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The Refugee Crisis Requires National Strategies

Asylum Policy in the Wake of EU Internal Power Interests and Foreign Policy on War Course ¹

The debates in Germany about the refugee drama on the Greek island of Lesbos have shown that the government's current course of action towards a "European" solution has reached an impasse. This is based on misunderstandings about the political system of the European Union (EU). The Common European Asylum Policy (CEAS) is based on intergovernmental cooperation within the framework of a changing European law. Anyone who wants more "Europe" and wants to transfer decision-making powers on asylum applications to an EU agency will have to amend the treaties. However, the member states view the Commission's New Pact on Migration and Asylum (23.9.2020) with scepticism because they would lose steering powers in asylum, migration and social policy. Brussels increasingly regards asylum seekers as an "untapped labour resource", although their integration into the labour market has exacerbated the existing wage and social dumping in the EU. Another taboo subject is the causes of flight. The public image of an EU acting jointly in foreign policy, negotiating aid measures with countries of origin, dominates here. However, the European Court of Justice (ECJ) has made it clear, using the example of the EU-Turkey Agreement, that this policy field is also still a national responsibility. This throws a different light on the scope for shaping German foreign policy: It should support initiatives to return the refugees to their homeland, instead to be harnessed by interests of actors who only pretend a humanitarian approach in order to achieve completely different goals.

One day after the destruction of the camp on Lesbos, the Vice President of the European Parliament, Katarina Barley (SPD), described the EU refugee policy as a "Shame of Europe" ([ZDF, 10.9.2020](#)). This was not an offer to the local authorities to help find the alleged arsonists, which one would expect from a former Minister of Justice. She showed no understanding for the ordered quarantine measures against Corona in the refugee camp, but directed the responsibility immediately to "Europe", which had to find a common solution to the crisis.

The Vice-President of the German Bundestag, Claudia Roth (Alliance 90/The Greens), on the other hand, considers Germany, and thus the national level, to have a duty. She accused Interior Minister Horst Seehofer (CDU) of "total failure" because he was initially only willing to accept 150

minors. In doing so, he "shares responsibility for the inhuman suffering on Europe's doorstep". ([Augsburger Allgemeine, 12.9.2020](#)). She did not seem to take note of the fact that the Greek authorities are providing new accommodation, as they have an interest in examining asylum entitlement in order to curb the increase in illegal migration. Claudia Roth does not support this differentiation, nor does the parliamentary party leader of the Left, Amira Mohamed Ali. She even called for Greece to withdraw its duty of care for all migrants on Lesbos by means of a large-scale resettlement ([Pressestatement, 15.9.2020](#)).

While opposition parties in the German Bundestag - in contrast to earlier positions - favour the national card, the governing parties prefer one of several European solutions: Under the German EU Presidency, they support the Commission's

¹ This article is a translation: Sabine Riedel, [Die Flüchtlingskrise bedarf nationaler Strategien. Die Asylpolitik im Sog von EU-internen Machtinteressen und Außenpolitiken auf Kriegskurs](#), in: *Forschungshorizonte Politik und Kultur (FPK)*, Vol. 4, No. 11 (2020 Oct 3), 16 pages.

concern to make asylum policy communal within the EU. ([eu2020.de](#)). This paper will look at both approaches and examine the scope for action at Union level and by EU member states.

This article is an analysis of the current situation and therefore does not evaluate party programmes and their visions. The more interesting question is to what extent the measures of the last five years have taken into account the causes of refugee suffering in the Mediterranean region. For behind the asylum dispute hide internal EU conflicts over competences as well as foreign policy interests of EU and NATO states. Their identification is indispensable for democratic discourse, not least because it makes new solutions visible.

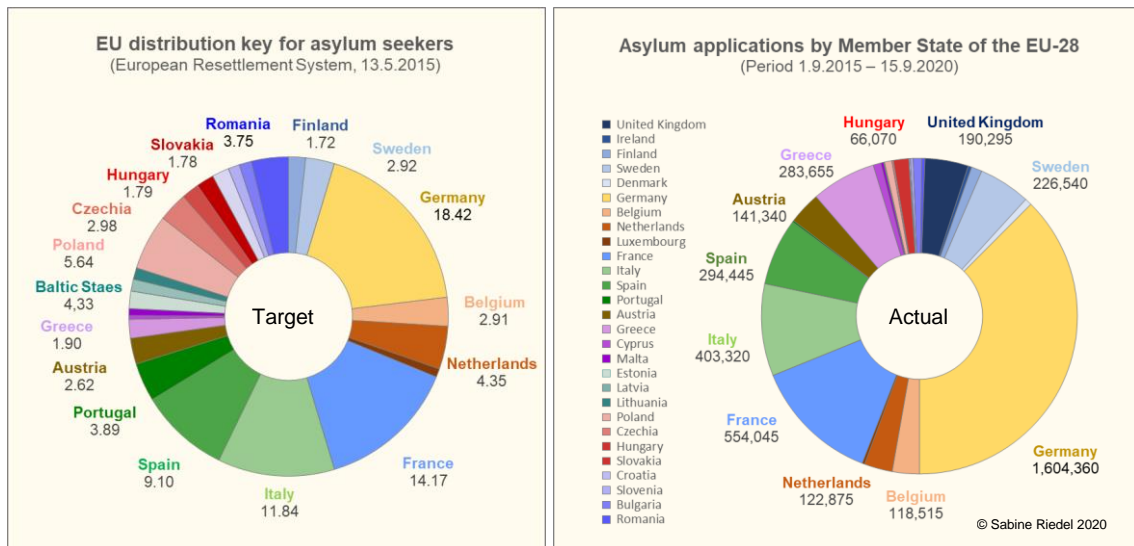
Germany takes care of one third of all asylum seekers within the EU

The accusation of Germany's "total failure" in refugee policy can be shared with Claudia Roth, although from a different perspective: According to the Statistical Office of the European Union (EU), Eurostat for short, which has kept records of every reported asylum application since 2008, around 7.5 million people have since applied for asylum in one of the EU member states ([Eurostat, 15.9.2020](#)). Germany alone shouldered 2.4 million applications, which corresponds to 32.7 percent. Looking at the last 5 years since the begin-

ning of the migration crisis in September 2015, of the 4.3 million applications throughout the EU, around 1.6 million were addressed to German authorities, which corresponds to a rate of 37.5 percent. This is followed by France and Italy with 12.9 and 9.4 percent, respectively, followed by Spain, Greece and Sweden, which handled 6.7, 6.6 and 5.3 percent of all applications (Figure 1).

These figures contradict current European law from several perspectives: According to the Dublin Convention (1997) and its follow-up treaties Dublin II and III (2003 and 2014), if a refugee arrives in the EU by land, he cannot simply travel on to Germany and ask for asylum there. Because it applies that "an asylum seeker must apply for asylum in the EU member state in which he first entered the EU territory. The Registration and the asylum procedure must also be carried out there." ([bundesregierung.de, 18.9.2020](#)) Such a contractual arrangement was the prerequisite for the removal of controls at the EU's internal borders and for the Schengen Agreement to be converted into EU law (2000). Because many member states had very low levels of refugee protection, such as Greece, or no asylum law at all, such as Italy. It should be avoided that states with high social standards become a focus of attraction for asylum seekers in the course of the free movement of persons.

Figure 1



Sources: Own compilation according to: [Eurostat, Asylum and first time asylum applicants](#), Last update: 15.09.2020, and European Commission, [A European Agenda on Migration, 13.5.2015](#), Brussels, p. 21 (both last viewed: 16.09.2020);

Comments: The United Kingdom, Ireland and Denmark have not been included in the EU resettlement scheme of the European Migration Agenda because they are not, or like Denmark, only partly part of the Schengen area. The EU members Croatia, Bulgaria and Romania are also not (yet) partners in the Schengen Agreement, but were nevertheless included in the distribution key. This was never officially adopted by the member states. The majority decision of the European Council of 22.9.2015 only refers to the quota of 120,000 refugees for resettlement from Greece and Italy ([ec.europa.eu, 22.9.2015](#)).

As early as September 2015, the German Federal Government knew what it only later publicly admitted: "According to the theory, no migrant or refugee should ever arrive in Germany. [...] But that does not correspond to reality." (spiegel.de, 11.8.2018) From the start of Eurostat recording in January 2008 to mid-September 2015, 830,000 refugees had already applied for asylum in Germany. This corresponded to a rate of 26 percent across the EU (Eurostat, 15.9.2020). But the German government did not insist on the implementation of existing European law, i.e. on compliance with the Dublin Agreement. Rather, it supported the European Commission in its plan to change the existing rules and reform the Common European Asylum System (CEAS) (Bundestag, 29.6.2015).

Brussels planned to set up EU offices on the Greek and Italian islands such as Lesbos and Lampedusa to assist the national authorities on the ground in registering and caring for refugees (Hotspot-Approach, 2015). These offices should then also organise their relocation to the EU member states. To this end, the Commission has proposed a distribution key "based on objective,

quantifiable and verifiable criteria that reflect the capacity of the member states to absorb and integrate refugees". (European Agenda on Migration, 13.5.2020: 19) The size of the population was taken into account at 40 percent, as was the "absolute wealth of a country" measured by gross domestic product (GDP). The "average number of spontaneous asylum applications" and the unemployment rate of the member states were each included at 10%.

Germany had hoped that this reform project would reduce its rate of EU-wide asylum applications from a quarter to a fifth (see Figure 1). This seemed to be a more convenient "European solution" than calling for the Dublin Regulation and thus risking a dispute with other EU states. Obviously, the Federal Government was convinced that this distribution key could be implemented with a simple majority in the European Council. Because on 21.8.2015 it unexpectedly lifted the Dublin rule for Syrian refugees and offered them the right to stay in Germany (zeit.de, 22.8.2016). This German unilateral action has triggered the European migration crisis, but as a result the country's own quota of asylum seekers within the EU increased from a quarter to a third.

Figure 2

Extracts from the Schengen Agreement

Article 13
Border surveillance

1. The main purpose of border surveillance shall be to [prevent unauthorised border crossings](#), to counter cross-border criminality and to take measures against persons who have crossed the border illegally. [A person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned](#) shall be apprehended and made subject to procedures respecting Directive 2008/115/EC. [...]

Article 15
Staff and resources for border control

Member States shall deploy [appropriate staff and resources in sufficient numbers](#) to carry out border control at the external borders, in accordance with Articles 7 to 14, in such a way as to ensure an efficient, high and uniform level of [control at their external borders](#). [...]

Article 16
Implementation of control

1. The border control provided for by Articles 7 to 14 shall be carried out by border guards in accordance [with the provisions of this Regulation and with national law](#) [...].

Source: [Schengen Borders Code](#) (codification), 9.3.2016 [blue text: S.R.]

Trigger of the 2015 refugee crisis: break instead to reform the Dublin Agreement

When the German government promised to accept Syrian refugees in the Schengen area without consulting its neighbours, hundreds of thousands more hoped for protection and asylum in "Europe". The then German Foreign Minister Sigmar Gabriel further fuelled the wave of migration with his statements. He assured that "we could certainly cope with a figure of half a million for a few years [...] perhaps even more." (rp-online.de, 8.9.2015) But Germany had not opened its borders, as the press often claimed (tagesschau.de, 9.9.2015). Because the Federal Republic's external borders are internal borders within the Schengen area, where according to the agreement no controls may take place. If refugees come by land, they must first pass through other member states before they can set foot on German soil.

As a result, the German government's unilateral action initially put the southern and central European EU members in a delicate situation. European refugee policy became a dilemma for them, because no matter what they do, they will always face accusations of breaking European law: Until the summer of 2015, they were mainly criticised for allowing illegal migrants to move on to the north and thus violating the Dublin Agreement. Therefore, instead of pursuing its actual

task and monitoring compliance with the treaties, the EU Commission has urged the European Council to approve the distribution key by majority vote, even if only for 120,000 asylum seekers (ec.europa.eu, 22.9.2015).

Since the summer of 2015, those member states at the Schengen external borders that strengthen their national border protection have been receiving negative headlines. Hungary in particular has been accused of shutting itself off from refugees (welt.de, 16.9.2015). However, Article 13 of the Schengen Agreement requires

them to prevent "unauthorised border crossings" by undocumented migrants ([Schengen Borders Code, 9.3.2016](#), see Figure 2 Without such a system, member states such as Germany and Austria would never have given up control of their national borders. They must be able to rely on the EU's external border being consistently monitored. Because the European Border and Coast Guard Agency (Frontex) has no corresponding sovereign powers, but is only allowed to support the national border guards.

In particular, the Central Eastern European states were criticised for opposing the redistribution plans. In their opinion, some of the illegally entered migrants have no chance of being recognised as refugees. In a statement, they therefore called for the EU to adopt a "comprehensive approach to migration policy to ensure "the differentiation between genuine asylum seekers and illegal and economic migrants". ([Future of Europe 26.1.2018: 2](#)) Although even in Germany between 30 and 50 percent of applicants do not receive a right to stay each year ([BAMF, August 2020: 12](#), see Figure 4), the proposal by the Visegrád countries has not yet been seriously considered. Instead, they were forced by the European Court of Justice (ECJ) to implement the European Council's decision to accept refugees from Italy and Greece ([beck.de](#), 31.10.2019).

While the German media repeatedly accuse the Visegrád states of refusal ([zeit.de](#), 12.5.2015, [dw.com](#), 2.4.2020), they spare other member states with negative headlines. But the list on the reintroduction of border controls at the EU's internal borders paints a different picture: According to this, France has been the only EU member to carry out full controls at all national borders since autumn 2015 ([Border control](#), status 30.9.2020). Norway, Sweden, Denmark and Germany have also continuously monitored at least part of their internal EU borders since that time. In contrast, the Visegrád countries only introduced controls within the EU as a result of Covid-19 ([Riedel 2020-6: 16](#)).

Even the redistribution of the 120 000 refugees from Italy and Greece decided by the Council has been slow, not only in Central and Eastern Europe. Two years after the beginning of the refugee crisis, the EU countries together had resettled only a third of the refugees ([europa.eu](#), 15.11.2017: 2). At that time Germany, France and the Benelux countries were still far below half of their promised quotas, while Spain and Croatia had only fulfilled 10 percent of their target. Finally, the statistics of Eurostat indicate that other EU members hardly grant any protection to refugees,

Figure 3

Reform of the Common European Asylum System (CEAS)

I.1 Inherent weaknesses of the Common European Asylum System in time of migratory crisis

[...] The Common European Asylum System consists of a legal framework covering all aspects of the asylum process and a support agency - the European Asylum Support Office (EASO) - to support the implementation of the legal framework and facilitate practical cooperation between Member States. *The crisis has exposed weaknesses in the design and implementation of the system, and of the 'Dublin' arrangements in particular.* [...]

But even before the present crisis, there have been serious shortcomings in the [implementation of the Dublin Regulation](#) such that, even with a more efficient and stricter enforcement by all Member States of the existing rules, and with additional measures to prevent secondary movements, there is a high likelihood that the current system would remain unsustainable in the face of continuing migratory pressure.* [...]

The Common European Asylum System is also characterised by differing treatment of asylum seekers, including in terms of the length of asylum procedures or reception conditions across Member States, a situation which in turn encourages secondary movements. Such divergences result in part from the often [discretionary provisions](#) contained in the current [Asylum Procedures Directive*](#) and [Reception Conditions Directive*](#). Moreover, while the [Qualification Directive*](#) sets out the standards for the recognition and protection to be offered at EU level, in practice recognition rates vary, sometimes widely, between Member States*. There is also a lack of adequate convergence as regards the decision to grant either refugee status (to be accorded to persons fleeing persecution) or subsidiary protection status (to be accorded to persons fleeing the risk of serious harm, including armed conflict) for applicants from a given country of origin.

Source: European Commission, [Towards a Reform of the Common European Asylum System](#) and Enhancing Legal Avenues to Europe, Brussels, 16.4.2016, p. 3-5.

Note: * Footnotes in the source text, blue text: S.R.

such as the Baltic States Estonia, Lithuania and Latvia as well as Portugal (Eurostat, 15.9.2020). According to the EU Commission's distribution key (2015), Croatia, Bulgaria and Romania would also have to accept considerably more refugees (cf. Figure 1). But they have a special position because they are not yet part of the Schengen area, as is the Republic of Cyprus. Although this is also the case for Ireland, Denmark and the United Kingdom, they were not even considered in the EU resettlement programme.

Asylum remains a national responsibility – EU provides only a legal framework

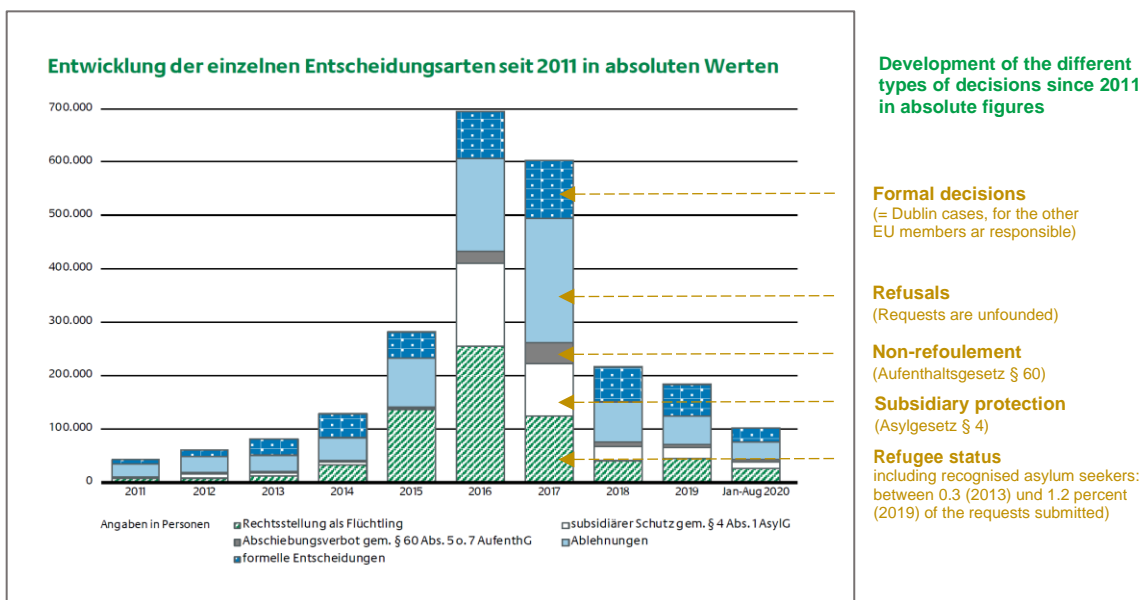
As a result of developments over the last five years, the prospects for a "Common European Asylum System" (CEAS) have deteriorated. Because European law only provides a common framework, which must be specified in national laws. The EU asylum system thus consists of different levels of decision-making, which the term "European multi-level system" aptly expressed. It states that the EU's political system, and asylum policy in particular, depends on cooperation between the Brussels authorities at supranational level and the EU member states at national and regional level. However, the Schengen and Dublin agreements are binding legal provisions be-

cause they were concluded as international treaties before they became European law. In contrast, the three EU Directives on asylum procedures, reception conditions, and qualification are so far only optional provisions (cf. Figure 3). The EU Commission sees this as the real cause of the refugee crisis. She therefore proposes that a central EU agency processes all asylum applications and distributes the refugees among the EU-members.

This reform project proposed by the EU Commission (EU Reform, 16.4.2016: 12) was unrealistic, because it goes beyond the previous aim of harmonising national legal systems and presupposes their unification. This would require an amendment to the EU Treaty, which is hardly conceivable in the light of current developments. The fact that such a project requires a uniform and binding EU legislature as well as a common judiciary speaks against it. Moreover, the European Court of Justice (ECJ) is a supranational body of the EU which can only be called upon to "ensure that in the interpretation and application of the Treaties the law is observed" (see Article 19), EU-Treaty 2016). He has neither the competence nor the personnel to decide on refugee protection issues at national and regional level.

Figure 4

Federal Office for Migration and Refugees (BAMF), **Current Figures, 5. Decisions**



Sources: Federal Office for Migration and Refugees (BAMF), Aktuelle Zahlen, August 2020, 5. Entscheidungen [Current Figures, 5. Decisions], p. 12 (last viewed: 18.09.2020);

Note: Green and yellow text and arrows outside of the chart were completed by the author; Formal decisions cf. Das deutsche Asylverfahren, 2014 [The German asylum procedure], p. 37, non-refoulement: Aufenthaltsgesetz § 60 and subsidiary protection: Asylgesetz § 4.

This should be illustrated using the example of Germany. For the 1.6 million asylum requests submitted since summer 2015, there were initially 1,300 and today 2,100 administrative judges in the first instance ([welt.de](#), 18.3.2019). They make their decisions based on various legal sources. In the first place are the Asylum Act and the Residence Act. According to them, only those persecuted by the state receive a right to asylum, i.e. persons "without an alternative means of escape within their country of origin". ([Asylberechtigung](#), 14.11.2019). In contrast, the international protection status is granted under the Geneva Refugee Convention (1951) if the person concerned is on the run (also from non-state actors) and cannot receive protection in his country of origin (Article 3, [Asylgesetz](#)).

Figure 5

**ECHR on push-backs to Morocco.
Spain was allowed to reject migrants**

„[...] The [complaint against Spain](#) was submitted by two men from Mali and Côte d'Ivoire in February 2015 to the ECHR [European Court of Human Rights of the Council of Europe, S.R.]. According to court documents, on 13 August 2014 they had tried to climb the fences together with 70 to 80 other Africans. When they reached the third fence, they saw that the Spanish police were already waiting for them below. After a few hours they climbed down anyway and were immediately arrested. Without being identified and without being questioned about their individual situation, they were then brought back to Morocco through doors in the fence and handed over to Moroccan border officials. [...]

In October 2017, a seven-member chamber of the ECtHR ruled in favour of the applicants and awarded them damages of EUR 5,000 each. Spain has infringed the [prohibition of collective expulsions](#) with these so-called push-backs. [...]

The 17-member Grand Chamber of the ECHR has now rejected the 2017 decision. The two men had placed themselves in an illegal situation when they climbed onto the fence with many other people, the large ECHR chamber now found. [They had deliberately not entered the country by a legal route](#). The Spanish consulate in Nador was only about 13.5 kilometers away from the scene in August 2014. According to the court's statement, they did not explain why they did not seek international protection there. [Instead, they took advantage of the size of the group in the storm on the fence and used force](#). The fact that they were brought back to Morocco without an individual expulsion decision was a [consequence of their own unlawful behaviour](#)."

Source: Quoted from: [ECHR zu Push-Backs to Morocco](#). Spain was allowed to reject migrants, in: Legal Tribune Online, [13.2.2020](#) [blue text, translation: S.R.]

As the asylum statistics of the Federal Office for Migration and Refugees (BAMF) show, the recognition rate in 2015 and 2016 was 48.5 and 36.8 percent respectively. In the remaining years, a "refugee status" was only granted in about 20 percent (2017 and 2018) and 25 percent (2014, 2019, 2020) of the cases ([BAMF, August 2020](#), cf. Figure 4). In the event of refusal, applicants still have the right to subsidiary protection provided that "they face a serious threat of serious harm in their country of origin". (Article 4, [Asylgesetz](#)). Finally, Article 60 of the German Residence Law can protect them from refoulement ([Aufenthaltsgesetz § 60](#)). Taking all four residence titles into account, on average only every second asylum applicant has a right to remain in Germany.

These figures include all legal remedies open to the applicants, i.e. they can contest the decisions of the BAMF. The higher administrative courts of the German federal states are responsible for this. Their judgments can only be overturned by the Federal Administrative Court (Bundesverwaltungsgericht, BVerwG) as the next higher instance. With his decision, the legal process has been exhausted. As a last resort, a refugee can appeal to the European Court of Human Rights (ECHR) of the Council of Europe in Strasbourg. It is the only international court worldwide where states can be sued for violation of human rights. Therefore, its jurisdiction is most relevant, for the asylum seekers concerned as well as for the receiving countries (see the example in Figure 5). The EU's European Court of Justice (ECJ), by contrast, only deals with procedural issues relating to the asylum laws of its Member States. While this is already reflected in the term "European Asylum System", it gives the wrong impression that this system actually creates a right that people can claim at supranational EU level.

Protection and solidarity for refugees in an EU of wage and social dumping

Nevertheless, with its decisions and interpretations of European law, the EUGH influences the asylum procedures of the Member States. His judgement of 25.10.2017 clarified the controversial question of responsibility for the so-called Dublin cases, for which other EU states are responsible: „If refugees continue to travel to another EU country and are not deported within six months, however, responsibility is transferred to that country.“ ([EUGH, 25.10.2017](#)) For Germany, which has had to process around 400,000 Dublin applications since summer 2015 ([BAMF, August 2020](#): 12), this was a bitter setback. With its decision, the ECJ effectively legalised the breach of

the Dublin Agreement. He also forces the receiving state to expel Dublin cases as quickly as possible in order not to have to take responsibility for them. Germany has hardly made use of this option.

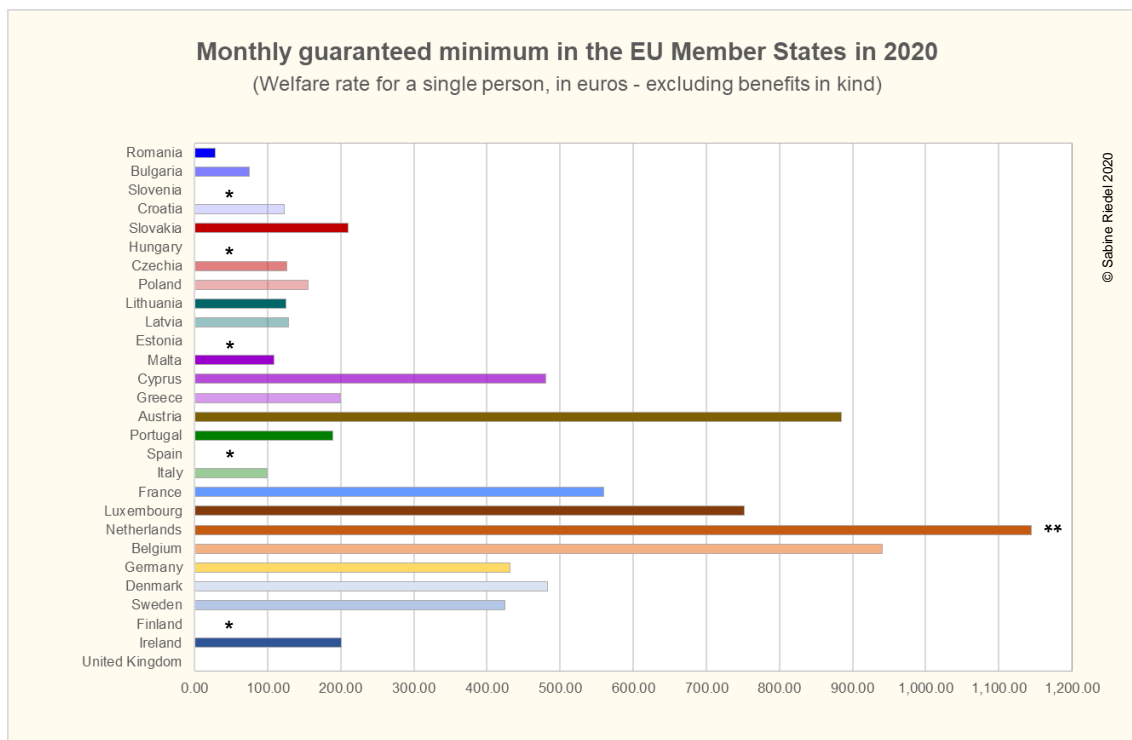
The EU directive on reception conditions for asylum seekers also requires member states to ensure that "material reception conditions provide an adequate standard of living for applicants" and that "applicants receive the necessary health care" to treat illness (Article 17 und 19, [Directive 2013/33](#)). As a comparison of the social benefits of the Member States shows, there are already considerable differences in the level of guaranteed minimum income ([Employment, Social Affairs & Inclusion](#)). This alone is a decisive motive for the refugees to choose another EU country with a higher social standard (cf. figure 6).

Moreover, "adequate standard of living" is a very flexible term. The Geneva Convention on Refugees (GCR) interprets it as equal treatment "accorded to their nationals" (cf. Article 23, [GCR 1951](#), Figure 7). For example, the German Refugee Council of Saxony-Anhalt - a member of the Federal Working Group Pro Asyl - interprets the refusal of an employment contract or a flat due to

a lack of German language skills as discrimination ([fluechtlingsrat-lsa.de, 2016](#): 2 and 3). Such statements trigger critical questions as to whether the refugee policy might lead to "positive discrimination", i.e. preferential treatment of refugees ([t-online.de, 29.9.2019](#)). Such an "envy debate", no matter from which side, will intensify the distribution conflicts over social benefits.

The issue of homelessness shows that behind this there are social problems that are structurally related. The Bundesarbeitsgemeinschaft Wohnungslosenhilfe (BAG W) estimates that there are currently one million homeless people in Germany ([mitmischen.de, 2020](#)). This would have increased by one third compared to 2018 ([bgaw.de, Zahlen](#)). So far, there is no nationwide statistic that is to be presented for the first time at the end of 2022 ([bundestag.de, 16.1.2020](#)). The data available so far are based on surveys from Lower Saxony, North Rhine-Westphalia and Baden-Württemberg. Of the 25,333 registered homeless people, 72 percent were German nationality, 12 percent came from another EU member state ([Stellungnahme BAG W, 9.1.2020](#)). Only about 14 percent receive overnight accommodation from the municipality, 21 percent live on the

Figure 6



Sources: Own compilation: European Commission, [Employment, Social Affairs & Inclusion](#), Your rights country by country (The latest versions of the guides to national social security systems, status: 2020, last viewed: 23.10.2020),

Note: * No data indicate the granting of benefits in kind; see op. cit., ** = further source under: [rijksoverheid.nl](#)

Figure 7

Geneva Convention on Refugees (1951)

Article 17 Wage-Earning Employment
 [...] 2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee [...] if a) He has completed three years' residence in the country; [...]

Article 20 Rationing
 Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21 Housing
 As regards housing, the Contracting States [...] shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22 Public Education
 1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. [...]

Article 23 Public Relief
 The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals. [...]

Article 34 Naturalisation
 The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings. [...]

Source: GCR 1951, UNHCR, Text of the 1951 Convention Relating to the Status of Refugees [Entry into force on 22.4.1954; blue text: S.R.]

street. "No data are available for 2017 from the federal states of Berlin, Brandenburg, Mecklenburg-Western Pomerania, Saarland, Saxony-Anhalt and Thuringia." (Statistikbericht 2017: 4)

A particular problem is the growing unemployment and homelessness of EU citizens in Germany. Under EU law, i.e. the existing Free Movement Directive (2004) and the corresponding judgements of the European Court of Justice, "Member States are not obliged to grant Union citizens and their family members entitlement to social assistance benefits to job-seeking" (bmas.de, 25.9.2020). As a result, they even lose their right of residence. Union citizens are therefore clearly at a disadvantage compared with asylum seekers. These rules are designed to prevent wage dumping by companies that simply take advantage of the EU's single market. The respective member states have to bear the social conse-

quences because even a reform of the EU Posting of Workers Directive has not solved the problem: „Eastern European truckers remain allowed to cross through the Federal Republic at low wages and social tariffs beyond German regulations.“ (handelsblatt.com, 4.7.2018). Similar developments can be seen in the Austrian construction industry, where one in three companies is suspected of depressing the wages of its employees (sn.at, 21.1.2020). This development finally affects the weakest members of society: in 2016 the earnings of 6.7 million employees in Germany were below the minimum wage of 8.50 euros set in 2015 (tagesspiegel.de, 7.12.2017).

Asylum as an instrument of an EU labour market policy controlled by Brussels

The topic of asylum currently acquires an additional conflict dimension in that Brussels regards asylum policy as an instrument of labour market policy. Because, like asylum policy, migration policy – including labour migration – is a national responsibility. According to Article 79 of the Treaty on the Functioning of the European Union (TFEU), the European Commission may take initiatives in this policy area, i.e. make proposals to the Member States for the formulation of common objectives. However, it states clearly: „This Article shall not affect the right of Member States to de-

Figure 8

**Council of the European Union:
 How the EU manages migration flows**

The EU has adopted various sets of rules and frameworks to manage **legal migration flows** with regard to:

- Asylum seekers
- Highly skilled workers
- Students and researchers
- seasonal workers
- family reunification

Regarding **other migration flows**, the EU has adopted:

- common rules for processing asylum requests
- [a decision on the resettlement of thousands of asylum seekers from Greece and Italy] *
- readmission agreements for returning illegal migrants

Quelle: European Council, Council of the European Union, How the EU manages migration flows, last reviewed: 7.10.2020.
 Notes: bold text in original; * deleted on 7.10.2020 in accordance with the New Migration and Asylum Pact (23.9.2020)

termine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.“ (Article 79 point 5. TFEU)

Even before the EU Commission discovered asylum seekers as a labour market reserve, it gained access to this policy field through so-called mobility partnerships. These are agreements between the EU and third countries that are intended to combine two goals, namely to promote labour migration into the EU and to combat illegal migration (eur-lex.europa.eu, 16.5.2007). This was based on the Commission's forecast that by 2050, the number of people in work in the EU would fall by around 52 million and the number of older people would double (eur-lex.europa.eu, 21.12.2005: 25). It therefore developed the Global Approach to Migration and Mobility (GAMM), which led to visa facilitation agreements and return agreements with countries in the EU's neighbourhood. These include Moldova (2008), Cape Verde (2008), Georgia (2009), Armenia (2011), Morocco (2013) and Azerbaijan (2013) (eur-lex.europa.eu, 21.2.2014).

However, visa liberalisation with Western Balkan countries in 2010 already showed the opposite effect: Many from Serbia, Kosovo, Montenegro, Bosnia-Herzegovina, Albania, Northern Macedonia and Croatia (now EU member) use legal entry into the Schengen area to stay after expiry of their residence permit and apply for asylum in Germany. In just four years, the number of asylum applications from these countries has quintupled to over 60,000 applications (2014, cf. [Alscher, Obergfell, Roos 2015](#): 24), with hardly any applicants being recognised as refugees. The Balkan route finally proved to be the main route for 1.8 million migrants on their illegal way into the Schengen area in summer 2015 ([Pact on Migration and Asylum, 23.9.2020](#): 3). In the following year, however, only 710,395 asylum seekers were granted refugee status in the EU-28, 60 percent of them in Germany.

This meant that the mobility partnership had hardly proved its worth as an instrument for combating illegal migration. On the contrary, the findings from the EU-funded research project *Clandestino* in the years 2007 to 2009 were confirmed ([Clandestino Dataset](#), 9.10.2019). Experts from 12 EU member states have shown that legal labor migration always brings with it an increase in illegal employment, depending on the extent of the shadow economy in the country of origin and destination (see examples: [Riedel 2011](#): 8). In its [European Agenda on Migration](#) of 13.5.2015 (cf. p. 3) and its New Pact on Migration and Asylum

(23.9.2020), the EU already affirms that it is resolutely combating the smuggling of migrants and thus "the organised exploitation of migrants". ([Pact on Migration and Asylum, 23.9.2020](#), point 5). The latest data from the International Monetary Fund (IMF) paint a different picture. It assumes growing shadow economies in all 47 countries of the Council of Europe. According to estimates, their share of gross domestic product (GDP) in the EU neighbourhood is between 44 and 51 percent, depending on the calculation methods used ([Kelmanson, Kirabaeva, Medina, Mircheva, Weiss, 13.12.2019](#): 18).

Despite *Clandestino's* publications, Brussels is sticking to its agenda: it wants to master the cur-

Figure 9

International agreements and the EU's external competences

EU external competences

- The EU has legal personality and is therefore a **subject of international law** which is capable of negotiating and concluding international agreements on its own behalf, [...].
- If the subject matter of an agreement does not fall under the exclusive competence of the EU, EU countries also have to sign the agreement. These are known as '**mixed agreements**'.

Exclusive competence and shared competence

- The **distribution of competences** between the EU and EU countries also applies at international level. Where the EU negotiates and concludes an international agreement, it has either **exclusive competence** or **competence which is shared with EU countries**.
- Where it has **exclusive competence**, the EU alone has the power to negotiate and conclude the agreement. Article 3 TFEU specifies the areas in which the EU has exclusive competence to conclude international agreements, including trade agreements.
- **Where its competence is shared with EU countries, the agreement is concluded both by the EU and by EU countries.** It is therefore a mixed agreement to which EU countries must give their consent. [...] [Article 4 TFEU](#) * sets out which competences are shared.

Source: eur-lex.europa.eu, Summeries of Legislation.

Notes: Bold text in original, blue text: S.R.

* cf. Article 4 (4) TFEU:

In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

Quelle: eur-lex.europa.eu, Document 12016E004.

rent challenges by concentrating competencies on supranational EU organisations. It combines policy fields which require very different legal frameworks and social policies, even at the national level of the member states: The New Migration and Asylum Pact "provides a comprehensive approach, bringing together policy in the areas of migration, asylum, integration and border management" (Pact on Migration and Asylum, 23.9.2020, point 1). In this sense, the European Council already considers asylum-seekers as a target group "to manage legal migration flow" (EU manages migration flows 2020, cf. Figure 8).

For these reform plans, Brussels not only lacks the competences within the EU. Nor does it look as if enough member states would be convinced or even agree to the necessary reform of the EU Treaty. Nevertheless, these Commission proposals act as agenda-setters. In addition, the media, through their reporting, feed the idea that they can actually steer migration and asylum policy at supranational level (zeit.de, 22.9.2020). The concrete problems at national level caused by the opening up of labour markets for asylum seekers are pushed into the background (bmas.de, 26.3.2020).

Today, more than a third are employed. However, scientific studies point to major deficits, which are due, in particular, to insufficient knowledge of German. Whereas in 2016 only one percent of the refugees were able to use the German language, in 2018 it was around 44 percent. (IAB-Kurzbericht 4/2020: 3). In addition, very few have a vocational or university degree (IW-Report 37/2017: 10). Accordingly, intensive and costly training programmes are necessary in order to get new asylum seekers arriving again and again

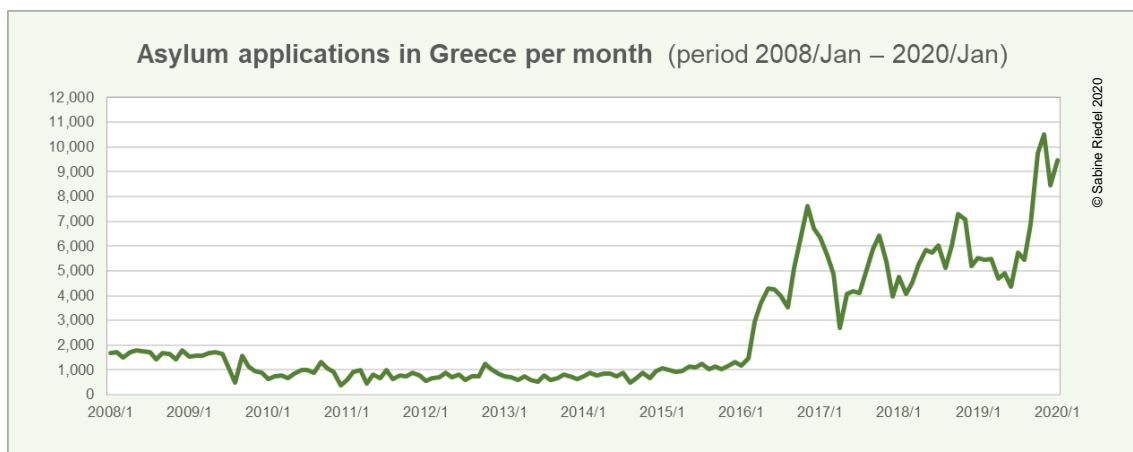
into qualified work. For the next year 2021, a total of €20.1 billion has been earmarked for refugee assistance – for their integration and to combat the causes of flight (spiegel.de, 25.9.2020). By comparison, the Federal Government's funding of the Research and Education Ministry amounts to 18.3 billion euros in the current year (statista.de, 29.11.2019).

Asylum as an instrument to establish a common EU foreign policy

Since the entry into force of the Treaty of Lisbon (2009), migration and asylum policies have given the supranational EU level more and more opportunities to take powers in foreign policy as well. In fact, this policy area is still at the core of the national sovereignty of the Member States. However, the EU has since become a subject of international law that can conclude international treaties. At the same time, however, the supranational bodies must respect the competences laid down in the Treaty. As foreign policy is still the sole responsibility of the member states, Brussels may only participate in shaping political relations with third countries that go beyond trade issues in policy areas for which it is authorised under the EU Treaty. This includes for example development cooperation and humanitarian aid (Article 4 (4) TFEU, cf. Figure 9).

These legally relevant differences are hardly noticed in the public debate, not least because the supranational level likes to play the role of initiator and donor. An example is the EU-Turkey Agreement of 18.3.2016, which in its original text is called EU-Turkey statement. It was concluded with the intention of combating illegal migration in the Mediterranean. Turkey subsequently agreed

Figure 10



Source: Own composition according to: Eurostat, Asylum and first time asylum applicants. Last update: 15.09.2020);

to take back those refugees who illegally entered Greece from its territory. In return, EU member states take in a Syrian asylum seeker from Turkey for every refugee returned (1: 1 mechanism loud [bundesregierung.de](https://www.bundesregierung.de), 28.9.2020). The EU also promised Ankara €6 billion in two tranches of financial assistance to help care for Syrian refugees in Turkey.

The Commission continues to present this agreement as a success of its humanitarian commitment to the refugees in the Mediterranean ([Tree Years on, March 2020](#)). But critics took the floor at a very early stage. The Federal Audit Office, for example, criticised the non-transparent structures in the financing and coordination of aid measures. The Commission was wearing its hat, although it contributed only one billion to the first tranche of €3 billion. The remaining €2 billion came from the Member States, 427.5 million from Germany ([bundesrechnungshof.de](https://www.bundesrechnungshof.de), 11.5.2018: 4). Similar points of critique were mentioned by the European Court of Auditors, namely inefficient administrative structures, high additional costs and too few control mechanisms (eca.europa.eu, 2018).

If the EU-Turkey agreement is measured by results, the assessment is even worse: According to Eurostat, asylum applications in Greece actually shot up after the conclusion of the contract. Until then, the number of applications had been around one thousand per month, but now it has multiplied by a factor of six and eight. By the end of 2019 it even exceeded the mark of 10,000 applications per month ([Eurostat](#), 15.09.2020, cf. Figure 10). Even if one takes into account that many asylum seekers had previously travelled on to other Schengen states, i.e. the number of unreported cases before 2016 was much higher, these data give the agreement a negative certificate. In addition, the 1:1 mechanism did not work either, as 18,711 people were repatriated to Turkey between 2016 and January 2020, while the EU received 27,000 Syrian refugees from Turkey ([Four Years on, March 2020](#)).

Finally, relevant to the political debate is the ECJ's response to a complaint by three asylum-seekers from Pakistan and Afghanistan. They wanted the Luxembourg court to review the legality of the EU-Turkey agreement in order to avoid the threat of expulsion ([CEPS, April 2017](#)). However, as the ECJ does not have to decide on their asylum applications, they accused the EU Commission of having to use other internal EU procedures in order to conclude the agreement as an international treaty. It was therefore not lawfully concluded. The ECJ surprised by the short reply

that it did not have jurisdiction to hear this case and therefore dismissed it. After consulting the Commission and the European Council, the Court concluded that "neither the European Council nor any other institution of the EU decided to conclude an agreement with the Turkish Government on the subject of the migration crisis." and that it wasn't an international treaty ([EUGH, 28.2.2017](#)). There would therefore be no legal act which the ECJ could have examined.

This decision by the European Supreme Court confirms the presumption that EU institutions are increasingly acquiring powers in foreign policy that they do not possess and do not wish to possess in case of conflict. This creates new problems at national level: as the EU-Turkey Agreement shows, member states engage in agreements with third countries which require a legal

Figure 11

French military withdrawal from Northern Syria since 14.10.2019

PARIS (Reuters) – France said on Monday it was taking measures to ensure the safety of its military and civilian personnel in northeastern Syria as the United States begins to withdraw its forces from the area following a Turkish offensive against Kurdish militias.

France has been one of the main allies in the U.S.-led coalition fighting Islamic State in Syria and Iraq, with its warplanes used to strike militant targets and its special forces on the ground coordinating with Kurdish and Arab fighters.

The United States announced on Sunday that it was beginning a deliberate withdrawal of around 1,000 troops from northern Syria, a process that U.S. officials told Reuters could take days, rather than weeks. [...]

French officials have previously said that a U.S. withdrawal would force them to also leave, given they rely on U.S. logistical support.

A regional diplomatic source told Reuters on Thursday that Paris was preparing to pull out its several hundred special forces. They are operating closely with Kurdish-led forces, who are now the target of Turkey's offensive in northern Syria. French aid workers are also in the zone.

In another headache for the Elysee, dozens of French Islamic State fighters and hundreds of French women and children are being held by Kurdish groups in areas close to the Turkish offensive.

France fears they could escape amid the offensive, return home and carry out attacks or fall under the hands of the central Damascus government, which could use them as bargaining tools. [...]

Source: [Reuters, 14.10.2019](#) [blue text: S.R.]

basis simply because of the consequential costs. But this hurdle is apparently being circumvented by sending Brussels as the political initiator and letting it act – in case of doubt even without the necessary legal basis.

Humanitarian refugee protection as compensation for an EU on war course

Because the legal basis for the EU-Turkey agreement is missing and there are thus no obligations under an international treaty, Ankara was able to violate agreements without incurring sanctions. The first critical moment emerged in mid-2018 when Turkey terminated its bilateral return agreement with Greece. It was in response to the refusal of the Greek judiciary to extradite Turkish military personnel accused of involvement in the attempted coup against Turkish President Recep Tayyip Erdoğan ([reuters.com, 7.6.2018](https://www.reuters.com/article/2018-07-06/turkey-greece-refugees-idUSKBN15L001)). Without examining the consequences of the suspension of the repatriation agreement for Greece, the €3

billion euros of the second tranche of aid money flowed on to EU projects in Turkey by the end of 2019.

It was only when Ankara started its military offensive in northern Syria in October 2019 that there were critical debates in the European Parliament. A resolution even condemned the military operation as a violation of international law and called for sanctions against Turkey ([euro-parl.europa.eu, 24.10.2019](https://eur-parl.europa.eu/24.10.2019)). But the proposed "reassessment of EU-Turkey relations" did not happen even when Ankara threatened to open its borders with the EU ([europarl.europa.eu, 18.3.2020](https://eur-parl.europa.eu/18.3.2020)). The European Parliament even approved in early June 2020 the Commission's proposal to pay a further 485 million to Ankara to help Syrian refugees despite the ending of the EU-Turkey agreement ([zeit.de, 6.6.2020](https://www.zeit.de/2020/06/2020-06-06)).

This is because Turkey is all the more dependent on foreign assistance as a result of its military offensive in north-western Syria. One of its objectives was to create a buffer zone on the Syrian border strip in order to resettle part of its 3.8 million refugees there ([reuters.com, 8.10.2019](https://www.reuters.com/article/2019-10-08)). But with the occupation of foreign state territory, Ankara is now also responsible for the local population, i.e. it now must provide for an additional 3 million people, mostly internally displaced persons from the civil war. In addition, a UN Human Rights Council Commission of Inquiry found in its latest report on Syria that Turkey bears responsibility for public order and security in the territory under its control. It is therefore complicit if it fails to prevent looting, ill-treatment or other human rights violations ([A/HRC/45/31, 14.8.2020: 14](https://www.unhcr.org/refugees/45/31)).

EU funds, if used properly, go to a huge number of people in need of help. However, donors do not seem to have a strategy to help end the civil war in Syria. On the contrary, they are now accepting an increase in refugee misery by continuing to support a warring party in the Syrian conflict that is using refugees as weapons for its war aims. Apart from the urgent humanitarian problems, Ankara's main concern is the Kurdish question. Not without reason it launched its military operation after the USA and France announced the withdrawal of soldiers from the Syrian war zone ([Reuters, 14.10.2019](https://www.reuters.com/article/2019-10-14), cf. Figure 11). According to official statements, they fought various Islamist groups in alliance with Syrian opposition members and Kurdish militias.

Turkey perceives the new military situation as a direct threat, because it improves the Kurds' chances of a territorial secession from Syria, Iraq and Turkey and raises hopes for the establishment of their own state. Their fears are not un-

Abbildung 12

Arms for Kurds, pictures for the Minister

The German Armed Forces could use positive news. [Defence Minister von der Leyen visits Hammelburg, where Peschmerga are currently being trained. Soon they will go to war with German weapons.](#) [...]

In the middle of this exercise on Thursday at the Army Infantry School in Hammelburg: Federal Defence Minister Ursula von der Leyen. The CDU politician came to Franconia to see the one-week training of 32 Kurdish Peschmerga soldiers who are to learn how to deal with the "Milan". [The Kurdish soldiers in northern Iraq are supposed to pass on their knowledge to their comrades in order to survive in the fight against the terrorist group "Islamic State".](#)

According to the German Armed Forces, the "Milan" has a maximum range of 2000 metres, and its projectile can penetrate 700 millimetres of thick panzer steel.

Germany plans to supply 30 "Milan" anti-tank missiles to the Kurds, plus 500 guided missiles, plus a total of 16,000 G3 and G36 assault rifles with ammunition, 40 machine guns, bazookas, hand grenades and signal pistols. [Equipping the Kurds with weapons and ammunition marks a turning point in Germany's security policy: for the first time in years, the Federal Republic is directly involved in an ongoing military conflict.](#) Von der Leyen had already advocated a stronger military engagement by Germany in international conflicts months ago. [...]

Source: Björn Hengst, Von der Leyen besucht Peschmerga-Ausbildung. Waffen für Kurden, Bilder für die Ministerin, in [spiegel.de, 2.10.2014](https://www.spiegel.de/2014-10-20) [Translation, blue text: S.R.].

founded, as European states have equipped the Iraqi peshmerga with weapons. Since 2014, they have been trained in Germany in the use of German tank weapons, which then go straight to the crisis areas together with hand grenades and machine guns (spiegel.de, 2.10.2014, cf. Figure 12). But allies can also use it to pursue their own agendas. In autumn 2017, the Kurds showed themselves ready to declare state independence after their referendum (nzz.ch, 21.9.2017) and to defend it militarily. That this did not happen was only due to the warning from the UN Secretary General (un.org, 25.9.2017).

Just as António Guterres defended Iraq's sovereignty, UN Special Envoy for Syria Geir Pedersen points out that the widely demanded constitutional reform for Syria will only succeed if the territorial integrity of the country is respected by all (sana.sy, 28.10.2019). Ankara has violated this rule with its military intervention as well as European states supporting separatist forces in Syria. Who will Turkey, Spain, Italy or the United Kingdom rely on when they themselves face separatist demands? Germany can also be drawn into such conflicts (dw.com, 9.10.2019).

In short: Instead of continuing sanctions – involving refugees in reconstruction

If one assesses the refugee crisis from the end, i.e. if one traces back the causal chain of the refugee causes, the dispute over the admission of further refugees turns out to be a sham discussion. It distracts attention from Germany's responsibility as an influential member of the United Nations (UN) to contribute with its own concepts to solving the Syrian refugee crisis. This is because the political disintegration and economic decline of the states affects not only Syria but the entire Middle East region and North Africa. Traditional concepts are not enough, because they rely mainly on sanctions, in the language of diplomacy on „sticks and carrots“ (Schweitzer, 9/2019).

As experience in Iraq shows, hardly any authoritarian regime has so far been overcome by economic sanctions. Saddam Hussein remained in power under embargo for more than a decade and was only overthrown by a US-led military intervention in 2003 ([AISammawi 2006](http://AISammawi)). President George W. Bush had called for support for this action, arguing that the sanctions were not effective (faz.net, 21.5.2001). In view of the devastating consequences, there was strong critiques of the UN, which was responsible for this: The 97 per cent drop in trade had led to a collapse of the Iraqi economy, resulting in the death of up to 880,000 children alone. This prompted the then

head of the UN aid programme, the German diplomat Hans von Sponeck, to resign (Welt.de, 22.9.2010; cf. [Riedel 1/2020](http://Riedel)).

In contrast, the proposal for sanctions against Syria met with resistance from Russia and China in the UN Security Council. The Russian ambassador to the UN criticised the resolution tabled by the US and EU members because it was only aimed at confrontation. A peaceful solution would require that not only the Assad regime be condemned for its use of force, but also parts of the Syrian opposition (theguardian.com, 5.10.2011). Security Council members who abstained, such as India, South Africa and Brazil, referred to the UN resolution to protect civilians in Libya, which had been misused by NATO for a military intervention. “They expressed fear a new resolution might be used as a pretext for armed intervention in Syria.” (ibid.)

These fears are not far-fetched; after all, EU countries have also become involved in the Syrian civil war. Therefore, the EU sanctions, which

Figure 13

Five years after the Syria conflict began

“[...] 9. **Millions of people have been pushed into unemployment and poverty.** The Syrian Center for Policy Research (SCPR) estimates that **more than 60 percent of the labor force (about 3.5 million) is unemployed, with some 3 million having lost their jobs** as a result of the conflict. [...] More than two-thirds of Syrians are living in extreme poverty, unable to meet basic food and non-food needs. [...]”

10. **Children have been profoundly affected by the war.** [...] School attendance has dropped by more than half, with **more than 2 million children in Syria out of school.** According to UNICEF, child labor is the predominant reason for the withdrawal of children from schools [...]

11. **Health conditions have dramatically worsened.** According to SCPR [...], **life expectancy has declined by 20 years within a span of four years (to 56 years in 2014, down from 76 years in 2010).** [...] about one-fifth of all **primary health care facilities are not functioning** and another one-fifth are functioning at limited levels; and half of the country's hospitals have been destroyed. [...]

12. **There is little food security.** People are having difficulties buying essential foods to survive, because of the contraction in agricultural output and high food prices. UNICEF estimates that **more than 4 million children and women are in need of nutritional assistance.**”

Source: Jeanne Gobat, Kristina Kostial, [Syria's Conflict Economy](http://Syria's_Conflict_Economy), IMF Working Paper, Middle East and Central Asia Department, WP/16/123, June 2016, p. 19 [bold text in original, blue text: S.R.]

have been in force since 9.5.2011 and extended until 1.6.2021 ([consilium.europa.eu, 28.5.2020, wko.at](https://consilium.europa.eu/2020/wko-at)), cannot be regarded as an initiative to resolve the Syrian conflict. They are the declared instrument of a Syrian strategy which is seeking a regime change in favour of opposition forces from outside – Turkey, Qatar and Saudi Arabia ([EU strategy on Syria, 3.4.2017](#), cf. point 3b, [auswaertiges-amt.de, 5.7.2019](https://www.auswaertiges-amt.de/5.7.2019)). EU action has also contributed to the deterioration of already precarious living conditions (cf. Figure. 13).

According to estimates in an International Monetary Fund study, the Syrian economy had shrunk by 57 percent after only five years of civil war, with crude oil production alone falling by 98 percent ([WP/16/123](#), June 2016, points 15 and 16). This was partly due to the war-related destruction of infrastructure and partly to the economic embargo. Of the export articles, crude oil and refined oil led the way with a share of around 45 percent in 2010, which was mainly delivered to the USA, the United Kingdom and Turkey. Today they are agricultural products such as olive oil (18.5 percent, [oec.world, 30.9.2020](#)) According to the report, it would take 20 years to rebuild Syria, provided " that the country can quickly restore its production capacity and human capital levels and remains intact as a sovereign territory." ([WP/16/123](#), point 33)

Until present days, the UN had refused Assad's requests for financial support to his government in repatriating refugees ([atlanticcouncil.org, 13.11.2018](https://atlanticcouncil.org/13.11.2018)). Concerns were fuelled by critical reports that Assad's government was not interested in the refugees, but was simply looking for a way to gain "international legitimacy" ([thenewhumanitarian.org, 16.8.2018](https://thenewhumanitarian.org/16.8.2018)). As the civil war now only affects areas in north-west Syria where Turkey is defending its security zone, the conditions for rebuilding the country are now more favourable than ever. The UN Commissioner for Refugees could now re-examine whether the criteria are met for the second phase of voluntary return to be launched and accompanied by the UN ([UNHCR, 2/2018: 2](#), cf. Figure 14).

But the decisive reason for the vehement reservations of Western states against the return of Syrian refugees to their homeland is probably that Russia has launched an initiative for this purpose. An Interagency Coordination Headquarters (ICH) was established on 18.7.2018, bringing together experts from 20 Russian ministries and government agencies with Syria "facilitating the process of refugee return". ([dam.gcsp.ch, 7.2.2019](https://dam.gcsp.ch/7.2.2019): 3). It considers that there are some 1.7 million refugees in countries neighbouring Syria who wish to

return. The Russian "refugee return plan" includes reconstruction of housing and basic infrastructure, facilitation of border crossings and an amnesty for those who have escaped military service.

In view of this multitude of possibilities to address the causes of the refugee crisis, German foreign policy can no longer hide behind the EU institutions. This is because, as shown in more detail above, the decision-making powers in this policy area are still in national hands (cf. Figure 9). The member states, not the High Representative of the EU for Foreign Affairs and Security Policy (HR/VP), must take the initiative to solve the refugee crisis. This applies above all to those countries which, like Germany, have made advance contributions within the European Union. The Federal Government would be well advised to think about the interests of its own country and to develop strategies, which it should then take the offensive while respecting the sovereignty of other states and the human rights obligations towards refugees. Without such a compass, every country quickly becomes the plaything of international actors who pursue their own political agenda behind their "humanitarian" refugee policy.

Figure 14

UNHCR's planning for return in Syria is characterized by two phases:

Phase 1 is the current phase, where the necessary conditions are not in place for safe and dignified return, but there are some self-organized returns occurring. During this phase, return should not be encouraged. [...]

Phase 2 will occur when conditions have substantially changed and large-scale voluntary repatriation can be facilitated by UNHCR and partners. A shift to phase 2 would be governed by four criteria:

1. **Legal framework(s)**, guaranteeing rights of returnees and unhindered access to them and return areas, is in place;
2. There is clear evidence of **Protection Thresholds** (see pages 7 & 8) being met in the place(s) of return;
3. There is an **improvement in conditions** in return areas;
4. **Refugees actively request support** from UNHCR to return, in large numbers.

Source: UNHCR, *Comprehensive Protection and Solutions Strategy*, Protection Thresholds and Parameters for Refugee Return to Syria, February 2018, page 2 [text bold in original, blue text: S.R.].

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