

Preface

Italy has “saved Europe’s honour” on migrant rescue and reception, European Commission President Jean–Claude Juncker stated in May 2017 during his State of the Union address in Florence. The Italian Prime Minister Paolo Gentiloni replied: “Merci Jean–Claude for saying that Italy defended the Union’s honour. But if it is a question of honour, honour should be defended together”.

Over the last years no other topic has dominated the political debate in Europe like the migration crisis did. In 2016 when the project for this book was launched, migrations flows across the Mediterranean Sea were at its height.

In this publication we looked at selected EU–governments and their national responses to the challenges posed by the migration phenomenon as well as the steps taken jointly on EU–level. This comparative approach gives an overview of the migration situation in selected EU–member states and provides insight in the policy measures put in place.

A number of important and successful steps have been taken to stabilize the situation, manage arrivals, fight illegal migration, protect the EU’s external borders, and to identify paths to foster integration.

In other areas we have failed: When we talk about migration and immigration we also think about solidarity. European Commission President Jean–Claude Juncker clearly stated in Florence, “we must show solidarity with both Italy and Greece which are not responsible for their geographical position. They are where they are and we have to take that into account”.

One area where solidarity was missing is the relocation scheme agreed upon in September 2015. Instead of relocating 160.000 refugees within two years – EU member states took on 31.502 refugees (as of Nov. 2017) from Italy and Greece.

These numbers are sobering, but a joint effort is still needed: The migration phenomenon will continue to require joint action – if not from all EU member states together, then from a “coalition of the willing”.

I would like to thank the experts for making this project – the workshop and publication – possible through their input, intellectual exchange and written contributions. I especially thank Professor Andrea De Petris for the coordination of the project and the trustful cooperation with the Konrad–Adenauer–Stiftung in Italy.

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Foreword and acknowledgments

In the last ten years, immigration has gradually become a constant presence in the news worldwide. Media and public institutions has dedicated more and more attention to the attempts of foreign citizens from Africa, Middle and Far East to reach European countries, as public opinion has started to be concerned about how to deal with this phenomenon.

The European regulation on this matter, based on the so-called Dublin Convention (since 2013 Dublin III Regulation) forced Member States to keep all asylum seekers who entered their territory within their national borders as long as they had not been identified and it was not clear whether they were entitled to receive asylum or other forms of international protection. As a result, national governments have been often left alone to deal with masses of hundreds of thousands of foreign citizens and refugees looking for assistance, permits of stay and, in many cases, a chance to reach other EU member States, although the European regulation prevented them to move over.

As the number of immigrants arrived in Europe increased and a relevant part of them applied for international protection, hosting European countries had to develop strategies and invest relevant financial resources in order to establish efficient policies for these new immigration flows. EU granted financial support to those measures, but the management of the migration flows remained in the hands of few single EU Member States that, especially for geographical reasons, were easier to be reached by migrants and asylum seekers.

The access of hundreds of thousands of immigrants forced the concerned national institutions to create and establish adequate programs aimed at providing them at first humanitarian aid, legal assistance, accommodation, health care and education services. Besides, it became clear that the presence of refugees and asylum seekers would not be occasional or destined to end soon, and that first aid services had to be accompanied by efficient integration programs, in order to allow a profitable quality of life for those migrants who applied for asylum or international protection and were therefore allowed to remain in Europe.

Since a common European guideline about these topics has not been provided yet, the single Member States often elaborates individual strategies, according to their own political, social and economic orientations.

The present book takes account of this occurrence and describes the different regulations and strategies adopted at European and national level in order to provide consistent answers to the challenges connected to the migration phe-

nomenon. As a matter of fact, the aim of this publication is to analyze which approaches have been followed by the considered EU Member States when they were forced to react to the increasing numbers of immigrants and it define possible successful solutions to the factual problems related with these experiences.

The result is the evidence of how different the approaches in this delicate matter can be. Italy invested most of its resources in rescue actions and first receptions programs, because the arrivals from Libya and North Africa on Southern Italian Coasts represented the main emergency to react to in the most recent years; Germany, instead, happened to put at least the same level of attention on reception and integration policies, although the country was also forced to produce a prompt reaction to the sudden arrival of over 800.000 Asylum seekers from the Balkan route by the summer of 2015; Sweden played a different role, since it has been considered as a country of desired final destination from migrants coming from other EU Member States, and has been gradually concentrating its attention to the correct application of the Dublin Regulation and the resettlements programs; United Kingdom claims the full respect of the “First Safe Country” principle, as well a proper distinction between refugees and economic migrants, in order to establish the correct answers to the different forms of migration.

If there is one common element in the different national approaches described in the book, this element is the fact that the current tactic of leaving single countries to deal with the recent migration waves and their consequences cannot be followed anymore. If migration has become a permanent phenomenon meant to remain also in the next decades, rather than a temporary problem destined to be solved after a certain time, it seems logical and correct to rule it under a common European perspective.

Despite of all deficits and failures that the national regulations has registered so far, it must be definitively recognized that single national solutions cannot produce effective results if the migration phenomenon has presently achieved a continental, indeed a global dimension. Thus, a collection of the reception and integrations policies adopted by the considered member States is nevertheless reasonable in order to acknowledge which strategies and means have been adopted so far and, moreover, which policies/strategies could serve as best practices to be adopted and/or implemented at European level in the next future. Surely, the concerned national and European institutions will need strength and courage to face migration as a continental phenomenon, by putting aside improvident, short-sighted national egoisms. The European integration process started in the early 1950s, when some peoples realized that the isolated national perspective was not able to provide proper answers to the crisis derived by the II World War. Today the time has come to admit that a successful regulation of the migration phenomenon and the proper treatment of its consequences for

both migrants and single EU Member States can be achieved only if Europe will be able to focus again on that spirit of integration and share of common values raised nearly 70 years ago from the ashes of a continental tragedy. This book is intended to be seen as a loyal and devoted contribution to the achievement of this fundamental goal, not only for a correct discipline of the migration phenomenon, but also for a vital reprise of the European spirit for the time to come.

To conclude, I must express my deep gratitude to the Konrad Adenauer Foundation for supporting this project with full commitment and generosity from the very beginning and during all phases of its realization: without the assistance of the KAS, this investigation would never be run and this book would never be realized. It is for me essential to mention the people inside the KAS who gave an enormous contribution to the success of the entire project, started in 2016 and concluded in the last months of 2017: Dr. Caroline Kanter, Director of the KAS Rome office, who accepted my proposal of collaboration and followed its implementation from the beginning until its final phases; Silke Schmitt, collaborator of the KAS Rome office, who supported every step of the research and ensured constant personal dedication at every stage of the project. I also want to thank Lucia Melotti, who provided excellent assistance in the revision of the single contributions. I really believe that this long lasting cooperation has proved one more time to be successful, and hope to have further occasions to repeat the experience in the near future.

I am of course also deeply thankful to all authors who accepted our invitation to take part in this project and provided excellent contributions. They were able to offer deep and exhaustive descriptions of the migration and integration policies at European and national level, stressing their weak points as well as their successful strategies: this is a clear and valid example of what European strategic collaboration can achieve, when resources and commitment are available and aimed at achieving results of general relevance. I was extremely proud and honored to work with all of them, and sincerely hope to have further opportunities of collaboration very soon.

Rome, November 2017

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EU-Refugee Policy: lessons from the stress test. What the EU has learned – and still needs to learn – from the refugee crisis

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Abstract: In 2015, the migration crisis illustrated the lack of resilience of the European asylum and migration policy. Since then, the EU has succeeded in making greater progress than in the entire decade before. The numbers of irregular border crossings into the EU have dropped significantly in 2016 (from 1.8 million in 2015 to roughly 500,000 in 2016). The main migratory route has shifted from the Eastern Mediterranean (from Turkey to Greece) to the Central Mediterranean (from Libya to Italy). Although the EU has invested a lot of financial and human resources into the “hotspots” in Greece, the situation there remains difficult. Still no consensus has been reached on a

solidarity mechanism for the distribution of those seeking protection, as the search for mechanisms of responsibility sharing is ongoing. Nevertheless, there are a number of positive developments: some long overdue measures, such as the harmonisation of asylum legislation, the creation of a joint border and coast guard and enhanced collaboration with the countries of origin and transit, have been intensified. However, even if first positive experiences with “Migration Partnerships” have been gained, migration will remain one of the EU’s key challenges during the years and decades to come. The efforts made in the last 20 months can only represent the beginning of a long process of reform. The present article deals with the different political efforts taken at EU level in order to react to the most recent immigration and refugees crisis, illustrating the measures undertaken so far, and describing the key questions which must be addressed in the next future from the EU and its member states in order to establish an effective political strategy for the years to come.

Introduction

Over the last 20 months, the EU has come under a great deal of criticism regarding its response to the refugee crisis. From outside of Europe, the EU has been accused of a lack of political will and common purpose. However, the external criticism was exceeded by far by the opposition from some of the member states and its exaggerated depiction of a policy of non-compliance by some of the media.

Despite the complex issue and the immense pressure to act quickly, the European Union has shown itself capable of taking action in many areas over the past 20 months and passed numerous measures and reforms. While there have been and still remain some disputes about the distribution of the asylum seekers, much has been achieved with the establishment of the First Reception Centers (the so-called “hotspots”) in Greece and Italy, the EU-Turkey Agreement and the enhanced border and coast guard – to name but a few elements of the policy. These and other mechanisms have allowed the migration to the European Union to be redirected into regulated pathways, at least for the time being. The purpose of this analysis is to describe what has been achieved over the last 20 months, highlight challenges and put forward some recommendations for action for the future development of European migration and refugee policy.

1 Original Situation and Background

1.1 The global context: 2015 – a year of superlatives

2015 was a year of extremes: globally, 65.3 million people found themselves forced to leave their homes due to political persecution, military conflict as

well as a general increase in violence and human rights violations. More people than ever before were displaced within the borders of unsafe or failing states or had to flee their home country altogether. These included 21.3 million recognised refugees, 40.8 million internally displaced persons and 3.2 million asylum seekers. The great majority of the recognised refugees, 86 per cent, settled in developing countries. The least developed countries, such as Ethiopia and Chad, accounted for the protection of 25 per cent of all the people in need of aid worldwide. Over half of the recognised 21.3 million refugees were children under 18. Most people fled from Syria (accounting for 4.9 million refugees), followed by Afghanistan (2.7 million), Somalia (1.1 million), South Sudan (0.8 million) and Sudan (0.6 million)¹. This trend has continued in 2016.

In 2015, more people than ever fled their homes. In terms of absolute figures, Turkey accommodated the largest group of refugees in 2015, namely some three million, followed by Pakistan (1.6 million), Lebanon (1.1 million), Iran and Ethiopia (around 1 million each). Measured by the size of its own population, every fourth person in Lebanon was a refugee, while it was roughly every tenth in Jordan. In Sweden and Malta, the two most affected EU countries in 2015 in relative terms, refugees made up two per cent of the population. In 2016 Germany hosted the biggest refugee community in Europe in absolute numbers: 1.6 million persons.²

1.2 Definition of a refugee

Wars and conflicts, human rights violations and persecution, terror and repression, poor governance and corruption, poverty, overpopulation and a lack of prospects as well as natural disasters and climate change are forcing people to migrate.

However, only those who can prove a well-founded fear of persecution are recognised as refugees internationally. The reasons for the persecution must be substantiated specifically during the asylum procedure and related to criteria of political opinion, religion, nationality, race or membership of a particular social group. That was how it was laid down in the Geneva 1951 Refugee Convention, the purpose of which at the time was to find a solution for hundreds of thousands of people who had to flee or were driven out of their homes in Europe during World War II and its aftermath and to create a solid and sustainable protection system.

Since then, international and European refugee legislation has evolved and

¹ See: UNHCR: “Global Trends – Forced Displacement in 2015”, 20 June 2016.

² See: https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2017/11/PD17_387_12521.html and <https://www.weforum.org/agenda/2017/06/eighty-four-percent-of-refugees-live-in-developing-countries/>.

additional instruments of protection, temporary and subsidiary, have been introduced for war and civil war refugees. However, the criteria of the Geneva Refugee Convention continue to be at the centre of refugee protection, making a distinction between recognised refugees, who require international protection, and other migrants, who cross borders to join family members, to find work or to study. While the numbers of the latter group can be limited and regulated, international law prohibits countries from rejecting those in need of protection (the non-refoulement principle).

2 The EU is facing a Herculean task: implementation of the common asylum legislation

Before 2015, there were already clear signs of the repercussions of war, terror, displacement, destitution and lack of prospects in the Middle East and Northern Africa and therefore in the immediate neighbourhood of the European Union. The numbers of irregular border crossings registered by Frontex rose from 72,500 (2012) to 283,500 (2014) and then to 1.8 million (2015). This illustrates the extent of the migration pressure at the external EU borders, caused by new conflicts such as the one in Syria in addition to protracted crisis situations such as in Afghanistan, which have persisted for decades. In 2016 the numbers of irregular border crossings into the EU again dropped to about 503,700 – indicating the effectiveness of the first set of EU policy reforms³.

2.1. Countries at the external EU borders are overburdened

The number of asylum applications lodged in the EU also doubled from 2011 to 2014 and once again from 2014 to 2015. The available data indicates that in 2016 roughly 1.2 million asylum applications were filed in the EU – almost two thirds of all applications were made in Germany, with 722,265 cases. In 2016, the recognition rate for protection remained high. In the third quarter of 2016, 63 per cent of all asylum seekers in the EU were granted asylum.⁴

³ <http://frontex.europa.eu/news/fewer-migrants-at-eu-borders-in-2016-HWnC1J>.

⁴ See: <https://de.statista.com/statistik/daten/studie/459422/umfrage/asylbewerber-in-den-laendern-der-eu>.

2.2. Asylum applications in the EU from 2010 to 2015

	2010	2011	2012	2013	2014	2015	2016
European Union (28 member states)	259,400	309,040	335,290	431,090	626,960	1,321,600	app. 1,205,000

Source: Eurostat

Before 2015, the countries most affected by migration due to their location at the EU periphery, such as Italy, Malta, Greece and Cyprus, had already repeatedly called for solidarity from other member states – requesting both financial support and measures to ensure an equitable distribution of refugees. At the same time, countries such as Germany and Sweden pointed out that they were accepting a far higher *per capita ratio* of asylum seekers than the above-mentioned countries, and called attention to the failure of some southern EU member states to apply the existing EU asylum legislation. Regular calls, by the EPP group in the European Parliament amongst others, for a strengthening of important instruments such as the border protection agency Frontex and the European Asylum Support Office (EASO), had also been unheard, due in part to opposition from the larger member states – like Germany, among others. In addition, the political agenda was dominated by the stabilisation of the Eurozone, which overshadowed all other topics.

After the disaster off the Italian island of Lampedusa, in which almost 400 people lost their lives in October 2013, another catastrophe occurred during the night from 18 to 19 April off the Libyan coast, where up to 800 people perished during their attempt to cross the Mediterranean. Following this event and in view of the exponential increase of irregular migration by October 2015, almost all subsequent European Council summit meetings have dealt with the challenges arising from the migration and refugee crises. In the past 20 months, the focus has moved from immediate response to a long-term strategy.

However, even before the attention shifted due to the crisis, the EU did already have a wide set of asylum policy instruments at its disposal. In the past two decades, the European Union had been working intensively on directives for simplifying procedures, setting standards and rules, proving that there was no shortage of EU asylum policy instruments. These efforts resulted in a Common European Asylum System (CEAS) in 2013, which comprises the following elements:

- The Dublin Regulation, which determines the responsibility for an asylum application and ascribes it to a specific EU member state. Aim-

ing towards – on the one hand – preventing those seeking protection from remaining in the EU without a clear destination and ultimately receiving no proper protection (refugees in orbit) and – on the other hand – towards avoiding asylum seekers from moving from country to country seeking out the best conditions or benefits at different locations (asylum shopping);

- The Directive on the Definition of Standards for the Reception of Persons who have applied for International Protection (Reception Directive);
- The Directive on the Recognition of Refugee Status, which prescribes harmonised principles and standards (Qualification Directive);
- The Asylum Procedures Directive;
- The directive for the Temporary Protection of Displaced Persons, which describes a flexible mechanism for war and civil war refugees.

There was and is no shortage of policy directives, but implementation at EU member state level has remained a sore point. The Dublin Regulation, for example, had to be suspended in 2011 for Greece, which meant that until 2017 no country was able to return asylum seekers to Greece⁵. The European Court of Justice and several national courts have also identified systematic weak points in the asylum process and in the legal protection process in Bulgaria, Italy, Malta and Hungary, resulting in a departure from the application of the Dublin Regulation by court order on various occasions. Generally, there have been deficiencies in applying the regulations of the European Asylum System in nearly all EU member states.

3 EU Reforms in Response to the Refugee Crisis

In 2015, although the legislation was in place, the EU and its member states were nowhere near a truly workable common asylum system. However, due to the increased need for action and new prioritisation by the Heads of

⁵ The ECJ judgment of 21 Dec 2011 (C-411/10, C-493/10, InfAusLR 2012, 108) spells out that Article 4 of the Charter of Fundamental Rights of the European Union obligates the EU member states to desist from returning individuals to a country under the rules of the Dublin Regulation if it is general knowledge that there are systematic deficiencies in the asylum system and in the reception conditions for asylum seekers, which pose the risk of inhumane or degrading treatment. Consequently instructions by the German Interior Ministry, BMI, were put in place in 2011 to suspend returns to Greece under the Dublin Regulation (cf. Bundestag Parliamentary Documentation 17/4827 of 21 February 2011). These instructions had been extended (BAMF, Entscheiderbrief 2/2014, p. 4) until spring of 2017.

State and Government and the European Commission, significant progress has been made. Numerous reform proposals have been devised and many already adopted. This was underlined by EU Commissioner for Migration, Dimitris Avramopoulos, when he stated in July 2015: “In the last few months, we have achieved more than we have done in the past decade”⁶.

3.1 Political quantum leaps 2015/2016

The initial decisions taken by the EU heads of state and government were related to sea rescue, the fight against trafficking and people smuggling, and cooperation with third countries (including Turkey, Lebanon and Jordan). These were followed by decisions about the relocation from Greece and Italy of individuals seeking protection, the resettlement of persons living in precarious situations in first host countries (above all Turkey), as well as the strengthening of Frontex to create an effective border and coast guard. In addition, the changes adopted during the last 20 months included the creation of eleven First Reception Centers, the so-called “hotspots”, greater financial support for humanitarian aid, as well as the initiation of the transformation of the European Asylum Support Office (EASO) into a European Union Agency for Asylum (EUAA). The reforms implemented to date have concentrated on measures in the following areas:

- Sea rescue and combating people smuggling,
- Regaining control over the external EU borders and control of migration into the EU,
- Improvement of the EURODAC-registration at the EU external borders,
- Implementation, adaptation and harmonisation of existing EU asylum arrangements,
- More intensive cooperation with third countries in the fight against the causes of flight,
- Further development of channels for regular migration.
- As a result, specific measures were approved in the fields of sea rescue and fight against people smugglers.

In view of the serious maritime disasters and deaths related to the desperate attempts to cross the Mediterranean, the EU initially focused on improving the sea rescue efforts. As one of the first measures, the funds and capacities for the sea rescue programmes “Triton” and “Poseidon” were trebled from 2.9 million to some 9 million euros per month in April 2015. Furthermore, the sea

⁶ Dimitris Avramopoulos, “A European Agenda on Migration”, 20 July 2015.

rescue measures were complemented by the EUNAVFOR MED EU Mission (renamed “Operation Sophia” in September 2016) since mid-June 2015, which concentrates on combating people smuggling and human trafficking. Two UN Security Council resolutions⁷ cover this mission. They justify the monitoring of ships on the high seas off the Libyan coast for the purpose of stopping the activities of people smugglers and human traffickers. Section 12 underlines that “this resolution is intended to disrupt the organised criminal enterprises engaged in migrant smuggling and human trafficking and prevent loss of life and is not intended to undermine the human rights of individuals or prevent them from seeking protection under international human rights law and international refugee law.” The three EU missions (Poseidon, Triton and Sophia) combined have saved the lives of over 50,000 people who had come into difficulties at sea in 2016⁸. Still in 2016, over 181,000 irregular migrants crossed the Central Mediterranean to reach Europe (90 per cent of them boarded a ship in Libya) – over 4,500 persons died in the attempt⁹. In November 2016 NATO launched its new maritime operation named “Sea Guardian”. Under this operation, NATO ships conduct surveillance activities, counter-terrorism and capacity building of regional navies. “Sea Guardian” supports the EU’s Operation Sophia¹⁰.

Europol plays a key role in the fight against people smuggling and human trafficking. It collects data on numbers, routes and the practices of people smugglers and human traffickers. Europol also established that 90 per cent of the persons registered at the “hotspots” in Greece and Italy had arrived through smugglers and traffickers¹¹. In 2015 and 2016, the EU had apprehended 2,000 suspected traffickers and smugglers and removed 375 vehicles. The European Council summit meeting in November 2015 thus called for a European Migrants Smuggling Center, which was subsequently set up in February 2016. In addition, decisions were taken at the EU–Africa summit in La Valletta in November 2015 in order to improve the exchange of information as well as cooperation in the areas of policing and jurisdiction between the EU and the African countries.

⁷ Cf.: Resolution 2292 of the UN Security Council of 14 June 2016 and Resolution 2240 (2015) of the UN Security Council of 9 October 2015.

⁸ Cf.: European Commission: Infographic – Infographic – EU Mediterranean operations 2016 <http://www.consilium.europa.eu/en/policies/migratory-pressures/50000-lives-saved/>, last access: 9 June 2016.

⁹ European Commission “Migration on the Central Mediterranean route – Managing flows, saving lives”, Brussels, 25.01.2017.

¹⁰ http://www.nato.int/cps/en/natohq/news_137427.htm.

¹¹ See: Europol Unclassified: Basic Protection Level, 17 June 2016.

3.2 Regaining control over the external EU borders and regulating migration into the EU

3.2.1 Improving the registration rate

Since the beginning of the crisis, so-called “hotspots”/First Reception Centers for migrants were set up in Greece and Italy, where new arrivals are registered and their asylum applications are examined. After years of turning a blind eye and allowing people to pass through, the registration rate in both countries has now virtually reached 100 per cent. In Greece, for instance, “hotspots” were set up on the islands of Lesbos, Chios, Samos, Leros and Kos, with capacities for some 5,500 people in total created for the purpose of first reception, registration and the asylum procedure. Over 400 Frontex officers are operating at the sites, and the EASO is represented with 68 asylum legislation experts and 53 cultural mediators¹². In Italy, there are operational “hotspots” on Lampedusa, in Pozzallo, Taranto and Trapani; they offer a total reception capacity of 1,600. The staff there include 80 officers from Frontex, nine asylum legislation experts from EASO and ten cultural mediators. A lot of energy, resources and thought have been put into the establishment of the “hotspots”. Nevertheless, the capacities of the Greek “hotspots”, especially, are insufficient and lead to a volatile atmosphere.

In addition, the European Commission has proposed a reform of the Eurodac system, a European database for storing fingerprints. The objective is to expand the scope of the regulation, allowing member states to also store and retrieve data of nationals from third countries who are in the EU illegally. The determination of their identity is to facilitate their return or readmission. Furthermore, facilities are to be added to allow additional data to be stored to provide national asylum authorities with simpler and particularly faster methods for identifying rejected asylum seekers¹³.

3.2.2 Creation of an EU Border and Coast Guard

For years, the limited mandate of the EU border control agency Frontex (no dedicated resources, no dedicated personnel to conduct operations, no authority to conduct operations of its own to safeguard the external EU borders) represented a key problem for the protection of the external EU borders. In June 2016, the Council of Ministers and the European Parliament came to a fundamental agreement on upgrading the border control agency Frontex and

¹² See: European Commission: “Hotspot State of Play”, 26 August 2016.

¹³ See: Proposal for a regulation for the establishment of ‘Eurodac’ (recast), 4 May 2016 Brussels (COM (2016) 272 final).

transforming it into a “European Border and Coast Guard”, simultaneously enhancing its resources and its mandate significantly. For one, the mandate of the agency has been broadened substantially, allowing it to provide assistance on return, both voluntary departure and deportation: so far, out of 690 needed specialists to carry out these tasks, 395 have been seconded. Since the entry into force of the regulation, the Border and Coast Guard effected 78 return operations, repatriating 3,421 irregular migrants¹⁴.

Furthermore, the border control agency will intensify the monitoring of the external EU borders and identify weak points through regular inspections. The new border guard also envisages the possibility of dispatching European border guard personnel into sovereign national territories. This involves liaison officers being sent to the affected member states, who will be able to provide assistance with eliminating identified weaknesses. The agency should be able to call upon a reserve pool of 1,500 border guards, who can be deployed at short notice. The border agency also has the authority to call upon a member state to take concrete measures. The degree to which the member states are relinquishing sovereignty in this context is remarkable. If a member state is not capable of protecting its external border, the newly established European Border and Coast Guard can take action itself. If a member state refuses to allow the border agency to act, the other member states will be entitled to introduce border controls with respect to that member state. In addition, the agency can conduct joint operations with third countries.

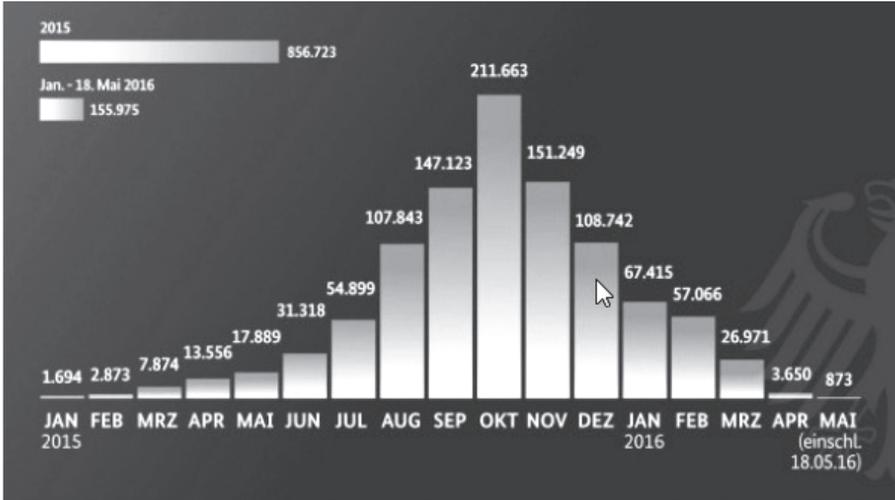
The proposal first put forward by the European Commission in December 2015 was adopted by the Council of Ministers and the European Parliament within only some six months. The new, upgraded border guard has started its work in early October – as planned. Before 2015, the creation of such a border control agency in particular – which the EPP group in the European Parliament among others had demanded for a long time – seemed illusory. The first weeks have demonstrated the will to make the border guard a viable instrument: member states have already confirmed the availability of 1,500 border guards for the so-called Rapid Reaction Pool. However, there are still sizeable gaps for equipment (particularly patrol vessels and helicopters)¹⁵.

¹⁴ European Commission: Report from the Commission to the European Parliament, the European Council and the Council on the operationalization of the European Border and Coast Guard, COM (2017) 42 final, Brussels, 25 January 2017.

¹⁵ See: European Commission: Report from the Commission to the European Parliament, the European Council and the Council on the operationalization of the European Border and Coast Guard, COM (2017) 42 final, Brussels, 25 January 2017.

3.2.3 Strengthening cooperation with Turkey

Since the EU–Turkey Agreement of March 30th, 2016 has been in force, the number of people crossing the Aegean and therefore the overall number of those entering the EU has reduced significantly (see Fig.).



Das EU-Türkei-Abkommen wirkt: es kommen deutlich weniger Flüchtlinge nach Griechenland.

Source: German Federal Government

While the refugees arriving in Greece still reached over 210,000 in October 2015, their number has gone down to 3,650 by April 2016. The data also reveal that the EU–Turkey Agreement has had a direct effect on the people smuggling “business” which had thrived in the Aegean. In 2016, the average number of persons setting out on the crossing every day was around 81. In 2015, it had still been up to 15,000 people a day. Contrary to what critics have claimed, the cooperation has largely been a success – above all because the Turkish side is adhering to the operational part of the agreement. Overall, the EU–Turkey Agreement has made a massive contribution to stabilising the situation and reducing irregular migration. At the same time, the loss of life along this route has also significantly decreased. 63 fatalities and missing persons were reported in the Aegean since the start of the Agreement – in comparison to 592 people who died in the Eastern Mediterranean in 2015¹⁶.

¹⁶ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20161208-4th_report_on_the_progress_made_in_the_implementation_of_the_eu-turkey_statement_en_0.pdf.

3.2.4 EU–Turkey Agreement is showing effects

The Statement covers cooperation in the area of border control and sea rescue, financial and practical support for Turkey in caring for the approximate three million refugees in the country, and relief provided to Turkey through a refugee resettlement programme. The Statement has had a number of positive effects in addition to curbing irregular migration:

1. It has contributed to progress in the cooperation between Turkish and Greek authorities, which are now regularly sharing information about routes and departures of boats – unlike the situation in previous years.
2. The Statement has resulted in an improvement in the conditions for refugees in Turkey. The promised disbursement of two tranches of each three billion euros in EU aid funds by 2018 will help to support humanitarian and structural projects (mostly conducted by international organisations and state institutions and NGOs, such as UNICEF, IOM, CARE, KfW, GIZ and DAAD) for providing food, accommodation, healthcare and education to refugees in Turkey. Since March 2016, the European Commission has approved project funding in the amount of 2.15 billion euros. After a difficult start, the EU has thereby started fulfilling its responsibilities under the agreement.¹⁷
3. Under the influence of the refugee crisis, which has had a massive impact on Turkey since 2012, the Turkish asylum legislation has developed significantly. Originally, while Turkey had signed the 1951 Geneva Refugee Convention, it did not ratify the 1967 Protocol, which removed the geographic limitation to Europe. That meant that – until recently – only people from Europe could obtain refugee status in Turkey. However, things changed in 2014, and Turkey now also grants protection to persons from other parts of the world. Since 2015, people enjoying temporary protection can also apply for a work permit in Turkey. The EU–Turkey Agreement and its arrangements for aid are having an enhancing effect on these reforms.
4. The agreement has also meant that the existing asylum structures and capacities in Greece have been expanded – with support from the EU: Greece has received around 850 million euros for basic provisioning as well as for enhancing its own asylum system¹⁸. Contrary to what

¹⁷ Cf.: European Commission: Managing the Refugee Crisis, the Facility for Refugees in Turkey, 28 July 2016: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160713/factsheet_managing_the_refugee_crisis_the_facility_for_refugees_in_turkey_en.pdf.

¹⁸ See: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2016/20160722_1_en.htm.

human rights activists had feared, people crossing the Aegean Sea and arriving in Greece in search of protection are not automatically deported, which would represent a breach of international law. Instead, asylum proceedings are conducted in the “hotspots” – including appeal proceedings (which have already been reformed). The key question in the proceeding is whether the asylum seeker will be safe in Turkey or whether there are recognised reasons mitigating against a return. By September 2016, 1,187 people had been sent back to Turkey from Greece after a negative asylum decision, a withdrawal of asylum application or because they never asked for protection. Of these 1,187 persons, 869 returned voluntarily, with an assisted voluntary return and reintegration program. Throughout Greece this special program was granted to more than 5,700 migrants in 2016. Most of them came from Pakistan, Afghanistan, Algeria and Iraq¹⁹. In general, asylum legislation in Greece is recently applied more stringently than in the past. The length of the determination process, however, represents a problem, although this is an issue throughout Europe.

5. The EU resettlement program, which forms part of the Agreement, further provides a regular and direct way for Syrians in Turkey who are in need of protection to enter the EU. Consequently, the agreement represents a key element for regulating migration to the EU. According to the Agreement, for every Syrian returned from the EU – because Turkey represents a safe third country for them – one Syrian will be allowed into the EU via the resettlement programme. This approach aims at curbing irregular migration. As the asylum process obviously takes time and no Syrians have been returned so far, the 1:1 mechanism is not yet in operation. However, as a demonstration of solidarity, the EU has actually started the resettlement programme. Since April 2016, 20 EU member states have accepted a total of 2,386 Syrians (selected by UNHCR) from Turkey.

The migration figures for 2016²⁰ indicate that the reduction in migration has not been due exclusively to the closing of the Western Balkan route and changes to migration policy in Greece and the EU, but also at least in equal measure to the EU–Turkey Agreement.

¹⁹ See: <http://dtmodk.iom.int/docs/WEEKLY%20Flows%20Compilation%20No21%2028%20July%202016.pdf>, 22 July 2016.

²⁰ From the week from 15 to 22 February 2016 to the week from 14 to 20 March 2016, weekly refugee numbers decreased from some 19,000 to just over 5,000. By the week from 2 to 8 May 2016 the figure had fallen further to under 400 arrivals per week (under the influence of the EU–Turkey agreement). Cf.: Eurocomment Briefing, March 2016.

A further important element – in parallel with the closing of the Western Balkan route – has been the NATO mission approved in February 2016 at Germany's initiative, which has contributed significantly to better monitoring of the Aegean and therefore enhanced border control. At the same time, the mission has contributed to a noticeable improvement in Greek–Turkish cooperation within the NATO framework²¹.

4 Implementation, adaptation and harmonisation of existing asylum regulations

The European Commission has intensively operated over the last few months in order to make the European asylum system more efficient, fair and human. The Commission ensures transparency through regular updates about the reform measures, as well as the developments at the external EU borders and the effectiveness of the adopted regulations and mechanisms. This is complemented by direct action in dealing with member states when they fail to implement the asylum legislation. The following steps have been achieved:

4.1 Implementation of existing legislation

As the guardian of the agreements, the European Commission has increased the pressure on member states since 2015, urging them to implement existing obligations. In the summer of 2015 alone, the Commission opened 40 new proceedings against 19 member states²². These were cases of unsatisfactory implementation of the asylum directives, which only five countries have so far transferred fully into national legislation. Among others, Germany has also had a case brought against it for violation of common asylum standards. Responsibility for implementing reforms rests with the EU member states. The Commission consequently considers it one of its key aims to replace the directives with regulations with immediate validity. In the meantime, a new monitoring mechanism has been established, which is also aimed at the full implementation of the European Asylum System.

²¹ Cf.: NATO and EU extend their cooperation, Europe Diplomacy and Defense, no. 906.

²² More Responsibility in managing the refugee crisis: European Commission adopts 40 infringement decisions to make European Asylum System work. European Commission, 23 September 2015.

4.2 Adaptation and harmonisation of existing asylum rules

In April, May and July 2016, the European Commission presented proposals to reform the existing asylum rules:

- The currently applicable Asylum Procedures Directive of 2013 is to be replaced by a regulation. The aim is to introduce a common procedure for assessing applications for international protection. At the same time, simplified, more precise and briefer asylum procedures are to be introduced. The length of time for an asylum application to be processed should not exceed six months, and inadmissible or unsubstantiated applications should be managed within one to three months. The rights of asylum seekers are to be strengthened at the same time: after six months from having lodged their application, asylum seekers throughout the EU are to be granted access to the labour market. The procedural rights are also being strengthened by granting asylum seekers access to legal aid during the course of the asylum process in all EU member states.
- The existing Qualification Directive is also to be replaced by a regulation, because both acceptance rates and protection standards still vary greatly among single member states. There are also discrepancies in terms of the rights acknowledged to refugee status in the different countries – for instance with respect to residence status (temporary or indefinite). These differences have resulted in secondary movements within the EU in the past. The protection of minors is also to be strengthened. Important: the new regulation is to provide clear definitions on safe countries of origin and safe third countries with the aim of obtaining a uniform common list within five years. At the same time, the reform shall introduce options of sanctioning asylum seekers who do not cooperate with the authorities or who leave the EU member state responsible for conducting their case²³.

4.3 European asylum legislation is to become more binding: moving from directives to regulations

- The reform of the Directive about the Standards for the Reception of Asylum Seekers also aims at greater consistency within the EU. One of the objectives is to ensure the enforcement of the so-called residential

²³ Cf.: European Commission – Fact Sheet: “Reforming the Common European Asylum System: Frequently asked questions” 13 July 2016: http://europa.eu/rapid/press-release_MEMO-16-2436_en.htm.

obligation of asylum seekers. This means that social benefits are linked to the location of an asylum seeker's place of residence. Individuals should only be able to obtain benefits and take advantage of integration services at the location where their asylum application is being processed; this rule is also included in the German integration legislation that was adopted in summer 2016. In addition, a distinction is to be made early on between individuals with good or poor prospects of being granted leave to remain. The first group is to be given faster access to the labour market, namely within three months from the start of the asylum procedures. Generally, asylum seekers are to be granted access to the labour market within six months throughout the EU. The intention here is to foster the economic independence and integration of the individuals in need of protection.

- Furthermore, the European Commission is aiming at a long-term and comprehensive reform of the Common European Asylum System. Back in April 2016, the European Commission put forward some plans and two models for debate²⁴. One model envisages retention of the Dublin Regulation, complemented by a “fairness mechanism”. This mechanism would be triggered once a member state exceeds one and a half times the number of refugees that had been deemed reasonable for it to accept. The other model proposes a complete departure from the Dublin system and a direct distribution of migrants in need of protection across the member states organised by a central EU asylum authority.

While the member states' majority do not reject the first model, this is plainly the case for the second model. The proposed correction mechanism, which would come into play once the threshold value was exceeded, seems to be a potentially useful instrument, which would allow the Dublin system, generally preferred by the member states, to be retained while providing effective relief for member states that are particularly affected. The threshold would be determined by the EASO, which – as already mentioned – would then be transformed into an EU Agency for Asylum (EUAA) with an enhanced mandate for action.

²⁴ Cf.: Communication by the European Commission (COM (2016) 197 final) of 6 April: Towards a reform of a common European Asylum System and enhancing legal avenues to Europe.

5 More intensive cooperation with third countries in the fight against the root causes

5.1 Recent negotiations on partnerships with countries of origin and transit

Since the La Valetta summit in November 2015, where also representatives from African countries of origin and transit were involved, cooperation with third countries to counter the root causes of migration has been a key topic on the agenda. One example involves the plans of the European Commission of June 7th, 2016²⁵, to create so-called Migration Partnerships. These envisage closer relations with a number of important transit countries, first and foremost Niger, Nigeria, Mali, Ivory Coast, Senegal, Lebanon, Jordan and Ethiopia. The idea is to conclude bilateral agreements with these countries in order to achieve sustainable improvements in their economic, political and social conditions. For this purpose, the entire range of instruments available to the EU and the individual member states – from humanitarian aid, development cooperation to economic policy and cooperations in education and research – is to be deployed in concert to strengthen economic development and resilience.

The hope of this approach is that, once stabilised and strengthened by these means, the countries can then become partners in implementing the return policy. With the aid of various financial instruments, including a fund similar to the European Fund for Strategic Investments (EFSI), investments of up to 62 billion euros are to be leveraged to significantly improve economic development at the local level. However, access to dedicated funds would be made conditional on the willingness of the third countries to take necessary steps to curb illegal migration and to readmit citizens. There are also concrete plans for a stronger engagement of the European Investment Bank in countries of origin and transit. However, there is some doubt about whether this joint coordinated approach will materialise. The “External Investment Plan” for Africa presented by the European External Action Service on September 14th 2016, has similar aims but negotiations have yet to be finalised²⁶.

²⁵ Cf.: Communication by the European Commission on establishing a new Partnership Framework with third countries under the European Agenda on Migration (COM 2016 (385) final) of 4 June 2016.

²⁶ Cf.: EU announces external investment plan for Africa, EEAS, 14 September 2016: https://eeas.europa.eu/topics/sanctions-policy/9820/eu-announces-external-investment-plan-for-africa_en.

5.2 Fight against root causes and solidarity with first host and transit countries

It is still too soon to properly evaluate the impact of these partnerships: however, already some encouraging results can be seen – even though progress varies enormously among partnership countries. The number of migrants crossing the Sahara via Niger fell substantially. Furthermore, in cooperation with Niger, 102 smugglers were sent to court, 95 vehicles have been seized and 4,430 irregular migrants have been intercepted in 2016. Similarly positive results can be seen in Mali. In other partnership countries, however, effects have so far been less visible²⁷.

At the same time, EU member states have shown the willingness to step up their efforts to address root causes, such as the German Ministry for Economic Cooperation and Development with a “Marshall-Plan with Africa” presented on February 15th, 2017²⁸.

Due to the increasing migratory pressure via the Central Mediterranean Route, the EU has attempted to increase the cooperation with the Libyan authorities. During their meeting in La Valletta on February 3rd, 2017, the EU heads of state and governments have committed themselves to launch a variety of measures to train, equip and support the Libyan national coast guard, cooperate stronger against smuggler networks, support the development of local communities in Libya and improve the catastrophic situation in the “detention centers”²⁹. The EU also pledged 200 million Euros of additional funding, which however have been considered as insufficient by the Libyan authorities. The memorandum of understanding signed on February 2nd, 2017, between Italy and the Chairman of the Libyan Presidential Council could be a first sign of development. However, as currently no central authority, no security, stability and rule of law exist in Libya, the possibilities of cooperation are narrow.

6 Proposals for regular migration

There are also plans to continue enhancing the options for people to enter the EU by regular means. The European Commission has put forward initial pro-

²⁷ European Commission (2016): Communication from the Commission to the European Parliament, the European Council and the Council, 14.12.2016, COM (2016) 960 final.

²⁸ BMZ: Afrika und Europa – neue Partnerschaft für Entwicklung, Frieden und Zukunft. 15 February 2017.

²⁹ Malta Declaration by the members of the European Council on the external aspects of migration.

posals to improve existing instruments. Specifically, it presented an action plan for integration and a reform of the Blue Cards system of, which has been rather disappointing to date and is used almost exclusively in Germany to attract highly qualified individuals³⁰. The new arrangement increases the incentives for highly qualified third-country nationals through measures including a simplified procedure for changing the place of employment, an opening up of the labour market to recognised refugees (“beneficiaries of international protection”) and the strengthening of their rights within the EU.

7 Need for action and recommendations for action

After a difficult beginning, the EU and its member states have responded comprehensively and manifold to address the complex range of issues relating to refugees and migration. Nevertheless, while some important reforms have been initiated, there is still need for further action – not least because the issue of migration will continue to represent an urgent challenge over the coming years.

7.1 Solidarity: no breakthrough with respect to the distribution of refugees

Some elements of inner-EU solidarity already exist. The European Commission, for instance, promptly granted funds to support Greece in providing humanitarian assistance to refugees. However, solidarity is a more difficult issue where the distribution of persons is concerned.

The question of a solidarity mechanism was already addressed at the first special European summit in April 2015, but the outcome was rather disappointing. The parties merely agreed to the voluntary distribution of 5,000 refugees. While the number was increased in June 2015 to 60,000, a more realistic figure given the considerable migration pressure, the principle of voluntary acceptance still applied. On September 23rd, 2015, the Council of Justice and Home Affairs Ministers then took a decision about the distribution of 120,000 refugees (across the different member states via a fixed distribution formula) by a qualified majority. While 23 member states accepted the proposal, four countries (Hungary, Slovakia, the Czech Republic and Romania) voted against it, and Finland abstained. The implementation of this decision on the ground is still not complete; Slovakia and Hungary have lodged a complaint – which

³⁰ See: Delivering the European Agenda on Migration: Commission presents Action Plan on Integration and reforms ‘Blue Card’ scheme for highly skilled workers from outside the EU, 7 June 2016, http://europa.eu/rapid/press-release_IP-16-2041_en.htm.

has been denied by the European Court of Justice in the meantime – against the decision, and a referendum on the matter was conducted in Hungary on October 2nd, 2016. The emergency relocation scheme still falls far behind its expectations: Austria, Denmark, Hungary and Poland do not participate at all; Bulgaria, the Czech Republic, Estonia, Ireland, Lithuania, Slovakia and Sweden are partially involved. This leads to the situation when only 3,205 persons out of the pledged 35,000 that were to be relocated from Italy (between September 2015 and September 2017) to other EU member states have been distributed until February 2017. The relocation numbers from Greece are equally low: until February 2017 8,481 persons (from the anticipated 63,000) were relocated from Greece to other EU states. However, it must be remarked that since December 2016 the numbers have gone up significantly: alone in December 1,959 persons from Italy and 6,212 persons from Greece were distributed throughout the EU. And on the other hand the situation on the ground has changed greatly since the Council Decision of 2015 – meaning that migrants have moved onwards – without waiting for an official implementation.

At the same time the search for common ground is difficult: The watered-down fairness mechanism (see above) proposed by the European Commission does not find much favour from some member states either, partly from fear that this would provide the wrong incentives to the affected EU countries. One of the reasons for the opposition against the Commission's plans deals with the penalties for non-participation in the fairness mechanism (a 250,000 Euros penalty for each refusal to accept a refugee who has been assigned under the fairness mechanism), which are considered too draconian. The discussion has evolved only very slowly; after the alternative proposal of flexible solidarity by the Visegrad countries has found little favour from the other member states, the discussion has moved towards a form of 'effective solidarity'. The Maltese presidency of the EU was determined to work out further progress until June 2017 in order to at least have an agreement on some basic principles of the Dublin reform. The recently suggested Franco-German proposal which foresees a multi-phase model (with a minimum non-automatic distribution kicking in once a certain threshold has been crossed) is considered as an important element of such a compromise.

7.2 Restore solidarity within the EU through a system of incentives

- While sanctioning is not likely to enhance solidarity, coupling the fairness mechanism to adherence to and implementation of the asylum regulations would be of benefit. With this approach, a country would only benefit from the fairness mechanism proposed by the European Commission if it actually implemented the European asylum legislation consistently and, for instance, was able to demonstrate a registration rate of 100 per cent of migrants.

- Instead of sanctions, a budget item funded by all member states should be introduced – and this could be included in the planning of the next multiannual financial framework – that would be used to provide financial support to member states that accept migrants under the fairness mechanism. However, in those circumstances the respective funding should be earmarked for the local and regional levels as those are most strongly affected by the need to care for the individuals in need of protection and take measures to integrate them.
- Alternatively, member states refusing to participate in the fairness mechanism could provide compensation by making proportionally greater contributions to the EU border guard in terms of funding and personnel³¹ and proportionally larger payments to various aid funds. Nonetheless, at least a minimal, non-automatic distribution mechanism – such as presented in the Franco–German proposal – should not be part of the agreement.
- In addition, the EU could continue and expand the existing policy of humanitarian admission with a view to permanent resettlement. This could alleviate the burden on countries such as Turkey, Lebanon and Jordan, and give those seeking protection prospects for the future. The UN Resettlement Summit in September 2016 and President Obama’s initiative were also aimed at boosting efforts in this area – so far without results, however.

8 Implementation of and adherence to the concluded agreements

Important EU refugee policy reforms have been approved. But how well and how comprehensively these will be implemented by the member states remains to be seen. The harmonisation of the standards of reception conditions and adherence to the criteria for asylum procedures and the granting of refugee status will be equally as important in this context as a coordinated returns policy and conscientious data collection and sharing. The latter also requires standard digital technology for countering secondary migration.

9 Humanitarian responsibility

9.1 Involvement in humanitarian aids

Aside from the urgent need to bolster inner–EU solidarity, further steps to improve the global situation are required. This is because the worldwide refugee

³¹ This proposal is already under consideration.

crisis affects particularly third-world countries that are themselves striving for stability. While the EU and its member states are already among the most significant actors in the areas of humanitarian aid and development cooperation, more could be done. The funds pledged for the acting UN organisations such as UNHCR (whose budget is funded from voluntary contributions) regularly lag far behind demand. Poor payment behaviour (by the EU member states as well) exacerbates the problem of underfunding further. For instance, 1 billion Euros were pledged for the EU Regional Trust Fund in response to the Syrian crisis, but only 266 million Euros have been paid into the fund by member states (Austria leading the list of donors with 11.5 million, Germany contributing the average sum of 5 million). In the case of the Emergency Trust Fund for Africa announced in La Valetta, pledges were made in the amount of 3.6 billion Euros. However, the fund is still short of 1.7 billion Euros (in this case Belgium and Italy lead the list of donors with 10 million Euros each, while Germany has contributed with 3 million). Things are different where the pledges associated with the EU–Turkey Agreement are concerned. Of the initial 3 billion Euros pledged, only 130 million are still outstanding (here, Germany leads the list with 427.5 million euros, followed by the UK, France and Italy)³².

9.2 The EU as a leader in humanitarian aid

At the UN Refugee Summit on September 19th, 2016, the community of States pledged better international cooperation and coordination with respect to migration issues. This includes greater solidarity where acceptance rates are concerned and more equitable sharing of financial responsibility. The EU could give a clear signal for greater responsibility at the international level. As the largest donors for development and humanitarian aid worldwide, the EU and its member states should act as humanitarian world leaders and pledge a fixed annual budget.

10 Cooperation with first host and transit countries

First, despite the fact that the current situation in Turkey is highly volatile – in view of its deficits in the area of human rights protection and the rule of law – the country remains an indispensable partner for the EU for overcoming the challenges posed by refugees and migration. Repeated threats by the Turkish government to withdraw from the agreement if the question of visa liberalisation for Turkish citizens cannot be settled should not be responded to with a

³² See: European Commission: “Financial Pledges to Trust Funds“, 7 June 2016.

softening of the criteria that need to be met. That said, it would also be wrong to break off the negotiations prematurely and allow the situation to escalate. Ultimately, both sides have a definite interest in fulfilling the Agreement and in cooperating closely – putting the visa liberalisation and the shaky enlargement process to one side – not least due to the close bilateral economic links.

Second, the EU–Turkey agreement can however only to a very limited extent serve as a blueprint for an agreement with Libya. In the case of the Central Mediterranean Route, the EU should primarily support the stabilization process of Libya and improve the situation of the migrants in the horrible detention centers – beyond the commitments made at the EU summit in Malta in February 2017.

Third, in the context of the migration partnership framework, the EU should link funding to capacity building: in return for the development support, these hosting countries should be encouraged to establish protection mechanisms and provide refugees with a legal status.

Finally, a very important element would be to agree on a European list of safe countries of origin and safe third countries.

11 Fighting the root causes

11.1 Available proposals

The Commission's proposals to fight the causes of forced migration are ambitious and innovative, but even more far-reaching measures could be taken.

Once cooperation with third countries has been successfully established, the migration partnerships could become so-called reform partnerships³³. Concrete measures could include opening the EU market, particularly the agricultural market, in the medium term to States willing to cooperate. Besides, it could be possible to grant investment guarantees to increase the incentives for direct investments. It should be ensured, that the numerous efforts undertaken on a European and a national level are well coordinated – especially on the issues of compatibility of incentives and the question of conditionality.

11.2 Greater effectiveness through better coordination

Innovative development policy instruments alone will probably not be sufficient in the long term to overcome the causes underlying the refugee crisis.

³³ See: A detailed analysis of this topic can be found in the following paper: Partnership for Reform with North Africa Economic integration as the first step towards a comprehensive EU–Africa cooperation in Facts & Findings 206/2016, Sankt Augustin, 13 June 2016, <http://www.kas.de/wf/en/33.45521/>.

What is needed now more urgently than ever is an effective Common Foreign and Security Policy (CFSP). For years, the EU was incapable of formulating a clear stance towards the Syrian conflict, and even if the political will had existed, the EU would not have had the appropriate instruments (including military ones) to prevent a lengthy military escalation in Syria. The fight against the causes of forced displacement will therefore only succeed if the EU member states can bring themselves to come to an agreement about the fundamentals of a joint stance on current and enduring conflicts in their neighbourhood as well as finally creating an effective CFSP.

One key aspect in this context will remain a common European strategy for the long-term stabilisation of Libya. The steps made during the February 2017 European Council should be continued and intensified.

12 Calm and objectivity

Questions of asylum and migration policy touch the core of national sovereignty, although they cannot be effectively enacted purely at a national level because of international connectivity and legal obligations. Many refer to the migration crisis as the greatest challenge of our time, and it is probably right. To do justice to the needs and interests of the affected individuals (both the refugees and the people in the host societies) and the involved actors – not least the States – requires thoughtfulness, calm and objectivity in the search for solutions. Over the last few months, the great majority of the EU institutions and member states have demonstrated that this is possible. Even if the results may not be immediately visible, seeing that it takes time to harmonise processes and break with old habits, important reform steps are being taken within the EU and its member states. These efforts must be acknowledged and should not be played down. After a difficult start, the EU has succeeded in agreeing on the broad lines of a joint approach – dispensing with bilateral solo actions – particularly at the three European Council summit meetings in the spring of 2016. This approach is characterised by the will to seek the best solutions supported by all. Thus, it will be a long and arduous road ahead: migration will remain one of the EU's key challenges during the years and decades to come as wars and conflicts continue, democracy and human rights are on the retreat and global disparities grow. The efforts made in the last 20 months can therefore only represent the beginning of a long process of reform.

Marcus Engler *

The German perspective. The regulation of migration flows and European cooperation in the field of asylum

Contents: 1. Introduction: Merkel's alleged open-door policy. – 2. German Asylum Policies: From national interest to European cooperation? – 2.1. Permissive approach after WWII. – 2.2. As numbers rise, restrictive policies are implemented. – 2.3. Liberalization process in society and politics. – 3. Rising numbers and new Controversies. – 3.1. Asylum seekers and “safe countries”. – 3.2. Germany's role in the prehistory of the “refugee crisis: In favor of EU-cooperation. – 4. Causes and Dynamics of the 2015 “refugee crisis”. – 4.1. Structural Explanations. – 4.2. Background of the decision of 4th September 2015. – 5. Regaining control: Restrictions at the national level and the EU-Turkey Deal. – 5.1. Reactions and Debates at the National level. – 5.2. Divided population – reactions and surveys. – 5.3. Permanent conflict within the government. – 6. European level. – 6.1. Closure of Balkan Route and EU-Turkey-Deal. – 7. Conclusions and Outlook.

Abstract: A number of actors in the German and European political arenas are claiming that the high influx of asylum-seekers in 2015 and 2016 was mainly the result of an intentional invitation or open-door policy by the German government. In contrast to this assumption, this article will argue that the influx can be mainly explained by a combination of factors – high number of forcibly displaced people in the European periphery; failure of international community to offer durable solutions in the conflict region; lack of cooperation at the EU level; existing ties to Germany; relative attractiveness of Germany – which were beyond the scope of influence by the German government. Also, during the Syrian refugee crisis, the German government – in contrast to earlier German positions in the field of asylum – was strongly but without success advocating for a Europe-wide coordinated approach concerning the admission of people in need of protection. Against this backdrop, the decision to ‘open’ the border to Hungary has to be seen as a last-minute reaction to avoid a humanitarian catastrophe rather than an intentional or proactive policy. Inside Germany, the arrival of high numbers of asylum-seekers led to an ongoing conflict in society and politics. Starting from autumn 2015 the German government introduced a series of measures aiming to

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reduce the number of new arrivals. Moreover, Germany was against a closure of the Balkan-route and in favor of a deal with Turkey. Today, Germany is supporting ‘external’ solutions with Libya and other countries.

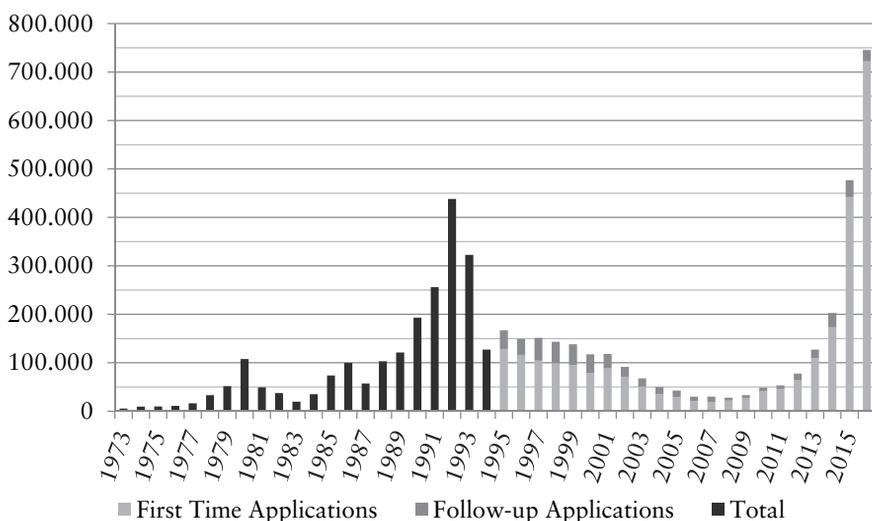
1 Introduction: Merkel’s alleged open-door policy

From summer 2015 till the closure of the Balkan-Route and the coming into force of the so-called EU-Turkey-Statement in February and March 2016, around 1 million migrants and refugees entered the European Union in a spontaneous and irregular manner (IOM 2017). The dimension of the influx from the outside of Europe was without precedent in recent history. As most new arrivals came from war-torn countries like Syria, Afghanistan and Iraq and were seeking protection, the number of asylum seekers in the European Union reached new record levels in 2015 (1,26 million first time asylum applications) and remained very high in 2016 (1,20 million) (Eurostat 2017).

A large part of those asylum-seekers went to Germany. In 2015, more people seeking sanctuary came to Germany than ever before. In 2015, 441,899 first time asylum applications were lodged. In total, including subsequent applications, 476,649 requests for asylum were submitted (see figure 1). However, the number of asylum seekers actually coming to Germany in 2015 was significantly higher – due to registration issues, it took considerable time to lodge formal applications. Several hundred thousand people arrived in Germany in 2015 but could not formally apply for asylum. According to the German federal government, the arrivals of almost 890.000 asylum seekers were registered in the so-called EASY system in 2015 (BMI 2016). In 2016 the number of formally pledged first time asylum-applications further increased to 722,370 (745,545 total applications) of which around 280,000 arrived in 2016 (BMI 2017). The number of arrivals in the European Union and in Germany quickly and significantly decreased at the end of March 2016 as a result of the closure of the Balkan-route and the EU-Turkey-Deal.¹

¹ The so-called protection rates were exceptionally high, in a historical comparison. In 2015 approximately every second asylum seeker was recognized as being in need of protection. In 2015, the so-called overall protection rate, which includes all forms of protection (i.e. eligibility for asylum, refugees received under the Geneva Convention and subsidiary protection) stood at 50%. The figure is even higher if second instance decisions by administrative courts are taken into account. In 2016 this figure rose to 63 percent. This can be attributed to, above all, a high proportion of asylum seekers from Syria and other war-torn countries such as Iraq and Eritrea, who were almost all given refugee status. This implies that a very large number of humanitarian migrants will very likely stay for a longer period of time or permanently in Germany.

Figure 1: Asylum Applications in Germany 1973 – 2016



Source: BAMF 2017

Those developments have brought the topic of asylum and migration to the forefront of the public sphere and triggered a controversial debate on the causes of the unprecedented influx as well as on political solutions in Germany and at the European level. Numerous media outlets, political representatives in Germany and other European countries as well as a few scholars (Betts/Collier 2017) have argued that the influx resulted primarily or exclusively from an alleged open-door or invitation policy of the federal government – often reduced to the person of the Chancellor Angela Merkel. According to this view, the decision of the German government in early September 2015, to ‘open’ its borders would have triggered a pull effect. Furthermore, the “we can do it” rhetoric of the chancellor and selfies taken with refugees are believed to have been understood as an invitation to come (Engler 2016). According to this view, Germany and Europe would not have a ‘refugee problem’ if the German government would have acted differently.

In sharp contrast, this article seeks to demonstrate that the causes behind the events of 2015 and 2016 are manifold and that the actions of the German government had only a limited impact. It will be argued that a number of factors such as a record number of forcibly displaced people worldwide and especially at the margins of Europe, the failure of the international community to offer durable solutions in the conflict regions, existing ties to Germany and the relative attractiveness of Germany as compared to other European destination

countries can better explain the arrivals of high numbers of asylum-seekers, and that those factors were beyond the scope of political influence by the German government. Also, during the Syrian refugee crisis, the German government – in contrast to earlier German positions in the field of asylum – was strongly but without success advocating for a Europe-wide coordinated approach concerning the admission of people in need of protection. Against this backdrop, the decision to ‘open’ the border to Hungary has to be seen as the result of a failed European coordination in the field of asylum and as a last-minute reaction to avoid a humanitarian catastrophe rather than an intentional policy. The closure of national borders was discussed within the German government but in the end discarded for humanitarian and political reasons. Inside Germany, the arrival of more than a million asylum-seekers in a very short time has led to an ongoing dispute on the introduction of an upper limit for asylum seekers (*Obergrenze*) and transit zones. In reaction to the high number of asylum seekers, the German government implemented a number of restrictive policies, which aimed at a reduction of asylum flows. Moreover, Germany was against a unilateral closure of the Balkan-route and in favor of a deal with Turkey. Today, Germany is supporting ‘external’ solutions with Libya and other countries.

This article will start by giving a short overview of asylum trends and policies prior to the year 2015. It will then analyze the events and dynamics of the 2015. The article will finally discuss debates and reaction to the “refugee crisis” in Germany. It will focus on those debates and policies which relate to the aspect of regulation or controlling flows of asylum-seekers. The equally important dimension of integration policies will be discussed in another article in this volume (s. Goebel).

2 German Asylum Policies: From national interest to European cooperation?

The reactions to the 2015/2016 “refugee crisis” can only be adequately understood if the historical background and more recent developments of asylum and migration policies in Germany are taken into account. Therefore, the main steps and developments in this field will be briefly outlined in the following paragraphs.

Over the last decades, political approaches to asylum in Germany have changed several times. The underlying dynamics and causalities are certainly complex and cannot be discussed here in detail. However, it can be stated that asylum policies tend to be more restrictive when numbers of arriving asylum-seekers are on the rise, including in comparison to other European destination countries. On the other hand, lower numbers of asylum-seekers can lead to more liberal policies.