



2018 Annual Report

Steering What Can Be Steered: What Can Immigration and Integration Laws Do?

Seven Core Messages

When the Ukrainian brothers and later world boxing champions Wladimir and Vitali Klitschko came to Germany more than two decades ago, they were amazed by the fact that German motorists would stop at a red light even in the dead of night, with other traffic far and few between. The brothers' observation of the diligent adherence to the highway code in Germany is in keeping with the reputation Germans have worldwide as law-abiding if not law-adulating citizens.

Every cliché is known to have at least one grain of truth. It may well be 'typically German' to demand that a new law be created the very minute that deficiencies or flawed developments manifest in a given area. Alas, the areas of migration and integration are no exception, especially following the waves of refugees that entered Germany in 2015 and 2016. In particular last year, in the context of the German federal election, the topic of whether an immigration law would be advisable, and if so, in which form, was a much debated issue. Integration laws were likewise demanded from various parts of society, specifically to promote the integration of recently arrived refugees.

If anything, all stakeholders agree that the government should steer immigration and shape integration as best it can – an area where the Expert Council of German Foundations on Integration and Migration (SVR) sees considerable room for improvement. The SVR also asserts that neither the steering power of an immigration law nor the influence of integration laws should be overestimated. While such misgivings do not invalidate the legitimacy or the need for such laws, they do help to prevent misperceptions and subsequent disappointments from a perspective of so-called political expectation management.

1 Immigration and integration laws contribute (also) to societal self-understanding.

Beyond the concrete steering function, such laws have a signalling and symbolic effect, which is precisely where their value lies. The concept of symbolic politics has a negative connotation – wrongly so. Especially in policy areas such as migration and integration, which are politically sensitive and which tend to be discussed readily, and emotionally, by society at large, government activities cannot and should not be limited to the provision of a consistent legal framework. Rather, it is important to involve the population and to discuss the topic not only within parliament but also as part of broader public discourse. For such discourse to be fruitful, it needs to draw on the various political convictions in addition to the empirical-scientific findings and the positions of different social actors. Indeed, that is exactly what immigration and integration laws can do. When an immigration law is enacted at the federal level, it can trigger a process of reflection and self-validation within society. Seeing that Germany relies on controlled migration, if only for demographic reasons, it would benefit from engaging in that process. Integration laws can therefore help a society such as Germany's to communicate about what living together in an immigration society should look like and about the principles to which an integration policy should subscribe.

For more information and recommendations for action, see chapters B.5 and C.2.



2 An immigration law can provide an overview of the immigration options and have a signalling function both externally and internally.

Over the years, the various immigration standards have given way to a jumble of different laws and regulations. An immigration law could allow a clearing of the forest, so to speak, and to bring some structure into the chaos. The SVR is in favour of a German Immigration Code, or *Einwanderungsgesetzbuch*. A model for this could be the German Social Code (*Sozialgesetzbuch*), in which the various branches of social security are regulated in separate books. A German Immigration Code could likewise present the various ways in which third-country nationals may immigrate to Germany in separate books. It would be structured similarly to the Residence Act (*Aufenthaltsgesetz*), although it would present the existing standards a bit more clearly and in a more user-friendly way. This would send out a double signal: Internally, a German Immigration Code could communicate to the resident population that immigration and the steering of immigration are necessary for demographic reasons alone. At the same time, it would facilitate communication with the outside world: Especially in the area of labour migration, some very liberal regulations for highly qualified workers are already in effect, while those for skilled workers (with vocational training) need to be relaxed (see Core Message 3). A German Immigration Code could summarise these regulations as clearly and comprehensibly as possible, and raise awareness for them on site in the key geographical areas of origin from which immigration is anticipated.

For more information and recommendations for action, see chapters B.4 and B.5.

3 The immigration opportunities for highly qualified workers are good, yet those for skilled labour need to be increased.

Immigration can be steered, especially in the area of labour migration. At the European Union level, requirements already exist, especially for the group of highly qualified workers, in other words, professionals with a university education. In recent years, Germany accomplished a political quantum leap by, building on those regulations, establishing one of the most attractive national frameworks in the world for highly qualified professionals. For this reason, the SVR considers far-reaching reforms for this group of immigrants to be unnecessary; besides, it would be difficult to ensure compliance of any further changes with the EU-wide requirements. However, in the area of skilled workers with vocational qualifications, the immigration opportunities should be increased.

For more information and recommendations for action, see chapters B.2, B.4 and B.5.

4 A more flexible approach to the equivalence criterion could make it easier for skilled labour to move to Germany.

Presently, those wishing to immigrate to Germany have to prove *before* entering the country that their vocational training acquired abroad meets German standards. This has proven to be a key barrier to entry for skilled labour. For Germany, this constitutes the following dilemma: Germany does not want to, for understandable reasons, forego its – internationally admired – training standards in the area of vocational training. Yet, those very vocational training paths are hardly established or developed in the key countries of origin of immigrants. To resolve this dilemma, the SVR proposes three approaches: First, training partnerships could be initiated to further anchor German training standards in future countries of origin. Secondly, the existing opportunities for third-country nationals to migrate for training purposes could be increased. This would create opportunities in the area of vocational training that would resemble those already existing for higher education. Thirdly, the SVR recommends relaxing the obligation to demonstrate the equivalence of the qualifications acquired abroad. In fact, this third recommendation could be the main thrust behind the effort to reform the framework conditions of the labour migration policy. The ‘two plus’ model should serve as the basis for a new regulation in which the equivalence requirement would be replaced by a combination of other criteria (e.g. language skills, a financial criterion or training in a shortage occupation). Namely, a skilled worker who has secured a job in Germany could then enter the country without proof of equivalence, provided she can claim two plus at least one more (two plus) alternative qualification criteria. This would be an appropriate middle ground between the status quo, under which the equivalence criterion in German law functions as an exclusion criterion, and its complete abolition.

For more information and recommendations for action, see chapters B.4 and B.5.



5 Policy should ensure that expectations of an immigration law remain realistic. It can do so by observing 'limits in law' and 'limits of law.'

Expectations of an immigration law ought not be too high. In order to prevent unrealistic notions, it is necessary to point out the limits of what can and cannot be steered by such a law. For one, the degree to which the law, or a law, can influence migration processes at all should not be overestimated. This also applies to labour migration, an important segment of immigration. For example, numerous studies indicate that the language spoken in a country or other factors, ranging from the weather to the tax system, often weigh in on an immigration decision more so than any immigration law. In addition to these 'limits of law' there are also 'limits in law.' The latter applies primarily to the EU legal framework, given that migration law is now largely Europeanised. That context allows nationals of EU member countries to skirt the provisions of a national immigration law (of a European country other than their own), seeing that they enjoy freedom of movement within the European Union. And it is exactly this immigration group that is extremely important for Germany, even if it hardly gets media attention. Third-country nationals, too, are subject to a tight European legal framework. Especially in the context of refugees and asylum, as well as for issues related to highly qualified workers, Brussels now wields more clout in terms of standardisation than Berlin. In that context, national unilateralisms are, by and large, not an option, leaving national legislation little room for manoeuvre – apart from the bargaining position that Germany happens to have in Brussels and how it transposes EU directives into its own national legislation.

For more information and recommendations for action, see chapters B.1 and B.2.

6 Targeted steering of integration relies more on a fine-tuning of laws that apply equally to all members of society than on specific integration laws.

The federal government cannot prescribe integration; but it can shape the framework conditions such that they promote integration. For this, it has several options, including the adoption of corresponding laws. Last year, the German federal government issued a set of laws referred to as the Integration Act (which de facto functions as a new asylum package). A number of German federal states (*Länder*) have likewise adopted specific integration laws in recent years, with others intending to follow suit. Another option is comprised of so-called integration concepts, which are mainly used at the state (*Länder*) and local level. The question of whether integration at the state level is best realised by concepts or by laws is less important than the consistent implementation and good monitoring of integration. As with the immigration regulations, however, the power which integration laws can wield should not be overestimated. Firstly, individual integration processes cannot be controlled predominantly by the government. Secondly, a fine-tuning of the basic laws (that apply equally to all members of society) is more effective and also systematically more convincing than special laws targeting only those with a migration background. For example, the successful integration into and through education relies less on integration laws than on a more permeable education system that gives equal opportunities to children and young people from different backgrounds. While special measures are still needed, such as language training, these could most often be set up and provided without any new legal regulations. In essence, these measures consist of services such as courses, qualification programmes or counselling and support services.

For more information and recommendations for action, see chapters C.1, C.2 and C.3.

7 The municipalities are contributing significantly to integration. They have coped well with the influx of refugees, even if there is room for improvement as regards coordination.

It is now recognised that the municipalities (*Kommunen*) play an important role in integration. Although they are not authorised to institute integration-related legal measures on their own, they are usually the authority that carries out the measures adopted at the federal and state levels. For this, they have a defined leeway of action, which they can use in different ways. In addition, the municipalities are independently engaged in integration policy; for example, they sometimes develop very comprehensive integration concepts. Finally, they are ultimately the key players in a dimension that is often underestimated in public debate: that of identificative integration. The influx of refugees has put the integrative capacities of the municipalities to the test, thereby revealing the challenges and flaws requiring attention (e.g. in the coordination and adjustment of measures and their sustainability). Some municipalities have already developed creative approaches to addressing these challenges. By communicating with one another – as many of them



are already doing – they can learn from one another and adopt those measures and concepts that have proven to be effective or adapt them to their local conditions.

For more information and recommendations for action, see chapter C.4.