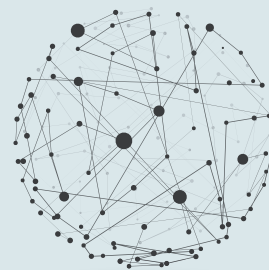


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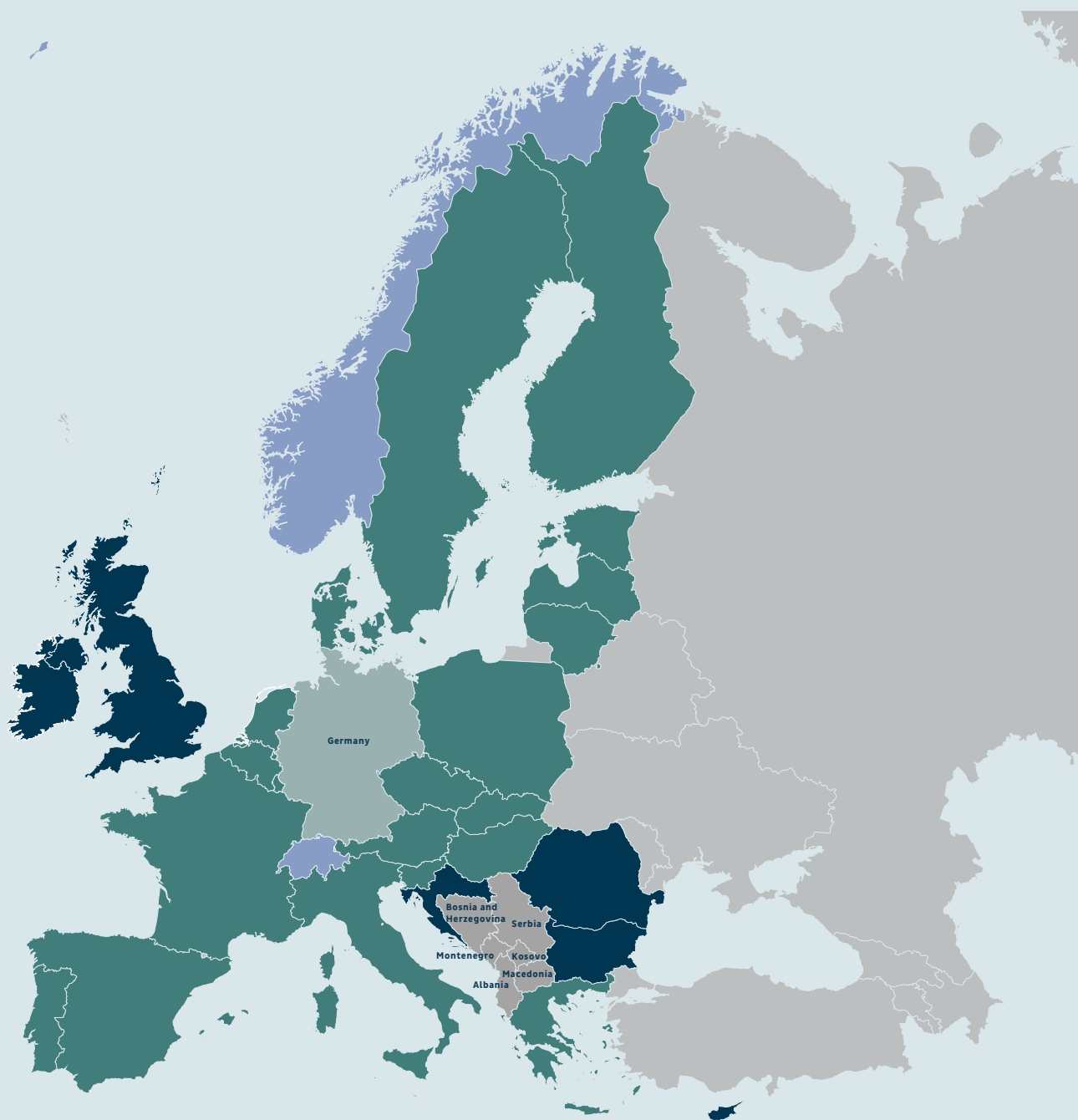
ON INTERNATIONAL COOPERATION
AND DEVELOPMENT



CREATING LEGAL PATHWAYS TO REDUCE IRREGULAR MIGRATION? WHAT WE CAN LEARN FROM GERMANY'S “WESTERN BALKAN REGULATION”

October 2018

Jessica Bither and Astrid Ziebarth



- Schengen Area (EU)
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The views expressed in this publication are the views of the authors alone and do not necessarily reflect those of the partner institutions.

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EXECUTIVE SUMMARY

The arrival of over 1 million people in Europe in 2015 and the sense of crisis it provoked have renewed debates on appropriate ways to establish a more orderly migration management system. How can we ensure pathways are available for those in genuine need of protection, while reducing the number of migrants arriving irregularly? “Legal pathways” are often presented as an essential tool toward this end. In 2015, Germany created such legal pathways in the form of access to the German labor market in a little known, and almost accidental migration policy experiment: the Western Balkan Regulation. Against the backdrop of large numbers of people arriving in Germany from the six Western Balkan states (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Macedonia and Serbia) who had almost no chance of receiving asylum and then from 2015 the sudden increase of Syrians and others coming through the Balkan route, the regulation was part of a broader initiative in Berlin to reduce the numbers of people seeking asylum. The regulation, also known as section 26.2 (§26.2) of the employment regulation (*Beschäftigungsverordnung*), essentially opened the labor market for nationals from the six Western Balkan countries, without, more surprisingly, including any minimum skill or qualification requirements. The only pre-requisite was a valid job offer by an employer in Germany, subject to a standard priority check for third country nationals.

The Western Balkan Regulation is now being invoked by some German politicians as a success and a model to apply to other countries and regions, such as North Africa, when it comes to migration management and irregular migration. These references often imply that creating legal pathways is an effective component of reducing irregular migration, in that it somehow “re-routes” part of it to legal channels – channels that are simultaneously in line with labor market needs. There are others who offer a more critical perspective and do not support the continuation of the regulation after 2020 or beyond the Western Balkans. Although the number of asylum applications from the Western Balkans did drop after the regulation, it is not clear how big of a role the new process played – nor is it certain what labor market consequences the regulation may have in the medium or longer term.

While the policy environment at the time was so complex that one cannot credibly single out the exact effect the Western Balkan Regulation had on reducing irregular migration from the region to Germany specifically, it is nonetheless a unique migration policy experiment from which important lessons can be drawn, lessons that are even more relevant as policy makers are considering using the regulation as a model for other regions or countries going forward.

FINDINGS AND LESSONS FROM THE WESTERN BALKAN REGULATION

- Since the regulation entered into force, over 117,123 valid work contracts for applicants from the Western Balkans were submitted and approved under §26.2 in 2016-17 by the Federal Employment Agency (*Bundesagentur für Arbeit*); of these 44,093 received visas for work during the same time period. This coincided with a significant drop of asylum seekers from the region of over 90%, from the height of 120,882 first time asylum applications in 2015, to 34,360 in 2016, to 10,915 in 2017.
- However, as the regulation was only one of many policy measures at the time, including many restrictive measures and faster processing times of asylum applications as well as the “closure” of the Western Balkan route, it is not possible to isolate the exact causal role the Western Balkan Regulation may have played. It is plausible that it contributed.
- Of the work contracts submitted for pre-approval under the regulation, for 2016-17, 51% were in the “Helper” (*Helper*) category (unskilled or low skilled) 46% skilled (*Fachkräfte*). In 2017, the plurality, or 42%, of pre-approvals were in the construction sector; hospitality and the health care sector were the other biggest fields.

- The regulation was born out of a grand political bargain between different political parties. It was pushed by Germany's more liberal parties, as part of negotiations on two asylum packages containing largely restrictive measures towards asylum seekers, and discussions on designating Albania, Kosovo and Montenegro "safe countries of origin." This resulted in an unclear migration policy logic regarding how exactly the regulation would potentially influence migration to Germany from the region and which people exactly the regulation was intended for.
- The implementation suffered from process issues related to the initial set up, and underdefined responsibilities between different agencies, for instance between embassies, the employment agency, the foreigner's office or German customs. This, in turn, has given rise to concerns about alleged misuse of the regulation.
- There were no monitoring or information collection mechanisms built into the process that could have provided valuable data for evaluation. Improving this would be important to address worries of misuse and to provide more insights for future policies.
- There was not a clear communication strategy toward or in the Western Balkan countries, and some policymakers in these countries did not even know the regulation existed. The lack of official or proactive communication also left space for dubious information from local recruiters and informal networks.
- There were significant differences between the six Western Balkan countries. This indicates that many different variables are at play. One crucial variable is diaspora networks, which play a role in communication and contract facilitation, and thus should be considered in the crafting of policy.

Our conclusion is that there are key factors that should be addressed and analyzed in greater detail for any future policy that seeks to draw on or use the Western Balkan Regulation as model. These include:

1. **Apply a clearer policy logic** on how exactly "legal pathways" will address a given migration policy goal. Is it a foreign policy logic needed to ease return and deportation policies with countries of origin? Is it to "re-route" irregular migration from a country or region to regular channels? Is it based on real demands of the labor market? A demographic argument?
2. **There is no "one size fits all approach"** when transferring this model. Rather, depending on the country, different factors regarding the labor market, diaspora ties etc. will influence how any regulation plays out in practice.
3. **Improve coordination processes and adapt mandates** of various government agencies in order to maintain the credibility of legal immigration channels. This includes establishing better cooperation mechanisms between German embassies, the employment agency, the foreigners office, and customs, among others.
4. **Consider labor market and development implications** both in Germany and the country of origin, for example regarding brain drain in certain sectors, or implications for the low skilled labor market in Germany.
5. **Develop a systematic communication strategy**, in order to limit misinformation or rumors spread by, say, dubious recruitment agencies, and to better manage expectations of individuals and governments in partner countries.

At a time when Germany is reordering both its asylum and immigration laws and systems, the lessons from the Western Balkan Regulation can offer valuable insights, also as Germany and Europe are shifting their focus toward partnerships with African countries on the management of migration. This is particularly important as the general assumption remains in place that legal pathways are at least a partial but crucial component in managing irregular migration.¹

¹ The information and analysis presented in this policy paper is based on publicly available data as well as field research and 28 background interviews with government representatives, ministry officials, private sector associations, researchers, and civil society actors in Germany, Kosovo, and Serbia, conducted by the authors between January and July 2018. Interviews were conducted in German or English. While the interviews and research looked into the regulation in general, further field research in the four other Western Balkan countries may reveal more country-specific findings.

1. INTRODUCTION

The arrival of over 1 million people in Europe in 2015 provoked a sense of crisis and a search for responses. Since then, reinvigorated debates have continued as Europe, and Germany in particular, are trying to find appropriate ways to create a more orderly migration management system: ensuring pathways are available for those in genuine need of protection, while reducing the number of migrants arriving irregularly.² “Legal pathways” are often presented in these policy debates as an essential part of the answer. If you can offer people a way to arrive legally, fewer will arrive irregularly; so goes the common-sense assumption of a holistic migration approach.

Calls for legal or regular pathways can refer to many different things: from creating safe pathways for refugees, to expanding visa options and basic travel or for student exchanges, creating new training programs, to opening more legal channels for employment, to name a few. Each suggestion has its own policy logic on how exactly such regular channels would contribute to decreasing irregular migration. Enhancing access to visas or bilateral projects on training and study programs can be a powerful tool in negotiations with third countries to achieve different migration policy aims, including securing cooperation on returns and readmission. If returns to third countries are more common, the incentive may be lowered for people to leave their country in the first place. Offering safe passages for refugees of persecution and war aims to reduce the number of people that would otherwise embark on risky journeys along irregular migration routes. The logic of opening-up more labor migration channels as a method to address irregular migration, in turn, implies a “re-routing effect,” by which those who would otherwise arrive and enter the asylum system or stay in a country without any legal status will be incentivized to try to receive a legal work permit from home, rather than embark across borders irregularly.

This re-routing assumption is a more controversial aspect of the legal-pathways argument. First, there is simply no conclusive evidence on whether offering more legal labor migration opportunities would indeed reduce irregular migration, and if so, under which conditions or exactly how.³ Second, it raises the question on whether migrant receiving countries—specifically those with generous welfare systems—are advised to further open-up labor migration channels, including to low-skilled migrants, as one component to manage irregular migration from specific countries or regions.

2 Irregular migration can refer to cases where people either enter and stay in the country without a status or apply for asylum system in the hope of getting some form of temporary residence permit, even though the asylum system is not the appropriate channel for them, if say, they are primarily looking for better living conditions or economic opportunities. Refugees with a genuine need of protection often also enter countries irregularly, as this is sometimes the only means to file for asylum. As both groups often travel via the same routes, and end up in the same administrative processes, these “mixed migration flows” complicate efforts to differentiate different types of people, and all may be “irregular” at one point or another. This paper uses the term irregular migration to address those type of irregular migrants who generally do not qualify for some form of protection.

3 Clemens, M & Gough, K, (2018). *Can Regular Migration Channels Reduce Irregular Migration? Lessons for Europe from the United States*. In Center for Global Development, CDG Brief. Retrieved from <https://bit.ly/2JbInrO>
As Clemens et. al point out, there is some indication from the US Mexican border experience that mere regular migration channels can be a necessary corollary to stricter enforcement measures, while conversely, legal channels themselves can only assist in reducing irregular migration when enforcement is stepped up as well. Overall, much more research is needed to find evidence not on whether legal pathways for regular migration influence migration patterns but exactly *how* and under which conditions they can decrease irregular migration.

In 2015, at the height of the refugee crisis, Germany passed a little known legislative measure that fits squarely into the questions surrounding this legal pathway approach: The Western Balkan Regulation (*Westbalkanregelung*). Passed in the midst of fierce parliamentary debates of the summer and fall of 2015 and couched among a package of restrictive asylum legislation (Asylum Package I), the regulation marked a significant departure from previous labor migration policy and has since been dubbed “new territory” by some experts.⁴ Against the backdrop of large numbers of asylum applicants from the six Western Balkan countries with almost no chance of obtaining asylum, and just as refugees and asylum seekers from Syria and the Middle East were passing through the “Balkan-route” towards Northern Europe, it was tied to discussions to declare the Balkan States “safe countries of origin.” Within the legislative package, the Western Balkan Regulation opened up new legal pathways to citizens from Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Macedonia, and Serbia by greatly reducing hurdles to labor market access that apply to other third-country nationals. Specifically, the regulation essentially opened the German labor market to all skill and qualification levels, including low-skilled migrants, as it does not set minimum language or professional qualification requirements. The only requisite is to have a job offer by an employer in Germany willing to hire for a job for which no eligible person in Germany can be found.⁵ The regulation itself was set up as a temporary measure for a five-year period from November 2015 to 2020.

Politicians have invoked the Western Balkan Regulation as a success story and have even referred to it as a potential model to follow for other regions or countries. During her annual summer press interview in July 2018, Chancellor Merkel called it a “prototype for arrangements with other countries.”⁶ Other politicians have argued to apply the Western Balkan model to North African states.⁷ The head of the faction of Germany’s Free Democrats (FDP), Stephan Tomaie, has similarly called it the “right instrument to facilitate labor market migration while simultaneously reducing a backlog in the asylum application system.”⁸ Since the time of its enactment, politicians emphasized either its potential contribution to the reducing the numbers of asylum applications from the region, or its supposed benefits to a German economy in need of labor migrants. The regulation, however, has not been uncontentious. Specifically, criticism levied against the regulation concerns the question of whether migration under the regulation actually matches the needs of German labor market demand, and a growing unease among some policy makers, as cases of real or alleged misuse of the rule have surfaced.

There is a lot to learn from the Western Balkan Regulation and its first results, especially when considering new “legal pathways” applications. While asylum applications from the Western Balkan countries did decrease, and the regulation was frequently used in 2016 and 2017, given the complexity of the policy environment at the time and the number of policies that took shape simultaneously, it is impossible to determine conclusively how much the regulation contributed to reducing the number of asylum applications from the region exactly. It is nevertheless very plausible that it did. The implementation further offers valuable lessons and potential building blocks for any future consideration of opening new labor migration channels, including in the low-skilled sector, to address irregular migration and when considering applying the Western Balkan “model” to other countries and regions.

⁴ Burkert, Carola und Marianne Haase. (2017). *Westbalkanregelung: Ein neues Modell für die Migrationssteuerung?* P.1. Friedrich Ebert Stiftung. Retrieved from <https://bit.ly/2zpVGVO>

⁵ Exceptions exist for jobs in certain regulated sectors in Germany. Here, minimum qualifications must be equivalent of those of the sector regulations.

⁶ Die Welt (7.29.2018). *Wird das migrationspolitische Experiment noch ausgeweitet?* Retrieved from <https://bit.ly/2NVWUu6>

⁷ See: Rheinische Post. (10.06.2017). *Union und FDP bieten Grünen Einwanderungsdeal an*. Retrieved from <https://bit.ly/2Jubpmn> and Frankfurter Allgemeine. (7.07.2017). *Ausländer müssen lange auf Arbeitsvisum warten*. Retrieved from <https://bit.ly/2u3KKIs>

⁸ Die Welt (7.29.2018). *Wird das migrationspolitische Experiment noch ausgeweitet?* Retrieved from <https://bit.ly/2NVWUu6>

2. BORN IN CRISIS: THE WESTERN BALKAN REGULATION AS A GRAND POLITICAL BARGAIN

In November 2015, new labor market channels for nationals of the six Western Balkan states were opened through the Western Balkan Regulation as the German Asylum Package I entered into force. Known as section 26.2 (§26.2) of the German Employment Regulation (*Beschäftigungsverordnung*), the regulation was limited to 5 years (until 2020) and was not tied to any minimum skill level or formal qualifications, nor did it have any German language requirements. Applicants from the Western Balkans can receive a temporary work visa for Germany if they have an employment contract that adheres to German labor laws and minimum wage standards, and which has passed through a “priority check” by the employment agency (*Bundesagentur für Arbeit*) ensuring that there are no other eligible applicants in Germany available to take the job (*Gleichwertigkeits- und Vorrangprüfung*).⁹ In order to understand how this regulation made it into the package in the first place, and the current controversies and debates it has sparked, it is necessary to provide some key context on the political developments leading up to autumn 2015.

2.1. DETERIORATING CONDITIONS IN THE WESTERN BALKANS, RISING ASYLUM APPLICATIONS

Germany has long been a country of destination for people from the Western Balkans, beginning with the official guest worker programs with former Yugoslavia in the 1960s and 1970s and again as a safe harbor for those fleeing the Balkan wars of the 1990s and early 2000s.¹⁰ Since then, reasons for continued migration from the region have included a mix of reactions to a dire economic situation, unstable political situation, and in the case of Roma, social exclusion.^{11,12} Since 2010, there had been a steady increase of Western Balkan citizens arriving on German territory and filing for asylum of which only under 1% of applicants qualified for some form of protection.¹³ The total number of applications rose continuously from 17,476 in 2012, to 44,199 people in 2014, to 120,882 in 2015.¹⁴ In the case of Albania, the number of first time asylum applicants increased 40 fold from 1,247 in 2013 to 53,805 in 2015 (see figure 2).¹⁵

⁹ This check includes giving preference to Germans, EU citizens, and other third country nationals, including asylum seekers that are in Germany with a valid work authorization.

¹⁰ Berlin Institut für Bevölkerung und Entwicklung. (2017). *Beschäftigung und Migration in der Region Westbalkan. Übersicht der Wanderungsbewegungen und Arbeitsmärkte*. P.2. Retrieved from <https://bit.ly/2MAmxAV>

¹¹ Henkel, Felix and Bernd Hoppe. (2015). *Flucht und Migration. Debattenbeiträge aus den Ländern des Westbalkans*. P.17. Friedrich Ebert Stiftung. Retrieved from <https://bit.ly/1YUtZl1>

¹² European Asylum and Support Office. (May 2015). *Asylum Applicants from the Western Balkans: Comparative analysis of trends, push-pull factors and responses- update*. P.11-14. Retrieved from <https://bit.ly/2K2VJvN> According to information submitted to the European Asylum and Support Office (EASO), Germany noted that 90% of the asylum applicants from Serbia until 2014 were Roma, and about 60% of those from Albania.

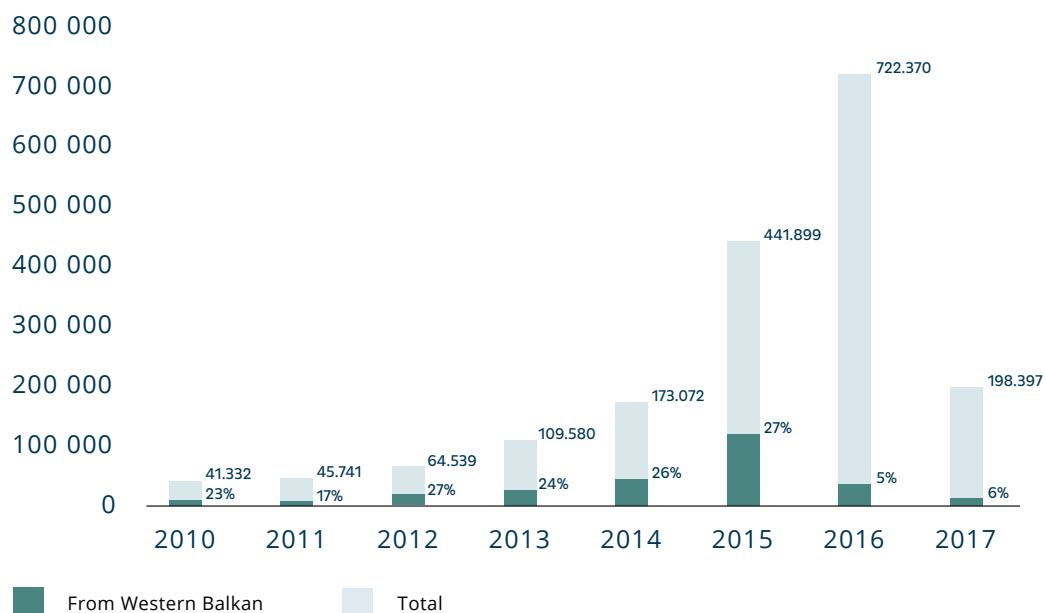
¹³ Bundesamt für Migration und Flüchtlinge. (2015). *Migrationsprofil Westbalkan: Ursachen, Herausforderungen und Lösungsansätze*. P. 5. Retrieved from <https://bit.ly/1X8krbU>

¹⁴ Bundesamt für Migration und Flüchtlinge. (2018). Antrags-, Entscheidungs- und Bestandsstatistik: Westbalkanstaaten.

¹⁵ Bundesamt für Migration und Flüchtlinge. (2018). Antrags-, Entscheidungs- und Bestandsstatistik: Albanien. Information obtained directly from BAMF upon request.

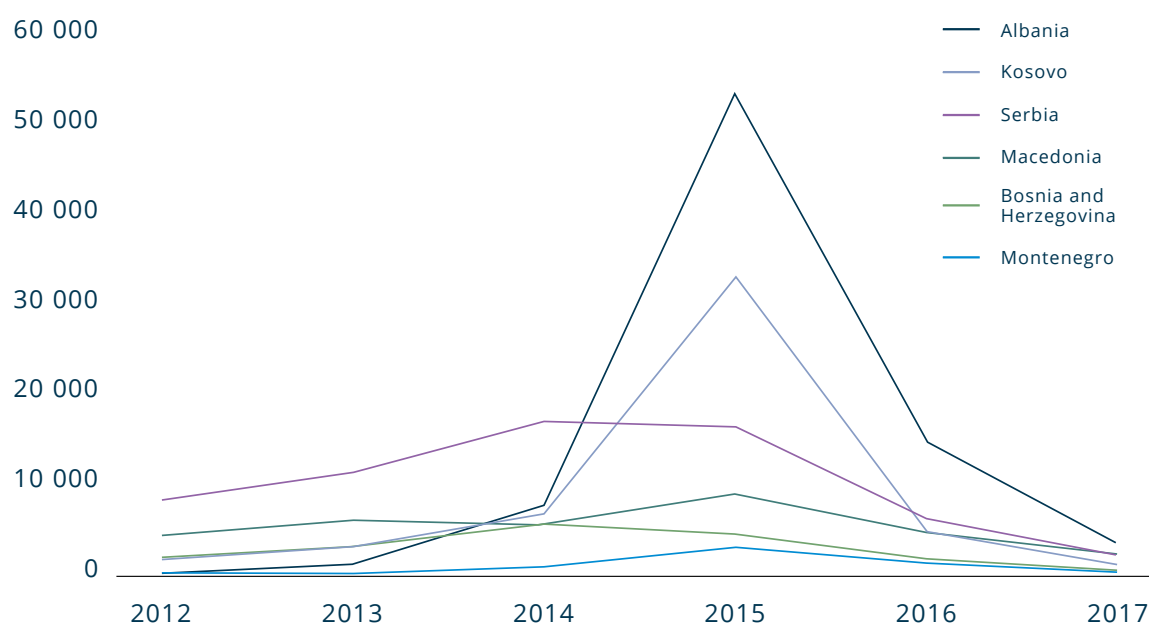
From 2012 to 2015, applications for protection from all Western Balkan states accounted for about a quarter of all applications in Germany (see figure 1). By 2015, amid the high numbers of new asylum-seekers and refugees from Syria, Iraq, or Afghanistan, reducing the numbers of arrivals from the six Western Balkan states had become a political priority for the German government.

Figure 1: Percentage of Western Balkan nationals of all first-time applications for asylum and other forms of protection in Germany (total numbers)



Sources: Bundesamt für Migration und Flüchtlinge. (2018). *Das Bundesamt in Zahlen 2017*. P.9.; Bundesamt für Migration und Flüchtlinge. (2018). Antrags-, Entscheidungs- und Bestandsstatistik: Westbalkanstaaten. Own compilation.

Figure 2: Development of first-time asylum applications in Germany from the six Western Balkan countries 2012-2017



Source: Bundesamt für Migration und Flüchtlinge. (2018). Antrags-, Entscheidungs- und Bestandsstatistik: Westbalkanstaaten. Own compilation.

Still struggling with political and economic transformation processes, the poorest region of Europe was hit hard by the financial crisis of 2008; high unemployment rates, particularly among the youth, have improved only slightly since.¹⁶ Coupled with education and labor market systems in dire need of reform, leaving the country has become one of few viable options for anyone looking for a better living standard. About 45% of Albanians, Bosnians and Montenegrins, 30% of Kosovars and Macedonians, and a little under 20% of Serbians currently live outside their home country.¹⁷

The weak post-2008 economic recovery of Italy, Greece, and Slovenia limited previously available options for seasonal work and redirected labor migrants from the Western Balkans towards other countries.¹⁸ The sizeable diasporas already present in Germany and other European countries provide active networks that further help to attract and situate family members or other newcomers.

Importantly, the large exodus from the region was already in place when record numbers of people arriving from Syria and the wider Middle East put a spotlight on the so-called Balkan route, the region becoming a mass transit route in addition to already being a major source of irregular migration to the EU and Germany.

Additional factors provided incentives to move and contributed to the numbers of people from these countries seeking asylum to climb continuously. The EU's gradual visa liberalization¹⁹ made it easier to enter EU territory. In 2014, severe floods in Bosnia and Herzegovina and a government crisis in Kosovo for the second half of 2014 after challenging parliamentary elections also added to a sense of political and economic frustration and hopelessness. Long asylum procedures in Germany were used by some applicants as

a temporary escape from dire circumstances at home, especially in winter.²⁰ In a recent study, some asylum seekers mentioned that they realized their chances of obtaining asylum were virtually non-existent, but they came anyway because they were barely able to obtain basic sustenance in their home country (in terms of paying for food or heating) or provide direly needed medical treatment to their children.²¹ Others were promised by smugglers that they would get a job. In 2012, the German Constitutional Court ruled to increase the minimum amount of financial support for each asylum

¹⁶ In 2017, the unemployment rate stood at around 15% for Serbia, Montenegro and Albania, 20% for Bosnia and Herzegovina, and 30% for Kosovo. The rate for youth unemployment is particularly high, at 45.5% for Bosnia and Herzegovina, 32.4% in Albania, and as high as 50.7% in Kosovo which, with a median age of thirty, has the youngest population in the Western Balkans or Europe. See World Bank. (2018a). *Western Balkans Regular Economic Report: Vulnerabilities, Slow Growth*, P. 67. Retrieved from <https://bit.ly/2L3fEHn> and World Bank. (2018b). *Western Balkans Labor Market Trends* 2018. P. 80-84. Retrieved from <https://bit.ly/2Njk1Pj>

¹⁷ Berlin Institut für Bevölkerung und Entwicklung. (2017). P. 2.

¹⁸ Italy, for instance, decreased contingents for low skilled seasonal workers from 98,000 in 2010 to 18,000 in 2013. Berlin Institut für Bevölkerung und Entwicklung. (2017). P. 16.

¹⁹ Starting in December 2009 for Macedonians, Montenegrins and Serbs and in December 2010 for Albanians and natives of Bosnia and Herzegovina. So far, only Kosovars have not yet been granted visa liberalization. While the visa liberalization itself is not a reason for an increase in asylum applications, it allowed for an easier entry into EU countries to file for asylum.

²⁰ European Asylum and Support Office. (May 2015). P. 19-22.

²¹ Forschungsbereich des Sachverständigenrat deutscher Stiftungen für Integration und Migration. (November 2017). *Wie gelingt Integration? Asylsuchende über ihre Lebenslagen und Teilhabeperspektiven in Deutschland*. Pp. 80. Eine Studie des SVR-Forschungsbereichs und der Robert Bosch Stiftung, Berlin. Retrieved from <https://bit.ly/2Ju990L>

applicant during the asylum process.²² In Kosovo, a new agreement with Serbia in 2014 introduced a new Kosovar ID card, which made it possible for Kosovars to cross the border to Serbia, eliminating one barrier along the path to Hungary and Germany.²³ The flight from Kosovo was particularly large and abrupt, and as one government official in Pristina noted, “the exodus caught everyone in the country by surprise.” Smuggling networks in certain cities facilitated rumors about prosperity abroad and offered transport, and at the height of the crisis, busloads of people were leaving every day from Pristina to Belgrade. Some younger people thought it would be an adventure. Whole families – even people with jobs – sold their houses, buying into the rumors that “Germany was granting economic asylum.”

Importantly, the large exodus from the region was already in place when record numbers of people arriving from Syria and the wider Middle East put a spotlight on the so-called Balkan route, the region becoming a mass transit route in addition to already being a major source of irregular migration to the EU and Germany.

2.2. IN SEARCH OF A POLICY TO REDUCE NUMBERS

Facing rapidly rising number of people entering Germany in 2014 and especially 2015, the German government took a series of political and legislative steps to address migration from the Southeast, including a number of meetings between German government officials who met with their counterparts in the Western Balkan countries to voice concerns and look for ideas.²⁴ German embassies ran information campaigns in the region advising that residents had poor chances of being granted asylum, as did the Federal Office for Migration and Refugees (BAMF). The German Information Point for Migration, Vocational Training and Career (DIMAK), began operations in Pristina, Kosovo in May 2015. The German ambassador and the Kosovar president travelled to municipalities to convey dissuading messages and returns of people arriving at the airport were publicized and aired on (live) TV, both in Germany and Kosovo. In order to counter false rumors and to discourage people from leaving for Germany, the Kosovo Ministry of European Integration of Kosovo initiated several information campaigns via town hall meetings and field visits to remote villages where large numbers of asylum seekers had come from.

At home, the Federal Office for Migration and Refugees was assigned 300 more staff in 2014 to address the increase in asylum applications. Debates in parliament intensified over how to reduce the number of asylum seekers and to return those already in Germany whose claims for asylum and protection were denied. In November 2014, the German parliament declared Macedonia, Serbia and Bosnia Herzegovina “safe countries of origin,” a designation that served a twofold purpose: first, it served as a deterrent by making it clear to citizens of these “safe” countries that the chances of receiving some form of residence permit for applicants was very rare (it was under 1%), and second, it allowed for speedier processing of asylum claims and faster deportations, an imperative at the time for a German asylum system operating at its limits. In general, efforts by government agencies at the state and federal level were concerted to review all applications from nationals of the six Balkan states before other regions of the world.

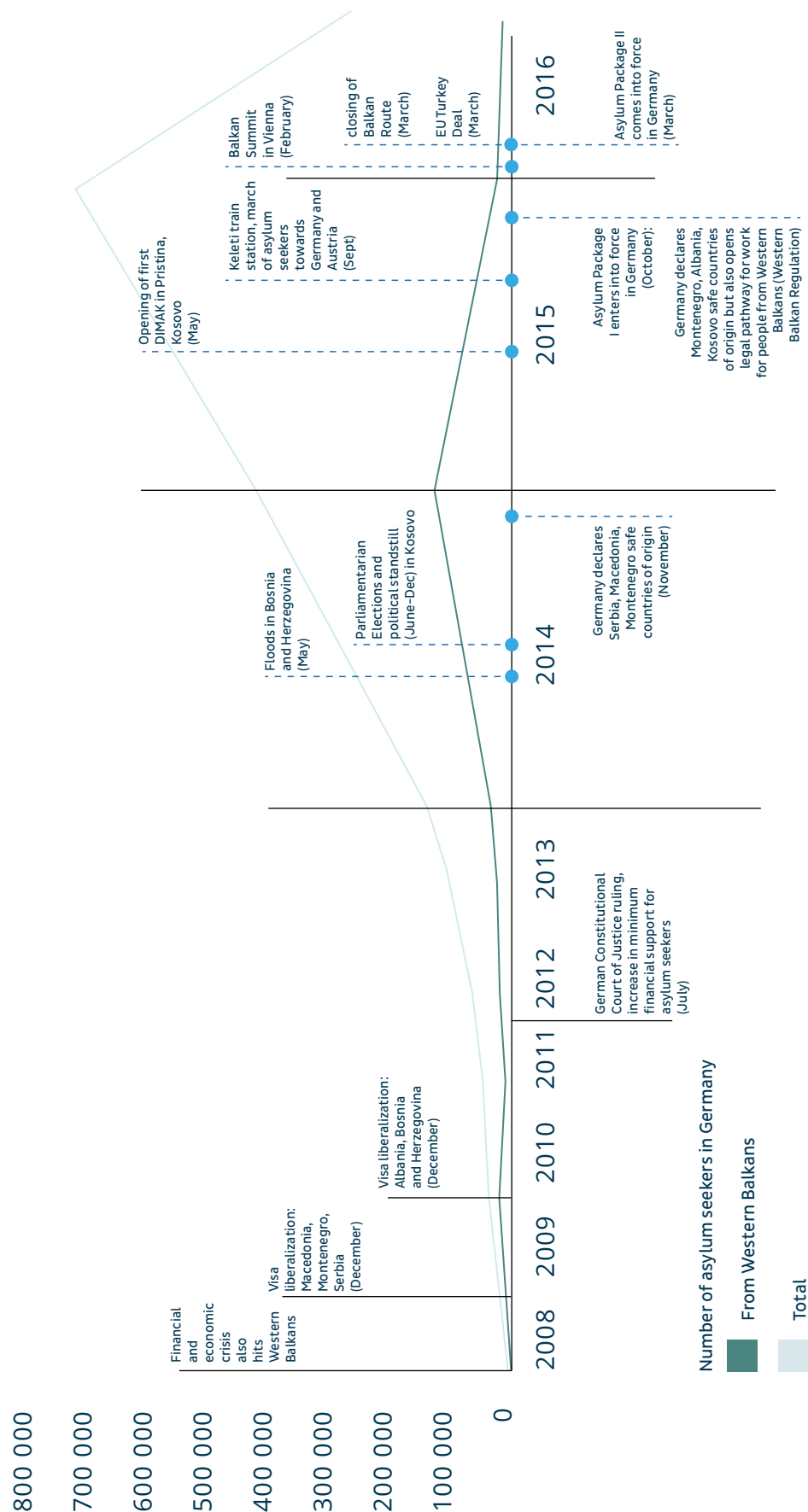
In 2015, the situation in Germany intensified as more and more people arrived via the Balkan route. Following German chancellor Merkel’s joint decision with then Austrian chancellor Faymann to allow

22 Frankfurter Allgemeine. (7.18.2012). *Karlsruhe: Mehr Geld für Asylbewerber*. Retrieved from <https://bit.ly/2u3kn5s>. The regulation stipulated that asylum seekers must receive the same minimum standard amount that applies to Germans receiving state subsidies. The financial support level for asylum seekers had not been adjusted since 1993.

23 As of September 2018, Kosovo is still the only country of the Western Balkans that does not have visa liberalization to travel to the Schengen area.

24 The German Secretary of State for the Interior and the Minister of Foreign Affairs of the Republic of Kosovo met in Berlin in March 2014; the Minister of the Interior met with the Albanian Prime Minister in July 2014 in Tirana; the Ministers of the Interior from Serbia and Germany met in Belgrade that same month. See European Asylum and Support Office. (May 2015). P. 29.

Figure 3: Timeline Policy Context



people arriving from Hungary via Austria to pass into Germany,²⁵ people continued to come in greater and greater numbers over the following weeks and months. By the beginning of 2016, the situation in the Western Balkans had reached new dimensions with high levels of asylum seekers from mostly Syria, Iraq or Afghanistan transiting through the region and increasing the strain on the Balkan countries as well as Austria. The ensuing Balkan Summit in Vienna in February of 2016 added stricter border control measures and cooperation between the countries, in effect “closing” the Balkan route. A longer time in the making, the EU and Turkey agreed on the EU- Turkey statement in March 2016, which also slowed down migration from Turkey to the EU.²⁶

THE GERMAN DOMESTIC DEBATE AND A GRAND POLITICAL BARGAIN

As the exponential increase of asylum seekers and migrants met an ill-prepared and overburdened German bureaucracy and increasingly also fueled political tension at home, the German parliament responded by introducing two legislative packages: Asylum Package I, which came into effect in October 2015, and Asylum Package II, which entered into force in March 2016 (after discussions had begun in November 2015). Both packages were aimed to speed up asylum procedures in general and contained mostly restrictive measures, especially for asylum seekers from safe countries of origin. In the attempt to ease concerns of benefit abuse the packages also allowed each German state to hand out non-cash items rather than cash payments during the asylum procedure. The final version of package I included the provision to add Albania, Montenegro and Kosovo to the list of safe countries of origin. It also included the Western Balkan Regulation.

The Western Balkan Regulation is the exception within the packages. To include new immigration pathways for all skill levels, including unskilled workers with no minimum qualification requirements was not an obvious or unquestionable measure. There were and are certainly different reasons why it could have made sense to call for legal pathways provided in the regulation as one sensible component

in addressing irregular movement of people coming to Germany. But there are also political reasons – and no clear migration logic was applied consistently in what was a political process to include the Western Balkan Regulation.

Politically, the more liberal parties needed to include something that seemed open and positive to make

The Western Balkan Regulation is the exception within the packages. To include new immigration pathways for unskilled workers was not an obvious or uncontroversial measure.

two legislation packages that were otherwise very restrictive toward asylum and immigration more palatable. As part of discussions placing Albania, Montenegro and Kosovo on the safe country of origin list and the restrictive measures of Asylum package I, a debate was raging among Germany's left-leaning parties, the Social Democrats (SPD) and the Greens. As a governing coalition partner, the SPD needed to get its members onboard. More importantly, passing the legislative package required the approval of Germany's upper house, the *Bundesrat*, which consists of the individual German *Länder* or states. To pass the new legislation, the support of at least one Green co-governed state was a necessity. Green opposition to the designation, however, remained firm, and on August 18, 2015, the party signed a joint position paper against expanding the list of safe countries of origin.²⁷ Their critique called it pure political symbolism, and the paper called for “legal pathways” to the German labor market. In doing so, it in fact reiterated an idea first floated by the SPD earlier that month, when state ministers and party

²⁵ Under the Dublin III regulation, the EU member state where a person first entered EU territory is responsible for processing the asylum applications. This decision, in effect, suspended Dublin temporarily.

²⁶ European Council. (18.03.2016). EU-Turkey Statement. Press Release. Retrieved from <https://bit.ly/2C0EdiO>

²⁷ Spiegel Online. (8.18.2015). Grüne gegen Ausweitung sicherer Herkunftsländer. Retrieved from <https://bit.ly/2KY2OgK>

leader Sigmar Gabriel in a phone call had agreed to push the idea of opening up additional pathways for employment from these countries.²⁸ In the final negotiations at the *Bundesrat* level, these legal pathways were part of the package.²⁹ Including access to the labor market had made the other parts of the package more acceptable to SPD and Green party members and supporters, giving the image, somewhat correctly, of retaining some openness to immigration and offering a humane alternative for those people desperate enough to migrate from the region. On October 2, 2015, the package passed the upper house. For conservatives, the openness of the Western Balkan Regulation was a necessary compromise, and some also identified a potential economic benefit in the measure. At least implicitly, politicians seemed to argue two causal assumptions: first, that the people applying for asylum would be the same people applying for a work visa, i.e. that it would at least in part “re-route” migrants from irregular asylum application system to legal channels. And second, that it would also be in line with needs of the German labor market. At the time of negotiations, the minister of Hesse, Volker Bouffier (CDU), approved of discussing the concept because “by providing work visas we can help exactly those people that leave the Western Balkans due to economic reasons and that come to Germany with valid work contracts,” adding that the German economy would also benefit.³⁰

Others were more skeptical. The German Associations of Employers (BDA), for instance, remained unconvinced of the regulation, stating that “from the beginning, we have been skeptical towards special immigration rules for people from the Western Balkans that are not based on specific needs of the German labor market.” Rather, they argued, the focus should be on including recognized refugees into the labor market.³¹

The main motivating factor for including the regulation was thus a political bargain and not a clear migration policy logic. The blurring of rationales may have made sense politically to reach a compromise, but it complicated parts of the implementation process and evaluation of its usefulness as a migration management tool. The following section looks at first results of the regulation and points to lessons we can draw from this novel experiment, especially as policy makers consider it as model for future arrangements.

The main motivating factor for including the regulation was thus a political bargain and not a clear migration policy logic.

²⁸ Deutsche Welle. (8.6.2015). SPD schlägt Arbeitsvisa für Westbalkan-Flüchtlinge vor. Retrieved from <https://bit.ly/2upwzNh>

²⁹ Süddeutsche Zeitung. (9.24.2015). Grüne Kompromisse. Retrieved from <https://bit.ly/2j7pbLu>

³⁰ Deutsche Welle. (8.6.2015). SPD schlägt Arbeitsvisa für Westbalkan-Flüchtlinge vor. Retrieved from <https://bit.ly/2upwzNh>

³¹ Berliner Morgenpost. (3.10.2016). Arbeits-Visa: Noch kommen wenige Menschen vom Westbalkan. Retrieved from <https://bit.ly/2NBqmGB>.

3. THE WESTERN BALKAN REGULATION EXPERIMENT: FIRST FACTS AND FIGURES

It has now been almost three years exactly since the Western Balkan Regulation entered into force with Asylum package I and essentially opened the German labor market in an unprecedented way to citizens of the Western Balkans. Before November 2015 there were very limited options to get a work visa in Germany. One either needed to be a well-paid specialist (blue card) or be a professional in a field in which Germany suffered a labor shortage (shortlist professions, such as care workers). With the regulation though, as stated above, no minimum skill or language requirements were in place. Further, the right to apply for a work visa under §26.2 is only available for someone who has not received any benefits under the asylum system in Germany 24 months prior to applying for a work permit.³²

Until October 31, 2017, a so-called pre-approval process was in place through the federal employment agency, which was intended to speed up the visa process at embassies. In theory, embassies would not need to check every work contract themselves, as the pre-approval by the agency meant that the presented contract was deemed legitimate. But the pre-approval process encountered a number of problems, the most crucial being that processing times at embassies often stretched beyond the six-month validity of the pre-approvals. The process was stopped as of November 1, 2017 and the embassy is now the first point of contact for the entire application process.³³ The fact that the initial set-up of the regulation included a pre-approval of work contracts by the federal employment agency is significant, because the collected pre-approval applications provide a unique glimpse into what the actual interest in these types of work visas were in terms of scale (application numbers), both by employers and workers. Since November 2017, embassies have only collected numbers for visas issued, so we do not know how many visas were sought and denied, and thus can no longer gauge the general level of interest.

32 One suggestion initially floated by the SPD was capping the number of available work visas at 20,000 per year, a cap not included in the final rule.

33 In practice the pre-approval did not speed up the visa process as embassies still needed to run their own checks of both the application and work contracts. In some cases, the work contract presented at the embassies was not the one pre-approved by the BA. Also, often people only received an appointment with the embassy when the pre-approval, valid for six months, had already expired, and the job offer had potentially been revoked.

Figure 4: How to come to Germany through the Western Balkan Regulation- processing steps

- Step 1** Person applies for job in Germany from country of origin
- Step 2** Employer provides contract to person they want to hire
- *Step 2a** *until Oct. 31st, 2017: Employer sends contract to Federal Employment Agency (BA) for review and pre-approval of contract to speed up visa application process.*
- after November 1, 2017: this step was eliminated as the pre-approval did not lead to a faster processing time at the embassies*
- Step 3** Person books embassy appointment online (different waiting times apply depending on the embassy), then presents paperwork at appointment.
- Step 4** Embassy checks with:
- a) **Federal Agency for Administration** (*Bundesverwaltungsamt/BVA*) whether person pre-registered filed for asylum seekers in Germany before (via the Central Register of Foreigners) and if there is a security threat information on the person (e.g. through Visa Warning System or Schengen)
 - b) **Foreigner's Registration Office** (*Ausländerbehörde/ABH*) whether person previously filed for asylum. If yes, when asylum benefits were received. If person received benefits in the past 24 months, no visa is issued, even if the person repaid all benefits received. Exceptions apply for those who filed for asylum after January 1, 2015 and before October 24, 2015, who were in Germany on October 24th with a temporary suspension of deportation (*Duldung*) or who were subject of removal (*ausreisepflichtig*) and left immediately (generally before January 2016, exceptions apply).
 - c) **Federal Employment Agency** (BA) checks whether other Germans, EU citizens, foreigners with residence permit, asylum seekers or those with temporary suspension of deportation with employment permit are available to do the job and should be given priority (*Vorrangprüfung*). The agency also checks contracts within their mandate and capacity concerning plausibility.
- In case the embassy notices irregularities or suspects fraud, it can relay this information to the foreigner's registration office (ABH) to suggest limiting the duration of the residence permit and to check on the situation within a year's time. The embassy also checks whether the wage level can sufficiently sustain the potential employee's stay in Germany (especially in case of part time contracts).
- Embassy can request further documents and new appointment (additional waiting times apply).
- Step 5** In case of positive clearance during all checks, a visa is provided for legal entry to Germany.
- Step 6** Person moves to Germany to job location and registers with local Foreigner's Registration Office (ABH) which issues the residence permit. The duration of the work visa differs on a case by case basis, but in Berlin, for instance, it is typically for three years.
- Step 7** Person can begin to work. After two years, he or she is allowed to change employers. However, in interviews several people told us that the two year window is in effect not checked, and people may well change employment earlier.

MORE PRE-APPROVALS BY THE EMPLOYMENT AGENCY THAN VISAS ISSUED

Overall, the employment agency received a total of 147,863 work contracts for pre-approval for 2016-2017, of which roughly 80% percent or 117,123 were finally pre-approved (meaning that the labor contract matched German standards and it passed the *Vorrangprüfung*).³⁴ However, of these 117,123 pre-approvals, only 44,093 (38%) received visas at German consulates during the same period (potential reasons for this notable difference are explained below).

Table 1: Total number of pre-approvals and visas issued as a result of §26.2. (2016-2017)

	WORK CONTRACTS SUBMITTED TO EMPLOYMENT AGENCY FOR REVIEW UNDER § 26.2		PRE-APPROVALS ISSUED		PRE-APPROVALS DENIED		VISAS ISSUED PER § 26.2	
	2017	2016	2017	2016	2017	2016	2017	2016
Total	94,280	53,583	74,577	42,546	19,703	11,037	25,341	18,752
Albania	8,235	3,933	6,053	2,977	2,182	956	2,796	1,228
Bosnia and Herzegovina	21,206	13,889	17,220	11,330	3,986	2,559	5,933	5,581
Kosovo	36,245	18,182	28,816	14,419	7,429	3,763	6,012	5,102
Macedonia	11,452	6,213	8,918	4,746	2,534	1,467	5,167	2,635
Montenegro	1,839	1,313	1,433	1,012	406	301	856	678
Serbia	15,301	10,050	12,135	8,059	3,166	1,991	4,577	3,528

Sources: Bundesagentur für Arbeit. (2017). *Zustimmungen u. Ablehnungen zur Arbeitsaufnahme von Drittstaatsangehörigen – Deutschland, Länder und Regionaldirektionen (Jahreszahlen und Zeitreihen) – Dezember 2017*. Retrieved from <https://bit.ly/2L8NhLP>; Institute for Employment Research (IAB). (2017). *Westbalkanregelung: Arbeit statt Asyl?*; Deutscher Bundestag. (2018). *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. Andre Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE – Arbeitsvisa aus dem Westbalkan im zweiten Halbjahr 2017*. Drucksache 19/1422. Own compilation.

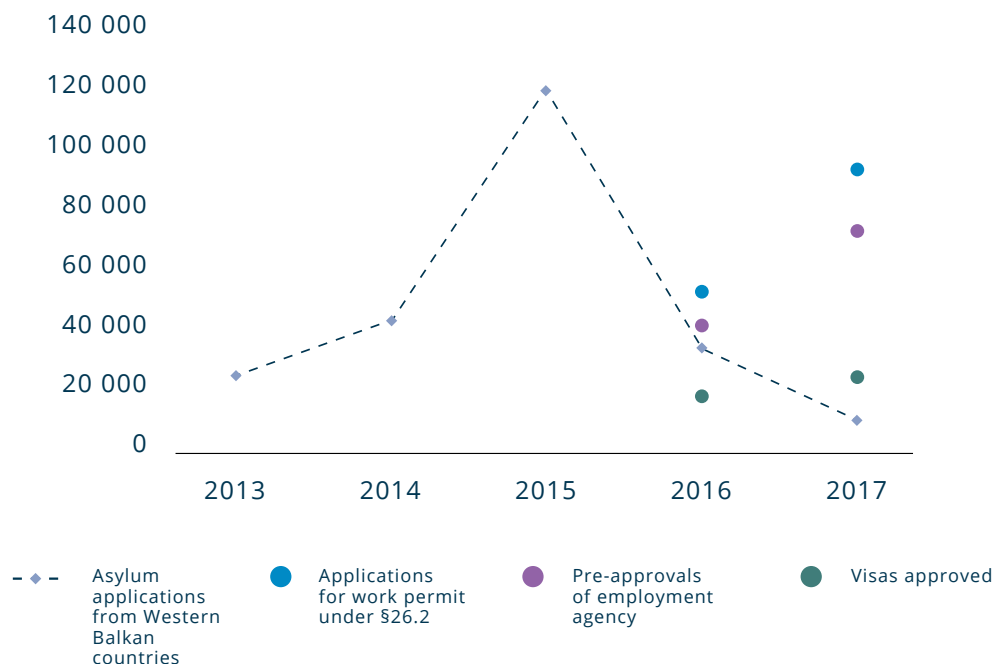
SIMULTANEOUS DROP IN FIRST TIME ASYLUM APPLICATIONS

There is indeed a coinciding significant drop of asylum applications, while applications for work permits rose (though, as mentioned before, the drop also coincides with multiple other restrictive policies). The total amount of first time applications for asylum from Western Balkans dropped significantly from 120,882 in 2015 to 34,360 in 2016, and then to 10,915 in 2017 (see figure 5).³⁵

³⁴ Bundesagentur für Arbeit. (2017). *Zustimmungen u. Ablehnungen zur Arbeitsaufnahme von Drittstaatsangehörigen – Deutschland, Länder und Regionaldirektionen (Jahreszahlen und Zeitreihen) – Dezember 2017*. Retrieved from <https://bit.ly/2L8NhLP>

³⁵ Source: Bundesamt für Migration und Flüchtlinge. (2018). *Antrags-, Entscheidungs- und Bestandsstatistik: Westbalkanstaaten*.

Figure 5: First time asylum applications decrease, applications for pre-approval increase



Sources: Bundesamt für Migration und Flüchtlinge. (2018). Antrags-, Entscheidungs- und Bestandsstatistik: Westbalkanstaaten. Annual figures; Bundesagentur für Arbeit. (2017). *Zustimmungen u. Ablehnungen zur Arbeitsaufnahme von Drittstaatsangehörigen – Deutschland, Länder und Regionaldirektionen (Jahreszahlen und Zeitreihen) - Dezember 2017*. Retrieved from <https://bit.ly/2L8NhLP>; Institute for Employment Research (IAB). (2017). *Westbalkanregelung: Arbeit statt Asyl?*; Deutscher Bundestag. (2018). *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. Andre Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE - Arbeitsvisa aus dem Westbalkan im zweiten Halbjahr 2017*. Drucksache 19/1422. Own compilation.

RESULTS DIFFER ACCORDING TO COUNTRY

There are notable differences between individual countries. In the case of Albania, for instance, the high numbers for first time asylum applications did not result in similarly high numbers for pre-approval work applications. For Bosnia-Herzegovina, on the other hand, applications through the regulation far outstripped previous requests for asylum in Germany, while Kosovo had both a high number of asylum seekers and applications through the Western Balkan Regulation. Multiple factors, such as diaspora size in Germany or labor profile of migrants, could provide plausible explanations for these differences, but we cannot know for sure.³⁶

36 One hypothesis to explain this could be that there is a larger number of nationals from Bosnia-Herzegovina (180,950 people in 2017) residing in Germany than from Albania (48,705 in 2017) who could help attract or employ their fellow nationals. However, this hypothesis would have to be tested and might not stand as Kosovars, the second largest group of citizens in Germany, also have family ties to Albania.

Figure 6: Albania, high number of asylum applications, lower number of applications for pre-approval

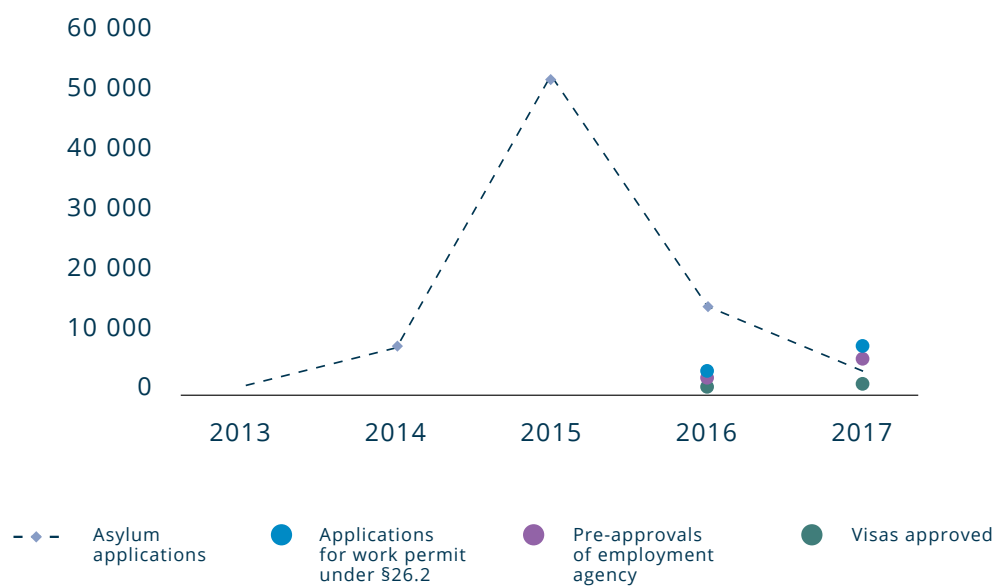


Figure 7: Bosnia-Herzegovina, lower numbers of asylum applications, higher number of applications for pre-approval

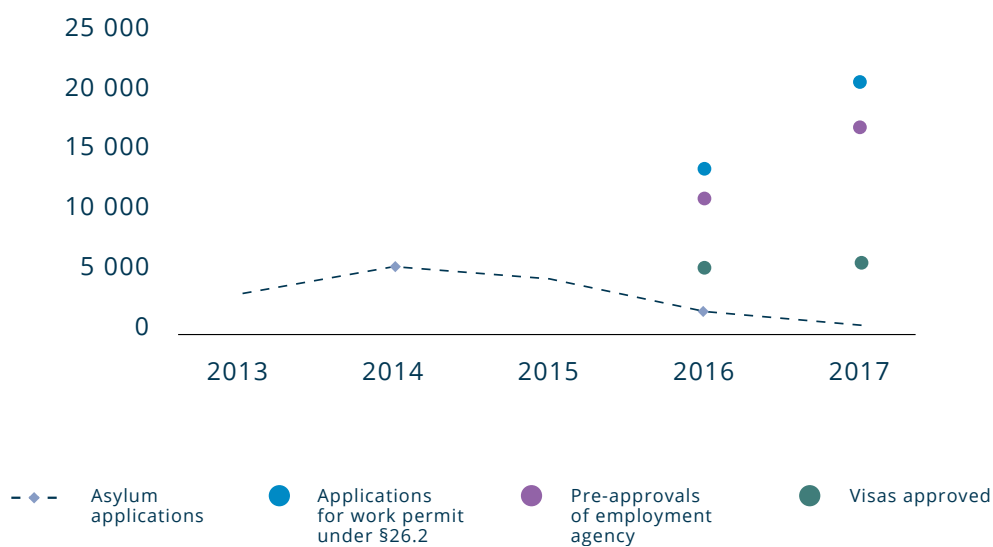
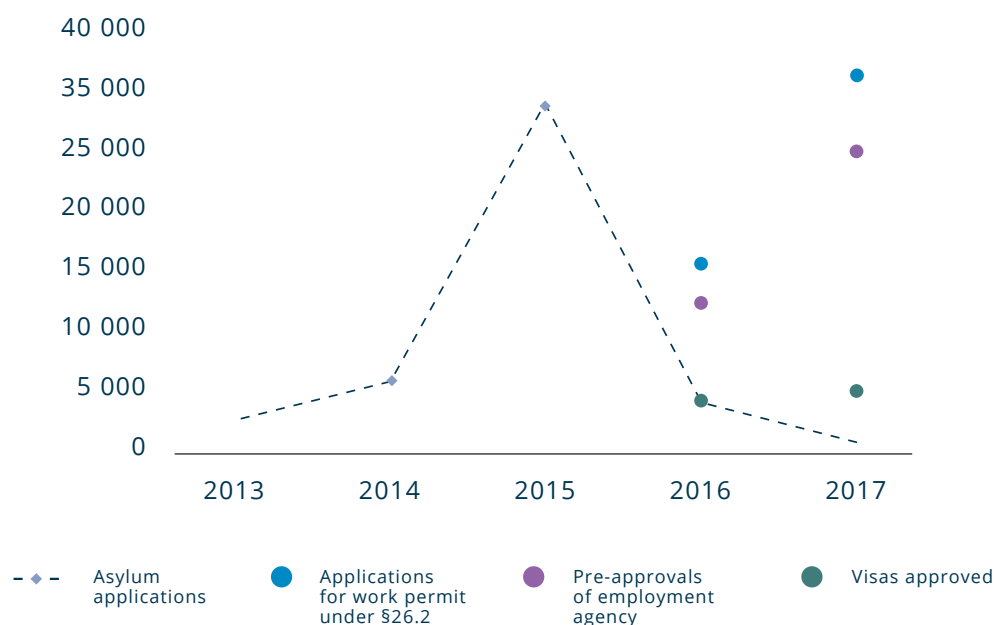


Figure 8: Kosovo, high number of asylum applications, high number of applications for pre-approval



Sources for figures 6-8: Bundesamt für Migration und Flüchtlinge. (2018). Antrags-, Entscheidungs- und Bestandsstatistik: Westbalkanstaaten. Annual figures; Bundesagentur für Arbeit. (2017). *Zustimmungen u. Ablehnungen zur Arbeitsaufnahme von Drittstaatsangehörigen - Deutschland, Länder und Regionaldirektionen (Jahreszahlen und Zeitreihen) - Dezember 2017*. Retrieved from <https://bit.ly/2L8NhLP>; Institute for Employment Research (IAB). (2017). *Westbalkanregelung: Arbeit statt Asyl?; Deutscher Bundestag*. (2018). *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. Andre Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE - Arbeitsvisa aus dem Westbalkan im zweiten Halbjahr 2017*. Drucksache 19/1422. Own compilation.

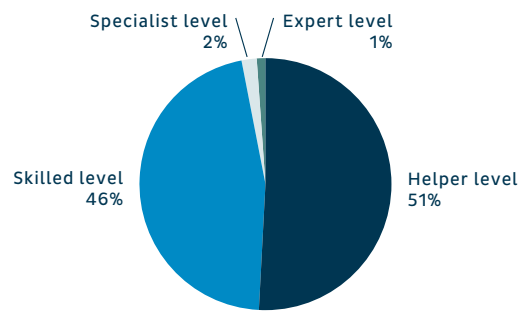
MANY OF PRE-APPROVALS ARE IN THE LOW- OR UNSKILLED “HELPER” CATEGORY AND CONSTRUCTION AND HOSPITALITY SECTOR

As mentioned, one of the more surprising features of the Western Balkan Regulation was that it was open to all skill levels, including low-skilled migrants. In terms of skill level, of all work contracts submitted to the employment for pre-approval, approximately half fell within the “helper” (*Helfer*) category (unskilled or low-skilled jobs), while another 46% were for some degree of skilled labor (*Fachkräfte*)³⁷. In terms of economic sector, most requests for pre-approval in 2017 were in the construction and hospitality sector.

37 Bundesagentur für Arbeit: Statistik (2013). *Methodische Hinweise zum Anforderungsniveau nach dem Zielberuf der auszuübenden Tätigkeit*. Retrieved from <https://bit.ly/2KZoWag>

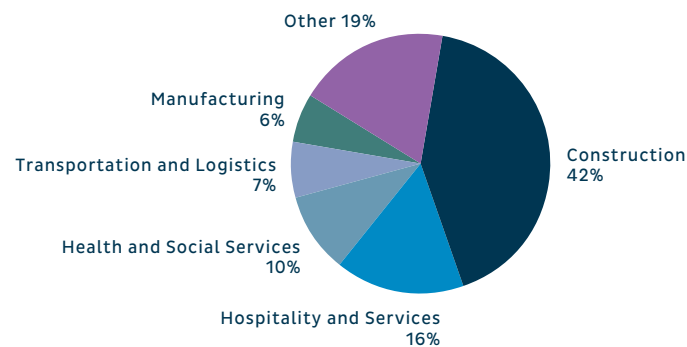
There are four skill levels as defined by the employment agency, however, they do not neatly correspond with the general usage in everyday language: 1) “helper” level (*Helfer*): simple and routine work, requires no or very low knowledge of job, does not require any formal education- this also includes people with a one year education who e.g. are helping in the health sector or on construction sites; 2) skilled level (*Fachkraft*): 2-3 years of job/vocational training needed to do the job, in the public usage and perception, skilled level can also contain those of level 3, specialists; 3) Specialist level (*Spezialisten*): usually 4 years of university education or education of a master craftsman. 4) Expert level (*Experten*): highly complex activities including leadership and upper management tasks, minimum of 4 years university education, potentially also PhD

Figure 9: Pre-Approvals by skill level 2016-2017, in percentage



Source: Deutscher Bundestag. (2018). *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. Andre Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE - Arbeitsvisa aus dem Westbalkan im zweiten Halbjahr 2017*. Drucksache 19/1422. P.12 & 15. Own calculation.

Figure 10: Pre-Approvals of work contract under the Western Balkan Regulation by economic sector 2017, in percentage



Source: Deutscher Bundestag. (2018). *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. Andre Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE - Arbeitsvisa aus dem Westbalkan im zweiten Halbjahr 2017*. Drucksache 19/1422. P.24. Own calculation.

In its first years, a significant drop of the number of asylum applications from the Western Balkans did coincide with the use of the Western Balkan Regulation. However, multiple events and initiatives of the German governments and governments in the region were happening at the same time, making it impossible to determine what role specifically the Western Balkan Regulation played in bringing down numbers of asylum seekers. The sharp drop in asylum applications also coincides with the harsher measures of the asylum packages and faster processing times, as well as with the closure of Balkan route. However, even with this uncertainty and its inconsistencies, §26.2 has provided several elements of a migration management experiment that offers important lessons for further consideration of similar policies. This is particularly important as the general assumption remains in place that legal pathways are a (at least partial) answer to irregular migration, and as German politicians are keen to replicate the Western Balkan Regulation elsewhere.

Even with this uncertainty around the numbers and the regulation's inconsistencies, §26.2 provides a migration management experiment that offers important lessons for further consideration of similar policies.

4. A REGULATION MEETS REALITY: IMPLEMENTATION ISSUES AND LESSONS FROM ABROAD AND AT HOME

4.1. PROCESS DESIGN AND STAFFING SHORTAGES CAUSE IMPLEMENTATION ISSUES

In the statistics now available for the Western Balkan Regulation, the difference between the number of pre-approvals made by the employment agency and the actual visas issued by the German embassies and consulates is most striking. In all countries, pre-approvals significantly outstripped visas issued by the six German consulates. In 2016, only 18,752 visas were issued out of 42,543 pre-approved work contracts. In 2017, the visas issued rose to 25,341 out of 74,577 pre-approved by the employment agency (see table 1).³⁸ Some of our interviewees suspected the German Foreign Office of purposefully undermining the original regulation by restricting access to the labor market through their bureaucratic processes.³⁹ Our research indicates, however, that it was rather a matter of logistics and capacity, as the process of the regulation put a great burden on the visa personnel to verify information of the applications through §26.2 (and not enough on adequate control mechanisms in Germany).

First, the personnel at the embassies was originally not equipped to deal with the large increase in visas under §26.2. The staff at several embassies since the beginning of the regulation was only minimally increased, adding 1 person in Sarajevo, 3 in Pristina, and 2 in Skopje.⁴⁰ As a result, the waiting times for visa applications went up significantly at the consulates. While in Podgorica applicants did not have to wait, waiting times elsewhere stretched into many months: four months in Skopje, six in Tirana, and seven months in Belgrade. Applicants had to wait as long as a year or more in Pristina and Sarajevo.⁴¹ As the consulates in these regions also deal with all kinds of other visas – for work, family reunification, or in the case of Kosovo, with basic Schengen visas for travel purposes – the regulation sometimes slowed down other forms of visas.⁴² In the case of Pristina, the addition of consulate personnel is still pending a building approval by local authorities to construct more office space.

The long waiting times undermined one key component of the Western Balkan Regulation: that it was tied to a work contract and thus, at least in theory, linked to actual demands by German employers (including short term or temporary labor needs). As the employment agency approval was contingent upon no other eligible person in Germany available to take the job (priority check), long waiting times for the visa process effectively undermined this connection.

38 Deutscher Bundestag, *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. Andre Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE – Arbeitsvisa aus dem Westbalkan im zweiten Halbjahr 2017*. Drucksache 19/1422. (2018). Retrieved from <https://bit.ly/2zzUjEf>

39 Expert and practitioner interviews, Berlin.

40 Deutscher Bundestag. (2018). P. 3.

41 Ibid. p.4

42 Not only in terms of staff time, but also applicants crowded toward §26.2 visas: some Visa applicants who would have qualified under a work visa under §18.1 of the German Employment Regulation, or some that were clear family reunification cases, applied via this new rule, in the hopes of receiving a faster visa for Germany.

Second, the original set-up with the pre-approval of the employment agency left the verification burden of checking whether the work contract plausibly matched the job requirements entirely to the embassies. Therefore, there may have been good reasons to deny a visa application even though the work contract had been pre-approved. Visa officers have discretionary mandates to, among other

things, apply a “plausibility test.”

Scrutiny of individual applicants in combination with a work contract could, for instance, show that the candidate was not a plausible hire for the job described in the work contract because she lacked the necessary qualifications for the job listed in the work contract.⁴³ Even if the regulation did not set minimum qualification levels, a history teacher still cannot do the job of an expert welder. Other examples voiced

The long waiting times undermined one key component of the Western Balkan Regulation: that it was tied to a work contract and thus, at least in theory, linked to actual demands by German employers (including short term or temporary labor needs).

during our interviews were a company that had one employee the year before, and now applied for 50 work visas at once (in which case the embassy would ask for more detailed checks from the agencies at home) or jobs that required frequent interaction in German, while the applicant clearly did not speak German. Other reasons for denying a visa could be formal (such as that the minimum wage for certain types of jobs is not met in the work contract, or that it is implausible that a person could live off their salary in Germany, for instance in the case of part-time work) or that the person applying was not allowed to enter Germany due to a previous misdemeanor or criminal charge (*Einreisesperre*).⁴⁴ Finally, if the job in the contract required a minimum qualification in Germany, the equivalent degree of the applicant would need to be recognized as such, another review that also falls on embassies.

Visa case workers have a great deal of discretion, so there certainly could be instances in which a case is unrightfully interpreted to the detriment of the applicant. But as information on denied applications is not systematically collected, it is not possible to determine the grounds for denials, or even how many visas via the Western Balkan Regulation were denied. We would however conclude that there was not a deliberate and systematic effort to keep the numbers of visas low.

⁴³ While §26.2 does not set a minimum qualification level, this does NOT mean that there are not minimum qualifications necessary to conduct certain regulated jobs in Germany. A welder, for instance, would still need to have an equivalent qualification of a welder in Germany. Other jobs, such as basic construction workers, on the other hand, would not need such a qualification.

⁴⁴ Multiple Interviews in Pristina and Belgrade.

4.2. INSUFFICIENT VERIFICATION MECHANISMS AT HOME LEAD TO SUSPICIONS OF “MISUSE”

Many people in Germany we interviewed mentioned a sense of unease and raised concerns about fraud or abuse of the Western Balkan Regulation. However, as no systematic data collection is in place, we only have anecdotal evidence of such alleged “misuse.”

It is important to distinguish between different types of accusations of abuse of the rule (or “*Missbrauch*”). On the one hand there is actual fraud or abuse as it pertains to the exploitation of migrant workers, actual working conditions, or jobs advertised. On the other hand, there are other cases where people other than the intended group made use of the regulation and it became, in the words of one interviewee, “an alternate route for extended family reunification.” This latter case is not illegal *per se*.

The first category, concerns about fraud and abuse, relate either to firms that do not really exist or contracts that are then not adhered to after the person starts work in Germany. In some cases the terms are simply changed (more hours, lower pay) or the employee is doing a different job altogether than what was indicated in the visa application. The employment agency did not record the number of times it checked on employees before it approved of the labor contracts according to §26.2.⁴⁵ It did, however, conduct 3,500 reviews after the fact, and found in about 200 cases a suspicion of a crime or an administrative offense (*Ordnungswidrigkeit*). In the majority of these 200 cases the problem was that the actual work performed either did not correspond to labor conditions or to the tasks outlined in the original labor contract.⁴⁶ There have been select reports of worker abuses in terms of pay, accommodation, or hours worked.⁴⁷

Other than these 3,500 cases, there is no systematic record of employers who made use of the Western Balkan Regulation, making monitoring nearly impossible. The German customs (*Zoll*) as part of their general mandate does conduct regular labor spot checks. According to customs figures from spot checks made in 2017, five of the six Western Balkan states were on the top 10 list of illegal workers (*Schwarzarbeiter*), though these were by definition not people working with contracts under the regulation.⁴⁸ Concerns of abuse thus cannot easily be assuaged or confirmed because the regulation failed to set up a monitoring process for §26.2 workers, either by customs agents or others.

The second case, the idea that people are using the rule for something other than valid employee needs, is harder to judge. The main suspicion is that some people in Germany are hiring other family members.⁴⁹ There is of course nothing wrong with hiring a family member for a job for which she is suitable, but the most common concern voiced was that family members might be creating fictional jobs for other family members, i.e. jobs that did not previously exist and are not needed. As some interviewees pointed out, hiring only trusted contacts is common practice in many Balkan states, and is thus a normal procedure (and should not be overinterpreted). It further allows for a safe recruitment process, and business owners who themselves have no ties to the Balkan states may also prefer to hire the recommended cousin of a current employee, and rely on these ties to make orientation on the job more seamless. None of this is illegal or even necessarily improper. The definition of misuse in this case would need to be discussed based on what the intended use of the regulation was. But as outlined above, beyond targeting nationals of the six Balkan countries, the intended use was always left vague.

⁴⁵ Deutscher Bundestag. (2018). P. 6.

⁴⁶ Ibid.

⁴⁷ Die Welt. (7.29.2018). *Wird das migrationspolitische Experiment noch ausgeweitet?* Retrieved from <https://bit.ly/2NVWUu6>

⁴⁸ Deutsche Welle. (2.1.2018). *Betrüger und Betrogene vom Balkan – Schwarzarbeit in Deutschland*. Retrieved from <https://bit.ly/2J6xnMf>

⁴⁹ Interviewees in Pristina, Belgrade and Berlin.

Neither the employment agency nor the visa officers have the mandate or capacity to check every suspicion of fraud or misuse, or indeed even most of them. This insufficient control mechanism actually makes the potential for abuse of workers after arrival in Germany greater, and also undermines the credibility of the rule itself. Most importantly, it seems that no agency in Germany sees itself as responsible for the control element of the Western Balkan Regulation in particular. The employment agency sees itself as a service provider for employers, not as an enforcement agency. Customs checks the labor market and firms in general, but has no specific responsibility related to the Western Balkan Regulation. As a result, the officials working for the consulates face the greatest burden to somehow monitor potential abuse before the visa is issued. Reliable data collection or monitoring would be needed to verify or discredit these accusations of different kinds of abuse or “misuse.”

4.3. A MIGRATION MANAGEMENT EXPERIMENT, BUT WITHOUT MONITORING AND EVALUATION

As outlined above, the Western Balkan Regulation came into being as a rushed political bargain, simultaneously as part of the goal to bring down asylum numbers while also proposing to open legal channels to the German labor market, based on the assumption that labor market needs would regulate the process. There was not a clear common understanding of how the regulation would specifically influence the scale and type of migration to Germany.

If the assumption by policy makers was that because of legal pathways, fewer people would enter the asylum system, the implicit assumption was that in fact the people who had sought asylum or would be applying for asylum are the same people who would now take the opportunity provided by §26.2. However, neither the set up or monitoring of the regulation addresses this supposed logic.

Most policymakers might not have been aware of the experiment they entered into at the time. Though understandable, this resulted in a lack of monitoring and collection of key data points that could have provided valuable evidence for evaluating the Western Balkan Regulation before it expires in 2020. Of the data available, the most interesting was embedded within the initial set-up itself, as it placed the job agency as the first respondent to requests from employers in the pre-approval process. This has provided an indication of the number of those interested in coming to Germany via this new rule, which is over 100,000 thus far. With the new process and the consulates as the first point of review, we will no longer have even this reference number.

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Thanks to the initial set up and job agency numbers we can ask some questions on process and efficacy and identify some of the information that we would need to draw further conclusions:

1. It was generally not defined what “success” means for the Western Balkan Regulation and how this should be measured (i.e. by application or asylum numbers alone, by type of migrants, or by type of jobs).
2. Correspondingly, it was unclear what exactly would constitute “misuse” or “fraudulent abuse” of such a rule or how to measure it. This creates misgivings among many policy officials when it comes to evaluating the usefulness of the regulation or its continuation beyond 2020. Further, because no official statistics were collected on the number and type of abuses of the Western Balkan Regulation, we cannot know more precisely how significant this issue is.
3. As part of the application process, there was no data collected on whether the asylum applicants in Germany who returned to the Western Balkans in or after 2015 were the same ones who later applied (successfully or unsuccessfully) for a work visa through the Western Balkan Regulation. This would have been crucial to examine whether or not “legal pathways” can in fact re-route other types of migration, or whether they address different people altogether.
4. The government agencies currently do not collect data on the profile and motives of those applying for a visa and admitted to Germany under the Western Balkan Regulation, nor is there any information on what happens to admitted migrants after they arrive in Germany (e.g. do they switch jobs, how many are laid off, do they/how many return).
5. On the business side, no data is collected on the background of the employer and how they relate to the employee.

An official evaluation of the Western Balkan Regulation conducted by the Institute for Employment Research (IAB) of the Western Balkan Regulation is currently underway ⁵⁰ and may be able to fill at least some of these gaps.

4.4. LACK OF STRATEGIC COMMUNICATION OPENS INFORMATION VACUUM

There was surprisingly little communication about the new legal pathway. Our research on the communication revealed that while the regulation was heavily debated and discussed inside Germany, there was almost no communication about it in the target countries. While information campaigns and communication channels were used to dissuade people from going to Germany under the asylum system, there were no official government or other campaigns to promote the new legal channels within the countries themselves and portray the regulation as a disincentive to come irregularly. In fact, during our interviews, some government officials from countries of origin did not know that the Western Balkan Regulation even existed. It was thus neither communicated broadly to the government partners, nor to the wider public. This is not entirely surprising, as presumably policymakers did not want to advertise new opportunities to come and encourage additional migration.

It is possible that the prime target audience for the German Western Balkan Regulation were asylum seekers already in Germany, to provide them incentives to return. However, it is not clear what exactly motivated returns or how many people were made aware of the new labor-market opening. There are also no figures on whether the people who had previously applied for asylum were now those applying for work visas. As of March 2018, the official government return consultations with asylum applicants do not involve communicating about the Western Balkan Regulation to asylum applicants already in Germany,⁵¹ though in our interviews we did encounter civil society organizations who mention the regulation as part of their consultation with asylum seekers from the region.

⁵⁰ The evaluation analyzes the impact of the Western Balkan Regulation and will consist of two parts. The quantitative analysis will look into the integration of migrants from the Western Balkan. The qualitative part will look into employment case studies and will use interviews to assess motives, conditions and processes of employment situations resulting from the Western Balkan Regulation. Federal Institute for Employment Research (IAB) (Website). (2018, July 20). *Evaluation of the Western Balkans Regulation*. Retrieved from <https://bit.ly/2NxwYFg>

⁵¹ Deutscher Bundestag. (2018).

The question here becomes who benefits from messy communication, and what should be done differently if a similar policy is pursued again.

As the numbers of visa applications and the lines in front of the German consulate in Pristina attest, the information about a “new channel” or a “Germany rule,” as one interviewee called it, spread nonetheless, as did the information that it now was much easier to get a legal work

permit in Germany without any minimum qualification requirements. Because it was coming from mixed sources, including sometimes from dubious recruiters, this information was not always reliable. The question here becomes who benefits from a messy communication channel, and what should be done differently if a similar policy is pursued again.

4.5. KNOWN UNKNOWNs AND UNINTENDED CONSEQUENCES

Like many policies, and certainly those taken in moments of heightened tension, the Western Balkan Regulation has had some unintended consequences and leaves a number of questions open.

NO CONCLUSIVE EVIDENCE ON WHETHER REGULATION MEETS REAL LABOR MARKET NEEDS

Regarding the German labor market, the Western Balkan Regulation raised two contentious issues in particular: whether it in fact met real labor market demand, and whether in fact there is real demand in the un-/low-skilled sector. As outlined in the beginning of the paper, some politicians claimed that the Western Balkan Regulation would generally be positive for the economy and in tune with German labor market needs, while the employers association maintained that it would not.⁵² Two years into the regulation, there is no conclusive evidence to support one claim above the other, but limited evidence for both claims exists.

Generally speaking, the Western Balkan Regulation’s prerequisite of requiring a valid job offer for which no other eligible person could be found (*priority check*) was designed to minimize risks for the labor market. This connection was in effect significantly weakened by the long visa processing times, as well as the large discrepancy between applications and actual numbers of visas issued. Presumably, there were labor needs that were left unmet for months as the approval process dragged on. In addition there were insufficient control mechanisms, as outlined above.

From a strict labor-market view, there seems to be a skill-mismatch. While fifty-one percent⁵³ of all pre-approval requests through the Western Balkan Regulation were for jobs in the unskilled or low-skilled sector, Germany is in much bigger need of workers for the skilled sector: Of a total of 792,637 vacant jobs in May 2018, only 18% (144,799) are in the “helper (*Helfer*)” category, meaning they do not require a formal education. About 65%, or 517,854 are vacant jobs for skilled workers.⁵⁴ If you add the category of experts and specialists, then 82% of open jobs in Germany require skilled employees, giving credibility to the claim that the people arriving via the Western Balkan Regulation are not those that a labor recruitment strategy would target. Additionally, almost half of the currently unemployed in Germany (47% of 2.3 million) also lack formal qualification and in theory could be suitable for these types of *helper*

⁵² Berliner Morgenpost. (3.10.2016). *Arbeits-Visa: Noch kommen wenige Menschen vom Westbalkan*. Retrieved from <https://bit.ly/2NBqmGB>.

⁵³ Deutscher Bundestag. (2018).

⁵⁴ Federal Employment Agency. (2018). *Arbeitsmarktdaten nach Zielberufen: Arbeitslose, Arbeitsuchende und gemeldete Arbeitsstellen, Mai 2018*. Retrieved from <https://bit.ly/2N32bRd>

jobs. Another group competing for open positions are newly recognized refugees. Currently about 25% of refugees are employed in Germany.⁵⁵ One labor market expert suggested in our interview that it might make more sense to encourage employers to hire (recognized) refugees already in Germany, with the state helping to upskill them so that they can fit employers need, rather than hiring people from the Western Balkans.

On the other hand, employers do need unskilled labor. While the 18% of open jobs for the unskilled is much lower than the 82% for skilled, that is still over 140,000 open jobs – and demand for unskilled labor seems to be growing.⁵⁶ Furthermore, the primary tool for identifying segments of the labor market where there is a serious shortage of skilled workers is the so-called “white-list,” (*Positivliste*) but this does not look at potential shortages in the low-skilled sector.⁵⁷ Employers in the construction and hospitality sectors have stated that they have used the regulation to fill crucial labor shortages.⁵⁸

It is important to remember that the Western Balkan Regulation was not devised solely, or even primarily, as a labor-recruitment strategy. Nonetheless, as it is tied to employment it is entwined with

labor market considerations, and the question of whether there is an actual need in the low-skilled or unskilled sector would have consequences for further debates; for instance, whether such legal pathways for third country nationals to the low-skilled sector for seasonal work, such as in agriculture or

It is important to remember that the Western Balkan Regulation was not devised solely, or even primarily, as a labor-recruitment strategy.

hospitality, might be advisable. The forthcoming evaluation of the IAB may shed more light on short and medium-term effects of §26.2 on the labor market.

DIASPORA TIES SIGNIFICANTLY SHAPE MIGRATION MOVEMENTS, ALSO UNDER THE REGULATION

As is widely known, transnational diaspora networks can play an important part in migratory movements, a fact that seems also to have been a significant shaping factor as part of the Western Balkan Regulation.⁵⁹ Not surprisingly, interviewees frequently mentioned the prominence of diaspora networks in shaping movements from the Western Balkans to Germany, ranging from information exchange—say on low chances of obtaining asylum—to work opportunities through the Western Balkan Regulation or in facilitating the move to Germany. As mentioned, family ties continue to play an important part in the economic and social fabric of the region of the Western Balkans and hence it is not surprising that business owners in Germany, such as diaspora members of earlier movements to Germany, may employ members of their wider family network. This fact was most frequently brought up for the construction sector, but no statistics exist about the profile or citizenship of employers to verify this claim. While exact numbers regarding the size of the diaspora from the Western Balkans are hard to come by, the 2005 foreigner's registry listed 493,915 people from former Yugoslav republics as living in Germany.⁶⁰ In 2017,

⁵⁵ Rheinische Post. (5.31.2018). *Jeder vierte Flüchtling hat einen Job*. Retrieved from: <https://bit.ly/2Ni9hR8>

⁵⁶ According to the government-affiliated Institute for Employment Research (IAB), Germany is actually currently showing a trend of increased job numbers in two segments: among specialists and experts, as well as in the low skilled “helpers” segment (and to a lesser extent in the skilled-jobs segment). Institute for Employment Research. (2017). *Westbalkanregelung: Arbeit statt Asyl?* P. 16. Retrieved from: <https://bit.ly/2KHyc3L>

⁵⁷ The whitelist is updated about twice a year, the last one from March 2018 can be accessed here: <https://bit.ly/2Msq2cD>

⁵⁸ Die Welt. (7.29.2018). *Wird das migrationspolitische Experiment noch ausgeweitet?* Retrieved from <https://bit.ly/2NVWUu6>

⁵⁹ Shehu, Ujbien and Gejsu Plaku. (2015). *(Kosovo-)Albanische Migration und Diaspora, Migrationsprofil und Stellenwert der Diaspora für die Reformprozesse in Albanien und Kosovo unter Berücksichtigung der albanischen Migration in Griechenland und Italien und der kosovo-albanischen Migration in Deutschland und der Schweiz*. P.74. Retrieved from: <https://bit.ly/2J7BJCE>

⁶⁰ *ibid*, p. 222

the number of all citizens from all six countries from the Western Balkans residing in Germany taken together amounts to almost 785,000.⁶¹ This number does not include those who have taken on German nationality or who did not declare their departure from Germany. Currently, some estimate that the Kosovar diaspora in Germany is at about 300,000⁶², while the foreigner's registry for 2017 places that number at 208,505 (compared to 136,937 in 2010). The Kosovar diaspora is hence the second largest Western Balkan diaspora in Germany after the Serbian, with 225,535 Serbian nationals residing in Germany as of December 2017 (compared to 197,984 in 2010). It is plausible that the diaspora also contributes to the different outcomes of the Western Balkan Regulation in individual countries. For instance, the large Kosovar diaspora in Germany might credibly be a contributing factor for high share of Kosovars applying.

THE WESTERN BALKAN REGULATION HAS RAISED EXPECTATIONS AND BRAIN DRAIN CONCERNS

Among our interviewees in Serbia and Kosovo, the Western Balkan Regulation was received very differently and with varying degrees of detailed knowledge about the regulation. While some claimed that it was widely known among the people, others had never heard of it, among them also government officials and migration researchers. Some voiced concerns that the regulation had certainly raised expectations in the country for continued labor migration to Germany beyond 2020. Known as “the Germany rule,” certain people in Kosovo hoped that Switzerland and Austria, also home to a large Kosovar diaspora, would soon follow suit with a similar rule. At this point in time it is unclear whether the Western Balkan Regulation will be extended beyond 2020, but our interviewees were in agreement in claiming that

The regulation certainly raised expectations in the country for continued labor migration to Germany beyond 2020. Known as “the Germany rule,” certain people in Kosovo hoped that Switzerland and Austria, also home to a large Kosovar diaspora, would soon follow suit with a similar rule.

in the case of Kosovo, at least, people would try to come irregularly again if the rule ceased to exist, irrespective of stricter border controls.

While many hope it will continue, others are concerned about the consequences. Interviewees mentioned the emigration of skilled workers as a major challenge for the region, which they say was intensified by the Western Balkan Regulation. Co-existence of high unemployment rates

with simultaneous lack of skilled workers is a prominent feature in the countries of the Western Balkans. As about 46% of pre-approvals were granted for skilled workers, constituting a sizeable share of the emigrant work force through the regulation.⁶³ Sectors with skill shortages in the region, according to our interviews, included wood processing or technical maintenance jobs for machineries in Kosovo, and a lack of bus and truck drivers in Serbia. More research on such shortages and their relationship to the Western Balkan Regulation are needed in order to offer more definitive conclusions, but the impact on sending countries is another important consideration.

⁶¹ Statistisches Bundesamt (Destatis). (2018). *Bevölkerung und Erwerbstätigkeit, Ausländische Bevölkerung, Ergebnisse des Ausländerzentralregisters*. P.22-29, own calculation, retrieved from: <https://bit.ly/2KqyMSC>,

⁶² Shehu (2015), p.220

⁶³ Deutscher Bundestag. (2018).

RISE OF FRAUDULENT SERVICES AND RECRUITMENT AGENCIES

One does not have to walk far from the German Embassy in Pristina to see travel and recruitment agencies lined up, one after another. Interviewees reported that the number of such agencies mushroomed after the Western Balkan Regulation came into effect. While not all are fraudulent, some apparently promised to provide work visas even though they are in no position to authorize and approve them. Others claimed to get faster visa appointments at the German embassy, even though the normal booking system is free of charge and no special arrangements exist for expedited services. However, it was also reported that for some applicants the visa process could seem too complicated and they hence willingly use the overpriced services of agencies. While there are no valid numbers of how many people have fallen prey to fraudulent recruitment services which link up with employers in Germany aiming to exploit their future workers, several policymakers from Kosovo raised concerns about the well-being of their citizens abroad.

5. CONCLUSION AND RECOMMENDATIONS

The Western Balkan Regulation came about during the politically tumultuous times of 2015, at the height of the record number of people arriving in Europe and Germany. Embedded in a package of restrictive measures that were aimed to reduce the number of asylum seekers from the Western Balkans, the regulation that opening up the German labor market to people from the region passed parliament as more of a political bargain between conservative and left-leaning parties than as a clearly devised policy. It nevertheless rested loosely on two assumptions that some politicians voiced at the time: that creating legal pathways would, somehow, contribute to reducing the number of people entering through the asylum system, and that it would also benefit the German economy and be in line with labor

The initial set up of the Western Balkan Regulation did not include any systematic collection of information or data points that would have been useful to evaluate it from a migration management standpoint.

needs. The final verdict on both fronts is still out. Nonetheless, it ended up being a valuable policy experiment in migration management, particularly by including even those without formal qualifications seeking jobs in the low-skilled sector.

While the number of policy measures at the time, including faster processing, faster deportations, stricter coordination and enforcement at the borders of the Balkan

states after the Vienna summit almost certainly played their part in bringing down the number of people entering Germany after October 2015, there are indications that the potential of work permits, combined with stricter enforcement, did indeed contribute to “taking pressure out of the asylum system” as one interviewee in Pristina put it. Because the policy was not intended as an experiment, the initial set up of the Western Balkan Regulation did not include any systematic collection of information or data points that would have been useful to evaluate it from a migration management standpoint, and to give an indication as to whether such rule in fact can significantly “re-route” or deter irregular migration. In light of discussion about applying similar policies to other countries or regions in the future, the results of the regulation do, however, point to important policy lessons regarding implementation, potential efficacy, as well as some considerations about unintended consequences.

Two crucial contextual factors specific to the Western Balkan Regulation are important to keep in mind, especially when drawing conclusions about replicability or transferability to other regions. First, the migration regulation experiment is taking place during times in which the German economy is doing very well, and unemployment (August 2018) is very low at 5.1%. In less prosperous times with higher unemployment levels, different considerations may need to be made. Second, as the states of the Western Balkan are at different stages on a path to EU membership, opening up legal channels in a way pre-dates future mobility agreement and informs integration efforts towards the region. These factors are rather specific for the context of the Western Balkan Regulation, but there are more general lessons that can be drawn from the first years of the policy if it is applied as a model moving forward.

1. BE CLEAR ON THE GOALS AND POLICY LOGIC OF ANY NEW RULE FOR LEGAL PATHWAYS TO THE LABOR MARKET AND DEFINE DATA POINTS FOR EVALUATION ACCORDINGLY

While policy makers and experts often call for “legal pathways” as an important component for reducing irregular migration, it is often unclear exactly how legal channels to the labor market would ideally influence migration movements. This was also the case with the Western Balkan Regulation. In the future, any new regulation should define and agree on the underlying logic implied: Is it a foreign policy logic needed to ease return and deportation policies with countries of origin? Is it to “re-route” irregular migration from a country or region to regular channels? Is it based on real demands of the labor market? A demographic argument? Some of these logics may be compatible, but they certainly do not all lead to identical policies. Only if policymakers are clear on the logic of their legislation, and correspondingly, on how many and what type of workers or migrants they want or expect, or which type of people the rule addresses (former asylum applicants? Potential future migrants?), can we determine the usefulness of such policy tools.

Importantly, based on these goals and logic, clear data points should be put in place, including regarding the collection of information that will help to monitor and evaluate the success of any new rule.

2. THERE IS NO “ONE SIZE FITS ALL” APPROACH WHEN IT COMES TO TRANSFERRING THE MODEL TO OTHER COUNTRIES OR REGIONS

As the initial facts and figures indicate, and as was underscored by our interviews, the exact way the Western Balkan Regulation affected applications for visa, actual migration movements, as well as irregular migration, both in profile of migrants or in scale, varied significantly from one country to another – and this within one somewhat homogenous region. One important shaping factor seems to be the sizeable diaspora of people from the Western Balkans already in Germany, which could explain the high interest in job offers and work permits for certain countries. In addition, diaspora networks also function as important bridge builders and integrating forces, making it an important aspect related to questions of integration, in particular as the regulation did not require pre-departure training or language instruction. Thus, any consideration of using the Western Balkan Regulation for other countries, say in Africa, would need to take into account national and regional specifics. Finally, there is the further variable of other destinations. Hope voiced by people in Kosovo that Austria and Switzerland would also soon create a “Germany rule” indicate that future similar pathways should consider other possible destination countries.

3. IMPROVE COORDINATION BETWEEN ADMINISTRATIVE OFFICES AND PROCESSES VIA NEW ROLES AND EXPANDED MANDATES

The Western Balkan Regulation was implemented in very short time under crisis mode, putting many involved institutions and processes to an ultimate stress test. Any new rule should carefully think through adequate processes and mandates. Notably, embassies were not fully staffed to deal with increased visa applications resulting from the Western Balkan Regulation, nor was a uniform or standard briefing supplied. Other than increasing the staff at embassies, potential solutions could also be to create and install permanent liaison officers at embassies to coordinate on all matters regarding legal migration with the institutions back home in Germany, for example with the federal employment office or the Foreigner’s Office. In addition, a rotational scheme could be envisaged that could post employees of the Foreigner’s Registration Office, the Federal Employment Agency or the Federal Office for Migration and Refugees at German embassies abroad, so that actors understand each other’s processes and reasoning better and to avoid miscommunication or misinterpretation of actions, say on the issuance of visas.

It would be further important to establish a regular unit or system that registers, controls and screens employers wanting to hire migrant labor (particularly large scale) under any such special regulation

and that multiple institutions, including visa embassy staff, have access to such a registry. Not only could this ensure the safety of workers and prevent abuse and misuse of the regulation, but it would also keep public trust in the system, which is of vital importance for any migration policy. The mandate and capacity of the German customs (Zoll) could be expanded in this regard and should be involved systematically from the outset in any special rule or pathway, ideally in a way that would allow the agency to share findings and accessible data sets, e.g. potential employer blacklists, with the other relevant administrative offices. Proper monitoring and data collection is crucial to prevent and address misuse and suspicions of misuse, as well as simply to gauge efficacy and make necessary adaptations.

4. CONSIDER LABOR MARKET AND DEVELOPMENT EFFECTS

There is not clear evidence whether the Western Balkan Regulation meets crucial needs of the German labor market, even if some policymakers have made statements to this effect. In light of high public interest in such matters, expectations should be managed more carefully. There is no evidence that legal pathways that include the low or unskilled sector of the German labor market should be abandoned, but it does need careful consideration moving forward, especially regarding potential medium and long-term consequences of such migration. Specifically, more studies and data are urgently needed that address needs in the low or unskilled sectors of the German labor market, for instance as part of seasonal agricultural work or construction and hospitality. Further research is needed to assess if and how labor market outcomes and hiring of refugees already in Germany may be affected by hiring through the Western Balkan Regulation. Finally, we must also look into potential negative effects on the local work force, as well as a potential down-skilling of migrant labor, i.e. that people end up in jobs that they are in fact overqualified for. Any new rule should further consider the integration perspectives of workers, especially in local communities. It could prove detrimental at some point, for instance, for individual workers that the regulation did not require any pre-departure training or language requirements.

Finally, a migration policy should ideally consider also labor and development effects in the sending countries. While in Germany there may be questions about receiving an over-proportion of unskilled workers, emigration of skilled workers from the Western Balkan region can lead to painful gaps in the local labor market with negative consequences for the political and economic development of the region.

5. CONSIDER ROLE FOR APPROPRIATE INTERMEDIARIES, PREVENT FRAUDULENT RECRUITMENT PROCESSES

After the Western Balkan Regulation came into force, recruitment agencies mushroomed in short time, some of them using questionable procedures and tactics for recruitment as reported by interviewees. The German government should work with national governments in the region to certify or regulate recruiters and agencies to prevent fraud and abuse, or perhaps verify trusted recruitment agencies themselves. It could, for example, follow the guidelines of the International Organization for Migration (IOM) International Recruitment Integrity System (IRIS), which aims to identify and support ethical labor recruiters, promote a shift of recruitment costs from the worker to the employer, and call for increasing the transparency in recruitment processes and labor supply chains. In general, any new regulation should carefully weigh the role of potential intermediaries, and how these can help or hinder the intended application of any migration regulation.

6. PURSUE A PROACTIVE COMMUNICATION STRATEGY, BOTH DOMESTICALLY AND ABROAD AS VITAL PART IN ANY NEW RULE

It is notoriously difficult to measure whether and how providing information can influence acceptance of policies domestically, or how it may impact intentions to migrate or return to countries of origin. While it was notable that there was virtually no official communication on the Western Balkan Regulation itself outside of Germany, first experiences with the German Information Point for Migration, Vocational Training and Career (DIMAK) in Kosovo show that there is an appetite for consultation and information on migration channels, and that they are increasingly used by returnees but also by those wanting to emigrate at some point. At the same time, policymakers need to carefully consider communication strategies for the domestic audience, to ensure that they address concerns and highlight benefits of any new rule, and also address alleged misuse or doubts about the match with German labor market needs. Moreover, a lack of communication leaves an information gap easily filled by others who may have questionable motives. If policy makers do not control the message at home and abroad, information can easily be bent, misinterpreted or willfully misrepresented.

At the point of finalizing this paper in September 2018, it is unclear whether the Western Balkan Regulation will be extended, adjusted, or stopped after 2020, and what the consequence of any of these moves will be. What is clear is that the question of whether and how legal pathways to the labor market are a necessary ingredient in decreasing irregular migration will continue to be a crucial policy question for Germany for the years to come. This will include the question of whether any such schemes should include employment in the low-skilled sector. At this moment, when Germany is reordering both its asylum and immigration laws and systems, the lessons from the Western Balkan Regulation can offer valuable insights. In particular as Germany and Europe are shifting their focus toward partnerships with African countries on the management of migration, the lessons from the initial stages of the Western Balkan Regulation can inform negotiations or pilot programs. It is imperative that any such approach is grounded in medium-to long-term policy horizons and cannot be a hasty reaction to pressure from domestic political debates. As well-managed and coherent migration policies are difficult enough to achieve in the best of circumstances, let us be sure to make use of all available resources and lessons.

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For more information: www.faire-migration.de

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ABOUT THE MIGRATION STRATEGY GROUP ON INTERNATIONAL COOPERATION AND DEVELOPMENT

The Migration Strategy Group on International Cooperation and Development (MSG) is an initiative by the German Marshall Fund of the United States, the Bertelsmann Foundation, and the Robert Bosch Foundation. The MSG brings about 25-30 representatives from different German ministries and other relevant actors together at regular intervals, in order to discuss current migration-related foreign and development policy issues. From 2018-2019, the MSG will focus on the phenomena of 'mixed migration' flows and whether it is possible or sensible to attempt to disentangle them — particularly focused on cooperation with countries of Sub-Saharan Africa.

While this paper is part of the MSG project, it is not the direct result of any of the MSG discussions and it reflects the opinions of the authors only.

