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KATHOLISCHES FORUM  **LEBEN IN DER LEGALITÄT**

**KOK**  
Bundesweiter Koordinierungskreis  
gegen Menschenhandel e.V.

 **DER PARITÄTISCHE**  
GESAMTVERBAND

## German NGO Submission:

### Regional Review Global Compact for Migration in the UNECE Region

November 2020

On the occasion of the first regional review procedure in Europe and North America (UNECE Region)<sup>1</sup> for the Global Compact for Migration (GCM), representatives of civil society organisations and associations, practitioners, churches in Germany see a need for action and would like to point out that the implementation in Germany<sup>2</sup> and at the European level<sup>3</sup> needs to be taken further.

Yet, there is no formal coordination process in Germany to implement the GCM goals. An exchange with civil society groups and the Federal Foreign Office took place for the first time in September 2020. The authors and their institutions have, in some cases, been concerned for decades with the interests of migrants living in Germany at different stages of their lives, be it in daily advice and accompaniment, as legal representatives or in the context of advocacy.

We welcome the fact that, due to the approach embracing the whole of society, civil society groups can contribute their perspective in the review process. Migrant and diaspora associations should also be supported in contributing their point of view. Due to the broad thematic range of the GCM, the participation of technical experts should be encouraged, e.g. in the form of working groups in which policy-makers and civil society organisations regularly exchange views on current processes and good practices.

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<sup>1</sup> <https://migrationnetwork.un.org/country-regional-network/europe-north-america>

<sup>2</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/themen/migration/-global-compact-implementation/2230332> Nr.3 "A large part of the measures contained in the Global Compact are already being implemented in Germany."

<sup>3</sup> On 23.09.2020 the European Commission proposed a "New Pact on Asylum and Migration", which is currently being intensively discussed. The focal point is legal proposals regarding the Common European Asylum System. Thematically there are overlaps with the GCM, e.g. in the new screening process for all migrants, also for those who did not wish to lodge an asylum application in the EU.

## **The need to implement the objectives of the Global Compact for Migration**

In the following incomplete selection of issues, the authors<sup>4</sup> and the undersigning organisations see a discrepancy between the GCM goals and the legal reality for people with a history of migration in Germany and the EU.

The assessment is organised according to the order of the objectives discussed in the four Round Tables on 12/13 November 2020 at the “First Regional Review of the Global Compact for Safe, Orderly and Regular Migration in the UNECE region”.

### **A. Round table 1:**

#### **Objective 15: Provide access to basic services for migrants**

##### **1. Social benefits for job-seeking European Union citizens**

**Implementation gap:** The immigration of EU citizens who take advantage of their right to freedom of movement has been for years the most important source of migration for Germany. Germany benefits considerably from workers from other EU countries, as confirmed by the Expert Council of German Foundations (SVR) on Integration and Migration and other research institutes.<sup>5</sup> The SVR sees this as a clear “mobility dividend”. Apart from many skilled workers and highly qualified individuals, other migrants work below standard wage / union rates in sectors requiring hard, often physical labour, such as agriculture, the meat industry, the building industry, care, live-in-care, delivery services and the hotel sector. Without migrant workers, these sectors would suffer severe shortages.

Job-seeking EU citizens often only require assistance some time after entering Germany, when their savings have been used up and they have not found paid work fast enough. Since 2018, this group of persons has been excluded from basic social benefits (Grundsicherung) for five years – regardless of the fact that they are in Germany lawfully. If there is a prospect of paid work EU job seekers enjoy the general right of freedom of movement to look for a job. On the other hand occasional and precarious employment cannot lead to permanent employee status that in the long-term enables access to the statutory social benefit system (SGB II). Employers in Germany can easily exploit the dire straits in which those concerned find themselves. Frequently job-seeking Union citizens fall prey to exploitative work situations, which have meanwhile escalated into serious forms of exploitation even to the point of human trafficking. This exclusion from benefits, affecting families with children at school and in training, creates precarious living conditions and in many cases means that health insurance is called into question.<sup>6</sup>

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<sup>4</sup> The following have participated in drafting this position paper: Katharina Stamm, Diakonie Deutschland, Martina Liebsch, Geschäftsführung AG Menschenhandel der Deutschen Bischofskonferenz (DBK), Jonas Wipfler, Misereor, Sophia Wirsching, KOK e.V., Dr. Elke Tießler-Marenda, Deutscher Caritasverband, Astrid Müller, VENRO, Christian Wolff, ACT Alliance, Prof. Dr. Anuscheh Farahat, Erlangen, Marius Tollenaere, RA Frankfurt. The authors thank Dr. Steffen Angenendt and Dr. Anne Koch from the German Institute for International and Security Affairs (Stiftung Wissenschaft und Politik, SWP) for substantive suggestions.

<sup>5</sup> Prof. Dr. Herbert Brücker, Institute for Employment Research (IAB), <https://www.tagesspiegel.de/politik/15-jahre-eu-osterweiterung-die-zuwanderung-aus-osteuropa-ist-einerfolgsmodell/24266040.html>, SVR\_Jahresgutachten 2013 [https://www.svr-migration.de/wp-content/uploads/2013/04/SVR\\_JG2013\\_Kernbotschaften.pdf](https://www.svr-migration.de/wp-content/uploads/2013/04/SVR_JG2013_Kernbotschaften.pdf)

<sup>6</sup> The CJEU has declared this state of exclusion to be in contravention of European law. [EuGH C-181/19](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62019CJ0181)

**Demand:** Suspension of the statutory exclusions from benefits for job-seeking EU citizens and their family members under social benefit law.<sup>7</sup>

## 2. Health services and health protection of migrants<sup>8</sup>

**Implementation gap:** The Covid-19 pandemic highlights the health risks associated with poor migration policy decisions. These include the risks associated with the [precarious housing and working conditions](#) of many migrants and refugees. Examples from the German meat and agriculture industries show that numerous chains of infection can be directly attributed to inadequate hygiene measures and the cramped accommodations of seasonal workers. Similar problems exist in group accommodation settings and refugee camps, which often pose health risks for the residents and where infections can spread quickly.<sup>9</sup> In addition, some refugees and migrants have inadequate access to health care. This is particularly widespread among nationals of non-EU Member States without legal residence permits, who are afraid that public authorities will report them if they claim health benefits (see 3. below).

**Demand:** Minimisation of the health risks for migrants through abolishing mass living quarters and unhygienic forms of employer-provided accommodation, and abolition of communal accommodation centres for refugees and asylum seekers; promotion of decentralised accommodation.

## 3. Access without fear to health care services for people living in irregular circumstances or without papers<sup>10</sup>

**Implementation gap:** The everyday life of people without a regular or temporary residence status is primarily characterised by avoiding any contact with government departments. The reason is the valid obligation of the authorities under §87(2) AufenthG (Residence Act) to notify the immigration department if, in the course of duty, they hear of an immigrant without the necessary residence permit. Exceptions here are schools and educational institutions, but not the offices responsible for social policy matters, first and foremost the social welfare departments. Out of fear that the staff will exercise their reporting obligation, those affected refrain from asserting the fundamental rights to which they are entitled, independently of their residence status. Ultimately the notification obligation from § 87 (2) of the Residence Act prevents access to medical care. Non-state actors from churches, welfare organisations and civil society, such as the Maltese Medicine for people without health insurance or the Medibureaus, often fill the care gap it creates. However, these largely voluntary initiatives lack the financial resources or staff to guarantee the basic medical care of all people in irregular situations. Nor can it be their task to take over the duty of the state on a long-term basis.

**Demand:** The reporting obligation (§ 87 Residence Act) should be urgently suspended or restricted in the area of health benefits, too, by analogy with the educational field.

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<sup>7</sup> "Starvation" as an instrument of migration control? The exclusion of EU citizens from livelihood-securing services, Claudius Voigt, GGUA [Asylmagazin](#) 1-2/2017; Position of Diakonie Deutschland on Intra EU-Mobility, [May 2020](#)

<sup>8</sup> Contribution drawn from Steffen Angenendt, inter alia „Der Globale Migrationspakt und die öffentliche Gesundheit im Kontext der Covid-19-Pandemie“, SWP aktuell [Nr.75 SEPTEMBER 2020](#)

<sup>9</sup> <https://www.aerzteblatt.de/archiv/214372/Fluechtlingsunterkuenfte-Plotzlich-ein-Corona-Hotspot>

<sup>10</sup> Contribution drawn from Katholisches Forum Illegalität [https://forum-illegalitaet.de/wordpress\\_01/wp-content/uploads/2017/04/Positionspapier-Forum-Illegalita-t-Gesundheitsversorgung-2017.pdf](https://forum-illegalitaet.de/wordpress_01/wp-content/uploads/2017/04/Positionspapier-Forum-Illegalita-t-Gesundheitsversorgung-2017.pdf)

## **Objective 20: Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants**

**Implementation gap:** Regulated immigration movements offer great potential for development, e.g. through the transfer of knowledge or money, plus investments by migrants in their home countries. The great significance of migrant remittances is beyond dispute. They have been rising for decades and in 2019 – a record year - amounted to 550 billion dollars, i.e. three times as much as the whole of official development assistance.<sup>11</sup> Monetary transfers stabilise and improve the income situation of migrants' families and communities who have remained in their country of origin. Very problematic, however, are the bank charges for the individual transfers. According to the World Bank, transaction costs in 2019 ran at an average of 6.9 percent, and in some cases were much higher.<sup>12</sup>

**Demand:** 1) Lowering the average transaction costs

In line with the ambition of the sustainable development goals, (SDGs) average transaction costs should be lowered to a maximum of three percent. Since government influence on the private banking sector is slight, one possible way of realizing this goal would be through the establishment of a non-profit, international digital remittance platform.<sup>13</sup>

2) Enabling more people to have access to a bank account

A large share of migrants work, however, in informal sectors, some of them are undocumented and are therefore dependent on cash-to-cash transfers. In the EU, it has been possible to enforce the introduction of a basic account in which now asylum seekers, persons with temporary residence permits and those of no fixed abode can open an account.<sup>14</sup> There must be a strengthening of such efforts to bring more people into the banking system despite their precarious residential status.

### **B. Round table 2**

## **Objective 2: Minimise the adverse drivers and structural factors that compel people to leave their country of origin**

### **1. Climate-related migration**

**Implementation gap:** It is not scientifically questioned that different forms of climatic and environmental change are taking place worldwide and will intensify in the future. According to the figures of the Internal Displacement Monitoring Centre, in 2019 around 23.9 million people have been driven out of their traditional regions within their home countries by extreme weather alone.<sup>15</sup> Even if climate change must not be regarded as the only reason for violent conflicts and wars, it is

<sup>11</sup> <https://blogs.worldbank.org/opendata/money-sent-home-workers-now-largest-source-external-financing-low-and-middle-income>

<sup>12</sup> <https://blogs.worldbank.org/peoplemove/covid-19-through-migration-lens-policy-responses-should-be-inclusive-migrants>

<sup>13</sup> <https://www.zeit.de/wirtschaft/2020-05/remittances-dilip-ratha-migration-lockdown-corona-weltbank/komplettansicht>

<sup>14</sup> EU Basic Account Directive [2014/92/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0092)

<sup>15</sup> [https://www.internal-displacement.org/global-report/grid2020/img/2020/versions/breakdown\\_conflict-disasters-dl.png](https://www.internal-displacement.org/global-report/grid2020/img/2020/versions/breakdown_conflict-disasters-dl.png)

increasingly working as a “threat multiplier” that increases the probability of a violent conflict arising from existing, complex interaction between (geo-)political, economic, religious and ethnic forces. There is no clear-cut global data collection for displacement by the slow onset of climate extremes such as the rise in sea level or desertification. These migration movements are often attributed to economic or otherwise induced migration, which diverts attention from the actual driver - the consequences of climate change. Since 2008, due to the sudden onset of extreme weather events that are intensifying and multiplying as a result of climate change, an average of 21.7 million people per year have been forced to seek protection and prospects elsewhere, particularly inside developing countries.<sup>16</sup> People may be displaced temporarily or permanently within the territory of their state and across national borders. At the international level, there are therefore efforts to develop instruments supplementing the Geneva Refugee Convention that benefit those persons who cannot remain in their country of origin, and do not fall under the mandate and protection of the Convention. Intergovernmental processes are underway on this matter, such as the Task Force on Displacement (TFD) initiated in 2016 in the context of the UN Framework Convention on Climate Change (UNFCCC) and the Platform on Disaster Displacement (PDD), which led to the Nansen Initiative. The recommendations of the TFD, the proposals of the PDD and meanwhile also regional mechanisms – e.g. in the Pacific – point in the right direction.

**Demand:** Appropriate instruments must be developed to enable people who have to flee the impact of climate change to gain access to protection and support. In addition, the Federal Government should continue to support the existing processes (TFD, PDD) and also use synergies with these processes in the framework of implementing the GCM. In addition, the Federal Government should ambitiously implement the Paris climate agreement, i.e. carry out consistent mitigation action in order to keep the impacts of climate change at a manageable level and, if possible, limit the rise of global average temperatures to 1.5°C. The countries of the Global South must be more strongly supported when dealing with the consequences of the climate crisis. Adequate climate financing is, besides the actual reduction of greenhouse gases, one of the most important preconditions for cushioning the impact the climate crisis has on the poorest people and thereby containing the humanitarian disasters caused by climate change. Germany and the EU must play an important pioneering role and raise the yardstick for all other industrial states to imitate.<sup>17</sup> In addition, more and more regular migration routes should be made available, which inter alia will benefit people who, due to the climate change, need new ways of securing their livelihoods (see also Objective 5).

## 2. Combating the root causes of displacement<sup>18</sup>

**Implementation gap:** The German Federal Government and European Union locate the causes for displacement in the countries of origin. Yet the chronic and acute plights that compel people to flee are rarely to be found in local circumstances alone. Wars become more destructive and brutal when they become proxy wars, in which the EU and other actors pursue their own interests. The framework conditions caused by European policy-making are forcing people to leave their country and counteract even the best development strategies. Combating the root causes of displacement

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<sup>16</sup> [https://ejfoundation.org/resources/downloads/EJF\\_Bericht\\_Beyond\\_Borders\\_Klimawandel\\_Migration\\_Konflikte.pdf](https://ejfoundation.org/resources/downloads/EJF_Bericht_Beyond_Borders_Klimawandel_Migration_Konflikte.pdf)

<sup>17</sup> <https://www.brot-fuer-die-welt.de/blog/2020-eu-klimafinanzierung-greift-zu-kurz/>

<sup>18</sup> Contribution drawn from: Standpunktpapier "Flucht(ursachen)bekämpfung", Brot für die Welt, PRO ASYL und medico international 7/2017 <https://www.brot-fuer-die-welt.de/blog/2017-fluchtursachenbekämpfung/>

must therefore begin in the Global North, in Europe. The reasons driving people worldwide to flee are partly due to European policies, but reach back to colonialism and manifest themselves at present in postcolonial structures. Ultimately, the climate-damaging and resource-wasteful style of life, consumption and production in the Global North is destroying livelihoods in the global South. An example of this is arms exports that share responsibility for the conflict and crisis flashpoints worldwide. Despite the escalating situation at the local level, German arms exports continue to go to the Middle East. European weapons manufacturers profit from the business of war, while millions of people are driven to flee. Likewise subsidised farm products from Germany and the European Union are put on the markets in Africa at dumping prices. Speculation with foodstuffs, landgrabbing and the use of arable land to grow biofuel for the Global North also exacerbates the grounds for displacement, such as hunger and poverty.

**Demand:** The best way to combat the grounds for displacement and prevent more people being forced to leave their home regions is to pursue a coherent policy aligned to Agenda 2030, which sustainably combats poverty and creates better living conditions at the local level. An important instrument for this is the German Sustainability Strategy.<sup>19</sup> The Federal Government should promote it to a key principle of German policy, internally und globally.

### **Objective 5: Enhance availability and flexibility of pathways for regular migration**

#### 1. Expanding regular migration below the level of skilled workers

**Implementation gap:** The new German rules<sup>20</sup> for the immigration of skilled workers are far-reaching when it comes to trained professionals. Both on the part of migrants from the EU and from third countries as well as on the part of the employers, there is a demand for immigration channels for sectors requiring no particular training that are not hampered unreasonable bureaucratic hurdles. Due to the often unproductive labour market in their home countries, migrants are willing to accept jobs that the local population avoids or for which it is not qualified. In Germany this is most evident with seasonal workers for the fruit and vegetable harvest, in the building, delivery and cleaning trades and with live-in-care.

**Demand:** Visas to look for work and take on good jobs have been introduced in the skilled worker immigration act - these should be extended to immigrants looking for jobs requiring few or no qualifications, depending on the short- and medium-term demand for labour. In addition, there should be a call for a regular, independent assessment of the existing demand, in order to create more transparency.

#### 2. Family unification for migrants with temporary residential status

**Implementation gap:** From the viewpoint of the authors, the German legal situation and practice does not fulfil the goal set out in the Global Compact for Migration of facilitating access to the family reunification procedure for migrants at all levels of qualification. It is not possible for migrants to bring their families to Germany without restrictions. For many forms of residence permit, having

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<sup>19</sup> <https://www.bundesregierung.de/breg-de/themen/nachhaltigkeitspolitik/nachhaltigkeitsstrategie-1124112>

<sup>20</sup> <https://www.anerkennung-in-deutschland.de/html/en/pro/skilled-immigration-act.php>

even their core family join the migrant is completely out of the question or subject to the high obstacles of providing adequate living space, guaranteeing living costs and, even sometimes requiring German language skills.<sup>21</sup> In the case of refugees with subsidiary protection, the law to amend family reunification took effect in August 2018. Since then, up to 1000 family members have entered the country. However, the fundamental right to protection of the family cannot be subject to a quota. Living in intact relationships and families is an essential building block for the success of integration. Letting families stay divided is also misguided in terms of integration policy and unacceptable as humanitarian policy.<sup>22</sup>

**Demand:** Family reunification under fair conditions should be made possible for all types of German residence permits. Quotas for allowing families to join persons with subsidiary protection should be lifted.

### 3. Social advisory services on international migration

**Implementation gap:** Migration is a cross-border process. Social work on migration should therefore be designed transnationally. However, in Germany there is little knowledge about pre-integration programmes in countries of origin. There is no possibility of gaining an overview of existing programmes and transnational cooperation projects or identifying examples of good practice. Yet it is important to generate a holistic, value-based approach to social work on transnational migration that fosters the migrants' perspective and synchronises migration with the goals of international development work.

**Demand:** Cross-border, independent advice structures sponsored by civil society groups should be established, giving information in the country of origin about the options, risks and potential of migration in an unbiased situation of social counselling.<sup>23</sup> (See also Goal 3: **Provide accurate and timely information at all stages of migration**)

## **Objective 6: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work**

### 1. Mobility partnerships<sup>24</sup>

**Implementation gap:** In the last few years, the Federal Government has pursued various approaches to facilitate immigration for work purposes in practice (e.g. through mobility partnerships with third countries, triple-win projects, the "West Balkan arrangement"<sup>25</sup> or thinking about Global Skills Partnerships). Mobility partnerships are meant to connect migration and development policy goals and enable a fair balance of interests with the partner countries. Migrants obliged to leave Germany are to be returned via take-back agreements with their countries of origin. In return, a prospect of obtaining visas more easily is mentioned. That also includes capacity building of the countries in the "area of border management, document security and fighting

<sup>21</sup> <https://www.bamf.de/DE/Themen/MigrationAufenthalt/ZuwandererDrittstaaten/Familie/NachzugZuDrittstaatlern/nachzug-zu-drittstaatlern-node.html>

<sup>22</sup> Position of the Protestant and Catholic church in Germany 2017

<sup>23</sup> See project of Diakonie Deutschland on international migration-related social work, October 2020

<sup>24</sup> Contribution drawn from <https://www.brot-fuer-die-welt.de/blog/2016-europaeische-migrationspolitik-mit-afrikanischen-staaten-kernelemente-kurz-erklart/>

<sup>25</sup> <https://www.arbeitsagentur.de/vor-ort/zav/content/1533719184471>

corruption, in order to contain irregular migration". In the authors' view, however, the partnerships have so far focused too strongly on reducing irregular immigration and too little on promoting regular migration and mobility. That way they do not fulfil their potential. A partnership was signed with Morocco in June 2013, with Tunisia in March 2014 and the EU-Turkey agreement to take back Syrian refugees was concluded in March 2016. The promised simplified process of granting visas for EU countries was never realised.

**Demand:** Take the interest in legal migration opportunities of partner countries seriously and offer them and their citizens real options. Conceptually and practically, again promote migration as a driver for development e.g. in the framework of international training partnerships. Give targeted support to positive approaches in regional migration policy aimed at promoting development, e.g. mobility on the African continent according to Agenda 2063 of the African Union.

## 2. Standards for fair international recruitment and referral of skilled workers (e.g. in care)<sup>26</sup>

**Implementation gap:** The skilled worker immigration act that took effect in early 2020 is a response to the rising demand for trained workers in Germany and enables recruitment programmes particularly in professions and trades where there is a shortage. By 2035 half a million skilled workers could be lacking in German care homes and hospitals, according to the Cologne Institute for Economic Research. Yet the World Health Organisation (WHO) recommends dropping active recruitment from countries and regions with a critical shortage of staff. It calls on its member states to give priority in their own country to ensuring they have enough personnel by effective staff planning, as well as education and training.

**Demand:** Before enacting further recruitment efforts, the Federal Government should urgently examine whether the desired effect ensues – i.e. added value for both the German health system and the migrant and their country of origin, and whether the WHO's principles for health professionals are respected.

## **Objective 18: Invest in skills development and facilitate mutual recognition of skills, qualifications and competences**

### 1. Recognition of foreign professional qualifications

**Implementation gap:** The recognition of vocational qualifications obtained abroad is for many migrants in Germany a long, complicated and often expensive process. Often precarious residence permits with accompanying bans on employment lead to dequalification and a loss of prospects. There is often no possibility of becoming self-employed or it is linked with high bureaucratic hurdles. The often more informal ways of taking up work in the countries of origin contrast strongly with the very formalised access to the labour market in Germany. Generally speaking, immigrants often work for too long in a job that does not correspond to their qualifications. In this context, there are also protectionist tendencies that do not assess foreign training as adequate and give preference to employees who have undergone vocational training in Germany.

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<sup>26</sup> Contribution drawn from Welt-Sichten 3/2020 <https://www.welt-sichten.org/artikel/37384/pflegekraefte-es-geht-nicht-nur-um-unsere-gesundheit>



**Demand:** On the international scene there are certainly good examples of how to facilitate labour market integration. For example, the fast-track programme in Sweden has the aim of achieving complete individual adaptation to the labour market as quickly as possible. The programme enables a rapid resumption of a trade or profession that has already been learned through close cooperation with all labour market-relevant actors, in a rapid series of activities.<sup>27</sup> Such programmes should be adopted and further developed.

## 2. Recognition of informal qualifications and language skills

From the angle of the authors, the present legal situation and procedures in Germany fall short of adequately respecting the informally acquired skills and competences of migrants and benefiting from their potential.

**Demand:** In some sectors, particularly in industry and manual trades, it must become simpler to take up jobs requiring qualifications and also do on-the-job training, allowing migrants to develop their potential and not have to work in poorly paid jobs below their level of training. Furthermore, procedures must be devised to recognise skills acquired from experience. The possibility of undergoing training, particularly in language skills, from other countries or the country of origin, should be extended through online and learning platforms; cooperation with the private sector must be expanded and strengthened on this point. Access to integration courses must be improved in Germany. The private sector, too, has a responsibility to make future workers fit for the German labour market. Reducing bureaucratic hurdles is the first and foremost step towards migrants and employers finding each other more rapidly and permanently.

## C. Round table 3

### Objective 8: Save lives and establish coordinated international efforts to find missing migrants

**Implementation gap:** With the GCM the states commit to saving lives. The death and injuries of migrants on their routes are to be explicitly prevented. Here we are encouraged in urging the Federal Government to advocate even more strongly for respect for international law of the sea and international law on the Mediterranean. The Asylum and Migration Pact of the European Commission published on 23 September 2020 contains the beginnings of a coordinated approach in its recommendations on search and rescue (SAR).<sup>28</sup> The pact clearly does not meet the expectations of the civil SAR organizations. Above all, the recommendations merely relate to the activity of private rescue ships, while SAR is first and foremost an obligation of the state. The flag state and the coastal countries with the nearest safe port have a duty to save human lives and ensure crews respect international regulations. At the moment, many SAR ships are being detained after putting ashore and disembarking persons rescued at sea based on unusually frequent and strict state harbour controls and are prevented from embarking again. In many cases the detentions have to be the subject of lawsuits.<sup>29</sup> The European Commission even approved this practice

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<sup>27</sup> <https://www.netzwerk-iq.de/angebote/iq-good-practice-international>

<sup>28</sup> [https://ec.europa.eu/info/sites/info/files/commission-recommendation-cooperation-operations-vessels-private-entities\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/commission-recommendation-cooperation-operations-vessels-private-entities_en_0.pdf)

<sup>29</sup> <https://sea-watch.org/sea-watch-wehrt-sich-gegen-unrechtmassige-festsetzung/>

recently in a recommendation, likewise hampering search and rescue operations. At the same time, the Federal Government considerably hindered the registering of ships deployed for SAR. Private rescue at sea, financed by donations, is being massively thwarted while, time and again, people are drowning during their attempt to flee across the central Mediterranean. Rescue organisations are therefore right to speak of a continuing SAR-crisis in the Mediterranean.<sup>30</sup> On top of this, the EU border protection agency Frontex is possibly involved itself in unlawful “push-back” actions<sup>31</sup> and would thereby actively undermine the obligation to safeguard the protection of human life.

**Demand:** State-run SAR must be resumed again in the Mediterranean. The coastal countries must not be allowed to instrumentalise port controls to hinder civil rescue ships. Human rights violations by EU organisations or Member States must be consistently monitored and penalties imposed on violations of the Geneva Refugee Convention or the European Convention on Human Rights.

### **Objective 10: Prevent, combat and eradicate trafficking in persons in the context of international migration**

**Implementation gap:** The GCM affirms the SDG Agenda (Goal 8.7. likewise calls for an end to forced labour, modern slavery and human trafficking; 5.2. aims to end violence against women/girls including human trafficking and sexual exploitation; 16.2 seeks to terminate trafficking of children). The protection of victims is inadequate, according to the specialist advice centres for victims of human trafficking in Germany. The financing of specialist advice centres for those affected generally comes from the limited and temporary project-funding. There is no extensive advisory service. In particular, for male victims of human trafficking, there are hardly any accommodation facilities. There continue to be no specialist safeguarding facilities for minors who are victims of human trafficking. The access of those affected to the courts is based on “considerations of usefulness”. Only if the person concerned is willing to make a statement will he or she receive the prospect of a temporary residence permit. Control mechanisms intended to protect people from exploitation are inadequate or are not implemented effectively. In spite of the high profits gained with human trafficking, the financial aspect is not routinely examined when investigating a case.<sup>32</sup> There is also a lack of comprehensive, independent reporting that covers all dimensions of combating human trafficking.

#### **Demands:**

##### 1) Implementing the relevant sustainable development goals

Consistent and transparent efforts to implement the global sustainable development goals are necessary, here particularly Goals 5.2, 8.7 and 16.2, also showing how they interact with the GCM.

##### 2) Strengthening protection for victims

The resources invested to protect persons affected by human trafficking should be increased in Germany and Europe-wide. The identification of victims of all forms of human trafficking and

<sup>30</sup> <https://www.msf.org/five-things-know-about-search-and-rescue-crisis>

<sup>31</sup> <https://www.tagesschau.de/investigativ/report-mainz/frontex-pushbacks-101.html>

<sup>32</sup> “Despite the high value of THB globally, ALEFA has found that financial investigations are not routinely carried out in THB investigations” <http://alefa.eu/> - Trafficking in Human Beings, Financial Investigation Handbook, p. 4

exploitation must be improved by granting specialist advice centres a formal role in the identification process, and enabling identification independently of introducing criminal investigations. The penalty-free access of persons affected to the courts must be guaranteed for an effective prosecution; in particular, reporting the matter to the police must be possible without fear of loss of freedom, deportation or punishment. Victims of human trafficking from third countries only receive a residence document if they are willing to make a statement that the public prosecutor needs. This must change as fast as possible.

All over the country, there must be advice and protection facilities for victims of all forms of human trafficking and exploitation. Specifically there must be a considerable increase in capacity of labour inspectors in sectors of employment and industries where there is increasing suspicion of exploitation. In addition, the topic should be systematically mainstreamed through in-service training in all relevant fields: health, advice on migration, courts and prosecution (customs, police). Attention should be paid here to the important difference between people smuggling and human trafficking. Recruitment Agencies should have to implement the ILO standards. Further, drop-in centres should also be established for men. Overall, the number of shelters for victims of human trafficking and specialist advice centres must be raised and their sustainable financing guaranteed.

### 3) National strategy, coordination and rapporteur position

Establishing a political coordination office on human trafficking at the federal level would allow for better planning, linking and implementing of measures to combat human trafficking. A coordination office on human trafficking could ensure more coherence (on the one hand, between the federal states and, on the other, between the federal ministries) – it should also participate in writing the national Agenda 2030 and make the link between SDG 8.7 and GCM 10. In addition, the position of an independent national rapporteur should be established to monitor human trafficking.

### 4) Routine investigations of financial flows involved

The cooperation of regulatory authorities, financial intelligence units and offices for reporting money laundering are needed to prevent criminal offences and to clear up cases of human trafficking. Information about substantial finance flows should be made public.

## **Objective 13: Use migration detention only as a measure of last resort and work towards alternatives**

### 1. Pre-removal detention

**Implementation gap:** There are doubts whether the German legal situation and practice of voluntary commitment regarding Goal 13 are sufficient. The provisions of the “orderly return act” that took effect in June 2019 contain visible steps backwards with respect to the actual goal of avoiding detention pending removal. This is administrative detention, not penal detention. Yet since 2019 detention pending removal has been possible again in Germany in regular prisons. Accommodating removal detainees in prisons, albeit separately within the institution, contradicts the ban on separation established by the European Court of Justice. If the removal as such means a considerable strain on the persons concerned, this applies even more in the case of pre-removal detention and exit custody (“Ausreisegewahrsam”). Detention that serves neither prosecution nor

execution of a sentence is problematic from ethical points of view. The question regularly arises as to whether the psychological and physical impairments accompanying detention are proportionate. Studies also prove that detention pending removal is not particularly effective and, what's more, is expensive.<sup>33</sup> Accordingly, many European states have abandoned it in recent years and are increasingly using alternative measures: persons obliged to leave the country must report daily to the responsible authority in order to minimise the risk of absconding. In Germany detention pending removal is being increasingly used again.

**Demand:** Besides the urgently necessary reintroduction of the requirement to separate detainees from other prisoners, alternatives to detention pending removal should be introduced. Numerous recommendations already exist on this matter.<sup>34</sup>

### 2. Exit custody ("Ausreisegewahrsam")

**Implementation gap:** The law also tightened up the use of exit custody. By contrast, with a normal detention pending removal, exit custody may be used to guarantee that a removal takes place even when there is no realistic fear of absconding. De facto, the custody can be equated with detention. In terms of detention, this must be regarded as disproportionate because the possibility referred to by the legislator of being able to leave the country voluntarily is here given only theoretically, not in practice.

**Demand:** Exit custody must be abolished when it is for the preventive guaranteeing of removal without there being a real risk of absconding.

### 3. Pre-removal detention of children and young people

**Implementation gap:** Although the GCM at many points highlights the importance of children's rights and prescribes protective measures, it was not possible during negotiations on the text of the GCM to include the ban on detaining children and young people for the purpose of removal. Likewise the draft of the EU Return Directive<sup>35</sup> of 2018 contains the passage "Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time." There is no guarantee of the complete exclusion of detention of minors. In German practice, too, children and young people are put into detention pending removal or into transit detention in airports.<sup>36</sup>

**Demand:** For years, associations and organisations have been advocating for a clear prohibition: for the child's welfare and to preserve his or her best interests there must be a general, unlimited ban on detention pending removal for minors.

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<sup>33</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/irregular-migration/00\\_synthesis\\_report\\_detention\\_study\\_final.pdf#page=7](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/00_synthesis_report_detention_study_final.pdf#page=7)

<sup>34</sup> European ATD Network <https://www.atdnetwork.org/alternatives-to-detention/>, European study of the Jesuit Refugee Services in 2012: <https://jrseurope.org/en/resource/jrs-europe-policy-position-on-alternatives-to-detention/>

<sup>35</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0634>

<sup>36</sup> <https://www.fr.de/rhein-main/zweijaehriges-kind-abschiebehaft-befragt-11108062.html>

## **Objective 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration**

### 1. Execution deficit in the case of returns?

**Implementation gap:** Statutory amendments such as the “Orderly Return Act” of 2019 and administrative measures in the field of return management, as well as in media coverage, start from the assumption that there is a lack of enforcement of the law regarding the obligation to leave the country and the ending of residence. This general assumption is questionable. In replying to Small Questions in the German Parliament,<sup>37</sup> the Federal Republic admitted that no reliable statements can be made on those obliged to leave the country. In particular, many exit journeys cannot be registered. The German data situation in the Central Register of Foreign Nationals is presumably not valid. It may be assumed that many of those registered are no longer in the country. The state cannot fully monitor who leaves Germany, and there is no obligation to deregister.<sup>38</sup> The assumption that large numbers of rejected asylum seekers do not leave the country and thereby render the asylum procedure obsolete and impair the population’s readiness to welcome them cannot be proven with the available figures. In all, only half of the persons recorded as having to exit the country are rejected asylum seekers. The measures for reinforced return management therefore mainly impair the integration of people who are going to stay in Germany for a considerable time or permanently.

**Demand:** First, the data situation should be improved, in order to create a valid starting basis for suitable measures. (Also **Goal 1: Collect and utilize accurate and disaggregated data as a basis for evidence-based policies**). A suitable measure would be for people who, for reasons of legal barriers to removal, cannot be removed and can be given a temporary visa (*Duldung*) e.g. for purposes of education and employment, to be granted lawful residence and a residence document. That would end the status of the temporary visa, which constantly requires renewal and is dubious in terms of rule of law. This would probably considerably reduce the number of persons listed as required to leave the country.

### 2. No removals to unsafe countries

**Implementation gap:** For some years, Germany has regularly removed people to countries like Afghanistan and Iraq although they are not safe. In most cases, they are restricted to criminals, persons likely to threaten public safety, and "identity frauds", but – depending on the federal state – persons with no particular features have been obliged to leave the country. Even though removals to states like the examples mentioned have been comparatively few on grounds of the disastrous security situation there, the trend is clearly rising with 361 cases of removal to Afghanistan and 30 to Iraq in 2019. Removals were interrupted from March 2020, due to the pandemic, but are currently being increasingly organised again.<sup>39</sup>

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<sup>37</sup> BT- Drucksache (parliamentary gazette) [18/12725](#)

<sup>38</sup> <https://www.sueddeutsche.de/politik/fluechtlingspolitik-im-graubereich-1.4471250> ; <https://www.nds-fluerat.org/38697/aktuelles/ausreisepflichtig-bundesregierung-operiert-mit-falschen-zahlen>

<sup>39</sup> <https://www.proasyl.de/news/afghanistan-abschiebeplaene-der-eu-fuer-das-gefaehrlichste-land-der-welt/>

**Demand:** Prohibition of removals to countries like Syria, Iraq and, in particular, Afghanistan.<sup>40</sup> A safe and dignified removal to those countries is not possible.<sup>41</sup>

#### **D. Round table 4**

##### **Objective 7: Address and reduce vulnerabilities in migration**

See the remarks on Objective 6 and Objective 15.

##### **Objective 17: Eliminate all forms of discrimination and promote evidenced-based public discourse to shape the perception of migration**

**Implementation gap:** Both the Committee on the Elimination of Racial Discrimination (CERD)<sup>42</sup> and the European Commission against Racism and Intolerance (ECRI)<sup>43</sup> drew attention to the problem of structural racism in state institutions and authorities in their reports on Germany in 2014 and 2019. The practice of the (federal) police to go by external features is specifically named and criticised. The UN committee recommends that Germany abolish or alter the legal basis for random personal checks. In this context, an independent scientific study on racism in the police and security departments would be an important step in this direction.<sup>44</sup> The slow process of shedding light on the NSU<sup>45</sup> crimes clearly indicates deficits in this respect. In 2011, central files were destroyed in the Federal Office for Protection of the Constitution, and a voluntary explanation has not taken place to this day.<sup>46</sup> Nor has it been possible to appropriately interrogate central undercover officers with the closest contact to the trio in the NSU complex. The series of attacks by racist-motivated and right wing extremist perpetrators in Kassel, Halle and Hanau in June and October 2019 and in February 2020 show that similar terrorist crimes can occur at present in Germany too.

**Demand:** In order to tackle this development the federal and state security authorities need to be reorganised, leading to a resolute clampdown on right wing terrorist structures.

Brot für die Welt <https://www.brot-fuer-die-welt.de/en/bread-for-the-world/>

Misereor <https://www.misereor.org>

Deutscher Caritasverband <https://www.caritas-germany.org/germancaritasassociation/german-caritas-association>

Diakonie Deutschland <https://www.diakonie.de/english>

Paritätischer Gesamtverband <https://www.der-paritaetische.de/verband/international/english/>

Katholisches Forum in der Illegalität <https://forum-illegalitaet.de/mitglieder/>

Bundesweiter Koordinierungskreis gegen Menschenhandel - KOK e.V. <https://www.kok-gegen-menschenhandel.de/en/home>

Berlin, 6.11.2020

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<sup>40</sup> Examples of demands by the associations <https://www.caritas.de/fuerprofis/presse/pressemeldungen/keine-abschiebungen-nach-afghanistan-86680117-8738-4a9f-b036-6c5e38ba8214> <https://www.diakonie.de/stellungnahmen/keine-abschiebungen-nach-afghanistan>

<sup>41</sup> [https://www.ecoi.net/en/file/local/2017434/AM19-8-9\\_beitrag\\_stahlmann.pdf](https://www.ecoi.net/en/file/local/2017434/AM19-8-9_beitrag_stahlmann.pdf)

<sup>42</sup> ICERD - Concluding observations for Germany (2015) [CERD/C/DEU/CO/19-22](https://www.cerddocs.org/DEU/CO/19-22)

<sup>43</sup> <https://rm.coe.int/ecri-report-on-germany-sixth-monitoring-cycle-/16809ce4be>

<sup>44</sup> The situation report "[Rechtsextremisten in Sicherheitsbehörden](https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/10/lagebild-rechtsextremismus.html)" ("Right-wing extremists in security agencies") has been approved by the Federal Office for the Protection of the Constitution itself <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/10/lagebild-rechtsextremismus.html>

<sup>45</sup> "National Socialist Underground" (NSU)

<sup>46</sup> <https://www.zeit.de/gesellschaft/zeitgeschehen/2020-10/verfassungsschutz-urteil-nsu-akten-vernichtung>