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Refugees as Migrant Workers after the Global Compacts? Can Labour Migration Serve as a Complementary Pathway for People in Need of Protection into Sweden and Germany?

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Abstract: Both the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees commit states to diversify and expand on labour migration opportunities, in particular by facilitating work-based ‘complementary pathways’ for the admission of refugees. Yet, almost four years after their adoption, such pathways remain limited in many cases. It is the aim of this article to examine the constraints posed by existing immigration laws to serve as an admission ground for people in need of protection and the key legal, policy and political issues that need to be addressed to allow the commitments related to labour migration pathways contained in the Compacts to be implemented in national legal systems. In so doing, this article applies a legal and political feasibility lens to evaluate why these pathways for persons in need of protection are often small-scale, underutilized by employers and unwelcoming to potential refugees. It employs a comparative case study methodology drawing on more than 30 semi-structured interviews with stakeholders at the international and national levels in Germany and Sweden. The article concludes that the main challenge to the political feasibility of opening work-based complementary pathways for refugees is politicians’ and policy makers’ traditional thinking of migration and asylum as separate domains. When it comes to challenges to legal feasibility, these stem from entry requirements, lack of sufficient interest among employers who are a key stakeholder in the facilitation of such pathways, as well as issues related to the security of status of potential beneficiaries of such measures.

Keywords: complementary pathways; legal pathways to refugee protection; work-based pathways; Global Compact for Safe, Orderly and Regular Migration; Global Compact on Refugees; migration; refugees; labour migration; policy feasibility; Germany; Sweden



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1. Introduction

In response to increasing restrictions to spontaneous arrivals and to accessible protection opportunities (Chimni 1998; Hathaway 1992; Moreno-Lax 2017), the international community has been advancing the long-standing policy idea of opening legal pathways to protection, additional to resettlement,¹ where traditional durable solutions are not achievable (UNHCR 2019a, p. 5). These so-called ‘complementary pathways’ include humanitarian admission programmes, such as community sponsorship, allowing individuals or organisations to provide reception and integration support to refugees admitted in a host country (UNHCR 2019a, p. 5), and other migration avenues based on labour migration, education and family reunification. This article focuses on the policy idea to employ labour migration as a complementary pathway for people in need of protection in third countries, understood as ‘safe and regulated avenues for entry or stay in another country’ and leading to either permanent or temporary residence (UNHCR 2019a, p. 10).

Both the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR) contain commitments related to enhancing labour

¹ United Nations General Assembly, New York Declaration for Refugees and Migrants, Resolution No. A/RES/71/1 adopted on 19 September 2016, paras 77–79 and Annex I, paras 10 and 14–16.

migration opportunities and facilitating work-based complementary pathways for admission of refugees.² On the one hand, ‘labour mobility opportunities for refugees, including through the identification of refugees with skills that are needed in third countries’ are promoted as part of the GCR.³ On the other, the GCM calls for enhanced ‘availability and flexibility of pathways to regular migration’,⁴ which could also be beneficial for asylum seekers and refugees in seeking legal access to protection or solutions through onward migration (Costello 2019, p. 647). Past experience shows that when provided with an opportunity for facilitated labour mobility, many people in need of protection would prefer to apply for a work permit rather than go through the cumbersome refugee status determination procedure, and this bears the potential to reduce the workload of national refugee status determination bodies (Crépeau 2018, p. 655). Even though references to those groups have been omitted from the final version of the GCM (Guild et al. 2019, p. 51), their consideration should form part of its implementation process (Costello 2019, p. 647).

The added value of such complementary pathways has also been recognised at the European Union (EU) level.⁵ Yet, almost four years after the adoption of the Compacts, such pathways are still far from reality in the EU context,⁶ mostly due to their discretionary nature (Vankova 2022, p. 95) and the limited competence in the field of legal migration at the EU level (Farcy 2020).⁷ Therefore, it is the aim of this article to examine the constraints posed by existing immigration laws to serve as an admission ground for people in need of protection and the key legal, policy and political issues that need to be addressed to allow the commitments related to labour migration-based pathways contained in the Compacts to be implemented in national legal systems.

In order to do that, the article’s research design draws from evaluation and policy analysis studies aiming to interrogate the feasibility of developing complementary pathways at the national level in the EU. According to Majone, policy feasibility ‘is defined in terms of all the relevant constraints’ (Majone 1975, p. 49), and this article focuses on those of legal and political nature. A legal feasibility examination is needed in order to understand the extent of immigration legislation’s accessibility and its suitability to provide security of status for people in need of protection. Furthermore, any normative analysis examining the feasibility of a new policy idea should account for the political constraints that can limit the possibility of realising its goals (Majone 1975, p. 68). Therefore, considering political feasibility can point to an important source of potential disagreement among key stakeholders that can hinder the implementation of complementary pathways for refugees at the national level.

² Even though the Compacts uphold the migrant-refugee dichotomy and distinguish between complementary pathways reserved for recognised refugees and legal pathways for the rest of the migrants, these terms are used interchangeably in this article, using the New York Declaration, para 6 as point of reference. See further the Introduction to this Special Issue and Section 4 of this article. In addition, the terms work-based, labour migration-based and labour mobility pathways are also used interchangeably in this article. Since such pathways are discretionary, their target groups are determined by states and differ. See further (Vankova 2022).

³ United Nations, Report of the United Nations High Commissioner for Refugees, Part II: Global Compact on Refugees, General Assembly Official Records Seventy-third Session Supplement No. 12 (A/73/12 (Part II)), New York, 2018, para 95.

⁴ United Nations, Resolution adopted by the General Assembly on 19 December 2018, Seventy-third session, A/RES/73/195, Annex: Global Compact for Safe, Orderly and Regular Migration, Objective 5, p. 12.

⁵ European Union Agency for Fundamental Rights, Legal Entry Channels to the EU for Persons in Need of International Protection: A Toolbox, 2015; European Commission, Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe, COM (2016) 197; European Commission, Communication on a New Pact on Migration and Asylum, COM (2020) 609 final; European Commission, Recommendation on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways, C (2020) 6467 final, Brussels.

⁶ Under the EU-funded DT4E project, complementary labour mobility pathways will be piloted in Belgium, Ireland and Portugal. Yet, according to information provided by IOM, this is not expected to happen before the end of 2022/early 2023. The United Kingdom is also covered by this project and has already launched the Displaced Talent Mobility Pilot: <https://www.talentbeyondboundaries.org/blog/introducing-the-uks-displaced-talent-mobility-pilot> (accessed on 7 July 2022).

⁷ On the legal nature of the Compacts, see the Introduction to this Special Issue and the contribution of Favi. For a non-EU perspective on the implementation of the Compacts, see the contribution of Alexander and Singh in this Special Issue.

Or as Robert and Zeckhauser note: ‘ignore politics, and policy recommendations will fall on deaf ears, accomplishing nothing’ (Robert and Zeckhauser 2011, p. 624).

This article employs a comparative socio-legal case study methodology to analyse the possible implementation of such pathways based on Germany and Sweden’s immigration laws. These two EU Member States have been among the top ten refugee host countries worldwide (UNHCR 2018)⁸ and attracted most of the secondary movements after the so-called 2015 ‘refugee crisis’ (EPRS 2017, p. 4). These are also the two countries with the largest resettlement quotas in the EU⁹ and even though they introduced restrictions into their national refugee laws after 2015, Sweden maintained a “welcoming” approach to labour migration and Germany liberalised its immigration legislation aiming to attract skilled migrants. All this made them stand out as countries prone to think creatively about refugee protection and ideal case studies to explore the topic of work-based complementary pathways. Methodologically, alongside legal and policy analysis, the article draws from more than 30 semi-structured interviews conducted between October 2020 and June 2021 with national stakeholders including NGO representatives, lawyers, employers’ organisations and trade unions, as well as with international and national policy makers and experts from Germany and Sweden to ascertain their views on the feasibility of using such policy approach. Even though no politicians were interviewed, the interviews that were conducted covered questions related to the political feasibility of initiating labour migration-based complementary pathways for people in need of protection.

This article argues that the main challenge to the political feasibility of opening work-based complementary pathways for refugees is politicians’ and policy makers’ traditional thinking of migration and asylum as separate domains. When it comes to challenges to the legal feasibility, it concludes that these stem from entry requirements that can be insurmountable for people in need of protection, alongside insufficient interest and incentives among key stakeholders to engage in such policy approach, as well as issues related to the security of status of potential beneficiaries of such measures. Therefore, when designing work-based complementary pathways for refugees, policy efforts need to address both admission conditions and precarious migration statuses equally. This requires the participation of the International Labor Organization (ILO) as an equal partner in the governance of refugee work (Gordon 2021, p. 250), and more specifically in the newly established Global Task Force on Refugee Labour Mobility whose members represent governments, UN agencies, international business and civil society organisations as well as refugees.¹⁰

The article is structured as follows: It commences with an analysis of the challenges to the legal feasibility of facilitating work-based complementary pathways for people in need of protection (Section 2). It discusses Sweden and Germany’s immigration law provisions which can serve as a basis for work-based complementary pathways (Section 2.1) and then moves on to examine the admission and post-arrival legal barriers, as well as barriers outside the law, such as the positions of key stakeholders (Section 2.2). Next, it presents a feasibility analysis of using other national models for the facilitation of work-based complementary pathways, such as the Western Balkan Regulation and community sponsorship programmes (Section 3). It then moves on to an analysis of the political feasibility of facilitating work-based complementary pathways for people in need of protection (Section 4).

⁸ Respectively in absolute and relative terms.

⁹ See <https://www.unhcr.org/resettlement-data.html> (accessed on 7 July 2022).

¹⁰ Established in April 2022 in response to the 2019 UNHCR’s Three-Year Strategy on Resettlement and Complementary Pathways, Goal 2: Enabling actions, p. 23. See further <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/corporate-initiatives/global-task-force-refugee-labour-mobility.html> (accessed on 7 July 2022).

2. Legal Feasibility of Using General Labour Migration Frameworks as Pathways for People in Need of Protection

This section aims to examine the legal feasibility of using existing national provisions which are part of the immigration systems of Sweden and Germany as the basis for work-based complementary pathways. This focus is necessary as the European Pact on Migration and Asylum¹¹ and the Commission recommendation on legal pathways to protection in the EU¹² demonstrate that, apart from technical support to Member States, no other EU action is envisaged for the facilitation of such labour migration-based into the EU for people in need of protection. This is in line with Article 79 TFEU providing for shared EU competence over labour migration which has resulted in EU secondary law covering only specific categories of migrant workers.¹³ Therefore, Member States willing to facilitate such pathways would rely on their national law or a combination of EU and national law to do so (see further (Vankova 2022)).

Furthermore, not all Member States use these EU instruments to the same extent. In the Swedish case, for instance, the EU law on labour migration has had limited effects at the national level (Parusel 2020, p. 55). Alongside Sweden's 'reluctant' approach to implementing these directives, causing delays in their transposition, they are not seen as bringing any added value by labour migrants who have easier access to permits provided by the general labour migration framework (Parusel 2020, p. 55). Unlike Sweden, Germany has been so far the Member State issuing the most Blue Cards in the EU and using the Blue Card Directive as the main legal channel to recruit migrants in highly-skilled occupations.¹⁴ Yet, at the same time, Germany has also recently adopted an ambitious migration law package, showing that it will not 'confine migration policy reform to supranational harmonisation' (Thym 2019).

2.1. The Swedish Aliens Act and the German Skilled Immigration Act as Basis for Work-Based Pathways for People in Need of Protection

The state officials interviewed in both case study countries stressed that the existing general labour migration frameworks are accessible enough to be used as legal pathways for people in need of protection.¹⁵ In Sweden, almost all interviewees referred to the Swedish Aliens Act,¹⁶ which people from refugee producing countries had already used as it provides the basis of 'one of the most liberal' labour migration systems in the OECD area as a result of the reform undertaken in late 2008.¹⁷ The Swedish model was considered a suitable pathway for people in need of protection as it was employer-driven and open to labour migrants from all skill levels, without any labour market restrictions stemming from quotas or labour market tests.¹⁸ After receiving a job offer, the prospective migrant worker

¹¹ European Commission, Communication on a New Pact on Migration and Asylum, COM (2020) 609 final, pp. 22–23.

¹² European Commission, Commission recommendation on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways, COM (2020) 6467 final, p. 10.

¹³ Such as highly-skilled, seasonal workers, intra-corporate transferees and researchers. See further (Vankova 2022).

¹⁴ Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC, [2021] OJ L 382. In 2019, Germany granted 28,858 Blue Card compared to 2,036 in France and 2,104 in Poland, which were the other two countries issuing most of the Blue Cards. Eurostat, <MIGR_RESBC1>, (last visited 1 March 2022). See further (De Lange and Groenendijk 2021; De Lange and Vankova Forthcoming).

¹⁵ Interview with a state official, Germany, 19 October 2020; Interview with a state official, Sweden, 2 March 2021.

¹⁶ Utlänningslag (2005: 716).

¹⁷ Interview with a state official, Sweden, 2 March 2021; Interview with an academic with academic, Sweden, 25 February 2021. See further OECD, Recruiting Immigrant Workers: Sweden 2011, OECD, p. 32. It must be stressed, however, that the analysis in this article covers the period before June 2022, when the Swedish Alien Act's amendments introduced a more restrictive approach.

¹⁸ Interview with a state official, Sweden, 2 March 2021. Yet, it needs to be noted that employers are obliged to advertise their vacancy through the Employment Service and EURES portal for 10 days in order to satisfy the EU principle of community preference but they do not need to justify their recruitment from a third country. See (Parusel 2020). Furthermore, there are pending changes concerning the reintroduction of a general labour market test. See Section 4.

has to submit an application for a residence permit from abroad.¹⁹ As part of this process, applicants need to present a valid passport, demonstrate that their terms of employment are in line with the respective collective agreements, satisfy a maintenance requirement with a salary of at least 13,000 SEK (approx. 1200 EUR) per month before taxes and have their insurance covered by the prospective employer.²⁰

Those labour migrants who are granted a residence permit of at least a year, are entitled to the same rights as Swedish citizens in terms of welfare benefits and healthcare (Ahlén and Palme 2020), and can apply for family reunification in line with the Family Reunification Directive²¹ without the need to satisfy a maintenance or any other integration requirements.²² Work permits are bound to a specific employer and occupation for the first two years.²³ Migrant workers are free to change employer after two years and occupation after four years, given that they have obtained permanent residence allowing for full access to the labour market.²⁴

Most interviewees in Germany pointed to the opportunities introduced by the new Skilled Immigration Act of 2019,²⁵ which according to them could provide legal channels for people in need of protection.²⁶ The new law amended the Residence Act containing the general provisions concerning employment of third-country nationals and made it largely easier for skilled workers below the level of tertiary education to migrate to Germany.²⁷ General requirements to obtain a permit based on employment include a job offer and proof of completed vocational training in Germany or a foreign vocational qualification that is equivalent to a German one.²⁸ In case of tertiary education, the qualification must be obtained in Germany, or recognized as equivalent to a German degree.²⁹ In addition, the Federal Employment Agency needs to verify whether applicants will perform work for which they are qualified and whether the employment conditions are equivalent to those for German workers.³⁰ Finally, there is an additional requirement for workers above the age of 45 who need to meet a certain salary threshold or demonstrate sufficient savings to prevent reliance on social benefits as pensioners.³¹

When it comes to legal pathways for people in need of protection, the interviewees pointed to the newly introduced job-seeking and vocational training-seeking provisions: a temporary residence permit for up to six months for skilled workers with a vocational training qualification³² and foreigners below the age of 25 who wish to seek a quality vocational training.³³ Evidence of sufficient resources is an admission requirement in both

¹⁹ Aliens Act, Chapter 6, Section 4. At the time of finalising this article, this rule has been tightened and currently applicants need to present a signed job contract. See Aliens Act, Chapter 6, Section 2. To be able to work in Sweden, a migrant now needs a work permit (Aliens Act Chapter 2, Section 7) and a residence permit for stays longer than 3 months (Chapter 2, Section 5).

²⁰ Aliens Act, Chapter 2, Section 1; Chapter 6, Section 2. See also the proposal to increase the income level requirement from 1300 SEK to 29,500 SEK: <https://www.regeringen.se/4a49f5/contentassets/44ea5209975849a4b758af78ebd8a442/ett-hojt-forsorjningskrav-for-arbetskraftsinvandrare-prop.-202122284.pdf> (accessed on 7 July 2022).

²¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [2003] OJ L 251.

²² This provision changed in June 2022 and currently the sponsor is subject to a maintenance requirement. See Government Bill, 2021:22:134 and Aliens Ordinance, Chapter 4, Section 4a.

²³ Aliens Act, Chapter 6, Section 2a, 3st.

²⁴ Aliens Act, Chapter 6, Section 1, 2st. and Section 2a, 3st. For the access to permanent residence, see Aliens Act, Chapter 5, Section 5.

²⁵ Fachkräfteeinwanderungsgesetz (FEG), BGBl. I, Nr. 31, 20.8.2019, p. 1307–46. In force since 1 March 2020.

²⁶ Interview with a state official, Germany, 19 October 2020; Interview with an expert, Germany, 20 October 2020.

²⁷ Interview with a state official, Germany, 22 January 2021; Interview with a state official, Germany, 4 January 2021.

²⁸ § 18 (2), (3), § 18a Aufenthaltsgesetz (AufenthG)/Residence Act.

²⁹ § 18 (2), (3), § 18b AufenthG.

³⁰ § 18 (2) No. 2, § 39 (2) AufenthG.

³¹ They need to demonstrate a salary of at least 55 per cent of the earnings ceiling of the general pension scheme. See further § 18 (2) No. 5 AufenthG.

³² § 20 (1) AufenthG.

³³ § 17 (1) AufenthG.

cases.³⁴ The former category requires a command of German language commensurate with the work to be performed and a foreign vocational training that is equivalent to the German system. To be eligible for the later provision, apart from the age limitation and good German language skills, the foreigner also needs to be qualified to study at a university.³⁵ Yet, job-seekers cannot benefit from any social assistance in case they fail to secure a job, as the rules on social security exclude this category (Thym 2019).

Another provision that was identified as an admission pathway for refugees was the permit for vocational training, which provides options for in-company training for those who manage to secure a contract with a German employer. The vocational training could include job-related German language training or require proof of sufficient command of German. Alongside being paid as part of the training curriculum, this temporary residence permit also authorises its holder to work up to 10 h per week in jobs that do not necessarily need to be related to the vocational training,³⁶ which could mitigate the existing economic self-sufficiency requirement (Thym 2019).

With these legal pathways into Germany, the security of status will depend on finding and keeping employment or retraining successfully as part of the vocational training path that can lead to employment, until one is eligible for permanent residence. However, failure to pass the vocational training exams can lead to a withdrawal of the permit.³⁷

2.2. Existing Challenges to Legal Feasibility of Such Approach

In order to assess whether the abovementioned national provisions could serve as a basis for work-based complementary pathways for refugees, Section 2.2 commences with a focus on the constraints outside the law consisting of employers' perceptions to this policy approach and identifying potential candidates for such pathways. It then moves on to examine admission requirements related to visa and travel documents, language knowledge and recognition of qualifications that can be challenging for people in need of protection. It concludes with a discussion of post-arrival issues related to the security of status of potential beneficiaries of such measures.

2.2.1. Employer Organisations' Perceptions

Employers have a central role to play in making work-based legal pathways a reality for people in need of protection, as labour migration to Sweden or Germany cannot commence without a job offer or a work contract, except for job-seeking visas.³⁸ Notwithstanding the Covid 19 pandemic, employers in both countries experienced labour market shortages and interviewed representatives of employers' organisations confirmed that they were open to hiring foreign workers.³⁹ However, when it came to recruiting people in need of protection from first countries of asylum, the data collected demonstrate diverging views among employers' organisations. Most of them stressed that companies' starting point would be to look for the right skills and competences, and that the idea to open such pathways did not match this starting point as 'the focus is to give refugees a safe passage from what they need shelter from'.⁴⁰ 'That is something not for businesses or businesses organisations to be involved in, this is for politicians'.⁴¹

Furthermore, the interviewees stressed that most companies would not view refugees based in third countries as a primary target group when it comes to recruiting skilled

³⁴ § 17 (1) Nr. 2 and § 20 (4) 1 AufenthG. This is a general requirement for almost all residence titles according to § 5 (1) No 1 AufenthG. In the case of employment this requirement is usually fulfilled by the job contract.

³⁵ § 17 (1) No. 3 AufenthG. The provision requires a school-leaving certificate issued by a German school abroad or a school-leaving certificate entitling the holder to access higher education in the federal territory or in the country where the school-leaving certificate was acquired.

³⁶ § 16 (3) AufenthG.

³⁷ Interview with an expert, Germany, 23 October 2020.

³⁸ On the role of employers, see further (Vankova 2022, pp. 95–97).

³⁹ Interview with an employers' organization representative, Sweden, 6 April 2021.

⁴⁰ Interview with an employers' organization representative, Sweden, 6 April 2021.

⁴¹ Interview with an employers' organization representative, Sweden, 6 April 2021.

personnel.⁴² The reason was that companies did not think that they would find the right skills in refugee camps because their main perception was that refugees were low-skilled, rather than having ‘recognisable skills’.⁴³ Alongside the skills and competences, employers were looking for relevant education, language skills, experience and for people ‘in a mental position to start working’.⁴⁴ For that reason, the interviewees congrued that there was a need for targeted initiatives and institutionalized support to identify potential beneficiaries of work-based pathways among refugees, and that the current bureaucratic process to move them to Sweden or Germany without knowing whether the person might be able to enter and stay poses too high of a business risk.⁴⁵ This policy idea was perceived as entailing insecurity and being too complicated, and therefore for most employers it was natural to look at the situation in their own country or in other safe country where potential employees could come through normal procedures.⁴⁶

The analysed data collected as part of this study also suggest sector-based differences. For instance, companies representing the hospitality sector were open to recruiting people from abroad, including those in need of protection, as they were experiencing problems filling positions requiring both qualified, such as chefs, and unqualified workers, such as dishwashers.⁴⁷ An interviewee in Sweden also stressed that the country’s minimum wage was high in international comparison and it could be attractive to migrants coming from abroad as it could substantially increase their welfare.⁴⁸ The German hospitality sector relied mainly on EU citizens coming from Eastern Europe and was also open much more than other sectors to working with refugees who were already in the country.⁴⁹

The findings concerning employers organisations’ perceptions demonstrate the need for advocacy and awareness raising in order to attract them as a key stakeholder in the development of work-based pathways for refugees.⁵⁰ Their engagement is essential as they can ‘build and communicate the business case for hiring refugees and the diversity advantage to other employers’ (UNHCR 2019b, p. 31). Therefore, they are represented in the Global Task Force on Refugee Labour Mobility⁵¹ and should be part of every national coalition of stakeholders aiming to design and implement such pathways.⁵² But once they are interested, how can employers recruit potential new workers among refugees based in third countries?

2.2.2. Identifying Potential Beneficiaries of Such Complementary Pathways

The GCR links the use of labour mobility as a complementary pathways with the ‘identification of refugees with skills that are needed in third countries.’⁵³ Yet, several interviewees stressed that the identification of refugees could be one of the challenging parts of making such pathways work in practice.⁵⁴ NGOs experienced with such projects relied mainly on their existing networks.⁵⁵ Indeed, the experience with work-based complementary pathways globally shows that third country employment is made possible with the support of non-for-profit organisations, like the Talent Beyond Boundaries and

⁴² Interview with an employers’ organization representative, Sweden, 6 April 2021.

⁴³ Interview with an employers’ organisation representative, Germany, 14 May 2021.

⁴⁴ Interview with an employers’ organization representative, Sweden, 6 April 2021.

⁴⁵ Interview with an employers’ organisation representative, Germany, 14 May 2021.

⁴⁶ Interview with an employers’ organisation representative, Germany, 14 May 2021.

⁴⁷ Interview with an employers’ organization representative, Sweden, 28 April 2021; Interview with an employers’ organisation representative, Germany, 14 May 2021.

⁴⁸ Interview with an employers’ organization representative, Sweden, 28 April 2021.

⁴⁹ Interview with an employers’ organisation representative, Germany, 14 May 2021.

⁵⁰ See also GCR, para 95.

⁵¹ Through the International Chamber of Commerce.

⁵² See also GCM’s objective 5.

⁵³ GCR, para 95.

⁵⁴ Interview with a NGO representative, Germany, 26 November 2020; Interview with state official, Germany, 19 October 2020.

⁵⁵ Interview with a NGO representative, Germany, 26 November 2020; Interview with a NGO representative, UK, 7 December 2020.

RefugePoint, which are in charge of recruitment in successful pilots of Canada, Australia and the UK (Fratzke et al. 2021, pp. 34, 84). For instance, Talent Beyond Boundaries uses a talent catalogue to map the skills and experiences of potential candidates for work-based complementary pathways, and connects them with international employment opportunities.⁵⁶ Other possible options identified by the interviewees included using the available infrastructure in first countries of asylum, such as for instance the migration counselling centres developed by the German Agency for International Cooperation (GIZ)⁵⁷ or UNHCR's structures supporting community sponsorship.⁵⁸ Yet, even if NGOs could reach out to potential beneficiaries of such pathways, states would still need to address obstacles stemming from the existing visa procedures.

2.2.3. Visa Procedure and Travel Documents

Several interviewees stressed that they saw the visa application procedure as a big practical hurdle, as there was a long waiting time at the German embassies' consulates, especially in countries neighbouring Syria.⁵⁹ At the time of this writing, a refugee lawyer highlighted that one needed to wait for around 2 years in order to get an appointment in a German embassy.⁶⁰ This issue was also among the factors making employers reluctant to engage in such an approach.⁶¹ One interviewee raised a concern that embassies might not be willing to grant labour migration visas to people coming from refugee producing countries, as they would fear that such individuals would apply for asylum once they reached Germany.⁶² Embassies might require thorough evidence that 'there will actually be long-standing employment, otherwise they will probably say 'no'.⁶³ Even though this was not considered as such an outstanding issue in Sweden, some interviewees also raised concerns in this regard.⁶⁴ The need of a fast-track procedure at embassies was highlighted as an essential element that will make such pathways a feasible option.⁶⁵

Another problem identified in terms of entry procedures concerned the travel documents of people in need of protection. An interviewee emphasised that since the 2016 Berlin Christmas market attack, the focus on security in Germany had increased and this had impacted the screening of travel documents.⁶⁶ Authorities were quite strict with requiring IDs and passports in order to verify the identity of foreigners before entry, which was a big hurdle for refugees who had not necessarily brought such documents when they left their countries of origin. Those with refugee status under the UNHCR mandate would usually have a UNHCR issued passport but sometimes German authorities would not accept it as a valid ID even in the context of resettlement.

The GCM commitments to providing 'non-discriminatory visa and permit options' and 'reducing visa and permit processing timeframes for standard employment authorizations' that aim to develop flexible and rights-based labour mobility schemes and foster effective skills-matching, are particularly pertinent also for states wishing to develop refugee specific pathways.⁶⁷ Yet, alongside visa procedures and travel documents, recognition of qualifications is another requirement that needs to be facilitated.

⁵⁶ See further <https://www.talentbeyondboundaries.org/talentscatalog> (accessed on 7 July 2022).

⁵⁷ Interview with a state official, Germany, 19 October 2020.

⁵⁸ Interview with an international organisation representative, Germany, 20 October 2020.

⁵⁹ Interview with a state official, Germany, 19 October 2020.

⁶⁰ Interview with a lawyer, Germany, 10 November 2020.

⁶¹ Interview with an employers' organisation representative, Germany, 14 May 2021.

⁶² Interview with an employers' organisation representative, Germany, 14 May 2021.

⁶³ Interview with an employers' organisation representative, Germany, 14 May 2021.

⁶⁴ Interview with an international organisation representative, Sweden, 18 February 2021.

⁶⁵ Interview with a lawyer, Germany, 10 November 2020.

⁶⁶ Interview with a lawyer, Germany, 10 November 2020.

⁶⁷ See GCM' Objective 5 (d) and (f).

2.2.4. Recognition of Qualifications

Unlike refugees who have already entered a host country and therefore can go through the process of recognition of their qualifications there, people in need of protection who want to make use of labour migration pathways as a means to seek admission in a host country need to fulfil this requirement in advance, as evidence of such recognition could form part of the visa application process, especially for regulated professions.⁶⁸ For instance, according to the German Residence Act, a German or recognized foreign qualification is generally an entry requirement for employment and job-seeking.⁶⁹ The German Law on the determination of the equivalence of professional qualifications requires applicants in regulated professions to go through an equivalence assessment on the basis of an application for authorization before they can be allowed to take up or practice a profession regulated in Germany.⁷⁰ There is a special procedure, if applicants do not have all the documents requested for the assessment, which is the case for most people in need of protection.⁷¹ As part of this assessment, the applicants need to demonstrate that they intend to pursue gainful employment in Germany that corresponds to their professional qualifications, by providing proof of applying for an entry visa for gainful employment and proof of contacting potential employers or having a business concept.⁷² In case of significant differences between the applicants' qualifications and the German requirements, the differences can be compensated for by completing an adaptation course of no more than three years, which can be the subject of an assessment, or by taking an aptitude test in Germany.⁷³ The visa application process can start only after a positive decision on the determination of the equivalence is taken by the competent authority.⁷⁴ In case the qualification has not been fully recognized, a special residence title can be granted to finalise the recognition process.⁷⁵ Once the person has entered Germany, the recognition process can continue depending on the individual case and the person can only start working if he or she has sufficient proficiency in German necessary for the work (see Section 2.2.5 below). The only partial exception in this regard concerns those who have practical work experience and aim to enter Germany for completing vocational education under the new Skilled Immigration Act on the basis of an agreement of the Federal Employment Agency.⁷⁶

Interviewees stressed that the recognition process could be a real barrier as it was slow, cumbersome and costly. Interviewees in Sweden commented that despite the possibility for fast-track recognition,⁷⁷ 'it takes forever' to have one's qualification recognised.⁷⁸ After the application is submitted, it can take up to four months or longer until a recognition statement is issued.⁷⁹ In Germany, for asylum seekers with regulated professions who were in the country, it took up to a year and a half or even longer to go through the whole recognition process due to delays caused by existing backlogs and the Covid 19 pandemic.⁸⁰ It was usually more complicated to recognise a proof of apprenticeship rather

⁶⁸ See further, (Vankova 2022, p. 101).

⁶⁹ § 18 (2) No. 3 AufenthG. In case of academic non-regulated professions, however, only comparability is necessary.

⁷⁰ Chapter 2 of *Berufsqualifikationsfeststellungsgesetz* (BQFG). For the list of documents required, see § 12 BQFG. It also needs to be stressed that there is a requirement for most regulated professions that a permission to practise a profession has been granted or promised for. See § 18 (2) No. 3 AufenthG. For the Swedish case, refer to *Förordning (2012: 811) med instruktion för Universitets- och högskolerådet*, Sections 5–7 and <https://www.uhr.se/en/start/recognition-of-foreign-qualifications/> (accessed on 7 July 2022).

⁷¹ § 14 BQFG. Interview with a recognition advisor, Germany, 14 May 2021.

⁷² § 12 (6) BQFG.

⁷³ § 11 BQFG.

⁷⁴ Interview with a recognition advisor, Germany, 14 May 2021.

⁷⁵ § 16d AufenthG.

⁷⁶ § 16d AufenthG.

⁷⁷ Interview with a representative of a regional authority, Sweden, 2 March 2021.

⁷⁸ Interview with a think tank representative, Sweden, 7 April 2021.

⁷⁹ Interview with a representative of a regional authority, Sweden, 2 March 2021.

⁸⁰ Interview with a lawyer, Germany, 10 November 2020.

than a university degree, as Germany has quite a specific dual system combining theoretical education with occupational training, different from most other countries.⁸¹

In both countries, there was targeted support only for refugees who were already in the host country.⁸² That meant that people applying from abroad could have difficult time identifying the responsible organisation, especially in Germany where depending on the profession in question, the process could take place at either federal or regional level, and could involve different state and professional associations.⁸³ The new Skilled Immigration Act was expected to ease this process by requiring the employer to support the employee's application.⁸⁴ Yet, this requirement was considered to be a real barrier for people without sufficient resources⁸⁵ or access to financial support,⁸⁶ as the cost associated with translation of certificates could reach 5000 EUR in Germany.⁸⁷

Whereas the GCR calls for refugees' skills identification,⁸⁸ recognition of prior learning, diplomas, skills and competences is not easily accessible for refugees because of the time and costs associated with identifying the different governmental bodies or professional organisations in charge of verification and issuing the proof of equivalence or else pronouncing a compensatory measure, including an adaptation period or aptitude test. This highlights the importance of advancing the GCR commitment to 'facilitate recognition of equivalency of academic, professional and vocational qualifications'⁸⁹ and the GCM details the tools that states can use to achieve that, such as the development of standards and guidelines for recognition of qualifications and non-formally acquired skills in different sectors in collaboration with the respective industries; conclusion of bi-and multi-lateral recognition agreements; and establishment of screening mechanisms of credentials.⁹⁰

2.2.5. Language Knowledge

The GCM also recommends the availability of accessible and remote skills development programmes covering, amongst others, early and occupation-specific language training.⁹¹ The analysed data collected as part of this study illustrate the importance of such measures as most of the interviewees stressed that the knowledge requirement of German or Swedish language respectively could be considered an obstacle to implementing complementary pathways for people in need of protection.⁹² Even though the Swedish Aliens Act does not impose a Swedish language requirement, this is a prerequisite for some regulated professions and there are sectors that require a good level of Swedish.⁹³ The same applies in Germany in regard to health care occupations which require up to B2 level. In addition, the new Skilled Immigration Act requires German language knowledge ranging from A2 level, for instance concerning permits for completing vocational education in line with Article 16d, to language skills in general corresponding to level B1 for persons

⁸¹ Interview with a state official, Germany, 22 January 2021. See further (Kolb 2020, p. 267).

⁸² Interview with an employers' organisation representative, Germany, 14 May 2021; Interview with a state official, Sweden, 13 April 2021.

⁸³ Interview with an expert, Germany, 23 October 2020

⁸⁴ Interview with a recognition advisor, Germany, 14 May 2021.

⁸⁵ Interview with a state official, Sweden, 13 April 2021.

⁸⁶ E.g., refugees in some German states can apply for financial support or scholarships for translation costs or to do some courses as part of the qualifications recognition process. Interview with a recognition advisor, Germany, 14 May 2021.

⁸⁷ Interview with an employers' organisation representative, Germany, 14 May 2021.

⁸⁸ Para 95.

⁸⁹ Para 69. See also para 71. The UK's Refugee Nurse Support Programme provides a good example for recognition facilitation in a regulated profession: <https://www.sanctuarypersonnel.com/blog/2022/07/refugee-nurses-boost-nhs-workforce?source=google.com> (accessed on 7 July 2022).

⁹⁰ See further GCM's objective 18.

⁹¹ Objective 18 (h).

⁹² Interview with an expert, Germany, 23 October 2020; Interview with a trade union representative, Germany, 14 May 2021.

⁹³ Interview with a NGO representative, Sweden, 12 March 2021.

seeking a vocational training.⁹⁴ As in Sweden, German companies would require sufficient knowledge of the language even for apprentice contracts (Thym 2019). Therefore, the GCR commitments to facilitate language training need to be considered not only for local integration purposes but also with regards to complementary pathway development.⁹⁵

2.2.6. Security of Status and Labour Exploitation

The interviewed representatives of trade unions and NGOs highlighted problems that are inherent to the labour migration systems in both countries, and need to be taken into account when developing complementary pathways for people in need of protection. The issues at stake concern the precarious migration statuses before beneficiaries of work-based complementary pathways become eligible to access permanent residence, which can increase dependency on employers and make them vulnerable to labour exploitation (Costello 2015; Gordon 2021).⁹⁶ The lack of security of residence due to a precarious migration status can lead to triggering of asylum applications as a safety net option.

As mentioned above, labour migrants in Sweden are initially bound to one employer and a specific occupation for the first two years of their permit. When they extend their permit for another two years, they can change employer but still need to stay within the same occupation. Trade unions have documented that due to the employer-driven Swedish system, there have been cases of employers hiring migrant workers to exploit them or selling the job offers that serve as the basis for a work permit application.⁹⁷ Since migrant workers were extremely dependent on their employer to stay in Sweden for the first two years and to eventually become eligible for permanent residence permit after four years, they were forced to work for the same employer even when they were not paid the wages they were promised in the original job offer that the employer presented to the Swedish Migration Board. According to the trade union representative interviewed, there were many third-country nationals who came as labour migrants and were abused by unscrupulous employers who made them pay back thousands of Swedish kroner on their wages every month and forced them to work more hours.⁹⁸ Some of them came from refugee producing countries and could have applied for asylum status but chose the labour migration pathway. Therefore, they could not go back, which was why ‘they keep their heads down even if they have to work 18 h a day for half the salary.’⁹⁹ In the case of Germany, similar labour exploitation cases were reported due to the high dependence of refugees on employers.¹⁰⁰

Another issue specific to the Swedish context concerns the so-called ‘competence deportations’ (kompetensutvisningar), resulting from residence permit withdrawals when employers fail to apply the initial admission conditions.¹⁰¹ More specifically, in cases where the Swedish Migration Board discovers discrepancies between the job offer presented by the employer upon the work permit application and the actual work contract (e.g., concerning employment conditions, insurance or salary), migrant workers could be deported if the errors are found to be substantial. Since these are considered as violations of migration law—and not labour law—the only sanction envisaged in migration law is permit withdrawal. One of the cases, for instance, which was successfully appealed, concerned a migrant whose salary for several months was SEK 460 (approx. 44 EUR) less than the salary level agreed

⁹⁴ Interview with an expert, Germany, 23 October 2020.

⁹⁵ Para 99.

⁹⁶ For international standards that needs to be considered when developing such pathways, see further (Vankova 2022, pp. 92–94) and UNHCR Guidelines on International Legal Standards Relating to Decent Work for Refugees, July 2021, available at <https://www.refworld.org/docid/60e5cfd74.html> (accessed on 7 July 2022)

⁹⁷ Interview with an academic, Sweden, 25 February 2021; Interview with a trade union representative, Sweden, 2 March 2021; Interview with a think-tank representative, Sweden, 7 April 2021.

⁹⁸ Interview with a trade union representative, Sweden, 2 March 2021.

⁹⁹ Interview with a trade union representative, Sweden, 2 March 2021.

¹⁰⁰ Interview with a trade union representative, Germany, 14 May 2021.

¹⁰¹ See Aliens Act, Chapter 7, Section 7e.

in the collective agreement.¹⁰² After several court cases stressing that the principle of proportionality had to be applied when assessing permit withdrawal cases, which resulted only in minor changes,¹⁰³ amendments aiming to resolve the ‘competence deportations’ issue are now in the pipeline.¹⁰⁴

This sub-section demonstrated that national reforms aiming to strengthen the protection of labor migrants’ rights, their security of status and access to decent work¹⁰⁵ will contribute to the feasibility of establishing work-based complementary pathways where people in need of protection enter and stay as labour migrants, and do not resort to the asylum system as a safety net. The GCM can be used as an important reference point for such measures,¹⁰⁶ which amongst others are related to the right to just and favourable working conditions; the right to change employer which overcomes ties stemming from migration status related to a particular job, employer and sector; the ability to exercise the right to quit, which when put under constraints can create conditions for forced labour prohibited by the European Convention on Human Rights; and regulating the role of labour recruiters (Costello 2015).

3. Legal Feasibility of Using Other National Policies as Models for Work-Based Complementary Pathways for People in Need of Protection

Having discussed the admission and post-arrival challenges when general labour migration law provisions are employed as pathways for people in need of protection, this section moves on to examine the feasibility of using other national policy models for the development of work-based complementary pathways, namely the so-called “Western Balkans regulation” introduced in German law in 2016, and the refugee community sponsorship, already established in Germany and pending in Sweden. These models were identified on the basis of literature review and discussed with some of the stakeholders interviewed as part of the study.

3.1. ‘Western Balkans Regulation’

The increase in asylum applications from the Western Balkan countries in 2014–2015 led to the adoption of the “Western Balkans Regulation” as part of a ‘political deal’ in 2016 (Kolb 2020, p. 267), which provided a special labour migration pathway for citizens of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Northern Macedonia and Serbia. This pathway is regulated in Article 26 (2) of the German Employment Ordinance.¹⁰⁷ Applicants from the Balkan countries covered by this provision need a binding job offer and an approval from the Federal Employment Agency consisting of a labour market test and verification that the foreigners are not employed under less favourable terms than German nationals employed in an equivalent position.¹⁰⁸ The regulation allows for any employment and, unlike the general admission criteria of the German labour immigration law, does not require a formal qualification unless the migrant workers are applying for a regulated profession. Initial approval may only be granted if the application for residence permit has been submitted to the respective competent German mission in one of the countries covered by this regulation and are capped to a maximum of 25,000 per calendar year.¹⁰⁹

Temporary residence permits granted under this provision are renewable, subject to fulfilling the initial admission conditions related to job confirmation and the ability to

¹⁰² MIG 2017: 25.

¹⁰³ See further (Herzfeld Olsson 2019). See also the Inquiry into improved system for labour migration, SOU 2021:5.

¹⁰⁴ See Government Bill 2021/22:134 and the Parliament bet. 2021/22:SfU22.

¹⁰⁵ See further UNHCR Guidelines on International Legal Standards Relating to Decent Work for Refugees, July 2021.

¹⁰⁶ See objective 6.

¹⁰⁷ Refer to § 26 (2) Beschäftigungsverordnung (BeschV)/Employment Ordinance.

¹⁰⁸ In line with § 39 (2) AufenthG.

¹⁰⁹ § 26 (2) sentence 3 BeschV.

secure a living by means of employment (Brücker et al. 2021, pp. 9–10), and could provide a path to permanent residence in line with the Residence Act.¹¹⁰ Furthermore, migrant workers with temporary residence permits entering on the basis of this regulation are eligible for family reunification subject to the requirements of the law,¹¹¹ and could make use of social security benefits, e.g., in case of unemployment.¹¹²

Initially limited until 31 December 2020, the Western Balkan Regulation has been extended to the end of 2023, as it was evaluated as being a successful model (Brücker et al. 2021). Despite the lack of a formal qualification requirement, the evaluation of this instrument has demonstrated that it had attracted many skilled migrant workers in the construction, care and hospitality sectors, and that most of them were engaged in long-term employment (Brücker et al. 2021, pp. 4, 8). Due to the requirement for a job offer, the majority of the beneficiaries of this instrument relied on personal and professional contacts. Therefore, the availability of networks in Germany was considered central to the success of this initiative,¹¹³ which—combined with provisions facilitating mobility—was identified in policy literature as a suitable model for complementary pathways for people in need of protection (Wagner and Katsiaficas 2021, p. 4). Yet, this model was criticised for providing specific labour migration routes on the basis of citizenship as opposed to maintaining the German ‘universalist’ labour migration scheme.¹¹⁴ Contrary to the findings of the programme evaluation (Brücker et al. 2021), another interviewee perceived it as enabling mainly circular migration, which made it unsuitable for people in need of protection.¹¹⁵

By way of comparison, Sweden’s legislation does not envisage such special provisions for labour migration pathways only for citizens of certain countries, with the notable exception of some working holidays agreements (Parusel 2020, pp. 48–49). The Swedish government has limited its role to providing a legal framework that the employers can use themselves to fulfil their labour needs.¹¹⁶ Therefore, even long-lasting circular migration patterns, as the ones in the berry picking industry with migrant workers coming from Thailand every year, were not facilitated by the government but developed by itself and were driven by the labour market and business connections.¹¹⁷ Nevertheless, in Sweden it is not so much access to the labour market which is problematic, but rather finding a decent employer and securing a permanent residence without paying the price of labour exploitation. Access to a secure status could become even more difficult considering that the Swedish government currently investigates the possibility of introducing language and civic requirements for permanent residence.¹¹⁸

3.2. Community Sponsorship

The community sponsorship model was developed in Canada more than 40 years ago to support the resettlement of Indochinese refugees, where groups of individuals and private organizations shared responsibility with the state in providing refugee reception and integration support.¹¹⁹ Since 2016, the Canadian government in partnership with the UNHCR and the Open Society Foundations has been working actively on supporting other countries to introduce sponsorship models that meet the specific needs of their national contexts under the auspices of the Global Refugee Sponsorship Initiative,¹²⁰ created in the

¹¹⁰ Refer to §§ 9 and 9a AufenthG.

¹¹¹ Refer to § 29 AufenthG.

¹¹² Refer to German Social Codes SGB II and SGB III.

¹¹³ Interview with a trade union representative, Germany, 14 May 2021.

¹¹⁴ Interview with an expert, Germany, 20 October 2020. For the critique of this regulation, see for instance (Kolb 2020, p. 267).

¹¹⁵ Interview with an academic, Germany, 12 May 2021.

¹¹⁶ Interview with a state official, Sweden, 26 February 2021.

¹¹⁷ See further (Woolfson et al. 2012; Herzfeld Olsson 2018).

¹¹⁸ Prop. 2020/21:191, pp. 67–68, SOU 2021:54, p. 74ff; SOU 2021:2.

¹¹⁹ See largely (Labman 2019, pp. 81–109).

¹²⁰ See further (Bond and Maniatis 2022).

margins of the 2016 New York Declaration.¹²¹ The states' increased interest in controlled admission after the so-called 2015 'refugee crisis' (Fratzke et al. 2019) and the reference to the design of community sponsorship initiatives in the GCR¹²² have served as an impetus to the piloting or establishment of such programmes in several European states, such as Germany, Ireland, Spain and the United Kingdom (Tan 2021). Furthermore, Belgium, Malta and Portugal pledged to explore pilot community sponsorship models at the 2019 Global Refugee Forum (Tan 2020).

The Recommendation on legal pathways to protection in the EU, which accompanied the EU Pact on Migration and Asylum, linked the development of the future EU approach to community sponsorship with work-based complementary pathways.¹²³ The technical assistance provided through feasibility studies¹²⁴ and funding from the EU to Member States,¹²⁵ as well as interviews with European Commission officials and representatives of international organisations and Brussels-based NGOs,¹²⁶ indicate that this could be one of the models of work-based complementary pathways to be established in the EU in the short-term. Therefore, this section examines the possibilities for the adoption of such an approach in Sweden and Germany.

Beneficiaries of community sponsorship are either 'named' directly by sponsors, who could also be employers, or referred by UNHCR and assigned to a sponsor for integration support (CEDEFOP 2019, pp. 47–48). The first model creates an independent complementary pathway, whereas the latter one employs UNHCR and state resettlement channels to admit refugees (Tan 2021, p. 2). There are also some hybrid sponsorship models that include both naming and UNHCR-referred resettlement sub programs including in Canada, the United States, Australia and New Zealand.¹²⁷ The Canadian experience shows that when community sponsorship serves as a standalone complementary pathway where refugees are 'named', sponsors often secure jobs for newcomers in the companies where they work, in their own firms or through their local networks in advance. This results in a de facto work-related sponsorship with such initiatives mushrooming in Canada since the arrival of Syrian refugees,¹²⁸ and illustrates one of its policy strengths. Community sponsorship has the flexibility to support a range of entry pathways without the need to develop a new policy model for each form of sponsor-sponsored relationship, which would be cumbersome to design, and could be limiting in practice.

This means that, along with entering through existing labour migration pathways and obtaining a labour migrant status, beneficiaries of complementary pathways could also arrive through a protection pathway, e.g., humanitarian corridor, and receive a secure status and a job upon arrival in the host country.¹²⁹ In cases where labour migration pathways are inaccessible for people in need of protection, the community sponsorship approach has the potential to mitigate the challenges discussed above, such as practical obstacles related to initial admission and issues related to security of status, as the practice so far shows that

¹²¹ New York Declaration, GA Res 71/1, UNGAOR, 71st Session, UN Doc A/Res/71/1.

¹²² GCR, Para 95.

¹²³ European Commission, Recommendation on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways, C (2020) 6467 final, Brussels (2020) para 22.

¹²⁴ European Commission, Study on the Feasibility and Added Value of Sponsorship Schemes as a Possible Pathway to Safe Channels for Admission to the EU, Including Resettlement: Final Report, 2018.

¹²⁵ See the Asylum, Migration and Integration Fund's call available at <https://ec.europa.eu/migrant-integration/news/amif-funding-call-2020-complementary-pathways-for-protection-and-integration> (accessed on 7 July 2022).

¹²⁶ Interview with European Commission representatives, Belgium, 14 April 2021; Interview with an international organisation representative, Belgium, 7 April 2021; Interview with a NGO representative, Belgium, 12 April 2021.

¹²⁷ See further (Manks et al. 2022).

¹²⁸ See for instance, Growing Jobs: Sponsor Offers Refugees Greenhouse Jobs: <https://www.rstp.ca/en/resources/videos/growing-jobs-sponsor-offers-refugees-greenhouse-jobs/> (accessed on 7 July 2022).

¹²⁹ Interview with a NGO representative, Belgium, 10 November 2020. On humanitarian corridors, see further (Ricci 2020).

beneficiaries of community sponsorship usually obtain a refugee or humanitarian status (European Commission 2018, pp. 135–36).

Germany has been piloting the community sponsorship programme ‘NEST—New Start in a Team’ since 2019,¹³⁰ where up to 500 refugees annually are admitted under the same legal conditions as refugees resettled under the national resettlement programme, with selection, screening and the granting of legal status undertaken by UNHCR and national authorities (Endres de Oliveira 2020).¹³¹ Sweden is currently preparing for a community sponsorship pilot as part of its existing resettlement system.¹³² As already stressed by other authors, community sponsorship in its two main forms usually operates within existing legal systems and does not require ‘significant, dedicated legislative infrastructure’ (Bond and Kwadrans 2019, p. 95; Ricci 2020). Therefore, its legal feasibility is less of a challenge compared to its political feasibility (Tan 2021, p. 6), which is discussed in Section 4.

Most of the interviewees in Sweden were aware of Canada’s community sponsorship initiative, which was considered good practice and a good model for the Swedish context.¹³³ Some of them even stated that such ‘sponsorships’ were already happening on a small-scale on the basis of existing labour migration legislation, where friends or family of people in need of protection in Iraq and Syria were establishing a job ‘that is there not only to fill a gap on the market but also to assist persons.’¹³⁴ Yet, since people were often hiring refugees in order to help them (or to exploit them as discussed above), this led to labour migration into jobs where there was no real demand, which was seen as great problem of the current labour migration model in Sweden.¹³⁵ In Germany, the main criticism was related to the few admissions this model allowed and the fact that the German government was announcing certain resettlement capacity and then including some of the quotas under the NEST programme, thus reducing the overall available resettlement places.¹³⁶

As evident from this section, policy models that can provide a workable solution in one country would not necessarily be applicable in other national contexts. Therefore, it is important that national coalitions aiming to design such pathways engage in pilots to test the feasibility of potential models.¹³⁷ Apart from that, it is hard to see how both models discussed can live up to the GCR’s commitments that such pathways ‘are made available on a more systematic, organized, sustainable and gender-responsive basis.’¹³⁸ As mentioned above, the Western Balkans Regulation model relies heavily on the availability of networks and has so far worked only for countries with geographic proximity. The community sponsorship, on the other hand, provides for a limited admission only and raises scalability and additionality issues. It is of paramount importance to not compromise the additionality of such pathways when designing and implementing them, as this risks turning them into a substitute for the traditional ways of admitting refugees (Hashimoto 2021, p. 27).

¹³⁰ <https://www.neustartimteam.de/> (accessed on 7 July 2022).

¹³¹ See further Anordnung des Bundesministeriums des Innern, für Bau und Heimat zur Aufnahme besonders schutzbedürftiger Flüchtlinge unterschiedlicher Staatsangehörigkeit oder staatenloser Flüchtlinge aus Ägypten, Äthiopien, Jordanien und aus dem Libanon aus dem Pilotprojekt Neustart im Team (NesT) im Resettlementverfahren gemäß § 23 Absatz 4 des Aufenthaltsgesetzes vom 15.04.2019, §1–2.

¹³² Interview with an international organisation representative, Sweden, 18 February 2021.

¹³³ Interview with a state official, Sweden, 19 February 2021; Interview with a representative of a regional authority, Sweden, 2 March 2021; Interview with a state official, Sweden, 26 February 2021.

¹³⁴ Interview with a state official, Sweden, 19 February 2021; Interview with an academic, Sweden, 5 February 2021.

¹³⁵ Interview with a state official, Sweden, 19 February 2021; Interview with an academic, Sweden, 5 February 2021.

¹³⁶ Interview with an academic, Germany, 12 May 2021. On this, see further (Pohlmann and Schwiertz 2020, p. 5; Endres de Oliveira 2020, p. 215).

¹³⁷ See also UNHCR 2019b, p. 23.

¹³⁸ GCR, para 94.

4. Political Feasibility of Facilitating Work-Based Complementary Pathways for People in Need of Protection

By building on the findings pertaining to the legal feasibility of developing work-based complementary pathways for refugees, this section moves on to examine existing political constraints. In so doing, it analyses the empirical data collected as part of the study to identify the factors that influence political willingness to engage in such pathways on the basis of general labour migration law provisions and the other policy models discussed above.

All stakeholders interviewed in both Germany and Sweden stated that there were no political plans indicating that such approach would be adopted. One of the reasons in Germany was that this idea was still rather unknown among key stakeholders, including political actors and policy makers. According to one interviewee, only a few academics, UNHCR and several state officials from the ministries who engaged with the Global Compacts were aware of it.¹³⁹ Therefore, it had mainly been discussed at expert meetings so far, such as the ones organised by the European Commission.¹⁴⁰

Unlike Germany, this policy idea was part of a Swedish government inquiry on migration in 2017.¹⁴¹ It highlighted that labour immigration systems could serve as legal entry pathways for individuals seeking protection but no concrete action was proposed in this regard (Parusel 2020, p. 18). This statement was interpreted as indicating interest on behalf of Sweden to act only in case of an EU wide initiative, where other Member States showed more solidarity, as ‘Sweden cannot carry this burden’.¹⁴² The inquiry committee eventually recommended that Sweden should continue to support resettlement as this was considered ‘to reduce the number of asylum seekers and have more orderly processes of helping refugees’,¹⁴³ and work with other countries to incentivise them to increase their resettlement quotas.¹⁴⁴

A substantial reason for the lack of political will to initiate work-based complementary pathways for people in need of protection is the reluctance in both countries to (further) blend asylum and labour migration regimes—a move which is considered politically controversial—and has been associated mainly with ‘lane switching’ measures.¹⁴⁵ In Sweden, dovetailing asylum-related issues with labour migration is perceived as eroding the right to asylum.¹⁴⁶ Therefore, the main rule concerning asylum seekers was that they should not, either during the asylum process or after a rejected asylum applications, be able to apply for a residence and work permit from within Sweden, and that this option should be applied only in exceptional cases, where there were solid humanitarian reasons.¹⁴⁷ This was also among the reasons why Sweden did not consider labour market integration prospects when selecting refugees for resettlement.¹⁴⁸ Furthermore, the political climate in Sweden signalled a pending turn to a more restrictive approach to labour migration aiming to introduce more control through tougher requirements, limit ‘abuse’ of the labour system

¹³⁹ Interview with an expert, Germany, 23 October 2020.

¹⁴⁰ Interview with a state official, Germany, 19 October 2020.

¹⁴¹ Utredningen om lagliga asylvägar 2017, pp. 74–80.

¹⁴² Interview with an international organisation representative, Sweden, 18 February 2021.

¹⁴³ Interview with an academic, Sweden, 25 February 2021.

¹⁴⁴ Interview with a state official, Sweden, 26 February 2021.

¹⁴⁵ This term is widely understood as policies allowing those asylum seekers whose claims were unsuccessful to stay in the country if they had managed to secure a gainful employment or a vocational training in the case of Germany. See further (Reyhani and Golmohammadi 2021, pp. 13–15).

¹⁴⁶ Interview with a think-tank representative, Sweden, 7 April 2021. For an early reference to this stance, see the final report of a government inquiry on labour immigration, published in 2006, Arbetskraftsinvandring till Sverige – förslag och konsekvenser, SOU 2006:87, p. 208. See further (Calleman 2015). The author wishes to thank Bernd Parusel for pointing her to this reference.

¹⁴⁷ Arbetskraftsinvandring till Sverige—förslag och konsekvenser, SOU 2006:87, p. 208.

¹⁴⁸ Interview with an academic, Sweden, 25 February 2021.

by asylum seekers and take away from asylum seekers the possibility to change track to labour migration statuses.¹⁴⁹

In a similar way, in the German context, there is a longstanding tradition of maintaining a clear distinction between refugees and labour migrants reflected in the legal framework and fuelled by the ‘ideological position of actors’.¹⁵⁰ It is based on the idea that these are different pillars and they should be kept separate,¹⁵¹ especially when it comes to transitioning from an asylum procedure to a labour migrant status.¹⁵² According to an interviewee, Germany had to be able to admit the ‘wanted’ and limit the ‘unwanted’ migrants by avoiding pull factors through the establishment of more rights for asylum seekers.¹⁵³ Despite the period of liberalisation in the last two decades concerning access to the labour market and integration of asylum seekers, including those with unsuccessful claims, more restrictions were introduced as a result of the so-called ‘refugee crisis’¹⁵⁴ and the surge of applicants from the Western Balkans.¹⁵⁵ Even though the introduced Western Balkan Regulation was considered a success in Germany as demonstrated above, one of the experts interviewed stressed that this regulation was also an illustration of merging migration and asylum rules ‘which belong in different boxes’.¹⁵⁶ To use this model as a complementary pathway model required a significant dogmatic shift, since the division between migration and asylum regulations was one of the cornerstones of German migration policies, but it was not impossible.¹⁵⁷

Some of the interviewees in Germany and Sweden expressed the same resistance towards linking labour migration and community sponsorship, stemming from the institutionalised separation of humanitarian and labour migration issues. A Swedish representative of an employers’ organisation stated that this model did not solve the problem arising in cases where such employees were to be fired, namely that they would either become dependent on welfare benefits or apply for asylum.¹⁵⁸ Yet, this view underestimates the potential of this initiative to mitigate such risks through its flexible design options and the bedrock commitment of local citizens providing integration support across a range of areas, including employment. Therefore, an interviewed Swedish state official considered that organised community sponsorship ‘works very well with the liberal individual perspective, where persons would like to be able to support a person who they feel can be assisted into Swedish society’ and this was seen as more feasible in the current political climate, which was ‘not very supportive to refugees in larger groups’.¹⁵⁹

In Germany, a similar initiative has little chances of success as detailed below.¹⁶⁰ One of the interviewed state officials highlighted that people who could come through labour migration should not take the places of refugees whose only chance was to be transferred through community sponsorship.¹⁶¹ Furthermore, the German government did not want to apply any additional selection criteria, such as educational background, as a requirement

¹⁴⁹ Interview with an academic, Sweden, 25 February 2021. See further the new inquiry tasked to reintroduce labour market tests and limit the possibility for lane switching. New directives for a new inquiry, Dir 2022:90 En behovsprövad arbetskraftsinvandring: <https://www.regeringen.se/49f2d3/contentassets/81013162c8184995a0fe14327bbfad2a/en-behovspruvad-arbetskraftsinvandring-dir-2022-90.pdf> (accessed on 5 October 2022).

¹⁵⁰ Interview with an expert, Germany, 23 October 2020.

¹⁵¹ Interview with an expert, Germany, 23 October 2020; Interview with state official, Germany, 22 January 2021.

¹⁵² Interview with a state official, Germany, 19 October 2020.

¹⁵³ Interview with an expert, Germany, 23 October 2020.

¹⁵⁴ Interview with an expert, Germany, 23 October 2020.

¹⁵⁵ Interview with an expert, Germany, 23 October 2020; Interview with a state official, Germany, 19 October 2020. Refer for instance to Article 10 (3) of the Residence Act. In addition, the lane switching has also been limited through temporal restrictions.

¹⁵⁶ Interview with an expert, Germany, 20 October 2020.

¹⁵⁷ Interview with an expert, Germany, 20 October 2020.

¹⁵⁸ Interview with an employers’ organisation representative, Sweden, 24 February 2021.

¹⁵⁹ Interview with a state official, Sweden, 19 February 2021.

¹⁶⁰ Interview with an academic, Germany, 12 May 2021.

¹⁶¹ Interview with a state official, Germany, 22 January 2021.

for people to be selected and transferred through the existing NEST programme.¹⁶² Yet, in practice the NEST programme was criticised by NGOs for not being as open as standard resettlement programmes and for ‘constantly introducing state-interest to humanitarian access’.¹⁶³ This has also been stressed by other authors demonstrating that post-2015 humanitarian admission to Germany features more and more selection categories, such as ‘integration capacity’ and ties ‘beneficial to integration’ alongside nationality-based and geographically confined criteria (Welfens 2021).¹⁶⁴

Other factors contributing to the lack of political support for complementary measures in Germany were the Covid 19 pandemic and the relatively recent experience with organised resettlement and community sponsorship. Even though Germany had been engaging in humanitarian admission programmes since the 1970s, the country had established resettlement programmes only in 2014¹⁶⁵ and since then had continued to scale up these programmes.¹⁶⁶ The only other new programme, introduced in 2019, was the NEST programme discussed above. Therefore, due to the pandemic and the limited possibilities for resettlement, the efforts of the administration were mainly targeted at keeping ‘those structures alive’.¹⁶⁷ An interviewee shared that fears of economic recession and the need for economic recovery after the pandemic also limited openness to experiment with new political ideas.¹⁶⁸ Furthermore, Germany had implemented a significant reform on the basis of the new Skilled Immigration Act, which entered into force in 2020 during the Covid 19 pandemic. Therefore, when it came to labour migration, some of the interviewees stressed that the focus was on the implementation of the new law and no further changes were foreseen.¹⁶⁹

Another reason for the limited opportunities to introduce additional pathways for protection in Sweden was the fact that the country had attracted many refugees in the last five years.¹⁷⁰ Politicians were hesitant to introduce new schemes also due to the generous social benefit system, where everyone who was ‘settled’ could access ‘a lot of welfare benefits’.¹⁷¹ Some of the stakeholders interviewed also stressed that it was logical to first look for employees among the refugees who were already in the country and then open new complementary pathways.¹⁷²

To sum up, the analysis of the data collected suggests that the current political climate in both countries is not conducive to the introduction of any new measures facilitating work-based complementary pathways. Some of the political constraints stem from temporary

¹⁶² Interview with a state official, Germany, 22 January 2021; Interview with an academic, Germany, 12 May 2021. Such approach could also give rise to non-discrimination and equal treatment concerns. See further (Tan 2020).

¹⁶³ Interview with an academic, Germany, 12 May 2021.

¹⁶⁴ See further Anordnung des Bundesministeriums des Innern und für Heimat für das Resettlement-Verfahren 2022 gemäß § 23 Abs. 4 des Aufenthaltsgesetzes (AufenthG) zur Aufnahme besonders schutzbedürftiger Flüchtlinge unterschiedlicher Staatsangehörigkeit oder staatenloser Flüchtlinge aus Ägypten, Jordanien, Kenia und Libanon sowie über den UNHCR Evakuierungsmechanismus in Niger (aus Libyen) vom 24.03.2022, §2 (c) and (d). Such model comes closer to the Australian refugee sponsorship which has been characterised as ‘market-driven outsourcing and privatization of Australia’s refugee resettlement priorities and commitments.’ See further (Hirsch et al. 2019).

¹⁶⁵ The resettlement programme had a pilot phase between 2012 and 2014. For further details, see <https://www.bamf.de/EN/Themen/AsylFluechtlingsschutz/ResettlementRelocation/Resettlement/resettlement-node.html> (accessed on 7 July 2022).

¹⁶⁶ Interview with a state official, Germany, 22 January 2021.

¹⁶⁷ Interview with a state official, Germany, 22 January 2021.

¹⁶⁸ Interview with an expert, Germany, 23 October 2020.

¹⁶⁹ Interview with a state official, Germany, 19 October 2020; Interview with an expert, Germany, 23 October 2020. It needs to be stressed, however, that at the time of this writing, the new German government intends to revise the Skilled Immigration Act in order to liberalise the regime for skilled immigration further. Plans include introduction of a point-based migration path, making the Western Balkans Regulation into a permanent scheme, and lowering the barriers for recognition of foreign qualifications. See further: <https://www.bundesregierung.de/resource/blob/974430/1990812/04221173eef9a6720059cc353d759a2b/2021-12-10-koav2021-data.pdf?download=1> p. 33. (accessed on 22 November 2022).

¹⁷⁰ Interview with a state official, Sweden, 2 March 2021.

¹⁷¹ Interview with a state official, Sweden, 2 March 2021.

¹⁷² Interview with an employers’ organisation representative, Germany, 14 May 2021.

factors such as the Covid 19 pandemic and recent or pending immigration law reforms. However, a central obstacle when it comes to the political feasibility of such complementary pathways seems to be the separation created between migrants and refugees (Carling 2015; Atak and Crépeau 2021) which translates into separate policy domains.¹⁷³ Even though on the surface the reluctance to blend these two domains is currently associated with the experience of both countries with the so-called ‘lane switching’, its roots can be traced back to the origins of the current international refugee regime.

When individual states recognised the first refugees as a specific group,¹⁷⁴ they decided not to return them to states where they would be persecuted and to offer them legal protection on the basis of domestic and bilateral extradition law (Barnett 2002; Haddad 2003; Orchard 2014). It is from these decisions that normative obligations towards refugees gradually developed over the next two centuries, culminating in the anchoring of refugee protection in international law and, eventually, the establishment of UNHCR to foster multilateral cooperation, and provide protection and assistance (Orchard 2014, pp. 240–41). Yet, it was not until the adoption of the 1951 Refugee Convention,¹⁷⁵ which codified the protection from refoulement,¹⁷⁶ that the separation between ‘humanitarian’ and ‘economic drivers of migration’ was institutionalised for the first time (Long 2013, p. 16). Before that, what mattered more was the need of protection of specific nationalities outside of their country of origin rather than the distinction between refugees and migrants (Long 2013, p. 7).

Despite the rise of the ‘deterrence paradigm’ (Gammeltoft-Hansen and Hathaway 2015)—enacted through legal and physical measures preventing refugees from accessing the asylum state territory as a way for developed countries to control migration—these international refugee law obligations are so deeply engraved in states’ practices and internalised by actors, that attempts to challenge or alter them occur only rarely (Orchard 2014, p. 250; Gammeltoft-Hansen and Tan 2017, p. 32). Furthermore, countries are bound to continue to cooperate on refugee protection as without it, refugees become ‘a destabilizing force within international society’ (Orchard 2014, p. 251). As Gammeltoft-Hansen and Hathaway stress, withdrawal from the Refugee Convention is not in the developed states’ interest as it is the reason why the less developed countries, hosting the bulk of the refugee population, ‘act in ways that provide a critical support to the developed world’s migration control project’ (Gammeltoft-Hansen and Hathaway 2015, p. 240).¹⁷⁷

In line with this, the official rhetoric of politicians and policy makers has been to speak against the conflation of refugees and economic migrants, as a way of ‘protecting’ the refugee category (Mourad and Norman 2020, p. 696). This separation has been supported by both refugee advocates, such as NGOs and UNHCR,¹⁷⁸ and state actors aiming to admit only the ‘neediest’ as a way to control migration (Long 2013, p. 22). Yet, in practice these distinctions are blurred both in policy realms and in border crossing motivations (Hamlin 2021). At policy level, this is done through ‘policy conversion’ amongst others (Streeck and Thelen 2005), where state parties to the Refugee Convention and international organisations ‘have actively transformed the refugee regime in a way that erodes the distinctiveness of the category it purports to be built upon’ (Mourad and Norman 2020, p. 688). For instance, as discussed above, many Member States cherry-pick refugees through the resettlement programmes by assessing applicants’ ‘integration potential’, including their

¹⁷³ See further (Zetter 2007).

¹⁷⁴ It is widely considered that these were the Huguenots fleeing from France as a result of Louis XIV’s 1685 revocation of the Edict of Nantes.

¹⁷⁵ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

¹⁷⁶ On the links between non-refoulement and the right to seek asylum, see (Hathaway 2005, p. 301; Gil-Bazo 2015).

¹⁷⁷ For further reasons why refugee law matters for developed countries, see (Hathaway 2007; Gammeltoft-Hansen 2014).

¹⁷⁸ See for instance (Hamlin 2021, pp. 70–92).

educational qualifications and work experience, thus conflating humanitarian admission with immigration channels (Westerby 2020; Mourad and Norman 2020; Welfens 2021).

Furthermore, even though the ‘migrant/refugee binary’ dominated the negotiations and the adoption of the New York Declaration and two separate Global Compacts (Hamlin 2021, p. 77), they were intended to converge as ‘migrants are often future asylum-seekers and unrecognised refugees’ (Guild et al. 2022, pp. 3–4). This distinction is further blurred in the International Migration Review Forum’s progress declaration.¹⁷⁹ Yet, some authors have also criticized the blurring prompted by the Compacts claiming that self-reliance and labour mobility opportunities for refugees promote them as ‘economic benefit’ to the states that can potentially host them (Mourad and Norman 2019).¹⁸⁰

As stressed above, these migration movements are also difficult to distinguish in the empirical reality (Castles 2003, p. 17; Ramji-Nogales 2017; Motomura 2020) and are clearly intertwined from the perspective of people in need of protection (BenEzer and Zetter 2015; Squire et al. 2017; Bivand Erdal and Oeppen 2018, pp. 987–93). Existing literature and the data collected as part of this research demonstrate that many refugees would be interested to use available labour migration channels as a way to find a solution to their displacement rather than to go through the asylum system (Long 2013, p. 22; Long 2015, p. 3; Long and Rosengaertner 2016, p. 7; Crépeau 2018, p. 655; Atak and Crépeau 2021, p. 141). Furthermore, many ‘do not like the stigma of being an asylum-seeker’,¹⁸¹ associated with the vulnerability that refugee status brings (Hamlin 2021, p. 7).

As it is beyond the scope of this paper to argue whether ‘refugees’ and ‘migrants’ should remain as distinct categories, it is imperative to stress that actors’ diverging positions surrounding the ‘migrant/refugee binary’ have implications for the political feasibility to facilitate work-based complementary pathways. Undoubtedly, the refugee regime has been transformed under the pressure exerted by containment and deterrence policies, and the introduction of new measures, such as for instance complementary pathways, and refugee finance instruments have further changed the ‘spectrum of refugeehood’.¹⁸² This does not mean, however, that one should disregard the potential of labour migration to provide ‘pragmatic and accessible solutions’ in protracted situations for those refugees who are not eligible for the limited resettlement places and are left without any other alternatives to their exile (Long 2013, p. 23; see further (Long 2015) and (Long and Rosengaertner 2016)). Yet, instead of tacitly inserting labour migration elements into humanitarian admission, leading for instance to cherry-picking in resettlement, the GCR now commits states to develop such measures for refugees in an open and transparent way in the form of complementary pathways and by observing ‘appropriate protection safeguards’.¹⁸³

5. Conclusions

This article examined the legal and political constraints posed by the existing provisions of Sweden and Germany’s immigration laws, as well as specific policy instruments such as the Western Balkan Regulation and community sponsorship to serve as an admission ground for people in need of protection, and the key issues that need to be addressed to allow the soft law commitments related to labour migration pathways contained in the Compacts to be embedded in national legal systems.

A closer look at the legal feasibility of developing a work-based complementary pathways approach reveals legal and non-legal barriers related to entry requirements that can be insurmountable for people in need of protection, along with lack of sufficient

¹⁷⁹ See for instance para 59 referring to the availability of legal pathways, including for migrants in vulnerable situations and para 61 committing amongst others to ‘ensuring that migrants do not become liable to criminal prosecution for the fact of having been the object of smuggling’, which is also applicable to refugees.

¹⁸⁰ On that see also (Long 2013, p. 8).

¹⁸¹ Interview with a lawyer, Germany, 10 November 2020. See further (Vankova 2022, p. 104) and (Arendt [1943] 1996).

¹⁸² On the latter, see (Davitti 2021) and (Davitti and Vankova Forthcoming).

¹⁸³ GCR, para 94.

interest among key stakeholders such as employers to engage in such initiatives, as well as concerns related to the security of status of potential beneficiaries of such measures. When designing work-based complementary pathways for refugees, challenges stemming from both admission conditions and precarious migration statuses need to be addressed equally, which requires the participation of the ILO as an equal partner in the governance of refugee work (Gordon 2021, p. 250) and its involvement in the Global Task Force on Refugee Labour Mobility.

Work-based admission for refugees motivated by labor market rationale will ultimately depend on its feasibility for institutions and stakeholders implementing that approach: states will need to facilitate mobility through visa procedures, create incentives for employers to become engaged in such pathways, and support financially (at least initially) NGOs and international organizations which are aiming to bring potential beneficiaries and employers together. Furthermore, while legal barriers to access require flexibility in the application of admission conditions or amendments across different types of legislation (e.g., not only immigration but also recognition of qualification rules), non-legal barriers, such as identification of potential candidates and their matching with employers, require awareness-raising and advocacy measures. As the successful pilots' experience shows, building national coalitions and investing into sector specific pilots¹⁸⁴ can create proof of concept indicating the most suitable approach at a national level and potentially ensuring long-term support.¹⁸⁵

The analysis also demonstrates that instruments like the Western Balkan Regulation and de facto work-related refugee sponsorship that could serve as a policy model in one country are not necessarily applicable to other contexts. Therefore, when it comes to the development of work-based complementary pathways, 'context-specific solutions' rather than a 'one-size-fit-all' approach are more likely to work (Fratzke et al. 2021, p. 9). Nevertheless, one of the greatest challenges with such pathways remains scalability and their availability 'on a more systematic, organized, sustainable and gender-responsive basis',¹⁸⁶ which would allow refugees to choose independently the pathways that best suit their different needs—based on existing immigration legislation or humanitarian channels. As an UNHCR report stresses, complementary pathways are currently limited in scale but require quite resource intensive casework models (Fratzke et al. 2021, p. 9). For instance, the largest work-based pilot is the Canadian one, which provides for up to 500 applicant places.¹⁸⁷ Such scale could hardly be considered to 'complement' resettlement. Another important consideration is not to compromise the additionality of such pathways when designing and implementing them.

Finally, there is a need for political will in order to facilitate such pathways. Yet, the data analysed suggest that the current political climate in both countries studied is not conducive for introducing work-based complementary pathways. As this article demonstrated, some of the political constraints stem from temporary factors such as the Covid 19 pandemic and recent or pending reforms, others require a significant shift in traditional thinking about migration and asylum as separate domains that do not interact with each other. Whereas abandoning the distinction between refugees and migrants is not necessary, this article advocates to focus on the potential of labour migration to serve as a pragmatic and accessible approach for people in need of protection faced with protracted situations. The GCR provides a basis for such approach by committing states to develop complementary pathways for refugees in an open and a transparent way and by observing their international obligations, instead of continuing to tacitly insert labour migration

¹⁸⁴ Among the priorities of 2019 UNHCR's Three-Year Strategy on Resettlement and Complementary Pathways, Goal 2: Enabling actions, p. 23.

¹⁸⁵ Canada's Economic Mobility Pathways Pilot is a case in point: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/economic-classes/economic-mobility-pilot.html> (accessed on 7 July 2022).

¹⁸⁶ GCR, para 94.

¹⁸⁷ <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/economic-mobility-pathways-pilot/immigrate.html> (accessed on 7 July 2022).

elements into humanitarian admission. The launch of the Global Task Force and the interest in complementary pathways shown by other international organisations,¹⁸⁸ are expected to support the political feasibility of work-based complementary pathways by increasing awareness and available expertise for their development.

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¹⁸⁸ <https://www.osce.org/occea/514723> (accessed on 7 July 2022).

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