

5 Implications for asylum and migration policies in Europe

Lead Author: Matthias Lücke

European and African interests in the area of international migration policy differ considerably, especially with respect to irregular migration. Many European citizens and governments want to manage immigration to ensure that immigrants from outside the EU meet specific conditions: those coming to work in the EU are meant to be highly educated (and earn a correspondingly high salary) or have special vocational skills. Others are admitted because their family members already live in the EU or because they qualify for international protection from persecution or violent conflict. At the same time, many European citizens and governments are opposed to irregular immigration on the grounds that, if individuals do not qualify for legal immigration, their presence may be detrimental to residents.⁵³

By contrast, many African citizens and their governments view mobility between places, especially within Africa, as a natural way of life (chapter 4). Such mobility has existed longer than the states whose borders individuals are now obliged to cross, turning long-standing patterns of mobility into international migration. For many individuals, these borders, like the states that they delineate, are of limited relevance and the act of crossing borders is usually not contentious as such. Yet, mobility may well be contentious at the point of destination if it leads to conflicts over resources, as in the case of conflicts between farmers and herders in many parts of Africa or hostility to immigrants from poorer African countries in South Africa.

In addition, many governments in Africa are reluctant to support any restrictions on international migration by countries of destination because migrant remittances sustain the livelihoods of hundreds of thousands of households and represent a large source of international finance. Governments are particularly reluctant to cooperate with the mandatory return and readmission of their migrant citizens, especially at a time of high youth unemployment at home.

Because of the large difference in per-capita incomes between most African countries on the one hand and EU member states on the other hand, many African workers can improve their standard of living signif-

icantly if they migrate to the EU, even irregularly. Although travelling to Europe from Africa irregularly is dangerous and requires substantial payments to people smugglers, approximately 200,000 individuals reached Europe irregularly via the Western and Central Mediterranean migrant routes in 2016. In the same year, nearly 5,000 individuals died when they attempted to cross the Mediterranean, while even more migrants died attempting to cross the Sahara to reach Libya. Of those who made it to Europe, many applied for asylum, but did not receive international protection.

Since 2016, irregular migration from Africa to Europe along the Western and Central Mediterranean routes has declined sharply, largely as a result of EU support for the Libyan coastguard taking back to Libya migrants rescued at sea. Although the number of migrant deaths in the Western and Central Mediterranean also more than halved from 2016 to 2019, many migrants taken back to Libya have suffered severe human rights abuses from the local authorities. While the IOM and UN High Commissioner for Refugees have repatriated some migrants from Libya to their home countries and resettled others for international protection, abuses in Libya continue.

This situation exemplifies the dilemma that the EU and its member states face in pursuing their goal of controlling immigration to Europe when there is less than full cooperation from countries of origin or transit or when authorities in potential partner countries pursue their own agendas that contradict EU objectives or values. In recent years, the EU and its member states have attempted in multiple ways to limit irregular entry into the EU: disrupting irregular migration routes (including through EU support for the Libyan coastguard); supporting refugees in Turkey in exchange for Turkey restricting irregular movement to the EU (EU-Turkey Statement of March 2016); building fences and policing the external border more tightly; closing borders; and issuing visitor visas only under highly restrictive conditions to ensure that visitors have no incentive to remain in the EU. While these practices have been effective to varying degrees

⁵³ It is worth noting that the Global Compact for Safe, Orderly, and Regular Migration (emphasis added) takes a similar position—implicitly in its title and explicitly in Objective 9.

in reducing irregular immigration, they also have important downsides. Notably, the Libyan coast guard has been involved in human rights abuses. Refugees who were prevented from applying for asylum in the EU may not always have been safe in their current host countries. The EU-Turkey Statement was never implemented fully, with dire consequences for migrants on the Greek islands. And restrictive visa practices have hurt bilateral relations by creating barriers for legitimate international travel for education, tourism, and business.

The dilemma for the EU and its member states lies in the fact that, under present conditions, simply abandoning these restrictive practices would be tantamount to opening the EU's external border to all would-be immigrants who manage to physically reach it: any non-EU citizen can apply for asylum at the border and remain in the respective EU member state while the application is processed. However, many of those who do not receive permission to remain in the EU never return to their countries of origin (section 2.2). To a large extent, this low return rate is caused by bureaucratic inefficiency on the part of EU member state authorities, rather than by countries of origin responding slowly to requests by EU member states to readmit their citizens. In any case, restrictive practices at the EU's external border played a key role in reducing the number of irregular immigrants arriving in the EU in 2016 (via the Eastern Mediterranean route, the EU-Turkey Statement) and 2017 (via the Central Mediterranean route, support for the Libyan coast-guard) and in keeping the number low since then.

Furthermore, irregular immigration occurs not just when individuals cross the external EU border unauthorized; more often, individuals enter EU territory in a regular manner, but remain there after their visa runs out. In this case, restrictive practices at the border are ineffective. As a result, for many non-EU countries, EU member states will only issue visas to their citizens if applicants demonstrate conclusively that they have no incentive to remain in the EU.

By jointly managing migrant flows with countries of origin and transit based on the principles of the Global Compact for Safe, Orderly, and Regular Migration and the Global Compact on Refugees, the EU and its member states could make substantial progress toward controlling immigration without engaging in problematic restrictive practices at the external border. People smuggling takes place, and needs to be combatted, in transit countries as well as in the EU. The EU-Turkey Statement of March 2016 is an example of how the EU can support refugees in countries of first asylum in the European neighborhood who might otherwise

embark upon secondary migration to the EU. In return for EU support, Turkey largely stopped irregular migration to Greece until late February 2020.⁵⁴ Thus, when (potential) irregular migrants are refugees who may embark on secondary migration and stand a good chance of receiving international protection in the EU, the key to successful cooperation with host countries is for the EU to share in the responsibility for ensuring that refugees can live with dignity in their host country. While the primary tool is financial support for refugees and for the host country as it provides public services for refugees and residents, this should be complemented with other instruments like resettlement options for particularly vulnerable refugees.

By contrast, when irregular migrants are mostly mixed or labor migrants as along the Western and Central Mediterranean migration routes or simply visa overstayers, well-functioning procedures for the mandatory return and readmission of non-EU citizens by their countries of origin become crucial. When non-EU citizens who overstay their welcome in the EU can be returned smoothly, the EU and its member states have little reason to engage in problematic restrictive practices at the external border to prevent irregular migrants from entering EU territory in the first place: irregular migration will turn out to be a bad investment, discouraging others from trying. While administrative processes in EU member states for the mandatory return of non-EU citizens to their countries of origin are often ineffective, there are also cases in which the lack of active cooperation from countries of origin is the bottleneck.

So how can the reluctance of many country-of-origin governments, including in West Africa, to cooperate with the EU and its member states in curbing irregular migration be addressed constructively (chapter 4)? So far, EU efforts have focused on making the EU policies in which African and other developing-country governments are especially interested conditional on cooperation with return and readmission. Increasingly, the EU has used conditionality in a 'punitive' manner in the sense that existing benefits would have been withdrawn had the partner countries not signed up formally to certain commitments (chapter 3). In practice, however, cooperation on return and readmission fails mostly not because there is no written agreement, but because the partner-country government faces strong disincentives to implement an existing agreement or principle of internal law and finds ways to drag its feet.

To overcome this impasse and draw together the diverging interests of the EU vs. the countries of origin in the area of migration management, the EU needs to

⁵⁴ During a two-week episode in early March 2020, Turkey attempted to put pressure on the EU for more financial, political, and military support by actively aiding irregular migrants as they sought access to Greece, violently at times, across the border that had been closed from the Greek side. The EU responded by offering to renew the EU-Turkey Statement on refugees, but did not otherwise give in to Turkish demands. In mid-March, Turkey closed its side of the border, assisted would-be irregular migrants in returning to their places of residence in Turkey, and expressed its interest in renewing the agreement with the EU.

offer measures that are credible and significant enough to change the political calculus of country-of-origin governments by creating substantial benefits for their citizens. One prominent concern among developing-country citizens and governments relates to the EU's very cumbersome visa procedures. Remarkably, the EU maintains successful visa-liberalization regimes with several poorer countries in the Western Balkans and Eastern neighborhood that were subject to highly restrictive visa practices not too long ago. In the process of negotiating visa liberalization, these countries undertook far-reaching reforms in the area of human rights so that their citizens could not plausibly claim to be persecuted at home and successfully apply for asylum in the EU after entering visa-free; judicial cooperation and return and readmission procedures were also strengthened (Ademmer 2012). With weaker institutions in many poorer African countries, visa liberalization may be a long-term vision rather than a short-term possibility, although it may be within the reach of a few countries in North Africa. For all others, there are progressive steps in terms of visa facilitation that would provide important benefits to partner-country citizens and a political bonus for the government.

Another policy area that would be of great interest to African citizens and governments is enhanced opportunities for legal labor migration to EU member states. The benefits to African citizens and the political mileage that governments would receive from any step forward are clear. On the EU side, responsibility for labor migration rests with the member states, which would have to issue work visas to non-EU citizens based on their governments' willingness to cooperate in the area of return and admission. This process would require considerable coordination between the European Commission and member states. Member states would want to determine their offers of work visas based on the absorptive capacity of their labor markets, whereas the involvement of the Commission would reflect its growing role in returns policy, including through Frontex. If the Commission can present a unified negotiating position on behalf of member states, this may be more effective than individual member states negotiating separately (Barslund, Di Salvo, and Ludolph 2019).

Going forward, member states' willingness to offer work visas to African citizens will be influenced by the impact of the COVID-19 pandemic on output and labor demand, which is impossible to predict at

this stage. Even when labor demand recovers, it will be crucial to set education, skill, and language requirements for visa applicants at a level that puts migration to Europe credibly within the reach of a large enough group of workers in Africa to make a difference to the political calculus of governments. Despite the preference of many European voters for high-skilled immigrants, many non-EU citizens who initially arrived as low-skilled irregular migrants are now gainfully employed and socially well integrated in the EU. Hence, there is likely to be room for more and successful labor migration from Africa to Europe that would be in the interest of many Africans and supported by their governments.

Member states should also use their available policy space for pilot projects that would demonstrate the feasibility of this approach while generating operational experience that will be useful for upscaling the program later. Interestingly, Germany has a work visa program for citizens of Western Balkan countries that may serve as an example. The program has been part of a move to curb irregular immigration from Western Balkan countries to Germany after its surge in late 2015. For several years, a total of approximately 20,000 work visas annually have been issued to citizens of Western Balkan countries, requiring only the offer of an employment contract with standard pay and working conditions from a German employer. In contrast to the more restricted migration opportunities available to other non-EU citizens, there are no requirements regarding education, vocational, or language skills.⁵⁵ While it is difficult to formally establish causality between the Western Balkan program and the reduction in irregular immigration since 2015, it is plausible that the program has enabled governments in the Western Balkans to cooperate fully with the swift return of rejected asylum seekers while offering a realistic possibility for legal migration to many Western Balkan citizens with links to employers in Germany.

In sum, our analysis calls for a substantial shift in emphasis in the external dimension of EU asylum policy: rather than attempt to enforce punitive conditionality, the EU should treat joint migration management as an important element in negotiations for a win-win scenario that takes on board the aspirations of African citizens and governments for easier travel and legal labor migration to Europe. Such cooperation offers the best prospect for more humane practices at the EU's external border and for all stakeholders benefitting from safe, orderly, and regular migration to Europe.

⁵⁵ The large share of low-skilled workers in the Western Balkan program suggests that it has not led to a brain drain from the Western Balkans to Germany. A possible brain drain is more of a concern in relation to plausible patterns of labor migration from Africa because the level of education in Africa tends to be lower than in the Western Balkans, while a minimum education level is needed for successful labor market integration in Germany (Backhaus 2020). These observations suggest that vocational training for African workers in preparation for work opportunities either at home or in the EU should be part of the proposed cooperation with African countries of origin.