Between Innovation and Preservation. How German Migration and Asylum Governance Managed the 2015/16 'Refugee Crisis'

Johannes Eichenhofer[*]

Abstract: This chapter examines how the German migration and asylum governance reacted to the so-called 'refugee' or 'migration crisis' in 2015 and 2016. To this end, it will first briefly discuss the extent to which the reception of around one million asylum seekers within a few months can be described as a 'crisis' at all (I.). An overview will then be given of the numerous actions taken to manage the crisis (II.1.) before examining the question of the extent to which these measures can be described as 'innovations' which may also be suitable for managing future crises (II.2.). It will be shown that the measures taken contained only selective innovations, while the basic structures have been preserved (III.2.). Finally, the text aims to examine what lessons can be learned from the 2015/16 crisis and to what extent the measures taken then are proving their value in the light of the migration of large numbers of people from Ukraine (III.).

I. Measuring the crisis

I.1. The 'refugee crisis' as a challenge for the German asylum and migration governance

If there is such a thing as 'a refugee crisis'[1] and one intends to examine how a national governance has reacted to it, then it is worth looking at the development that Germany experienced in the period from late summer 2015 to around spring 2016. Within the year of 2015 the number of people who had been forced to leave their homes increased from 59,5 million to over 65 million people worldwide.[2] The reasons for this drastic increase

* The author would like to thank Clara Mallon, Jan Klingler and Leo Kölsch for their truly helpful support.

1 Geoff Gilbert is sceptical about the refugee crisis in 'Why Europe Does Not Have a Refugee Crisis' (2015) 27, International Journal of Refugee Law 531.

2 UNHCR, 'Global Trends Forced Displacement in 2015' (20 June 2016) <www.unhcr.org/media/unhcr-global-trends-2015> accessed 12 March 2024.

are manifold.[3] For many people who had to flee their homeland at that time, Germany was one of the main destinations. And as is well known, the German authorities did, unlike other EU Member States, such as not simply forward the protection seekers to other EU Member States – because of a possible lack of responsibility under the Dublin III Regulation[4] – but took care of them. On the one hand, the German governance has since then been celebrated as a "front-runner' by many spectators abroad[5] – an impression that can be questioned because of the governance actually pursued during this period. On the other hand, inside Germany, already in September 2015, when the number of asylum applications in Germany suddenly increased to over 1 million,[6] the (social and 'traditional') media spoke of a 'refugee crisis' – a term, that soon spilled over into politics and even the academia.[7] The latter is particularly surprising as the term is obviously ambiguous and therefore rather inappropriate for academic use.

The term 'crisis' – derived from the ancient Greek term κρίσις ('*krisis*') – is generally understood as a turning point or a climax of a development that is perceived as dangerous.[8] In this sense, a 'crisis' is characterized by

3 In the first place, there is the civil war in Syria, which has been smouldering since 2011 but suddenly became much more brutal around 2015. At the same time, the Islamic State (IS) continued to advance there and in Iraq, while in Afghanistan the resurgent Taliban gained influence and carried out repeated attacks. In addition, there were further humanitarian conflicts in Somalia, Sudan and South Sudan, in Nigeria, in Ukraine (as a result of the occupation of Crimea by troops of the Russian Federation) and, last but not least, high unemployment in the Western Balkans – see on this, Stefan Luft, *Die Flüchtlingskrise* (CH Beck 2017) 26–37.

4 See on this problem the join ECJ judgment from 26 July 2017 in the cases C-490/16 *A.S. v Slovenia* EU:C:2017:585 and C-646/16 *Jafari v Austria* EU:C:2017:586.

5 The fact that the German Chancellor at the time, Angela Merkel, made it onto the cover of Time magazine as 'Person of the Year' is probably particularly well remembered, see <https://time.com/time-person-of-the-year-2015-angela-merkel/> accessed 12 March 2024.

6 See the statistics of the German Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge BAMF), '2016/2017 Migration Report: Key Results' (2019) <www.bamf.de/SharedDocs/Anlagen/EN/Forschung/Migrationsberichte/migrationsbericht-2016-2017-zentrale-ergebnisse.pdf?__blob=publicationFile&v=13> accessed 12 March 2024.

7 See for instance Otto Depenheuer/Christoph Grabenwarther (eds), *Der Staat in der Flüchtlingskrise* (Schöningh 2016); Ulrich Becker and Jens Kersten, 'Demokratie als optimistische Staatsform' (2016) 35 Neue Zeitschrift für Verwaltungsrecht 580; Andreas Dietz, 'Reformvorschläge zum Asylprozessrecht im Kontext der Flüchtlingskrise' (2018) 37(15) Neue Zeitschrift für Verwaltungsrecht-Extra 1.

8 Kent S Miller and Ira Iscoe, 'The Concept of Crisis' (1963) 22 Human Organization 195.

a – usually sudden – situation that requires rapid decision-making, which is typically accompanied by a certain degree of uncertainty about the consequences of the decision made.[9] Crises are, therefore, typically perceived as highly stressful and undesirable situations – especially from the point of view of the decision-makers, but also from the point of view of those who are affected by the decisions. From their viewpoints, crises need to be overcome as quickly as possible and should be prevented as far as possible ('crisis prevention'). At the same time – and this is also of primary interest in this chapter – as well as of this publication as a whole, it is a well-known fact that lessons can be learned from crises. They prove to be 'stress tests' and overcoming them can increase the 'resilience' of an individual or a political community, as they provide the opportunity for decision-makers to test new instruments and simultaneously tackle problems in the long term to prevent future crisis situations.

Reference to the reception of (forced) migrants as a 'crisis' articulates the concern that the impact of this political decision for the receiving country is unclear and potentially negative. The general scepticism towards the migrants seeking protection that has been generated as a result has brought much criticism to the term 'refugee crisis',[10] especially since it is emphasized that it is primarily the migrants who are going through a crisis because they have to leave their country and seek asylum elsewhere.[11] Therefore, in order not to stir up (unfounded) fears and encourage a general rejection of migration, it was suggested that the term 'authority crisis' should be used instead of 'refugee and migration crisis'.[12] This objection is valid in as far as it correctly names the decision-makers who are plunged into a crisis. These

9 Angela Schwerdtfeger, *Krisengesetzgebung* (Mohr Siebeck 2018) 7.

10 Geoff Gilbert is sceptical about the refugee crisis in 'Why Europe Does Not Have a Refugee Crisis' (2015) 27, International Journal of Refugee Law 531. Some have even argued, the term 'refugee crisis' should be awarded as the 'worst word of the year' – see <www.migazin.de/2015/12/18/petition-warum-fluechtlingskrise-ein-unwort-ist/> accessed 12 March 2024.

11 <https://geschichtedergegenwart.ch/fluechtlingskrise/> accessed 12 March 2024. For a more detailed analysis of the term, see: Arne Niemann and Natascha Zaun, 'EU Refugee Policies and Politics in Times of Crisis: Theoretical and Empirical Perspectives' (2018) 56 Journal of Common Market Studies 3; Natalie Welfens, 'Whose (In)Security Counts in Crisis?' (2022) 59 International Politics 505. Especially on the role of the European Parliament: Ariadna Ripoll Servent, 'Failing under the 'shadow of hierarchy': explaining the role of the European Parliament in the EU´s 'asylum crisis"' (2019) 41 Journal of European Integration 293.

12 <www.migazin.de/2015/12/18/petition-warum-fluechtlingskrise-ein-unwort-ist/> accessed 12 March 2024.

are the people who had to manage the reception, assistance and potentially integration of an unprecedented number of asylum seekers within a short space of time. In this respect, the use of the term 'crisis' seems entirely appropriate and therefore unproblematic: in 2015 alone, the German Federal Office for Migration and Refugees (in German: *Bundesamt für Migration und Flüchtlinge – BAMF*) had to decide on almost 890,000 asylum applications. The applicants had to be registered, distributed among the competent authorities and accommodated during the asylum procedure, i.e. they had to be given accommodation immediately and their basic needs for food, medical care and hygiene had to be met.

Therefore, the term 'refugee crisis' is to be construed in the sense of an elementary challenge for the asylum and migration governance of the receiving state.[13] The term 'governance' is understood here in a dual sense: on the one hand, as an ensemble of (primarily state) players concerned with the management of tasks and, on the other, as a 'regulation' or 'regulatory structure'. This includes both legally binding measures of legislation and administrative law-making, as well as non-binding measures of procedural and organizational management, such as the improvement of information and communication structures in the public administration, as well as cooperation with private parties.[14]

I.2. Are insufficient governance structures the cause or at least the intensification of the crisis?

Accusations of an 'administrative chaos' were already spreading as early as in August 2015, when the first migrants reached Germany, especially the large cities, such as Berlin and Munich. The Berlin State Office for Health and Social Affairs[15] was emblematic of this, as it could not even begin to cope with the large number of people, meaning that there was no

13 On the challenges for the decision-makers at international level see the contributions to this book by Magdalena Kmak and Stephen Philips, 'Deterrence as Legal Innovation: Management of Unwanted Mobilities and the Future of Refugee Protection'. With regard to the EU level, see Łukasz Łotocki's contribution, 'Innovations in Public Governance in response to the migration crisis from the EU perspective. Institutional and normative solutions'.

14 In the same sense also for instance Gunnar F Schuppert, *Alles Governance oder was?* (Nomos 2011) 11.

15 In German: Landesamt für Gesundheit und Soziales (LaGeSo).

contact at all between the authorities and many asylum seekers, who in their distress had to camp out in front of the office.[16] These impressions raise the fundamental question of the extent to which the onset of the governance crisis was 'home-made'. In order to examine this question in more detail, it will now be necessary to look more closely at the position in which the decision-makers found themselves in 2015 and 2016. To this end, why and how the German Asylum Governance had to take actions will first be outlined before taking a closer look at the structures of the German migration administration in which these actions must have had been taken.

I.2.1. The requirements of international, European, and German asylum, refugee and human rights protection as pressure for action

The key to answering the question of why and what measures German asylum governance had to take lies in International, European, and German Constitutional Law. Article 33 of the Geneva Refugee Convention,[17] Article 3 of the European Convention on Human Rights (ECHR), and Article 4 of the Charter of Fundamental Rights of the EU (CFR) prohibit turning people seeking protection away at the border (principle of 'non-refoulement'). Furthermore, they must be allowed entry and at least provisional stay in order to conduct the asylum procedure. In principle, this claim is directed against the state that has declared that it is responsible for taking in asylum seekers. In Europe, this will typically be Greece, Italy, Spain, or other states that have external borders of the 'area of free movement (Schengen area)'. With the abolition of internal border controls within the Schengen area, however, protection can in fact also be sought in all other Member States. The Dublin III Regulation[18] is intended to prohibit asylum seekers from freely choosing ('asylum shopping') a Member State where they want to undergo their asylum procedure, by standardizing certain criteria that can be used to establish exactly which state is responsible for handling the asylum procedure. However, if, as in 2015 and 2016, states

16 <www.spiegel.de/fotostrecke/fluechtlinge-in-berlin-2015-chaos-streit-ueberforderung-fotostrecke-151752.html> accessed 12 March 2024.

17 The Convention Relating to the Status of Refugees of 28 July 1951.

18 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

that are actually responsible simply let the asylum seekers continue to migrate,[19] Article 17 of the Dublin III Regulation provides for a so-called self-entry clause, according to which the Member States can always declare themselves responsible, even if they are not actually responsible according to the other criteria. The German government made use of this possibility in September 2015 and declared itself the responsible Member State for several hundred thousand people.[20]

From the point of view of national asylum and migration governance, however, this clause is fraught with the risk of placing its administration into crisis mode. For example, they had to ensure compliance of the obligation to conduct asylum procedures in the case where an asylum application arises with, *inter alia*, Article 16a of the German Constitution ('Basic Law'[21]), but also, for instance, the EU Asylum Procedures Directive.[22] Furthermore, the time pressure on the obligation to provide accommodation and food, hygiene products and medical care to asylum seekers arises from human rights regulations – namely the prohibition of inhuman or degrading treatment (Article 3 ECHR,[23] Article 4 CFR[24]) and, in Germany, from the 'basic right to a dignified minimum standard of living'[25] – and the EU

19 See on this problem: join ECJ judgment from 26 July 2017 in the cases C-490/16 *A.S. v Slovenia* EU:C:2017:585 and C-646/16 *Jafari v Austria* EU:C:2017:586.

20 Mattias Wendel, 'Asylrechtlicher Selbsteintritt und Flüchtlingskrise' (2016) 71 JuristenZeitung 332.

21 In German: Grundgesetz (GG).

22 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. Arts 6–30 of this Directive require Member States to ensure that a third-country national who applies for 'international protection' is actually granted access to it. Arts 14–17 of the Directive require a personal interview before a decision is made on the application. The Asylum Procedures Directive does not specify a maximum duration for asylum procedures, but Art 31(8) provides for the possibility of an accelerated procedure.

23 See, among others, Tarakhel v Switzerland App no 29217/12 (ECtHR, 4 November 2014).

24 See, among others, Case C-411/10 *N.S. v Secretary of the Home Department* EU:C:2011:865.

25 The German Constitutional Court (Bundesverfassungsgericht – BVerfG) has derived this right from the guarantee of human dignity (Art 1 (1)) in conjunction with the principle of the welfare state (Art 20 (1) GG) – BVerfGE 125, 175. According to BVerfGE 132, 134, asylum seekers can also invoke this right.

Reception Conditions Directive[26] and the subsequent German legislation, which is laid out in the 'Asylum Seekers Benefits Act'.[27]

I.2.2. Complex structures and reform backlog within German asylum and migration governance as an obstacle

The pressure to act in the aforementioned way would probably lead all EU Member States into a crisis mode. However, it seems that there are other factors to the emergence of a crisis, which are rooted in German asylum and governance. First, the federal structure of the Federal Republic of Germany should be mentioned, which results in the independence of several administrative bodies (federal, state – *Länder* and municipality level – *Gemeinden*). Since asylum, migration and integration governance is a 'cross-sectional task', several different specialized administrations (such as asylum, general migration, labour market, social, education or security administrations) are affected, which, in turn, belong to different administrative bodies. This results, on the one hand, in the need for clearer delimitations of competences and, on the other, in the requirement for a large degree of cooperation and, above all, the exchange of information. And here lies a final problem, which is less rooted in the law than in the specific design of these legal framework conditions, namely that both the federal administration and many state and local administrations do not have sufficient human resources to cope even with a much smaller number of people. For example, the Federal Office for Migration and Refugees,[28] which is responsible for carrying out the asylum procedures, has since 2008 been processing fewer applications than the new ones it has been receiving. As a result, there was already a backlog of 169,166 unprocessed asylum applications in 2014.[29] In addition, the administrative structures have not been modernized for a long time: this is particularly evident in

26 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. In its Art 4, this establishes the principle of minimum standards, according to which the member states may go beyond the admission conditions standardized in Art 17ff but may never go below it.

27 In German: Asylbewerberleistungsgesetz (AsylbLG) in der Fassung der Bekanntmachung vom 5. August 1997 (BGBl I S 2022).

28 In German: Bundesamt für Migration und Flüchtlinge – BAMF.

29 Dietrich Thränhardt, 'Die Asylkrise 2015 als Verwaltungsproblem' (2020) 70(30–32) Aus Politik und Zeitgeschichte 37.

the absolutely deficient IT infrastructure,[30] which will be discussed in more detail below. So far, however, it can be stated that there is a whole series of 'homemade' problems which needed to be analysed and the solutions of which required governance 'innovations'.

II. Reactions to the crisis

II.1. Overview of the various measures

The way in which the aforementioned challenges have been addressed by the German asylum and migration Governance in 2015 and 2016 are presented below. The various measures apply to the faster and 'better' registration of asylum seekers (II.1.1.), an improvement in information and communication management by expanding digital technology (II.1.2.), the acceleration of asylum procedures (II.I.3.) and the faster and 'better' integration of asylum seekers with 'good prospects of remaining,' as well as meeting housing needs (II.1.5.). And finally, some of the measures pursue the purpose of acting as a dissuasive factor for future asylum seekers.

II.1.1. Faster and 'better' registration

Of the almost 1 million people who entered the Federal Republic of Germany alone in 2015 to seek asylum and protection, only about 10 % were checked before entering the country.[31] This means German asylum and migration governance first had to register almost 900,000 people and record their personal data (e.g. name, age, nationality, marital status, etc.). Unless registration had already taken place in another EU Member State, which can be traced by means of a request in the EURODAC[32] database, German asylum and migration governance did not have any personal data on the

30 Jörg Bogumil, Jonas Hafner and Sabine Kuhlmann, 'Verwaltungshandeln in der Flüchtlingskrise' (2016) 49 Die Verwaltung 289, 296.

31 ibid 289, 291.

32 EURODAC (European Dactyloscopy) is a fingerprint-database, which aims to support the functioning of the Dublin III regulation by providing evidence on whether an asylum seeker has already trespassed into another EU Member State. Its legal basis is contained in Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013.

asylum seekers or their migration route, which is important for establishing the Member State responsible for conducting the asylum procedure. This lack of information resulted in a massive knowledge deficit: as long as it was not clear who had entered Germany from which state or region and for what reasons, it was not possible to assess who was likely to remain permanently in the country and who would have to be turned away from Germany. This problem persisted in cases where people could not identify themselves with documents or otherwise prove their identity.

Under German law, responsibility for initial registration lies with the authority with which the asylum seeker first comes into contact. These are typically:

- the Federal Police, if asylum seekers are checked on their entry into the federal territory;
- the foreigner's municipal authorities, which are responsible, among other things, for issuing residence permits;
- the Federal Office for Migration and Refugees (BAMF), which, in addition to conducting asylum procedures,[33] is also responsible for several other migration and asylum governance tasks;[34]
- the initial reception centres operated by the federal states (*Länder*), where asylum seekers are accommodated and where they receive food and medical care.[35]

In order to ensure comprehensive registration and identification, but also to prevent repeated registrations and to ensure identification, the so-called 'Asylum Procedure Acceleration Act' of 20 October 2015[36] (also known as 'Asylum Package I'), introduced – among various others measures – the need for asylum seekers to hold a certificate of registration as an asylum seeker,[37] which, however, was only to be valid for a maximum of one month and which, according to unanimous opinion, did not have any legal effects.[38] With the so-called 'Data Exchange Improvement Act' of 2 February

33 See § 5 of the German Asylum Act (Asylgesetz – AsylG).
34 See § 75 of the German Residence Act (Aufenthaltsgesetz – AufenthG).
35 See for the details § 47 AsylG and the 'Asylum Seekers Benefits Act' (Asylbewerberleistungsgesetz – AsylbLG).
36 Asylverfahrensbeschleunigungsgesetz vom 20 Oktober 2015 (BGBl I 1722).
37 In German: Bescheinigung über die Meldung als Asylsuchender (BüMa).
38 See for instance Winfried Kluth, 'Das Asylverfahrensbeschleunigungsgesetz' (2015) 35 ZAR 337, 340.

2016,[39] the previously introduced 'BüMa' certificate was replaced by the so-called 'proof of arrival',[40] a forfeit-proof and electronically readable 'certificate of registration as an asylum seeker' – to be issued either by the BAMF or the initial reception centres.[41] It is to be issued to foreign nationals who have already applied for asylum (cf. § 13 AsylG) but have not yet filed an asylum application (§ 14 AsylG). The technical characteristics and external design are regulated in more detail in a special regulation.[42] Furthermore, the 'Data Exchange Improvement Act' has introduced new possibilities of establishing identity (e.g. by means of identification services) § 48 para. 8 and 9 AufenthG and extended the possibilities for security checks (§ 73 AufenthG). A quick-matching fingerprint system called 'Fast-ID' has been developed to avoid re-registrations.[43] This system is operated by the Federal Criminal Police Office,[44] and such institutions as the BAMF (§ 16 AsylG) and the initial reception centres of the *Länder* (§ 11 para. 3a AsylbLG) have access to it.

II.1.2. Improving data exchange by expanding digital technology

Another difficulty in 2015 and 2016 was that the above authorities all had different databases, which – due to a lack of effective interface management – could only communicate with each other to a very limited extent. Consequently, multiple registrations and other administrative work had to be done, which was not very efficient.[45] Therefore, a 'core data system' has been established with the 'Data Exchange Amendment Act',[46] which is a special database within the so-called 'Central Register of Foreigners',[47] to

39 Gesetz zur Verbesserung der Registrierung und des Datenaustauschs zu aufenthalts- und asylrechtlichen Zwecken (Datenaustauschverbesserungsgesetz) vom 2 Februar 2016, BGBl I 130 ff.

40 In German: Ankunftsnachweis, § 63a AsylG.

41 See the Official explanatory memorandum of the law, BT-Drs 18/7043, p 3. In contrast, the BüMa certificate was issued by the police or the authorities of the foreigners.

42 Verordnung über die Bescheinigung über die Meldung als Asylsuchender (Auskunftsnachweisverordnung – AKNV) vom 5. Februar 2016, BGBl I 162 ff.

43 See for more details: BT-Drs 18/7043, p 3.

44 In German: Bundeskriminalamt (BKA).

45 Bogumil, Hafner and Kuhlmann (n 30) 296.

46 Gesetz zur Verbesserung der Registrierung und des Datenaustauschs zu aufenthalts- und asylrechtlichen Zwecken (Datenaustauschverbesserungsgesetz) vom 2. Februar 2016, BGBl I 130ff.

47 In German: Ausländerzentralregister (AZR).

which all relevant authorities of asylum and migration governance had access and in which they could create entries as soon as an asylum seeker came into contact with them for the first time.[48] The data stored in this core data system included fingerprints, contact data, health data, and data on vocational training.[49] Since German nationals are not affected by comparable measures, this once again demonstrates a 'two-class system' within German data protection law.[50]

II.1.3. Acceleration of asylum procedures

In order to accelerate asylum procedures, not only was the Asylum Procedure Acceleration Act ('Asylum Package I') passed, but so was the Act on the Introduction of Accelerated Asylum Procedures,[51] which forms the core of 'Asylum Package II'. Therefore, various measures have been introduced which were intended to serve the objective of accelerating asylum procedures.[52] The central means of achieving this objective is the distinction between asylum seekers with 'good prospects' and those with 'poor prospects of remaining'. Even though neither of these terms is explicitly used in the law, the distinction is visible in numerous places. For example, 'Asylum Package I' declared Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia (former Republic of Yugoslavia), Montenegro, Senegal and Serbia as so-called 'safe countries of origin'.[53] In the case of these 'safe countries of origin', it is presumed under the first sentence of Article 16a (3) of the Basic Law that no political persecution[54] takes place there or that there is no threat of serious

48 BT-Drs 18/7943, p 3.

49 ibid.

50 On this Johannes Eichenhofer, 'Das Datenaustauschverbesserungsgesetz' (2016) 35 NVwZ 431ff.

51 In German: Gesetz zur Einführung beschleunigter Asylverfahren vom 11. März 2016, BGBl I 390; BT-Drs 18/7538.

52 This is not legally required, as neither international, European or German human rights law mandates such acceleration. Art 31 (8) of the Asylum Procedures Directive merely stipulates certain conditions under which the introduction of such accelerated procedures is permissible.

53 Cf the altered Annex II to Section 29a of the Asylum Act, BGBl. 2015 I 1722, 1725. The reason given for this classification is the low recognition rate of nationals of these states – see BT-Drs 18/6185, p 25.

54 This is the central requirement for recognition as a person entitled to asylum (§ 2 AsylG) or the award of refugee status (§ 3 AsylG), also under Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the

harm.[55] Therefore, the applications for asylum and international protection filed by nationals of these countries had to be 'rejected as manifestly unfounded' pursuant to the first sentence of section 29a (1) AsylG, unless the applicants succeeded exceptionally in substantiating the risk of political persecution or serious harm. This kind of fiction made the BAMF's work much easier but delegated the problem to the courts.

However, the same regulation technique was applied in 'Asylum Package II', specifically the 'Act on the Introduction of Accelerated Asylum Procedures'.[56] Among others, this law introduced the institution of accelerated asylum procedures (§ 30a AsylG). According to this, the BAMF had to decide on asylum applications with 'a lower probability of success' (cf. § 30a para. 1 AsylG[57]) within one week (cf. § 30a para. 2 phrase 1 AsylG) – and this usually means rejecting the applications. A further example of the acceleration of procedures by way of a fictitious effect is the provision on not pursuing the asylum procedure (§ 33 AsylG), which was also revised with 'Asylum Package II'. According to this provision, an asylum application is considered as having been withdrawn as soon as an applicant no longer pursues the procedure. This may, in turn, be presumed in the case of the failure to appear on the hearing date, absconsion or breaches of the so-called 'residence obligation' under § 56 AsylG. Critics of this rule[58] see it as a severe curtailment of procedural rights, if not a complete exclusion of those affected from their right to undergo an asylum procedure. Once the asylum application is rejected, the so-called residence permit (§ 55 AsylG) is no longer valid, and the people in question are obliged to leave the country (§ 50, para. 1 AufenthG). If they do not comply

qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

55 This is the central requirement for recognition as a person entitled to 'subsidiary protection status' (§ 4 AsylG) and Arts 15ff. Directive 2011/95/EU. Both, the subsidiary protection and the refugee status constitute the international protection status.

56 Gesetz zur Einführung beschleunigter Asylverfahren vom 11. März 2016, BGBl I 390; BT-Drs 18/7538.

57 Thereafter, a low probability of success is to be assumed in the case of nationals of safe countries of origin pursuant to section 29a of the Asylum Act (cf section 30a, para 1, no 1 of the Asylum Act), applicants who provide false information (no 2) or wilfully destroy their proof of identity (no 3), in the case of subsequent applicants (no 4), in the case of persons who have filed their application only to obstruct the execution of a deportation (no. 5) or who refuse to submit their fingerprints to EURODAC (no 6) or who have been expelled for reasons of public security and order (no 7).

58 Marei Pelzer and Maximilian Pichl, 'Die Asylpakete I und II: Verfassungs-, europa- und völkerrechtliche Probleme' (2016) 49 Kritische Justiz 207, 216.

with this obligation, they can be deported to their countries of origin (§ 58 AufenthG) or otherwise repatriated, if necessary using coercion. Finally, 'Asylum Package II' contained a law[59] facilitating the deportation of foreigners who commit crimes and extending the exclusion of refugee recognition for asylum seekers who have committed crimes.

II.I.4. Faster integration for asylum seekers with 'good prospects of remaining'

While, according to the new legislation, asylum seekers with 'poor prospects of remaining' should be turned away from German territory as quickly as possible, asylum seekers with 'good prospects of remaining', which can be assumed above all in the case of Syrian, Iraqi and Eritrean nationals,[60] should, according to German law, be 'integrated into society and the world of work as quickly as possible'.[61] Accordingly, as a derogation from the previous law, they were given the opportunity to attend a language course (§ 421 SGB III new version)[62] or an integration course (cf. § 44 para. 4, sentence 2, no. 1 AufenthG) during the asylum procedure. Additionally, 'Asylum Package I' introduced another subsequent language course (§ 45a AufenthG) to teach specific German language skills for specific professions. The so-called 'Integration Act'[63] introduced additional measures, such as financial assistance for young trainees (§ 132 para. 2 and 4 SGB III). In addition, the accompanying ordinance to the Integration Act introduced,[64] among other things, easier access to the labour market for asylum seekers with 'good prospects of remaining' and so-called tolerated persons,[65] i.e. foreign nationals who may not be deported for legal or factual reasons (§ 60a AufenthG). Since the 'Integration Act' entered into force, a reason for 'tolerance' can also be seen in the fact that the foreigner pursues education

59 Gesetz zur erleichterten Ausweisung von straffälligen Ausländern und zum erweiterten Ausschluss der Flüchtlings-anerkennung bei straffälligen Asylbewerbern, BGBl I 394ff.
60 Daniel Thym, 'Schnellere und strengere Asylverfahren' (2015) 24 Neue Zeitschrift für Verwaltungsrecht 1625, 1627.
61 BT-Drs 18/6185, p 2, 27, 30.
62 ibid 58.
63 Integrationsgesetz vom 5. August 2016, BGBl I 1939.
64 BGBl I 1950; Verordnungsbegründung: BR-Drs 285/16.
65 For details, see the new version of § 32 BeschV.

in Germany (cf. § 60a para. 2 p. 4 AufenthG), provided that he or she does not come from a 'safe third country'.[66]

II.1.5. Measures to accommodate asylum seekers

In order to meet the high demand for housing that has arisen because of the influx of almost 1 million people, it was decided, among other things, to ease the law on the construction of refugee accommodation (§ 246 BauGB).[67] Some federal states, such as Bremen or Hamburg, also have their own legal bases for securing private housing for accommodating asylum seekers.[68] Finally, a so-called 'residence regulation' was adopted in § 12a AufenthG within the framework of the 'Integration Act'. Primarily intended to prevent social and ethnic segregation,[69] this rule obliges foreign nationals – even in the case of an asylum procedure that has already been successfully completed – to reside in the county or district in which they have completed their asylum procedure. From the point of view of the people concerned, such residence requirements represent a serious restriction on their freedom of movement. However, both the German Federal Administrative Court[70] and the ECJ[71] considered the measures to be justified by concerns of the aforementioned integration policy.

II.1.6. Measures to deter new immigrants

Finally, the above laws contain a number of measures, the regulatory purpose of which can be considered solely as deterring new immigrants. These include a general suspension of family reunification for people with

66 On the contrary, citizens of a 'safe third country' are completely excluded from the labour market (cf § 47 para 1a in conjunction with § 61 para 1, para 2 s 3 AsylG new version, § 60a para 6 AufenthG).

67 More on this: Sina Fontana, 'Die Unterbringung von Flüchtlingen und Asylbegehrenden als Herausforderung für das Bauplanungsrecht' in Roman Lehner and Friederike Wapler (eds), *Die herausgeforderte Rechtsordnung* (Berliner Wissenschafts-Verlag 2018).

68 More on this: Judith Froese, 'Die Sicherstellung privaten Eigentums zur Flüchtlingsunterbringung (2016) 71 JuristenZeitung 176.

69 BT-Drs 18/8615, p 6.

70 BVerwGE 130, 150.

71 Cases C-443/14 *Ibereolica Renovables v Commission* and C-444/14 *Osso v Germany*.

subsidiary protection (§ 104 para. 13 AufenthG[72]) and various measures lowering social standards. For example, 'Asylum Package I' contained far-reaching restrictions of social benefits (§ 1a para. 2–4 AsylbLG), which were justified by the possibility of saving costs. It simultaneously reintroduced the 'principle of benefits in kind' in § 3 AsylbLG, according to which social benefits should not be granted in cash, although this principle was only abolished in December 2014.[73] The official justification for this step was that benefits in kind could be granted more quickly and easily than cash benefits.[74] Furthermore, according to § 47 AsylG (new version), asylum seekers are obliged to live in the initial reception centre instead of shared accommodation (§ 53 AsylG) for up to six months (para. 1) or even until the decision is issued on their asylum application (para. 1a). The latter is accommodation of a much higher standard, typically flats, former hotels or hostels, while gymnasiums or comparable facilities can also serve as initial reception facilities.

II.2. Reaction as innovation? On the innovative potential of the measures taken

Now that an overview of the measures taken has been given, the question is which of these measures can be described as 'innovations'. Following a common understanding in innovation research, 'innovations' are understood here as certain 'novelties' – for example, new findings, processes, or institutions – which enable problems to be solved better than before and can, therefore, have far-reaching consequences for individuals and society.[75] A distinction can be made between technical/technological, economic,

72 Critical on this: Bellinda Bartolucci and Marei Pelzer, 'Fortgesetzte Begrenzung des Familiennachzugs zu subsidiär Schutzberechtigten im Lichte höherrangigen Rechts' (2018) 38 Zeitschrift für Ausländerrecht und Ausländerpolitik 133.

73 Art 3 Abs 2 AsylbLG idF des Gesetzes zur Verbesserung der Rechtsstellung von asylsuchenden und geduldeten Ausländern vom 23 Dezember 2014 (BGBl I 2014, 2439).

74 BT-Drs 18/6185, p 45.

75 Wolfgang Hoffmann-Riem, *Innovation und Recht – Recht und Innovation* (Mohr Siebeck 2016) 23–24.

political, social,[76] cultural, artistic and legal innovations.[77] Of primary interest here are the legal innovations, which, in this context, are understood broadly, namely in the sense of the above definition of 'governance', so that, for example, certain innovations in procedural design or information and communication structures would also be included.

Overall, 'Asylum Package I' is considered to be ambivalent in terms of integration policy. The improvements in the area of integration are likely to include, in particular, the opening of existing[78] integration offers and the creation of new ones[79] for asylum seekers with 'good prospects of remaining'. On the other hand, asylum seekers and tolerated people from safe countries of origin (§ 29a AsylG) are not certified as having 'good prospects of remaining' from the outset, which is why they are systematically excluded from all integration offers (II.1.4.). This is seen as a danger of a two-[80] or three-class system[81] of asylum seekers. This 'pre-sorting' means the danger also arises that many asylum applications will be rejected in a sweeping and poorly justified manner. This, in turn, can lead to legal action being taken against a large proportion of these decisions, which means a considerable additional burden on the administrative courts. Between 2014 and 2017, the number of asylum cases filed doubled from year to year.[82] Reforms in the asylum procedure would have to go hand in hand with a reform of the asylum procedural law in order to achieve actual relief of all parties involved in the procedure and therefore an acceleration of the entire process from the asylum application to the final (possibly judicial) decision.[83]

76 Wolfgang Hoffmann-Riem, ibid emphasizes that these have a reference for public life in communities and society and therefore to forms of social participation and integration, reconciliation of interests, social justice or individuality and solidarity.

77 ibid 40f.

78 These include, for example, integration courses in accordance with §§ 43–44a AufenthG or language courses in accordance with § 421 SGB III.

79 This includes, for example, job-related German language support in accordance with § 45a AufenthG.

80 See Frederik von Harbou, 'Das neue Beschäftigungsrecht für Asylsuchende und Geduldete' [2016] Asylmagazin 9, 17.

81 See Claudius Voigt, 'Die „Bleibeperspektive' [2016] Asylmagazin 245, 250.

82 Klaus Rennert, 'Änderungen des Asylrechts und Verbesserung der personellen und sachlichen Ausstattung der Verwaltungsgerichte dringend geboten' (2018) 133 DVBl. 401.

83 Dietz, 'Reformvorschläge' (n 7).

The amendments to the Asylum Benefits Act (AsylbLG) (II.1.6.) are also problematic from an integration policy perspective. However, the legislator obviously wants to remove false incentives for new immigrants. The question must arise of whether the reduction of so-called 'pull factors' – namely positive incentives promoting flight and migration movements to a certain state – serves the intended purpose of reducing the number of asylum seekers at all. The example of civilian sea rescue has already proved that people flee even without these 'pull factors' because the situation in their country of origin leaves them no choice, and that therefore both the importance and the existence of 'pull factors' can be doubted.[84]

The residence requirement in § 12a AufenthG from the 'Asylum Package I' (II.1.4.) was introduced to avoid social ethnic segregation and to distribute the burdens associated with the award of social benefits evenly among the various institutions. It stipulates that the residence permit of people entitled to subsidiary protection who receive social benefits is subject to the condition that they take up residence in a certain place. However, the ruling establishes unequal treatment with other foreign nationals who do not fall under the scope of the ruling, which cannot be justified by the federal government's justification of a fair distribution of costs, as this is not related to a person's status as being eligible for subsidiary protection. This unequal treatment would only be legitimate if it promotes integration.[85] However, the extent to which the integration of people entitled to subsidiary protection must be promoted more than that of people with refugee status seems at least questionable.

There are also concerns about the changes to the construction planning law (II.1.5.), which are intended to facilitate the construction of refugee accommodation. It is true that this will allow a quicker response to an increased number of refugees in need of accommodation. Particularly in large cities, the construction of accommodation with large capacities or of new housing estates carries the risk of segregation and therefore spatial discrimination.[86] It would be more innovative to take measures that also provide for the spatial integration of refugees into the municipalities, as has partly been done, for example, by securing housing.

84 Elias Steinhilper and Rob J Gruijters, 'A Contested Crisis: Policy Narratives and Empirical Evidence on Border Deaths in the Mediterranean' (2018) 52 Sociology 515.
85 Cases C-443/14 *Ibereolica Renovables v Commission* and C-444/14 *Osso v Germany*.
86 Becker and Kersten (n 7) 583.

At first glance, the 'Data Exchange Improvement Act', which introduced the so-called 'core data system' (II.1.1.) within the Central Register of Foreigners, appears positive. The processing and transfer of data between the relevant authorities could be improved and procedures could be accelerated by avoiding multiple registrations. However, this innovation must also be viewed critically insofar as it contributes to the perpetuation of unequal treatment between Germans and foreigners that is inherent in existing data protection law.

Overall, German asylum and migration governance seems only to react to certain symptoms of administrative failure. There are no signs of addressing the causes of the problems or of innovative approaches. Innovations typically enable problems to be solved better than before. As has just been demonstrated, this is predominantly not the case with the measures of 'Asylum Packages I and II'. In order to be able to speak of innovation, the legislative changes should at least potentially have far-reaching consequences for the individual and for society. In the case of the changes made by the 'Asylum Packages' of 2015/2016, however, only minor changes, with partial improvements, are made, the consequences of which can hardly be rated as far-reaching. German asylum and migration governance can, therefore, hardly be described as innovative. In particular, the central problem of staff shortages in the asylum and migration administration, which was identified at the beginning, has remained unsolved.

II.3. Conclusion

At first glance, the measures that have been taken seem to have innovative potential, as accelerating procedures could contribute to easing the burden on the authorities involved. On closer inspection, however, it becomes apparent that most of them are neither novel nor desirable. Many of the innovations were made to the detriment of the rights of given refugees and appear at least questionable from a constitutional, fundamental, human rights, and moral perspective. The structures of German asylum and migration governance were mainly preserved in 2015 and 2016 within the framework of the 'Asylum Packages I and II', while far-reaching improvements or positive consequences for future-oriented governance are not apparent. The measures do not seem to be very suitable for a better management of future comparable crises and cannot be construed as innovations in the sense defined above.

III. Lessons learned? Testing German asylum and migration governance in the context of the Russian invasion of Ukraine

In 2016, the so-called 'EU–Turkey Deal'[87] on refugees was agreed between the EU and Turkey. The deal provides for the return to Turkey of 'illegal' migrants from Syria arriving on the Greek islands from March 2016 onwards. As a result of this deal, the number of refugees arriving in Germany fell sharply, so that it was no longer appropriate to speak of a crisis for German asylum and migration governance in the sense defined above. Whether the measures taken in 2015 and 2016 within asylum and migration governance would also prove their worth after the immediate crisis situation or in the event of a renewed high number of arrivals and applications (i.e. a renewed 'flight and migration crisis') could not be verified at first.

While the number of asylum applications fell continuously after 2017, the number started to rise again from 2021.[88] What cannot be read from the BAMF statistics: since the start of the Russian war against Ukraine in the spring of 2022, the number of refugees arriving in Germany has risen sharply, with over a million war refugees coming from Ukraine.[89] A practical test of German asylum and migration governance therefore seemed imminent in early 2022. In contrast to most of the refugees who reached Germany in 2015 and 2016,[90] however, Ukrainian nationals have been able to come to Germany and further EU countries without visas since 2017, which is why issues of registration for Ukrainian citizens are less complicated than for other third country nationals.[91] However, this can also be attributed to the fact that the EU directive for temporary protection[92]

87 For a legal assessment see: Rainer Hofmann and Adela Schmidt, '„EU-Türkei-Deal" ohne Beteiligung der EU? – Die Beschlüsse des EuG zur Erklärung EU-Türkei vom 18. März 2016' (2017) 44 Europäische Grundrechte Zeitschrift 317.

88 BAMF, 'Aktuelle Zahlen' (Dezember 2022) p 6, <www.bamf.de/SharedDocs/Anlagen/DE/Statistik/AsylinZahlen/aktuelle-zahlen-dezember-2022.pdf?__blob=publicationFile&v=3> accessed 20 March 2024.

89 BMI, Press Release of 23 February 2024 <www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2024/02/jahrestag-angriffskrieg-ukr.html> accessed 20 March 2024.

90 European Parliament, Press Release, Plenary Sessions of 6 April 2017 <www.europarl.europa.eu/pdfs/news/expert/2017/3/briefing/20170327NEW68672/20170327NEW68672_en.pdf> accessed 26 March 2024.

91 Klaus Ritgen, 'Aufnahme und Aufenthaltsrecht von Flüchtlingen aus der Ukraine: Die kommunale Perspektive' (2022) 42 Zeitschrift für Ausländerrecht und Ausländerpolitik 238, 241.

92 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on

was activated for the first time in 2022.[93] This opened up the possibility of granting temporary protection to all Ukrainian nationals, as well as their family members and some third-country nationals under § 24 AufenthG.[94] They were also allowed to pursue professional activity (in accordance with Article 12 of the Directive) from the beginning of their stay, while 'regular' asylum seekers are not allowed to work during their asylum procedure.[95]

Therefore, a completely different path was chosen than in 2015–2016 because of the EU protection regime. It remains questionable why the Directive on temporary protection, which has already existed since 2001, was not activated in 2015 despite a situation that was comparable in principle.[96] The unequal treatment of refugees at the EU's external borders, depending on their nationality, raises the question of the extent to which the EU migration policy is racist and discriminatory.[97]

Even independently of this, there are still some ambiguities: the privileges arising for a large proportion of the refugees from Ukraine under the directive do not apply to all third-country nationals, which means there are still some unresolved legal questions, such as with regard to the

measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

93 Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

94 Ritgen (n 91) 241.

95 Heinrich Griep, 'Sozialrechtlicher Status der Ukraine-Flüchtlinge' (2022) 26 Sozial-Recht aktuell 99, 101.

96 See on this Adela Schmidt, 'Die vergessene Richtlinie 2001/55/EG für den Fall eines Massenzustroms von Vertriebenen als Lösung der aktuellen Flüchtlingskrise' (2015) 35 Zeitschrift für Ausländerrecht und Ausländerpolitik 205, 211f; Daniel Thym, 'Schneller Schutz für Kriegsflüchtlinge: Ukrainer dürfen in die EU' (*LTO,* 2022) <www.lto.de/recht/hintergruende/h/krieg-ukraine-flucht-schutz-status-massenzustromsrichtlinie/> accessed 26 March 2024.

97 Katrin Elger, Interview with Sabine Hesse, 'Flüchtlinge aus der Ukraine: „Es wird mit zweierlei Maß gemessen"' *Spiegel* (Hamburg, 2 March 2022) <www.spiegel.de/panorama/interview-mit-migrationsforscherin-wird-putins-angriffskrieg-die-europaeische-asylpolitik-dauerhaft-veraendern-a-99b7cc0e-a427-4117-b42b-2d803145605a> accessed 26 March 2024; Susanne Mermarnia, Interview with Niki Drakos and Kadiatou Diallo, 'Ungleichbehandlung von Geflüchteten: „Das ist Rassismus"' *Taz* (Berlin, 1 June 2022) <https://taz.de/Ungleichbehandlung-von-Gefluechteten/!5857593/> accessed 26 March 2024.

requirement to provide evidence.[98] Furthermore, according to Article 4 of the directive, the temporary protection status is limited to three years and it is still unclear what will follow after that.[99] The real practical test for German asylum and migration governance may therefore still be ahead of us. In any case, it remains to be said that the differences that can be observed in the reactions to the German asylum governance in spring 2022 and 2015 are not so much due to a political change within German asylum governance but to the fact that the treatment of Ukrainian nationals was dictated by EU law.

However, it should not go unmentioned that the German administration seems to benefit from the experiences of 2015 with regard to the registration and placement of asylum seekers.[100] Furthermore, the 'Act on the Acceleration of Asylum Court Proceedings and Asylum Procedures',[101] which joins the series of laws discussed above, came into force on 1 January 2023. In addition to facilitating the asylum procedure, it also aims to accelerate court proceedings. Furthermore, it has introduced a needs-based asylum procedure counselling service, which is free of charge for the applicants and independent of the authorities.[102]

The legislator, therefore, also seems to have considered the successes of the previous amendments as being insufficient and to have seen a need for further improvements.[103] It remains to be seen, however, how effective the legislative changes prove to be in practice – i.e. whether the desired acceleration effects can be achieved[104] and how the weaknesses and problems in managing asylum procedures will continue to be addressed by legislation as a long-term constructive reaction to the crisis in asylum and migration governance.

98 Andreas Dietz, 'Kriegsvertriebene aus der Ukraine' (2022) 41 Neue Zeitschrift für Verwaltungsrecht 205, 508.

99 Wienfried Kluth, 'Was bedeutet die „Zeitenwende" für das Migrationsrecht?' (2022) 42 Zeitschrift für Ausländerrecht und Ausländerpolitik 223, 225.

100 Ritgen (n 91) 239.

101 Gesetz zur Beschleunigung der Asylgerichtsverfahren und Asylverfahren, 28 Dezember 2022, BGBl I 2817.

102 <www.bmi.bund.de/SharedDocs/gesetzgebungsverfahren/DE/beschleunigung-asylgerichtsverfahren.html;jsessionid=2A4EEC8E24710C198CACA5F937086A80.1_cid332> accessed 20 March 2024.

103 Andreas Heusch and Andrea Houben, 'Gesetz zur Beschleunigung der Asylgerichtsverfahren und Asylverfahren' (2023) 42 Neue Zeitschrift für Verwaltungsrecht 7.

104 Markus Sade, 'Das neue Gesetz zur Beschleunigung der Asylgerichtsverfahren und Asylverfahren' (2023) 43 Zeitschrift für Ausländerrecht und Ausländerpolitik 21, 25.

Yet, in order to be better prepared for large-scale refugee and migration movements in the long term, it is important to move away from a purely reactive migration policy towards structurally proactive approaches. Structurally proactive migration governance means that migration movements are anticipated and solutions are sought through intergovernmental cooperation.[105] However, the measures taken in German asylum and migration governance after 2015 only take effect when people are already in Germany and these measures are, therefore, only classified as reactive. However, a structurally proactive approach appears to be necessary, especially in view of the climate crisis and the enormous refugee movements that are expected in this context.[106]

The 'Match'In' project for the placement of refugees, for example, shows how the cooperation of researchers, representatives of refugees and the federal states and municipalities can produce innovation. An algorithm developed by researchers from the universities of Hildesheim and Erlangen-Nuremberg helps harmonize the needs of refuges seeking protection with the conditions in the individual municipalities ('matching') in order to make migration beneficial for municipal development and to improve integration and participation.[107] The placement system is being tested as a pilot project in four German states (*Länder*).[108] The criteria considered in the placement process range from individual healthcare needs (e.g. the need for certain treatment) and education needs (e.g. attendance of a family's children at school) to compatibility with professional qualifications (e.g. assigning skilled people to locations with good prospects of finding employment in their fields). Even preferences regarding the location of family members or other people from their personal environment who are already living in Germany will be relevant in the matching.[109] Therefore, by processing the available data and using algorithms to produce results,

105 Johannes Eichenhofer, 'Reaktives und proaktives Migrationsrecht' in Uwe Berlit, Michael Hoppe and Winfried Kluth (eds), *Jahrbuch des Migrationsrecht 2023* (Nomos 2023) 357.

106 Catherine Brouers, 'Der Schutz der Umwelt- und Klimaflüchtlinge im Völkerrecht: Regelungslücken und Lösungsansätze' (2012) 23 Zeitschrift für Umweltrecht 81, 89.

107 <http://matchin-projekt.de/> accessed 20 March 2024.

108 Dinah Riese, 'Wer schafft was?' *Taz* (Berlin, 3 February 2023) <https://taz.de/Unterbringung-von-Gefluechteten/!5910573/> accessed 20 March 2024.

109 <https://integrationskompass.hessen.de/aktuelles-mediathek/presseinformationen/details/integration-matchin-projekt-ein-algorithmus-als-gemeinsam-entwickelte-entscheidungshilfe> accessed 20 March 2024.

the Match'-In project implements the demands that have been raised by advocacy groups for a long time. As for the placement of refugees arriving from Ukraine, the BAMF federal ministry started to use an application called 'FREE' (translated as: Specialist application for registering management, recording and initially placing for temporary protection) in May 2022. According to the ministry, in addition to the regular ratio of placements, the application helps consider individual criteria, such as family ties.[110] 'FREE' is being used exclusively for Ukrainian refugees, while asylum seekers from other countries are placed according to a different (common) system called 'EASY'.[111]

In view of the unabating crises and conflicts in the world, such as the war in Ukraine, which has now lasted more than a year, the war in Syria, which the Assad regime is still waging, as well as the foreseeable migration movements because of the climate crisis, the measures taken cannot be sufficient. In order to meet these challenges, real innovations are needed, which not only react to events that have already taken place but also prepare asylum and migration governance with foresight for developments that will take place in the future so that refugees can be granted the protection to which they are entitled as quickly as possible. The counterpart of improved asylum and migration governance must be a committed, humane migration policy that advocates for a fair distribution of refugees seeking protection at the European level and for combating the causes of flight at the global level.

110 <www.bamf.de/SharedDocs/Meldungen/DE/2022/22060x-am-free-bericht-behoerdenspiegel.html> accessed 20 March 2024.

111 <www.bamf.de/DE/Themen/AsylFluechtlingsschutz/AblaufAsylverfahrens/Erstverteilung/erstverteilung-node.html> accessed 20 March 2024.