



Flight and asylum

A lack of solidarity and growing populism as challenges to European domestic policy

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Key Points

- To date, enforcing the European asylum system has been met with only limited success. Despite acknowledged difficulties, increasing pressure will in future be needed to comply with legal directives and laws. A further task of the European Union consists in securing its borders and combating the root causes of migration beyond Europe.
- The current pressure of migration from the Middle East and Africa combined with increasing scepticism with regard to “multiculturalism” and immigration from Islamic countries represents a major challenge to the European Union’s Member States.
- The future task of German and European policy on asylum and migration lies in striking a balance between democratic participation in debates on refugees and migration on the one hand and responsible and ethical conduct towards vulnerable people on the other.
- German policy must revolve around the twin aims of reinforcing the social order and the non-selective implementation of the rule of law. To consolidate the ongoing social change requires a regulated restriction of immigration.

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The challenges lie in the fair distribution of migrants and refugees within the EU and the fight against right- and left-wing populism.

Summary

The reactions of the EU Member States to the continuing refugee and migration crisis coupled with growing scepticism towards multicultural societal models reveal are markedly different. Whereas the public debate in Germany is primarily focused on managing the admission of asylum seekers, other EU Member States are attempting to counter the developments making recourse to constitutional means to curb of “pull factors” but also by implementing measures in respect of refugee admission that fall shockingly short of the demands of decency. Despite the adoption of a policy of voluntary distribution of approximately 120,000 refugees within the European Union, weighty factors are set to continue to obstruct the harmonisation of the European asylum system.

Several models exist to curb right-wing populist parties and movements within the European Union, although Germany’s approaches are just as unconvincing as the reactions of her European neighbours. While right-wing populist parties in Sweden, France and the United Kingdom are increasingly setting the political agenda, the shift to the right in Germany is largely taking place outside the party spectrum – that is to say, on the streets. The central task of politicians in achieving domestic acceptance of a large influx of migrants is the enforcement of the existing legal framework and making a distinction in the asylum procedure between vulnerable people and migrants. What is required, alongside moves to strengthen the primacy of the rule of law, is a debate on the aims of and limits to immigration.

1. Introduction

In recent years, crises, wars, social inequalities and demographic trends in the MENA region and Central Africa have resulted in an unprecedented increase in migration, for which Europe has been insufficiently prepared and which has placed the mutual solidarity of the EU Member States under unremitting strain.¹ In 2013 some 435,000 applications for asylum were submitted across Europe. In 2014 this figure mushroomed to 625,000.² Current forecasts place the number of applications for asylum in Germany alone at over 800,000 in 2015.³

Given the intensity of inter-denominational and geopolitical conflicts, the fragility of state structures in the MENA region and the projected doubling of the African population by the middle of this century, the European Union faces a long-term challenge, to which the Member States must find coherent foreign and domestic policy responses. While the European Union is at its external border confronted with a moral dilemma between the need to protect refugees and the need to safeguard its own frontiers,⁴ significant challenges are also arising within the EU. At pan-European level these are, on the one hand, the equitable distribution of migrants and refugees in the spirit of solidarity, and, on the other, the growth of right- and left-wing populist movements, between which an unbridgeable gulf is increasingly opening up in respect of European asylum policy and which are contributing to domestic political tensions, in Germany and elsewhere.⁵

Against the backdrop of growing scepticism towards multicultural societal models, Islamist attacks in Western Europe and the lack of Eastern European countries’ experience with multiculturalism of the EU’s western Member States, Europe’s political elites and national populations alike are being forced to find sustainable solutions to the refugee crisis. German Government officials in particular have complained in the past that the distribution of refugees within Europe is divisive and unjust and demanded a much stronger burden-sharing.⁶

The following article represents an attempt to explain these “domestic” European problems, in the first instance through an analysis of the current situation coupled with the historical development of European asylum policy. The article then goes on to compare the differences in the implementation of asylum policy in the EU Member States and to assess the key obstacles that have thus far prevented the “Europeanisation” of asylum policy. The second part of the analysis focuses on the challenges posed by populist parties and movements, which are gaining popularity on the back of the refugee problem and the selective enforcement of existing legislation. Finally, possible solutions are outlined with regard to European asylum policy and populist movements.

2. Outlining the problem

a) The failure of the Common European Asylum System (CEAS)

With the Dublin Regulation, concluded in 1990 and enacted in 1997, the international legal foundations for the Common European Asylum System (CEAS) were laid. The regulation followed the principle of “One refugee, one state”, intended as a means to combat illegal migration within the EU (“no refugees in orbit”). The Dublin procedure lays down criteria for the jurisdiction of the EU Member States over asylum procedures. In principle, the Member State of first entry is also responsible for processing the asylum application. The Dublin procedure assigns both legal and political responsibility to the state through which the asylum seeker first enters the EU, regards the fulfilment of its national responsibility to protect and control the border and to prevent migrants from unobstructed passage to other states. Alongside the harmonisation of entry regulations, these provisions are a central element of the Schengen Agreement, which provides for the removal of checks on individuals at the internal borders between the contracting European countries.

Already back in the 1990s, the objective of European asylum policy went beyond the mere establishment of national responsibility. Article 80 of the Treaty on the Functioning of the European Union (TFEU) emphasises the “principle of solidarity” in the “fair sharing of responsibility, including its financial implications, between the Member States”.⁷ The measure was aimed at the approximating quotas of guaranteed asylum permits alongside the enforcement of standards and the protection of the rights of asylum seekers.⁸ With the FRONTEX regulation of 2007/2004, the Member States laid down the conditions for the European Border Agency. Reception guidelines including policies for accommodation and care (Council Directive 2003/9 EC), qualification guidelines on the minimum standards for the recognition of asylum seekers (Council Directive 2003/109/EC), and a Asylum Procedure Directive (Council Directive 2005/85/EC) were successively established. At the end of the 1990s the European Union adapted the principle of non-refoulement, which prohibits the individual EU Member States from deporting refugees who enjoy protection under the objective criteria of the Geneva Convention Relating to the Status of Refugees.⁹ Contrary to the public perception of a “Fortress Europe”, both the European Union and Germany thereby liberalised the legal criteria in favour of asylum seekers, expanding the category of persons entitled to protection, as well as the recognition criteria and procedures.¹⁰

Despite the creation of a pan-European refugee fund (AMIF) and the European Asylum and Immigration Pact together with the EASO Office (European Asylum Support Office), the “Europeanisation” of asylum policy over the last decades has failed. On the one hand, the admission quotas for asylum seekers – even for those who are seeking refuge for the same reasons from the very same states – differ widely

The Dublin procedure for the registration of asylum seekers was a central plank of the Schengen Agreement.

The European Union and Germany have never been a “fortress”.

The implementation of the Dublin Agreement was already poor even before the current refugee and migration crisis.

between the EU Member States. On the other, the reception of asylum seekers was limited to a few European States.¹¹ In 2014, according to absolute figures, the five EU states Germany, Sweden, Italy, France and Hungary were responsible for three-quarters of all the asylum procedures in the EU. The highest application rates by head of population (relative numbers) were recorded in Sweden, Hungary, Austria, Malta, Denmark, Germany and Belgium. Whereas a total of 150,000 asylum applications were made in Sweden, a country with just under 10 million inhabitants, between 2008 and 2012, the number in Spain (with over 45 million inhabitants) during the same period was only 16,260.¹² Even a superficial comparison of these figures shows that the Dublin Convention is in practice insufficiently enforced.

Whereas, in 2012, the rate of protection for Iraqi asylum seekers in Austria amounted to 92.3%, in Denmark it was 10%, and in Greece the figure amounted to less than 3%.¹³ There were also significant differences in the provision of medical care for refugees and asylum-seekers. Although refugee status and subsidiary protection with the related minimum provision of services are uniformly defined under EU law, the implementation in individual cases and the humanitarian justification for the granting of protection continue to be subject to the domestic law of the individual nation states. State practice of granting asylum applications thus varies accordingly.¹⁴

The commitments of monetary support by the EU often fall below the cost threshold of the registration of incoming refugees.

In the face of increasing migration movements from the MENA region and Africa, the Dublin Convention has come in for criticism and has effectively been suspended. First and foremost, the solidarity mechanism created by the Dublin system is insufficient: While the peripheral states are required to take in incoming asylum seekers according to the Dublin Convention and the decisions of the European Court of Justice in the Hague, the non-peripheral states pay into a common fund which does not, however, cover the costs of the reception of asylum seekers.¹⁵ The EU's commitments of monetary support remain vague and below the actual cost threshold, if the peripheral states were to register all arriving refugees in line with the Dublin Convention.

In the past, the states located on the external borders of the European Union have tried to avoid taking in asylum seekers. For instance, Italy has intercepted refugees on the open sea and abandoned them without consideration of their asylum entitlement status. This practice was however ruled unlawful by the European Court of Human Rights in 2012.¹⁶ A second approach in several EU Member States was to minimise the standards for acceptance. Although the official Italian standards for asylum seekers are similar to those of Germany and include regulated claims to asylum, accommodation, food and medical care,¹⁷ it is in practice impossible to consider it as a functional asylum system. It is for this reason that German administrative courts have in the past ruled unlawful the repatriation of asylum seekers due to the "inhumane and humiliating treatment" to which they are exposed in Italy.¹⁸ Repatriations to Bulgaria, Hungary and Greece were also stopped due to the systemic shortcomings of the respective asylum systems.¹⁹

A lack of bureaucratic capacity and inadequate conditions for refugees have undermined the European treaties.

It can also be assumed that a lack of administrative capacities in peripheral states such as Bulgaria, Greece and Italy are a key reason for shortcomings in the implementation of the Dublin Convention, although case-law – for example, concerning the medical care of refugees in Italy – is in some cases very generous. However, the Italian asylum system depends to a high degree on the financial and organisational involvement of private organisations, with the effect that the majority of asylum seekers are forced to manage without government support.²⁰ In addition, intentional or unintentional failures to carry out checks on individuals, result in refugees

and migrants being able to journey on to other states of the European Union and to apply for asylum there.

It was due to the unequal distribution of asylum-seekers and individuals granted asylum and a wide disparity in the standards for the reception of refugees that the European asylum system was revised in July 2013.²¹ The resolutions included both the introduction of uniform minimum conditions regarding reception, the provision of care and access to the asylum procedure and the EURODAC regulation, which relates to the identification of incoming migrants by means of fingerprinting and the clarification of the jurisdiction of the Member States. The intention was to bolster emergency aid to Member States on the external borders of the EU and to examine the possibilities for an “emergency redistribution on a voluntary basis in all Member States”. Agreement was reached on the posting of teams from the European Asylum Support Office in the states at the EU’s external borders with the aim of sharing the task of processing asylum applications. A further plan was to initiate a first voluntary pilot project for resettlement in all EU Member States. These measures are supported by a fund promising three billion euros for the years from 2016 to 2020.²² In addition, uniform standards were set for the integration of asylum seekers into the labour market, although these are still not being uniformly implemented in the Member States. Furthermore, rights for minors and the especially vulnerable were defined for the first time. The European Refugee Fund has moreover set in motion first improvements in the reception centres, in particular in Greece. At the same time, external pressure on Greece, at least until the election of Alexis Tsipras as Greek Prime Minister in January 2015, has resulted in a rise in the intake of refugees from the previous figure of one percent to twelve percent. In addition, individual EU Member States have transposed the services to be provided to asylum seekers laid down by the EU into national law. In Hungary, the asylum authorities have since 2014 been concluding an “integration contract” with refugees and persons eligible for subsidiary protection, which regulates their basic needs and services such as accommodation, claims to education and health care.²³

However, further measures adopted by the European Council in April 2015 have fallen short of the harmonisation target.²⁴ For instance, the European Council has abandoned the introduction of an EU-wide system for the distribution of recognised refugees outside the EU’s territorial borders (“resettlement”). The relocation of 120,000 refugees residing in Italy, Hungary and Greece was accepted after a majority vote in the European Council. In the face of the gravitational pull of ethnic and religious communities in Europe and the unwillingness of four Eastern European EU Member States to participate in the decisions, the extent to which the decisions will be implemented remains to be seen. Nor has the United Kingdom participated in the voluntary scheme.²⁵ In spite of ongoing declarations of intent to prevent people smuggling within the European Union, not a day goes by without illegal border crossings with the aid of organised networks.²⁶

b) Long-term deficiencies of the European asylum system

Despite a potential future convergence of refugee and asylum policy, the EU Council ruling of 22 September and some improvements which, from the perspective of the refugees, must be welcomed, weighty factors militate against the harmonisation of the European asylum system – at least when the standards formulated since the 1990s are applied. The reasons for this are complex.

First of all, the lack of institutional authority of the European Union will continue in the future to hinder the implementation of asylum standards and a more equitable distribution of asylum seekers. Even if, in contrast to the practice of the past few

Thus far, the decisions taken at European level have fallen short of the goal of a long-term solidarity mechanism.

The lack of institutional authority of the EU will continue to make law enforcement difficult in the future.

It is hard to see why refugee and asylum policy should run counter to the trend toward renationalisation.

decades, the decisions of the European Union were to be gradually implemented, the standards used for refugee and asylum matters will continue to be set by the individual Member States. Although the Single Market and intra-European migration movements have restricted the sovereignty of individual states, the territory of the EU continues in spite of cross-border mobility to be organised at the national level. The European Union exercises no territorial sovereignty over the Member States. The German Federal Constitutional Court has clearly established here that the right to grant and withhold asylum remains in the remit of the individual states.²⁷

Implementation at European level is complicated by a divergence of interests of the European institutions.²⁸ Thus the European Parliament and the European Commission, with their emphasis on the rights of asylum seekers, often represent interests diametrically opposed to those of the European Council. The latter is often split between the interests of the peripheral and the core states, as well as between Western and Eastern European states.

It also appears unlikely that the refugee and asylum policy will counteract a trend toward the renationalisation of European politics that started to set in a decade ago and has been reinforced by the Greek debt crisis.²⁹ Finance Minister Wolfgang Schäuble recently warned against an extension of the powers of the European Commission.³⁰ A weighty factor behind the lack of Europeanisation may well lie in the fact that the majority of Member States continue to perceive of immigration policy as a core task of national sovereignty. The British migration expert Paul Collier argues that the protection of national territory will often be perceived as a human right. Accordingly the defence of national territory is given equal standing with the right to private ownership.³¹

In addition, domestic political debates and different national integration philosophies, as well as national social standards remain the central driving forces behind European asylum and refugee policy. It can admittedly be argued that the refugee crisis has in recent years led to the development of European public awareness in this policy field.³² However, this public awareness is often predicated on national reservations with regard to the refugee policy of other EU states or toward the refugees themselves. It is a basic matter of fact that debates on refugee policies remain firmly in the hands of the individual nation states. German public knowledge of the debate on refugees in Hungary or Poland is just as limited as French public knowledge of German reception centres and the Königstein quota system for the distribution of asylum seekers within Germany. A morally charged debate along the lines that "no human being is illegal" is as unthinkable in Poland as comments concerning the "swarms of foreigners" made by British Socialists are in Germany. Individual EU Member States have also openly spoken out against a multicultural immigration-based society. At the same time, differences in national debate are one of the causal factors behind the discrepancy in the implementation of the applicable laws. Whereas, due to the public debate and the actual political implementation of repatriation laws, the repatriation rate in Germany is significantly below the European average, France is trying to use rigorous deportation methods to deter potential migrants.³³

Varying degrees of administrative capacity as well as constitutional differences – in particular in the implementation of applicable European regulations – are militating against the Europeanisation of asylum policy, even though individual statistics bear witness to an increasing trend toward convergence of European refugee policy.³⁴ In Hungary and other Eastern European countries, the social benefits on offer are significantly lower than those enjoyed by the indigenous population.³⁵ In light of the

The assumption of responsibility for core state functions at the periphery of Europe by NGOs and the local population cannot be a permanent solution.

sharp rise in the numbers of refugees, the competent authorities are being overwhelmed in many places and are hardly in a position to guarantee the protection and care of refugees any longer. In addition, the mandates of intergovernmental organisations such as the UNHCR are restricted, with the consequence that their ability to intervene in support of the migrants is also limited. As a result, NGOs and social institutions are playing an increasingly central role in the protection of refugees. For example, NGOs in Greece are helping to set up shelters, providing food and hygiene facilities, organising integration and language courses for those who are waiting for their applications for asylum to be processed and advising refugees in legal and social matters.³⁶ Even through this is currently both necessary and correct, the assumption of responsibility for core state functions by NGOs poses long-term questions concerning the regulatory function of the state. Where these functions are not being fulfilled, comparable standards cannot even be guaranteed at the national level and their satisfaction is increasingly dependent on the ability to mobilise local populations.

In many Member States EU law is implemented only reluctantly because of the divergent views regarding adequate standards.

Adding to this are the divergent economic conditions and labour market policy challenges related to the labour market in Europe. For instance, youth unemployment in Italy is officially over 40 percent, whereas in Germany it is just over seven percent.³⁷ This kind of disparity gives rise to significant differences in demand for workers in the respective labour markets. As a result, there are significant differences between Member States with regard to reception conditions for asylum seekers and their access to the labour market.³⁸ EU directive 2013/33/EC, adopted in 2013, lays down standards for reception and stipulates that access to the national labour market should be granted to asylum seekers no later than nine months after submission of the application. However, implementation of the directive has met with resistance in many Member States because, whereas they are on the one hand interested in integrating refugees into the labour market and reducing the financial burden of social benefits, on the other they do not want to attract additional economic migrants.

At the end of the day, all the Member States of the European Union have a normative commitment to the principles of the Geneva Convention on Refugees of 1951. However, this commitment applies first and foremost to the criteria that must be met if people are to be granted protection from persecution. The treatment of the persecuted after their acceptance as refugees is, however, not bound to any normative framework. Although negotiations between the EU Member States have in the past revealed a high level of convergence in the criteria used in the definition of refugees, differing views regarding appropriate reception standards and constitutional verification procedures have surfaced on many occasions.³⁹

3. Challenges to the integration of refugees and migrants

a) Right-wing populism

In addition to the challenges posed by the accommodation and distribution of asylum seekers, increasing migration pressure has given rise to political challenges within the European Member States. For instance, sustained and increasing migration movements have generated growing support for populist parties whose Euroscepticism has long since struck a chord. The refugee movements are however only one element of an overall increase in scepticism on the part of Western European societies toward multicultural models.⁴⁰ At the same time, the reservations of right-wing populist parties such as the Front National, the Sweden Democrats, UKIP or the True Finns - notwithstanding all the substantive differences in the party pro-

grammes – are being further succoured by a sceptical attitude towards immigration and, again with differences between the individual EU states, fears of the Islamisation of Europe. In the EU, polls show that a majority of the European population perceives of immigration as a source of enrichment for national societies. On the other hand, the current level of immigration is considered to be too high.⁴¹ Whereas there is a high level of readiness to take in refugees on the basis of the Geneva Convention, the admission of economic migrants through the asylum procedure is unpopular.

Contrary to the widely-held opinion that the parties which are sceptical of integration openly base their reservations on racism, a study of the Royal Institute for International Affairs ("Chatham House") has shown that the sceptical attitude toward the ongoing immigration and the swelling of the ranks of extreme and populist right-wing parties are in particular due to a fear of loss of cultural identity.⁴² Ethnic racism is therefore, at least in Western Europe, a marginal phenomenon; in Poland and Hungary, however, respondents expressed the opinion that some "races are more privileged" than others. The study further reveals that migration sceptics are less concerned with competition on the labour market than they are with social cohesion. Thus the perceived risk of a loss of cultural identity is given far greater weight than other factors.⁴³

Elsewhere it has been argued that right-wing populist movements in Europe largely support the abovementioned principle of non-refoulement; that the majority of them thus reject the deportation of people whose lives are at risk.⁴⁴ Populist right-wing parties like the Front National in France and the Sweden Democrats have in recent years pursued strategies in which they have significantly downplayed their previously open aversion towards refugees and are now calling for solutions to be found in the refugees' respective countries of origin.⁴⁵

At the same time, reservations about Islamic population groups have grown throughout Europe. In Germany, too, the debate has moved on from questions of a fundamental German culture to be subscribed to equally by all immigrants to a discussion of headscarves, forced marriages and Islamic honour killings. It must be assumed that the attacks in France and Denmark have further reinforced this tendency. Eastern European politicians have already made it clear that they would prefer Christians over Muslims when it comes to taking in refugees and migrants, among other reasons because the group of Muslim refugees might include "terrorists".⁴⁶ Czech President Miloš Zeman has stated that Islamic immigrants in particular are for "genetic reasons" not capable of integrating into other cultures.⁴⁷ The Slovak Government too recently announced that it would not be taking in any Muslims from Syria on the grounds that they would not feel "at home" in Slovakia.⁴⁸

When it comes to dealing socially and politically with right-wing populist parties and movements, several strategies present themselves:⁴⁹ On the one hand, politicians, the media and society could choose to respond by excluding populist parties and movements. The reactions to the protests by PEGIDA in Dresden suggest that sections of the political and media elites are trying to do just that. For instance, the North Rhine-Westphalian Minister of the Interior Jäger referred to PEGIDA as "Nazis in pin-striped suits".⁵⁰ Federal Minister of Justice Maas called the protest movement a "disgrace to Germany".⁵¹ The advantage of such a clear disavowal is that right-wing parties in Germany, in contrast to other EU States, have only limited prospects of success. Only sporadically make demands hostile to the refugee cause their way onto the political agenda of the German state parliaments. They do not feature at all in the Bundestag.

The reservations about immigration are based on cultural reservations and not on ethnic racism.

Reservations about Muslim population groups have risen since the attacks on Paris and Copenhagen.

Neither German nor British strategies for dealing with immigration sceptics have proved convincing.

The perception of differences between “public” opinion and the “published opinion” – allegedly driven by German political parties – is now being expressed in many reader comments and letters from citizens. These are increasingly raising doubts in the ability of politicians to resolve the current asylum crisis. Drawing a line in the sand with regard to right-wing extremism while simultaneously reforming the German asylum system and pursuing a consistent policy of deporting rejected asylum seekers could serve to bridge the perceived gulf between parts of the population and politicians.

Another approach might be the strategy of defusion, in other words, targeted distraction from the actual problem.⁵² This strategy is, however, not very promising, since it could disrupt general trust in politics even outside right-wing populist circles.

This category includes attempts to emphasise the economic benefits of migration, also with regard to future demographic challenges. However, firstly, problems arise in the quantification of the economic benefits of migration: A comprehensive study by Frédéric Docquier, Çağlar Ozden and Giovanni Peri came to the conclusion that immigration in OECD countries during the 1990s had no significant impact on the economic performance of the destination countries.⁵³ Secondly, the economic argument does not address the – in the majority – cultural reservations in the face of increasing numbers of migrants.

States such as the UK and Denmark have opted for a strategy of “adoption”, attempting to bring some of the reservations of the populist parties into the mainstream.⁵⁴ While this approach does incorporate some of the criticisms expressed by right-wing opinion, it might at the same time lead to a significant increase in an atmosphere adverse to immigration among swathes of political and social groups through the political legitimisation of what were originally populist views.

It therefore follows that strategies of engagement and interaction will in the first instance continue to offer the greatest prospects of success. Both approaches take place primarily at the local level and try to tackle the fears and reservations of both the local population and the asylum seekers themselves. Increasing the interaction between various social groups could lead to a significant reduction in mutual resentment.⁵⁵ One might suggest that legitimising political action in refugee and migration policy is built through interaction.

The balance between “enlightened elitism” and “integrative democracy” will determine the future treatment of refugees and migrants.

At the same time, the strategy of local interaction cannot replace the answering of basic questions on migration and asylum. If migratory pressure on Europe should become constant, a central future challenge will be to strike a balance in absorption policy between “enlightened elitism” and “integrative democratisation”. Essentially it boils down to the tension between the internationalisation of political and economic decision-making spaces in the course of globalisation, in which the primacy of territoriality is increasingly giving way, and sovereign national identity spaces for which the territoriality imperative still holds sway.⁵⁶ An enhanced understanding between European elites could define the implementation of measures in the area of refugee and asylum policy and thereby circumvent individual national reservations.⁵⁷ However, risk arise where elites over-reach in matters of asylum and refugee policy: On the one hand, a stronger European dimension runs counter to the individual national reservations about issues of asylum policy. On the other, it risks deepening the alienation between the political and economic elites on the one side and the national populations on the other.

b) The inadequate implementation of laws, taking the example of Germany

The challenges which arise in the fight against right-wing populism also affect the respective domestic politics of the nation states. The example of Germany shows that resentment emerges when national law is not or cannot be implemented. In comparison to other European countries, the attitude of the German population to migrants is positive. According to a survey of the Allensbach Institute in 2014, 87 percent of Germans considered civil wars to be a legitimate reason for refugee movements. Two-thirds of those polled also voiced a desire to support refugees personally.⁵⁸ Another study has shown that the German population has a more positive attitude towards immigration than their British and French counterparts.⁵⁹ However, the number of respondents expressing support declined significantly last year, even though the majority of those polled were still highly supportive of the provision of aid for refugees under the terms of the Geneva Convention.⁶⁰

The reasons are varied but are also based on reservations with regard to liberal legislation and interpretations of German refugee law, in particular on the part of individual German states. Only about one-tenth of the rejected asylum seekers actually leave Germany.⁶¹ The criticism levelled at the abuses of German asylum law is justified – although the causes are more complex than is publicly perceived.

First of all, the repatriation of rejected asylum seekers fails due to practical considerations. The personal details of asylum seekers are often untraceable, so that the origin of the applicants remains unclear and the persons in question cannot be deported. The decentralised accommodation of refused asylum seekers makes it difficult to repatriate people from safe countries of origin. Individual deportations are also made more difficult at a practical level by the refusal of individual carriers to transport asylum seekers whose deportation has been ordered. For these reasons, states such as Switzerland have significantly curtailed the benefits they offer anonymous asylum seekers. Since 2008, individuals whose applications for asylum have been definitively rejected have also been excluded from receiving social benefits and may apply only for emergency assistance.⁶² Similar arrangements are in place in Denmark. In Italy, in the event of a negative decision, social security payments are terminated after a six-month period during which an appeal may be lodged against the decision.⁶³ In the UK, the benefits paid out to tolerated failed refugees are significantly lower than those of the applicants. Moreover, tolerated refugees must demonstrate that they are destitute and cannot finance their own departure. In Hungary, individuals whose deportation has been ordered are taken into custody.⁶⁴

In Germany the Federal Constitutional Court has significantly increased the entitlement of asylum seekers to state benefits.⁶⁵ For instance, any consideration of cutting monetary benefits to asylum seekers from safe countries of origin is subject to constitutional limits.⁶⁶ The European Union has moreover restricted the right of nation states with regard to the detention of illegal migrants and issued a directive instructing Member States to facilitate for refugees' and asylum seekers' access to the labour market.⁶⁷

German politicians have responded to the poor enforcement of legislation by amending it and have liberalised the right of residence for asylum-seekers – in a manner completely in line with European case law. The rates for asylum seekers were increased in 2012. They are now only marginally below those of the German social welfare standard and come into full alignment after a residence period of 15 months. The legal measures have thus far also applied to tolerated refugees whose

The positive attitude of the German population toward migrants is waning.

The ruling of the Federal Constitutional Court has increased the rights of asylum seekers.

asylum application has in the first instance been rejected. Moreover, the residence requirement has been relaxed and integration into the labour market for asylum seekers and tolerated refugees made easier. Asylum seekers may now take up employment in Germany after a stay of three months, and the period during which any job must first be made available to a German national or a foreign national with equivalent rights is limited to fifteen months.⁶⁸ This approach reduces the dependency of these groups of individuals on state welfare benefits and furthers their integration.⁶⁹

The adaptation of asylum law makes sense for many reasons. On the one hand, asylum seekers can benefit from the fruits of their labour (even if integration into the labour market is often more difficult than German business leaders suggest) and, once they have a taxable income, are no longer dependent on state benefits. Moreover, the situation, in particular the life of an illegal or semi-legal alien, is difficult to bear for many asylum seekers.

Nevertheless, parts of the German asylum system remain opaque, particularly with regard to migration from the western Balkans, the implementation of statutory deportation laws and the extension of individual benefits. The European Union has recently criticised Germany's deportation practice.⁷⁰ The Bavarian initiative to declare Kosovo, Montenegro and Albania as safe countries of origin was rejected by a majority until the refugee summit on 24 September.⁷¹ It was also for this reason that the six western Balkan countries accounted for just over 50 percent of applications for asylum in the first quarter of 2015. In March 2015 an increase of almost 3,000 percent in the number of Kosovan nationals seeking asylum was recorded in comparison to March 2014, and the number of Albanian nationals seeking asylum rose by over 300 percent. And yet, the overall asylum recognition rate for these states is currently between 0.2 (Albania) and 0.4 per cent (Kosovo).⁷² At the same time, France declared Albania a safe country of origin, whereupon the number of Albanian asylum applications submitted in France decreased. However, whether it is actually possible to achieve the desired deterrent effect by declaring the countries of origin of prospective migrants to be safe is highly questionable, especially as in Germany an asylum procedure is available even to migrants from safe countries of origin.

German policy blurs the distinction between asylum seekers and migrants, refugee movements and immigration, in order to avoid morally difficult decisions.⁷³ The low level of deportation of asylum seekers whose applications have been rejected can therefore be blamed on a lack of political will. The failure to implement the law has been the result on the one hand of the negative attitude towards "inhumane" deportation practices that prevails in the responsible German states. On the other hand, opinion-leaders of civil society and politics openly reject the premises of German and European asylum law. Interest groups such as ProAsyl and church associations are campaigning fiercely for the right to remain also for rejected asylum seekers. Even if the number of rejected asylum seekers who enjoy the protection of church asylum is relatively low, the practice is representative of the lack of willingness of socially relevant organisations to implement the applicable legislation.⁷⁴ Interior Minister Thomas de Maizière has rightly urged the Protestant Church in Germany (Evangelische Kirche Deutschlands – EKD) to show more restraint on political issues. Moreover, through selective reporting, German media are also helping to muddy the waters with regard to German asylum law.⁷⁵

Even more significant is the blatant tendency of various state governments in Germany to bend asylum law. For instance, Schleswig-Holstein and Thuringia decided

Germany has difficulty in distinguishing between migrants and refugees.

Individual state governments selectively interpret German case-law.

in 2014 to enforce a halt to winter deportations for all asylum seekers, even though the individuals concerned included many migrants from the countries of the Western Balkans whose refugee recognition rate is minimal.⁷⁶ Moreover, states with a Social Democratic/Green coalition government are considering granting asylum seekers a work permit from the first day of residence. These Red/Green states have in the past successfully appealed for a change to the principle of benefits in kind in favour of cash payments to asylum seekers.⁷⁷ At the same time, human rights organisations and regional politicians have based their case on a highly selective interpretation of the law. While the right of appeal of asylum seekers whose application has been rejected by the court of first instance is often emphasised and exploited to the full, deportations are at the same time rejected.

The compromise between the Federal government and the states will not lead to an improvement.

It is doubtful whether the compromises reached at the summit of the federal states at the end of September will lead to a real improvement in the inadequate practice of deportation, all the more so because other questions are now being asked concerning the possibility of upholding the constitutional nature of German asylum law in the face of the influx of migrants. Decisive changes proposed by the Ministry of the Interior, such as the "airport procedure" to avoid that ineligible migrants are referred to primary reception centres and to withdrawal funding for the journey and return tickets for candidates who clearly do not have a case, have been diluted.⁷⁸ Given their poor record of implementation to date, whether individual federal states will comply with the demands for quicker deportations remains to be seen.⁷⁹

The interests of German business leaders are not capable of rising to the challenge facing society as a whole.

On the other hand, business representatives have also made it clear that they have an interest in a liberal interpretation of asylum legislation. German industry is pursuing its self-interest with its demands, while refusing to enter into a discussion of the social consequences. Thus, the majority of German managers believe that the upper limit of sustainable refugee and migrant reception has not yet been reached and rejects the interception of refugee boats.⁸⁰ Representatives of the Ministry of the Interior have however stressed that a high number of asylum seekers cannot immediately be integrated into the labour market. Figures from Denmark show that, only one in four of the refugees taken in between 2000 and 2003, is now in employment.⁸¹ Gunnar Heinsohn has pointed out that the performance of students with an immigrant background is increasingly lagging behind compared to their local counterparts and has appealed to politicians not to march to the tune of the short-term interests of German business leaders.⁸²

Past regulations have undermined the acceptance of the German people.

Domestic political approaches to the issue of asylum with the stubbornly high number of migrants without any prospect of asylum or subsidiary protection is preventing a potentially higher intake of refugees from crisis and war areas, for example, through controlled resettlement programs. On the other hand, the intake of economic migrants is undermining the social consensus regarding the admission of vulnerable civil war refugees from the MENA region. The right to stay in Germany is often not reflective of the status of asylum seekers as refugees. The focus is instead on the "economic benefit", even of rejected asylum seekers.⁸³

Serb and Albanian politicians fear a "brain drain" as a result of liberal asylum laws in Germany.

The rejection of elements of deterrence such as those used in the United States, Canada or Australia has its origin in the human rights principles of the European Union, the case-law of the European Court of Human Rights and of the German Constitutional Court, and the poor implementation of existing legislation by the individual German states. Consequently, in Europe this has strengthened the "pull factors" for migration from Africa and the MENA region. This is particularly true of Germany and Sweden, which, by contrast with the practices of their neighbours,

have previously decided to extend the government services offered to asylum seekers.⁸⁴ The liberal German asylum practice has recently been criticised by Albanian Interior Minister Tahiri, who sees it as one of the principal reasons for the brain drain of skilled workers from Albania.⁸⁵ The prime ministers of Kosovo and Serbia have also expressed reservations concerning the “pull factors” of the German asylum system. Moreover, the High Commissioner for Refugees of the United Nations, António Guterres, does not regard the disproportionately heavy burden on Germany and Sweden as indefinitely sustainable.⁸⁶ If the migration pressure continues, this will also raise the question of how long-winded constitutional asylum procedures can be sustained in the long term.

4. Conclusions and recommendations

a) CEAS

Measured against the objective laid down in the Treaty of Amsterdam of an asylum policy characterised by solidarity, the refugee and migration policy of the European Union has fallen far short of expectations. Ultimately, the way states deal with asylum shows that, notwithstanding the existence of European standards, national policy still takes precedence over pan-European measures. The reasons for the failure of European asylum policy are complex. The “race to the top” practiced by Germany and a few other states – that is to say, the extension of the rights even of rejected asylum seekers – is understandable from a domestic political and legal perspective but threatens to reinforce the dichotomy in European asylum policy between attractive destination states and countries with minimum standards of care for refugees.

A quota system for distributing refugees in Europe aspired to by various sides offers a compelling solution only at first glance. Member States such as Germany would in practice be preferred due to the differences in the actual standard of living, government benefits and legal conditions on offer and to the diaspora already to be found there. It can be assumed that refugees will continue to make every effort to stay or to reach in their destination country of choice. What would then be required would be transfers within the EU, which have to this day a poor record of enforcement. Any quota-based distribution of asylum seekers between the Member States would not automatically lead to an improvement in those states in asylum procedures and reception conditions. The national asylum standards would therefore need to be aligned with each other at the European level rather than on the level of national social welfare standards. But this would appear unrealistic due to the divergent developments in the European Member States, and it would have to go hand in hand with a partial curbing of the sovereignty of national parliaments and courts.

National reservations about a pan-European regulation of the asylum system mean that the European Parliament and the Commission will in the future play a subordinate role. The limited intervention rights of supranational institutions are putting a brake on the harmonisation of the CEAS, especially as the Dublin system offers few incentives for peripheral EU states to reduce the permeability of national borders. The current practice involves the potential risk of at least partial suspension of the Schengen Agreement.⁸⁷

The quoted statistics have also made it clear that reservations concerning the intake of refugees are by no means merely based on monetary considerations, but that cultural factors are equally important. The redistribution of funds will therefore

A European quota system is not a convincing solution.

not be sufficient in and of itself to compensate for varying levels of readiness to integrate migrants. It must be conceded that the relocation programme, coupled with the simultaneous implementation of the registration policy by Italy and Greece, offers an initial approach to the solution of the refugee distribution problem. However, its rejection by several EU states means that this remedy remains limited to a long-term quota system, especially as intra-European migratory movements of refugees cannot be ruled out even after relocation.

In light of the developments, a solution to the refugee problem outside the European Union might also be rendered possible by moves to strengthen the EU's foreign policy. More attention needs to be paid at the same time to the transit routes and the situation in the countries of origin. Given the lack of solidarity within Europe, reception centres in North Africa for the processing of asylum applications and a robust fight against the smugglers are a common denominator on which some of the EU States can agree.⁸⁸ The EU-Africa summit in Valletta in November and the inclusion of the Khartoum and Rabat process for the stabilisation of the conditions giving rise to refugee movements and the fight against traffickers in Africa could be another approach.⁸⁹ What is of increasingly crucial importance here is the need to exert pressure on the African governments to fulfil their responsibilities in the fight against the traffickers.

Development cooperation of the European Union in the Middle East should be stepped up to improve the conditions in the Jordanian, Lebanese and Turkish refugee camps. However, the lack of willingness to comply with the obligations from the Syria donor conference shows that the EU has implementation problems here too. This does not, however, mean that the European institutions must remain inactive. The supervision of reception conditions could in the long term lead to a more humane way of dealing with refugees. The EU can also intervene to provide support for the setting up of reception centres in Eastern Europe. The EU fund for asylum policy can also be used to improve medical care. At the same time, the European institutions, in particular the Commission, should continue to exert pressure on the Member States to bring about the desired Europeanisation of the asylum criteria. Consideration should also be given to making the European asylum system more flexible. In view of the negative attitude of certain Eastern European states and the humanitarian crisis in the MENA region, the prioritisation of the admission of Christian refugees should not be considered a taboo subject. The European Council can coordinate the designation of safe countries of origin, even if an agreement on the grounds of the demand of the European Court of Justice for the approval of the EU Parliament places obstacles in the path of implementation of a common list.⁹⁰ The European institutions represent an appropriate discussion forum for the in part divergent standards of government provision contained in the individual asylum systems.

The effects of sanction mechanisms are, however, limited. For example, the imposition of sanctions on Greece in the form of a reduction in financial aid will do nothing to kindle the enthusiasm of Greek politicians and the Greek people for the implementation of European standards and directives. If, in spite of *relocations* within Europe and the support of Italy and Greece in the registration of asylum seekers, the trade in people smuggling into Northern Europe should remain as brisk as it currently is, consideration must be given to the partial reintroduction of national border controls along with the "airport procedure" in border transit zones proposed by the Ministry of the Interior. There should also be a readiness to countenance the suspension of the visa liberalisation regime for the western Balkan States as a move of last resort.

The primary task of the European Union is to stabilise the crisis regions and to protect its borders.

The "airport procedure" and the suspension of the visa liberalisation regime should be the last resort.

b) Populism

The core problem in German asylum policy is the selective implementation of existing legislation. The lack of political will to exploit the legal framework of German asylum law when it comes to repatriation continues to play a key role. It is the presence of migrants on the territory of the Federal Republic and not the recognition of their entitlement to protection which is decisive in respect of whether or not they are allowed to stay in Germany. As long as the law is placed at the heart of policy and the debate within society, the most promising approach would be to draw clear lines in the sand to demarcate the state from both the left and right of the political spectrum. This means that law and justice must take precedence over the moral criteria by which church groups and some state governments are acting. The current blurring of the distinction between refugees and migrants may be right from a humanitarian point of view since, in the case of migrants from dictatorial African countries, these criteria often also become blurred. However, the legal distinction needs to be maintained because this is the way to ensure in the long term that vulnerable refugees are accepted by society. For politicians, this means promoting the cause of rightful asylum claims and acting decisively to counteract attempts to undermine existing laws. Here, the Federal Government should send a clear signal that monetary assistance to the federal states also depends on the enforcement of existing legislation. Changes in the law will do nothing to reinforce the obligation to leave the country if they are ignored at the level of the individual state governments.

Finally, what is needed is an open debate regarding the future social challenges posed by refugee movements and migration. An honest debate must include the recognition that Germany has a significantly less onerous refugee burden to bear than Jordan, Lebanon, Turkey and other countries in crisis regions. It should be emphasised that the majority of migrants in Germany come from countries in the European Union. In addition, an open debate would highlight the opportunities presented by migration from outside Europe in the context of demographic change in Germany. Moreover, the admission of a relatively large community can consolidate trade relations with the regions of origin, strengthen foreign policy by providing access to relevant actors in the countries of origin and, in the long term, give rise to a well-trained class in the countries of origin whose attach high importance to contacts to their former country of refuge.⁹¹

On the other hand, it should be made clear that immigration via the asylum system presents greater problems for integration into the labour market than the practice of targeted recruitment from "classic" immigration countries. The debate must also feature the identification of economic "pull factors" in Germany and the simultaneous reduction in monetary benefits for asylum seekers and tolerated refugees in states such as the UK and Denmark. The former Commissioner for Foreigners of the Berlin Senate, Barbara John, has described Germany's generous asylum standards as "globally unique".⁹² In the light of this claim it is questionable whether other European societies, with their different forms, will want to follow Germany's lead when it comes to the issue of asylum. Furthermore, the absorption of hundreds of thousands of migrants will do nothing to resolve the structural problems of the Western Balkans, Africa and the MENA region; instead, a "brain drain" of young people could have a negative impact on development in the countries of origin.⁹³

At the same time the public debate must not shy away from discussions of the long-term effects of social diversity brought about by immigration. A permanently

Right- and left wing populism must be opposed by a robust and non-selective application of the rule of law.

Any society-wide debate must identify the advantages and disadvantages of migration.

Consideration must be given in the medium term to the managed limitation of the absorption of migrants – similar to the points system operated in the US and Canada.

unregulated immigration practice might for instance have an impact on social cohesion. Lack of cohesion could in the long term lead to a decrease in the level of willingness to fund a generous welfare state.⁹⁴ Paul Collier has even gone so far as to describe as an “impossible trinity” the combination of an open door policy and multiculturalism with the provision of social benefits. Thus, long-term uncontrolled migratory pressure might undermine historical norms of cooperation. Moreover, conflicts from regions with a less well developed democratic constitution would have an impact on the functionality of the host society.⁹⁵ If the social changes are to be successfully absorbed, consideration must be given in Germany too to a regulated limitation of the numbers of refugees with justified asylum claims.

- 1] *Although accurate and credible information is essential for a discussion of the refugee problem, the causes of refugee movements are often far more complex than the media coverage and public debates would suggest. Thus it is not the deterioration of living conditions but their emerging improvement and urbanization, which also involve because of development assistance, that increase the pressure of migration, e.g. from Africa. On the other hand, a mere glance at the disastrous living conditions in countries such as Eritrea serves to blur the much-touted distinction between economic migrants and refugees.*
- 2] *Of the over 600,000 applications and follow-up applications for asylum, over 200,000 had Germany as the country of destination.*
- 3] *Admittedly, the figures of the last few months show that only about one-third of the refugees recorded via the EASY process have thus far actually submitted an application for asylum. And yet, the number of applications for the period January - September 2015, at 303,443, is already well above that of the previous years. See BAMF asylum statistics, January to September 2015.*
- 4] *Katharina Senge, 2015, "Wer hat hier die Verantwortung? Modelle und Perspektiven europäischer Flüchtlingspolitik", ("Who is in charge here? Models and perspectives of European refugee policy"), KAS-Auslandsinformationen 2-3, <http://www.kas.de/wf/de/33.40710/>.*
- 5] <http://www.theguardian.com/commentisfree/2014/nov/04/slow-immigration-social-consequences>
- 6] <http://www.faz.net/aktuell/politik/inland/gabriel-kritisiert-ungerechte-verteilung-der-fluechtlinge-in-der-eu-13742495.html>.
- 7] *Artikel 80 des Vertrags über die Arbeitsweise der Europäischen Union (Article 80 of the Treaty on the Functioning of the European Union). <http://eur-lex.europa.eu/legal-content/de/txt/pdf/?uri=CELEX:12012E/TXT&from=EN>. The principle of burden-sharing initially applied only to situations in which a Member State would be required in a refugee crisis to take in a disproportionately large number of people. This principle was generalised in the Treaty of Amsterdam in 1998.*
- 8] *Council Regulation (EC) No 343 / 2003, EURODAC Regulation 2725/2000.*
- 9] http://www.unhcr.de/fileadmin/user_upload/dokumente/03_profil_begriffe/genfer_fluechtlingskonvention/Genfer_Fluechtlingskonvention_und_New_Yorker_Protokoll.pdf.
- 10] *Christian Kaunert and Sarah Leonard, 2012, "The development of the EU asylum policy: venue-shopping in perspective", Journal of European public policy, 19:9; Kay Hailbronner, verbatim report of the 20th Session of the Home Affairs Committee of Berlin on 2 July 2014, p. 13.*
- 11] *Petra Bendel, 2013, Nach Lampedusa: das neue Gemeinsame Europäische Asylsystem auf dem Prüfstand", ("After Lampedusa: testing out the new common European asylum system"), Friedrich-Ebert-Stiftung. <http://library.FES.de/PDF-files/wiso/10415.pdf>.*
- 12] *Steffen Angenendt, Marcus Engler, Jan Schneider, 2013, Europäische Flüchtlingspolitik Wege zu einer fairen Lastenteilung, SWP-Aktuell (European refugee policy: towards a fair system of burden-sharing), SWP-Aktuell 65, p. 8.*
- 13] *Steffen Angenendt, Marcus Engler, Jan Schneider, 2013, Europäische Flüchtlingspolitik Wege zu einer fairen Lastenteilung, SWP-Aktuell p. 2.*
- 14] http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.
- 15] *Daniel Fröhlich, 2012, "The Development of a Federal European Asylum System", AWR Bulletin : Vierteljahresschrift für Flüchtlingsfragen (Quarterly journal on refugee issues), vol. 50, no. 3, pp. 159-168.*
- 16] <http://www.faz.net/aktuell/politik/ausland/menschenrechtsgerichtshof-strassburg-verurteilt-italy-11660085.html>.
- 17] *EMN / EC (2013) Ad-Hoc Query on asylum support rates: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/protection/458_emn_ad-hoc_query_on_asylum_support_rates_wider_dissemination_en.pdf.*
- 18] <http://www.spiegel.de/politik/deutschland/urteil-fluechtlinge-duerfen-nicht-nach-italien-back-led-be-a-844105.html>.
- 19] *See also <http://www.zeit.de/politik/ausland/2011-01/asyl-abschiebung-griechenland>.*
- 20] http://www.proasyl.de/de/presse/detail/news/egmr_urteil_fluechtlingsfamilien_duerfen_nicht_ins_ungewisse_abgeschoben_werden/; http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Asyl/leitfaden-italien.pdf?__blob=publicationFile

- 21] *The continuing differences in the implementation of European law: Hofmann, Rainer; Löhr, Tillmann (eds.), 2008, Europäisches Flüchtlings- und Einwanderungsrecht. Eine kritische Zwischenbilanz*, ("European refugees and immigration law. A critical interim statement"), Baden-Baden and <http://www.ecre.org/component/content/article/56-ecre-actions/294-asylum-lottery-in-the-eu-in-2011.html>.
- 22] *On 21 May 2014 the revised asylum, migration and integration fund (AMIF) for the financial period 2014-2020 for the financial support of asylum, migration and integration came into force (total volume € 3.1 billion, of which Germany provides € 208 million).*
- 23] http://www.bmbah.hu/index.php?option=com_k2&view=item&id=491:integrationsvertrag&Itemid=1258&lang=de.
- 24] Christoph Schulte, 24 April 2015, *EU-Beschlüsse zur Flüchtlingshilfe (EU decisions on refugee aid): Worte ohne Taten, (Words without deeds)*, Spiegel Online <http://www.spiegel.de/politik/ausland/fluechtlinge-eu-sondergipfel-nicht-vielmehr-als-show-a-1030340.html>.
- 25] Nikolaus Busse, 7 August 2015, "Europa tut wenig" ("Europe is doing little"), *Frankfurt Allgemeiner Zeitung*, p. 1.
- 26] *Two decades after the determination that "refugees in orbit" are to be avoided in Europe, every day offers numerous examples of people smuggling, of which the death of at least 20 refugees in a truck near Vienna is just the latest tragic example.* <http://www.zeit.de/gesellschaft/zeitgeschehen/2015-08/mehrere-tote-fluechtlinge-in-einem-lkw-in-oesterreich-gefunden>.
- 27] *German Federal Constitutional Court 123, 267 (403).*
- 28] Petra Bendel, 2013, *Nach Lampedusa: das neue Gemeinsame Europäische Asylsystem auf dem Prüfstand*, ("After Lampedusa: testing out the new common European asylum system"), Friedrich-Ebert-Stiftung. <http://library.FES.de/PDF-files/wiso/10415.pdf>.
- 29] http://www.deutschlandradiokultur.de/gesine-schwan-zur-krise-in-europa-wir-erleben-eine.1008.de.html?dram:article_id=323240.
- 30] <http://www.zeit.de/politik/2015-07/schaeuble-eu-kommission-kompetenzen-wettbewerb>.
- 31] Paul Collier, 2013, "How to have a sensible conversation about immigration", <http://www.newstatesman.com/global-issues/2013/11/new-exodus>.
- 32] Ulf Poschardt, 3 July 2015, "Die Krise macht uns jetzt zu wahrhaften Europäern" ("The crisis is now turning us into real Europeans"), <http://www.welt.de/debatte/kommentare/article143520903/Die-Krise-macht-uns-jetzt-zu-wahrhaften-Europaeern.html>.
- 33] *Interview with Steffen Seidendorf 18 October 2013*, <http://www.arte.tv/de/in-frankreich-wird-doppelt-so-viel-abgeschoben-wie-hierzulande/7684892,CmC=7685632.html>.
- 34] European Migration Network, "Migrant access to social security and healthcare: policies and practice European Migration Network Study 2014", http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/final_synthesis_report_migrant_access_to_social_security_final_3july2014_en.pdf,
- 35] European Migration Network/ EC (2013) "Ad-Hoc Query on asylum support rates", http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/protection/458_emn_ad-hoc_query_on_asylum_support_rateswider_dissemination_en.pdf.
- 36] <http://reliefweb.int/report/greece/greece-chaos-and-squalid-conditions-refugees-and-migrants-island-lesbos>.
- 37] <http://de.statista.com/statistik/daten/studie/74795/umfrage/jugendarbeitslosigkeit-in-europa/>.
- 38] European Migration Network / EC (2014) *ad hoc query on asylum seekers access to labor market*, http://www.udi.no/globalassets/global/european-migration-network_i/ad-hoc-queries/ad-hoc-query-on-asylum-seekers-access-to-labor-market-open-compilation.pdf.
- 39] Christof Roos and Natascha Zaun, 2014, "Norms Matter! The Role of International Norms in EU Policies on Asylum and Immigration", *European Journal of Migration and Law*, 16:1, p. 45-68.
- 40] Kenan Malik, 2015, "The Failure of Multiculturalism", *Foreign Affairs*, March/April 2015 Issue, <https://www.foreignaffairs.com/articles/western-europe/2015-03-01/failure-multiculturalism>.
- 41] A. Zick, B. Küpper, A. Hövermann, 2011 "Intolerance, Prejudice and Discrimination: A European report", Berlin: Friedrich Ebert Stiftung.
- 42] Matthew Goodwin, 2011, "Right Response Understanding and Countering Populist Extremism in Europe", Chatham House, https://www.chathamhouse.org/sites/files/chathamhouse/r0911_goodwin.pdf.
- 43] E. Ivarsflaten, 2005 "Threatened by diversity: Why Restrictive Asylum and Immigration Policies Appeal to Western Europeans", *Journal of Elections, Public Opinion and Parties*, 15:1.
- 44] Christof Roos and Natascha Zaun, 2014, "Norms Matter! The Role of International Norms in EU Policies on Asylum and Immigration", *European Journal of Migration and Law*, 16:1, p. 45-68.
- 45] <http://www.bbc.com/news/world-europe-29202793>.
- 46] <http://www.euractiv.com/sections/justice-home-affairs/commission-frowns-christian-only-solidarity-migrants-316,932th>
- 47] http://diepresse.com/home/politik/aussenpolitik/4636760/Tschechien_Zeman-will-Migranten-ausweisen.
- 48] <http://www.zeit.de/politik/ausland/2015-08/fluechtlinge-slowakei-syrien-umverteilung-muslime-christen>.
- 49] Matthew Goodwin, 2011, "Right Response Understanding and Countering Populist Extremism in Europe", Chatham House.
- 50] <http://www.sueddeutsche.de/politik/nrw-innenminister-jaeger-ueber-pegida-neonazis-in-nadelstreifen-1.2263548>.
- 51] <http://www.welt.de/politik/deutschland/article136467420/Pegida-nicht-als-schandhaft-bezeichnen.html>.
- 52] See also: Werner Patzelt, January 21, 2015, "Edel sei der Volkswille" ("The will of the people is noble"), *Frankfurter Allgemeine Zeitung*, <http://www.faz.net/aktuell/feuilleton/debatten/die-verortung-von-pegida-edel-sei-der-volkswille-13381221.html>.
- 53] Frédéric Docquier, Çağlar Ozden und Giovanni Peri, September 2014, „The Labour Market Effects

- of Immigration and Emigration in OECD Countries", *The Economic Journal*, 124:579, p. 1106–1145.
- 54| Matthew Goodwin, 2011, "Right Response Understanding and Countering Populist Extremism in Europe", Chatham House.
- 55| MJ Goodwin, 2009 "Can We Promote Cohesion through contact? Intergroup Contact and the Development of "Cohesive" Local Communities", in C. Durose, S. Greasley and L. Richardson (eds.), *Local Governance, Changing Citizens? Bristol: Policy Press*, pp 91-110; TF Pettigrew and LR Tropp, 2006 "A Meta-Analytic Test of Intergroup Contact Theory", *Journal of Personality and Social Psychology*, 90: 5, pp 751-83.
- 56| The concept of "decision-identity-spaces" originates from Charles Maier, a historian at Harvard University.
- 57| Thielemann and Zaun, 2013, "Escaping Populism – Safeguarding Human Rights: The European Union as a Venue for Non-Majoritarian Policy-Making in the Area of Refugee Protection", presentation at the Annual Meeting of the American Political Science Association, Chicago, 29 August–1 September 2013.
- 58| http://www.bosch-stiftung.de/content/language1/downloads/RBS_AsyL_Studie_FINAL_RZ_einzel.pdf.
- 59| http://trends.gmfus.org/files/2014/09/Trends_Immigration_2014_web.pdf, p. 14.
- 60| <http://www.welt.de/politik/deutschland/article144650873/Akzeptanz-der-Deutschen-fuer-Fluechtlinge-sinkt.html>.
- 61| <http://www.welt.de/politik/deutschland/article138669557/Warum-Deutschland-so-wenige-Asylbewerber-abschiebt.html>.
- 62| <http://www.bpb.de/gesellschaft/migration/laenderprofile/139690/flucht-und-asyl#footnode22-4>.
- 63| EMN/EC NL NCP (2014) Ad-Hoc Query the support/accommodation provided to irregularly staying third country nationals, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/illegal-immigration/572_emn_ahq_on_support_and_accomodation_for_irregularly_staying_tcns_2014_en.pdf.
- 64| European Migration Network/EC NL NCP, 2014, „Ad-Hoc Query the support/accommodation provided to irregularly staying third country nationals“, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/illegal-immigration/572_emn_ahq_on_support_and_accomodation_for_irregularly_staying_tcns_2014_en.pdf.
- 65| https://www.bundesverfassungsgericht.de/entscheidungen/ls20120718_1bvl001010.html. Whereas in Germany under the law on the provision of benefits to asylum seekers the same state benefits have thus far been granted to asylum seekers whose repatriation has been ordered, the summit of the Federal government and the states of 24 September resolved to reduce benefits for asylum seekers "without prospects".
- 66| <http://www.zeit.de/politik/deutschland/2015-08/asylpolitik-leistungskuerung-de-maiziere-balkan>.
- 67| This is a major reason why the UK did not agree to the current European regulations.
- 68| In the case of apprenticeships, the requirement to prioritise nationals or those with an equivalent entitlement is waived completely.
- 69| <https://www.bmi.bund.de/SharedDocs/Kurzmeldungen/DE/2014/09/neue-regelungen-zum-asylverfahren-und-zur-optionspflicht.html>.
- 70| <http://www.welt.de/politik/deutschland/article146947701/EU-Kommission-ruegt-Berlins-lasche-Abschiebep Praxis.html>.
- 71| Bundesrat, stenographic report, 932. Session of 27 March 2015.
- 72| BAMF asylum statistics, January to September 2015.
- 73| Jasper von Altenbockum, 26 August 2015, "Scherbenhaufen der Asylpolitik" ("Asylum policy in tatters"), *Frankfurter Allgemeine Zeitung*.
- 74| For the constitutional debate see Kathleen Neuendorf, 2011, "Kirchenasyl" – Verfassungsrechtliche Aspekte und ausgewählte administrative Handlungsmöglichkeiten ("Church asylum"- constitutional aspects and selected administrative options for action), *Zeitschrift für Ausländerrecht und Ausländerpolitik*, 31:8, p. 259-265."
- 75| Heribert Seifert, 16 June 2015, "Minenfeld Migration" ("The minefield of migration") *Neue Zürcher Zeitung*, <http://www.nzz.ch/feuilleton/medien/minenfeld-migration-1.18562659>.
- 76| <http://www.welt.de/regionales/thueringen/article135186321/Thueringen-erlaesst-Winterabschiebestopp-fuer-Fluechtlinge.html>.
- 77| <http://www.zeit.de/politik/deutschland/2014-09/gruene-tragen-asyl-kompromiss-im-bundesrat-mit>. For the individual provisions see <https://www.bmi.bund.de/SharedDocs/Kurzmeldungen/DE/2014/09/neue-regelungen-zum-asylverfahren-und-zur-optionspflicht.html>.
- 78| Jasper von Altenbockum, 30 September 2015, "Der Druck wird steigen" ("The pressure will increase"), *Frankfurter Allgemeine Zeitung*, p. 8.
- 79| The recently adopted asylum reform addresses this point and explicitly provides for the more consistent implementation of deportations. For instance, deportations will in the future no longer be announced in advance.
- 80| <http://www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/f-a-z-elite-panel-deutschland-kann-mehr-fluechtlinge-nehmen-13714208.html>.
- 81| <http://www.thelocal.dk/20150309/denmarks-refugee-integration-efforts-have-failed>.
- 82| Gunnar Heinsohn, 5 October 2015, "Das Fiasko der Migrantenkinder", ("The fiasco of migrant children") *Frankfurter Allgemeine Zeitung*, <http://www.faz.net/aktuell/wirtschaft/menschen-wirtschaft/gastbeitrag-werden-fluechtlinge-die-deutsche-wirtschaft-retten-13838509.html>.
- 83| Jasper von Altenbockum, 21 July 2015, "Bleiberecht für alle?" ("A right to remain for all?"), *Frankfurter Allgemeine Zeitung*.
- 84| <http://www.handelsblatt.com/politik/international/daenemark-fluechtlinge-bekommen-weniger-geld/12237606.html>.

- 85| Karl-Peter Schwarz, 20 August 2015, "Verführung aus dem Norden" ("Seduction from the north"), *Frankfurter Allgemeine Zeitung*.
- 86| <http://www.welt.de/politik/ausland/article145322513/Deutschland-nimmt-laut-UN-zu-viele-Fluechtlinge-auf.html>.
- 87| <https://www.tagesschau.de/inland/fluechtlingspolitik-125.html>.
- 88| Eric Gujer, 24 April 2015, "Die Stunde der Heuchler", ("The hour of the hypocrites") *Neue Zürcher Zeitung*, <http://www.nzz.ch/meinung/kommentare/die-stunde-der-heuchler-1.18529145>.
- 89| For more on the Valletta Summit see: <http://www.bundesregierung.de/Content/DE/StatischeSeiten/Breg/Fluechtlings-und-Asylpolitik/Artikel/2015-09-10-bekaempfung-fluchtursachen.html>. For Khartoum process see Statement by Foreign Minister Steinmeier at the conference on the Khartoum process 28 November 2014 http://www.auswaertiges-amt.de/DE/Infoservice/Presse/Reden/2014/141128_BM_Rom.html.
- 90| <http://fluechtlingsforschung.net/einigung-durch-die-hintertur/>. Serbia is currently classified as safe by seven EU Member States (Belgium, Bulgaria, Denmark, Germany, France, UK and Austria), Bosnia-Herzegovina and Macedonia by eight EU Member States (those mentioned plus Luxembourg). Albania and Montenegro, on the other hand, are classified as safe by Belgium, Bulgaria, Denmark, France, the UK, Austria and Luxembourg and Kosovo by four EU Member States (Belgium, Denmark, the UK and Austria).
- 91| <http://www.newsweek.com/uk-should-take-10000-syrian-refugees-322263>.
- 92| Barbara John, 22 August 2015, „Wider den Wahnsinn!“ ("Countering the craziness!") *Tagesspiegel*, <http://www.tagesspiegel.de/politik/deutsche-fluechtlingspolitik-wider-den-wahnsinn/12221588.html>.
- 93| Collier argues that a "brain drain", for example in Haiti, has led to the long-term stagnation of the country. Paul Collier, 2013, "How to have a sensible conversation about immigration", <http://www.newstatesman.com/global-issues/2013/11/new-exodus>.
- 94| Paul Collier, 4 November 2014, "Now it is time to slow down immigration", *The Guardian*, <http://www.theguardian.com/commentisfree/2014/nov/04/slow-immigration-social-consequences>.
- 95| Paul Collier, 2013, "How to have a sensible conversation about immigration", <http://www.newstatesman.com/global-issues/2013/11/new-exodus>.

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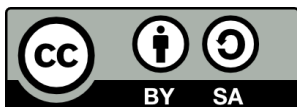
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