning assistance, but should also be linked to support for inclusion in working life. Integration takes place through work. Even language skills cannot help migrants and refugees integrate if the individuals do not participate in working life.

(9) Sustainably minimize the causes of flight

While regulated forms of labor migration generally have positive development-policy impacts, refugee movements are always humanitarian and development-policy catastrophes. Thus, from a development-policy perspective, their causes must be prevented. A sustainable development policy can make a significant contribution to this goal. For example, development-policy programs can contribute to preventing crises and reducing the causes of refugee flight by combating corruption and improving health care, education and natural-resources governance. Promoting legal certainty and economic development, strengthening civil society structures, and providing climate-change-adaptation assistance are all becoming increasingly important.

However, development cooperation quickly reaches its limits when violence has already broken out. Acute drivers of flight such as violent conflict and political persecution can be influenced by development policy only to a small extent. Therefore, a comprehensive development-cooperation program aimed at addressing refugee flight must include additional areas of activity. In particular, this includes the provision of support for initial-intake countries in poorer regions of the world, as well as support for refugees' voluntary return and reintegration in their countries of origin once there is no longer a threat of displacement and persecution there, and prospects for building a life have returned.

The specific context is always crucial when combating the causes of flight. There are no model solutions that fit in every case. In this regard, it is clear that the fight against causes of refugee flight cannot be solely a task for development cooperation, but also demands the use of foreign, security, trade and

economic policy instruments, as well as European and international crisis-management efforts. Only in this way can regional interests be balanced, power struggles restrained, and war-based economies overcome.

(10) Improve data

Existing statistical categories poorly reflect the often very complex reality of mixed migration. Further analysis is needed in order to better understand the dynamics of mixed-migration flows along the various migration routes. The monthly reports published by regional networks on mixed-migration flows in West, North and East Africa could provide one basis for this in the future.¹⁵³ Germany should contribute more significantly to these efforts.

In Germany itself, while asylum statistics offer reliable information on positive and negative asylum decisions, gray areas continue to exist. For example, for some countries of origin, mixed migration accounts for an above-average number of "other procedural conclusions," without a more detailed breakdown being made regarding the actual reason for the termination of proceedings. Here, a more detailed statistical survey could improve our understanding. In addition, there is insufficient information regarding the basis on which two-thirds of the people officially obliged to leave Germany have been granted tolerated status. Here, the federal states should improve their statistics.

The data quality of the Central Register of Foreign Nationals (AZR) could be an additional potential starting point. If this database is to be used as a management tool, the quality of the data must be improved. This points to a broader need for reforms such as the introduction of an electronic file-management system for the various agencies holding immigration-law and integration responsibilities.

¹⁵³ The Regional Mixed Migration Secretariat primarily analyzes migration events out of and within the Horn of Africa and Yemen (<http://www.regionalmms.org/>), while the Mixed Migration Hub focuses on North and West Africa (<http://www.mixedmigrationhub.org>), and the Mixed Migration Platform on the Middle East (<http://www.blog.mixedmigrationplatform.org/>).

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