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**Ensuring the Rights of Migrants in the EU:
From Vulnerability to Empowerment**
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Migration, Refugees and Integration*

*** The spoken word shall be binding ***

I. Introduction

Ladies and gentlemen,
Colleagues,
Mr Muižnieks,
Mr Shekarabi,

First of all, let me say how pleased I was to receive your invitation to speak on this very topical issue today. It is a great honour for me to be giving the opening statement at this conference.

Our understanding of ourselves as Europeans means we have but one option: we must offer protection to those seeking refuge for themselves and their families from war, terror and persecution. In this context the European Union, a place of peace and security, bears a great responsibility, a responsibility we must meet. Whenever we are discussing directives, regulations and laws relating to refugee policy, we need to be aware of this understanding of ourselves. We are talking about people who have fled from the most horrendous disasters. They are seeking protection from us in Europe and want to live in dignity.

I would like to make three points to outline what a European migration and asylum policy oriented to the immigrants' human rights needs to do.

1. Firstly, I would like to give a very brief overview of what I regard as the key principles of Europe's migration and asylum policy to date.

I hope that afterwards you will agree with me in thinking that we are currently at a decisive juncture in European migration and refugee policy.

2. Secondly, I will look at a few developments in Germany's immigration policy and suggest what we might be able to learn from these for the European level. For a long time there was — let me say it frankly — nothing like a systematic plan for German policy. This area was and still is controversial in Germany's domestic politics. And perhaps it will always remain a bit controversial. But there is no longer the viciousness in the debate that there was around twenty years ago. Back in the early 1990s, newly "reunited" German society showed a great degree of repulsion towards all immigrants, and in some instances nothing less than pure racism, when more than 400,000 refugees from the war in Yugoslavia arrived in our country. Germany had not experienced such an influx of foreign refugees after the Second World War, and the population simply was not

prepared for it. Extreme right-wing parties and groups found a receptive audience and attracted a lot of new supporters. The shameful attacks on refugee shelters, for example in Rostock in 1992, and the deadly arson attacks in Mölln and Solingen in 1992 and 1993 remain unforgotten to this day. Now, however, the situation is entirely different. This year Germany will take in some 200,000 asylum seekers — the highest figure since 1993 — and society is showing a gratifying readiness to help refugees.

3. Following on from this look back, I would like to outline a few political approaches that I think the various stakeholders in European migration and asylum policy would find it worthwhile to discuss.

Firstly, though, just another thought. Whenever there is a debate on how to improve the situation of migrants, what usually happens is this: “opponents of change” appear, reproaching those calling for a rethink.

Albert O. Hirschman, a German-born Jew who during the Second World War initially helped people to flee and later had himself to flee to the United States, has described such situations as the “rhetoric of reaction”. A highly regarded professor of economics, Hirschman wrote a book about the

opponents of political reform in which, with considerable humour and numerous references from history,¹ he makes three points:

Firstly, he says, opponents of reform always claim that any reform implemented will in the end always turn out to have exactly the opposite effect from that originally intended. Hirschman calls this the “perversity thesis”.

Secondly, he goes on to say, opponents of reform claim that when reforms are implemented they don’t actually change anything anyway and are completely inappropriate. The goals, they claim, will never be achieved, at least not like that, and so any effort at reform is bound to fail. This Hirschman calls the “futility thesis”.

And thirdly, opponents of reform regularly like to stir up fear. The “reactionaries” discredit reform endeavours by claiming that reform would endanger everything that has been achieved to date. This is Hirschman’s “jeopardy thesis”.

When we in Germany were discussing whether we needed an immigration act to manage immigration and provide a framework for integration policy, many opponents of the

¹ In his essay, Hirschman considers the changes wrought by the French Revolution, the introduction of universal suffrage in Britain and debates on the introduction of welfare measures.

measure immediately claimed that we were going to welcome everyone in. They didn't even want us to think about what such an act could involve. Of course that was not our intention. Instead, one of the things we wanted to do was make it possible for immigrants to have German language lessons. Today everyone who fought against the act back then claims it was actually they who came up with the idea. And why? Because the integration courses have been so successful, of course! There will probably always be debates and obstacles like this to overcome in migration policy.

1. European migration and asylum policy to date

When I say "European migration policy" here, I generally mean European Union policy, unless I say otherwise. Of course migration policy is also shaped and influenced by the Council of Europe and through the European Convention on Human Rights.

But I want to focus primarily on EU directives and EU regulations and on the rulings of the European Court of Justice in Luxembourg.

a) First a word about European migration policy and European migration law

The key idea that kickstarted the European integration project was freedom of movement for goods, services and persons. The goal was a single market. Freedom of movement for people meant freedom of movement for workers and self-employed persons who were nationals of an EU member state.

In other words, migration initially focused on workers and their families. It was a matter of allowing access to national labour markets, of ensuring secure rights of residency even after the end of the employment, and of ensuring the rapid integration of the worker's family into the "host state".

Over the years the importance of freedom of movement grew and it could no longer be restricted. In addition, Europe passed bans on discrimination designed to prevent immigrants to the EU from being treated worse than the state's own nationals.

Gradually the social standards were extended to Turkish workers and their families through the association law. With the Tampere European Council in 1999, nationals of other third states who had been living in Europe for a long time were as a rule also included.

The desired equality within the European Union between migrant Union citizens and member states' own nationals is still not entirely in place.

Rather, we are currently getting unmistakable signals from the United Kingdom, France, Denmark, the Netherlands and also Germany that cast doubt on freedom of movement for citizens of the Union. Anyone who is unable to cover his or her entire living costs without support from the state immediately upon arrival in another member state is often accused of "social security abuse". Of course one must never underestimate the power of right-wing populism and public politics in migration policy. But in Germany we have been able to prove both for Bulgarian and for Romanian nationals that the vast majority of immigrants are pursuing legal employment and that the proportion drawing benefits is low.

But what arguments do you hear from the doubters? They say that in principle freedom of movement is in fact a good thing for Union citizens. But if the best brains were to emigrate from Spain, Italy, Greece, Romania or Bulgaria, then those member states would never get their economies up and running again. So, in their view, freedom of movement does not bring greater prosperity; on the contrary, it incurs costs in the host state and increases poverty and worsens prospects in the migrant citizens' countries of origin. The problem they

are touching on here cannot, of course, be swept aside completely – think, for instance, of the lack of doctors in Bulgaria. But one cannot keep people away with prohibitions and the threat of loss of benefits.

One thing is clear: freedom of movement brings real and quantifiable migration benefits for the host society! And at the level of the individual, very many people move from unemployment to employment. One thing we have to make clear over and over again is this: we benefit from immigration, Germany especially! So let's not talk down the Union citizen's individual freedom, a guarantee that comes with Union citizenship. It is a pillar of our Europe!

Let me move on now to asylum and refugee law.

b) Asylum policy and asylum law

Every day in asylum procedures in the EU member states, hundreds of people seeking protection, with their families, are recognised as refugees or, as we say today, “beneficiaries of international protection”. In Germany in the last three years, considerably more than 20,000 people have been awarded this status each year.

Unfortunately, the recognition practices of the member states with regard to certain countries of origin are still very inconsistent.

The 2013/2014 Annual Report of the Asylum Information Database project, published by the European Council on Refugees and Exiles (ECRE), is clear on this point. Yet from a refugee law perspective, standardised recognition practices in the member states are really a prerequisite for using the Dublin System.²

The current state of European asylum policy is alarming, and not only because of the catastrophic human rights situations in Syria and Iraq at the moment. We must be honest: in previous years the European Union was equally incapable of finding a convincing solution to the refugee situations on the EU's external borders and particularly in the Mediterranean.

The way I see it, there are at the moment two important refugee policy measures in Europe that deserve special mention or rather, which reveal the problems we face:

The first is the discontinuance of the Dublin transfers to Greece, because the weaknesses in that country's national

² People seeking protection should only be referred to other member states to have their applications reviewed if it is fairly safe to assume that they do indeed have similar chances of recognition.

asylum system are undeniable. The second is Italy's Mare Nostrum operation.

The cessation of the transfers of asylum seekers to Greece was enforced in 2011 by the two highest European courts, the European Court of Human Rights in Strasbourg and the European Court of Justice in Luxembourg.

This was therefore a legal achievement and not a political decision. The verdicts found that the first step towards harmonisation in Greece had not created the minimum standards set down in EU law. In recent years, instead of ensuring that the agreed standards were observed in the member states – and I don't just mean Greece – we have focused primarily on introducing further legislation at EU level.

And the Mare Nostrum operation was carried out by the Italian army and financed by the Italian Government. Mare Nostrum did not take place within the legal framework of the EU. And so far support from individual member states, which would certainly be a viable political option, has not been forthcoming. The EU Triton operation planned as an alternative will be less comprehensive, and it is not only refugee and human rights organisations which are concerned that it will indeed provide less protection and security.

The recent criticism by some member states of reception conditions and asylum procedures particularly in Italy, Greece, Malta, Cyprus, Hungary, Romania and Bulgaria is certainly valid. But even after the decision by the European Court in Strasbourg just last week in the case of “Tarakhel v Switzerland” it is not convincing that those member states that lie at the *heart* of the European Union and not on the geographical periphery still want to declare the principles of the Dublin System as being fundamentally unchangeable.

Anyone who wants to have an honest discussion must accept the following:

1. Of course the legally binding **minimum standards** agreed in EU law must be observed – throughout the European Union. Fair and swift asylum procedures are always important for those seeking protection. They make it possible for refugees and their families to start a new, secure life without persecution and threats. And people need to know quickly if they are not going to be allowed to stay in the European Union. That is part of what being honest means!

2. The **Dublin III Regulation is evidently not the solution** to the current problems of those member states with inadequate asylum systems. The Dublin III Regulation is even less of a

solution for the many refugees from Syria, Eritrea and Iraq among those seeking protection.

In fact, so far the Dublin System has not resulted in countries such as Germany and Sweden, which are not located on the southern fringes of the European Union, taking in and recognising only a few refugees from Syria, Iraq and Eritrea. In many cases the opposite is true: in absolute terms but also in relation to the total population, Sweden and Germany are currently taking in a comparatively high number of refugees. This is particularly evident in the case of Syrian citizens³, because Germany, for example, has taken in an additional 20,000 Syrians in extra contingents.

3. Yet it is also the case that the asylum systems and the societies in many member states are simply **not adequately equipped** to handle the numbers of refugees currently arriving. They failed to tackle this problem earlier and find a longer-term solution. Yet those seeking protection should not now have to pay for this omission.

³ Out of the total of 434,000 people seeking protection in the EU, 78% submitted their applications for asylum in the first three months of 2014 in the five countries Germany (34%), France (15%), Sweden (12%), Italy (10%) and the United Kingdom (7%). To compare the burden: Sweden: 5713 asylum seekers per 1 million inhabitants, Germany: 1564 asylum seekers per 1 million inhabitants, France: 986 asylum seekers, Italy: 459 asylum seekers.

If Albert O. Hirschman could still listen to the discussion on asylum in the EU, he would no doubt find his views confirmed. Anyone who wants to raise the issue of changing or modifying the Dublin System generally finds themselves at loggerheads with those who want to preserve the status quo.

Yet things cannot continue like this. That ought to be clear to everyone by now. Firstly, it is not acceptable that 80% of applications for asylum are submitted in only 5 of the 28 EU states (see footnote 3). And secondly, it is not acceptable that each year thousands of people lose their lives in the Mediterranean.

2 What could we improve?

At the start of my speech, I mentioned that although the debate on migration and asylum has been conducted very intensively in Germany during the past 25 years, it has been anything but straightforward and systematic.

Until the late 1990s, Germany had a blockade as regards political thinking, which was found from the two main political parties to the trade unions. This blockade ended less because of a clear political impetus, but rather because it gradually faded away.

The indisputable developments in a country that experienced immigration for over 45 years (particularly as regards recruiting so-called guest workers and allowing their families to join them) made many discussions expressly denying these developments simply seem rather strange.

Here are just two examples:

Firstly, there was virtually a sweeping ban on labour migrants, even if there were no suitably qualified skilled workers in Germany. This applied to graduates and non-graduates alike.

Until the Immigration Act entered into force in 2005, third-country nationals who graduated from a German university had to leave Germany immediately after obtaining their degree, although our universities had educated them and although they spoke German and were familiar with our country!

And a provision in the Federal Regulation on Doctors of 1935 applied until as recently as 2012. It prohibited third-country nationals from setting up their own medical practice in Germany, even if they had been awarded a medical degree by a German university.

Secondly, it was anything but easy in Germany for refugees in search of protection. Since the late 1980s, there were hostilities in many places, as well as legally undue obstacles.

The welfare laws for asylum seekers were made considerably tighter, and the benefits remained frozen at a low level for over 19 years. As a rule, asylum seekers were also denied access to the labour market.

Over the course of the 1990s, German society gradually realised that it was on its way to becoming a society of immigration and that immigrants – as well as refugees – need to be given a chance to participate for the benefit of all, including the host society. No one now seriously disputes the fact that Germany is a country of immigration. Fifteen years ago, this was not a matter of course. Now we need to complete the path from a country of immigration to a society of immigration that is equally open to skilled labour and to refugees.

German President Joachim Gauck described the development very vividly during a naturalisation ceremony at his official residence on 22 May 2014. I quote:

“Immigration was first ignored. Then it was rejected. Later still, it was endured and tolerated. And finally, it was recognised as an opportunity and accepted. And this is where we find

ourselves today. I now know that we will not lose ourselves if we accept diversity. We want this diverse 'we'. We do not want to fear it and worry about it. We want to support it in a forward-looking way and in a spirit of optimism." (Quote ends.)

And this is where we are today. Immigration is finally being discussed in Germany with considerably more optimism than in the past. It is more difficult for sceptics and people who are pessimistic about reform than it used to be. This is progress – and this progress must be maintained. The **paradigm shift in German immigration and integration policy** began with the reform of citizenship law in the year 2000. Children born in Germany to parents from other countries can now acquire German citizenship at birth. This may not sound like a major step to many of you, but it was a milestone for our country. In this way, we affirmed that children of immigrants do not have to deny their background, but at the same time we gave them a chance to clearly commit to Germany. We continued this course with the 2005 Immigration Act, which included the nationwide introduction of the language and integration courses I already mentioned. Over 1.4 million people – half of them EU citizens – have attended these courses so far. We now also want to give asylum seekers a chance to learn German from an early stage.

Furthermore, the two large political parties, which make up the current German Government, stated in their coalition agreement that they want to **further the integration of immigrants** and ensure better reception conditions and a swift asylum procedure for **refugees**.

Just the week before last, the German Government decided that asylum seekers will be allowed to move freely in Germany (abolition of a mandatory place of residence for refugees from the fourth month), that they can work three months after arriving in Germany, and that they will generally receive benefits in cash rather than in kind. The aim is to process all asylum applications within three months. To this end, 650 jobs will be created at the Federal Office for Migration and Refugees. Asylum seekers simply need clarity about their status sooner. And I repeat that for some of them, this will also mean they will be told at an earlier stage that they have to leave the country.

These are all important steps in terms of dealing realistically with people who are fleeing war, violence and persecution, and seeking protection in Germany. They want to be part of society, they want to work, and they want to live in dignity and safety. It is our duty to ensure this. And ultimately, Germany will also benefit from these changes, as they will make it easier for people to share their potential rather than being condemned to sitting around in their accommodation.

3 Conclusion

Why am I giving all these examples from Germany's recent migration policy history at the end of my speech?

I did not only mention these examples because they reveal a development that we were able to shape and further in Germany. By the way, this has never been a simple undertaking, as many of you will also know from your own country.

I did not only mention the development in Germany to show that it is a good idea to give immigrants and refugees more opportunities to integrate or to show that we cannot have a situation where very poor reception conditions are held up as a deterrent.

No, I mentioned these examples because I believe that the end of the attitude in Germany that I described as a "thinking blockade" a few minutes ago was primarily the result of two developments. Firstly, it came about as a result of the work of non-governmental organisations, churches and other associations, which campaigned tirelessly for decades for a different approach to immigrants and refugees.

And secondly, it resulted from the fact that the “European argument” was added to the debate in Germany, or so I believe at any rate. The arguments that were almost all in favour of a restrictive policy – arguments that could previously be expressed without any problem whatsoever in German politics and indeed in other EU countries, too – became increasingly less plausible with the communitarisation of migration and asylum policy at the EU level from 1999.

Those who wanted to be a “European” and who regarded immigration and asylum policy as an important supranational topic, like us Germans, could no longer permanently oppose the Tampere Programme of 1999. They had to implement it – even if national legislation needed to be changed as a result.

Without good European arguments – as I firmly believe – it becomes particularly difficult for the governments of the member states that only recently became a destination for immigration by EU citizens, third-country nationals or refugees.

“Europe” needs to stand the test and show solidarity. It needs to stand for rationality, rather than for a lack of ideas or for isolation. We would be taking a huge step backwards if Europe’s migration policy answer to the economic crises in

many member states were limited to ideas on curtailing freedom of movement for EU citizens.

And if Europe's refugee policy answer to the human rights disasters in Syria and Iraq is simply "Dublin III", we are doing far less than we are capable of doing. However, we can only respond in a spirit of solidarity.

More courage in Europe, more solidarity and less national-state anxiety in all the capitals of the member states (including Berlin!) – this must be our common motto!

And last but not least, we need clearer and more honest targets from Brussels. That is my hope and my advice for the European migration and asylum policy of the future, a policy that must be based on our shared human rights!

This is why I think it is a very good sign that the new President of the European Commission, Jean-Claude Juncker, warned against a return to greater nationalism last week on the Commission's first working day: "As regards the integration of the European continent, we need to step up our pace, rather than focusing on national interests."

Thank you for your attention.