

1. European asylum and migration policy— Toward flexible solidarity

The number of irregular migrants arriving in Europe continued to fall in 2017. Judged alone by these numbers, European efforts to improve migration management may seem successful. However, several elements of the policies that have brought down the number of arrivals may not be sustainable. The situation along migration routes in Libya and the conditions on the Greek islands are testimony to this. Apart from addressing the underlying shortcomings of existing policies, there is a need to address fundamental problems of migration management. A case in point is the reform of the Dublin Regulation. Few have noticed that this contested draft legislation would do little to help Italy deal with Mediterranean crossings: most Mediterranean migrants are not eligible for protection and therefore would not be relocated within the EU under the proposed rules. The fundamental problem is rather the lack of an effective return policy—which would require not only actions coordinated at the EU level, but also a genuine partnership with African countries of origin. With the number of migrant arrivals down, now is the time to make progress on sustainable migration management in the EU.

In this chapter, we focus on key elements of a sustainable migration management system with a particular focus on legal pathways to EU labor markets. We start from the five dimensions of a sustainable EU policy framework for immigration and refugee protection that we identified in our first MEDAM assessment report: (i) external border management; (ii) burden sharing in the hosting of asylum seekers within the

EU (including through joint financing); (iii) intra-EU relocation of refugees; (iv) financial support to third countries that host refugees; and (v) resettlement of vulnerable refugees from third countries. In section 1.1, we discuss lessons from Greece and the Central Mediterranean as well as current EU legislative initiatives in the light of these key dimensions of a sustainable immigration and asylum system. In section 1.2, we zoom in on the situation in the Mediterranean and assess how challenges in external border management and the absence of effective return operations connect with the lack of legal migration pathways into the EU. In section 1.3, we assess existing legal pathways into member states' labor markets and explore how the EU can consolidate offers for more legal labor migration by EU member states to become part of a wider EU-Africa partnership for better migration management and economic development in the Mediterranean region and beyond.

Our main message throughout chapter 1 is the need for flexible solidarity among EU member states, covering all policies related to the immigration and asylum system (our 'five dimensions'). To develop an effective EU response, it is essential to acknowledge that member states differ in their political preferences and in their capacity to contribute to the various policies. At the same time, given the high degree of economic and political integration in the EU, a joint response by member states and EU institutions is required to address the interrelated challenges of irregular immigration, refugee protection, and relations with neighboring regions, including Africa.

1.1 Reforming asylum and migration policies— Burden sharing remains key

Lead authors: Mikkel Barslund, Mattia Di Salvo, and Matthias Lücke

Europe saw fewer irregular arrivals in 2017 compared with 2016. One reason was the EU-Turkey agreement of March 2016 that closed the Eastern Mediterranean route, but there was also a sharp decrease in the number of people crossing the Mediterranean Sea to Italy or taking the Western Balkan route; arrivals in Spain via the Western Mediterranean route more than doubled, but remained small in comparison with the other routes (table 1.1).

In terms of the overall debate on asylum and migration management policies, two developments in 2017

are of specific importance. First, the fall in arrivals via the Central Mediterranean route came about after implementation in the summer of 2017 of the Italy-Libya Memorandum of Understanding (MEDAM 2017).¹ This includes assistance to the Libyan coast guard as well as to local communities in southern Libya. Other initiatives supported by the EU in Niger, the main entry route into Libya from Western Africa, also likely played a role. These initiatives largely arose from the refusal of other EU countries to help Italy accommodate people rescued in the Mediterranean

Table 1.1 Irregular entries into the EU by main route, 2014–17

Route	2014	2015	2016	2017 (total)	2017 first half	2017 second half
Central Mediterranean Destination: Italy, Malta Origin: Eritrea, Guinea, Nigeria, Somalia	170,760	153,946	181,126	118,962	83,533	35,429
Eastern Mediterranean Destination: Greece Origin: Afghanistan, Iran, Iraq, Somalia, Syria	50,830	885,386	182,534	42,319	13,464	28,855
Western Mediterranean Destination: Spain Origin: Sub-Saharan and West Africa	7,840	7,164	10,231	23,113	7,552	15,591
Western Balkans Destination: Hungary, (Germany, Austria...) Origin: Albania, Kosovo, plus arrivals from the Eastern Mediterranean route	43,360	764,038	122,779	12,179	5,728	6,451

Source: Own elaboration based on Frontex.

¹ We make extensive reference to the first MEDAM report in this section, where the fundamental interdependencies and spillovers among the various policy areas are discussed in detail (see sections 2.2 and 2.3 in MEDAM 2017). This section is not meant to cover all elements of the Common European Asylum System.

as part of various search and rescue (SAR) operations. This shows that there is very limited support among EU member states for burden sharing when it comes to asylum seekers who are unlikely (on average) to receive protection in the EU. The same challenge was already embodied in the design of the EU relocation scheme for asylum seekers that expired in September 2017 and covered only individuals from countries with a protection ratio of more than 75 percent. Since most asylum seekers who arrive after traveling across the Central and Western Mediterranean have little chance of being recognized as refugees in the EU, the proposed reforms of the Dublin Regulation would have little impact on the current situation.

Second, while there were fewer crossings from Turkey to the Greek islands in 2017 than in 2016, they actually increased in the second half of 2017 (table 1.1). Moreover, very few migrants are returned from Greece to Turkey although this is foreseen in the EU-Turkey agreement. While some refugees have been moved from the islands to the Greek mainland, reception centers on the islands are still under strain and living conditions are often precarious. Hence, there is a need not only to improve reception conditions but also to implement a functioning return system as laid out in the EU-Turkey agreement, including a mechanism for monitoring the conditions of refugees upon return. Additionally, EU countries still have to agree on the second tranche of payments to the Facility for Refugees in Turkey (€3 billion) to be contracted in 2018.

Both developments illustrate the need for more EU involvement in managing migration to EU countries, in line with the concept of “refugee protection as a public good” as argued in the first MEDAM report (2017). They also highlight, in the case of Italy, the importance of incentives for individual member states. In the absence of a systemic EU approach to migration, member states are left to devise their own policies to fill the gaps. These may or may not be optimal from the perspective of all 28 member states, but they constitute our benchmark for evaluating alternative policy prescriptions. This is an important metric to understand. As an example, a feasible common EU policy in Libya would involve cooperation with the authorities on the ground and could eventually improve conditions for migrants in Libya (for instance, by pushing authorities not to violate the human rights of migrants; facilitating voluntary return; offering resettlement to the most vulnerable migrants; or providing legal pathways for some labor migrants). The most likely alternative to a common EU policy along these lines is the present disparate (and likely more restrictive) mix of asylum policies of

individual EU member states – and, hence, worse conditions for current and future migrants in Libya. The relevant counterfactual is not a well-organized transfer of all migrants from Libya to Italy.

In this section, we begin by assessing the internal dimensions of the EU’s migration management with a focus on the Dublin Regulation, the asylum systems of member states, and external border management. Policy reforms that represent steps toward a sustainable EU system of asylum management, each building on our notion of flexible solidarity, follow from this assessment. We then assess the external dimension, notably financial support for countries that host refugees, including the EU-Turkey agreement, and funding for international organizations engaged in migration management. We conclude by highlighting the steps needed to improve governance of the external dimension while ensuring fair cooperation within the EU.

Internal dimensions of EU migration governance

In our first MEDAM report, we outlined the first-best solution to the provision of the public good of refugee protection within the EU (MEDAM 2017): individuals recognized as needing protection are relocated within the EU according to a formula that takes into account the preferences of member states and refugees. The preconditions for this approach to be optimal are central (EU-level) external border management and asylum standards, in addition to the central financing of integration costs, along with the costs of hosting and returning rejected asylum seekers. Yet we recognized, and maintain, that a proposal for such a centralized system runs afoul of political realities. Thus, below the emphasis is on concrete implementable steps toward a better EU approach to migration management. Our key point about flexible solidarity is that while all member states will have to make contributions, they may vary in intensity depending on the policy area and action.

Reforming the Dublin Regulation

The proposed reform of the Dublin Regulation² has become a hallmark of the divisiveness of asylum and migration policy among EU member states. Most observers agree that an overhaul is necessary because the present system, *in principle*, puts a disproportionate burden on countries on the external border due to the ‘first country principle.’ The main contentious point of the proposed reform is an automatic, mandatory mechanism for relocating asylum seekers that is triggered when a country receives more asylum applications than 150 percent of a distribution key, which is determined

² See MEDAM (2017) for an initial assessment of the proposal (i.e., European Commission, “Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person” (recast), COM(2016) 270 final, Brussels (May 4, 2016)).

by a function of that country's share of population and GDP.³ Opposition to this mandatory relocation aspect has meant that after two years there is still no common position in the European Council.

This divisiveness casts doubt on one of the presumed advantages of mandatory relocations: crisis resilience. If a country's asylum system is overburdened by a humanitarian crisis, the automatic relocation mechanism is triggered. However, not only is there the issue of whether reluctant countries will actually accept relocated refugees in greater numbers in the event of a crisis but also whether they will have the structures in place to facilitate meaningful integration into society and, importantly, to limit secondary movements in a borderless Schengen area.⁴ While such movements would be illegal and could carry penalties, the past years have shown that such sanctions are very difficult to enforce, particularly in the face of a large number of people moving.

Moreover, had the proposed amended Dublin Regulation been in place during 2017, it would have done little to address the problem that Italy encountered with irregular migrants in the past year. The reason is that frontline member states would have to carry out admissibility checks prior to implementing Dublin procedures, which means assessing whether applicants have arrived from a first country of asylum, a safe third country, or a safe origin country, or whether they pose a threat to national security. In such cases, the member state responsible for assessing the application is the member state of first arrival. Given the nationalities of the migrants arriving in Italy and the various countries that they transited, only a small share of those arriving in Italy would qualify for relocation. In fact, few relocations—as a share of total asylum applications—would have taken place at all in 2017.

Given the political divisiveness and limited effectiveness of mandatory relocation, we argued in our 2017 MEDAM report that a politically feasible way forward is to rely on a 'coalition of the willing' member states for relocations when needed in times of crisis. A coalition of the willing would remain the mainstay of an approach applying flexible solidarity to relocations: financial compensation from the EU budget would be allocated for relocated refugees, ensuring burden sharing through contributions from member states as set out in the Multiannual Financial Framework. It would be natural to align this amount with the one disbursed for the resettlement of refugees from third countries

under the Union Resettlement Framework (see section 1.2). For many countries, however, the proposed amount of €10,000 per refugee is too low relative to the cost of hosting people in need of protection. A higher amount, potentially linked to a cost of living index, would enhance financial solidarity. Countries not participating in the relocation scheme would be expected to contribute financially and in other ways to member states hosting many refugees.

To achieve further financial burden sharing in the longer term, a system of central financing per asylum seeker should be considered. Contributions from the EU budget would depend on the actual costs and subsequent status of the asylum seeker (i.e., recognized versus non-recognized). The system would apply not only in times of crisis and relocation but to every refugee hosted. To be meaningful this would require dedicated financing through the EU budget. With an average of around 600,000 asylum applications per year over the past decade, an average payment of €10,000 per asylum seeker (already on the low side) would require an annual budget of €6 billion per year. To limit the budgetary impact, the system could kick in when a country exceeds 50 percent of its reference key mentioned above (and it would cover only asylum seekers above the threshold). The upcoming budget cycle for the period 2021–27 provides an opportunity for introducing such a system.

Support for external border management

Member states on the external border will still require additional support to manage the EU's external borders. Assistance in managing external borders is provided through the European Border and Coast Guard Agency (EBCG) (MEDAM 2017). The EBCG continues to support countries with external borders primarily along the three Mediterranean access routes and the Western Balkans. The foreseen upgrade of the agency's capacity is ongoing and when it comes to pledging and nominating manpower, the rapid reaction force to be deployed in case of emergency is now fully staffed.⁵ However, committing equipment has been slower and the Commission has called on member states to act on this.⁶ In addition, there is an immediate need for allocating, from member states, personnel and equipment to cover activities in 2018. Given the priority member states attach to controlling borders and return operations (on which the EBCG is assisting member states), covering these gaps should be a priority.

³ The proposal contains other changes (such as new obligations aimed at limiting the risk of secondary movements, shorter time limits for the different steps of the procedure, transformation of take-back requests into simple notifications, and an enlarged scope of the information to be provided to applicants), which can be implemented independent of the relocation mechanism.

⁴ The EU relocation scheme ending in 2017 had already shown signs of these problems: all the people relocated to Latvia have since left the country. See *Baltic Times*, "Only five of the asylum seekers relocated to Latvia are still in the country" (February 22, 2017), https://www.baltictimes.com/only_five_of_the_asylum_seekers_relocated_to_latvia_are_still_in_the_country/.

⁵ Composed of 1,500 border guards, the rapid reaction pool is a standing corps at the disposal of the EBCG to be deployed in emergency situations that require immediate action or which could jeopardize the functioning of the Schengen area.

⁶ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, "Progress report on the Implementation of the European Agenda on Migration," COM(2018) 250 final, Brussels (March 14, 2018).

Contributing funding and equipment to the EBCG provides scope for flexible solidarity: Member states that spend less than others on hosting and integrating irregular migrants may be encouraged to contribute more immediate additional funding for EBCG activities. Such a linkage should be a guideline for the Commission in upcoming talks with member states on additional funding. Going beyond immediate needs, the next EU budget cycle (2021–27) should include a fully funded EBCG, ensuring full financial burden sharing among all member states.⁷

As part of its operations in the Mediterranean Sea and external border management, the EBCG together with Italian authorities operates training programs for the Libyan coast guard to limit the departures of irregular migrants from Libyan shores and to carry out SAR operations within Libyan territorial waters.⁸ According to media reports, the Italian government also works directly with militias along the coastline and in southern Libya to prevent further migration and departures.⁹ Other related activities mainly financed by the EU Emergency Trust Fund for Africa aim at limiting the inflow of migrants into Libya along the main migratory routes (primarily via Niger). Though difficult to estimate, it is reasonable to assume that the fall in the number of crossings in 2017 is largely explained by these activities.

Yet, working with the Libyan government, which is widely acknowledged to have only partial control of Libyan territory, as well as with other nongovernment actors is problematic for two main reasons. First, there are the widespread reports of human rights abuses in Libya and deplorable conditions even in government-run detention centers. Second, without providing migrants alternative options for leaving Libya, they risk remaining stranded in detention centers or in informal centers run by people smugglers.

In order to improve the situation in Libya, further training and financing of the Libyan coast guard should be made conditional on letting the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) have access to the migrants rescued in SAR operations as well as those in detention centers.¹⁰ The IOM is running a Voluntary Humanitarian Return program from Libya whereby migrants in detention centers who wish

to return to their country of origin are provided with assistance to do so. Efforts are also under way to evacuate vulnerable migrants to Niger jointly with the UNHCR, with a view to resettling them in the EU (see section 1.2 below).

Both the European Commission and Italy recognize that the current policies to manage the external border—a consequence of large numbers of irregular crossings of and drownings in the Mediterranean, combined with a lack of effective return policies once migrants land in Italy—should not stand alone. Rather, a three-pronged strategy to manage migration pressure from Northern Africa is necessary: (i) limit crossings of the Mediterranean and importantly, migration into Libya in the first instance; (ii) offer migrants in Libya assistance to return to and reintegrate into their country of origin; and (iii) evacuate vulnerable people in need of protection for subsequent relocation. This three-pronged strategy requires close cooperation with third countries as well as international organizations (see the subsection on the external dimensions of EU migration management below).

Reforming EU asylum systems

External border management (as discussed above) aims to limit the incentives to cross the Mediterranean for those individuals without a claim for international protection. Nevertheless, these policies may not be sustainable due to the fragility of the Libyan partner. Moreover, in the long run, policies for managing external borders alone cannot fully address two fundamental problems affecting European asylum systems: lengthy procedures and the inability to return individuals whose asylum application is rejected. The latter is an EU-wide issue that we treat in section 1.2.

As regards asylum systems, a combination of lengthy asylum procedures, a low probability of being returned to the country of origin after being denied protection, and the ease of crossing internal EU borders imply that the outcome of the asylum procedure has little impact on migrants' prospects for staying in Europe. Lengthy asylum procedures also put pressure on the hotspots where applicants are waiting for asylum decisions (see MEDAM 2017). Furthermore, for people eligible for international protection, the long processing time may negatively affect integration prospects (*ibid.*).

⁷ The potential scope of the future EBCG ranges from funding the current level of operations to a fully-fledged EU EBCG taking over all border operations from member states with its own equipment and staff. The latter option is estimated to require a budget in the order of 14 percent of today's EU budget (European Commission, "Progress report on the Implementation of the European Agenda on Migration," COM(2018) 250 final, 2018).

⁸ See the EUNAVFOR MED Press Release, "Operation SOPHIA: New training modules for the Libyan Coastguard and Navy arranged in Italy," Rome (September 9, 2017), https://eeas.europa.eu/csdp-missions-operations/eunavfor-med-operation-sophia/32315/operation-sophia-new-training-modules-libyan-coastguard-and-navy-arranged-italy_en.

⁹ For instance, see M. Herbert and J. Harchaoui, "Italy claims it's found a solution to Europe's migrant problem. Here's why Italy's wrong," *Washington Post* (September 26, 2017). The article reports claims about payments made by Italian government representatives using intermediaries such as mayors and other local leaders. Other concerns were expressed about the risk of turning smugglers into coast guards overnight. The UN Security Council documented existing links between armed criminal groups and the coast guard in Zawiya, specifically concerning the business run with detention centers in the region and human rights violations observed in such centers (see Annex 17 and Annex 30 of the Final Report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011), S/2017/466, United Nations Security Council, June 1, 2017).

¹⁰ As proposed by Dalhuisen and Knaus (2018) and Leghtas (2018).

The effectiveness of asylum procedures varies by country (and according to surges in caseloads).¹¹ Still, because most crossings of the Mediterranean go to Italy and Greece, improving the speed of procedures in these two countries is an important element to enhance overall EU migration management. EU support for Greece and Italy is already available through the European Asylum Support Office (EASO), the EU body responsible for operational support for member states on the external border challenged by a large number of asylum applications (MEDAM 2017).

To support Greek and Italian authorities in coping with asylum applications and shortening the length of asylum procedures, investing additional resources at the EU level to increase assistance is a priority. The additional funding and operational manpower needed would be of an order that can be accommodated by the current EU budget. One concrete proposal by the European Stability Initiative (2018b) is to set up pilot projects in Greece and Italy modeled on the procedures of the Dutch asylum system. In the Dutch general asylum procedure, a first-instance decision is reached following an eight-day process during which asylum seekers are interviewed twice and enjoy free legal assistance. In the case of a negative first-instance decision, a final decision is reached within four weeks after the appeal is lodged; therefore, the time needed to reach a final decision in the Netherlands is usually two months (European Stability Initiative 2018a; AIDA and the Dutch Council for Refugees 2018).

For Greece this would permit faster transfers to Turkey under the EU-Turkey agreement (discussed further below), whereas for Italy faster decisions would facilitate return management and reduce incentives to cross the Mediterranean for migrants who are ineligible for protection. The initiative to speed up asylum procedures will have to come from the Italian and Greek governments. However, a comprehensive EU plan, addressing important complementary policies such as improving return rates, cooperation with Turkey on the application of the EU-Turkey agreement, and a stated willingness to provide flexible solidarity in order to relocate recognized refugees when systems are overburdened, may be an attractive package to help convince leaders in Greece and Italy.¹²

Another critical aspect of member states' asylum systems is the diversity of asylum outcomes and reception conditions. There are large disparities in member states' propensity to grant asylum to refugees of the same nationality. Afghans applying for protection in 2016 in Italy had a 97 percent chance of being recognized as needing international protection (Parusel and Schneider 2017), vs. 1.7 percent in Bulgaria. Such differences are difficult to explain with reference to applicants from one and the same country of origin having different characteristics in the two member states. Furthermore, differences in the type of protection granted (e.g., under the 1951 Refugee Convention vs. subsidiary protection) are also common among EU countries (SVR 2018).

Variations in asylum outcomes on this scale among otherwise similar cases are not only objectively unfair, favoring the informed, resourceful, and least vulnerable migrants; they also increase incentives for irregular movements within and outside the EU, often relying on smugglers to reach the destination country perceived as most favorable. These are good reasons to further harmonize member states' asylum systems.

As part of the Common European Asylum System the Commission has proposed several initiatives to ensure greater harmonization: the Reception Conditions Directive¹³ aims at further harmonizing reception conditions across member states with the goal of limiting secondary movement,¹⁴ whereas the Qualification Regulation¹⁵ and the Asylum Procedure Regulation¹⁶ set common standards for granting international protection and define the relevant procedures. Member states would be obliged to rely on common analysis and guidance about the situation in the country of origin provided at the EU level by the European Union Agency for Asylum and by dedicated European networks. Other provisions include common time limits for appeal stages as well as a common EU list of safe third countries.

These reforms are vital to move toward a more centralized asylum system for the EU in the longer term. While there have been calls for 'more EU' in processing asylum claims, direct involvement in assessing claims would necessitate not only that this competence—which presently lies with member states—be transferred to an EU institution, but also that a

¹¹ European Commission, "Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU," COM(2016) 467 final, Brussels (June 13, 2016).

¹² The Italian government amended its immigration law in April 2017 to shorten asylum procedures, but it is still early to assess its effectiveness.

¹³ European Commission, "Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection" (recast), COM(2016) 465 final, Brussels (June 13, 2016).

¹⁴ It seeks to do so, for instance, by standardizing definitions (e.g., of family members and people with special reception needs), by applying operational standards and indicators for reception conditions developed by EASO, and by imposing a three-month limit after the lodging of an application to grant access to the labor market.

¹⁵ European Commission, "Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents," COM(2016) 466 final, Brussels (June 13, 2016).

¹⁶ European Commission, "Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection," COM(2016) 467 final (2016).

mandatory distribution key for asylum seekers be in place. In the short term, EU institutions are limited to acting through EASO to support national asylum systems operationally and financially. This is achievable in line with the notion of flexible solidarity through the EU budget and a coalition of willing member states for relocation in times of crisis.

External dimensions of EU migration governance

With regard to its asylum system, the EU not only needs to put its own house in order. There is an important external dimension to EU asylum policy that involves support for third countries that host refugees and for international organizations engaged in global migration governance. This section focuses on support for Turkey under the EU-Turkey agreement.¹⁷ It also looks at support for African countries and the international organizations engaged there through the EU Emergency Trust Fund for Africa.

In general, and as argued in the 2017 MEDAM report, the EU in cooperation with member states should take on more financial responsibility for the protection of refugees at the global level. This includes increased support for third countries that host many refugees and the international organizations that assist them.¹⁸ While many member states are already important actors in delivering humanitarian aid, increasing the part financed by the EU budget would ensure genuine burden sharing among member states.

Stable funding for host countries reduces the risk of sudden secondary movements of large numbers of refugees along often dangerous routes. Therefore, funding for the second tranche of the EU-Turkey deal should be committed as soon as possible. Although Turkey remains a difficult partner, the bulk of funding is of a humanitarian nature and is directed at refugees needing support, mostly through nongovernmental organizations rather than the Turkish government.

The EU-Turkey agreement

The EU's engagement with Turkey has worked well when it comes to practical implementation on the ground in Turkey. All of the €3 billion from the first tranche had been contracted out by the end of 2017, with all but a small part of it funding nongovernmental and international organizations. The EU-Turkey Statement¹⁹ foresees another €3 billion tranche committed during 2018. This deal is an important pillar in manag-

ing migration to the EU and supporting third countries hosting refugees. Making these additional funds available is a key priority. The Commission has suggested covering €1 billion from its own funds with member states funding the remainder. The share funded by member states provides an opportunity to apply flexible solidarity by having those countries least affected by immigration finance a relatively larger share of the commitment.

While support for refugees in Turkey has worked well under the agreement, the one-for-one return and resettlement procedure has been less successful to date. Since the conclusion of the EU-Turkey agreement, very few people have been returned from Greece to Turkey. Against a total of more than 50,000 arrivals, only just over 2,000 people have (or have been) returned to Turkey in the two years since March 2016; another 12,000 have returned voluntarily (from both the Greek islands and the mainland) through the Assisted Voluntary Return and Reintegration program.²⁰ Therefore, the probability of being returned to Turkey is very low. With only few individuals relocated to other EU member states,²¹ a great proportion of the people who have arrived on the Greek islands since March 2016 are still waiting for a decision on their request for protection.

The main problem is the slow speed of asylum decisions in Greece as discussed above, coupled with the limited accommodation capacity on the islands where refugees arrive. In the second half of 2017, an average of just over 3,000 people per month arrived on the islands. With a total capacity of around 7,000 places, people cannot spend much more than two months on average on the islands before facilities become overcrowded (European Stability Initiative 2018c). However, refugees spent an average of five months on the islands in 2017. Hence, reception centers are already at more than full capacity, which makes the system vulnerable to a sudden increase in arrivals, especially if the number of returns to Turkey remains low.

Moreover, there is the issue of whether Turkey can be considered safe for returned asylum seekers, without the risk of abuse and chain refoulement to unsafe countries. These risks remain in particular for non-Syrians (Ulusoy and Battjes 2017). The upcoming talks between EU member states and Turkey on how to spend the second tranche of EU payments provide a good opportunity to strengthen monitoring as foreseen in the deal.

¹⁷ European Council, "EU-Turkey Statement," Brussels (March 2016), <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.

¹⁸ Besides Turkey, the EU is supporting Syria's other neighbouring countries, Jordan and Lebanon, in providing better services and protection to asylum seekers and refugees. The budget committed by the EU for actions to be carried out in 2018 is €334 million for Lebanon and €228 million for Jordan. See European Commission, "Progress report on the Implementation of the European Agenda on Migration," COM(2018) 250 final (2018).

¹⁹ European Council, "EU-Turkey Statement" (2016), <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.

²⁰ European Commission, "EU-Turkey Statement: Two years on," Brussels (March 2018), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_eu-turkey-two-years-on_en.pdf.

²¹ As of 18 April 2018, a total of 21,999 people (33 percent of the 66,400 originally foreseen) have been relocated from Greece to other member states since the launch of the Member States' Support to Emergency Relocation Mechanism (see European Commission, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf).

When it comes to returns from the Greek islands, a procedure based on European Court of Human Rights (ECtHR) case law and previous European Commission guidelines for resuming Dublin transfers to Greece in 2016 should be explored (European Stability Initiative, 2018c). This would entail Turkey, Greece, and the EU agreeing on a monitoring mechanism to ensure that the guarantees provided by Turkey in relation to returning asylum seekers are implemented on the ground.

The legal background is a ruling by the ECtHR in 2014 (*Tarakhel v. Switzerland*).²² The court decided to suspend the relocation of the Tarakhel family from Switzerland to Italy (which was the country of first arrival and thus responsible for the asylum procedure under the Dublin Regulation) because the Swiss authorities did not request any guarantees from Italy about the reception conditions for the family. The decision requires the sending state to inquire about the receiving state's compliance with the European Convention on Human Rights (Article 3) if there is information that points to possible, case-specific, individual risks, even when there is no indication of systematic deficiencies (ECRE 2015; Taylor 2014). Since decisions of the ECtHR apply to the Council of Europe (of which Turkey is a member), Turkey could provide such assurances to EU member states and Greece through a monitoring body.²³

The Tarakhel case formed the background to the procedures suggested by the European Commission in 2016 in its recommendation to resume Dublin transfers to Greece, after a period in which they had been suspended. The Commission recommended resuming Dublin transfers "on the basis of individual assurances...and taking account of the currently inadequate treatment of certain categories of persons."²⁴ Specifically, it suggested that the process includes active contact between the sending country and the receiving country (Greece); a team of member state and EASO experts to monitor conditions (pre-transfer and upon transfer) and to facilitate the exchange of information; and periodic reporting by Greek authorities on progress made in addressing shortcomings of their asylum system.

Support for Northern Africa

Countries in Northern Africa, particularly Libya, are at the end of migration routes from Western and Eastern Africa to the Mediterranean (and further toward Europe). The EU is financing activities, mainly through the EU Emergency Trust Fund for Africa, in Libya and

countries along the migration routes to relieve the hazardous conditions migrants face. Given the difficult situation in Libya, supporting migrants there is a policy priority. EU involvement in Libya was stepped up with the creation of the joint African Union-EU-UN task force in November 2017.

Among other actions, the EU is providing finance to the IOM for its assisted voluntary return program for migrants stranded in Libya or along the main migration routes, where information on the 'costs and risks of irregular migration' is also provided by the IOM or local partners.²⁵ In the three months to mid-March 2018, 10,000 migrants were assisted with their voluntary return (IOM 2018). The program also provides help to reintegrate into local communities in the countries of origin. These initiatives are important to help migrants already stranded in Libya and to avoid new migrants entering Libya.

Of equal importance is assisting vulnerable migrants in need of protection. This group of migrants, mainly unaccompanied children, single mothers, and people with serious medical conditions, may not be able to return, even with IOM assistance. To help this group, the EU is working with the UNHCR under the Emergency Transit Mechanism to evacuate migrants in need of protection from Libya to Niger for subsequent resettlement. By March 2018, 1,300 people had been evacuated, although of these only 25 had been resettled.

These programs matter in terms of numbers and make a difference on the ground. In 2017, the Libyan coast guard intercepted an average of 1,500 people per month (European Stability Initiative 2018b). Extending IOM support to all individuals disembarked by the Libyan coast guard is thus possible given the size of the voluntary return program. The number of migrants in official detention centers was brought down to 4,000 in mid-March 2018 from 20,000 in October 2017.²⁶

Resettling vulnerable migrants is more difficult. Yet, the EU can make a difference by committing some of its planned 50,000 resettlement places (see section 1.2) to resettlement from Niger. The numbers bear this out: in January 2018 the UNHCR reiterated its call for 40,000 resettlement places covering 15 countries along the central migration routes toward the Mediterranean (including Libya). While at that time only 13,000 places had been pledged, adding a significant proportion of the 50,000 places available under the EU scheme would go a long way towards meeting needs.

²² See the judgment of the ECtHR, Grand Chamber, in *Tarakhel v. Switzerland*, App. No. 29217/12, Eur.Ct.H.R. (2014).

²³ As reported above, the European Commission has already proposed a similar system for relocation in Greece under the Dublin Regulation. See Commission Recommendation (EU) 2016/2256 of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013 of the European Parliament and of the Council, OJ L 340/60 (15.12.2016).

²⁴ Commission Recommendation (EU) 2016/2256 on the resumption of transfers to Greece (2016).

²⁵ European Commission, "EU-IOM Joint Initiative for Migrant Protection and Reintegration: One year on," Factsheet, Brussels (December 15, 2017), http://europa.eu/rapid/press-release_MEMO-17-5306_en.htm.

²⁶ UN News, "Thousands of migrants return home safely from Libya as part of UN-supported programme" (13 March 2018), <https://news.un.org/en/story/2018/03/1004782>.

In light of the results so far, ensuring sufficient funding for projects under the EU Emergency Trust Fund for Africa is a priority to further stabilize the situation along the different migration routes. The overall funding gap in 2018 and 2019 is about €1.2 billion. To close this gap, the Commission may usefully call especially on countries that have been less affected by migrant flows so far.²⁷

Regarding the external dimension of migration policy, we reiterate our warning (MEDAM, 2017) against adopting an ‘out of sight, out of mind’ mentality because the number of Mediterranean crossings has decreased. Given the volatile situation in Libya, withdrawing external support for migrants in the country and ceasing to engage with the authorities on the ground would almost certainly cause conditions to deteriorate and could lead to a resurgence in irregular departures to Europe.²⁸

Steps toward flexible solidarity

Better EU migration management will entail less irregular immigration and more regular, legal immigration (covered in detail in sections 1.2 and 1.3, respectively). In this section, we have identified the key institutional building blocks for improving EU migration management, with our 2017 MEDAM Assessment Report as a starting point. On this basis, we have recommended several specific actions, based on the notion of flexible solidarity among member states in the areas of asylum and immigration policy.

The drive by the European Commission to harmonize member states’ asylum systems is necessary both for reasons of fairness and to limit the secondary movement of migrants within the EU. Member states at the external border, notably Italy and Greece, should be able to call on more support, both technical (through EASO) and financial.

When it comes to reforming the Dublin Regulation, the diversity of views and political preferences within the EU regarding immigration suggests that the preferable option is a flexible ‘coalition of the willing’

approach for relocating recognized refugees in times of crisis, rather than mandatory relocation. Flexible solidarity can be achieved in the form of ‘money follows the refugee’ compensation from the EU budget. In the long term, this will need to be part of the new Multiannual Financial Framework (2021–27). Until 2021, i.e., for the years 2019 and 2020, financial burden sharing could come from a small-scale program calibrated to what can be achieved within the existing budget. One idea is to trigger compensation per refugee once a certain threshold number has been reached in a member state.

With respect to managing external borders and providing support for host countries outside the EU, the following issues are key:

- strengthening the EBCG by equipping the agency as has already been agreed;
- funding the upcoming €3 billion tranche under the EU-Turkey agreement in exchange for guarantees from Turkey that allow the EU to fully implement the deal and return refugees to Turkey in compliance with Greek and EU law;
- conditioning further training and financial support for the Libyan government and its coast guard on giving the UNHCR and IOM full access to rescued individuals and detention centers; and
- meeting the upcoming funding needs of the EU Emergency Trust Fund for Africa—in particular, support for the UNHCR and IOM programs for voluntary return and evacuation of vulnerable migrants.

For those steps where additional funding from member states is necessary, a flexible solidarity approach calls for a relatively larger financial burden falling on those countries less exposed to migrant flows.

²⁷ See European Commission, “Progress report on the Implementation of the European Agenda on Migration,” COM(2018) 250 final (2018).

²⁸ The Commission warned that funding for the year 2018 is falling short of expectations. See European Commission, “Progress report on the Implementation of the European Agenda on Migration,” COM(2018) 250 final (2018).

1.2 Curbing irregular migration on the Mediterranean: Increasing refugee resettlement and managing return

Lead authors:
Mattia Di Salvo and Lars Ludolph

Over the past decade, the Mediterranean has turned into the busiest yet deadliest migration corridor in the world. Between 2009 and 2017, more than 2 million migrants arrived by crossing one of its routes; in 2016 and 2017 alone, more than 8,000 people died or went missing when attempting to make their way to the EU.²⁹ With the closure of the Western Balkan route and the EU-Turkey agreement in place, the number of asylum seekers crossing from Turkey to Greece has decreased sharply.³⁰ On the other hand, the deterioration of the security situation in Libya and the increased migratory pressure from Sub-Saharan African countries has led to record arrivals in Italy via Libya, with monthly numbers often exceeding 20,000 in 2016 and in the first half of 2017. In the second half of 2017 and in the first trimester of 2018, arrivals have decreased significantly, following the implementation of the Memorandum of Understanding between Italy and Libya signed in February 2017. However, given the situation in Libya, concerns abound about the sustainability of the current policies to reduce arrivals in Italy.

The central dilemma behind the EU and Italy's emphasis on policies that curb all migration flows, including those of genuine refugees, is that of low return rates of rejected asylum seekers to their countries of origin—combined with an inefficient asylum system, primarily in Italy, where decisions on asylum can take years to conclude. At the same time, vulnerable migrants in genuine need of humanitarian protection have very few legal options to enter the EU.

This section zooms in on the two main shortcomings of the EU's approach to managing migration across the Mediterranean that cause these dilemmas: the lack of refugee resettlement from third countries to the EU and inefficient return operations of rejected asylum seekers from the EU to third countries. Both dilemmas must be addressed in order to move EU policies toward a sustainable approach of 'closing the backdoor and opening the front door.'

The former requires a commitment from EU member states to make more places available to the UNHCR.

The latter, as we argue, requires signing so-called non-standard readmission agreements with African countries in the context of genuine partnerships with these countries. The key issue is that, at present, the EU does not have sufficient bargaining instruments at its disposal to incentivize partner countries to readmit their citizens.

Refugee resettlement from third countries to the EU—Much room for improvement

Opening up legal pathways to the EU for humanitarian migrants currently does not require innovative policy solutions. UNHCR estimates on the need for resettlement places still exceed the actual number of resettled refugees by a huge margin (table 1.2).

EU countries have resettled fewer refugees than other developed countries: around 12 percent of the global total between 2014 and 2016. The increase to 36 percent in 2017 can be explained by two factors. First, the EU took in a considerable number of Syrians under the EU-Turkey agreement so that the share of Syrians among those resettled in the EU rose to 84 percent in 2017 from 57 percent in 2014. Under the EU-Turkey agreement, the EU pledged to resettle 25,000 Syrians from Turkey to the EU in 2017;³¹ it nearly reached that target with more than 18,000 Syrians resettled in the EU by November 2017. Second, global resettlement pledges decreased considerably from 126,291 in 2016 to 60,272 in 2017.

Despite the increased resettlement efforts by EU member states, many geographical regions—notably in Sub-Saharan Africa—do not see their resettlement needs being met. In 2017, the UNHCR estimated a total of 441,523 refugees to be in need of resettlement from an Africa country, but only a meager 7,000 quota places were allocated to Sub-Saharan countries by all destination countries combined. De facto, there are presently no legal pathways to the EU (or other countries involved in UNHCR resettlement) for vulnerable refugees from Sub-Saharan Africa (UNHCR 2017).

²⁹ The numbers represent aggregated statistics based on Frontex and UNHCR data. The fatalities are as recorded by the IOM's Missing Migrant Project.

³⁰ Numerous challenges persist on the Greek islands, see section 1.1.

³¹ See European Commission, 'Seventh Report on the Progress made in the Implementation of the EU-Turkey Statement,' COM(2017) 470 final, Brussels (September 6, 2017), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20170906_seventh_report_on_the_progress_in_the_implementation_of_the_eu-turkey_statement_en.pdf.

Table 1.2 Global refugee resettlement needs and actual number of refugees resettled, 2014–18

Year	Estimated global number of refugees in need of resettlement	Global number of refugees resettled	Total number of refugees resettled in the EU	EU share of the total resettled (%)	Share of Syrians among the total number resettled in the EU (%)
2014	691,000	73,608	8,894	12.1	57.5
2015	960,000	81,893	9,629	11.8	63.1
2016	1,153,000	126,291	13,277	10.5	79.1
2017	1,190,000	60,272	21,568	35.8	83.7
2018	1,200,000	n.a.	n.a.	n.a.	n.a.

Source: Own elaboration based on UNHCR data; 2017 data up to and including November.

Note: Recent numbers in particular are subject to small changes (see UNHCR, <http://www.unhcr.org/uk/resettlement-data.html> for updates); n.a. = not available.

The European Commission is not unaware of the problem. It has recently met its goal, stated in the latest progress review of the 2015 European Agenda on Migration, of offering a total of 50,000 places for resettlement in EU member states during 2018 and 2019.³² The legislative motions toward a more coordinated and strategic EU resettlement framework therefore continue as planned and a compromise is likely to be reached in 2018. The framework will help to coordinate resettlement efforts at the EU level with member states contributing resettlement places on a voluntary basis, according to Council and Commission positions (the European Parliament wants to make participation mandatory). In return for participating, it is proposed that member states receive a lump-sum payment of €10,000 for each resettled individual.

The voluntary coordinated approach with flexible solidarity ensured via the payment from the EU budget is promising because it allows the Commission to verify the number of resettled individuals. However, the €10,000 currently suggested is unlikely to cover the long-term financial costs in most countries³³ and can only serve as a useful lever to adjust incentives marginally. In the long run, the European Commission will need to account for country-specific expected costs more accurately.

In coordination with the program for Voluntary Humanitarian Return from Libya run by the IOM, the resettlement of vulnerable individuals in the EU could help the humanitarian emergency situation in Libya in

the short term. The UNHCR already called for 40,000 additional places for resettlement from countries along the main routes leading toward the Central Mediterranean in September 2017.³⁴

Yet, with the EU-Turkey agreement in place and an estimated 300,000 Syrians in Turkey in need of resettlement, Sub-Saharan Africa—and vulnerable refugees elsewhere in the world—will likely come away empty-handed even within the new EU resettlement framework. The underlying issue is that global resettlement pledges are still too low relative to global needs. In the long run, meeting global resettlement needs will have to be coordinated at the global level. In this context, the European Parliament has proposed to use each country's share in global GDP as its target share in global resettlement pledges. For the EU, this would imply a goal of approximately 25 percent of annual, projected, global resettlement needs.³⁵

The importance of managing return operations

Improving the existing legal pathways into the EU (see section 1.3) and thus opening the EU's front door to migrants is only sustainable if irregular migration flows, the backdoor into the EU, are reduced. Return policies are a crucial weak link in the EU asylum system and improving their efficiency is a necessary step toward 'closing the backdoor'. If the outcome of an asylum procedure has, *de facto*, little impact on an indi-

³² See European Commission, "State of the Union 2017—Commission presents next steps towards a stronger, more effective and fairer EU migration and asylum policy," Press Release, Brussels (September 27, 2017), http://europa.eu/rapid/press-release_IP-17-3406_en.htm.

³³ The average unweighted estimated cost of an asylum seeker in the EU is around €10,000 for only the first year (MEDAM 2017).

³⁴ See UNHCR, "Central Mediterranean Situation: UNHCR calls for an additional 40,000 resettlement places," Geneva (September 11, 2017), <http://www.unhcr.org/news/press/2017/9/59b6a5134/central-mediterranean-situation-unhcr-calls-additional-40000-resettlement.html>.

³⁵ See European Parliament, "Report on the Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No. 516/2014 of the European Parliament and the Council," COM(2016)0468—C8-0325/2016—2016/0225(COD)), Brussels (October 23, 2017), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2FTEXT%2FBREPORT%2BA8-2017-0316%2B0%2BDOC%2BXML%2B-V0%2F%2FEN&language=EN>.

vidual’s probability of remaining in the EU, this triggers an inevitable chain reaction of adverse incentives under the current Dublin system:

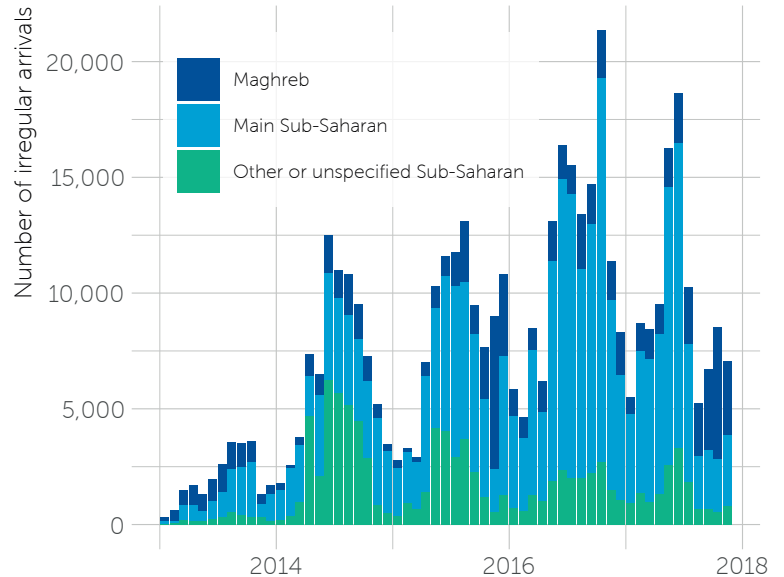
- It creates an incentive for irregular migration, because entering the EU becomes a ticket to stay in the absence of functioning return operations.
- Member states at the external border have an incentive to block out all asylum seekers since it is impossible to tell a priori whether immigrants have genuine humanitarian reasons or are using the asylum channel to enter the EU for economic reasons. This puts genuine asylum seekers at a clear disadvantage.
- Member states at the external border have little incentive to register asylum seekers or speed up asylum procedures, leaving all asylum seekers in a limbo state with adverse effects on their well-being and economic opportunities (Hainmüller et al. 2016).
- Internal EU member states have an incentive to reintroduce border controls at their Schengen borders because, otherwise, rejected asylum seekers might move into their territory and they would be left with the burden of handling return. This is further exacerbated by the incentive of external-border member states to let asylum seekers move on when return operations cannot be carried out.

Between 2008 and 2017, on average, 79 percent of final decisions on international protection (humanitarian status, Geneva Convention status, subsidiary protection status, and temporary protection status) in the EU were negative, and the overall EU-wide return rate—calculated as a share of those ordered to leave—was just 43 percent (37 percent excluding Western Balkans countries of origin). With a total of 6.1 million first-time asylum applications lodged in EU member states over the same period, managing return operations poses a severe challenge to national and supranational policy makers in the EU.

In this context, the large number of migrants entering the EU irregularly via the Central Mediterranean over the past years is particularly problematic. In recent years, these migrants have primarily come from Sub-Saharan African countries (with Bangladesh constituting another noteworthy country of origin) and thus hold nationalities that are most often not eligible for protection in the EU. Figure 1.1 shows the rising share of those arriving irregularly from Africa who have a low chance of protection.

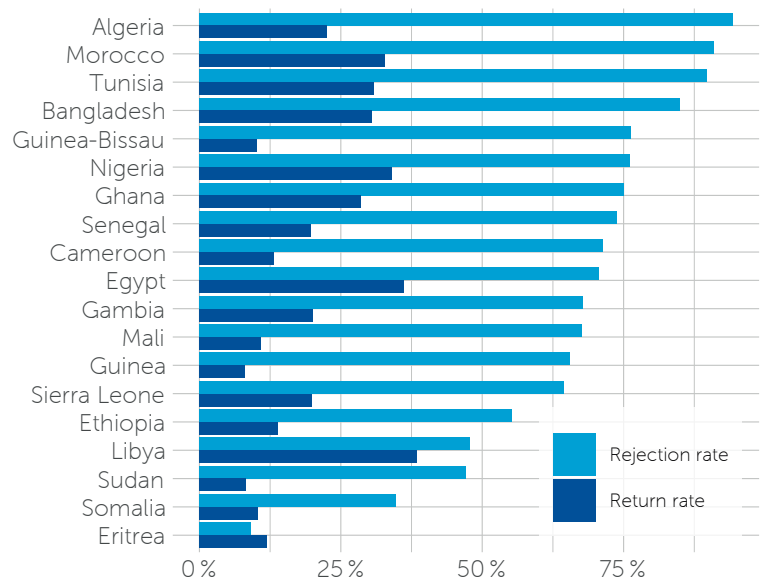
Due to the low protection rates for many nationalities prominent among irregular immigrants, two recent reform proposals for the Dublin system would not substantially alleviate the burden of arrivals via the

Figure 1.1 Monthly evolution of irregular arrivals from Africa (nationalities with average EU rates of first-instance recognition of less than 40 percent, 2013–17)



Source: Own elaboration based on Frontex data (Eurostat data (migr_asydcfina)).
 Note: ‘Main Sub-Saharan’ includes Côte d’Ivoire, The Gambia, Guinea, Mali, Nigeria, and Senegal. ‘Maghreb’ includes Algeria, Egypt, Morocco, and Tunisia.

Figure 1.2 Rejection and total return rates by nationality, 2014–16



Source: Own elaboration based on Eurostat and Frontex, summed 2014–16 data.
 Note: ‘Rejection rate = the share of rejected asylum applications in 2014–16; return rate = the share of the returned among the total number ordered to leave in 2014–16.’

Table 1.3 Main reasons for difficulties in carrying out return operations

Overarching issue	Examples
Unwillingness to cooperate on the part of the rejected asylum seeker	<ul style="list-style-type: none"> • Withholding or destroying documents • Absconding • Misusing the non-detention principle for minors • Launching repetitive appeal procedures
Administrative/technical issues when carrying out return operations	<ul style="list-style-type: none"> • Insufficient resources and infrastructure • Implementation issues with alternatives to detention • Refusal of airline companies to carry out return operations
Unwillingness to cooperate on the part of the source country	<ul style="list-style-type: none"> • Refusal to admit their citizen • Refusal to issue (or delaying issuance of) travel documents • Refusal to issue (or delaying issuance of) identity documents • Refusal to accept charter flights

Sources: Own elaboration based on European Migration Network (2016a; 2016b).

Note: This list is non-exhaustive as it does not include exceptional reasons, such as medical or psychological issues affecting the asylum seekers, the return of asylum seekers rejected on the basis of Article 1F of the 1951 Refugee Convention, and civil society or media efforts against return operations.

Mediterranean on member states at the external border. The European Commission's (2016) proposal³⁶ for recasting the Dublin system includes critical admissibility checks—specifically, relocation of only those asylum seekers who do not come from a safe third country or a first country of asylum. Similarly, the “carefully calibrated filter” suggested by the European Parliament³⁷ in 2017 would exclude asylum seekers from relocation if they have only a low chance of gaining protection.

Return rates are extremely low for almost all rejected asylum seekers entering the EU via the Central Mediterranean. Figure 1.2 shows the rejection and return rates of asylum seekers by the main countries of origin.³⁸

The reasons for the low return rates are manifold. Table 1.3 summarizes them into three categories: (i) unwillingness to cooperate on the part of the rejected asylum seeker; (ii) administrative and technical issues in the EU member state; and (iii) unwillingness to cooperate on the part of the source country.

The first two issues listed in table 1.3 can arguably be overcome by dedicating more resources to return operations. The European Commission envisions supporting member states in these efforts by equipping the European Border and Coast Guard with a true return department that does not rely on specific requests from member states but acts more proactively. In a first step, the return department will develop operational return plans for all member states by mid-2018. Later on, the aim is to coordinate the joint actions of member states on return logistics.³⁹

The European Commission further provides substantial financial assistance to EU member states in carrying out return operations through its Asylum, Migration, and Integration Fund, of which €806 million period is reserved for return and readmission during 2014 to 2020. An additional €200 million was made available in 2017.⁴⁰ Current efforts to develop joint frameworks under the Assisted Voluntary Return and Reintegration program as initiated by the European

³⁶ See European Commission, “Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person” (recast), COM(2016) 270 final, Brussels (May 4, 2016), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/dublin_reform_proposal_en.pdf.

³⁷ See European Parliament, “Report on the Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person” (recast), (November 6, 2017), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bREPORT%-2bA8-2017-0345%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN#title1>.

³⁸ The analysis excludes Syria as, for simplicity, we assume that all Syrians are eligible for protection.

³⁹ Suggested pilot projects include “joint project development management and procurement, shared contracting including on commercial flights, shared detention capacity and management of detention facilities, shared consular support.” See p. 20 of 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 the Delivery of the European Agenda on Migration,” COM(2017) 471 final, Brussels (September 27, 2017), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_communication_on_the_delivery_of_the_eam_en.pdf.

⁴⁰ See European Commission, “Fact Sheet: Making Return and Readmission More Effective,” Brussels (March 2, 2017), http://europa.eu/rapid/press-release_MEMO-17-351_en.htm.

Commission are particularly important: assisted voluntary return is not only more dignified but also more cost efficient than forced return.⁴¹

Many rejected asylum seekers' unwillingness to cooperate originates partly from a shortage of legal pathways available to labor migrants. With very few legal options, some economic migrants attempt to enter the EU through the asylum system. This puts an additional burden on the system, lengthens procedures, and allows economic migrants to live in the destination country for an extended period—especially when they manage to delay the process by administrative appeals and judicial reviews.

Managing return and readmission—Toward genuine partnerships with third countries

The most severe challenge for return operations is the unwillingness to cooperate on the part of the source country. While the straightforward answer to more efficient return operations is to sign readmission agreements⁴² with those countries that are currently unwilling to cooperate on readmission, most standard readmission agreements are highly ineffective as they lack the incentive for the readmitting country to comply.

Third-country governments often do not comply with a readmission agreement if this would be against the interests of their citizens who want to emigrate or receive remittances. At the same time, governments often *sign* a readmission agreement purely in order to facilitate diplomatic ties with partner countries. The key issue is that signing a readmission agreement does not change the bargaining position of the govern-

ment as long as noncompliance does not have negative consequences.

When asymmetries are high between countries that enter into a readmission agreement and de facto only one party needs to readmit citizens back to its territory, agreements need to be embedded in frameworks that address more profound interests than only the prevention of illegal migration flows. It is exactly these so-called nonstandard readmission agreements (see box 1.1) that the EU is working toward in negotiations with Western African countries within the Partnership Framework under the European Agenda on Migration. Nevertheless, progress on returns from the EU of nationals of these partner countries has been very limited so far.⁴³

The European Stability Initiative (2017) suggests that EU readmission agreements should start from a specified date in the future and not apply to asylum seekers (and migrants in an irregular status) already in the EU. Thus the present flow of remittances to partner countries would be unaffected, which would make compliance politically easier for the country of origin. In addition, if asylum procedures in EU external border countries were sufficiently fast (to avoid both absconding and unnecessary detention of asylum seekers), this could greatly curb the incentive for irregular migration.

However, even with these mechanisms in place, the EU needs the right tools to engage in genuine partnerships that balance out the asymmetric efforts that irregular migrants' countries of origin would have to make in readmission. Below, we take a close look at

Box 1.1 Nonstandard readmission agreements

Compared with standard readmission agreements that exclusively lay down obligations, principles, and procedures related to readmission operations (e.g., the sharing of information, time limits, and transportation costs), nonstandard readmission agreements typically cover several policy areas, such as security, energy, trade, development, and counter-terrorism (Cassarino 2010). Prominent examples of such nonstandard readmission agreements are the various administrative agreements and memoranda of understanding that Italy signed with Libya during the Gaddafi era, or more recently, the EU-Turkey agreement.

Nonstandard readmission agreements have the general advantage that they do not require a lengthy ratification process and can be easily renegotiated or modified in their parts. These features allow nonstandard readmission agreements to be adapted quickly to new circumstances and shifts in contractual parties' interests (Cassarino 2010).

Yet, such flexibility may lead to continual requests for renegotiation from readmitting countries, in particular when their importance to the EU in the field of migration management and border control increases.

⁴¹ While estimates vary across EU member states, forced return operations are estimated to be four to six times costlier than assisted voluntary returns (European Migration Network 2007).

⁴² The EU currently has readmission agreements with a number of countries: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cape Verde, the former Yugoslav Republic of Macedonia, Georgia, Hong Kong, Macao, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, Turkey, and Ukraine. See European Commission "Return & readmission" (https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en); however, no EU readmission agreements are in place with the main source countries of irregular migration.

⁴³ See European Commission, "Fifth Progress Report on the Partnership Framework with third countries under the European Agenda on Migration," COM(2017) 471 final, Brussels (September 6, 2017), https://eeas.europa.eu/sites/eeas/files/20170906_fifth_progress_report_on_the_partnership_framework_with_third_countries_under_the_eam_en_0.pdf.

the possible role of conditional development aid and trade preferences for countries of origin in nonstandard readmission agreements.

(Conditional) development aid

It has been suggested in response to irregular immigration via the Mediterranean (i) that development aid be used to create economic opportunities for potential migrants and thereby reduce the incentive to emigrate; and (ii) that development aid be made conditional on cooperation with the EU in the management of migration. We discuss the potential of development aid as a long-term strategy to address the root causes of migration through the creation of job opportunities, quality education, and better services in section 3.4 of this report.⁴⁴

Regardless of the direct effects of foreign aid on incentives to emigrate, foreign aid could still serve as a bargaining chip in the negotiation of EU readmission agreements: Foreign governments should have a higher incentive to cooperate on readmission when financial support for their country is at stake. However, making aid conditional on cooperation in other policy areas such as readmission defeats its primary purpose of reducing poverty; withdrawing it would hurt the most vulnerable part of the population, rather than the government in control.⁴⁵ This argument also holds for increasing development aid with the option of later withdrawal. Therefore, conditional development assistance is not a suitable tool to enforce compliance with nonstandard readmission agreements.

Trade agreements

Another option to induce cooperation from irregular migrants' countries of origin is to cooperate with them in areas where interests are asymmetric in their favor, without explicitly targeting the poorest part of the population. Preferential trade agreements offer developing countries access to the EU single market by lowering tariffs on their exports. As the primary beneficiaries of such agreements are domestic exporters with a high potential for having political influence, preferential trade agreements could provide a strong bargaining instrument for European policy makers.

The main source countries of irregular migrants in West Africa currently have access to different arrangements under the EU's Generalised System of Preferences (GSP):⁴⁶ exports by least developed countries (e.g., The Gambia, Guinea, Mali, Senegal) are not subject to any duties or quotas in the EU under EBA (Everything but Arms), whereas Nigeria and Cote d'Ivoire only enjoy the basic GSP arrangement because of their higher per-capita incomes. Although GSP treatment is

granted unilaterally by the importing country (in our case, the EU), WTO rules require it to be granted to all similar countries under the same conditions (e.g., at least GSP for all developing countries, EBA for all least developed countries). Therefore, the EU cannot legally fine-tune its trade preferences for source countries of irregular migrants to reflect the degree to which partner countries comply with their obligations under readmission treaties at any given point in time.

The EU is also close to concluding an Economic Partnership Agreement (EPA) with 16 West African countries. The EPA provides for a free trade area comprising the 16 countries and the EU as well as for extensive development assistance. The EPA will be an international treaty whose provisions must comply with relevant WTO rules. It would hardly be legally possible (and certainly not practical) to fine-tune the treatment of partner countries' exports within the EPA to the partners' compliance with readmission obligations. As for using development assistance under the EPA as leverage, the same considerations apply as for conditional aid in general (see the previous sub-section).

While a regional EPA involving 16 countries plus the EU gives the EU little flexibility to treat partner countries differently according to their policies on readmission, we discuss in section 3.5 the case of Jordan which has a bilateral Association Agreement/free trade area with the EU. To incentivize the employment of Syrian refugees, the EU and Jordan have agreed to liberalize the rules of origin for exports "made by Syrian refugees in Jordan" to the EU. Even for this highly specific case, there remain doubts whether the difference in rules of origin will be sufficient to make it more attractive for exporters to employ more Syrian refugees—although these exporters directly benefit from the more liberal rules of origin. Clearly, it would be far more difficult use a similar tool to shift incentives for the partner country government towards complying with an unrelated obligation (readmission).

Conclusions

We have argued that there are currently two EU policy priorities in the external dimension of EU migration management to further close the backdoor and open the front door to legal migration. The first is for the EU to continue to work with member states towards higher resettlement quotas, beyond those for Syrians under the EU-Turkey agreement. Vulnerable refugees from Sub-Saharan African countries, many of whom are stuck in Libya, have profound needs for resettlement but receive little support at present from the EU or any other developed nation.

⁴⁴ See also Lanati and Thiele (2017), who argue that by focusing on support for the social sector, the approach taken by the EU within the Migration Partnership Framework may be effective in reducing migrant flows.

⁴⁵ The High Representative of the Union for Foreign Affairs and Security Policies, Federica Mogherini has stated that "there is no conditionality of aid...that would not meet our legal standards and also our basic principles" (see European Policy Centre 2017).

⁴⁶ DG Trade website: <http://ec.europa.eu/trade/policy/countries-and-regions/regions/west-africa/>.

Prioritizing certain geographical areas over others seems inevitable as long as only a fraction of those in need can actually be resettled. To ensure that, in the long run, all urgent needs for resettlement can be met, the EU should help to establish a global resettlement system for all vulnerable migrants. The EU's role in such a system, where quotas might be based on countries' shares in global GDP, would be to resettle its designated share from third countries to its member states.

The second priority lies in improving the process of returning rejected asylum seekers, while abiding by the principle of non-refoulement, to make irregular migration less attractive. Excluding Western Balkan countries, the effective return rate of third-country nationals stood at only 37 percent over the period from 2008 to 2017. In this regard, the European Border and Coast Guard will play an important role. The agency is envi-

sioned by the European Commission to have a return department that develops operational plans with specific return objectives for member states by mid-2018.⁴⁷

However, better cooperation with third countries will also be required, which can only be achieved by negotiating functioning, forward-looking readmission agreements in the context of genuine partnerships. In this regard, the EU faces a dilemma: the instruments it has at its disposal to engage in such partnerships with the main source countries are either ill suited (conditional development aid) or have already been exhausted (preferential trade agreements). In the next section, we therefore focus on the possible role of legal options for migration and employment in the EU and how these could be extended to incentivize partner countries to comply with readmission agreements.

1.3 Expanding access to the labor markets of EU member states

Authors: Mikkel Barslund, Mattia Di Salvo, Matthias Lücke, and Chiara Pizzuti

Reducing irregular immigration from Africa to the EU requires the active cooperation of African governments in securing the external EU border, eliminating people smuggling across the Mediterranean, and readmitting African citizens who fail to gain legal residence in the EU (section 1.2). At present, however, African governments run a risk of alienating their voters by helping to suppress irregular migration to Europe. From the perspective of irregular migrants and their families, irregular migration may be inferior to legal migration, but it is far preferable to no migration at all—which is the relevant alternative as long as legal migration opportunities remain seriously constrained. In this section we argue that EU member states should expand legal employment opportunities for African citizens substantially. More legal migration opportunities would constitute a highly visible benefit to African citizens and could be made conditional on effective intergovernmental cooperation to reduce irregular migration and accelerate readmission. Thus, it could become politically acceptable for African governments to cooperate effectively with the EU in reducing irregular migration.

In addition to changing the incentives for African governments, legal access to EU labor markets would make it more attractive for potential migrants to acquire the necessary language and professional skills

to gain access to formal jobs. Furthermore, over the next several decades, most EU member states will face population aging due to increases in life expectancy and low fertility levels (Barslund and von Werder 2016). Increasing the pension age is in many countries only a partial solution to the resulting pressures on social security systems. Against the background of aging, immigration may help to relieve shortages of critical skills and occupations and may dampen the rise in the dependency ratio.

In this section, we begin by reviewing the tools used by EU member states to organize immigration from third countries. More immigration will only be politically feasible in host countries if immigrants are working and able to support themselves without relying on the welfare state. EU member states use various selection mechanisms for different categories of workers to ensure that immigrants' skills match local labor market needs. Since 2010 there has been a sharp decline in EU residence permits issued to African citizens for employment purposes. We then discuss how large a legal migration program would have to be in order to shift African governments' incentives toward cooperating with the EU in reducing irregular migration. Finally, we argue that such a work-centered legal migration program should be embedded in a wider Commission-led partnership framework with African countries.

⁴⁷ See European Commission, "Fifth Progress Report on the Partnership Framework," COM(2017) 471 final (2017).

An approach resembling the Union Resettlement Framework—with voluntary participation, but support from the EU budget—is a potential road forward.

Existing immigration pathways to EU member states for third-country nationals

Fundamentally, the rules that determine how many third-country nationals are admitted for employment-related reasons are an exclusive competence of the individual EU member states (Article 79(5) of the Treaty on the Functioning of the European Union (TFEU)).⁴⁸ At the same time, several EU legislative instruments regulate the admission and residence of certain categories of third-country nationals for the purposes of employment: high-skilled workers (Directive 2009/50/EC, which creates the EU Blue Card system), researchers (Directive 2005/71/EC), intra-corporate transfers (Directive 2014/66/EU), and seasonal workers (Directive 2014/36/EU). In addition, Directive 2003/86/EC imposes minimum standards on member states regarding the right to family reunification for third-country citizens residing in the EU.⁴⁹ Thus, member states will have a key role to play when the EU puts together a comprehensive offer for expanded labor market access for African citizens in return for better border security and migration management.

Criteria for immigration by third-country nationals

Member state policies on immigration for employment typically respond to labor market needs by granting work permits to workers with scarce skills, while also protecting residents from excessive labor market competition. In this process, all EU citizens must be treated equally. Therefore, when EU member states prioritize their own citizens over third-country immigrants in access to employment, they must accord the same priority to other EU citizens (as well as certain third-country long-term residents in the EU; Robin-Olivier 2016).

Three main mechanisms have been widely implemented by EU member states to identify strong labor demand and reduce the risk of excessive competition between immigrants and resident workers. First, occupation lists indicate where labor or skills shortages exist.

They are typically compiled and updated according to market needs, at intervals ranging from six months to three years, based on information from national and regional authorities or specific policy boards, employer organizations, or trade unions. Occupations on the shortage lists vary considerably across member states with some recurring elements, such as health professionals, engineers, and ICT professionals (European Migration Network 2011).

In Germany, for example, the Federal Employment Agency (Bundesagentur für Arbeit) has determined a whitelist (“Positivliste”) of occupations with a shortage of qualified staff, such as caregivers and nursing professionals, but also plumbing, heating, and electronics technicians.⁵⁰ Non-EU nationals who hold a recognized vocational qualification in one of these occupations may work in Germany if they have a binding job offer. However, foreign vocational qualifications are often not considered equivalent to those acquired in Germany and recognition becomes a barrier.

The French occupation list includes, for each region, 30 occupations with a shortage of qualified staff.⁵¹ Since the shortage is determined on a regional basis, immigrants benefit from the facilitated procedure only if they are willing to work in a specific region. France maintains bilateral migration agreements with several Northern and Western African countries that list additional occupations not subject to the regional limitation (Panizzon 2011).⁵²

Second, many EU member states make immigration contingent on passing a ‘labor market test.’ Typically, a job vacancy can initially only be filled by an EU citizen. Only when the position has been vacant for a certain period of time can it be filled by a third-country national. This labor market test constitutes a direct, case-by-case mechanism to assess whether suitably qualified candidates are available from prioritized groups of workers. Some categories of workers may be exempt from the test when they are not perceived to be competing intensely with local workers. High-skilled workers are summarily exempted from the labor market test in EU member states such as France, Italy, the Netherlands, and Spain (European Migration Network 2011).

⁴⁸ For more on the TFEU, see <http://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex%3A12012E%2FTXT>.

⁴⁹ Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155/17 (18.6.2009), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0050&from=EN>.

Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289/15 (3.1.2005), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0015:0022:EN:PDF>.

Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157/1 (27.5.2014), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0066&from=EN>.

Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94/375 (28.3.2014), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0036&from=EN>.

Directive 2003/86/EC on the right to family reunification, OJ L 251 (3.10.2003), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0086&from=EN>.

⁵⁰ For a complete list, see <https://www3.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mjc5/~edispl6019022dstbai777367.pdf>.

⁵¹ Since the decision of the Council of State to annul the decree of August 2011, the preceding Decree of January 18, 2008 has been in force. The text of the decree is available on the government website: https://www.legifrance.gouv.fr/jo_pdf.do?numJO=0&dateJO=20080120&numTexte=9&pageDebut=01048&pageFin=01052.

⁵² See, for example, the bilateral agreements with Senegal (https://www.gisti.org/IMG/pdf/avenant_senegal.pdf), Cameroon (https://www.gisti.org/IMG/pdf/accord_France-Cameroun.pdf), Tunisia (https://www.gisti.org/IMG/pdf/liste_metiers_tunisie.pdf), and Benin (https://www.gisti.org/IMG/pdf/16_metiers_ouverts_pour_les_Beninois.pdf).

Third, quotas are fixed numerical upper limits (expressed as actual numbers or percentages of the total labor force) for the admission of migrant workers into a country. They can be formulated as hard annual caps that cannot be exceeded or as soft targets that are more similar to policy objectives. For example, in Italy, overall limits for the admission of labor migrants are defined annually by decree ('decreto flussi') and quotas are assigned to countries of origin with which Italy has signed cooperation agreements against irregular immigration or readmission agreements (or both).⁵³

The French and Italian examples suggest that one potential channel for more legal labor migration from Africa may involve preferential treatment for labor migrants from countries that actively cooperate in counteracting irregular migration or actively cooperate in readmitting their citizens. This may consist of substantial numbers of 'reserved' entry quotas or of 'extended' occupation lists, with job applicants either receiving priority merely over other third-country citizens or even equal status with EU citizens.

While these selection criteria are characteristic of immigration policies for most categories of immigrants, there are specific provisions for two groups that involve mechanisms of wider relevance for expanding access to the EU labor market: high-skilled and seasonal workers.

High-skilled workers

The most substantive legislative developments in the EU regarding labor migration concern high-skilled workers. The notion that countries should attract the most qualified workers to enhance their international competitiveness is long-standing, but Europe is a relative newcomer to the 'global race for talent.' The United States, Australia, and Canada all adopted immigration policies specifically to attract high-skilled workers as early as the 1960s and 1970s.

Approved in 2009, the EU Blue Card is the first tool to establish more attractive entry and residence conditions for highly qualified employment at the EU level (Directive 2009/50/EC). By 2013, the Blue Card had been implemented in 25 of the 28 EU countries (Denmark, Ireland, and the United Kingdom opted out). Eligible applicants need to have higher professional qualifications, such as a university degree, and an employment contract or a binding job offer with a high enough annual gross salary—at least one and a half times the average national salary, although some

member states have set lower thresholds.

Some member states have imposed some stricter admission requirements, such as quotas, or reserved the right to reject applications for ethical reasons, in order to avoid a brain drain of critical personnel from developing countries. As a result, the directive effectively sets only minimum standards and the national versions of the EU Blue Card vary greatly, mainly in terms of salary thresholds, the qualifications required (some countries accept relevant professional experience), and the use of the labor market test.

Besides the EU Blue Card, many member states pursue their own national schemes for attracting high-skilled workers, either as separate policies for high-skilled migrants (e.g., the Netherlands, France, and Germany) or through specific provisions within wider immigration policies (e.g., Italy). The main tools to promote high-skilled migration are fast-track procedures for permits and visas, exemptions from general immigration requirements and labor market tests, information campaigns, and other incentives.⁵⁴

While some national schemes became less attractive after the approval of the Blue Card, others, such as the Dutch Highly Skilled Migrant scheme, are still widely used because they offer far more favorable conditions for companies (table 1.4). However, from the viewpoint of applicants and employers, it is hardly helpful to have parallel sets of rules for the same category of immigrants. The existence of parallel rules, in addition to restrictive admission conditions, has led to a low uptake of EU Blue Cards in almost all member states except Germany.

Therefore, the European Commission has proposed a new EU Blue Card (2016/0176 (COD))⁵⁵ that would, among other things, be available to beneficiaries of international protection, abolish parallel national schemes, and have more inclusive and flexible admission conditions (lower salary thresholds and a shorter minimum duration of the job contract) (Barslund and Busse 2017). The new proposal would also affect intra-EU mobility: First, EU Blue Card holders would be able to undertake short-term business trips without additional authorization, ending contradictory member state practices. Second, EU Blue Card holders would be able to move to another member state after 12 months of residence in the first member state (and further on, after 6 months of residence in the second member state, etc.). Moreover, unless professional qualifications are specifically regulated by member states, Blue

⁵³ In 2018, quotas for seasonal employment have been assigned to nationals of Albania, Algeria, Bosnia and Herzegovina, Egypt, El Salvador, Ethiopia, the former Yugoslav Republic of Macedonia, The Gambia, Ghana, India, Ivory Coast, Japan, Kosovo, Mali, Mauritius, Moldova, Montenegro, Morocco, Niger, Nigeria, Pakistan, Philippines, Senegal, Serbia, South Korea, Sri Lanka, Sudan, Tunisia, and Ukraine (text: http://www.interno.gov.it/sites/default/files/circolare_decreto_flussi_2018.pdf).

⁵⁴ See European Commission, Communication from the Commission to the European Parliament and the Council on the implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment ('EU Blue Card'), COM(2014) 287 final, Brussels (May 22, 2014).

⁵⁵ See European Commission, Proposal for a Directive of the European Parliament and of the Council on the conditions for the entry and residence of third-country nationals for the purposes of highly skilled employment, COM(2016) 378 final, 2016/0176(COD), Strasbourg (June 7, 2016), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0378&from=EN>.

Table 1.4 First residence permits issued to high-skilled workers through the EU Blue Card scheme or national programs in selected EU countries

	EU Blue Card					National channels	
	Fee (€)	Salary threshold (€)	Validity period (years)	Labor market test	No. of Blue Cards issued	Special programs or provisions for high-skilled workers	No. of first residence permits issued
France	260	53,331	3	No	506	Talent passport	2,221
Germany	110	49,600	4	No	6,189	Settlement/residence permits for high-skilled workers	11
Italy	274	24,789	2	Yes	254	High-skilled workers fall outside the quota system and are exempted from undergoing the labor market test	709
The Netherlands	881	64,385	4	No	42	Highly Skilled Migrant scheme	9,084
Poland	111	15,446	2	Yes	673	n.a.	1,184
Spain	418	33,908	1	Yes	10	High-skilled workers are exempted from undergoing the labor market test	3,211
Sweden	218	61,600	2	No	10	n.a.	5,288
United Kingdom	n.a.	n.a.	n.a.	n.a.	n.a.	Tier 1 (points-based system)	1,245

Source: Own elaboration based on the EU Blue Card website of the European Commission and national government websites. Data on the number of Blue Cards issued, as well as on other first residence permits for high-skilled workers, have been retrieved from Eurostat (2016).

Note: n.a. = not applicable.

Card holders would need to have their qualifications recognized only by the first member state.

The EU Blue Card or similar schemes may be attractive for some highly qualified immigrants, but with their demanding requirements, they are unlikely to become an important entry channel for many additional migrants from Africa. Because of the risk of a brain drain from Africa to the EU, such programs also give the EU little leverage as it seeks the cooperation of African governments to reduce irregular migration. The limited uptake of such programs, overall, provides important lessons for the design of policies for more regular migration from Africa to Europe: in order to generate numerically large migrant flows, education and skill requirements need to be set at modest levels that are within the reach of many African citizens, but also ensure a realistic prospect for employment and economic self-sufficiency in the EU.

Furthermore, it is worth exploring how the freedom of movement within the EU for the purpose of employment can be extended to (not high-skilled) immigrants.

Recent immigrants are typically more flexible than residents about moving house to search for work (Schündeln 2014; Cadena and Kovak 2016; Braun and Kvasnicka 2014). It may be useful to harness that flexibility to accelerate immigrants' labor market integration and labor market adjustment.

Seasonal workers

Most special programs for the immigration of low-skilled workers include a strong element of temporality—often in response to labor shortages in specific sectors or at certain times of the year (for example, seasonal work in agriculture). While the work itself may not be permanent, it recurs annually, leading to circular migration as the same individuals repeatedly take up similar jobs and any selection mechanisms give preferential access to those with previous experience of the program and a clean record of observing the associated visa and other regulations.

In recent policy debates in the EU, circular migration has been presented as a 'triple win' situation: the host

Table 1.5 National programs and schemes for seasonal workers in selected EU countries

	Seasonal workers			
	Sectors	Validity periods	Countries of origin	No. of first residence permits (2016)
France	Mainly agricultural sector	Max. 6 months within a consecutive 12-month period	Specific schemes exist for migrants whose country of origin signed a bilateral agreement with France	1,651
Germany	Agricultural sector; hospitality and food services; fruit and vegetable processing; sawmills; fairs	Max. 6 months (9 months for people working in fairs) within a year	A bilateral agreement must have been concluded with the migrant's country of origin (currently only Croatia)	0
Italy	Agricultural sector; hospitality and food services	Max. 9 months	Quotas are fixed annually and assigned to countries that have signed bilateral agreements with Italy	3,520
The Netherlands	Agricultural sector; catering industry; tourism; other	Max. 24 weeks	n.a.	0
Poland	Short-term permit: all sectors, except that covered by a seasonal permit; Seasonal permit: agricultural sector, horticulture, fisheries; hospitality and food services	Short-term permit: max. 6 months within a year; Seasonal permit (since 2018): max. 8 months within a year	Short-term permits are applicable only to nationals from Armenia, Belarus, Georgia, Moldova, Russia, and Ukraine	446,779
Spain	Agricultural sector	Max. 9 months within a year	Preference should be assigned to countries that have signed bilateral agreements (Law No. 14/2003, Article 39); however, the final decision on where to hire from is left to the employers	2,841
Sweden	No specific scheme for seasonal workers—general rules apply; some specific requirements are applied to berry pickers			3,309
United Kingdom	No specific scheme for seasonal workers—general rules apply; the Seasonal Agricultural Workers Scheme was closed at the end of 2013			0

Source: Own elaboration based on Eurostat data (http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resocc&lang=en).

Note: n.a. = not applicable.

country fills a labor supply gap but faces few integration costs (short-term migrants typically come without their families—either because family members do not receive visas or because the cost of living in the destination country is higher than at home). Migrants earn higher incomes than at home and learn new skills—even though their wages and working conditions may be inferior to what local workers would be willing to

put up with (a typical justification of seasonal work programs is that it would be impossible to find enough local workers to get the work done in the limited time available). The country of origin benefits from remittances and the new skills of returning migrants (European Migration Network 2011).

As of 2016, first residence permits for seasonal work were issued by only a few EU member states (mainly

Poland, Italy, Spain, France, Sweden, and Norway; see table 1.5).⁵⁶ The number of seasonal workers in Poland is particularly high because the program covers various temporary work visas, often renewable, for Eastern European citizens, especially Ukrainians.

The existence of a hassle-free, legal scheme for seasonal immigration weakens the strong incentives that would otherwise exist to fill these jobs with irregular immigrants, assuming that local workers cannot be found at prevailing wages and conditions of work. Nevertheless, there are cases, like the Italian one, where the way in which the directive has been transposed in national legislation and implemented has hampered its effectiveness. The Italian yearly decree (decreto flussi) establishing the number of (seasonal and not) permits for third-country nationals should be made available to employers in November of the previous year, so to facilitate their planning for the following year. Permits should then be issued within 20 days after the employer's request. However, the Italian decree is often published with significant delays and it takes months (instead of 20 days) to issue the permit. In 2016, for instance, only 18,000 of the 30,000 permits foreseen by Italian authorities for that year were issued, in spite of the 44,000 requests presented by employers.⁵⁷ These bureaucratic and procedural failures thus diminish incentives for employers to hire legally, especially given the high number of irregular migrants arriving in southern Italy, which relies heavily on agriculture and tourism.

Action is needed to address any kind of limitation as such that might exist in other member states in order to lessen the likelihood of irregularity and thus exploitation. Irregular immigration often involves risks for workers, including exploitative wages and working conditions. At the same time, if the supply of potential seasonal workers is large, immigrants may remain in a relatively weak position in terms of their employment and social rights as they face difficulties in changing employers at short notice and can be replaced in the following season (De Somer 2012).

At the EU level, the recent EU Seasonal Workers Directive (2014/36/EU) defines conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.⁵⁸ The directive aims at harmonizing admission rules, preventing exploitation, and reducing irregular migration including the over-staying of visas. Circularity is encouraged through a simplified re-entry procedure for future stays.

Seasonal migration programs work best when the work is by nature temporary and requires little training; the prospect of facilitated future stays in the destination country provides an incentive to comply with program rules; and relatively short stays make potential separation from family members acceptable. In some sectors (e.g., caregiving at home), circular mobility patterns have emerged within the EU that may also be suitable for immigrants from third countries, including Africa.

Labor migration from Africa to the EU

A future expansion of labor market access for African citizens in the EU would come about as an incremental change to existing migrant flows and build upon the existing networks of African immigrants in the EU. Currently, 8.6 million African-born individuals live in the EU-28,⁵⁹ corresponding to 17 percent of all foreign-born individuals (including those born in another EU member state) and 1.7 percent of the EU-28 resident population. In this section, we review the present pattern of immigration to the EU from Africa.

Overall, in 2016, about 3.4 million first residence permits were issued in the EU-28 to nationals of third countries, of which around 14 percent went to citizens of African countries (471,000). Of these, less than 8 percent were for employment, whereas more than 42 percent were for family reasons, 16 percent for education, and the remainder (34 percent) mainly for international protection and humanitarian motives. Immigration for employment from Africa is low except for a few Northern African countries (mostly Morocco; see table 1.6).

Table 1.6 First residence permits issued for remunerated activities, EU-28, 2016

	EU-28 permits issued (persons)
Ukraine	487,181
India	56,839
United States	41,465
China	19,628
North Africa	18,656
Rest of Africa	17,489

Source: Own elaboration based on Eurostat data (http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resfirst&lang=en).

⁵⁶ Figures on seasonal permits are available only for those countries that have already transposed the Seasonal Workers Directive in their national legislation. Otherwise, figures on seasonal permits are included in the category 'other remunerative activities.'

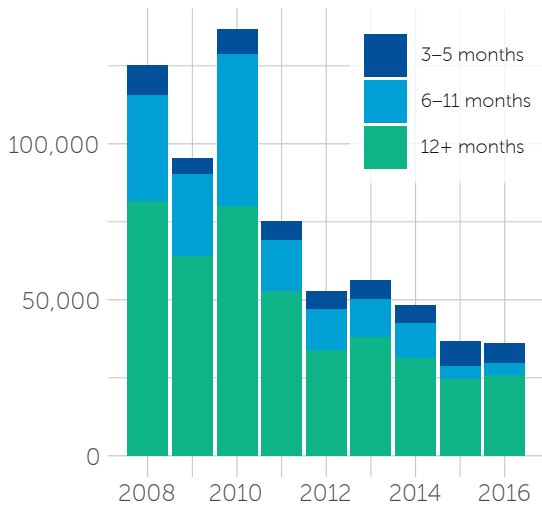
⁵⁷ F. De Ponte and R. Zanotti, "Decreto flussi, ecco i dati del flop. Permesso solo a un richiedente su tre," *La Stampa* (July 19, 2017), <http://www.lastampa.it/2017/07/19/italia/cronache/decreto-flussi-ecco-i-dati-del-flop-permesso-solo-a-un-richiedente-su-tre-s7LjRg6zfe4ewm7M18VyN/pagina.html>.

⁵⁸ Due to the absence of a common definition for seasonal workers, this category includes "all third-country nationals, who retain their legal domicile in a third country but reside temporarily for the purposes of employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in a Member State" (see Eurostat, http://ec.europa.eu/eurostat/cache/metadata/Annexes/migr_res_esms_an5.pdf).

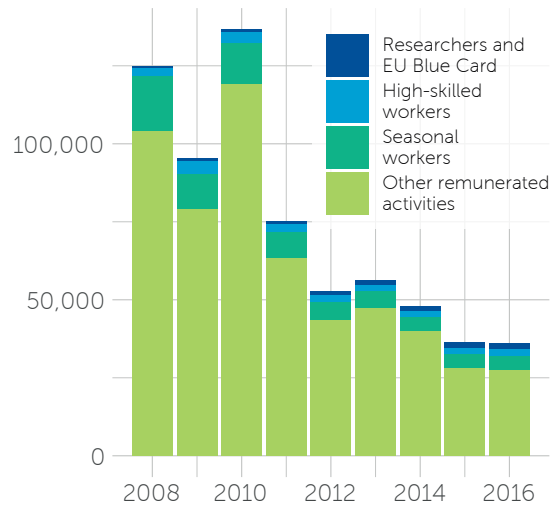
⁵⁹ See Eurostat, http://ec.europa.eu/eurostat/statistics-explained/index.php?title=People_in_the_EU_%E2%80%93_statistics_on_origin_of_residents&ol-did=380612.

Figure 1.3 First-time permits for employment reasons issued to African citizens by the EU-28

a. Breakdown by length of validity



b. Breakdown by type of occupation



Source: Own elaboration based on Eurostat.

Note: Figures on seasonal permits are available only for those countries that have already transposed the Seasonal Workers Directive in their national legislation. Otherwise, figures on seasonal permits are included in the category ‘other remunerative activities.’

The low number of first residence permits for employment issued to African citizens in 2016 (36,145) marks the end point of a sharp decline since 2010 when EU member states issued more than 140,000 permits (figure 1.3). Even more significant is the relative decline of the share of total EU permits for employment reasons directed to African citizens, which dropped from 17 percent in 2010 to just 4 percent in 2016. During the same period, the number of irregular immigrants crossing the Central and Western Mediterranean went from 9,453 in 2010 to 142,105 in 2017 (see section 1.2). Looking at the length of validity (figure 1.3, panel a), the absolute decrease is equally distributed between permits with durations of 6 to 11 months (i.e., seasonality-type permits) and those for more than 12 months (panel a). The breakdown by type of occupation (figure 1.3, panel b) shows that permits issued to seasonal workers decreased significantly to only 4,435 in 2016. The main part of the decrease in work permits stems from the category ‘other numerated activities’ for durations of between 6 and 11 months.

Of the first residence permits issued to African citizens for employment in 2016, 12 percent each went to high-skilled and seasonal workers and 76 percent to all others, including low- and medium-skilled employees as well as self-employed people (table 1.7). Huge differences exist across African countries. Northern Africa accounted for more than half of all permits and those for high-skilled migrants, as well as for nearly all seasonal workers. Within Northern Africa, Morocco alone accounted for 29 percent of all first permits and 85 percent of first permits for seasonal workers. Out-

side this region, South Africa and Senegal are among the top five individual countries for the number of first residence permits for employment.

Among EU member states, most permits overall were issued by Spain, France, and the United Kingdom (table 1.8). Some member states attracted predominantly high-skilled workers, including the Netherlands (64.6 percent), Ireland (64.3 percent), and Denmark (56.4 percent). All other member states issued more than half of all permits to ‘other’ workers. Most seasonal permits were issued by Spain, France, and Italy, even though Spain and Italy have decreased significantly the number of seasonal permits since 2012.

Options to expand legal migration opportunities from Africa to Europe

In terms of these migrant flows, a reduction in irregular migration to the EU would imply a lower number of first residence permits for humanitarian and similar reasons (approximately 160,000 in 2016) because many of these immigrants first entered the EU irregularly. An expansion of regular labor market access would be reflected by a higher number of residence permits for employment-related reasons (approximately 36,000 in 2016). The details of a comprehensive offer for expanded labor market access in the EU would have to be negotiated by the European Commission and the member states. That said, for such an offer to make a difference in convincing African governments to participate in better migration management, it would be reasonable as a first step to aim for 100,000 additional first-time work visas

Table 1.7 First residence permits issued for remunerated activities by reason and region, EU-28, 2016

	Total		Skill composition					
			High-skilled		Seasonal		Other	
	persons	% of all Africa	persons	% of total	persons	% of total	persons	% of total
Northern Africa	18,656	51.6	2,190	11.7	4,194	22.5	12,272	65.8
of which:								
Morocco	10,318	28.5	272	2.6	3,780	36.6	6,266	60.7
Egypt	3,342	9.2	815	24.4	147	4.4	2,380	71.2
Tunisia	3,069	8.5	522	17.0	262	8.5	2,286	74.5
Central Africa	1,296	3.6	207	16.0	28	2.2	1,061	81.9
Eastern Africa	2,509	6.9	420	16.7	38	1.5	2,051	81.7
Western Africa	8,645	23.9	575	6.7	169	2.0	7,901	91.4
of which:								
Senegal	2,323	6.4	78	3.4	43	1.9	2,202	94.8
Southern Africa	5,039	13.9	882	17.5	8	0.2	4,149	82.3
of which:								
South Africa	4,023	11.1	719	17.9	5	0.1	3,299	82.0
All Africa	36,145	100.0	4,274	11.8	4,437	12.3	27,434	75.9

Source: Own elaboration based on Eurostat data (http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resocc&lang=en).

Table 1.8 Top EU destination countries: First residence permits issued for remunerated activities to citizens of African countries by reason, 2016

	Total	High-skilled		Seasonal		Other	
	persons	persons	% of total	persons	% of total	persons	% of total
Spain	10,152	328	3.2	2,198	21.7	7,626	75.1
France	9,543	1,135	11.9	1,481	15.5	6,927	72.6
United Kingdom	6,188	125	2.0	0	0.0	6,063	98.0
Italy	1,922	65	3.4	736	38.3	1,121	58.3
Germany	1,746	583	33.4	0	0.0	1,163	66.6
The Netherlands	1,144	739	64.6	0	0.0	405	35.4
Other	5,450	1,299	23.8	22	0.4	4,129	75.8
EU-28	36,145	4,274	11.8	4,437	12.3	27,434	75.9

Source: Own elaboration based on Eurostat data (http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resocc&lang=en).

Box 1.2 Lessons from Germany's special program for immigration from the Western Balkans

The special provisions in Germany for labor migrants from the Western Balkans (“Westbalkanregelung;” Brücker and Burkert 2017) provide important lessons on how regular migration opportunities may be extended beyond traditional beneficiaries and how, as part of a comprehensive package that includes the accelerated return of failed asylum applicants, regular immigration opportunities are replacing irregular immigration. Since 2016, Germany has extended work visas to approximately 20,000 individuals per year from the Western Balkan states of Albania, Bosnia and Herzegovina, Kosovo, the former Yugoslav Republic of Macedonia, Montenegro, and Serbia. Applicants need a binding job offer or signed employment contract and have to pass several labor market tests. They cannot have received asylum seeker benefits in the 24 months preceding their application, which generates an incentive not to file frivolous applications for asylum (which most Western Balkan citizens could easily do because they can travel to the EU visa-free).

Approximately one in two visas is granted for unskilled jobs (Brücker and Burkert 2017); thus, in the absence of this special program, these immigrants could not legally have entered Germany. For medium- and high-skilled jobs, the requirements are also more stringent than under regular procedures. While there

are complaints about excessive bureaucracy and long delays, labor market tests are no insurmountable barrier for many applicants because there is nearly full employment with high labor demand in some key German regions. About half the beneficiaries work in the construction industry, with significant numbers also in hotels and restaurants.

While such access to the labor market can be expanded relatively easily, this program only started in 2016 and no systematic evaluation is possible yet regarding the long-term earnings prospects and fiscal impact of immigrants who may, after all, secure a short-term job but may lack the skills and flexibility to adjust to inevitable structural change later on. Some additional requirements, such as basic language skills, could help to address this concern. Reportedly, there is also a lack of administrative capacity to apply some of the labor market tests and ensure that wages and working conditions remain consistently on par with local workers. Compared with other immigration channels, the special provisions for Western Balkan citizens may be relatively successful largely because they do not require professional qualifications to be certified as equivalent to German standards; rather, workers may be employed in line with their skills as they prove them through daily work practice.

for African citizens per year—while expecting, in return, a sizable reduction in the number of irregular arrivals from Africa leading to de facto residence in Europe (see section 1.2). Such an increase is indeed feasible as it would bring the number of first-time permits back to the level of that in 2010, when around 130,000 first-time permits were issued to Africans.

A large increase in the number of work permits issued will not be achieved overnight, given constraints in the absorption capacity of EU labor markets, in the skill base of potential African migrants, and in administrative capacity to issue and monitor a large number of additional work visas. The proposed expansion of labor market access will require the active participation of many member states, the use of different programs targeting a wide range of workers, and a large effort to improve the skill base of potential African migrants with a view toward employment opportunities in both Africa and the EU.

An EU-Africa skill partnership approach

A viable partnership on labor migration with African countries must generate benefits for countries of origin in the short as well as the long term. Avoiding brain drain is important for long-term sustainability and development in Africa. Providing training in host countries prior to departure helps to achieve this objective. A skill partnership⁶⁰ model—resembling ideas proposed by Clemens (2015; 2017)—whereby initial training takes place in the country of origin prior to migration is a promising way forward. An implicit aim of the skill partnership approach is to train more people than would eventually get a job in the EU in order to increase human capital in the countries of origin.⁶¹ Countries of origin would benefit not only from enhanced human capital—through a net increase in the number of people trained—but also from more training facilities.

The European Commission's 2004 green paper discussing a common EU approach to economic migration contained similar thoughts.⁶² In order to

⁶⁰ The importance of partnership in skills development and their recognition is acknowledged also under objective 18 of the UN zero draft of the Global Compact for safe, orderly, and regular migration.

⁶¹ As Stark and Wang (2002) argue, people are more willing to invest in human capital once they can be rewarded for their skills through migration.

⁶² European Commission, “Green Paper on an EU approach to managing economic migration,” COM(2004) 811 final, Brussels (November 1, 2005), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52004DC0811>.

strengthen cooperation on migration management, the green paper underlines the importance of, on one side, considering origin countries' interests and potential losses due to migration, and, on the other side, enhancing the economic integration of migrants at destination, as well as upon return for those migrating temporarily. Establishment of recruitment and training centers in countries of origin together with compensation for the educational costs for migrants directed to the EU were listed among the possible accompanying measures (to the EU approach to economic migration) focused on integration, return, and cooperation with third countries.

Defining training programs fitting both origin countries and different labor markets in the EU is no trivial task. A flexible approach, where core training is conducted in the country of origin, with training programs tailored to origin-country specific skills, combined with host-country specific training after an employment agreement has been signed, is necessary. Organizing this on the ground will take time and require mutual learning on all sides; therefore, both a long-term perspective and commitment from the EU and African countries are needed.

Within the skill partnership there is also scope for facilitating return migration after working for a period in Europe. The return of skilled individuals with work experience and training from Europe could be a potentially effective tool for development (Panizzon 2010; Sáez 2013; Dayton-Johnson et al. 2007). Those who after some time want to return could be aided in their search for employment (Newland et al. 2008) as well as economically by being paid back social security contributions and taxes related to pensions, health, and long-term care (Ruhs 2013; Holzmann et al. 2005). For instance, this is possible in some bilateral social security agreements like the one between Germany and Turkey: Turkish citizens returning to Turkey can choose to receive their pension benefits in the form of lump-sum payments by opting out of the German pension system. EU countries could conclude (or strengthen existing) bilateral social security agreements with the main countries of origin, focusing on the portability of pension benefits to (i) tackle distortions such as double coverage and missed totalization of periods of contribution and (ii) give the opportunity to receive these benefits in the form of lump-sum payments upon return. In many—if not all—EU countries such an amount would be significant, even for relatively low-paid positions.

The case for EU coordination

As we have argued in this chapter, irregular migration from Africa concerns all EU countries. This provides a case for coordinating and financing a skill partnership program at the EU level. Furthermore, there is the issue

of scale. Arguably, only few, if any, EU member states are able to offer a long-term partnership with several African countries. Hence, partnership agreements and an associated opening of legal pathways for work-related migration can usefully be coordinated at the EU level.

However, since access for third-country nationals to member states' labor markets is a national competence, and member states already have in place systems to gage labor shortages, cooperation should be built on the existing core legal basis; expanding work-related residence permits to African countries will remain a national competence and participation in coordinating activities voluntary.

Practical implementation may follow a model where member states offer a certain number of work permits for a given period and then leave it to the Commission to select the countries and agencies providing education and training facilities in partnership countries. Implementation could also be left to member states with only financing provided by the Commission. This is akin to the approach pursued in the pilot projects on labor migration that the Commission is undertaking with member states. Recruitment could be aided by the Commission (in the form of organizing job fairs) but would otherwise be left to member states.

A possible template for such cooperation is the proposed resettlement framework regulation (see section 1.2).⁶³ Resettlement of refugees from third countries is another area where member states hold exclusive competence. In particular, it includes the elements of voluntary participation at the member state level and central financing from the EU budget.

The voluntary principle would ensure that member states keep control of immigration from third countries and also cater to the large asymmetries of EU labor markets. Some countries may opt out initially due to high unemployment levels. Central financing of initial training in the country of origin, relocation costs, and language training in the host country as well as of recruitment channels would ensure burden sharing as part of the task of managing irregular migration. It would also induce member states to participate because there should be few additional costs to their taxpayers: immigrants who work provide for themselves. Furthermore, the Commission is well placed to liaise with social partners and other stakeholders and to gather information about program performance in the different member states and participating third countries. This applies not least to making sure that training programs are useful for labor markets in third countries. The Commission would also take an EU-wide perspective on which countries to target with such a program. Such a setup would additionally allow for gradual implementation and could accommodate a sectoral approach where certain shortage sectors are targeted (Triandafyllidou 2017).

⁶³ See the Proposal for Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No. 516/2014 of the European Parliament and the Council, COM(2016) 468 final, Brussels (July 13, 2016).

