Nadine Biehler, Anne Koch and Amrei Meier

Risks and Side-Effects of German and European Return Policy

Foreign Policy, Security and Development Trade-offs

- Returning migrants without legal residence status to their countries of origin is high on the political agenda of Germany and the European Union. As well as seeking to increase the number of returns, policy efforts in this area also serve a symbolic function: They demonstrate that the state is upholding the rule of law and are regarded as an important means for stemming the growing popularity of political parties of the extreme right.

- In practice it is difficult to enforce the obligation to leave. Across Europe, governments succeed in only about one-third of cases. The lack of co-operation by countries of origin is regarded as one of the central reasons for this.

- The European Union is currently witnessing dynamic developments in the internal and external dimensions of return policy. The objective is to improve cooperation with countries of origin and make European processes more effective.

- The development, foreign policy and security costs associated with on-going efforts to increase the number of returns are often not adequately accounted for. For example pressure to cooperate on readmissions can endanger democratic transition processes in countries of origin and weaken European bargaining power in other areas.

- The study calls for a comprehensive cost/benefit analysis of return policy that addresses these potential trade-offs in a systematic manner — and that provides the basis for pragmatic discussions about alternatives to return.

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The circumstances under which people return to their countries of origin vary widely, as do their migration and displacement biographies. Returning may represent the last stage of a successful labour migration project, a temporary episode in a highly mobile career, a conscious decision motivated by poor employment prospects in the host country, or a necessity after failure to obtain legal residence status. The objective of German and European return policy is much narrower. It concentrates on removing rejected asylum-seekers and other migrants without legal residence status by means of deportations and state-supported return programmes. These types of return involve far-reaching interventions in individual rights and liberties and represent an especially controversial aspect of state migration policy. They possess strong mobilisation potential and trigger emotionally charged debates.

Return policy is highly symbolic: Deporting unwanted foreigners demonstrates the state's ability to uphold its territorial sovereignty. This principally domestic messaging explains the high priority accorded to return measures since the so-called "European refugee crisis" of 2015 and 2016. In recent years there have been continuous efforts — both at the national and European levels — to increase the number of returns, with initiatives and policy measures at both levels deeply intertwined. Many of these efforts seek to address the lack of cooperation by governments in countries of origin, which frequently obstructs planned returns. This may involve offering incentives, threatening sanctions or ameliorating the individual hardships associated with forced return.

Attention tends to concentrate on the "how" of return, while the great political importance attributed to the issue is rarely called into question. As a result the repercussions of the German and European prioritisation of return in other policy areas tend to be neglected. This is what the present study seeks to remedy. It surveys the foreign policy, development and security implications of return policy and calls

for these to be given appropriate weight in the corresponding decision-making processes.

The study begins by discussing the deficits in the data on return and surveying recent developments in EU return policy. It goes on to explore the empirical evidence on the concrete impacts of these policies in countries of origin, and analyses what this means for German and European relations with the respective governments. A series of typical trade-offs are identified. For example, initiating readmission negotiations with authoritarian regimes may boost their international legitimacy. Employing development funds as leverage to persuade uncooperative partners to change their minds can undermine development principles and lead to the setting of otherwise unjustifiable priorities. Both are associated with the risk of discrediting development cooperation; moreover the prioritisation of return-related objectives can weaken German and European negotiating positions in other policy areas. Finally, the readmission of criminals and extremists poses potential security risks for countries of origin and beyond.

The present analysis of these trade-offs augments an otherwise overwhelmingly domestically driven debate. The outcome is a fuller picture of the trade-offs that need to be weighed before deciding whether and to what extent the current prioritisation of return actually reflects German and European interests. One central finding is that the pressure to showcase action created by the setting of quantitative return targets has acquired a life of its own, leading to the subordination of other migration policy objectives. Questions of proportionality threaten to be forgotten altogether. The lack of discussions about alternatives to return is counterproductive and ignores social realities. Alongside acknowledging that return activities are an integral part of a comprehensive migration policy, we need an open debate about the option of switching from the asylum process to a labour migration channel (discussed in Germany under the label "Spurwechsel", or change of track) — and about possibilities to regularise migrants who have lived for a significant period without regular residence status in Germany and other EU member states.

The Political Significance of Return Migration

The central problem in the response to the European "refugee crisis" of 2015 and 2016 was the failure of the EU member states to agree on a fair system for distributing asylum-seekers. Five years on, the question remains deadlocked. Another facet of migration policy has seen broad agreement, on the other hand: there is consensus across the EU that return policy must be reformed to enforce obligations to leave more thoroughly and efficiently, giving rise to dynamic policy developments at the national and supranational levels.

One important reason for this is that return policy initiatives frequently constitute the lowest common denominator in the otherwise tortuous negotiations over reforming the Common European Asylum System. However, the exceptionally high priority attributed by European governments to migrant return can only be understood in light of the issue's symbolic dimension. The sudden and apparently uncontrolled rise in immigration in 2015 and 2016 was unsettling for large sections of the population and has been blamed for the growth of extreme right-wing parties in many EU states. In that situation governments have used deportations and expansion of so-called assisted voluntary return programmes to counter the impression of a loss of control.

Germany is an example of how the public debate over return tends to be dominated by domestic politics. Yet return policy is inherently transnational. Unlike decisions concerning entry to their own territory, European governments cannot implement return decisions without the consent and cooperation of the respective country of origin. The political focus on return — with German Chancellor Angela Merkel calling repeatedly for a "national effort" to "deport migrants with no right to stay" after 2015 and the European Commission starting to measure the success of European migration policy in terms of the rate of successfully implemented returns therefore went hand in hand with intensified efforts to elicit cooperation from the countries of origin of migrants required to leave.

This turns out to be problematic. Because outcomes continue to fall far short of expectations, efforts to increase the rate of return continue or are being stepped up. At the same time there are growing numbers of reports about the potential negative repercussions that prioritising return can have on cooperation with individual countries of origin. The present study surveys the relevant developments in European return policy and analyses the risks and costs arising in the fields of development, foreign policy and security. As such, it addresses an important gap in the growing number of policy papers on the subject of return — which tend to seek more effective and humane return measures without fundamentally questioning the proportionality of those efforts in relation to other political objectives.[1]

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1 See for example: Victoria Rietig and Mona L. Günnewig, *Deutsche Rückkehrpolitik und Abschiebungen: Zehn Wege aus der Dauerkrise*, DGAP Analyse 3 (Berlin: Deutsche Gesellschaft für Auswärtige Politik [DGAP], May 2020); Kathleen Newland and Brian Salant, *Balancing Acts: Policy Frameworks for Migrant Return and Reintegration* (Washington, D. C.: Migration Policy Institute [MPI], October 2018); Anna Knoll et al., *A Sustainable Development Approach to Return and Reintegration: Dilemmas, Choices and Possibilities*, Discussion Paper 291 (Maastricht: The European Centre for Development Policy Management [ECDPM], January 2021).

Legal and Statistical Background

The return of refugees and migrants is typically categorised into three distinct types: (1) spontaneous return occurring without institutional or state support; (2) return in the context of so-called assisted voluntary return programmes, which are frequently implemented by the International Organization for Migration (IOM); and (3) forced return in the form of deportations. The qualifier "voluntary" in the second category is often misleading, however. If the only alternative to a state-funded return programme is deportation, it is a stretch to describe participation in the former as a voluntary decision.[2] This imprecision in the terminology creates two problems. The rhetoric suggesting a voluntary decision is perceived as unrealistic and cynical by civil society actors and generates blanket mistrust towards all return initiatives.[3] At the same time the term "voluntary" generates exaggerated expectations concerning the success of state-supported return programmes, because a genuinely voluntary process is regarded as the crucial precondition for the sustainability of return.[4]

In order to navigate these terminological difficulties, it is useful to distinguish two dimensions: whether the return is voluntary or involuntary, and whether state influence and/or support is involved (see Table, p. 9). Types 1 and 2 represent different modes of spontaneous return without state support, for example when labour migrants decide to return to their country of origin or citizens of third countries leave the EU as required when their visa expires. Type 3 corresponds to primarily development-oriented programmes promoting the return of skilled workers, for example when experts work for a time in their country of origin (or that of their parents), mostly in development projects. Type 4 comprises all state efforts to persuade foreign citizens without regular residence status to leave. German and European return policy concentrates on Type 4, which encompasses deportations as well as return programmes operating without physical coercion.

The International Legal Framework

Return policy is understood as state efforts to influence personal decisions concerning return and to actively support and/or enforce returns. The sovereign right of states to control access to their territory also includes the right to expel persons without legal residence status, for example when holiday visas or labour contracts expire, or when asylum applications are rejected. At the same time, the Universal Declaration of Human Rights formulates an individual right to return: "Everyone has the right to leave any country, including his own, and to return to his country."[5] Every state thus has a duty to readmit returning citizens.[6]

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2   See for example: Arjen Leerkes et al., "What Drives 'Soft Deportation'? Understanding the Rise in Assisted Voluntary Return among Rejected Asylum Seekers in the Netherlands", *Population Space and Place* 23, no. 8 (2017); Marieke van Houte and Tine Davids, "Moving Back or Moving Forward? Return Migration, Development and Peace-Building", *New Diversities* 16, no. 2 (2014): 71−87.

3   Valentin Feneberg, "'Ich zwinge niemanden, freiwillig zurück zu gehen': Die institutionelle Umsetzung der Politik der geförderten Rückkehr durch staatliche und nicht-staatliche Akteure", *Zeitschrift für Flucht- und Flüchtlingsforschung* 3, no. 1 (2019): 8−43 (14f.); Stephan Dünnwald, *Freiwillige Rückführungen: Rückkehrpolitik und Rückkehrunterstützung von MigrantInnen ohne Aufenthaltsrechte* (2011), 1f.; Pro Asyl, "Auf die harte Tour: 'Freiwillig' ist nicht gleich 'Freiwillig'", 20 November 2019.

4   Knoll et al., *A Sustainable Development Approach to Return and Reintegration* (see note 1), 7.

5   United Nations, *Universal Declaration of Human Rights*, General Assembly resolution 217 A, 10 December 1948, Article 13 (2). The International Covenant on Civil and

Table

Forms of return

	Voluntary	Involuntary
Without state support	Type 1: Free decision to return, self-organised	Type 2: Self-organised return in absence of viable alternatives
With state support and/or coercion	Type 3: Free decision to return, practical steps supported by the state	Type 4: Return in absence of viable alternatives, supported or enforced by the state

On the other side, certain provisions in international law restrict the right of states to expel non-citizens. For example, the non-refoulement principle of the Geneva Refugee Convention of 1951 prohibits the expulsion or return of any refugee whose "life or freedom would be threatened on account of his [sic] race, religion, nationality, membership of a particular social group or political opinion".[7] The European Convention on Human Rights and the United Nations Convention against Torture also prohibit expulsion or repatriation in cases where the person in question would be in danger of being subjected to torture or inhumane or degrading treatment.[8] A second element of protection, the prohibition of collective expulsion, was first codified in Protocol No. 4 to the European Convention on Human Rights (adopted in 1963) and has become a universally recognised principle of international law.[9]

The Global Compacts on Migration and Refugees agreed in December 2018 are the most recent international agreements affecting the topic of return, even if they are not internationally binding. In the Global Pact on Refugees, the international community commits to creating conducive conditions for voluntary return.[10] The Global Compact for Migration goes into the issue of return in even greater detail; one of its twenty-three objectives is to: "Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration."[11] The central concerns here are legal security and support for re-integration, rather than voluntariness.

This brief overview of international frameworks and agreements highlights the diversity of dimensions involved in return: It is a facet of state migration policy, but also an individual right. Especially for those who have been forced to leave their country of origin, forced return presents a potential risk from which they must be protected, especially where the reasons for leaving remain in place.

The Data: Fragmented and Incomplete

The data on return migration is frequently incomplete. Statistics gathered by various actors on the basis of different definitions and standards are not conducive to making direct comparisons and definitive statements. Nevertheless, the available figures point to a number of general trends at the global and European/national levels.

Political Rights and Protocol No. 4 to the European Convention on Human Rights also protect the right to return to one's own country.

6 Nils Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights*, (Leiden and Boston: Martinus Nijhoff, 2009), 28.

7 United Nations High Commissioner for Refugees (UNHCR), *Convention Relating to the Status of Refugees*, 28 July 1951, Article 33 (1).

8 Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms,* 4 November 1950; United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* 10 December 1984.

9 Council of Europe, *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 16 September 1963, Article 4. Most states have agreed to prohibit collective expulsions, under *General Comment* no. 15 to the International Covenant on Civil and Political Rights.

10 United Nations, *Global Compact on Refugees*, A/73/12 (Part II), New York, 2018, paras 87−89.

11 United Nations, *Global Compact for Safe, Orderly and Regular Migration*, A/RES/73/195, 10 December 2018, para. 37 a)−i).

Figure 1

Global refugee returns, 1980–2020

millions

Large return
movements to
Rwanda and
Mozambique

Large return
movement to
Afghanistan

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Source: UNHCR, "Refugee Data Finder"

Global Return Trends

Most cross-border migration movements are tempo-
rary or cyclical and involve a return component.[12]
There are no reliable statistics on the arrivals of re-
turnees in their respective countries of origin because
the migrants involved do not require permission to
return. Figures are therefore only available for cases
where international organisations and/or states are
involved. The key players in the global context are
the United Nations High Commissioner for Refugees
(UNHCR) and the International Organization for
Migration (IOM). UNHCR supports return ("voluntary
repatriation") as one of three "permanent solutions"
for refugees, alongside local integration and resettle-
ment in a third country; IOM offers so-called volun-
tary return programmes (Assisted Voluntary Return,
AVR; Assisted Voluntary Return and Reintegration,
AVRR), to provide financial and organisational sup-

port principally to individuals without legal residence
status. The figures gathered by these two actors sup-
ply a starting point for identifying trends.

Figure 1 (see p. 10) shows the global return figures
for refugees since 1980.[13] The low return figures in
the 1980s (in comparison to the period 1991 to 2005)
can be attributed to the Cold War and its proxy con-
flicts, which hindered major return movements. The
marked decrease in numbers since 2006, on the other
hand, is likely linked to the proliferation of *protracted
conflicts* that prevent safe return for many years.[14] The
spikes in the graph indicate that refugee returns

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13   UNHCR publishes these cumulative figures under the
caveat that many of the national statistics they are based on
are unverifiable. UNHCR does not distinguish between self-
organised and supported returns, or between voluntary and
involuntary returns. UNHCR, *Global Trends: Forced Displacement
in 2018* (Geneva, 2019).
14   UNHCR, *Global Trends. Forced Displacement in 2019* (Geneva,
2020), 11. That does not mean, however, that refugees only
return to stable and peaceful situations. During the ten-year
period 2010−2019 Syria had the highest return figures after
Afghanistan (ibid., 51).

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12   International Organization for Migration (IOM), *Manag-
ing Return Migration: Challenges and Opportunities*, International
Dialogue on Migration (Geneva, 2016).

Figure 2

Global returns under IOM AVRR programmes, 2005–2020
thousands

Source: IOM, *2019: Return and Reintegration* (see note 16), 2; e-mail to authors from IOM, 1 July 2021

occur in waves, with individual peaks attributable to progress in specific country contexts. In 1994 for example many people returned to Rwanda and Mozambique, in 2002 to Afghanistan.[15] In years where no former conflict region exhibited change significant enough to set in motion a major return movement the figures remained low. All in all this underlines how conditions in countries of origin are decisive for larger numbers of people returning.

IOM has been running return programmes since 1979 (see Figure 2).[16] Until the early 2000s most of these operated in the context of North-South return; today they are used by governments across the world. Unlike the return figures for refugees published by UNHCR, a rising trend is observed in the IOM data. The conspicuous spike in 2016 is directly attributable to the European "refugee crisis" of 2015 and 2016 after which European governments made great efforts to step up returns. The German government is a case

in point: 54 percent of all returns organised by IOM in 2016 were from Germany (54,006 returnees); Europe as a whole accounted for 83 percent.[17] The decline by roughly half from 2019 to 2020 was caused by pandemic-related travel restrictions.

Return Data in the European Context

The data for Europe is similarly incomplete and fragmented. Most countries do not centrally record self-organised returns to country of origin; EU-wide data is available only for the segments of state-supported and forced return. In order to assess the effectiveness of national return efforts, the European Commission calculates a so-called return rate. This is the ratio of the number of actual returns to the total number of persons required to leave. However numerous statistical weaknesses make this figure unreliable and potentially misleading (see "Enforcement Deficit and Return Rate", p. 16).

15 UNHCR, "Refugee Data Finder".

16 IOM, *2019: Return and Reintegration: Key Highlights* (Geneva, 2020), 81.

17 IOM, *Assisted Voluntary Return and Reintegration: 2016 Key Highlights* (Geneva, 2017), 3.

Figure 3

Comparison: Number of persons required to leave vs. number of state-supported and enforced returns from EU member states*, 2010–2020

thousands

	Persons required to leave in the EU-28	State-supported and enforced returns from EU-28 to third states

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020**
Persons required to leave	540	491	484	430	470	529	486	505	487	513	400
State-supported and enforced returns	199	167	179	185	170	196	229	190	170	162	70

Return rate in percent

36.8	34.0	36.9	42.9	36.3	37.1	47.1	37.5	35.0	31.6	17.6

* The data for Malta, Romania, Slovakia and the United Kingdom includes persons returning voluntarily without state support.

** Provisional data; excluding Denmark and the United Kingdom.

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Sources: Eurostat, "Nach Ausweisung zurückgekehrte Drittstaatenangehörige — Jährliche Daten (gerundet)", 20 May 2021; Eurostat, "Zur Ausreise aufgeforderte Drittstaatenangehörige — Jährliche Daten (gerundet)", 20 May 2021.

As Figure 3 shows, the return rate has fluctuated around an average of about 38 percent over the past ten years.[18] But it does not necessarily follow that more than 60 percent of persons required to leave actually remain in the European Union. Given that immigration continues that would mean the total increasing from year to year. Instead it has remained around on average a little below half a million people per year for a decade, with minor fluctuations. What would explain this constancy of the number of persons required to leave, when the return rate appears at first glance to be so low? A definitive explanation cannot be provided, although a combination of several factors is plausible. Firstly, many such persons leave the EU without state support and this goes unrecorded. Secondly some go on to acquire legal residency, for example when rejected asylum applications are granted on appeal. Thirdly, those who possess "Duldung" in Germany are not included in the EU's statistics.

Return Data in the German Context

In the German context, too, the number of returns attributable to state intervention is frequently cited as a ratio of the number of persons required to leave (see

18 2020 was exceptional, because the mobility restrictions imposed in response to the Covid-19 pandemic also affected returns.

The special case of "Duldung"

The German legal category of "Duldung" is not a residence status, but merely notification that deportation has been temporarily suspended (§ 60a Aufenthaltsgesetz). Duldung can be granted on legal grounds (for example if there is an official moratorium on deportations on account of the security situation in the country of origin), or for individual reasons (for example if a person is too ill to travel or lacks travel documents). Finally, "Ermessensduldung" may be granted on humanitarian or personal grounds (for example to complete a school year or vocational training).

As a rule "Duldung" is only granted for a period of a few days to months, after which the responsible immigration agency must review and if applicable extend — often repeatedly over many years. At the same time "Duldung" can be withdrawn without notice at any time, and the person deported. This leaves those who are granted "Duldung" living in limbo; they are permitted to remain temporarily in Germany, but without any regular residence status. This is associated with great insecurity and uncertainty, resulting in psychological stress for those affected.

New rules introduced in 2020 allow longer periods of "Duldung", namely for the duration of training (maximum three years) plus two years of subsequent employment (so-called 3+2 rule, § 60a Absatz 2 Satz 4 Aufenthaltsgesetz). At the end of 2019 four out of five persons theoretically required to leave in fact possessed a "Duldung".[a] The proportion has remained relatively constant over recent years.[b]

a Deutscher Bundestag, *Antwort der Bundesregierung, Drucksache 19/18201. Abschiebungen und Ausreisen 2019*, Berlin, 19.3.2020, S. 46.
b See for 2012−2016 Paula Hoffmeyer-Zlotnik, *Rückkehrpolitik in Deutschland im Kontext europarechtlicher Vorschriften*, Working Paper 77 (Nuremberg: Bundesamt für Migration und Flüchtlinge [BAMF], 2017), 18; for 2017 Deutscher Bundestag, *Antwort der Bundesregierung, Drucksache 19/633*, 5 February 2018, 78; for 2018 idem, *Antwort der Bundesregierung, Drucksache 19/8021. Abschiebungen und Ausreisen im Jahr 2018*, 26 February 2019, 33; for 2019 idem, *Drucksache 19/18201* (see note **a**), 46.

Figure 4, p. 14). However it must be noted that a quirk of German immigration law complicates any comparison of the two variables. This is "Duldung", suspending the requirement to leave for a defined period without annulling it (see "Duldung", p. 13).

As Figure 4 shows, the annual number of deportations more than doubled between 2014 and 2016;

returns in the scope of AVR programmes almost quadrupled over the same period. While the rise in the AVR figures was a temporary phenomenon and decreased again in 2017, the number of deportations remained high through 2019 (the low figures for 2020 are attributable to pandemic-related travel restrictions and therefore does not indicate an overall trend). The significant increase in deportations and AVR returns from 2015 on reflects state activities in response to increased immigration figures during the so-called "refugee crisis" of 2015 and 2016.

The fact that the number of deportations plateaued in the following years also suggests that return figures cannot simply be increased at will — even with considerable political determination and coercive measures. There are various reasons for this: For one thing, deportations are very resource-intensive; the requisite administrative and logistical capacities are limited and take time to expand. Also, the governments of countries of origin are often unwilling to cooperate with involuntary returns of their own citizens.[19]

The explanation for the trend in AVR returns is that in 2015 and 2016 there was a large group of people from the Balkan states who were required to leave and were relatively easily reached by the programmes. Once this pool had been exhausted greater effort was required to persuade individuals to return.[20]

The group of persons required to leave in Germany divides into those with and without "Duldung". The number of persons required to leave without "Duldung" increased significantly between 2014 and 2017, declining again since then. At the same time the number of persons required to leave but granted "Duldung" has risen continuously, more than doubling since 2014. So ever more persons are required to leave but the practical significance of the status has declined because the grounds for "Duldung" often persist for years and can, in the case of "Duldung" for vocational training, also offer a path to regular residence status.[21]

The discrepancy between the total number of persons required to leave (including those with "Duldung") and the number of state-induced returns is frequently

19 Mercator Dialogue on Asylum and Migration (MEDAM), *European and African Perspectives on Asylum and Migration Policy: Seeking Common Ground: 2020 MEDAM Assessment Report on Asylum and Migration Policies in Europe* (Kiel, 2020), 43.
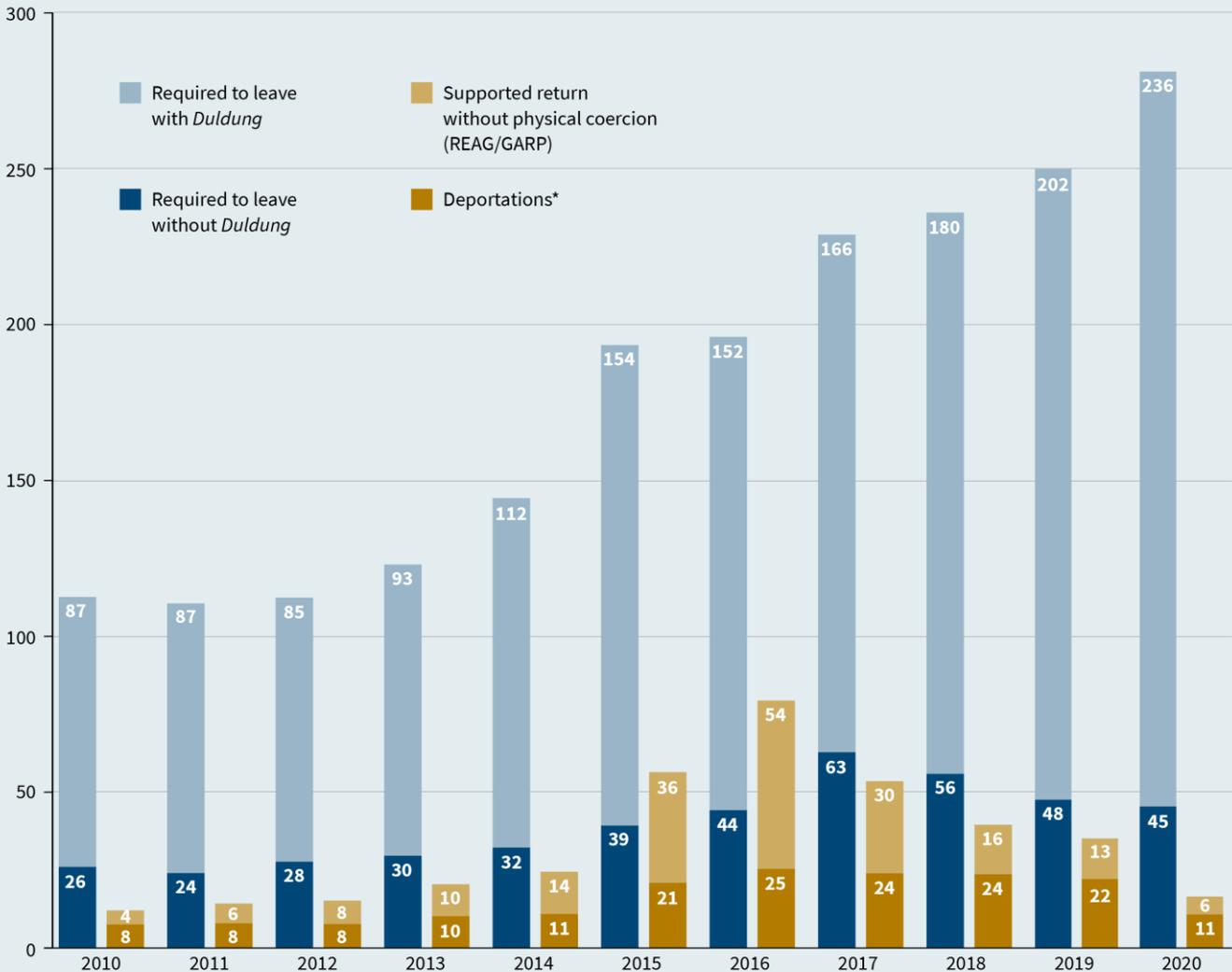**20** Rietig and Günnewig, *Deutsche Rückkehrpolitik und Abschiebungen* (see note 1), 18f.
21 Kirsten Eichler, *Ausbildung und Arbeit als Wege zu einem sicheren Aufenthalt? Die Ausbildungs- und Beschäftigungsduldung* (Berlin, 2020), 55.

Figure 4

Comparison: Number of persons required to leave (with and without *Duldung*) vs. number of state-supported and enforced returns from Germany, 2010–2020

thousands

Legend:
- Required to leave with *Duldung* (light blue)
- Required to leave without *Duldung* (dark blue)
- Supported return without physical coercion (REAG/GARP) (light tan)
- Deportations* (dark orange)

Data by year:

Year	Required to leave with Duldung	Required to leave without Duldung	Supported return (REAG/GARP)	Deportations*
2010	87	26	4	8
2011	87	24	6	8
2012	85	28	8	8
2013	93	30	10	10
2014	112	32	14	11
2015	154	39	36	21
2016	152	44	54	25
2017	166	63	30	24
2018	180	56	16	24
2019	202	48	13	22
2020	236	45	6	11

* In a parliamentary question on deportations and departures in 2017 (Bundesdrucksache 19/800), the Left Party pointed out that the deportation figures for 2016 also included transfers to other EU and Schengen states under the EU's Dublin Regulation.

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Sources: Deutscher Bundestag, Antworten der Bundesregierung zu Abschiebungen (und Ausreisen) in den Jahren 2010 bis 2020: *Druck-sache 17/5460*, 12 April 2011, pp. 1, 9; *Drucksache 17/7734*, 2 March 2012, pp. 1, 8; *Drucksache 17/12442*, 22 February 2013, pp. 1, 8; *Drucksache 18/782*, 12 March 2014, pp. 1, 7; *Drucksache 18/4025*, 16 February 2015, pp. 1, 9; *Drucksache 18/7588*, 18 February 2016, pp. 2, 8; *Drucksache 18/11112*, 9 February 2017, p.p 2, 9; *Drucksache 19/800*, 20 February 2018, pp. 2, 10, 14, 32, 33, 59; *Drucksache 19/8021*, 26 February 2019, pp. 2, 10, 14, 15, 23, 33, 39, 67; *Drucksache 19/18201*, 19 March 2020, pp. 2, 12, 15, 43, 46; *Drucksache 19/27007*, 25 February 2021, pp. 2, 10, 40, 47, 50; Janne Grote, *Irreguläre Migration und freiwillige Rückkehr – Ansätze und Herausforderungen der Informationsvermittlung*, Working Paper 65 (Nuremberg: Bundesamt für Migration und Flüchtlinge [BAMF], 2015), 18; Paula Hoffmeyer-Zlotnik, *Rückkehrpolitik in Deutschland im Kontext europarechtlicher Vorschriften*, Working Paper 77 (Nuremberg: BAMF, 2017), 18; e-mail to authors from IOM, 1 July 2021.

cited as evidence of inadequate enforcement of the obligation to leave (see "Enforcement Deficit and Return Rate", p. 16). However if one considers only the number of persons required to leave who have not been granted "Duldung", the discrepancy is much smaller and in certain years in fact reversed (in 2015 and 2016 the number of state-induced returns exceeded the number of persons required to leave who had not been granted "Duldung"). In other words any assessment of the effectiveness of removals in Germany depends on whether persons granted "Duldung" — whose deportation has been temporarily suspended — are included in the statistic.

The Monetary Costs of Return

There is little in the way of reliable data on the financial cost of state-supported returns and deportations to host countries like Germany. There is consensus that return in the scope of AVR(R) programmes is considerably cheaper than deportation.[22] Yet neither for Germany nor for the EU are there official statistics providing an overview of all the costs of deportation vis-à-vis supported return. Only individual items can be listed. In the case of state-supported return these include for example the budget for reintegration support programmes, in the case of deportation the cost of (charter) flights and security. But these items often represent only a small proportion of the actual costs. Deportations in particular frequently generate considerable additional costs, for example through deportation detention or medical staff accompanying group deportations.[23]

According to an estimate published in 2018, the average cost of a return under a European AVR(R) programme was €560, while a deportation cost €3,414.[24] For Germany, consulting firm McKinsey cites mean immediate costs of €1,500 for a single deportation and €700 for a return in the scope of the REAG/GARP programmes (Reintegration and Emigration Programme for Asylum-Seekers in Germany/Government Assisted Repatriation Programme). The average cost of accommodating and supporting a person required to leave was €670/month. Juxtaposing the latter two figures, McKinsey concludes that "Investment in voluntary return and removal is … already financially worthwhile if it shortens the stay by one or two months".[25]

This attempt to weigh individual cost items against each other reflects a short-sighted perspective on the actual expenditure and investment that — regardless of the overriding legal aspects — the state must consider in connection with returns. On the one side, a multitude of costs directly associated with return are not included (in the case of supported return the personnel costs for advisors, in the case of deportation the potential expense of deportation detention). On the other side, investment in integration and training is not adequately accounted for, regardless of the fact that these are normally recouped within a few years according to latest research.[26]

The poor overall quality of the data on returns represents an obstacle to evidence-based political decision-making. The available data offers scope for widely diverging interpretations, thus contributing to a polarisation of the public debate.

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22 Katie Kuschminder, *Return and Reintegration Policy between Europe and Africa: Expertise im Auftrag des Sachverständigenrats deutscher Stiftungen für Integration und Migration* (Berlin, 2020), 9f.

23 Anna-Lucia Graff and Jan Schneider, *Rückkehrpolitik in Deutschland. Wege zur Stärkung der geförderten Ausreise*, Studie des SVR-Forschungsbereichs 2017-1 (Berlin: Forschungsbereich beim Sachverständigenrat deutscher Stiftungen für Integration und Migration [SVR], 2017), 28.

24 Wouter van Ballegooij and Cecilia Navarra, *The Cost of Non-Europe in Asylum Policy* (Brussels: European Parliamentary Research Service, 2018), 163.

25 Translated from McKinsey & Company, *Rückkehr – Prozesse und Optimierungspotenziale: Abschlussbericht* (Düsseldorf, 9 December 2016), 37f.

26 Uri Dadush, *The Economic Effects of Refugee Return and Policy Implications*, Policy Research Working Paper 8497 (Washington, D.C.: World Bank Group, June 2018), 3f.

Enforcement Deficit and Return Rate – Misleading Calculations

While the discrepancy between the number of persons required to leave (including those granted "Duldung") and the number of state-induced returns illustrated in Figure 4 (see p. 14) might appear striking, the available data is simply too inadequate to calculate a precise "enforcement deficit" in this field. The data in Figure 4 suggest a misleading impression of completeness, but they are in fact incomplete and unreliable.

Two problems arise in the statistics on persons required to leave published by the German Central Register of Foreign Nationals (Ausländerzentralregister): Firstly they only include persons who have officially applied for legal residence status and have either been unsuccessful (as in the case of rejected asylum-seekers) or whose legal status has expired *(visa overstayers).* Those who enter the country irregularly without applying for asylum generally do not appear in these statistics. This leads to systematic *undercounting*. Secondly, the Central Register of Foreign Nationals has long been criticised for recording persons as required to leave who have in fact left of their own accord, whose asylum process is still ongoing (and are therefore not required to leave) or who have obtained a different residence status — which conversely suggests *overcounting*.[a] The respective dimensions of these effects are unclear.

While the figures on returns occurring with state support or coercion are probably largely reliable, they cannot be meaningfully related to the number of persons required to leave: AVR programmes are also open to persons who are not required to leave. The available figures do not reveal how often this occurred (and thus had no effect on the total number of persons required to leave).

Similar data deficits are found in other European countries, and as a result the European return rate — calculated on the basis of data supplied by national bodies — is correspondingly unreliable.[b]

Independently of the quality of the data, the assumption that the effectiveness of return policy can be measured in terms of the ratio of the number of persons required to leave to the number of people who return with state support or coercion is conceptually misleading and politically unwise: the numerator and denominator in the equation refer to different populations because of the time lag between the obligation to leave arising and its possible enforcement. For example faster processing of asylum applications (assuming constant return figures) produces a falling return rate, and thus the enforcement deficit for deportations increases. If the focus of public attention is on returns there is a danger that progress in the asylum system will be perceived primarily as a failure of return policy.

Regardless of these statistical and conceptual weaknesses, both figures — the German deportation enforcement deficit and the European return rate — are politically immensely influential: They create the opening for the political focus on return efforts. More broadly, they are also cited to justify far-reaching migration policy decisions.[c]

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a Statistisches Bundesamt, "Datenqualität des Ausländerzentralregisters und Erfassung von Schutzsuchenden", 2019; Diakonie Deutschland, "Ausreisepflicht, Duldung, Bleiberecht", 14 May 2021 (Wissen Kompakt).
b For further statistical weaknesses at the European level, see Jonathan Slagter, "An 'Informal' Turn in the European Union's Migrant Returns Policy towards Sub-Saharan Africa", Washington, D.C.: MPI, 10 January 2019; Martina

Belmonte et al., *How to Measure the Effectiveness of Return? Problem Definition and Alternative Definitions of the Return and Readmission Rates* (Luxembourg: Joint Research Centre, 2021), 14f.
c Stephan Scheel, "The Politics of (Non)Knowledge in the (Un)Making of Migration", *Journal of Migration Studies* 1, no. 2 (2021): 39 – 71 (58).

Return in the Public Debate

For a long time deportation remained an instrument applied only in exceptional cases, on account of its repressive nature. But a normalisation has occurred since the 2000s, and this formerly exceptional practice has been used more widely in Germany and North America. In the literature this is known as the "deportation turn".[27] The growing political significance of return and return programmes is manifested in a polarised and overheated public debate. In the following we outline how this has played out in Germany. Advocates of greater engagement for return tend to argue in terms of law and order, while opponents point to the human rights risks associated with forced return. In the context of this debate development-oriented reintegration initiatives represent a possibility to bridge the divide. They seek to make return more sustainable, to cushion the personal hardships of involuntary return and thus to improve public acceptance.

Law and Order vs. Human Rights

The discrepancy between the number of persons required to leave and the number who actually leave in the scope of AVR programmes and deportations — as outlined above — is often described in German media as a "deportation deficit" ("Abschiebedefizit").[28] A string of law-and-order arguments building on that are cited to justify a more restrictive return policy.

Upholding the Rule of Law

Conservative politicians in particular argue that a "deportation deficit" (or enforcement deficit) undermines the rule of law; more returns, they assert, are required to uphold it.[29] They fear a loss of voters' trust leading to a further strengthening of extreme right-wing political parties proposing restrictive solutions such as mass deportations and curbing immigration.[30] In that sense deportations and other return instruments fulfil the symbolic function of signaling state assertiveness, especially in times of crisis.[31]

The forced coupling of two pieces of legislation in 2019 illustrates the perceived importance of a restrictive return policy for public acceptance of a liberal immigration policy: Despite widespread support for the Immigration Act for Skilled Workers among key parts of their base, especially business representatives, the Christian Democratic parties made their support conditional on the simultaneous adoption of the "Orderly Return Law", which sought to speed up deportations.[32]

Integrity of the Asylum System

One frequent argument for boosting returns is that the asylum system can only remain functional if rejected asylum-seekers are actually made to leave and the system for returning them is efficient.[33] That

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27 Bridget Anderson et al., "Citizenship, Deportation and the Boundaries of Belonging", *Citizenship Studies* 15, no. 5 (2011): 547−63; Matthew J. Gibney, "Asylum and the Expansion of Deportation in the United Kingdom", *Government and Opposition* 43, no. 2 (2008): 146−67; Emanuela Paoletti, *Deportation, Non-Deportability and Ideas of Membership*, Working Paper Series 65 (Oxford, 2010).

28 See for example Reiner Burger, "Abschieben auf die sanfte Tour: Streit um Rückführungen", *Frankfurter Allgemeine Zeitung* (FAZ) (online), 26 November 2015; Ulrich Exner, "CSU-Vorschlag verschärft das Problem eher", *Welt* (online), 16 June 2018.

29 CDU/CSU-Bundestagsfraktion, "Systematische Verhinderung von Abschiebungen muss strafbar werden: Forderung des BAMF-Präsidenten verdient Unterstützung", press release, 26 March 2019; Marcel Leubecher, "Von Merkels Abschiebungsoffensive fehlt jede Spur", *Welt* (online), 8 June 2017.

30 Martin Sökefeld, "Nations Rebound: German Politics of Deporting Afghans", *International Quarterly for Asian Studies* 50, no. 1−2 (2019): 91−118 (91).

31 Ibid., 110.

32 "Einwanderungsgesetz auf unbestimmte Zeit verschoben", *FAZ* (online), 21 March 2019.

33 Anna Triandafyllidou and Alexandra Ricard-Guay, "Governing Irregular and Return Migration in the 2020s:

connection has been posited by a diverse set of actors in recent years, including the UNHCR and politicians such as former German interior minister Thomas de Maizière.[34] This linkage between protection for recognised asylum-seekers with removal of those not granted official protection is politically powerful because it presents enforcement of return as the moral option.

Deterring New Arrivals

Another argument for greater engagement for returns is reducing so-called "pull factors". The idea is that firm enforcement will deter other potential migrants with little prospect of a regular residence status in a European country from setting off on the dangerous journey, often across the Mediterranean, in the first place.[35] This line of argument is based on the observation that social media facilitate lively communication about conditions along specific migration routes and in host countries, and that information disseminates rapidly among potential migrants. Although the idea that this would have a deterrent effect is intuitively plausible, empirical findings from various national contexts suggest otherwise. The evidence indicates that deportations often end with the affected person making another immigration attempt, or are compensated by irregular migration projects by other family members.[36] Nevertheless the narrative of the deterrent effect of rapid returns has become broadly established; and it forms the basis for influential policy instruments such as the EU-Turkey agreement of 2015/2016 and more recent proposals for a "New Deal" with Africa.[37]

Internal Security and Public Safety

The rapid deportation of convicted criminals and known extremists (persons posing a terrorist or violent extremist threat) features prominently in the debates over return. One turning-point was the events of New Year's Eve 2015 in Cologne, where groups of young men predominantly from North Africa and Arab regions committed numerous sexual assaults on women. At the time there were calls for faster and more effective deportations, both in the population and from politicians of all parties.[38] These demands were framed in terms of the need to strengthen internal security. This discourse rarely distinguishes between criminals and extremists.

Against a backdrop of extremist violence in recent years, deportation of violent extremists and terrorism suspects (or a declaration of intent to do so) offers an ideal opportunity to signalise a tough line on public order — even if the Federal Ministry of the Interior admits that the individuals in question may continue to influence the Islamist scene in Germany from abroad.[39] One example of policy motivated by ideas of this kind is the lifting of the moratorium on deportations for Syrian criminals and extremists. Because of the lack of diplomatic relations with Syria this measure will remain more symbolic than practical, at least for the time being. The German embassy in Damascus remains indefinitely closed,[40] and Germany has recognised the National Coalition of Syrian Revolutionary and Opposition Forces in place of the Assad regime.[41]

Human Rights Risks

Civil society voices challenge the law-and-order discourse, raising human rights concerns and condemning concrete violations associated with deportations.

European Challenges and Asian Pacific Perspectives", *Journal of Immigrant and Refugee Studies* 17, no. 2 (2019): 115–27.

34 UNHCR, Better Protecting Refugees in the EU and Globally (Geneva, December 2016), 17; Reiner Burger, "Woran die Abschiebung nach Nordafrika scheitert", *FAZ* (online), 11 June 2016.

35 Volker Wagener, "Warum abgelehnte Asylbewerber selten abgeschoben werden", *Deutsche Welle* (online), 14 January 2016.

36 Michael Collyer, "Paying to Go: Deportability as Development", in *After Deportation: Ethnographic Perspectives*, ed. Shahram Khosravi (Cham: Palgrave Macmillan, 2017), 105–25; Giulia Scalettaris and Flore Gubert, "Return Schemes from European Countries: Assessing the Challenges", *International Migration* 57, no. 4 (2019): 91–104.

37 European Stability Initiative (ESI), *Why People Don't Need to Drown in the Aegean: A Policy Proposal* (draft) (Berlin, Brussels

and Istanbul, 17 September 2015); ESI, "New Deal with Africa: Regular Access and Fast Return", n. D.

38 See "Vizekanzler Gabriel fordert schnellere Abschiebungen", *Spiegel online*, 8 January 2016; "Ausweisung der Täter — 'durchaus denkbar'", *Tagesschau* (online), 22 August 2017.

39 See ibid.

40 Auswärtiges Amt, "Syrien: Reise- und Sicherheitshinweise", as of 14 June 2021.

41 See "Abschiebungen nach Syrien ab Januar rechtlich wieder möglich", *Zeit Online*, 11 December 2020; Deutscher Bundestag, *Diplomatische Beziehungen der Bundesrepublik Deutschland zur Arabischen Republik Syrien*, Antwort der Bundesregierung auf Kleine Anfrage, Drucksache 19/11964, 26 July 2019.

For example Amnesty International has long criticised deportations to Afghanistan for violating the principle of non-refoulement on account of the poor security situation there.[42] The German Federal Ministry of the Interior justified deportations with reference to the German Federal Foreign Office's asylum situation report of 2020, which asserted that there were regional differences in security and referred to locations "where the situation is comparatively stable despite sporadic security incidents".[43]

Additionally, refugee councils in various federal states have repeatedly denounced the unreasonable hardships associated with dividing families and the elevated suicide risk in deportation detention.[44] Another problem is the deportation of people in ill health. At the end of 2020 the Deutsches Institut für Menschenrechte (German Institute for Human Rights) raised constitutional concerns over the tightening of requirements for proof of being medically unfit for deportation.[45] The German government, on the other hand, has complained for years that medical exemp-

tions for deportations had been issued too liberally and in some cases been fraudulent.[46]

Deportations of the successfully integrated are especially controversial, as are those that sever family and social ties. In such cases criticism is often manifested in civil society protests.[47]

Considering the diametrically opposed positions of both camps, public debate about returns is highly polarised. Opponents of deportation accuse the government of "pandering to racists" and yielding to right-wing agitation in the context of efforts to increase the return figures.[48] Advocates of stricter enforcement of the obligation to leave reject the charges and present the other side's arguments as the product of an organised "anti-deportation industry".[49]

Development Initiatives Promise a Middle Ground

The controversy over forced returns explains the high expectations placed in AVR programmes. Setting aside the often questionable understanding of voluntariness on which the latter are based, they enable enforcement of the obligation to leave without employing physical coercion and stand for a more humane return policy.[50] For a long time the support offered in the scope of these programmes was restricted to organising and financing the return journey, sometimes with additional financial assistance to get started in the country of origin. A trend towards a more comprehensive reintegration support has been observed for some years in many classical destination countries, seeking to increase returns and prevent a

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42 Amnesty International, *Forced back to danger. Asylum-seekers returned from Europe to Afghanistan* (London, 2017), 41.

43 Translated from Auswärtiges Amt, *Bericht über die asyl- und abschiebungsrelevante Lage in der Islamischen Republik Afghanistan* (as of June 2020), Gz: 508-516.80/3 AFG (Berlin, 16 July 2020), 4. The poor security situation led the Afghan government to suspend cooperation on incoming deportations for three months starting July 2021. Despite the advances made by the Taliban, in early August 2021 the German interior minister called on the European Commission to exert pressure on the Afghan government to continue cooperation on readmission of deported Afghan citizens. On 11 August 2021 the German government decided to suspend deportations to Afghanistan, just three days before the government capitulated to the Taliban. Ankie Broekers-Knol et al., *Returns to Afghanistan – Letter to EU Commission*, 5 August 2021; Ministry of Refugees and Repatriations (MoRR), "Declaration of MoRR Related to Stop of Forced Return from Europe Temporarily" (Kabul, n. D.); "Vorerst keine Abschiebungen nach Afghanistan", *Tagesschau* (online), 11 August 2021.

44 Reimar Paul, "Abschiebung ohne Papa", *Taz* (online), 30 January 2020; Kai Weber, "Suizid in Abschiebungshaft", in *Grundrechte-Report 2011: Zur Lage der Bürger- und Menschenrechte in Deutschland*, ed. Till Müller-Heidelberg et al. (Frankfurt: Fischer Taschenbuch Verlag, 2011), 36–37.

45 Deutsches Institut für Menschenrechte, *Entwicklung der Menschenrechtssituation in Deutschland: Juli 2019–Juni 2020: Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG* (Berlin, 2020), 21.

46 Markus Decker, "Nur ernsthaft Kranke werden nicht abgeschoben", *Frankfurter Rundschau* (online), 21 January 2016.

47 For example "Protest gegen Abschiebung von Mitschüler — mehrere Verletzte", *Spiegel online*, 31 May 2017; Birgit Heidingsfelder, "'Wollen unseren Freund zurück': Fürther Schüler protestieren gegen Abschiebung", *Nordbayern* (online), 18 February 2021.

48 beck-aktuell — Heute im Recht, "Bundestag beschließt härtere Regeln für Abschiebungen", Munich, 7 June 2019; Pro Asyl, "So sieht Merkels 'nationale Kraftanstrengung' Abschiebung in der Praxis aus" (Frankfurt, 21 December 2018).

49 "Dobrindt beklagt eine 'Anti-Abschiebe-Industrie'", *FAZ* (online), 6 May 2018.

50 Leerkes et al., "What Drives 'Soft Deportation'?" (see note 2).

"revolving door effect".[51] In the course of this, development actors become increasingly involved in promoting return and reintegration.[52]

One example of this trend is the "Perspektive Heimat" programme launched in 2017, which originated in a joint initiative of the Federal Ministry for Economic Cooperation and Development (BMZ) and the Federal Ministry of the Interior. Its budget for the first four years was about €450 million; it is implemented in thirteen countries by the German development organisation GIZ. The programme comprises both preparatory advisory and qualification services in Germany and labour market and social reintegration measures in the countries of origin. It is intended to add a reintegration component to the existing assisted return initiatives and concentrates — according to BMZ — on the countries that account for the greatest proportion of persons required to leave Germany, and where German development cooperation is already active. Local advice centres in the countries of origin provide information about training and career opportunities in the region and support for (re)entering the local labour market. The advice services offered in the programme are open to all, not just to returnees.[53]

Altogether the programme integrates important findings on success factors, especially the value of (mental and practical) *preparedness*, the need for psychosocial support and the central importance of employment perspectives in the country of origin.[54] In this sense "Perspektive Heimat" can be understood as current *good practice* in the area of return sponsorship. However, research findings are applied selectively, and the central insight — that individual

support for returnees is normally not enough — is ignored. In fact, other factors are decisive for successful reintegration: on the one hand the voluntary nature of the decision to return; on the other, structural aspects such as political stability and propitious economic conditions in the country of origin.[55]

The development-oriented measures implemented to date under "Perspektive Heimat" cannot close that conceptual gap; the focus of these measures remains individual support. Moreover, the original impulse to create the programme was not genuinely development-led but driven by the government's interest in boosting the number of returns.[56] That is the basis of the charge that with "Perspektive Heimat" GIZ and BMZ were allowing themselves to be instrumentalised for law-and-order objectives and ultimately risking the credibility of the entire German development cooperation sector.[57]

Nevertheless the engagement of development actors in the field of return and reintegration offers immense added value for political decision-makers involved in the polarised debate outlined above.[58]

Concentrating on the "how" of return leads to increasing prioritisation of return over other policy goals.

By placing the focus on reintegration and possible positive development effects of return, development-oriented return measures create a rhetorical middle ground between the law-and-order and human rights discourses on return of rejected asylum-seekers and irregular migrants. Their practical implementation can reduce the openings for public protest by cushioning the hardships of forced return.

Ultimately, development-oriented reintegration initiatives channel attention to the support needs of individual returnees but fail to challenge the high political priority currently enjoyed by state-supported and forced return. This restriction of the debate to

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51 Rietig and Günnewig, *Deutsche Rückkehrpolitik und Abschiebungen* (see note 1), 16f.; Jan Schneider, "Ausreisepflicht als Entwicklungsimpuls? Freiwillige Rückkehr und Reintegration abgelehnter Asylbewerber/innen im Kontext der aktuellen Flüchtlingspolitik in Deutschland", in *Globale Wanderungsbewegungen: Beiträge der internationalen Zusammenarbeit zum Umgang mit Flucht und Migration*, ed. Christoph Beier et al. (Wiesbaden: Springer VS, 2020), 63—90 (67).

52 Organisation for Economic Co-operation and Development, *Sustainable Reintegration of Returning Migrants: A Better Homecoming* (Paris, 2020).

53 Deutscher Bundestag, *Sachstand (WD 3 — 3000 — 042/20). Fragen zur Rückkehr von abgelehnten Asylbewerbern in Drittstaaten* (Berlin, 9 March 2020).

54 Jean-Pierre Cassarino, "A Case for Return Preparedness", in *Global and Asian Perspectives on International Migration*, ed. Graziano Battistella (Cham: Springer, 2014), 153—65.

55 Newland and Salant, *Balancing Acts* (see note 1); Kuschminder, *Return and Reintegration Policy* (see note 22).

56 One example to the contrary is the programmes for return of skilled workers, which are also funded by the Ministry for Economic Cooperation and Development and run by the Centrum für internationale Migration und Entwicklung (CIM).

57 Feneberg, "'Ich zwinge niemanden, freiwillig zurück zu gehen'" (see note 3).

58 van Houte and Davids, "Moving Back or Moving Forward?" (see note 2), 83.

the practicalities of return instead of questions of pro-portionality is one reason why objectives relating to return are increasingly prioritised over those of other policy areas — a phenomenon also observed at the European level.

Developments at the European Level

The great political importance that the issue of return enjoys in many EU member states is reflected at the European level both in the form of legislation and in a multitude of implementation-related activities and reforms. Figure 5 (see p. 23) provides an overview of developments at the EU level. As it shows, while efforts to increase the number of returns have been a continuous element of EU migration policy for the past twenty years, they have been significantly stepped up since 2015.

Return Policy as Sideshow (1999–2007)

The Treaty of Amsterdam of 1999 granted the EU supranational powers in asylum and migration policy, and thus also the right to conclude its own readmission agreements with third states.[59] Early legal acts regulated the "mutual recognition of decisions on the expulsion of third country nationals" and technical cooperation on joint deportation flights.[60] From the mid-2000s two continuous fields of EU activity on return policy emerged: the negotiation of specific return agreements with individual partner countries and the engagement of the EU's

border agency Frontex in the practical implementation of returns.

The conclusion of EU-level readmission agreements was intended to successively replace the existing patchwork of bilateral agreements and make return policy within the EU more effective and consistent.[61] While the first Frontex joint deportation flights were of only minimal practical use to individual member states, they symbolised the capacity for action of an EU often criticised as bureaucratic and impractical. In parallel to these return activities the heads of state and government negotiated the first political framework for external EU migration policy. The outcome, the Global Approach to Migration (GAM) adopted in 2005, mentions "the effective implementation of readmission obligations" as a possible field of activity for the EU, specifically referencing the Cotonou Agreement of 2000. At the same time the GAM demonstrates that the topic of return was not at this point central to the debate over migration cooperation with third states.[62]

Strengthening Cooperation within the EU (2008–2014)

The Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals ("Return Directive") adopted in 2008 is the central frame of reference for return

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59 Peter Slominski and Florian Trauner, "Reforming Me Softly — How Soft Law Has Changed EU Return Policy since the Migration Crisis", *West European Politics* 44, no. 1 (2021): 93−113 (99).

60 Council of the European Union, *Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders*, 2004/573/EC (Brussels, 29 April 2004); idem, *Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals* (Brussels, 28 May 2001); idem, *Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air* (Brussels, 25 November 2003).

61 Martin Schieffer, "Community Readmission Agreements with Third Countries — Objectives, Substance and Current State of Negotiations", *European Journal of Migration and Law*, no. 5 (2003): 343−57.

62 Council of the European Union, *Global Approach to Migration: Priority Actions Focusing on Africa and the Mediterranean*, Annex 1 to the Presidency Conclusions of the Brussels European Council (15/16 December 2005) (cover note 15914/1/05 REV 1) (Brussels, 30 January 2006).

Figure 5

Key developments in EU return policy

Returns conducted by Frontex

Year	Returns
2006	8
2007	428
2008	801
2009	1,622
2010	2,038
2011	2,059
2012	2,110
2013	2,152
2014	2,271
2015	3,565
2016	10,698
2017	14,884
2018	13,729
2019	15,850
2020	12,072

planned annual target 2021–2027: 50,000

Institutional developments

2004 Establishment of the Euro- pean Agency for the Management of Opera- tional Cooperation at the External Borders of the Member States (Frontex)

2016 Establishment of European Readmission Capacity Building Facility (EURCAP)

2016 Regulation 2016/1624 on the European Border and Coast Guard expands the powers of Frontex on returns

2019 Regulation 2019/1896 on the European Border and Coast Guard further expands the powers of Frontex on returns

2019 Integration of EURINT into Frontex

Policy framework

2015 European Agenda on Migration

2016 Migration Partnership Framework

2020 Commission proposal for a proposal for a New EU Pact for Migration and Asylum

Legislative developments including "soft law"

2001 Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals

2003 Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air

2004 Council Decision 2004/573/EC on the organisation of joint flights for removals of third-country nationals
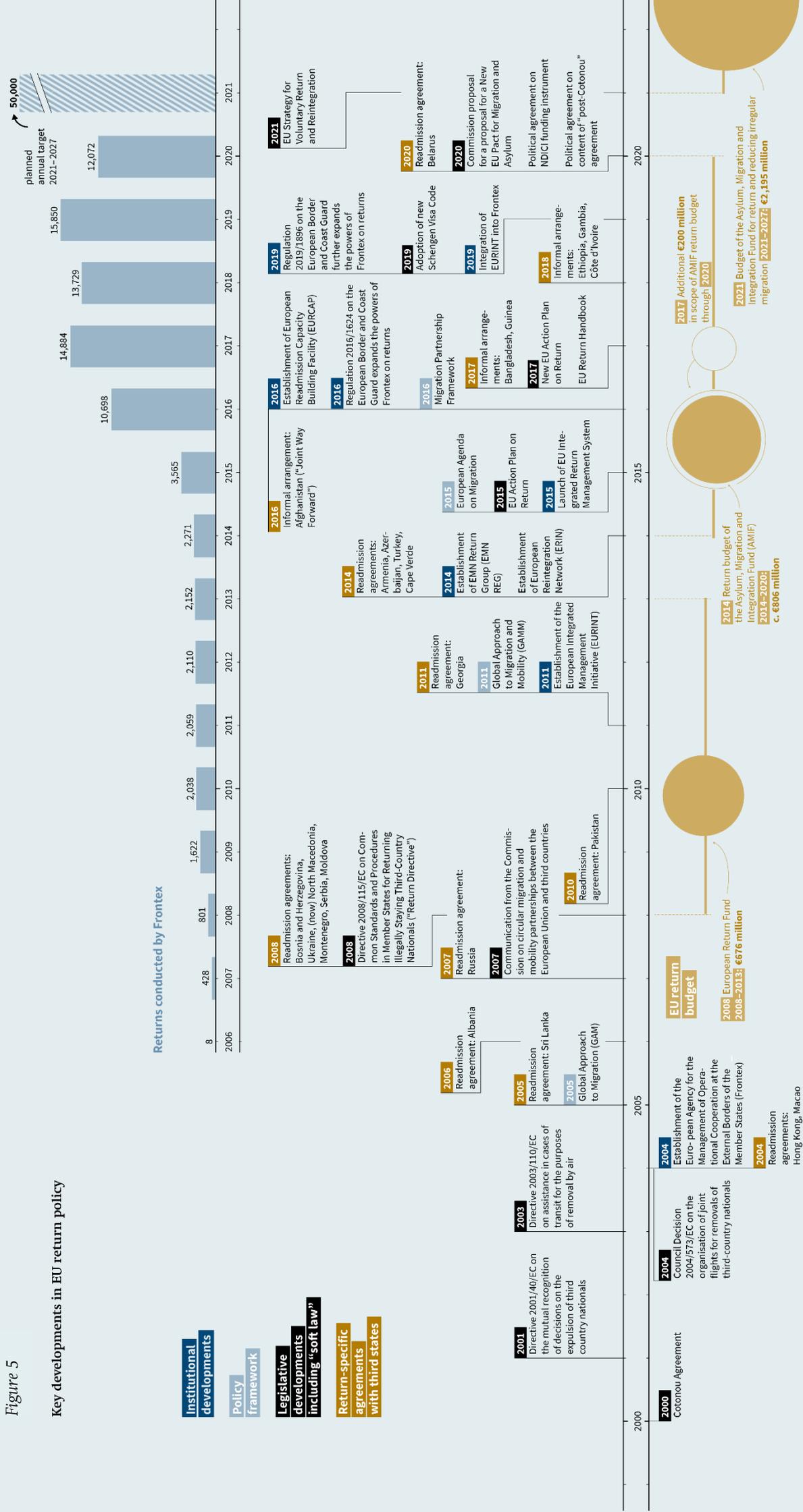
2008 Directive 2008/115/EC on Com- mon Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals ("Return Directive")

2014 Establishment of EMN Return Group (EMN REG)

2015 EU Action Plan on Return

2015 Launch of EU Inte- grated Return Management System

2017 New EU Action Plan on Return

EU Return Handbook

2019 Adoption of new Schengen Visa Code

2021 EU Strategy for Voluntary Return and Reintegration

Return-specific agreements with third states

2000 Cotonou Agreement

2004 Readmission agreements: Hong Kong, Macao

2005 Readmission agreement: Sri Lanka

2005 Global Approach to Migration (GAM)

2006 Readmission agreement: Albania

2007 Readmission agreement: Russia

2007 Communication from the Commis- sion on circular migration and mobility partnerships between the European Union and third countries

2008 Readmission agreements: Bosnia and Herzegovina, Ukraine, (now) North Macedonia, Montenegro, Serbia, Moldova

2010 Readmission agreement: Pakistan

2011 Readmission agreement: Georgia

2011 Global Approach to Migration and Mobility (GAMM)

2011 Establishment of the European Integrated Management Initiative (EURINT)

2014 Readmission agreements: Armenia, Azer- baijan, Turkey, Cape Verde

2014 Establishment of European Reintegration Network (ERIN)

2016 Informal arrangement: Afghanistan ("Joint Way Forward")

2017 Informal arrange- ments: Bangladesh, Guinea

2018 Informal arrange- ments: Ethiopia, Gambia, Côte d'Ivoire

2020 Readmission agreement: Belarus

2020 Political agreement on NDICI funding instrument

Political agreement on content of "post-Cotonou" agreement

EU return budget

2008 European Return Fund 2008–2013: **€676 million**

2014 Return budget of the Asylum, Migration and Integration Fund (AMIF) 2014–2020: **c. €806 million**

2017 Additional **€200 million** in scope of AMIF return budget through **2020**

2021 Budget of the Asylum, Migration and Integration Fund for return and reducing irregular migration 2021–2027: **€2,195 million**

2000 · 2005 · 2010 · 2015 · 2020

in the member states.[63] The directive seeks to harmonise measures to terminate illegal stays and enforce deportations (including the grounds for and conditions of deportation detention, as well as access to legal aid and the proportionality of the means used to carry out deportations). Aside from the statement that "voluntary return should be preferred over forced return", the directive in many respects reflects the restrictive preferences of the member states.[64]

The adoption of the Return Directive was made conditional on the release of funds the release of funds from the newly established European Return Fund.[65] With €676 million for the period 2008−2013, its purpose was to support the member states in improving the efficiency of their management of returns.[66] Subsequently EU member states worked increasingly to create synergies in operational cooperation and in negotiations with third countries. For example the number of deportations conducted by Frontex increased by 150 percent between 2008 and 2010. Additionally, from 2011 onwards, a number of inter-governmental networks were founded to promote exchange and improve operational cooperation: the European Integrated Return Management Initiative (EURINT), the European Return Liaison Officers Network (EURLO) and the European Reintegration Network (ERIN), the latter merging in 2018 into the European Return and Reintegration Network (ERRIN).

In parallel to this the EU concluded further readmission agreements, the one with Cape Verde (2014) being the first with an African state.[67] The Global Approach to Migration and Mobility (GAMM) of 2011, which succeeded the GAM, can nevertheless be read at least in parts as a response to the EU's failure to conclude readmission agreements with the main countries of origin of rejected asylum-seekers and irregular migrants.[68] By formulating an effective return policy as a precondition for the expansion of legal migration and mobility, the GAMM reflected the growing importance of return and readmission in the EU's external migration policy.[69] The budget of the new Asylum, Migration and Integration Fund (AMIF) for 2014−2020 earmarked €806 million for returns — amounting to annual funding in a similar order of magnitude to the previous budget period.[70]

Returns at the Heart of EU Migration and Asylum Policy (since 2015)

2015 marked a watershed for the EU's return policy. Already before September 2015 and the events that came to be known as the European "refugee crisis", the Commission had responded to rising numbers of asylum applications and irregular border crossings with the European Agenda on Migration. Compared to its predecessors GAM and GAMM, this new framework grants considerably greater priority to the return of irregular migrants. The justifications cited include low numbers of returns and the argument that the significant enforcement deficit they reveal represents an incentive for irregular entry into the EU.[71]

63 European Parliament and Council of the European Union, *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-country Nationals: Return Directive* (Strasbourg, 16 December 2008).

64 ibid., para 10; Diego Acosta, "The Good, the Bad and the Ugly in EU Migration Law: Is the European Parliament Becoming Bad and Ugly?" *European Journal of Migration and Law* 11, no. 1 (2009): 19−39; Anneliese Baldaccini, "The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Returns Directive", *European Journal of Migration and Law* 11, no. 1 (2009): 1−17.

65 Acosta, "The Good, the Bad and the Ugly in EU Migration Law" (see note 64), 38.

66 European Commission, *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the results achieved and on qualitative and quantitative aspects of implementation of the European Return Fund for the period 2007-2009 (report submitted in accordance with Article 50 (3) (b) of Council Decision 575/2007/EC of 23 May 2007)*, COM(2011) 858 final (Brussels, 9 December 2011), 2.

67 European Court of Auditors, *EU Migrant Return Policy − Cooperation with Third Countries on Readmission: Audit Preview*, Information on an Upcoming Audit (July 2020), 6.

68 Sarah Wolff, "The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey", *European Journal of Migration and Law* 16, no. 1 (2014): 69−95.

69 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The Global Approach to Migration and Mobility*, COM(2011) 743 final (Brussels, 18 November 2011), 6.

70 European Commission, *Communication from the Commission to the European Parliament and the Council on a More Effective Return Policy in the European Union − A Renewed Action Plan*, COM(2017) 200 final (Brussels, 2 March 2017), 13.

71 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic*

Subsequently the outcomes of return-oriented efforts were measured in form of an annual return rate. This return rate became one of the five *key performance indicators* (and one of just two that were migration-related) by which the work of the Directorate-General Migration and Home Affairs was to be judged over the following five years.[72] The goal was to significantly increase the rate by 2020 from a *baseline* of 40 percent in 2014.[73] In order to achieve this, and to respond to the public pressure on governments of important host countries like Germany, far-reaching changes were made in the internal and external dimensions of EU return policy in the following years.

Developments in the Internal Dimension

In order to support member states in enforcing removals, the Commission published an Action Plan on Return in September 2015.[74] Conceived as a restrictive interpretation of the Return Directive, it aimed to increase the return rate in the EU in the short and medium term.[75] Voluntary return was treated as the preferred option, but its implementation was tied closely to forced return: "the success of voluntary return schemes also depends on how credible the prospect of forced return is".[76] Just two years later, in the context of the spike in immigration in the second half of 2015 and in 2016 and the lack of progress on increasing the return rate (see Figure 3, p. 12), the Commission published a revised version of its Action Plan on Return, now supplemented with a "Return Handbook" providing practical guidance. At the same time it provided an additional €200 million for return-related activities in the period to 2020.[77] In the scope

of ongoing efforts since 2016 to reform the Common European Asylum System the Commission also published a proposal to update the Return Directive, seeking to harmonise the different national initiatives for supporting return and reduce the risk of absconding before deportations.[78]

In parallel to this the European Parliament and the Council agreed to expand Frontex's personnel and financial resources and grant it additional powers for organising, coordinating and executing returns. The European Centre for Returns was created within Frontex, as an integrated system of return management.[79] The annual number of returns carried out by Frontex consequently quadrupled between 2015 and 2017. A regulation on Frontex adopted in 2019 further expanded the aspect of return, making it one of the agency's two primary fields of activity alongside border operations.[80] For the budget period 2021−2027 Frontex planned to conduct fifty thousand returns per year.[81] In order to strengthen practical cooperation between member states in the area of return, the Commission also decided to fold the existing inter-governmental networks EURINT, EURLO and ERRIN into Frontex, with the handover to be completed by 2022.[82]

The Commission's proposal for a New Pact on Migration and Asylum published in September 2020 seeks an institutional consolidation of European

ities when carrying out return-related tasks (Brussels, 16 November 2017).

78 European Commission, *Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast)*, COM(2018) 634 final (Brussels, 12 September 2018).

79 European Parliament and Council of the European Union, *Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard* (Strasbourg, 14 September 2016).

80 European Parliament and Council of the European Union, *Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard* (Brussels, 13 November 2019).

81 Council of the European Union, *Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and Repealing Council Joint Action n°98/700/ JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council*, 8354/19 ADD 1 (Brussels, 22 May 2019), 8.

82 European Court of Auditors, *EU Migrant Return Policy* (see note 67), 7.

and Social Committee and the Committee of the Regions: A European Agenda on Migration, COM(2015) 240 final (Brussels, 13 May 2015), 12f.

72 Directorate-General Migration and Home Affairs, *Strategic Plan 2016–2020* (Brussels, 12 May 2016), 34.

73 Ibid., 10.

74 European Commission, *Communication from the Commission to the European Parliament and to the Council: EU Action Plan on Return*, COM(2015) 453 final (Brussels, 9 September 2015).

75 Slominski and Trauner, "Reforming Me Softly" (see note 59), 100.

76 European Commission, *EU Action Plan on Return* (see note 74), 3.

77 European Commission, *Communication … on a More Effective Return Policy* (see note 70); idem, *Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common "Return Handbook" to be used by Member States' competent author-*

return policy. It encompasses a series of central elements intended to improve intra-European cooperation, including the appointment of a return coordinator, the establishment of a High Level Network for Return, and "a seamless border procedure" that facilitates expedited return.[83] Probably the most prominent return-related component of the Commission's proposal is the so-called "return sponsorship". This offers EU member states the option of making their contribution to European responsibility-sharing on asylum exclusively through their engagement in implementing return. In other words, the proposal reinterprets the return of rejected asylum-seekers as an act of European solidarity. What this shows is that the Commission regards a prominent and permanent focus on return as imperative in order to reform the Common European Asylum System. And with that, the political coupling of refugee protection and promoting return achieves an entirely new quality.

Developments in the External Dimension

Reforms of the internal dimension alone will not be sufficient to increase the return rate, if only because political will in the countries of origin is often decisive. Despite the EU's ongoing efforts to conclude readmission agreements with important countries of origin, the Partnership Framework on migration presented by the Commission in 2016 reflects the insight that other formats and additional incentives are needed to persuade governments to cooperate in practice. This framework creates the basis for so-called migration partnerships with third states and pursues three objectives: (1) saving lives in the Mediterranean, (2) increasing returns to countries of origin and transit and (3) enabling migrants and refugees to remain in or close to their home region and dissuading them from attempting the dangerous journey to Europe.[84] That same year migration partnerships were concluded with Ethiopia, Mali, Niger, Nigeria and Senegal. They do not promise any expansion of legal

migration paths, but tactically employ the influence of other policy areas and instruments, for example in the areas of development cooperation, trade, energy and security, to achieve the aforementioned objectives including an increase in the number of returns.[85]

This approach of applying incentives and sanctions in other policy areas to leverage cooperation on returns has in recent years found its way into a series of EU instruments beyond migration partnerships. Especially noteworthy in this regard are (1) the new Schengen Visa Code adopted in 2020, which uses an annual review mechanism to reward cooperation on returns and sanction inadequate compliance; (2) the political agreement at the end of 2020 on the new EU Neighbourhood, Development and International Cooperation Instrument (NDICI), which opens the way for negative conditionalisation of development cooperation in relation to cooperation on returns; (3) the "post-Cotonou" agreement (negotiations completed early 2021), which re-emphasises the obligation to readmit citizens already included in the predecessor agreement and also entails a commitment to ensure timely identification and issue suitable travel documents.[86]

In parallel to this the European Commission has turned since 2016 to making informal, non-binding arrangements with important countries of origin. These resemble the formal readmission agreements,[87] but offer more flexibility and negotiating space, for example concerning third-state citizen clauses requiring that the partner country also take back migrants of other nationalities who transited through its territory. While EU member states insist on retaining this particularly controversial clause in official EU read-

83 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*, COM(2020) 609 final (Brussels, 23 September 2020), 4.

84 European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration*, COM(2016) 385 (Strasbourg, 7 June 2016), 6.

85 Roberto Cortinovis, *Migration: EU Return Policy*, Discussion Brief (Research Social Platform on Migration and Asylum, July 2018), 8.

86 European Parliament and Council of the European Union, *Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No. 810/2009 establishing a Community Code on Visas (Visa Code)* (Brussels, 20 June 2019); Vince Chadwick, "EU Breaks Impasse on Aid Budget", *devex.com*, 22 December 2020; Marina Strauss, "Post-Cotonou: EU Reaches Agreement with African, Caribbean and Pacific States", *Deutsche Welle* (online), 16 April 2021.

87 Jean-Pierre Cassarino and Mariagiulia Giuffré, *Finding Its Place in Africa: Why Has the EU Opted for Flexible Arrangements on Readmission?*, FMU Policy Brief no. 01/2017 (University of Nottingham, Human Rights Law Centre, 1 December 2017), 1.

mission agreements, the Commission enjoys greater freedom to deviate from standard texts when negotiating informal arrangements.[88] Alongside the existing eighteen official readmission agreements there are now six informal instruments seeking practical progress on cooperation with countries of origin. Alongside the first and probably best known agreement with Afghanistan (the "Joint Way Forward" of 2016), these are agreements with Ethiopia, Bangladesh, Côte d'Ivoire, Gambia and Guinea. Alongside these formal and informal agreements at EU level, the individual member states continue to use bilateral channels to achieve their return objectives.[89]

The significance of the topic of return is also manifested in the EU's budget planning.

Above and beyond these different approaches for persuading governments to readmit their own citizens, the EU is stepping up its engagement on reintegration. In the scope of its proposal for a New Pact on Migration and Asylum the Commission presented an analysis of deficiencies in past activities in the area of voluntary return and reintegration.[90] The EU Strategy on Voluntary Return and Reintegration published in April 2021 seeks to make better use of the potential of AVR(R) programmes for increasing returns.[91] The central role assigned to Frontex in implementing this strategy, however, raises questions over how voluntary and forced return can be differentiated and in what forms the agency should be held accountable.[92]

The significance of the topic of return in the internal and external dimensions of EU migration policy is also manifested in the EU's budget planning. The new Asylum and Migration Fund for 2021–2027 totals €9.882 billion, of which €2.195 billion is to be employed to reduce irregular migration and promote return.[93] That is many times the amount made available in the previous budget period.

The above review of developments concerning return at the EU level shows that this policy field, which emerged in the early 2000s, has been characterised since 2015 by especially dynamic developments. One explanation for the multitude of return-related policy activities and the high priority of return in the context of the EU's New Pact on Migration and Asylum is that intensifying return efforts is a great deal more consensual than other migration- and refugee-related initiatives such as developing an EU-wide distribution system for asylum-seekers. So in some respects return represents the lowest common denominator in the protracted process of negotiating a reform of the Common European Asylum System.

The numerous new instruments and legislative proposals in the area of promoting return have, however, to date failed to deliver results. The Commission's chosen yardstick of success, the return rate, is falling rather than rising. At the same time, focussing on increasing the number of returns narrows the political debate to questions of efficiency and neglects the repercussions of the respective measures in other policy areas. The following section turns to the potential trade-offs that can arise when promoting return.

88 Slominski and Trauner, "Reforming Me Softly" (see note 59), 11f.

89 Peter Slominski and Florian Trauner, "How Do Member States Return Unwanted Migrants? The Strategic (Non-)use of 'Europe' during the Migration Crisis", *Journal of Common Market Studies* 56, no. 1 (2018): 101–118.

90 European Commission, *Commission Staff Working Document Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC)2003/109 and the Proposed Regulation (EU)XXX/XXX [Asylum and Migration Fund]*, SWD(2020) 207 final (Brussels, 23 September 2020), 87f.

91 European Commission, *Communication from the Commission to the European Parliament and the Council: The EU strategy on voluntary return and reintegration*, COM(2021) 120 final (Brussels, 27 April 2021).

92 Erlend Paasche, "The Rise of Frontex in the EU's New Strategy on Assisted Return", Border Criminologies Blog (University of Oxford, Faculty of Law, 7 May 2021).

93 European Parliament and Council of the European Union, Regulation (EU) 2021/1147 *of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund*, (Strasbourg, 7 July 2021).

Risks and Side-Effects

The efforts of the EU and its member states to persuade irregular migrants and asylum-seekers to return have effects not only on the directly affected individuals but also on countries of origin and transit. While most policy papers continue to concentrate on more efficient and humane ways to implement return policy, empirical research in the academic realm is increasingly exploring the social and political consequences of return. Many of these contributions address the tensions between the objectives of return policy and those of other policy areas, especially in relation to cooperation between European and African states. To date, however, nobody has attempted to synthesise and order the findings, which generally originate from individual country case studies.

In this section we distinguish between the development, foreign policy and security implications of current German and European return efforts. While these categories are not mutually exclusive, they allow for a tentative systematisation of the potential negative effects of return policy efforts in other policy areas. It is important to note that these trade-offs are strongly context-dependent, and that not all occur in all countries. Possible positive (development) effects of return are mostly associated with genuinely voluntary return without direct or indirect coercion; they are therefore not included.

Development-related Trade-offs

German and European development policy is committed to a number of international agreements, above all the Agenda 2030 with its seventeen Sustainable Development Goals (SDGs) and the Paris Declaration on Aid Effectiveness,[94] which is based on the principles of ownership, alignment, harmonisation, managing for results and mutual accountabil-

ity.[95] The engagement of German development cooperation for returns is often justified with reference to SDG 10.7, which calls for "orderly, safe, regular and responsible migration … including through the implementation of planned and well-managed migration policies". When calling to mind the core concerns behind the pledge to "leave no-one behind" — reducing poverty and supporting disadvantaged groups — it is hard to see how a focus on returns of rejected asylum-seekers from wealthy countries like Germany matches the spirit of the Agenda 2030. The Paris Declaration in turn argues for aligning development cooperation more closely with the priorities of partner countries — and those do not typically include readmission of rejected asylum-seekers and irregular migrants.

Watering Down Development Principles at the European Level

The European strategies of informalisation and conditionalisation in pursuit of prioritised return objectives create contradictions with — and threaten to weaken — development principles. Fearing criticism from their own populations, the governments of many countries of origin refuse to sign legally binding readmission agreements. Over the past five years the EU has increasingly responded to these concerns by pursuing informal non-binding arrangements instead.[96] This approach is not new, but continues a tendency that has been noticeable for some years in the bilateral readmission talks between EU member

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94   Including the follow-on processes of the Aid Effectiveness Agenda, with the Accra Agenda for Action and the Busan Partnership for Effective Development Cooperation.

95   Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, "Grundsätze und Ziele" (Berlin, 2021); Council of the European Union, *Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission,* 2017/C 210/01 (Brussels, 30 June 2017).

96   Jonathan Slagter, "An 'Informal' Turn in the European Union's Migrant Returns Policy towards Sub-Saharan Africa" (Washington, D.C.: MPI, 10 January 2019).

states and the main countries of origin of irregular migration.[97]

The growing prioritisation of return objectives is increasingly spilling over into other policy areas, first and foremost development cooperation.

Although the substance of informal return arrangements is often largely identical with that of their official, formal counterparts, the former are normally more acceptable to the governments of countries of origin, because they can be negotiated without publicity and are not subject to democratic scrutiny.[98] The advantage of this kind of *"soft law"* for the EU is that there are fewer legislative hurdles to overcome — allowing it to signal action in times of crisis and meet expectations that it will respond quickly and effectively.[99] At the same time the strategy risks undermining central components of good governance — transparency and democratic accountability — in countries of origin. The manner in which these negotiations are conducted makes it impossible for the public and the legislature to exercise their control functions — for example by pointing out problematic aspects — still less to critically follow and scrutinise their implementation. The end result is loss of trust in the state.[100]

Neither legally binding agreements nor informal arrangements in themselves guarantee functioning cooperation on returns. The EU therefore increasingly uses other policy areas to reward cooperation on readmissions and to punish lack thereof. This approach is not in itself new either, as the EU has in the past offered incentives for signing readmission agreements.[101] But until 2015 these were largely restricted

to visa liberalisations and promises of legal migration paths.

Since then the growing prioritisation of return objectives has led to an expansion of this strategy, which has been increasingly spilling over into other policy areas, first and foremost development cooperation. This *"more for more"* approach is discernible for example in the terms of the migration partnerships concluded since 2016 with important countries of origin, and also in the distribution of funds from the EU's Emergency Trust Fund for Africa established in 2015.[102]

The counterpart to this approach — *"less for less"* — operates with sanctions rather than incentives *and* is extremely controversial especially in development circles. Nevertheless it is employed increasingly frequently: The new Schengen Visa Code explicitly mentions the possibility of sanctions, and the terms of the NDICI officially enshrine in the EU's development portfolio the option of negative conditionalisation of development funds in response to lacking cooperation on readmissions. The Commission's draft for a new EU Pact on Migration and Asylum emphasises the strategic benefits of leverage in other policy areas for persuading third states to cooperate on readmissions.[103] The prospects of success with this approach are dubious.[104] At the same time it is associated with very real development risks: If the allocation of development funding is interest-driven rather than aligned with the Agenda 2030 goals, this can have negative repercussions, especially on longer-term approaches and programmes where trust and legitimacy are preconditions for success. If the gap between normative claim and interest-led implemen-

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97   Jean-Pierre Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood", *The International Spectator: Italian Journal of International Affairs* 42, no. 2 (2007): 179–96.

98   Slominski and Trauner, "Reforming Me Softly" (see note 59), 105.

99   Ibid., 94.

100   Background discussion with representatives of the Institute for Security Studies (ISS), October 2020.

101   Annabelle Roig and Thomas Huddleston, "EC Readmission Agreements: A Re-Evaluation of the Political Impasse", *European Journal of Migration and Law* 9, no. 3 (2007): 363–87; Florian Trauner and Imke Kruse, "EC Visa Facilitation and Readmission Agreements: A New Standard EU Foreign Policy Tool?" *European Journal of Migration and Law* 10, no. 4 (2008):

411–38; Wolff, "The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey" (see note 68).

102   Ana Uzelac, *Returns at What Cost: The Challenges of Placing Readmissions at the Heart of EU Migration Policies*, Clingendael Policy Brief (The Hague: Clingendael, June 2019), 4ff.

103   European Commission, "New Pact on Migration and Asylum: Questions and Answers" (Brussels, 23 September 2020).

104   David Kipp et al., *Negative Sanctions and the EU's External Migration Policy: "Less for Less" Not Fit for Purpose,* SWP Comment 34/2020 (Berlin: Stiftung Wissenschaft und Politik, June 2020); Anna Knoll and Andrew Sheriff, *Making Waves: Implications of the Irregular Migration and Refugee Situation on Official Development Assistance Spending and Practices in Europe. A Study of Recent Developments in the EU Institutions, Denmark, Germany, the Netherlands and Sweden*, Rapport 2017:01 (Maastricht: ECDPM, 2017).

tation becomes too wide this threatens to delegitimise development cooperation as a whole.

A sanctions-based approach also contravenes the development principle of alignment with partner country priorities (regarding development objectives as specified by the SDGs). For example Afghanistan depends heavily on financial aid from the EU. The EU's implicit threat to reduce funding was decisive in persuading the Afghan government to agree to improve cooperation on readmissions in the "Joint Way Forward" of 2016.[105] Cooperation born under such conditions undermines the idea of a partnership of equal standing. This has consequences. If the development principle of alignment turns out to be nothing but an empty phrase, this can be seriously detrimental for the efficacy and sustainability of development cooperation.

Legitimisation of Authoritarian Regimes

Authoritarian governments' patterns of cooperation are typically characterised by the legitimisation strategies of the respective elites, and their interest in preserving their power.[106] At the same time, because of their greater independence from voters' preferences, authoritarian regimes find it easier than democratically elected governments to enter into cooperation in the domestically unpopular area of return. This is reflected in the travel activities of the German government since 2016: The clear prioritisation of increasing the number of returns led to a string of visits by German delegations to a number of small authoritarian states like Guinea and Guinea-Bissau that had not previously been priorities of German foreign policy. The visits were conducted to back up return talks initiated by Germany. Mali[107] and Niger also received more European state visits in the course of efforts to implement the European Agenda on Migration, including its return-specific objectives.[108] This undis-

guised courting of cooperation can strengthen governments by boosting their international reputation.

European governments therefore find themselves torn between wanting to intensify cooperation on returns and legitimising authoritarian regimes by doing so. The same problem also appeared in the discussion over ending the general moratorium on deportations from Germany to Syria at the end of 2020. Whereas the Federal Ministry of the Interior argued that at least the possibility of deporting extremists and criminals should be examined, opponents of these plans pointed out that diplomatic relations had been suspended on account of human rights violations committed by the al-Assad regime.[109]

Foreign Policy Trade-offs

German and European foreign policy seeks to engage globally for peace and security. That includes contributing to crisis prevention, stabilisation, post-conflict rehabilitation and humanitarian aid, and promoting the principles of democracy, rule of law and human rights. Individual interest-driven concerns must be measured against these overarching goals and tested for their possible conflict potential.[110] Empirical research in third countries and discussions with German decision-makers indicate, however, that this is sometimes called into question due to the strong domestic prioritisation of return. Not only have there been violations of the principle of non-refoulement by third statesin the context of so-called "chain deportations" and a shift of priorities in negotiations with third states towards return objectives; the overall return policy stands in conflict with the foreign policy aim of stabilising fragile states and consolidating democratic regimes.

Violations of the Principle of Non-Refoulement

One of the biggest bones of contention in talks on readmission agreements is European insistence that

105 Luigi Limone, "EU-Afghanistan 'Joint Way Forward on Migration Issues': Another 'Surrealist' EU Legal Text?" *European Area of Freedom Security and Justice Blog*, 1 August 2017.
106 Anne Koch, Annette Weber and Isabelle Werenfels, eds., *Profiteers of Migration? Authoritarian States in Africa and European Migration Management*, SWP Research Paper 4/2018 (Berlin: Stiftung Wissenschaft und Politik, August 2018), 6.
107 In 2016 Democracy Index categorised Mali as a hybrid regime; in 2020 it was reclassed as an authoritarian state.
108 European Commission, *Annex to the Communication from the Commission to the European Parliament, the European Council and the Council. Second Progress Report: First Deliverables on the*

Partnership Framework with Third Countries under the European Agenda on Migration, COM(2016) 960 final (Brussels, 14 December 2016), Annex 1 and 2.
109 "Abschiebungen nach Syrien ab Januar rechtlich wieder möglich", *Zeit Online*, 11 December 2020.
110 Auswärtiges Amt, "Germany's Foreign and European Policy Principles" (Berlin, 9 October 2019); European Union, *Treaty on European Union*, 1992, Article 21.

the obligations must apply not only to readmission of the partner country's own citizens but also to third country nationals who entered the EU via the respective country. In some cases negotiations fail over this clause.[111] Where the EU or an individual EU member state is successful in including and enforcing this provision, this can trigger a chain of forced returns whose legality is questionable and which are associated with the risk of human rights violations for the persons concerned. One relevant example is the readmission agreement between Spain and Mauritania, which led to the nationals of other West African countries being more or less dumped on Mauritania's borders with Mali and Senegal.[112] According to media reports, this occurred despite warnings from UNHCR that large parts of Mali were unsafe and reports from IOM that some asylum-seekers had had no opportunity to apply for asylum.[113]

Similar accusations have been made concerning other EU external borders: Third country nationals returned to Turkey from the EU (specifically Greece) are reported to have been transferred to their countries of origin without the opportunity to apply for asylum and in contravention of the non-refoulement principle.[114] This has implications beyond the possibility of individual human rights violations. Flouting the non-refoulement principle also undermines an important pillar of refugee and human rights protection that is anchored in international law.

Weakening European Negotiating Power in Other Policy Areas

The strong emphasis on return can weaken German and European negotiating positions in other policy areas and contribute to negotiations dragging on or agreements being difficult to conclude. The issue of return from the Global North is not a priority for many countries that are important to Germany and the EU in terms of migration.[115] Nor is reintegration top of their agenda. Nevertheless — or precisely because of this — countries of origin can succeed in instrumentalising the issue to strengthen their own negotiating position.

One example would be negotiations over readmission agreements, which are without exception initiated by the European side. The principal motivation of the EU and its member states is to increase return rates. The stronger the EU's wish for cooperation the more partner countries are able to insist on their own conditions for cooperation, leading to *reverse conditionality*.[116] Even if the EU's negotiating power initially appears greater, the obvious importance it attributes to the return question can weaken its negotiating position.[117]

The example of Morocco provides an illustration. Morocco employs the issue of return to garner international support for recognition of Western Sahara as Moroccan territory and uses bilateral cooperation on return with various European countries — including Spain and Sweden — to that end. Close cooperation enabled Morocco to avert Spanish pressure on the Western Sahara question,[118] while Sweden announced that it would refrain from recognising Western Saharan independence in return for cooperation.[119] In February 2016 Morocco agreed with Germany on a procedure for accelerated return of Moroccan citizens in the course of which Morocco would recognise laissez-passer documents issued by the EU as a substitute for missing passports. In return Germany promised Morocco that it would support an EU appeal against an agricultural and fisheries agreement with Morocco that the European Court of Justice had declared partially invalid in December 2015 on the

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111 One example being Morocco, see Kevin Kaiser, *EU-Morocco Negotiations on a Readmission Agreement: Obstacles to a Successful Conclusion*, EU Diplomacy Paper 07/2019 (Bruges: College of Europe, 2019); Coleman, *European Readmission Policy* (see note 6).

112 Florian Trauner and Stephanie Deimel, "The Impact of EU Migration Policies on African Countries: The Case of Mali", *International Migration* 51, no. 4 (2013): 20 – 32 (21).

113 "West Africans Are Dying Trying to Reach the Canary Islands", *The Economist* (online), 26 November 2020.

114 Sevda Tunaboylu and Jill Alpes, *The EU-Turkey Deal: What Happens to People Who Return to Turkey?* Forced Migration Review 54 (Oxford, February 2017), 84 – 87.

115 Background discussion with representatives of the German Foreign Office, October 2020.

116 Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood" (see note 97), 192.

117 Background discussions with representatives of the Federal Ministry of the Interior, Building and Community in December 2020, and with representatives of the Arnold-Bergstraesser-Institut für kulturwissenschaftliche Forschung (ABI) in November 2020.

118 Isabelle Werenfels, "Migration Strategist Morocco — Fortress Algeria", in *Profiteers of Migration?* ed. Koch et al. (see note 106), 22 – 33 (28f.).

119 Aleksandra Eriksson, "How Moroccon Street Boys Changed Swedish Foreign Policy", *EUobserver* (online), 7 March 2016.

grounds that it included the contested territory Western Sahara.[120] Negotiations over a readmission agreement with the EU as a whole have stalled on the other hand, not least on account of the Western Sahara question.[121] This illustrates how Morocco employs the issue of return to pursue its own interests in the Western Sahara conflict, where it prefers bilateral channels over negotiations at the European level.

The European Commission has made it clear that it wishes to employ all policy areas to achieve its migration objectives.

Morocco is not the only country to exploit this form of reverse conditionality; to varying degrees other African transit countries and countries of origin also do so.[122] In order to counter this development and expand its own negotiating power, the European Commission has made it clear that it wishes to employ all policy areas to achieve its migration objectives, including neighbourhood policy, energy, security, digital policy and trade.[123] However the responsible directorates-general resist subordinating their own interests to narrowly defined migration objectives due to the associated danger that this would threaten the achievement of their own objectives.

In trade policy such linkage could for example undermine the intensification of trade relations announced in connection with the reorientation of the EU-Africa Strategy and complicate dialogue with African partners.[124] The European External Action Service is concerned with broader political objectives, fears that focussing too strongly on return could endanger political relations with partner countries, and calls for a more balanced approach.[125] The negotiations over the shape of the "post-Cotonou" agreement for example were hampered by Europe's concentration on return,[126] resulting in considerable delays to the conclusion of talks.[127]

Protests and Unrest in Countries of Origin

When it comes to the question of whether and to what extent they cooperate with the EU on migration, political decision-makers in countries of origin have to take into consideration various aspects, including socio-economic costs, party politics, upcoming elections, media attention, public opinion and diaspora influences.[128] In particular cooperation on readmissions generally encounters broad public rejection.[129] One reason for this is the importance of *remittances* from abroad, which directly benefit ordinary people and frequently secure their living costs.[130] In Senegal for example about half the population has connections to family members abroad. Their remittances provide access to hard currency for those who remain in Senegal, which stabilises exchange rates, supports consumption in the country and thus boosts economic growth as a whole. In this way, relatives living abroad also function as a social security safety net.[131] If migrants are forced to return, these revenues are lost and with them the associated livelihood security for those who remain.[132]

126 Tsion Tadesse Abebe and Aimée-Noël Mbiyozo, "Focus on Migrant Return Threatens AU-EU Negotiations" (Pretoria: ISS, 22 October 2020).
127 Background discussion with representatives of the ISS, October 2020.
128 Melissa Mouthaan, "Unpacking Domestic Preferences in the Policy-'Receiving' State: The EU's Migration Cooperation with Senegal and Ghana", *Comparative Migration Studies* 7, no. 35 (2019): 1–20 (3).
129 Ilke Adam et al., "West African Interests in (EU) Migration Policy. Balancing Domestic Priorities with External Incentives", *Journal of Ethnic and Migration Studies* 46, no. 15 (2020): 3101–18 (3108); Mouthaan, "Unpacking Domestic Preferences in the Policy-'Receiving' State" (see note 128), 10.
130 Sachverständigenrat deutscher Stiftungen für Integration und Migration, ed., *Gemeinsam gestalten: Migration aus Afrika nach Europa: Jahresgutachten 2020* (Berlin, April 2020), 72f.
131 Uzelac, *Returns at What Cost* (see note 102), 2.
132 In certain contexts financial resources from the diaspora can support an authoritarian regime. The Eritrean government levies a so-called "diaspora tax" of 2 percent on the income of Eritreans living abroad. These revenues, along with remittances, contribute to stabilising the regime. See Nicole Hirt, *Der lange Arm des Regimes – Eritrea und seine Diaspora*, Länderprofile Migration: Daten – Geschichte –

120 "Deutschland und Marokko vereinbaren schnelle Abschiebungen", *Zeit Online*, 29 February 2016.
121 Werenfels, "Migration Strategist Morocco – Fortress Algeria" (see note 118), 29.
122 Trauner and Deimel, "The Impact of EU Migration Policies on African Countries" (see note 112), 25.
123 European Commission, *Communication … on establishing a new Partnership Framework with third countries* (see note 84), 9.
124 Kipp et al., *Negative Sanctions and the EU's External Migration Policy* (see note 104), 4.
125 Kaiser, *EU-Morocco Negotiations* (see note 111), 19.

Against that backdrop, the willingness of governments to cooperate with the EU on readmissions can lead to domestic tensions. The fact that Morocco and Algeria for example readmit deportees arriving by sea (that typically do not receive much public attention) but not by air demonstrates how charged the issue is.[133] In the worst case public dissatisfaction can explode into unrest and protests and endanger the stability of countries of origin, above all in fragile contexts and young democracies.[134]

One case in point is the readmission agreement between the EU and Mali signed in 2016, which provoked unexpected public uproar and protests in Mali. The diaspora and the opposition also criticised the planned agreement, leading the Malian government to withdraw its cooperation.[135] Undeterred the European Commission announced that cooperation with Mali on migration (including return) would continue anyway. In an already fragile context like Mali this is associated with risks. Tensions can sharpen, radical groups gain influence, violent conflicts be exacerbated.[136]

In Gambia too, return-related cooperation with the EU has caused massive and recent domestic political conflicts. The democratically elected government of Adama Barrow — who succeeded the long-ruling autocratic president Yahya Jammeh in 2017 — immediately came under European pressure to cooperate more closely on readmissions.[137] Cooperation by the Gambian side brought about a temporary increase in the number of returns, but was not to last. In a situation where many of the country's fundamental problems persisted under the new government, important reforms in the security and media sectors were not

carried out and the economic situation of the population did not improve, many Gambians felt betrayed when the government at the same time expanded return cooperation with the EU. Public protest began to form and at the beginning of 2019 the government declared a moratorium on readmissions.[138] This suspension of cooperation sent an important message that it was willing to protect the interests of its own population against foreign interests, in order to calm the domestic political situation and avoid endangering the ongoing democratisation process.[139]

The examples outlined here indicate the destabilising potential of strongly prioritising return policy, especially in relations with young democracies.

Security-related Trade-offs

Early detection, prevention and containment of crises and conflicts is a priority of German and European security policy. Berlin and Brussels are committed to working internationally for lasting peace, security and global stability, actively promoting human rights and democracy, and supporting third countries in fighting terrorism.[140] If one compares these objectives with the return efforts and practices of recent years, however, one finds contradictions, especially with respect to the efforts to stabilise post-conflict societies and prevent further conflicts.

Conflicts Sparked by the Return of Refugees

One possible security risk and danger to stability in post-conflict countries is new conflicts arising between returning refugees and the rest of the population. These can occur for various reasons; frequently

Politik (Bonn: Bundeszentrale für politische Bildung [bpb], 16 April 2020); idem., *Forced Migration from Eritrea and Regime Stabilization*, MAGYC Policy Brief (Migration Governance and Asylum Crises [MAGYC], March 2021), 2, 5.

133 Werenfels, "Migration Strategist Morocco — Fortress Algeria" (see note 118), 24.

134 Louise Hunt, "Warnings over Gambian Migrant Returns as Democratic Transition Wobbles", *The New Humanitarian*, 28 January 2020; Background discussion with government representative, November 2020.

135 Clare Castillejo, *The EU Migration Partnership Framework: Time for a Rethink?* Discussion Paper 28/2017 (Bonn: Deutsches Institut für Entwicklungspolitik, 2017), 23.

136 Fabian Wagner, "E.U. Deportations Risk Further Destabilizing Mali", *Refugees Deeply* (online), 2 July 2018.

137 Hunt, "Warnings over Gambian Migrant Returns" (see note 134).

138 Judith Altrogge and Franzisca Zanker, "The Return of Migrants from Europe Is Causing Problems for The Gambia", *Quartz Africa*, 21 November 2019; Hunt, "Warnings over Gambian Migrant Returns" (see note 134); Franzisca Zanker and Judith Altrogge, "The Political Influence of Return: From Diaspora to Libyan Transit Returnees", *International Migration* 57, no. 4 (2019): 167–80.

139 Altrogge and Zanker, "The Return of Migrants from Europe" (see note 138).

140 Bundesministerium der Verteidigung, *Weißbuch zur Sicherheitspolitik und zur Zukunft der Bundeswehr* (Berlin, 2016); European Parliament, *Report on the implementation of the Common Security and Defence Policy – annual report 2020*, A9-0265/2020, 15 December 2020.

the issue is property claims. For example returning displaced persons and refugees in Iraq in 2007 and 2008 were unable to move into their former homes because these had been occupied or destroyed by others. As well as hindering the return process the resulting conflicts can lead to further violence and instability.[141]

The civil war in Liberia from 1989 to 2003 altered settlement patterns, the composition of communities and their land use. In many cases returnees found their land occupied by others, from their perspective illicitly. The new residents — often former fighters — regarded their gains as an appropriate reward for their role in the conflict.[142] In Burundi land conflicts between returning refugees and residents who stayed have caused renewed flight and displacement and generated tensions that represented a serious threat to the peace process.[143]

In South Sudan conflicts between returnees and stayees shortly after the country's secession in 2011 developed out of feelings of alienation and competition. Resentment was directed especially against returnees from other East African countries whose English language skills — and in some cases even English-language university degrees — lent them advantages in the competition for the rare jobs with the government and in international organisations, because English had been declared the only official language and Arabic had been marginalised. Returnees were regarded as threatening, also on account of their culturally alien Western dress and behaviours attributed to them. The resulting hostility between the groups led to violent clashes between youth gangs.[144]

Major return initiatives must take the associated conflict risks into account.

As these different examples demonstrate, return movements in combination with real or perceived linguistic discrimination and/or land conflicts can exacerbate existing resentments and even lead to new violent conflicts at the local level — and thus endanger transformation and peace processes.

Even if one must exercise caution in applying experience from the South-South context to return movements originating in Germany and Europe, the experience of Bosnia and Herzegovina suggests that similar challenges may be associated with return from and in the Global North. In this case the return of about one million Bosnian refugees after the 1992–1995 civil war, which was in many cases involuntary, created new social divisions (alongside the ethnic/religious and rural/urban divides). This new fracture line was manifested in structural discrimination of the returnees by the authorities and in the labour market.[145]

Ultimately the magnitude of the return movement is decisive for whether and to what extent return in post-conflict countries generates social tensions between returnees and those who remained. Because there are more examples of large collective post-conflict return movements in the South-South context, that is where most of the examples of social tensions attributable to return are found. Because every involuntary return from a European state is normally preceded by an individual case assessment the problem is much less pressing there.

The problems described above become especially relevant for European and German return policy in connection with the possible return of Syrian refugees. Many of the almost 800,000 Syrians in Germany possess only subsidiary protection without entitlement to longer-term residency.[146] The German gov-

141 Deborah Isser and Peter van der Auweraert, *Land, Property, and the Challenge of Return for Iraq's Displaced*, Special Report 221 (Washington, D.C.: United States Institute of Peace [USIP], April 2009), 2f., 5f.

142 Jairo Munive Rincon, *Ex-combatants, Returnees, Land and Conflict in Liberia*, DIIS Working Paper 2010:05 (Copenhagen: Danish Institute for International Studies [DIIS], 2010), 7.

143 Stephanie Schwartz, "Home, Again: Refugee Return and Post-Conflict Violence in Burundi", *International Security* 44, no. 2 (2019): 110–45 (130, 137ff.).

144 Marc Sommers and Stephanie Schwartz, *Dowry and Division: Youth and State Building in South Sudan*, Special Report 295 (Washington, D.C.: USIP, November 2011), 7f., 12.

145 Anders H. Stefansson, "Refugee Returns to Sarajevo and Their Challenge to Contemporary Narratives of Mobility", in *Coming Home? Refugees, Migrants, and Those Who Stayed Behind*, ed. Lynellyn D. Long and Ellen Oxfeld (Philadelphia: University of Pennsylvania Press, 2004), 170–86 (176–78).

146 Deutscher Bundestag, *Diplomatische Beziehungen der Bundesrepublik Deutschland zur Arabischen Republik Syrien* (see note 41), 2; only about 2 percent of the Syrians living in Germany have permanent residence, the other 98 percent are accounted for by ongoing asylum applications (about 3 percent), temporary status (about 83 percent) and other categories (12 percent).

ernment is currently following UNHCR's assessment that the security situation in Syria does not permit the return of larger numbers of persons.[147] But the example of Denmark, where Syrian refugees have been instructed to return since May 2021 demonstrates how quickly that can change.[148] If major return initiatives do arise the associated conflict risks must be taken into account — all the more where the Syrian government has laid the groundwork for large-scale land conflicts with its controversial Property Law No.10.[149]

Criminal Returnees as a Security Risk in Countries of Origin

The expulsion and deportation of foreign citizens convicted of crimes could be regarded as a minimal consensus on involuntary return. Unlike other returns this practice is very broadly accepted. Even the Geneva Refugee Convention explicitly excludes from the prohibition of expulsion associated with refugee status any person "whom there are reasonable grounds for regarding as a danger to the security of the country" or "having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country".[150] In light of acts of violence by Islamist extremists, various EU member states have increasingly justified deportations on the grounds of internal security. In Germany individuals categorised as dangerous extremists can be deported without evidence of a specific crime.[151]

Possible negative effects of these types of returns on public safety in countries of origin are rarely discussed. In fact even the involuntary return of rejected asylum-seekers without involvement in crime is associated with security risks. Without employment perspectives they may turn in frustration to crime or join the armed groups that are active in parts of certain

countries of origin like Nigeria.[152] In Ghana and Gambia returnees — who cannot be adequately reintegrated because of insufficient state resources — are regarded by the government as a burden and blamed for rising unemployment and crime rates.[153] The same applies to Morocco, where the government regards deportees from Europe as an economic problem and in the case of criminal and radicalised returnees also a social liability.[154]

Such fears are by no means abstract. The so-called Northern Triangle in Central America — Guatemala, Honduras and El Salvador — suffers extremely high homicide rates even though the armed conflicts there have officially been ended by peace agreements.[155] The large numbers of violent deaths are attributable principally to organised gang crime. The history of the gangs is closely tied to migration: Many of their members — whose parents had fled from the wars in the region — were deported from the United States for gang-related crimes. After deportation they found themselves in weak state systems and lacking alternative perspectives, which in El Salvador demonstrably led to a further dissemination of gang culture and organised crime and rising rates of violence.[156] There is quantitative evidence for a causal relationship between the deportation of criminals and an extreme rise in violence in El Salvador.[157] This has implications for the international community as a whole. The violence associated with organised crime in the Northern Triangle in Central America — where the murder rate is seven times that of the rest of the

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147 Deutscher Bundestag, *Die menschenrechtliche Situation der Christen in Syrien*, Antwort der Bundesregierung auf Kleine Anfrage, Drucksache 19/30210 (Berlin, 1 June 2021), 4.

148 Christian Blenker, "Keine Duldung mehr in Dänemark", *Tagesschau* (online), 29 May 2021.

149 Ibid.

150 UNHCR, *Convention Relating to the Status of Refugees* (see note 7), Article 33 (2).

151 Daniela Hunold and Jan Raudszus, "'Gefährder'", Kurzdossiers Zuwanderung, Flucht und Asyl: Aktuelle Themen (Bonn: bpb, 13 January 2020).

152 Kwaku Arhin-Sam, *The Political Economy of Migration Governance in Nigeria* (Freiburg: ABI, 2019), 47; Franzisca Zanker et al., *Challenges in EU-African Migration Cooperation: West African Perspectives on Forced Return*, MEDAM Policy Brief 2019/5 (Freiburg: ABI, December 2019), 8.

153 Mouthaan, "Unpacking Domestic Preferences in the Policy-'Receiving' State" (see note 128), 8; Background discussion with government representative, November 2020.

154 Werenfels, "Migration Strategist Morocco — Fortress Algeria (see note 118), 24.

155 Markus Rudolf, *Organisierte Kriminalität als Fluchtursache. Lehren aus Lateinamerika*, BICC Policy Brief 7/2019 (Bonn: Bonn International Center for Conversion [BICC], 23 September 2019), 1—3.

156 Christian Ambrosius, *Deportations and the Roots of Gang Violence in Central America*, Discussion Paper 2018/12 (Berlin: Freie Universität, 17 June 2018), 18.

157 Christian Ambrosius and David A. Leblang, "Exporting Murder: US Deportations and the Spread of Violence", *International Studies Quarterly* 64, no. 2 (2020): 316—28 (326).

world — exacerbates internal displacement and increases cross-border movements to Mexico and the United States.[158]

Ultimately a double standard is often applied in connection with the deportation of criminals and extremists: On the one side the German government is — like other European governments — extremely reserved for reasons of internal security, for example in connection with readmitting its own citizens from the Syrian-Kurdish detention camp al-Hawl, who are regarded as ISIS supporters.[159] On the other side there is no open debate on the risks of Germany deporting Islamist extremists and criminals, who often encounter weak prevention and security systems in their countries of origin and lack alternative sources of income — but can take up with existing fundamentalist structures.

The European prioritisation of return objectives in interactions with states of origin and transit has implications for both sides. The EU and its member states risk seeing their negotiating power weakened and their values undermined, while the governments of third states must cope with protests by their own populations, possible unrest and return-related security risks. The wealth of evidence assembled here underlines the fact that these are not individual aberrations but rather the outcome of fundamentally conflicting goals. The resulting development, foreign policy and security costs differ from country to country, but must be taken into consideration on a case by case basis and seen in relation to the number of persons required to leave. In recent years European governments and the EU frequently persuaded their negotiating partners to accept short-term deals for returning a particular number of their citizens on a one-off basis. Such an approach harms the foreign and development policy reputation and influence of the EU and its member states. This also presents an obstacle for the establishment of a longer-term collective understanding of the problem and hinders stable future cooperation.

158 Amelia Cheatham, "Central America's Turbulent Northern Triangle" Backgrounder, Council on Foreign Relations (New York), 2020; The Internal Displacement Monitoring Centre/Norwegian Refugee Council, *GRID 2018: Global Report on Internal Displacement* (Geneva, May 2018).

159 Guido Steinberg, *Der Lagerkomplex al-Haul in Syrien: Syrisch-kurdische Hafteinrichtungen als Rekrutierungspool für IS-Terroristen*, SWP-Aktuell 74/2020 (Berlin: Stiftung Wissenschaft und Politik, September 2020), 8.

Towards a More Thorough Cost-Benefit Analysis

In view of the perception that rising immigration figures represent some form of crisis, efforts to ensure the removal of rejected asylum-seekers and irregular migrants have been significantly stepped up since 2015. Persuading countries of origin and transit to cooperate more closely on readmissions is a key concern for EU member states. One place where this is evident is the priority given to return-related objectives in negotiations with relevant governments, and the use of other policy areas for leverage to achieve the desired cooperation. The attention devoted to the quantitative outcomes of these efforts has grown. In the German context the idea of "deportation deficit" has become a recurring motif in the public debate; at the EU level the so-called return rate has become the yardstick for the success or failure of European migration policy.

The actual outcomes to date are sobering. Despite the investment of considerable financial, personnel and political resources into promoting return, return figures have remained relatively constant. At the same time the setting of quantitative targets has kept the issue in the public eye and created openings for extreme right-wing political parties blaming governments for the "failure" of their return policies. The resulting constant pressure to showcase action is manifested for example in the central role of return in the current European Commission proposal for a New Pact for Migration and Asylum.

Although quantitative progress on removals has lagged expectations, the return policy efforts of recent years have had a considerable impact on cooperation between the EU and its member states on the one side and important countries of origin and transit on the other, as well as on the situation in the latter. Depending on the specific circumstances this may contradict development objectives, weaken European bargaining power in other policy areas and/or create security risks in countries of origin. These negative consequences of a one-sided focus on return are known at an anecdotal level but largely ignored when it comes to setting migration policy priorities.

While return represents a normal aspect of migration policy, this says nothing about the weight that should be attributed to it. This raises questions over the proportionality of the political and financial resources currently devoted by the EU and its member states to increasing the number of returns. Finding answers requires an open and transparent comparison of the domestic benefits and foreign policy, development and security costs of prioritising return. As well as a comprehensive stocktaking of the outcomes of informal readmission arrangements and conditionalisation approaches, this must also include an independent and systematic evaluation of existing AVRR initiatives.[160] Development actors in particular still lack empirically based findings to weigh up the positive potential and disadvantages of their return engagement, both in terms of short- and medium-term reputational risks and long-term loss of legitimacy.

Regardless of the outcome of this urgently needed cost/benefit analysis there is one realisation that political decision-makers cannot ignore: Neither in the German nor the European context is it realistic to expect that all those who are legally required to leave will actually return to their countries of origin. In order to avoid a situation where significant numbers of people experience serious legal insecurity for years on end — with the known grave consequences for the affected individuals and for society as a whole — pragmatic solutions are needed. What means are suited to reducing the numbers required to leave in the long term? What alternatives to return exist? And how can return policies be complemented with realis-

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160 Erlend Paasche, *Why Assisted Return Programmes Must Be Evaluated. Insights from the Project "Possibilities and Realities of Return Migration"*, PRIO Policy Brief 08/2014 (Oslo: Peace Research Institute Oslo [PRIO], 2014).

tic perspectives to remain for a sub-group of well-integrated individuals without legal residence status?

Answering these questions in the German context requires an examination of the legal construct of "Duldung", which blurs the line between regular and irregular status.[161] Its inflationary use hinders the pursuit of clear and transparent policy. This is visible in the statistics. While the German Central Register of Foreign Nationals counts "persons granted "Duldung"" as a sub-category of "persons required to leave", the EU statistics do not. The "Duldung" for vocational training introduced in Germany in 2018 is designed to open a path to legal status for well-integrated young people and represents a de facto regularisation option. Despite that perspective those affected are counted for years as persons required to leave, which contributes — needlessly — to the perception of a grave enforcement deficit.

This is counterproductive and distorts the political discourse. Regularising persons who are theoretically required to leave but are already well integrated and/or whose return is unrealistic in the medium term should not be a taboo, but a legitimate political option. In this sense the efforts to shape an effective return policy are inseparably bound up with the discussion about reforming immigration law. This issue has been pushed down the agenda in recent years by even more pressing challenges regarding safe access to asylum. But it remains the central lever for resolving the ongoing controversies over return policy. Earlier arrangements to allow those eligible to acquire regular residence status have proven to be overly complex, as evidenced by the continuously increasing number of persons in the category of "Duldung".[162]

Regularisation campaigns of the kind conducted in the 1990s and 2000s in many EU member states could offer a pragmatic resolution to the hardening debate over the removal of large numbers of third-country nationals with comparatively longstanding residency.[163] Another option for reducing the number of persons required to leave is the option of individuals

transferring from the asylum process to labour migration channels. This is currently not permitted and the proposal is controversial. Looking ahead the establishment of circular migration programmes for low-skilled labour migrants, with the possibility of repeated stays could help to direct migratory movements into orderly channels.

The options laid out here are not new, but represent elements that have long circulated in the debate over national migration and asylum policy. The interdependencies between regular pathways, immigration law and return policy are important in the context of this study. The assumption that return is purely a question of enforcement and thus primarily a "technical" field ignores the political nature of the decisions, which are based on the much maligned discrepancy between the number of persons required to leave and the number of returns initiated by the state. In light of the described external costs and unintended consequences of prioritising return, return policy decisions need to be understood as part of a larger context of strategic domestic and foreign policy, and actions shaped accordingly.

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161 Rietig and Günnewig, *Deutsche Rückkehrpolitik und Abschiebungen* (see note 1), 15.

162 Pro Asyl, "Die Bleiberechtsregelung läuft ins Leere: Nur wenige Geduldete profitieren" (Frankfurt, 17 February 2017).

163 Albert Kraler, "Regularization of Irregular Migrants and Social Policies: Comparative Perspectives", *Journal of Immigrant & Refugee Studies* 17, no. 1 (2019): 94–113; idem., *Regularisation: A Misguided Option or Part and Parcel of a Comprehensive Policy Response to Irregular Migration?* IMISCOE Working Paper no. 24 (February 2009).

Annex

Data on returns conducted by Frontex

There is no publicly accessible overview of the number of removals and (since 2020) assisted voluntary returns conducted by Frontex. The figures shown in Figure 5 (see p. 23) were therefore compiled from various sources. Only for 2006 was it necessary to draw on a secondary source; figures for all other years were reconstructed from individual Frontex and other public EU documents. A multi-year overview for 2006–2018 was located in an internal Frontex training document from 2019 but it contained a number of discrepancies with the figures from other sources (small deviations for 2014 and 2015; significant deviations for 2017 and 2018). In these cases we used the figures from other publications that we regarded as more reliable. In the interests of transparency we list all sources used to compile the statistics for Frontex:

– **2006 (8):** Mariana Gkliati, "Frontex Return Operations and their Human Rights Implications", in *Deportation of Foreigners: EU Instruments, Nation-State Practices and Social Actors' Involvement*, ed. Ibrahim Soysüren and Mihaela Nedelcu (Bern: Peter Lang Editions, forthcoming), 9.
– **2007 (428):** Frontex/ECRet – European Centre for Returns, *Return Support to MS by the European Border and Coast Guard Agency (Frontex)*, 22.
– **2008 (801) and 2009 (1,622):** Frontex, *General Report 2009*, 18.
– **2010 (2,038):** Frontex, *General Report 2011*, 51.
– **2011 (2,059), 2012 (2,110)** and **2013 (2,152):** Frontex, *General Report 2013*, 18.
– **2014 (2,271):** Frontex, *General Report 2014*, 55.
– **2015 (3,565):** Frontex, *General Report 2015*, 29.
– **2016 (10,698):** Frontex, *Annual Activity Report 2016*, 21 June 2017, 9.

– **2017 (14,884):** European Commission, "State of the Union 2018: A Fully Equipped European Border and Coast Guard — Questions and Answers", 12 September 2018.
– **2018 (13,729):** Frontex, *Risk Analysis for 2019*, 7.
– **2019 (15,850):** Frontex, *2019 In Brief*, 5.
– **2020 (12,072):** Frontex, *Consolidated Annual Activity Report 2020*, 12 May 2021, 57.

Abbreviations

ABI	Arnold-Bergstraesser-Institut für kultur-wissenschaftliche Forschung (Freiburg)
AMIF	Asylum, Migration and Integration Fund
AU	African Union
AVR	Assisted Voluntary Return
AVRR	Assisted Voluntary Return and Reintegration
BAMF	Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees)
BICC	Bonn International Center for Conversion
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (German Federal Ministry for Economic Cooperation and Development)
bpb	Bundeszentrale für politische Bildung (Federal Agency for Civic Education)
CIM	Centrum für internationale Migration und Entwicklung (Centre for International Migration and Development)
DGAP	Deutsche Gesellschaft für Auswärtige Politik (German Council on Foreign Relations)
DIIS	Danish Institute for International Studies (Copenhagen)
DIMRG	Gesetz über die Rechtsstellung und Aufgaben des Deutschen Instituts für Menschenrechte (Law regarding the German Institute for Human Rights)
ECDPM	The European Centre for Development Policy Management (Maastricht)
ERIN	European Reintegration Network
ERRIN	European Return and Reintegration Network
ESI	European Stability Initiative
EURINT	European Integrated Return Management Initiative
EURLO	European Return Liaison Officers Network
FAZ	Frankfurter Allgemeine Zeitung
FMU	Forced Migration Unit, University of Nottingham
Frontex	European Border and Coast Guard Agency
GAM	Global Approach to Migration
GAMM	Global Approach to Migration and Mobility
GIZ	Gesellschaft für Internationale Zusammenarbeit
GRID	Global Report on Internal Displacement
IMISCOE	International Migration, Integration and Social Cohesion in Europe (International Migration Research Network)
IOM	International Organization for Migration
ISS	Institute for Security Studies (Pretoria)
MAGYC	Migration Governance and Asylum Crises
MEDAM	Mercator Dialogue on Asylum and Migration
MoRR	Ministry of Refugees and Repatriations
MPI	Migration Policy Institute (Washington, D. C.)
NDICI	Neighbourhood, Development and International Cooperation Instrument
PRIO	Peace Research Institute Oslo
REAG|GARP	Reintegration and Emigration Programme for Asylum-Seekers in Germany/Government Assisted Repatriation Programme
SDGs	Sustainable Development Goals
SVR	Sachverständigenrat deutscher Stiftungen für Integration und Migration (Expert Council on Integration and Migration)
UNHCR	United Nations High Commissioner for Refugees
USIP	United States Institute of Peace (Washington, D.C.)