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Recommended Citation
Lauren E. Campbell, Multikulti Ist Doch ’Ne Erfolgreiche Realität: Why Tolerance is Vital for German Economic Growth, 35 B.C. Int’l & Comp. L. Rev. 449 (2012),
http://lawdigitalcommons.bc.edu/iclr/vol35/iss2/4
MULTIKULTI IST DOCH ’NE ERFOLGREICHE REALITÄT: WHY TOLERANCE IS VITAL FOR GERMAN ECONOMIC GROWTH

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Abstract: In October 2010, German politicians declared that multiculturalism in Germany was no longer viable. That controversial declaration ignited a heated debate, and Germans were forced to address the fact that national immigration policies since World War II had produced one of the largest immigrant populations in Western Europe. Indeed, despite the purported failure of multiculturalism, highly qualified immigrants from non-European Union (EU) countries may be the key to securing German economic growth amidst a global race for talent. Accordingly, this Note explores the intricacies of German and EU policies on economic immigration and integration, which are aimed at attracting these highly qualified immigrants. It argues that, although German immigration legislation targets the right population, its integration procedures may not suffice to attract and retain immigrants. Faced with an aging population, Germany should utilize EU guidelines for integration to establish concrete measures to secure a workable multicultural society.

Introduction

“Multiculturalism has absolutely failed.”1 German Chancellor Angela Merkel uttered these now infamous words at an annual meeting of the Junge Union2 in October 2010, adding fuel to a newly rekindled

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1 Will Germany Now Take Centre Stage?, ECONOMIST, Oct. 21, 2010, at 27, 28 (internal quotations omitted). Chancellor Merkel’s original statement, in German, is “Der Ansatz für Multikulti is gescheitert, absolut gescheitert!” Merkel erklärt Multikulti für gescheitert, SPIEGEL ONLINE (Ger.) (Oct. 16, 2010), http://www.spiegel.de/politik/deutschland/0,1518,723532,00.html.

2 The Junge Union is a national political youth organization in Germany, sponsored by the Christian Democratic Union (CDU) and Christian Social Union of Bavaria (CSU). Information, JUNGE UNION, http://www.junge-union.de/content/english/2/ (last visited May 18, 2012). Deutschlandtag, the Junge Union’s annual conference at which Chancellor Merkel spoke, is composed of delegates from all German states. See Deutschlandtag, JUNGE
controversy about immigration policy in Germany.³ Although the viability of multiculturalism is by no means a new topic of conversation in Germany, the publication of Deutschland schafft sich ab⁴ in September 2010 renewed heated debate about the topic.⁵ In this polemical book, then-director of the German Central Bank Thilo Sarrazin argued that the future of Germany’s economy is in jeopardy because poor and immigrant classes reproduce at a higher rate than the educated.⁶ Although xenophobic tendencies have been quietly growing among the German population over the past several years,⁷ Sarrazin’s book has brought the issue to light in a very public forum.⁸ German media continues to discuss the highly contentious topics of immigration and integration in Germany, often focusing on tensions between the native population and Muslim or Arab immigrants.⁹

Conservative German politicians have seized the opportunity to voice wariness of immigrants and ethnic minorities.¹⁰ Horst Seehofer, head of the Christian Social Union,¹¹ has presented one of the more extreme policy recommendations: strict integrationist policies that


⁵ See Will Germany Now Take Centre Stage?, supra note 1, at 27–28.

⁶ See SARRAZIN, supra note 4, at 357–61; see also Will Germany Now Take Centre Stage?, supra note 1, at 27.


⁸ See Will Germany Now Take Centre Stage?, supra note 1, at 27–28.

⁹ See, e.g., Thema: Integration, SPIEGEL ONLINE (Ger.), http://www.spiegel.de/thema/migration/ (last visited May 18, 2012). SPIEGEL ONLINE, the online version of Der Spiegel, a popular weekly news magazine in Germany, follows Integration and the Politics of Immigration as important news topics on its website. See id.; see also Thema: Einwanderungspolitik in Deutschland, SPIEGEL ONLINE (Ger.), http://www.spiegel.de/thema/einwanderungs politik/ (last visited May 18, 2012) (Politics of Immigration).

¹⁰ See Will Germany Now Take Centre Stage?, supra note 1, at 28.

¹¹ The CSU is the Bavarian sister of the CDU, the party that currently controls the German Bundestag. See Will Germany Now Take Centre Stage?, supra note 1, at 28.
would prohibit further immigration from Turkey and Arab countries.\textsuperscript{12} Seehofer’s Seven-Point Plan for integration is predicated on evaluating potential immigrants based on their readiness and ability to integrate into German society.\textsuperscript{13} According to Seehofer, immigrants should conform to the German \textit{Leitkultur}, a version of German culture founded on “Christianity, humanism, and enlightenment.”\textsuperscript{14} Chancellor Merkel, meanwhile, has taken a more moderate position. While indicating that immigrants should integrate with German culture, she has nonetheless acknowledged that Islam has become a part of Germany.\textsuperscript{15} And although Merkel does not go so far as to suggest preventing the immigration of Muslims, like Seehofer, she calls for stronger integration policies designed to create more “German-like” immigrants and a less multicultural society.\textsuperscript{16} Similarly, German citizens echo this skepticism of multiculturalism; many believe immigrant minorities threaten the country’s stability.\textsuperscript{17}

Others, however, argue that Germany needs immigrant workers to maintain its position as Europe’s strongest economy.\textsuperscript{18} Germany’s working population is aging quickly, and native Germans are reproducing at a slower rate than immigrants.\textsuperscript{19} Thus, to curtail the declining working population, Germany must attract and retain immigrant workers.\textsuperscript{20} Some influential German politicians, such as Secretary of Labor Ursula von der Leyen and Secretary of Education Annette Schaven, have argued that Germany must remove barriers to entry for qualified workers in order to remain economically competitive.\textsuperscript{21} Indeed, competition on a global level increasingly turns on the ability to attract highly qualified

\textsuperscript{12} See Merkel erklärt Multikulti für gescheitert, supra note 1.
\textsuperscript{13} Id.
\textsuperscript{14} Id.
\textsuperscript{15} See Will Germany Now Take Centre Stage?, supra note 1, at 28.
\textsuperscript{16} See Merkel erklärt Multikulti für gescheitert, supra note 1; Will Germany Now Take Centre Stage, supra note 1, at 28.
\textsuperscript{17} See Habermas, supra note 7 (noting that recent polls have shown that over one-third of German citizens believe Germany is becoming “more stupid on average” due to immigration).
\textsuperscript{19} See Klaus F. Zimmerman et al., Immigration Policy and the Labor Market: The German Experience and Lessons for Europe 89 (2007).
\textsuperscript{20} See id. at 85–89.
\textsuperscript{21} See Merkel erklärt Multikulti für gescheitert, supra note 1. Both von der Leyen and Schaven are members of the conservative CDU. See id.
workers. The European Union (EU) has already entered this competition by committing “to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.”

Until the enactment of the Immigration Act of 2004, Germany had no comprehensive immigration policy; instead, its immigration regime consisted of piecemeal legislation intended to address immediate needs. This legislation ranged from attracting unskilled workers during the 1960s to working around a national ban on immigration after the international oil crisis in the early 1970s. These postwar policies have established one of the largest immigrant populations in Western Europe, despite the fact that German politicians have consistently denied that Germany is a country of immigrants. After World War II, approximately eight million ethnic Germans immigrated to Germany from countries formerly occupied by the Third Reich. From 1961 to 1973, Germany accepted 3.5 million immigrants as part of the Gastarbeiter program. Immigration peaked in 1992, when 1.2 million foreigners entered the country. The immigrant population continued to rise after Germany enacted the Aliens Law of 1990 and a green card program easing admission for information technology personnel.

22 See Richard Florida & Irene Tingali, Europe in the Creative Age 11–12 (2004); Shachar, supra note 18, at 152.
24 See Zimmerman et al., supra note 19, at 9.
25 See id. at 16–17.
26 See Cem Özdemir, Germany’s Integration Challenge, Fletcher Forum World Aff., Summer 2006, at 221, 221.
27 Ethnic Germans are immigrants of German descent, primarily from Eastern Europe. See Zimmerman et al., supra note 19, at 7, 10; Rolf Wank, Legal Framework for High-Tech Workers in Germany, 24 Comp. Lab. L. & Pol’y J. 435, 440 (2003).
28 See Zimmerman et al., supra note 19, at 16.
30 Zimmerman et al., supra note 19, at 21. These data include not only labor migrants, but also those joining family members, seeking asylum, and immigration for other reasons. See id. at 19–21. Indeed, calculating the number of immigrants during the post-Gastarbeiter period is difficult because government agencies lack data regarding those who immigrated to join family members. Id. at 19. Nevertheless, “[m]ore than half of all immigration to Germany between 1974 and the mid-1980s can probably be attributed to immigration of family members, until family reunification lost some significance in relation to the strong increase in refugees.” Id.
31 See id. at 10, 21, 29.
During the 1990s, Germany experienced a net increase of 3.8 million people, corresponding to 4.6% of the population.\(^{32}\) These statistics clearly refute the popular notion that “Germany is not a country of immigrants.”\(^{33}\) Moreover, the Immigration Act of 2004 constitutes the country’s first attempt to codify comprehensive immigration policies and attract the workers required to respond to demographic decline.\(^{34}\) Although it is not without its drawbacks, this legislation represents a bold first step to addressing long-term labor market needs.\(^{35}\)

This Note examines current German immigration and integration policies, arguing that integration reform in particular is needed to promote future economic growth. Part I provides a historical background of Germany’s immigration and migrant labor policies, explaining how the nation developed into a de facto immigration country. Part II discusses the economic policies implicit in the Immigration Act of 2004, as well as the codification of nationwide integration procedures. Part II then examines European immigration legislation focused on attracting highly qualified third-country nationals for employment in the EU, as well as suggested integration policies for all member states. Part III of this Note analyzes Germany’s ability to attract and retain highly qualified foreigners amid a global race for talent. It argues that although current legislation targets the right type of worker and industry, Germany must also encourage tolerance of highly qualified immigrants on a national level. The EU policy recommendations on integration provide Germany with a useful framework for establishing mutual accommodation between immigrants and nationals. Finally, based on those recommendations, the Note offers two concrete integration policies to advance toleration—promoting thoughtful public discourse and providing integrated housing schemes—which could drive long-term economic growth in Germany.

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\(^{32}\) Id. at 21. The net increase resulted from 12.2 million people entering Germany and 8.4 million people leaving. Id.

\(^{33}\) See Özdemir, supra note 26, at 221.


\(^{35}\) See Shachar, supra note 18, at 190 (noting that Germany’s immigration legislation now targets highly skilled workers in order to bolster competitiveness on a global scale and address long-term economic and demographic interests).
I. Background

A. West Germany’s Experiment with Migrant Labor: 1955–1973

Germany is no stranger to migrant labor schemes; it began developing temporary labor systems as early as 1870, when Polish workers were recruited to help construct mines and steelworks in the Ruhr valley. More than six decades later, the Nazi regime created a vast network of concentration camps to support its wartime economy, which one scholar deemed “the largest and most exploitative temporary labor system” in Europe. To rebuild its shattered economy after the War, Germany initiated the Gastarbeiter program, which was arguably the largest and most robust recruitment system in Europe. The program began in 1955, when Germany executed a bilateral recruitment agreement with Italy. Similar bilateral agreements with other Mediterranean countries, including Spain, Greece, Turkey, Morocco, Portugal, Tunisia, and Yugoslavia, later expanded the program.

After World War II, the United States invested significant capital in Germany to bolster its economy. Germany was unable, however, to fill newly created positions with national citizens, and turned to migrant labor to meet its needs. Pursuant to the bilateral agreements, the Bundesanhalt für Arbeit (Federal Employment Office) established recruitment offices in foreign countries that screened potential workers for employment in Germany. One of the program’s primary benefits was flexibility: employers had direct control over the number of immi-

37 Id.
38 See id. at 762–68 (discussing migrant worker programs implemented by several Western European states, including Great Britain, France, Belgium, the Netherlands, Switzerland, and Germany, and concluding that Germany’s program was the “most highly organized” system).
39 Id. at 768.
40 Id.
41 Nicole Jacoby, Note, America’s De Facto Guest Workers: Lessons from Germany’s Gastarbeiter for U.S. Immigration Reform, 27 FORDHAM INT’L L.J. 1569, 80 (2004). This Part focuses solely on immigration legislation in the Federal Republic of Germany (West Germany). Indeed, the distinction between West and East German immigration policies is rarely made in scholarly writings. See, e.g., Zimmerman et al., supra note 19, at 8–15 (discussing immigration regulations in Germany in general, and referring only once to the Federal Republic of Germany (West Germany) specifically).
grants hired to fulfill their fluctuating labor needs.\footnote{44 See Jacoby, supra note 41, at 1582–83.} Once work permits expired and employers no longer needed the additional labor, migrant workers were expected to return to their home countries.\footnote{45 See id. supra note 41.} Because residence permits were tied to labor permits, foreigners no longer needed by their German employers were prohibited from remaining in the country.\footnote{46 Id. supra note 41.}

Labor and residence permits granted through the \textit{Gastarbeiter} program were restricted to specific periods of time (often one year maximum), as well as to particular industries or jobs.\footnote{47 Id. supra note 36.} Foreign workers were primarily employed in agriculture or construction.\footnote{48 Id. supra note 42.} While the program later expanded to include other industries, guest workers continued to perform low-skilled, manual roles.\footnote{49 Id. supra note 42.} Other regulations prescribed by the program were intentionally vague, giving employers the discretion to determine which workers would continue to be employed in Germany.\footnote{50 Id. supra note 42.}

Although this appeared to be an ideal solution to the shortage of labor during the postwar years, the \textit{Gastarbeiter} program became difficult for German employers to administer.\footnote{51 Id. supra note 41.} Because the pool of workers was frequently rotating, employers had to train new employees constantly, causing a drain on internal resources.\footnote{52 Id. supra note 41.} As the program progressed, employers also found it increasingly difficult to replace foreign employees with natives.\footnote{53 Id. supra note 41.} Germans were less willing to accept positions previously occupied by foreigners because they typically involved minimal qualifications, paid low wages, and subjected the employees to stressful working conditions.\footnote{54 Id. supra note 41.}

The \textit{Gastarbeiter} program did not, however, grant foreign workers rights equal to those of German citizens; for example, guest workers were denied rights to freedom of movement, assembly, association, place of work, and place of education.\footnote{55 Id. supra note 41.} Given that the work was in-

\footnote{44 See Jacoby, supra note 41, at 1582–83.} See id. \footnote{45 See id. supra note 41.} Id. \footnote{46 Id. supra note 41.} Id. \footnote{47 Id. supra note 41.} Id. \footnote{48 Castles, An Obituary, supra note 36, at 768–69.} Id. \footnote{49 Castles, The Guests Who Stayed, supra note 42, at 519.} Id. \footnote{50 Id. supra note 41.} Jacoby, supra note 41, at 1583–85. \footnote{51 See id. at 1584.} Id. at 1584. \footnote{52 Id. at 1585.} Id. at 1585. \footnote{53 Id. at 1584–85.} Id. at 1583. During this period, Germany enacted the Aliens Law of 1965 in an attempt to recognize the legal status of foreigners. Kay Hailbronner, \textit{Fifty Years of the Basic Law—Migration, Citizenship, and Asylum}, 53 SMU L. Rev. 519, 523 (2000). The law focused
tended to be flexible and temporary, the laws discouraged guest workers from bringing dependents with them. Nevertheless, many guest workers circumvented these regulations to reunite with family members. The government was also unable to prevent guest workers from remaining in Germany after their employment periods expired and the majority of foreign workers who remained in Germany were unable to integrate with the broader society. Xenophobia was rampant in the workplace, hindering the development of friendly employment relations between Germans and foreigners. Trade unions often prohibited foreign workers from joining and even lobbied against foreign workers’ rights. These tensions laid a foundation for the contemporary debate about immigration.


The Gastarbeiter program was finally terminated in 1973 due to decreased labor demand accompanying a worldwide oil crisis and impending recession. At that time, Germany banned the entry of non-European Community (EC) workers in an attempt to reduce the foreign labor force. This general ban on immigration applied only to foreigners seeking employment; it did not restrict the entry of existing residents’ family members or individuals seeking asylum. Several economic and societal changes over the following decades forced policymakers to create exceptions to the ban in the years after its implementation. Immigration policy in Germany therefore developed as a patchwork of exceptions to this general ban, until the first comprehensive immigration legislation took effect in 2005.

largely “on the legal status of aliens under the aspect of protection of public order and security.” Id. It failed, however, to address individual rights of aliens and permanent residents. Id.

56 See Castles, An Obituary, supra note 36, at 769.
57 See id. Although guest workers were discouraged from bringing family members, spouses often entered Germany as workers to reunite with temporary migrants. Id. This inevitably led to family reunification and the “unplanned and unexpected settlement” of foreigners in Germany. Id.
58 See Jacoby, supra note 41, at 1590–95.
59 See id. at 1592–93.
60 See id.
61 See id. at 1595–99.
62 Castles, An Obituary, supra note 36, at 770.
63 Jacoby, supra note 41, at 1587.
64 ZIMMERMAN ET AL., supra note 19, at 10.
65 See id. at 10–11.
66 See id. at 9.
Throughout this period, Germany treated foreigners as temporary visitors, allowing them to stay in the country as long as market needs permitted. As labor shortages surfaced in the domestic market—specifically in agriculture—Germany executed bilateral agreements with non-EC countries allowing temporary immigration of additional contract workers. Legislation also allowed for exceptions that applied to specialty positions, such as “au pairs, specialists of international corporations, scientists and teachers, fashion models, artists/performers, and nursing staff.” Before the enactment of comprehensive immigration legislation in 2005, the recruitment ban contained so many exceptions that legislators called for a complete overhaul of the law.

Until 1990, German laws regulating foreign residents applied primarily to their legal status, without addressing individual rights. In 1990, the Aliens Law was amended to recognize different categories of immigrants and to provide limited individual rights to those who obtained permanent residency. Nevertheless, foreigners admitted for employment under the law remained subject to strict residence and employment requirements. The ability to remain in Germany was subject to the needs of the market; the law did not afford foreigners a legal claim to stay without a permit, and permits were only valid for up to five years.

In 2000, Germany implemented a ground-breaking green card program that allowed highly qualified information technology professionals to immigrate without applying for a specific job. The purpose of the program was to address economic needs associated with globalization and labor shortages in technology sectors. It provided regulations governing temporary, as well as unlimited, admission of third-country nationals. As under prior programs, immigrants were re-

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67 Hailbronner, supra note 55, at 523.
68 Zimmerman et al., supra note 19, at 11–12.
69 Id. at 12.
70 See id.
71 See Hailbronner, supra note 55, at 523.
72 Id.
73 Wank, supra note 27, at 440.
74 See id. at 440, 445.
75 Shachar, supra note 18, at 188.
76 Id.
77 Id. In 2009, the EU passed immigration legislation directed specifically toward third-country nationals seeking highly qualified employment in Europe. See Council Directive 2009/50/EC, On the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment, 2009 O.J. (L 155) 17. The Directive defines third-country nationals as “any person who is not a citizen of the Union within the meaning of
required to meet certain conditions for employment, but the resulting residence permit supplanted other types of permits and generally allowed for longer stays.\textsuperscript{78} This legislation paved the way for political discussions of managed migration and eventually led to the enactment of a new immigration law in 2004.\textsuperscript{79}

II. Discussion

A. Germany’s Immigration Act of 2004

1. Standardizing Admission of Immigrants

The same year Germany implemented its green card program, the Federal Minister of the Interior established the Independent Commission on Migration to Germany (Migration Commission).\textsuperscript{80} Headed by Rita Süssmuth, member of the \textit{Bundestag},\textsuperscript{81} the Migration Commission’s task was to “present recommendations for a future immigration policy.”\textsuperscript{82} Taking into consideration the declining population in Germany— and the negative effects this has on both the labor market and the social security system—the Migration Commission “came to the unequivocal conclusion that Germany must permit selective and managed migration in order to advance its economic growth and global competitiveness.”\textsuperscript{83}

This report ultimately led to the drafting and implementation of a comprehensive Immigration Act (Act)\textsuperscript{84} in 2004.\textsuperscript{85} The Act aims to con-

\begin{footnotesize}
\footnote{Wank, supra note 27, at 444–45.}
\footnote{Shachar, supra note 18, at 188–89.}
\footnote{Shachar, supra note 18, at 188; see also Indep. Comm’n on Migration to Ger., Structuring Immigration—Fostering Integration 2 (2001), available at http://www.bmi.bund.de/SharedDocs/Downloads/EN/Broschueren/Structuring_Immigation_Fostering_Id_14626_en.pdf?\_blob=publicationFile.}
\footnote{The \textit{Bundestag} is the national parliament of the Federal Republic of Germany, the highest legislative branch of the German government. \textit{Function and Role, German Bundestag}, http://www.bundestag.de/htdocs_e/bundestag/function/index.html (last visited May 18, 2012).}
\footnote{Indep. Comm’n on Migration to Ger., supra note 80, at 2.}
\footnote{Shachar, supra note 18, 188; see also Indep. Comm’n on Migration to Ger., supra note 80, at 4.}
\footnote{The \textit{Zuwanderungsgesetz} (Immigration Act) is codified in two separate pieces of legislation: the \textit{Aufenthaltsgesetz} (Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory) (Residence Act), and the \textit{Freizügigkeitsgesetz} (Act on the General Freedom of Movement for EU Citizens) (Freedom of Movement Act). \textit{See Zuwanderungsgesetz, ZUWANDERUNG IN DEUTSCHLAND}, http://www.zuwanderung.de/ZUW/DE/}
\end{footnotesize}
trol migration into Germany based on admission criteria and market needs, while providing specific guidelines for the entry of third-country nationals. The legislation applies only to foreigners without privileged status in Germany, and specific provisions target highly qualified workers such as scientists, senior researchers, and high-level managers in business and industry. The law is modeled after the policies of other immigration countries, such as Canada, and seeks to advance Germany’s economic interests by decreasing barriers to entry for economic immigrants. Through the Act, Germany has recognized that admitting highly skilled third-country nationals is a useful “tool to advance its economic interests and boost global competitiveness.”

Commentators have applauded the legislation as “an act of political courage” and “pioneer[ing] migration policy in the European Union” that will increase Germany’s competitiveness on a global scale. To this end, one of the Act’s major achievements is to acknowledge labor migration as a separate category of immigration, providing additional rights for foreigners accepted as economic migrants. Under previous legislation, economic immigrants were required to obtain separate work and residence permits; the new Act allows economic migrants to obtain one permit for their stay in Germany.

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85 See Shachar, supra note 18, at 188–89.
87 Id. § 1(2). The Act does not apply to the following groups of privileged foreigners: those “whose legal status is regulated by the Act on the General Freedom of movement for EU citizens;” those “who are not subject to German jurisdiction according to the provisions of Sections 18 to 20 of the Judicature Act;” and those “who, by virtue of treaties . . . , are exempt from immigration restrictions.” Id.
88 Shachar, supra note 18, at 189; see Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I § 19.
89 Id. supra note 18, at 190–91.
90 Id. at 190. In lobbying for a selective immigration policy, one German politician admitted, “[w]e need more Canada.” Id. (internal quotations omitted).
91 Zimmerman et al., supra note 19, at 30.
92 Id. at 36.
93 Shachar, supra note 18, at 189.
94 See Zimmerman et al., supra note 19, at 36; see also Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I §§ 18–21 (addressing residence requirements of foreigners entering for employment).
95 Zimmerman et al., supra note 19, at 37; see Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I § 18.
the Act establishes settlement permits for highly qualified third-country nationals, which allow unlimited residence within Germany for the purpose of economic activity. To qualify for settlement permits, third-country nationals must be employed in one of the sectors specifically listed in the Act, and must show that he or she can easily integrate into German culture and live without state assistance.

The Act also applies new regulations to students admitted for study, which may help increase the number of highly qualified foreign employees in Germany. Foreign students may now reside in Germany for up to one year after completing their studies in order to search for adequate employment. Although this regulation may improve the attractiveness of German education to third-country nationals, students will still be subject to priority hiring during the job search, which favors German and EU citizens.

The legislation charges the Bundesagentur für Arbeit (Federal Employment Agency) with granting residence permits to immigrants for the purpose of employment. In deciding whether a third-country national may seek employment in Germany, the Federal Employment Agency is required to evaluate Germany’s current economic needs, particularly the effect the proposed immigration will have on national unemployment. The Federal Employment Agency may approve residence permits for employment if the employment “does not result in any adverse consequences for the labour market” and “no German workers . . . or other foreigners who are entitled to preferential access to the labour market . . . are available for the type of employment concerned.” Additionally, the Federal Employment Agency must establish justifiable grounds for admitting third-country nationals based on labor market and integration policies.

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97 Id.
98 Zimmerman et al., supra note 19, at 36.
99 Id.
100 Id.
102 Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I § 18(1).
103 Id. § 39(2).
104 Id.
The Federal Employment Agency also has the power to refuse residence permits to potential immigrants, though the grounds for refusal are relatively limited under the Act.\textsuperscript{105} Refusal is mandatory if placement or recruitment of a foreigner is unlawful.\textsuperscript{106} Refusal is discretionary, however, if the foreigner has breached certain provisions of the Social Code, the Act to Combat Clandestine Employment, or the Act on Temporary Employment Businesses, or if important personal grounds exist for refusal.\textsuperscript{107}

Although many consider the Act a breakthrough for immigration policy in Germany and the EU,\textsuperscript{108} several commentators have criticized the Act’s specific refusal to include a points system similar to those used by Canada and Australia.\textsuperscript{109} In its original iteration, which the German Constitutional Court rejected on procedural grounds, the Act included a provision that imposed a more robust selection process for permanent labor migration.\textsuperscript{110} To determine whether potential immigrants should be allowed settlement permits, the points system considered “integration-relevant criteria in categories like age, education, work experience, family status, and language ability.”\textsuperscript{111} Nevertheless, after the original legislation failed in the Constitutional Court, the CDU lobbied heavily against the points system, believing it would encourage immigration at a time when foreigners should be restricted from entry due to high unemployment levels in Germany.\textsuperscript{112}

2. Codifying Integration Procedures

In addition to setting standards for the admission of third-country nationals, the Act codifies integration procedures for foreigners entering Germany.\textsuperscript{113} The legislation recognizes the importance of promot-
ing “the economic, cultural, and social” integration of foreigners—an aspect of immigration policy that had been noticeably lacking before 2004. The aim of the integration procedures is to acquaint permanent residents with life in Germany, such that they are able “to act independently in all aspects of daily life, without the assistance . . . of third parties.” Although all foreigners are entitled to participate in an integration course, attendance is only required in three circumstances: if the foreigner is unable to communicate in German at a basic level; if the foreigner receives federal benefits, and the body approving the benefits requires attendance; or if the foreigner has special integration needs. In addition to providing requirements and guidelines for integration courses, the Act establishes sanction mechanisms that “are vital for the effectiveness of the entire project.” In cases where an integration course is required, failure to participate may result in “denial of temporary residence permit renewal, denial of a permanent residence permit despite compliance with all other criteria, [or] denial of fast-track naturalization.”

Pursuant to the Act, the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) (BAMF) has established detailed guidelines for integration courses. At the core of the integration courses is language acquisition, which BAMF believes is essential to successful assimilation into both the labor market and German society more generally. BAMF has also developed an orientation course, which offers basic knowledge of German culture, history, and the legal system. The orientation courses are meant to complement language acquisition and “encourage migrants to think positively about their new home.” BAMF’s detailed guidelines enable teaching insti-

114 Id. § 43(1).
115 See ZIMMERMAN ET AL., supra note 19, at 41.
116 The integration regulations apply only to “foreigners living lawfully in the Federal territory on a permanent basis.” Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I § 43. A foreigner is considered to be a permanent resident if he or she receives a residence permit for “over one year’s duration or [if he or she] has held a residence permit for more than 18 months.” Id. § 44(1).
117 Id. § 43(2).
118 Id. § 44a(1).
119 ZIMMERMAN ET AL., supra note 19, at 43.
120 Id. at 42 (internal quotations omitted).
121 See Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I § 43(3).
124 See id. at 20–23.
125 Id. at 4.
tutions and instructors conducting the courses to develop curricula adapted to their students.\textsuperscript{125}

The Act’s integration provisions represent a significant step forward because they offer nationwide integration courses, which were largely unavailable, or inadequate where available under previous policies.\textsuperscript{126} Yet critics have challenged the Act for not appropriately incentivizing language acquisition and for failing to provide practical advice on how to succeed in the labor market.\textsuperscript{127} One commentator argues that Germany should consider requiring potential immigrants to take a language test before or immediately after entering Germany.\textsuperscript{128} Were an individual to fail, he or she would be required to pay a security deposit that would be reimbursed after successfully completing a language course.\textsuperscript{129} This would provide much stronger incentives for individuals to attend and complete integration courses.\textsuperscript{130} Additionally, critics point out that orientation courses focus solely on “legal, cultural and historical issues” and lack practical advice about navigating the German labor market.\textsuperscript{131} Thus, a foreigner who becomes unemployed may not be adequately prepared to search for work.\textsuperscript{132} To ensure that unemployed immigrants do not become a burden on the state welfare system, critics argue that legislators should consider amending the integration courses to include advice on how to succeed in the labor market.\textsuperscript{133}

Whether or not the statutory integration provisions are robust enough to support the needs of incoming foreigners, the implementation of these provisions has not been able to meet the high demand for integration courses. At the end of October 2010, the \textit{Spiegel Online} reported that integration courses in Germany were completely full, with

\textsuperscript{125} See id. at 5.
\textsuperscript{126} See Zimmerman \textit{et al.}, supra note 19, at 41.
\textsuperscript{127} Id. at 42.
\textsuperscript{128} Id.
\textsuperscript{129} Id.
\textsuperscript{130} Id. at 42–43.
\textsuperscript{131} See id. at 42; cf. Fed. Office for Migration & Refugees, \textit{supra} note 121, at 20–23 (outlining the objectives of orientation courses, which include understanding the German State, fostering a positive attitude toward Germany, providing information on rights and duties, enabling immigrants to acquire information independently, promoting participation in social life, and acquiring intercultural competence; neither the objectives nor the content of courses address the job-seeking process for the unemployed).
\textsuperscript{132} See Zimmerman \textit{et al.}, \textit{supra} note 19, at 42.
\textsuperscript{133} See id.
waitlists exceeding 9,000 willing participants.\textsuperscript{134} Although 140,000 individuals were participating in 16,000 integration courses at the time, the infrastructure for integration courses was unable to satisfy the demand for language training.\textsuperscript{135} The quality of integration courses has suffered as a result, causing the Commissioner for Migration, Refugees, and Integration, Maria Böhmer, to propose reforms to strengthen the integration process.\textsuperscript{136} Among her recommendations, Böhmer has suggested that language courses be offered via the Internet by better qualified instructors.\textsuperscript{137} Böhmer has also indicated that the Ministry of the Interior has set aside €15 million to address deficiencies in the integration process.\textsuperscript{138}

The Immigration Act of 2004 represents a significant step forward for Germany, establishing labor migration as a legitimate category of immigration and providing expedited settlement permits for third-country nationals meeting the Act’s requirements.\textsuperscript{139} That the Act separates highly qualified workers from immigrants seeking other types of immigration—such as asylum and family reunification—indicates that Germany has recognized the importance of promoting economic migration as a long-term solution to labor market problems such as demographic decline.\textsuperscript{140} These economic goals parallel the immigration policies later adopted by the European Union.\textsuperscript{141}

\textsuperscript{134} See Integrationskurse für Migranten sind überlaufen, SPIEGEL ONLINE (Ger.) (Oct. 23, 2010), http://www.spiegel.de/politik/deutschland/0,1518,724960,00.html.

\textsuperscript{135} See id.

\textsuperscript{136} See Böhmer will Integrationskurse verstärken, DER TAGESSPIEGEL (Ger.) (July 8, 2010), http://www.tagesspiegel.de/politik/boehmer-will-integrationskurse-verstaerken/1877884.html; Qualitätsmängel bei Integrationskursen?, BADISCHZEITUNG (Ger.) (Mar. 14, 2011), http://www.badische-zeitung.de/deutschland-1/qualitaetsmaengel-bei-integrationskursen-42627330.html.

\textsuperscript{137} Qualitätsmängel bei Integrationskursen?, supra note 136.

\textsuperscript{138} Böhmer will Integrationskurse verstärken, supra note 136.

\textsuperscript{139} See supra text accompanying notes 94–97.

\textsuperscript{140} See supra text accompanying notes 34, 88–90. Separate provisions of the Act address admission for asylum seekers, Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I §§ 22–26, and those seeking family reunification, id. §§ 27–34.

\textsuperscript{141} See discussion infra Part II.B.
B. The European Union

1. Approach to Economic Migration

Before Germany revamped its immigration policy through the Immigration Act of 2004, the European Council\textsuperscript{142} (Council) set a strategic goal, known as the Lisbon Strategy, to become a more competitive, knowledge-based economy.\textsuperscript{143} Although the Lisbon Strategy does not directly address the need to harmonize member states’ immigration policies, it focuses heavily on developing an information-based society with a specific focus on promoting research and development to generate economic growth.\textsuperscript{144} Subsequent meetings of the European Council in 2003 and 2004 expanded on these ideas, exploring the possibility of increasing immigration from third countries to meet demands of the labor market.\textsuperscript{145}

\textsuperscript{142} The European Council is a formal institution of the EU, consisting of the heads of state of each member state, as well as the President of the European Commission; it is tasked with “defin[ing] the general political directions and policies” of the EU. See Consolidated Version of the Treaty on European Union art. 15(2)–(3), Mar. 30, 2010, 2010 O.J. (C 83) 13 [hereinafter TEU].

\textsuperscript{143} Lisbon Presidency Conclusions, \textit{supra} note 23, para. 5. The initiatives associated with the EU’s goal of becoming more competitive globally became known as the Lisbon Strategy, under which a wide variety of policies have been adopted since March 2000. \textit{i2020 in Context: ICT and Lisbon Strategy}, Eur. Info. Soc’y, \url{http://ec.europa.eu/information_society/eeurope/i2010/ict_and_lisbon/index_en.htm} (last visited May 18, 2012).

\textsuperscript{144} See Lisbon Presidency Conclusions, \textit{supra} note 23, paras. 5–19.

\textsuperscript{145} See Presidency Conclusions, Brussels European Council, Annex I, Part III, § 1.4 (Nov. 4–5, 2004) [hereinafter Brussels Presidency Conclusions], available at \url{http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/82534.pdf} ("Legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contributing to the implementation of the Lisbon strategy."); Presidency Conclusions, Thessaloniki European Council, para. 30 (June 19–20, 2003), available at \url{http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/76279.pdf} ("In order to respond to [demographic and economic challenges facing the EU], the European Council stresses the need to explore legal means for third-country nationals to migrate to the Union, taking into account the reception capacity of the member states, within the framework of an enhanced cooperation with the countries of origin which will prove beneficial for both sides."). The EU first acquired competence to regulate in the area of migration under the 1997 Treaty of Amsterdam. European Commission, \textit{A Common Agenda for Integration: Framework for Integration of Third-Country Nationals in the European Union}, at 12, COM (2005) 389 final (Sept. 1, 2005) [hereinafter \textit{A Common Agenda for Integration}]. Article 79(1) of the current Treaty on the Functioning of the European Union allows the EU to “develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows [and] fair treatment of third-country nationals residing legally in Member States.” Consolidated Version of the Treaty on the Functioning of the European Union art. 79(1), Mar. 30, 2010, 2010 O.J. (C 83) 47 [hereinafter TFEU]. To achieve this provision’s goals, the European Parliament and the Council have the authority to adopt measures regarding “the conditions of entry and residence, and
Against this backdrop, the European Commission\textsuperscript{146} (Commission) sought to develop policies to promote economic migration of third-country nationals into the EU.\textsuperscript{147} In addition to the stated goals of the Council, the Commission recognized the need for long-term immigration policies to address demographic decline and aging populations in European countries.\textsuperscript{148} Economic migration, the Commission noted, would serve both as a solution to demographic decline and a complement to the Lisbon objective to increase European competitiveness.\textsuperscript{149} To this end, the Commission stressed the need for a common European policy regarding economic immigrants to meet the needs of the internal market and ensure Europe’s prosperity.\textsuperscript{150} As part of this policy, the Commission sought to attract third-country nationals by guaranteeing both their legal status and their right to assistance during the integration process.\textsuperscript{151} Recognizing the traditional sovereignty of member states in the area of immigration, the Commission also suggested that member states maintain the ability to set quotas on the number of immigrants admitted.\textsuperscript{152}

Ultimately, the Commission proposed that economic migration policies should be harmonized across member states and offered several options that could be implemented at the EU level.\textsuperscript{153} After several years of discussion within the EU, the Council adopted Directive 2009/50/EC (Directive), outlining “the conditions of entry and residence of third-country nationals for the purposes of highly qualified standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification.” \textit{Id.} art. 79(2)(a).

\textsuperscript{146} The European Commission is a formal institution of the EU with “legislative, administrative, executive, and judicial powers.” \textit{See} Paul Craig \\& Gráinne de Búrca, \textit{EU Law: Text, Cases, and Materials} 43 (4th ed. 2008). It consists of nationals of member states, but represents the EU as a whole as an independent body. \textit{See} id. at 39; \textit{see also} TEU art. 17.


\textsuperscript{148} \textit{Id.}

\textsuperscript{149} \textit{Id.}

\textsuperscript{150} \textit{Id.} at 4.

\textsuperscript{151} \textit{Id.}

\textsuperscript{152} \textit{Id.}

\textsuperscript{153} \textit{Green Paper on Economic Migration, supra} note 147, at 4, 5–12. The Commission offered suggestions on the degree to which immigration policies should be harmonized among member states, \textit{see id.} at 5–6, options for admissions procedures, \textit{see id.} at 6–9, application procedures for residence permits, \textit{see id.} at 9, rights of third-country nationals, \textit{see id.} at 10, and potential measures to accompany immigration policies, such as integration procedures, \textit{see id.} at 11–12.
employment.”

Rather, it establishes the general aims of the EU: to harmonize “[m]easures to attract and retain highly qualified third-country workers” in order to “enhance the knowledge-based economy in Europe.” The Directive recognizes the importance of making the EU more attractive to highly qualified third-country nationals, and to that end establishes “a fast-track admission procedure” and grants “equal social and economic rights as nationals of the host Member State in a number of areas.”

The Directive establishes the EU Blue Card, which provides “a simplified, accelerated, and standardized admissions process” for third-country nationals to enter member states. It applies to persons engaged in highly qualified employment, broadly defined as having “the required adequate and specific competence, as proven by higher professional qualifications.” Third-country nationals may be admitted as Blue Card holders under the following conditions: they must hold a valid work contract or binding job offer for highly qualified employment lasting at least one year; they must possess valid travel documents, including a visa and residence permit; and they must provide evidence of having health insurance as required by the individual member state. The narrowly defined grounds for refusing a Blue Card application are limited to fraudulent or falsified documentation or employer

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155 According to the TFEU, “[a] directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.” TFEU art. 288 (emphasis added). Unlike other types of legislation, member states must pass national implementation measures pursuant to the aims of the directive, and member states maintain significant discretion with regard to the implementation process. See Craig & de Búrca, supra note 146, at 279–80. Failure of member states to implement directives may cause EU policies and goals to suffer. Id. at 280. Although Germany is not per se required to implement Directive 2009/50/EC, failure to do so may result in adverse consequences if existing German legislation achieves effects that are contrary to the aim of the Directive. See id. at 282 (noting that member states may not adopt measures likely to interfere with the aim of a directive). For a more detailed discussion of the enforceability of directives, see id. at 279–303.


157 Id. at 17–18.


160 Id. at 22.
sanctions. Nevertheless, member states maintain the ability to set quotas on the number of third-country nationals admitted under the Directive.

In addition to streamlining the process for application and entry into member states, the Directive contains extensive provisions on rights accorded to Blue Card holders. For example, after two years of employment as a Blue Card holder, third-country nationals have equal access to the labor market as nationals of member states. If the Blue Card holder becomes unemployed, the work permit may not be revoked unless unemployment exceeds three consecutive months. Additionally, Blue Card holders enjoy equal treatment in a number of areas, including working conditions, education and vocational training, freedom of association with labor unions, and free access to the entire territory of the member state. Family members are allowed to join Blue Card holders in the member states, and long-term resident status is relatively easy to obtain after a period of continuous residence within the EU. These benefits are meant to attract highly qualified workers in the interest of increasing human capital in the EU.

Nevertheless, both the Treaty on the Functioning of the European Union and the Directive preserve the sovereignty of member states to determine the volume of admission of third-country nationals. Additionally, the Directive provides that each member state may reject Blue Card applicants where the employment vacancy in question could be filled by a citizen of the member state or the EU.

2. Approach to Integration of Third-Country Nationals

Alongside the common migration policy, the EU has begun to develop common integration policies for third-country nationals, recognizing that increasing immigration presents integration challenges

161 Id. at 23.
162 Id.
163 See id. at 25–27.
164 Id. at 25.
166 Id. at 25–26.
167 See id. at 26–27.
168 Id. at 17.
169 See TFEU art. 79(5); Directive 2009/50/EC, supra note 154, at 23.
170 Directive 2009/50/EC, supra note 154, at 23. Thus, EU citizens receive preferential treatment for employment vacancies within the Union. Id.
common among all member states. In November 2004, the Council established the Hague Programme, which sought to develop Europe-wide policies to promote equal opportunities for and prevent isolation of immigrants. Rather than establish detailed integration procedures, such as requiring language and orientation courses, the EU has suggested broad policies for, offered best practices from, and provided monetary support to member states for integration measures.

The Commission’s first attempt to establish a European approach to integration is outlined in its 2005 Communication on a Common Agenda for Integration (Communication). At the time, member states approached integration through a wide variety of policies. Based on a review of these varied approaches, the Communication offers general guidance for common integration policies built on basic European principles of “fundamental rights, nondiscrimination, and equal opportunity.” In addition to supporting language acquisition and cultural education, the Communication recommends that member states promote interaction between immigrants and nationals, and preserve the diverse cultural practices that immigrants contribute to member states.

The Commission rightly recognized that “[l]egal migration and integration are inseparable and should mutually reinforce one another.” Just as the EU has streamlined admission of third-country nationals, standardized integration procedures could maximize the

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171 See A Common Agenda for Integration, supra note 145, at 3; Brussels Presidency Conclusions, supra note 145, at Annex I, Part III, § 1.5.
174 See A Common Agenda for Integration, supra note 145, at 4. As of July 2011, all actions presented in this Communication had been completed on a European level. See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Agenda for the Integration of Third-Country Nationals, at 2, COM (2001) 455 final (July 20, 2011) [hereinafter European Agenda for Integration]. However, the principles of the Communication are still applicable to the current social and economic context in Europe. See id.
175 A Common Agenda for Integration, supra note 145, at 3.
176 Id.
177 See id. at 9.
178 Id. at 14.
effectiveness of integration in each member state.\textsuperscript{180} Although member states’ interest in maintaining sovereignty over policies that primarily affect internal borders may outweigh the European interest in common integration procedures,\textsuperscript{181} the EU offers guidance for integration measures currently lacking in German policy.\textsuperscript{182} Placing greater emphasis on mutual toleration between immigrants and nationals, however, may strengthen Germany’s ability to attract third-country nationals and secure economic growth amid the global race for talent.

\section*{III. Analysis}

\subsection*{A. The Global Race for Talent}

As Cem Özdemir, former German representative to the European Parliament, noted, “experts have repeatedly argued that Germany will face a near-term shortage of qualified labor, and that the country must prepare itself to recruit highly qualified immigrants, even if this means starting out gradually.”\textsuperscript{183} A significantly declining birthrate and corresponding aging population are two of the most pressing labor issues currently facing Germany.\textsuperscript{184} Germany’s Immigration Act of 2004 secured measures to attract highly qualified human capital, which, if correctly executed, will eventually relieve this socio-economic strain on the country.\textsuperscript{185} The Act has thus entered Germany into the global race for human capital.\textsuperscript{186} Since the late twentieth century, countries worldwide have been amending their immigration policies—such as those established in Germany and the EU—to target well-educated foreigners, especially those working in technological industries.\textsuperscript{187} This trend has

\textsuperscript{180} See \textit{A Common Agenda for Integration}, supra note 145, at 14 (suggesting that the EU and member states should work together to maximize the impact of EU integration policies).


\textsuperscript{182} Compare \textit{A Common Agenda for Integration}, supra note 145, at 5–10 (offering integration strategies emphasizing mutual accommodation and two-way communication between immigrants and member state nationals), \textit{with} \textit{Fed. Office for Migration & Refugees}, supra note 121, at 6–23 (outlining integration procedures focused solely on enabling immigrants to achieve self-sufficiency in German society).

\textsuperscript{183} Özdemir, supra note 26, at 222.

\textsuperscript{184} See \textit{ZIMMERMAN ET AL.}, supra note 19, at 84, 104; Özdemir, supra note 26, at 223.

\textsuperscript{185} See \textit{ZIMMERMAN ET AL.}, supra note 19, at 84.

\textsuperscript{186} See Shachar, supra note 18, at 191.

\textsuperscript{187} See id. at 151.
resulted in a heated “race for talent,” with countries jockeying for preferred position among the most talented minds in the world.\textsuperscript{188}

The race for talent arises where economic growth increasingly depends on human capital, as opposed to trading goods and services.\textsuperscript{189} Rather than low-skilled, manual labor, countries seek immigrants with “talent, ambition, and expertise, [which] are the \textit{sine qua non} for maintaining a competitive advantage in the knowledge-based global economy.”\textsuperscript{190} To attract highly qualified foreigners, countries have not only relaxed immigration requirements, but have also created non-economic incentives related to immigrants’ desire for “the security and prosperity that is attached to membership in a stable, democratic, and affluent polity.”\textsuperscript{191} Countries participating in the race for talent thus assume that highly qualified workers—that is, talented foreigners in technological industries—will ultimately choose to immigrate to countries offering the ability to settle long-term.\textsuperscript{192} As a result of this global race for talent, countries have begun formulating immigration policies in reaction to those of competing countries.\textsuperscript{193}

The race for talent is further evidenced by the growing importance of technology in our economy.\textsuperscript{194} Technology is the starting point for long-term economic development.\textsuperscript{195} Historically, economic theorists have understood that technology plays a vital role in economic growth, and its importance has become increasingly apparent in the twenty-first century.\textsuperscript{196} High-tech industries promote generation of new products, new wealth, and new jobs, thus sustaining growth.\textsuperscript{197} Technological industries would not exist, however, without the talent to support them.\textsuperscript{198} Within current knowledge-based economies, that talent, in the form of human capital, is key to driving economic development.\textsuperscript{199} Indeed, some scholars believe that geographic regions that combine

\textsuperscript{188} See id. at 153.
\textsuperscript{189} See Florida & Tingali, supra note 22, at 12.
\textsuperscript{190} Shachar, supra note 18, at 150.
\textsuperscript{191} Id. at 164.
\textsuperscript{192} See id.
\textsuperscript{193} See id. at 153–155.
\textsuperscript{194} See Florida & Tingali, supra note 22, at 12.
\textsuperscript{195} Id.
\textsuperscript{196} Florida & Tingali, supra note 22, at 12, 19; see also Richard Florida, The Rise of the Creative Class 15–17 (2002) (observing the heated debate over technology in the modern world).
\textsuperscript{197} Florida & Tingali, supra note 22, at 19.
\textsuperscript{198} See id. at 12.
\textsuperscript{199} Id.
technology and talent are well-positioned for long-term economic growth.\footnote{See Florida, supra note 196, at 249–52.}

A 2004 study of European competition for human capital indicated that Germany is currently well-positioned to offer the technological employment opportunities that are foundational for economic growth.\footnote{See Florida & Tingali, supra note 22, at 21 fig.6. Richard Florida studies “economic competitiveness, demographic trends, and cultural and technological innovation.” About Richard Florida, CREATIVE CLASS GROUP, http://www.creativeclass.com/richard_florida/about_richard (last visited May 18, 2012). His research focuses on the correlation between long-term economic growth and the “creative class,” a social class of individuals in knowledge-based industries such as science, research and development, and entertainment. See Florida, supra note 196, at xi, 68–69. The type of immigrant targeted in German immigration legislation closely aligns with Florida’s conception of the “creative class,” as both frameworks promote employment in similar knowledge-based industries. Compare Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, Bundesgesetzblatt, Teil I [BGBl. I] § 19 (Ger.), translation available at http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Englisch/Act_of_Movement_for_EU_Citizens.pdf (defining highly qualified persons as, in part, scientists, teachers, and specialists), with Florida, supra note 196, at 69 (including scientists and researchers among the “creative class”). Florida’s “3T” framework for economic growth—emphasizing the importance of talent, technology, and tolerance—provides an appropriate framework for analyzing Germany’s potential success in the race for talent. See Florida & Tingali, supra note 22, at 12.} Only Sweden and Finland spend more on research and development than Germany,\footnote{See Florida & Tingali, supra note 22, at 12.} and only Finland and the Netherlands submit more high-tech patent applications per million people.\footnote{See id. at 23 fig.7.} These data suggest that high-tech and innovative industries such as biotechnology and information technology already thrive in Germany.\footnote{See id. at 19–23.} Although Germany ranks high regarding technology, however, it falls behind five European countries with respect to scientific talent.\footnote{See id. at 17 fig.4 (showing Finland, Sweden, Denmark, France, and Belgium employ more researchers per thousand workers than Germany).} Comparing these data indicate that Germany already offers technological opportunities attractive to highly qualified workers, though it does not have the talent to fill these positions.\footnote{Compare id. at 19–23, with id. at 15–17.}

The Immigration Act of 2004 may respond to this talent gap by easing the admissions process for highly qualified third-country nationals.\footnote{See supra text accompanying notes 88–98.} By passing this comprehensive immigration legislation, Germany has recognized the need to address long-term demographic decline by encouraging economic migration.\footnote{See Zimmerman et al., supra note 19, at 44.} The admissions procedures out-
lined in the Act allow Germany to consider current economic needs—including filling employment positions for talented immigrants, such as scientists and researchers—while offering “something more” for immigrants, such as opportunities for long-term settlement. Moreover, the Act is closely aligned with EU policy as outlined by the Council Directive of 2009, but better addresses market needs and incentive measures to attract highly qualified workers. Germany’s Act focuses efforts on recruiting a more narrowly defined set of highly qualified workers and offers an immediate opportunity for long-term residence in certain cases. The Act thus promotes economic migration based on the most significant areas of growth: scientific and technological development.

Germany’s fast-track admissions procedure may be part of that “something more” that could attract potential immigrants. Through the Directive, Blue Card holders must enter the EU with a contract for one year’s employment. Nevertheless, Blue Card holders do not qualify for long-term residence in the EU until after five years of continuous legal residence within the Union. Germany may thus be more attractive to highly qualified third-country nationals than other European countries, because German law offers immediate opportunity for long-term residence through an expedited settlement permit. Moreover, as long-term residents of a member state receive the same rights as nationals, the rights of foreigners living in Germany attach more quickly than in other European countries.

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210 Compare Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I §§ 1, 19 (stating that the purpose of the Act is to enable immigration based on Germany’s labor market needs, and specifically targeting highly qualified third-country nationals), with Directive 2009/50/EC, supra note 154, at 17–18 (“[The Directive] is intended to contribute to achieving [the Lisbon Strategy objectives] by fostering the admission and mobility—for the purposes of highly qualified employment—or third-country nationals”).
211 Compare Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I § 19 (offering immediate settlement permits to a narrowly defined set of highly qualified workers), with Directive 2009/50/EC, supra note 154, at 21, 26 (providing long-term resident status for broadly defined Blue Card holders after five years of legal residence).
213 See id.
214 See id. §§ 9(1), 19.
216 See id. at 26.
long-term residence program is therefore an added incentive for third-country nationals to settle in Germany.\footnote{219}{See Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I §§ 9(1), 19.}

Efforts to attract human capital, however, must be accompanied by effective measures to retain human capital.\footnote{220}{Cf. Zimmerman et al., supra note 19, at 83 (suggesting that long-term immigration policy is necessary to address the potential effects of labor force decline).} While attracting human capital is effected through immigration policy, retaining human capital is effected through integration policy.\footnote{221}{Cf. id.} With so many countries involved in the race for talent, highly qualified individuals can be more selective in deciding where to immigrate for employment.\footnote{222}{Cf. id. at 164–65 (proposing that “something else,” in addition to economic consideration, is necessary to attract and retain highly qualified immigrants).} Robust procedures focused on long-term integration, specifically those that promote tolerance, will thus increase the likelihood that highly qualified workers will remain in the country they initially chose.\footnote{223}{Cf. id. at 200.}

B. Integration Policies Must Reflect Tolerance

Germany cannot rely on technology alone to succeed in the global race for talent; it must also cultivate tolerance for diversity to remain economically competitive.\footnote{224}{Cf. Florida, supra note 196, 252–55 (discussing the economic success of geographic regions that are tolerant toward outsiders, including immigrants); Florida & Tingali, supra note 22, at 12 (“Tolerance . . . critically affects the ability of nations and regions to mobilize their own creative capacities and compete for creative talent.”).} Scholars have argued that “openness to immigration is the cornerstone of innovation and economic growth,” and have suggested that countries such as Germany and Japan have declined in economic prosperity due to primarily homogenous populations.\footnote{225}{Florida, supra note 196, at 253.} On the other hand, the United States has prospered in the global economy precisely because it is open to and tolerant of innovative people from around the world.\footnote{226}{Id. (citing G. Pascal Zachary, The Global Me (2000)).} The success of the United States can also be broken down by metropolitan area: immigrants constitute nearly twenty-five percent of the population of Silicon Valley, the world’s leading center of technology.\footnote{227}{Id. at 252.} Although tolerance of immigrants may not directly cause economic growth, regions that are highly
tolerant of foreigners create low barriers of entry, which increases the likelihood of innovation and growth.\textsuperscript{228}

Promoting tolerance may be a significant challenge for Germany, especially given the current state of national discourse about immigration and multiculturalism.\textsuperscript{229} Germany’s difficulty with welcoming highly qualified third-country nationals is evidenced by the legislative history of the Immigration Act.\textsuperscript{230} Whereas the initial draft of the Act would have immediately offered unlimited settlement permits to immigrants meeting a broad range of “integration-relevant criteria,”\textsuperscript{231} the Act currently in force narrows the ability of immigrants to receive settlement permits upon entry.\textsuperscript{232} Additionally, the Act’s integration policies focus solely on the ability of foreigners to assimilate into German society.\textsuperscript{233} Language and cultural studies, while important, only address half of the problem.\textsuperscript{234} Germany must also attempt to foster tolerance.\textsuperscript{235} Ultimately, Germans themselves must believe that highly qualified third-country nationals are an important addition to German society.\textsuperscript{236}

The EU guidelines for integration, while not binding on Germany, provide Germany with a policy framework to achieve the successful integration of highly qualified third-country nationals.\textsuperscript{237} In addition to

\begin{footnotes}
\item[228] See id. at 250.
\item[229] See supra text accompanying notes 1–17.
\item[230] Özdemir, supra note 26, at 222–23.
\item[231] Id. at 222.
\item[232] See Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I § 19. Although the conditions under which the Act allows settlement permits are more restricted than those initially drafted, the Act still provides a better opportunity for immigrants to receive long-term residence than the EU Directive. See supra text accompanying notes 110–111, 215–217.
\item[233] See Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I § 43; see also Fed. Office for Migration & Refugees, supra note 121, at 4–5 (outlining standardized procedures for integration courses).
\item[234] See Fed. Office for Migration & Refugees, supra note 121, at 4.
\item[235] Cf. Florida & Tingali, supra note 22, at 12 (“[Tolerance critically affects the ability of nations . . . to mobilize their own creative capacities and compete for creative talent. . . . This is a critical dimension of economic competitiveness today.”).
\item[236] Cf. Özdemir, supra note 26, at 223 (“The points system also could have helped to change the image of migrants in Germany. If highly qualified Turkish immigrants had come to Germany, this probably would have dispelled several common stereotypes about Turks or Muslim immigrants.”); Habermas, supra note 7 (“The question is this: Does participation in democratic procedures have only the functional meaning of silencing a defeated minority, or does it have the deliberative meaning of including the arguments of citizens in the democratic process of opinion- and will-formation?”).
\item[237] See A Common Agenda for Integration, supra note 145, at 5–10; European Agenda for Integration, supra note 174, at 4–10. See generally 2010 Handbook, supra note 173; Director-
\end{footnotes}
recommending integration measures targeted solely toward the immigrant population, the EU guidelines emphasize the importance of mutual accommodation and intercultural dialogue between immigrants and national citizens.238 The Justice and Home Affairs Council (JHA), a configuration of the Council of the European Union239 consisting of justice ministers and interior ministers of member states, adopted mutual accommodation and intercultural dialogue as basic principles of integration.240 These principles recognize that member states must develop societies that both accept immigrants and make them feel welcome.241 The JHA explained mutual accommodation as “demand[ing] the participation not only of immigrants and their descendants, but of every resident.”242 Similarly, the JHA emphasized that integration generally occurs on a local level, where frequent interactions between immigrants and nationals are encouraged.243 Based on these guidelines, two possible measures stand out as particularly likely to increase integration in Germany.

1. Promoting Thoughtful Public Discourse

In the most recent Handbook on Integration, the EU emphasizes the importance of dialogue platforms to foster the principle of mutual accommodation.244 Increasing diversity in a small community may have negative impacts on the native and immigrant populations by breeding individualism and isolation, two societal characteristics that negatively affect integration.245 Thus, to promote positive integration, the Hand-
book recommends policymakers establish dialogue platforms in specific local contexts, such as schools, neighborhood associations, and workplaces.\textsuperscript{246} By focusing on small communities, this policy gives immigrants and natives an opportunity to interact on a personal level and engage in a two-way learning process more likely to establish support networks and lead to successful integration.\textsuperscript{247}

The heated debate about immigration currently permeating national German media may hinder the integration process by discouraging mutual accommodation.\textsuperscript{248} Prominent politicians have presented multiculturalism as simply unworkable in German society.\textsuperscript{249} As one distinguished German philosopher noted, this type of dialogue “divert[s] the social anxieties of . . . voters into ethnic aggression against still weaker social groups.”\textsuperscript{250} The German government has already addressed the difficulty of multiculturalism by requiring integration courses for newly arrived immigrants.\textsuperscript{251} Thus, political discourse discouraging multiculturalism risks negating current efforts to promote integration; negative conversation impedes integration by fueling German nationals’ growing resentment toward immigrants.\textsuperscript{252} This weakens social networks that are particularly important for integration, and negatively impacts immigrants relying on these networks to ease the integration process.\textsuperscript{253} Furthermore, as immigrants are growing consumers of media in Europe, negative portrayal of immigrant groups in national media may further isolate them from society at large.\textsuperscript{254}

Healthy public discourse is best achieved on a small, community level, so that leaders can focus on the specific integration needs facing immigrants and national citizens.\textsuperscript{255} To foster productive dialogue, the conversation must move from mainstream media into these smaller fo-

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\item \textsuperscript{246} See id. at 81–82.
\item \textsuperscript{247} See id. at 83, 91 (suggesting that participants in dialogue platforms are more likely to trust and accommodate one another due to open and respectful exchange of information).
\item \textsuperscript{248} See supra text accompanying notes 1–17.
\item \textsuperscript{249} See supra text accompanying notes 1–17.
\item \textsuperscript{250} See Habermas, supra note 7.
\item \textsuperscript{251} See Aufenthaltsgesetz [AufenthG] [Residence Act], July 30, 2004, BGBl. I §§ 43–44a.
\item \textsuperscript{252} See Habermas, supra note 7 (“This discourse [promoting German Leitkultur] is in turn reinforcing trends toward increasing xenophobia among the broader population.”).
\item \textsuperscript{253} Cf. 2010 HANDBOOK, supra note 173, at 79 (“This weakening [of social and associational networks] has an impact on the integration of newcomers, who are hit the hardest. During the settlement process, newcomers tend to rely on the existing social and associational networks, more than natives or established groups, in order to make up for their lack of social capital in the country.”)
\item \textsuperscript{254} See id. at 27.
\item \textsuperscript{255} See id. at 83.
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rums. This is not to say that mainstream media must refrain from covering immigration and integration altogether; rather, national leaders should promote local conversation consistent with national integration policy. As the mainstream media serves to inform and educate the public, it should provide “a fair and balanced portrayal of immigrants,” rather than fuel hostilities.

Improving the immigration discussion in national media would allow policymakers to focus on promoting conversation on a local level. Dialogue should be tailored to meet the specific needs of a narrower society. By encouraging a conversation at a manageable local level, both immigrants and natives would have an opportunity to engage in intercultural dialogue that fosters trust, respect, and tolerance. Such a dialogue would in turn strengthen the social networks essential to successful integration and assist foreigners in becoming self-sufficient in German society—an essential component of the Immigration Act.

2. Provide Integrated Housing Schemes

Integrated housing schemes may also support the principle of intercultural dialogue, which focuses on “enhanc[ing] the interactions between immigrants and Member State citizens.” In the 2007 Handbook on Integration, the Commission provided policy guidelines for providing third-country immigrants with housing opportunities. Like

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256 Cf. id. at 32 (discussing an effective media strategy and suggesting that integration officials should focus on activities and past experiences in local geographic areas for inspiration in framing their message).

257 See id. at 31–34 (offering strategies for creating an effective media strategy aligned to the interests of media organizations as well as national interests in integration).

258 Id. at 28.

259 Cf. 2010 Handbook, supra note 173, at 31–32 (discussing the effectiveness of media strategies in promoting national as well as local integration agendas).

260 See id. at 83.

261 See id. at 87. The Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) has promoted Migrantenorganisationen (immigrant organizations) as an important integration resource for immigrants, but the organizations are targeted solely at immigrants and not the native population. See Bundesamt für Migration und Flüchtlinge, 2. Fachtagung: “Kompetenzen nutzen—Migrantenorganisationen stärken” [Second Conference: “Strengthening Immigrant Organizations”] 6 (May 7, 2010).

262 See Aufenthaltsgesetz [AufenthG] [Residence Act], July 30, 2004, BGBl. 1 § 43(2); Fed. Office for Migration & Refugees, supra note 121, at 4.

263 JHA Press Release, supra note 241, at 22.

264 See 2007 Handbook, supra note 237, at 31–46. The 2007 Handbook on Integration primarily addresses housing policies designed to ensure nondiscrimination against immigrant minorities, particularly where immigrants require affordable housing. See id. at 32–36. This Note focuses specifically on mixed housing affordable for middle class immi-
community-oriented dialogue platforms, integrated housing provides opportunities for immigrants and natives to interact on a personal level, strengthening the social networks on which immigrants rely for successful integration.265

According to a 2008 report on segregation in Germany, thirty to forty percent of immigrants in German cities live in “ethnic neighborhoods”—that is, segregated from national citizens.266 As indicated by the Commission, this isolation from broader German society may hinder the process of integration for immigrants.267 Additionally, a lack of interaction between natives and immigrants may fuel resentment from the native population toward unfamiliar immigrant cultures.268 To counteract the negative impact of isolation, Germany may consider enacting policies to promote integrated housing schemes, such as tax incentives for private developers or property owners.269 Integrated housing would serve not only to increase immigrants’ housing choices and combat nondiscrimination, but it would also foster the intercultural dialogue promoted by the EU.270 This in turn would also support the German integration goal of promoting self-sufficiency for immigrants.271
Conclude

When it was enacted in 2004, Germany’s Immigration Act was a bold legislative move intended to consolidate and unify a wide variety of disjointed immigration policies from 1973 forward. The Act not only achieved this goal, but also refocused Germany’s efforts to attract immigrants in the global race for talent. Through the Act, Germany is poised to attract the best and brightest minds from around the world. Nevertheless, success in the race for talent depends on much more than attracting well-educated, talented immigrants for knowledge-based industries. The ability to retain highly qualified immigrants is especially important for Germany, a country that faces steep demographic decline in the coming decades. Retaining these in-demand immigrants requires that Germany make significant efforts to amend its integration policies. Current discourse questioning the viability of multiculturalism must give way to discussions promoting mutual respect and understanding. Community-oriented dialogue platforms and integrated housing schemes are two concrete policy measures Germany may implement to strengthen integration procedures. Most importantly, though, guidelines for integration must focus on developing mutual tolerance between immigrants and natives to pave the way for economic growth and stability.