



International migration and relations with third countries: European and US approaches

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“Migration” in the German debate still largely refers to asylum seekers and illegal immigrants, and policies linking migration and foreign relations are dominated by concerns about border management, return and readmission. Financial and technical assistance to Eastern neighbours, the negotiation of readmission agreements at bilateral and EU level, and voluntary return programmes are all used to achieve the migration control objectives set by the Interior Ministries of federation and Länder.

In the smaller field of development cooperation, a number of programmes exist that seek to achieve developmental objectives through the reintegration of migrants, on a scale and in a fashion far removed from justice and home affairs methods. Sincere concerns about the negative effects of brain drain are at the root of these programmes. German actors are aware that the analysis of brain drain is changing, and that experts suggest that developing countries may benefit more from greater mobility and transnational links than from permanent return. However, reintegration programmes can only change within the narrow framework of German immigration law, whose future remains uncertain. Other areas, such as remittances, may offer more flexibility and are increasingly being explored.

The GATS mode 4 discussion has not so far focused on the benefits of mobility to developing countries, largely because concerns about unemployment and wage instability on the domestic labour market dominated the debate. However, Germany did agree to the EU initial offer. The current lull in negotiations may give those actors advocating more far-reaching commitments under mode 4 a chance to regroup and to set different terms for coming debates on the topic.

1. The Justice and Home Affairs agenda

Germany has a number of bilateral return and readmission policies. It is also active at the European level as an important driver of common policies in the fight against illegal immigration. Border management and the return of rejected asylum seekers are key policies in the German effort to limit what is seen as unwanted immigration. Consequently, the Eastern border is a particular preoccupation, and cooperation on return has been an important component of Germany's relations with its Eastern neighbours.

In 2001, 54,054 persons were refused entry at German borders.¹ Responding to the high number of incidences at the German-Polish border, the German border patrol and the Polish border patrol have established a close co-operation. The German authorities have provided the Polish border patrol with material and personnel support in order to establish controls adhering to the common European standards. German patrol officers have been invited to go on patrol with Polish colleagues on the Polish side of the border.

¹ ECRE country report 2002, <http://www.ecre.org>

There have also been more formal bilateral agreements with Central and Eastern European states, amounting to a co-ordinated partnership policy. For instance, Germany concluded readmission agreements with Poland in 1993 and the Czech Republic in 1994. These were associated with financial aid: 120 million DM to Poland and 60 million DM to the Czech Republic. The agreements stipulated that this budgetary assistance would compensate for the financial effort borne by Poland and the Czech Republic owing to the rising rate of expulsions of foreigners carried out by Germany.²

The funds contributed to the development of the transport and communication infrastructures, as well as financial and technical assistance to create of a common database of undesirable aliens. Part of the financial assistance was also intended to be used in order to establish adequate refugee status determination infrastructures and to improve the reception conditions of the asylum applicants. However, out of the 120 million DM given to Poland only a mere 13 per cent was earmarked for asylum infrastructure, in contrast to nearly half for border authorities and another 38 per cent for the police. The financial assistance was therefore not only directed narrowly towards justice and home affairs areas, but was concentrated - even within the justice and home affairs area – on aspects directly related to Germany’s border security.

Germany is also concerned with the transit of undocumented migrants through neighbouring Eastern countries. The Federal Border Police, the Federal Criminal Police Office and the Federal Intelligence Service collect and evaluate information on the paths that undocumented immigrants use to get into the country.³ In 2002 Germany signed readmission agreements with Albania, the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia (now Serbia and Montenegro). The latter agreement provides for the return of Roma from any successor state of the former Yugoslav federation to Serbia and Montenegro, on the only condition that they have identification papers from the former Socialist Federal Republic of Yugoslavia. Readmission agreements have also been signed with a number of states outside of Central and Eastern Europe, where transportation by air or other means may be more relevant.

Table 1: Readmission agreements concluded by Germany⁴

Albania	IP A-C
Algeria	Signed A
Bosnia H.	Signed A
Bulgaria	Signed A-C
Croatia	Signed A
Czech Rep.	Signed A-B-C
Egypt	IP A-B

² Agreement between Germany and Poland on Co-operation Regarding the Effects of Migratory Movements, 7 May 1993; Agreement Between Germany and the Czech Republic on Co-operation Regarding the Effects of Migratory Movements, 3 November 1994. Cited in Daphné Bouteillet-Paquet, “Passing the Buck: A Critical Analysis of the Readmission Policy Implemented by the European Union and its Member States”, in *European Journal of Migration and Law* 5: 2003, p.365.

³ Norbert Cyrus and Dita Vogel, “Germany”, in Jan Niessen, Yongmi Schibel and Raphaële Magoni (eds.), *EU and US approaches to the management of immigration*, MPG (2003), p.28.

⁴ Sources: <http://www.poptel.org.uk/statewatch/sem doc/file/NEW/readmis2.htm> and http://www.europarl.eu.int/workingpapers/libe/104/default_en.htm

Estonia	Signed A-B-C
FYROM	IP A Signed C
Georgia	Signed
Hong Kong	Signed
Hungary	Signed A-B-C
India	IP A-B
Latvia	Signed A-B-C
Lithuania	Signed A-B-C
Morocco	Signed A
Pakistan	IP A-B
Poland	Schengen
Romania	Signed A
Russia	IP A-B
Slovenia	Signed A
Switzerland	Signed A-B-C
Vietnam	Signed A
Yugoslavia	Signed A

A = Provisions relating to the readmission of nationals of the contracting parties

B = Provisions relating to the readmission of third-country nationals

C = Provisions relating to transit for return purposes

IP = In preparation

Schengen = agreement signed with all Schengen States

Next to border management, the return of those persons who are found to be in the country illegally or who have been rejected in the asylum procedure is a central component of German policy. In 2002, there were 30,423 deportations of rejected asylum seekers, with the main destination countries Federal Republic of Yugoslavia (4,916 persons) and Turkey (4,531 persons).⁵ However, only a small percentage of returns are declared involuntary.⁶ Spontaneous returns and persons participating in assisted return programmes make up the major part of returns, but exact figures are not available since there are a significant number of federal and Länder programmes in this area. The following brief overview examines some of these programmes and comments on the extent of their interaction with developmental or foreign policy agendas.

The most important return programmes are implemented by the International Organisation for Migration (IOM). IOM's REAG (Reintegration and Emigration for Asylum seekers in Germany) programme has been running in Germany since 1979. GARP (Government Assisted Repatriation Programme) was added in 1989. Initially, the programmes were the responsibility of the Ministry of Family, Youth and Health. In 2000, the Interior Ministry took over, and since January 2003, the Federal Office for the Recognition of Foreign Refugees has administered the funding for REAG and GARP.

⁵ ECRE country report, op.cit.

⁶ In 1999, the percentage was 5.93%. Cited in Tina Entenmann, *Reintegration in Deutschland – Politische Entscheidungsträger, Akteure, Programme*, paper commissioned by AGEF GmbH Berlin, November 2002, available on European Reintegration Networking: <http://www.reintegration.net>, p.12.

50% of funding comes from the federal level (interior ministry), while 50% is provided by the Länder.⁷

The development of these programmes has been closely related to the changes in the number and nationality of refugees arriving in Germany. In the early to mid-1990s, Germany gave temporary protection to 345,000 refugees from Bosnia-Herzegovina. By the end of 2000 more than 90 percent of them had returned home,⁸ some of them with assistance through IOM-run programmes. An exemplary recent project targeted 180,000 Kosovar refugees temporarily resettled in Germany. The assistance given comprised air and land transport, pocket money for travel preparations, baggage allowances, and a start-up assistance of 450 DM per person.

With the GARP programme, which provides reinstallation grants to returnees of selected nationalities, the correspondence with the development of asylum figures is even closer. According to the stated preference for targeting persons from “countries of origin important in terms of migration policy”⁹, the programme allocates higher amounts of financial assistance to Afghan returnees and to minorities from Kosovo, while persons from Yugoslavia, Georgia, Iraq, Iran, Macedonia, Russia, Sri Lanka, Syria, Turkey, Ukraine would be assisted with a lower amount. These countries largely correspond to the main countries of origin of asylum seekers, which in 2002 were Iraq, Turkey, the FRY, the Russian Federation, and Afghanistan.¹⁰ In 2003, the programmes were projected to cover 12,000 returnees. The REAG and GARP programmes are premised on the assumption of permanent return: if the person comes back to Germany within the five years following return for a duration of more than three months, he/she has to pay back the costs of assistance.

Voluntary programmes can sometimes give way to forced returns. In Germany, the conference of the interior ministers of the Länder has the power to stop deportations to particular countries, where a situation of conflict is considered to make return impossible. Decisions must be adopted unanimously. The federal interior ministry does not have the authority to decide on deportation stops unilaterally.¹¹ At the November 2003 conference, the ministers adopted a decision on Iraq, noting that voluntary return currently takes precedence over forced return and will be supported in the framework of the existing programmes REAG and GARP. However, the ministers also called on the federal interior minister to “keep the Länder informed of the further development of the situation, so that [they] can submit, in good time, a concept on the forced return of Iraqi

⁷ Bernd Hemingway, Hans Beckers, “Förderung der freiwilligen Rückkehr ausländischer Mitbürger”, in: *Migration, Flüchtlinge und Integration*, Volume 10 “Wanderungsbewegungen”, Bundesamt für die Anerkennung ausländischer Flüchtlinge, 2003.

⁸ Veysel Oezcan, *Germany: Immigration in Transition*, country profile May 2002, Migration Information Source, <http://www.migrationinformation.org>

⁹ Ministry of the Interior, Department A4, Support for voluntary return through the programmes REAG and GARP, programme changes for financial year 2003, Berlin, 20 February 2003.

¹⁰ 71,127 asylum seekers arrived in 2002, 19.4% less than in 2001. Recognition rates (especially in the first instance) are low, with only 1.8% of applicants receiving constitutional (“big”) asylum in 2002, compared to 60.6% who were not granted any status at all. ECRE country report, op.cit.

¹¹ This limitation, which results from the application of Art. 83 of the Basic Law, has been quoted by the federal government in response to parliamentary questions regarding the deportation of Turkish nationals. Article 83 stipulates that “Where the Länder execute federal laws in their own right, they shall regulate the establishment of the authorities and their administrative procedure insofar as federal laws enacted with the consent of the Bundesrat do not otherwise provide.”

nationals as soon as this becomes possible".¹² A transition from voluntary to forced return is therefore foreseen.

With regard to forced returns, it must be noted that "the particular German political culture with its strong alignment to individuals' rights as guaranteed in transnational and national law, the strong interference of court case law, and the important role played by local implementation and pressures, has resulted in a practice much less restrictive than suggested by the rhetoric."¹³ For instance, there have been programmes to issue residence permits to particular groups of third country nationals who held tolerated status for a long time (Altfallregelungen)¹⁴ About 24,000 employed Bosnian civil war refugees benefited from such a programme in 2001¹⁵.

There is also a link between return programmes and development (or reconstruction). In the abovementioned decision, the interior ministers "call[ed] on the Iraqi nationals living in Germany to contribute actively to the reconstruction of Iraq and the establishment of a democratic regime, by making their knowledge and skills available to the people in their homeland".¹⁶ Here, the reference to the developmental potential of returnees is most likely a formality. However, specific programmes developed by certain Länder such as Berlin, whose policies are considered pioneering, have taken the commitment to reconstruction more seriously.¹⁷ The return programmes to Bosnia did, for example, have a component similar to reconstruction assistance, as half of the funds made available for returnees went to local municipalities to aid with infrastructure and other expenses. In fact, before the start of the Bosnian return programmes the Berlin Senate had considered approaching the GTZ (development agency) as an implementing partner, but the Development Ministry did not wish an involvement.¹⁸ The Berlin senate later worked with ICMPD in Bosnia to evaluate the use of payments by the local municipalities.

Future changes to voluntary return programmes cannot be easily predicted. The report of the Süßmuth Commission suggested that such programmes be stepped up, and that more persons from countries of origin should be involved in their design and implementation. This formulation suggests a strengthening of the development or reconstruction component in return programmes. However, the provision for supporting voluntary return was not carried over into the draft law of 2002, which only envisaged the establishment of facilities for foreigners under obligation to leave Germany, in order to "encourage, through counselling and advice, the readiness for a voluntary departure and

¹² Decisions of the 173rd session of the Permanent Conference of the Interior Ministers of the Länder, 21 November 2003 in Jena, point 2 on the return of Iraqi nationals.

¹³ Norbert Cyrus and Dita Vogel, *op.cit.*, p.7.

¹⁴ Section 32, Foreigners Act. The status of "toleration", which halts the obligation to leave the country, has been used widely for foreigners without residence status who are incapable of leaving the country for personal reasons (sickness), reasons in the country of origin (civil war) or practical reasons (missing travel documents). Toleration gives access to basic welfare provisions, but not to the labour market.

¹⁵ Federal Government's Commissioner for Foreigners' Issues: 2002 Migration Report, Berlin: Federal Government's Commissioner for Foreigners' Issues, p.71. Cited in Cyrus/Vogel, *op.cit.*

¹⁶ See above note 12.

¹⁷ Other examples of Länder active in return are Baden-Württemberg, which in 2002 offered €500 per family for (permanent) returnees to Kosovo, Bayern and Nordrhein-Westfalen.

¹⁸ At that time, the planned return programmes were considered to be driven by Interior Ministry priorities and were criticised by UNHCR, which later changed its opinion.

to ensure the accessibility to the foreigner of authorities and courts as well as the execution of the return".¹⁹ This suggestion has a much more restrictive emphasis and was strongly criticised by NGOs.

An overview of German policies in this area must increasingly take into account the developing EU policies and Germany's role in their planning and adoption. Since the entry into force of the Amsterdam Treaty, Germany has been widely considered to play an important role in the Council of Ministers: as an advocate of common measures in the area of illegal immigration, and as a force against harmonisation in the area of legal migration and residence rights. In the area of external relations, for instance regarding the process through which a number of readmission agreements are being negotiated at EU level, there is little knowledge about the role played by individual Member States.²⁰ It may be assumed that Germany plays a similarly active role in the area of relations with countries of origin as it does in the fight against illegal migration. One indication may be its role as co-initiator (with Spain and China) of the ASEM Ministerial Conference on Cooperation for the Management of Migratory flows between Europe and Asia, which was held in Lanzarote, Spain on 4 and 5 April 2002.²¹

The foreign ministry has a small but developing interest in migration issues. While the legal section of the ministry has a long track record of working on aliens and asylum law and on visa questions, other parts of the ministry are becoming increasingly aware of the impact that migration has on Germany's relations with third countries. For instance, the conclusion of tough readmission agreements can trouble relations with countries of origin beyond the narrow area of justice and home affairs. Vietnam has been a case in point. Where Germany has strong interests in the foreign policy and economic field, as is the case with China, an unaccommodating stance in the field of migration may hurt the coherence of national policy. However, the foreign ministry has not so far voiced its concerns strongly, indicating that the dominance of domestic home affairs policy in Germany is considerable.

2. Migration for development

In a position paper on migration and development cooperation, the Development ministry²² acknowledges that "the international community must, by mitigating the political, socio-economic, ecological and demographic problems which cause people to move, contribute to encouraging them to stay". However, it emphasises that a drop in migration pressure can be expected only in the long term. In the short and medium term, migration must be managed rationally and to the benefit of all those involved, so that violence and conflict are avoided. Even in the long term, and on the assumption that development strategies are successful, the establishment of migrant networks means that chain migration and family reunification movements will continue. While forced

¹⁹ Draft Law, para. 61 (2). Cited in Tina Entenmann, op.cit.

²⁰ Article 63, subparagraph 3(b) TEC confers jurisdiction to the European Union as regards repatriation of third country nationals. Under this provision, the European Union is entitled to conclude EU multilateral agreements which will complement the existing bilateral treaties concluded under international law.

²¹ http://europa.eu.int/comm/external_relations/asem/min_other_meeting/mig.htm

²² Formally called the Ministry for Economic Co-operation and Development, Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ).

migration may be avoided, mobility will be further encouraged. The ministry's statement therefore strongly warns of burdening development cooperation with too many expectations in the area of migration prevention. This would necessarily lead to disappointment and further erode the reputation of development cooperation.²³

Germany spent 0.27 of GNI on official development assistance in 2002, less than Sweden (0.83) or France (0.38) but more than Spain (0.26) Italy (0.20). German net ODA was €5,650 million in 2002, with a bilateral share of 63%. The top ten recipients of gross ODA were Serbia and Montenegro, China, Bolivia, India, Mozambique, Indonesia, Turkey, Egypt, Jordan and Afghanistan.²⁴ Several important migrant-sending countries are among the major aid recipients, which may indicate that a wish to address "root causes" plays a role in the allocation of funds. On the other hand, Serbia and Montenegro, Turkey, and Afghanistan are also the countries of origin of many rejected asylum seekers and illegal immigrants. As Germany supported the proposals presented by Spain and Britain at the June 2002 Seville summit to make aid conditional upon cooperation in the fight against illegal migration, it may be assumed that the government includes elements of such conditionality in its own political practice.

Nevertheless, the main political debates linking migration and development have taken place not about the uses of development aid, but about the question of brain drain. This issue played an important role in the German development debate of the 1960s-80s, despite the fact that most of the "Gastarbeiter" who had immigrated since the 1950s were semi- or low skilled and worked mostly in industrial manufacturing, and that most of the successive immigration movements through family unification or immigration of "ethnic Germans" were not subject to a skill-based selection process.²⁵ Nevertheless, the continued presence of foreign graduates of German universities was seen as problematic. As a result, their residence and work permits were limited, and incentives were developed in the form of reintegration programmes with financial support.²⁶ The brain drain debate experienced a new "high point" in 2000 around the introduction of the Green Card scheme. Rather than students, it was the high skilled IT workers that were the focus of attention. Again, reintegration programmes were proposed as a potential remedy.²⁷

The number of foreign graduates participating in the "first generation" of reintegration programmes remained low, as many of them chose instead to migrate to less restrictive immigration countries such as Canada and the US. Today, many reintegration programmes still exist, but only a small percentage of returnees are supported in the framework of a programme or a project.²⁸ An overview of existing programmes is

²³ Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ) (1999): *Migration und Entwicklungszusammenarbeit*, BMZ aktuell n° 99, Bonn.

²⁴ OECD DAC, <http://www.oecd.org>

²⁵ Uwe Hunger, *Vom Brain Drain zum Brain Gain: Auswirkungen der Migration von Hochqualifizierten auf Abgabe- und Aufnahmeländer*, Report commissioned by the committee on migration and integration of the Friedrich Ebert Foundation, August 2003.

²⁶ Konrad Melchers, Roger Peltzer and Patrick Wurster, *Königsweg der Entwicklungspolitik: Diasporas also Ressourcen von Entwicklung und Globalisierung*, EPD-Entwicklungspolitik 13/2003.

²⁷ See, for instance, Jürgen Wiemann, *Green Card für indische Programmierer: Herausforderung für die Entwicklungspolitik*, in: *Politik und Gesellschaft (International Politics and Society)* 4/2000.

²⁸ Tina Entenmann, op.cit.

nevertheless useful. Some alternatives then emerge from an evaluation of their strengths and weaknesses.

The ZAV (German Central Placement Office), an entity under the Ministry of Labour, advises potential returnees on reintegration. This is in keeping with a law dating from 1983, which grants returnees the right to receive advice on the labour market situation in the country of origin.²⁹ The ZAV also disburses funds provided by the Development ministry. Indeed, the Development ministry funds the great majority of reintegration programmes in Germany, under its budget line 685 08.³⁰ There is a “general” programme for a wide range of countries, as well as specific programmes for countries such as Afghanistan or Kosovo which also cater to lower-skilled returnees and allow for further training in the home country.³¹ With its activities, it seeks to achieve a transfer of know-how (both professional and “soft skills”), and also aims to contribute to the building up of sustainable structures in the developing countries, including good governance and a strengthened civil society. It is careful to point out that in contrast to REAG and GARP, the fact of a person’s return does not yet constitute a success for these programmes.

The Development ministry works with a range of implementing partners such as the ZAV or non-governmental agencies. The ZAV programme is typical in that it benefits nationals of developing countries, preferably those of a state that is already a focus of German development aid. These persons must have been trained in an OECD country and/ or worked in an OECD country for several years, preferably in their profession. They should find an employment “important in terms of development policy” and can receive travel and transport assistance as well as a grant in addition to the local salary. This grant is paid for 6-24 months after arrival.

Returnees can obtain assistance for workplace equipment through the APA programme run by the World University Service (WUS). Again, the equipment subsidies of up to €10,000 should be for “a workplace of development policy importance”, defined as a workplace in public administration, the private sector or social facilities in the following sectors: economic and social infrastructure, health-care services, environmental protection, agriculture and forest management, energy supply, or training.

The non-governmental organisation AGEF provides cross-border placement services, offering advice, active job acquisition as well as adapted recruitment instruments in Germany and in its offices in Kabul, Banja Luka, Pristina and Belgrade. In 2002, AGEF assisted in the job placement of 2,500 returnees. The organisation also runs the Southern Africa GetJobs initiative (German Experienced And/Or Trained Personnel Jobs Service in Africa and Asia), which assists German-trained skilled workers to either find employment in their home countries or to start a business. AGEF further assists in

²⁹ Law for the promotion of the willingness to return of foreigners.

³⁰ Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, Die Finanzressourcen des BMZ – Entwicklungszusammenarbeit im Bundeshaushalt 2004. The budget line is listed in a category also comprising five other budget lines, with a total amount of €287 837 000. Allocations in this category are projected to fall to €127 200 000 for the next year. Country specific programmes additionally receive funding under other budget lines. More information on the implementing organisations and their activities can be found under <http://www.zav-reintegration.de>, <http://www.agef.de>, <http://www.getjobs.net>, and <http://www.wusgermany.de>. The Federal Office for the Recognition of Foreign Refugees hosts a database of return support projects.

³¹ 5,000 Afghans returned in 2003 under the special programme.

communicating the characteristics of German qualifications to potential employers in countries of origin, in order to facilitate their acceptance.

Some programmes target specific countries, such as the programme implemented by the DEG (German Investment and Development Agency) to support migrant entrepreneurs who want to establish a company in their country of origin, in particular Albania, Eritrea, Croatia, Macedonia, the Palestinian territories, Slovenia, Turkey, and Vietnam. Various specialised programmes also give advice and assistance to particular groups of potential returnees. For instance, special programmes exist for women, for medical doctors, and for skilled persons without work experience. Seminars are also held about return to individual countries such as Sri Lanka, Vietnam, Chile, Morocco, Indonesia, and Cameroon.³²

The traditional concern with foreign students in Germany is sustained by academic institutions such as the DAAD (German Academic Exchange Service), which carries out networking activities such as the building up of professional networks to support former students from developing countries and to maintain their ties to Germany. Some of these institutions, which are anxious about the negative effects of brain drain, have introduced a strong return component. For instance, the Catholic Academic Exchange Service includes a return obligation in its scholarship agreements with students from developing countries, and aims to build relationships with partner institutions in the home countries in order to assist returnees with reintegration and employment perspectives.³³ This approach was shared by the drafters of the new immigration law, which includes a provision to exclude scholarship recipients from developing countries from a renewal of residence permits or from a change in status.³⁴ In contrast, the Development ministry in a statement about scientific cooperation presents a more differentiated picture of the brain drain, emphasising the benefits of close academic and commercial links especially in the long term, and does not propose a strong focus on return since researchers and other highly skilled persons can bring great benefit to their home countries even while remaining abroad.³⁵

An evaluation of the various reintegration programmes supported by the Development Ministry is scheduled to take place in 2004. So far, it can be said that the goal of achieving a true knowledge transfer is not always achieved, since it is not at all times possible to find jobs at the adequate level of qualification, or in the person's field of training. Moreover, as stated above the numbers involved in such programmes are fairly low. While this may be considered a weakness, it also benefits the programmes in so far as they are not generally seen as a "threat" by governments in the country of origin and do not lead to negative reactions among the local population. Within the Development department, the reintegration programmes are an accepted part of activities, but their insufficient integration with other programmes run by the ministry is a shortcoming.

³² In addition to those mentioned, a variety of local and regional programmes exist, as well as initiatives funded by the European Refugee Fund.

³³ Hermann Weber, *The "Globalized" Expert and the Diaspora – a new paradigm for the Church policy of scholarships and aid to development*, in: *People on the Move*, n° 88-89, April-December 2002, Pontifical Council for the Pastoral Care of Migrants and Itinerant People.

³⁴ Draft Law, para. 16.

³⁵ Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, *Wissenschaftsförderung, Hochschulkooperation und Migrationspolitik in der Entwicklungszusammenarbeit*, BMZ-Spezial 35, 2001/07.

A wider policy debate on the issues related to reintegration is not yet taking place in Germany. Neither the Süssmuth Commission's report on immigration nor the report of the Parliament's Enquete Commission on "Globalisation of the World Economy" address the theme of migration and development.³⁶ Of course, as mentioned above this relative lack of debate partly reflects the much lower presence of highly qualified immigrants in Germany as compared to countries such as Canada or the US – a product of the restrictive immigration policies of previous decades. However, the omission is also the result of the present, highly polarised, immigration debate, which has focused on issues of integration and security rather than the potential of migrants.

More concretely, calls to transform reintegration programmes into "mobility programmes", which do not rely on the permanent return of migrants but seek to support their "bridge" function between the countries, come up squarely against the restrictive immigration rules. For instance, the present regulations, which demand that even migrants with a long-term residence permit must not leave Germany for more than six months, are likely to deter migrants from becoming involved in their countries of origin.³⁷ When and if a liberalisation will take place cannot be predicted: the new Immigration Act 2002, which had already passed the legislation procedure, was stopped by the Federal Constitutional Court because of procedural shortcomings and must now be re-negotiated.

In consequence, the scope for the actors involved in reintegration programmes to make them more "mobility-friendly" – and more relevant to development - is limited by the lack of appropriate immigration legislation. Given the ongoing controversy about the draft law, it is more likely that actors who wish to link migration and development will turn to fields other than reintegration. Remittances are such a field, and attention to this topic is, in fact, growing steadily. While data about remittance flows from Germany are scarce, their magnitude can be inferred from the flows into main countries of migrant origin: for instance, in Turkey remittances are four times higher than foreign direct investment.³⁸ The Development ministry has stated that "the importance of remittances for development that should not be underestimated", especially "in times of shrinking development budgets and high costs of raising capital".³⁹ However, no further policy actions have yet been undertaken in this area, partly due to budgetary reasons. The debate may be intensifying in response to the growing international focus on remittances, which is closely observed by German actors.

Another promising avenue may be the involvement of migrants in Germany's promotion of good governance and human rights in developing countries. The foundations of the major political parties, church organizations and NGOs, but also government agencies themselves have a long tradition of projects to strengthen the civil society of developing countries through measures such as support for trade unions, chambers of commerce,

³⁶ Report of the Independent Commission on Migration (2001); Schlussbericht der Enquete-Kommission. Globalisierung der Weltwirtschaft (2002). However, the GTZ (development agency) has recently organised two conferences addressing brain gain/brain drain and working with the diaspora on development. See <http://www.gtz.de/migration-and-development/english>

³⁷ Section 44, Foreigners Act (on the expiration of the residence authorisation).

³⁸ Konrad Melchers, Roger Peltzer and Patrick Wurster, op.cit.

³⁹ BMZ (1999), *Migration und Entwicklungszusammenarbeit*, op.cit.

human rights groups, etc.⁴⁰ In its reintegration activities, AGEF already works with local professional associations, which receive some funding – for instance towards the employment of a coordinator. Such local organisations of professionals with ties to Germany exist, for example, in Morocco, Cameroon, Ghana, Mozambique, Indonesia, Peru and Mongolia. However, while the current programmes include the strengthening of transparency, pluralism, democracy and participation among their goals, the low number of participants and the restrictions on their mobility necessarily limit the impact on developing countries' societies. Fostering such initiatives may be a way of joining the German human rights focus in aid with the goal of using migrants as resources for development.

3. Migration, mobility and trade

The adoption of the EU initial offer on the General Agreement on Trade in Services generated a surprising amount of public and policy attention in Germany. In particular, the temporary movement of natural persons as provided for in mode 4 of the agreement was at the centre of a lively debate involving trade experts as well as Members of Parliament, the social partners⁴¹, the media and grassroots non-governmental organisations. However, the link between mobility and foreign relations, or between GATS mode 4 and the position of developing countries, played only a minor role in a debate that was dominated by concerns about the German labour market.

The GATS mode 4 debate, which reached its high point in the first half of 2003, took place against the backdrop of policies increasingly favouring the entry of high skilled professionals.⁴² The “ordinance covering exceptions from the general stop of labour immigration” (Anwerbestoppausnahmereverordnung) provided an instrument for the entry of high skilled workers, although it was little used – in 1999, there were 8,600 high skilled immigrants with temporary permits in Germany. On the other hand, large companies in particular used many intra-corporate transferees, with 20,000 of them coming to Germany in 1999.⁴³ The procedure granting permits to intra-corporate transferees was made easier in 1998, and economic needs tests for this group were abolished.⁴⁴

The “Green Card”, which was introduced in August 2000, constituted another “exception” to the general stop of labour immigration, restricted to a certain number of IT professionals who would receive permits for five years. Between 2000 and 2003, just 15,000 IT specialists were recruited, short of the planned quota of 20,000. Partly, this was a result of the negative developments in the IT sector, but it also reflected the “low attractiveness of Germany as an immigration country in general, and of the Green Card

⁴⁰ Peter Waller, Aid and Conditionality, in: *D+C Development and Cooperation*, n° 1, January-February 1994, pp 4-5.

⁴¹ In this section, “trade unions” and “business” are used as general terms summarising the role of the relevant social partners in the debate, without claiming to represent the full range of opinions represented. On the side of the trade unions, the service union federation “ver.di” was the most important actor, whereas on the side of business it was the Federation of German Industry “BDI”.

⁴² The government cited the fact that the implementation of the EU initial offer would not necessitate any change in existing German laws as an important element shaping its position towards the Commission’s draft offer.

⁴³ OECD, cited in Hunger, p.21.

⁴⁴ Hunger, op.cit., p.45.

offer in particular”.⁴⁵ The permits were mainly used by small and medium sized companies, while larger ones continued to use the possibility of intra-corporate transfers. Despite this policy background, the GATS mode 4 discussion was strongly affected by the negative debates about the draft law on immigration and about the consequences of enlargement in terms of migration. The massive concerns about unemployment in Germany created a focus on the labour market effects of mode 4 liberalisation. Partly, these debates were driven by fears rather than by a careful analysis of the policies at stake. For instance, much of the discussion was carried out as if the entry of low skilled workers was foreseen, despite the fact that the EU Commission’s draft did not include low skilled persons and despite the recent loss of interest of key developing countries in this question (partly because of own fears of immigration from poorer countries). This was particularly true for the construction sector, which has a 34% unemployment rate and which played a central role in the German GATS debate.⁴⁶ Both unions and companies in the construction sector had unfavourable positions concerning further mode 4 liberalisation. Negative experiences with existing bilateral arrangements for temporary migration were cited, mostly concerning the low wage sector (agreements with Poland, Hungary, Romania, etc.). In particular, the erosion of collective wage bargaining, the shrinking competence of staff councils and the spread of employment relationships outside the scope of German law were considered major problems.

Despite the provisions for consultation offered by the responsible ministry, many stakeholders in the German debate expressed their dissatisfaction with the negotiations’ lack of transparency – mostly targeted at the EU Commission. In Germany, the lead in the negotiations was taken by the large “ministry for the economy and for labour” (BMWA), which unifies in its mandate the responsibilities of trade, industry and labour departments. Other relevant ministries such as the Interior, Foreign Affairs and Development ministries were consulted by the BMWA, but did not enter into the debate at the public or even the expert level. The Interior Ministry, in particular, did not become active on mode 4 because it considered that the temporary movement of service providers did not concern its own competence of immigration and access to the labour market.

However, Members of Parliament as well as non-governmental organisations claimed their part in the debate and strongly criticised the fact that the European Commission had asked the German Parliament to keep the content of ongoing negotiations secret, and that comments on the initial offer had been solicited while only unofficial (“leaked”) versions were available.⁴⁷ In fact, the Parliament adopted – with the votes of the Social

⁴⁵ Hunger, op.cit., p.46. Perceptions of xenophobia in Germany and the delay of one year in granting labour market access to spouses were cited among the reasons for the relatively low number of applications. The Green Card regulation has now been prolonged until the end of 2004.

⁴⁶ Architects and other professions were also cited as a group threatened by a liberalisation under GATS, although currently the percentage of architects with foreign qualifications is at 1-2%, a figure that includes both EU and third country nationals. Source: Bundesverband der freien Berufe.

⁴⁷ MP Sigrid Skarpelis-Sperk (SPD), comment recorded in: Deutscher Bundestag, Committee on Economy and Labour, protocol of the public hearing on 7 April 2003 in Berlin on “The negotiations on the General Agreement on Trade in Services – opportunities and risks for the German economy and labour market”, Committee record 15(9) 350. Some information was given to civil society representatives in the course of the BMWA’s “trade consultations”, which take place three or four times a year. While these sessions are seen as useful opportunities for information

Democratic and Green majority - a request to the European Commission asking for greater transparency and for the publication of all relevant documents.⁴⁸ Social Democratic members of parliament (especially the working group on “world economy”) were also working closely with the trade unions. In this context, a public hearing on “GATS – opportunities and risks for economy and employment in Germany” was held on 7 April 2003. Mode 4 was one of the most discussed issues, along with the liberalisation of the water and education sectors. Representatives of several employers associations (industry, association of professionals, insurance, banks, etc.) and trade unions (German Trade Union federation, services, construction) were invited as well as the European Commission, the Kiel Institute for World Economics, the association of German cities, and the non-governmental organisations Attac and Weed.

The hearing took place at a late stage in the negotiation process, but served to restate the arguments of the main actors in a condensed form. It also demonstrated that business had been unable to set the terms of the debate with a positive message about the potential of liberalisation under GATS. Its representatives notably failed in their goal of keeping the GATS debate separate from the controversial area of immigration, with the argument that the temporary movement of service providers under mode 4 was completely separate from migration issues because of its temporary nature and the precise conditions attached to it. Moreover, business in Germany did not succeed in focusing the discussion on Germany’s offensive interests and on the potential economic gains of opening the markets of other countries. Trade unions argued that on the contrary workers in Germany may suffer lay-offs since companies could shift a greater part of their activities abroad in response to eased conditions. Opportunities to relocate abroad were not seen to benefit most German workers, who would have to take a pay cut in most cases (especially in the construction sector). Families would have to remain in Germany where cost of living remains high. Overall, market openings were seen as profiting, if at all, only “multinationals which are only nominally German”, rather than German workers. In some sectors such as water, trade unions suggested that cooperation with developing countries should take place through development aid rather than the activities of private firms. This may create jobs in Germany in the field of development cooperation.

The argument that the liberalisation of movement under GATS mode 4 would benefit developing countries played a minor role in the German debate. Both business and trade unions considered the fact that GATS was limited to high skilled workers as an indication that mode 4 would not actually help low-income states, since the service providers would mostly come from newly industrialising countries. Moreover, the trade unions also argued that the EU’s emphasis on the positive effects of mode 4 on developing countries was part of a disingenuous strategy to offer mode 4 concessions as “incentives” in return for demanding much more consequential concessions in the area of privatisation of services. In this context, they also criticised the Union’s poor record on reforming its agricultural policy, a topic considered to be much more decisive for the developing world than the movement of service providers.

sharing, they generally do not comprise written statements or in-depth treatment of particular points.

⁴⁸ MP Michael Husted (Bündnis 90/Die Grünen), “GATS- Verhandlungen transparent und gerecht gestalten”, in: Ver.di, GPA, Hans Böckler Stiftung, Documentation of the GATS conference on 26 March 2003, p.49.

Debate on these themes was shaped by the alliance between the trade unions and non-governmental organisations such as Attac. The participation of these actors introduced a more general element of WTO criticism into the debate. In this process, mode 4 became a symbol of the “WTO system” and was connected with broader criticisms of this system.⁴⁹ The involvement of anti-globalisation activists changed the GATS mode 4 debate by taking it to a wider public: rather than being confined to technical discussion between experts, GATS mode 4 became the subject of speakers at demonstrations and rallies. At the same time, both trade unions and NGOs made a strong effort to disseminate information about the technical aspects of mode 4 issues by organising conferences and preparing accessible documentation.⁵⁰

Despite the widespread opposition to GATS, Germany adopted the EU’s initial offer along with the other Member States and thereby agreed to comparatively far-reaching offers regarding the movement of natural persons. It has been commented that Germany, along with Austria, had the highest trade union involvement of all EU member states, a fact that influenced its role in Committee 133 on services. The fact that the “employment” and the “trade” portfolios are treated in the same ministry certainly contributed to the strong presence of the trade unions in the GATS mode 4 debate. However, the unions themselves feel that they have been relatively unsuccessful in influencing government on several important points, for instance on the provisions regarding intra-corporate transferees (where the three-year period was criticised by the unions). On the other hand, they consider that their lobbying has influenced the German (and therefore the EU) position on the qualification requirements for independent professionals (the requirement now includes a university degree *as well as* work experience) or on quotas. Here, the German government insisted on a written assurance by the European Commission that the annual quota for a given sector could also be zero.

Reconsidering the situation during the current lull in negotiating activity, business representatives acknowledge that to make a strong case for liberalisation they need to present a clear picture of their demand for qualified workers in specific sectors or with particular skill characteristics. So far, companies have not formulated precise demands or predictions of demand, partly because they lack the instruments for doing so. As a result, the relevant federations have had little concrete input from their members, which has made it more difficult for them to argue in favour of more liberal entry rules. Nevertheless, the federation of industry (BDI) maintains that there is a need for greater temporary availability of foreign service specialists, especially in the areas of information technology, telecommunications, software development, electrical technology, biotechnology and natural sciences. Similarly, the federation of banks has pointed out that mode 4 “import” would support the competitiveness of Germany as a financial centre and create new jobs for Germans. The BMWA is now working on defining numerical ceilings for various sectors in response to a Commission request. It is possible that this

⁴⁹ See, for instance, Deutscher Bundestag, op.cit., statement of Attac Germany. However, the positions of trade unions and NGOs differed on some points. For example, Ver.di (the services trade union federation) asked for a suspension of GATS negotiations, whereas Attac asked for a stop of negotiations.

⁵⁰ See, for example, the Ver.di publications “Handels- und Dienstleistungsliberalisierung als Herausforderung für Gewerkschaften” (January 2003), “Ver.di fordert ein Moratorium der GATS-Verhandlungen” (January 2003), and “Dokumentation GATS-Konferenz” (March 2003).

exercise in “quantification” could serve to sharpen business arguments for future liberalisation.

To conclude, the link between “migration for development” and GATS mode 4 has not been prominent in the German debate. Attention has been focused on the consequences of mode 4 for the German labour market, rather than on the potential benefits for developing countries. Indeed, the argument that developing countries may benefit from greater mobility has been criticised as insincere by trade unions. Business representatives claim that mode 4 will benefit developing countries, but they could do more to lend credibility to this claim. For instance, existing partnerships between business associations and the development ministry could be used to initiate programmes for the continuing support of service providers after their stay in Germany.

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