

A Comparison of Integration Programmes in the EU

Trends and Weaknesses

Sergio Carrera

Abstract

This paper offers an overview of integration programmes for immigrants in a selected group of EU member states. The main trends and similarities are assessed and broadly compared. As the paper argues, in the national arena there appears to be a distinct move in the direction of integration programmes with a mandatory character. Obligatory participation in such programmes is now a regular feature of both immigration and citizenship legislation, and a precondition for having access to a secure juridical status.

In the first section, the paper mainly addresses the questions of: Who are the target groups and what is the scope of the integration programmes? What are the related enforcement mechanisms and sanctions? What is the link between immigration, integration and citizenship, and what effects (positive or negative) are emerging from that relationship? The second section looks at the evolving EU framework on the integration of immigrants, where a struggle is taking place in two parallel arenas. The first is over the competence to determine policy in this field – at the national versus the EU level (principle of subsidiarity). The second struggle concerns the overall approach, where substantial differences appear between the EU's framework on integration and its Common Basic Principles for Immigrant Integration Policy (soft policy), and the actual legal acts involved (hard policy).

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An Integrated Project Financed by
the Sixth EU Framework Programme



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ISBN 92-9079-620-0

Available for free downloading from the CEPS website (<http://www.ceps.be>)

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Contents

Introduction	1
1. Integration programmes in the EU	2
1.1 National models and programmes for the integration of immigrants	2
1.2 The mandatory nature of integration programmes and courses	6
1.3 The personal scope.....	10
1.4 Enforcement of integration programmes and related sanctions.....	11
1.5 The nexus between immigration, integration and citizenship.....	12
2. An EU framework on the integration of immigrants: A two-level struggle.....	13
Conclusions	19
Bibliography.....	21

A COMPARISON OF INTEGRATION PROGRAMMES IN THE EU: TRENDS AND WEAKNESSES

SERGIO CARRERA

Introduction

This paper provides an overview of integration programmes for immigrants in a selected group of EU member states: Austria, Belgium, Denmark, France, Germany, Poland, Spain and the Netherlands. The main tendencies and common elements are broadly assessed and compared. As this analysis shows, in the national arena there appears to be a distinct trend towards a mandatory nature of integration programmes for immigrants. Binding participation in integration programmes is now a regular feature of immigration and citizenship legislation, and a precondition for having access to a 'secure juridical status'.¹ Therefore the paper also addresses two other important questions: Who are the target groups and scope of the integration programmes? What are the related enforcement mechanisms and sanctions?

A nexus between immigration, integration and citizenship is becoming the norm in a majority of the national legal systems. The link made between the social inclusion of immigrants and the juridical framework on immigration, integration and citizenship may at times conflict with human rights considerations, and endanger the inter-culturalism and diversity that are inherent to the nature of the EU as recognized in Art. 151.1 EC Treaty.² As discussed in the first section of this paper, the increasing establishment of a juridical framework on integration may have counterproductive effects by preventing the social inclusion of the immigrant. It might be time to acknowledge that the 'social conflicts' that some EU states are experiencing may in fact be products of the perpetuation of a conservative notion of 'we' and of rigid legal regimes on immigration and citizenship. Rather than providing a framework for the social inclusion of immigrants and the prevention of discrimination, such notions are rather (mis)using the device of 'integration' as a tool to put into practice an restrictive policy.

The second section looks at the evolving EU framework on the integration of immigrants, where a struggle is taking place in two parallel arenas. The first is over the competence to determine policy in this field – at the national versus the European level (principle of subsidiarity). The second struggle concerns the overall approach, where substantial differences appear between the EU's framework on integration and its Common Basic Principles for Immigrant Integration Policy (soft policy approach), and the actual legal acts involved (hard policy approach). It seems that the common EU immigration policy is providing the means to strengthen the connection between 'immigration' and 'integration', and to reinforce particular national policies that might make the already-vulnerable position of the immigrant even more so. In our view, an EU policy framework on integration must not be instrumentalised, as it could result in the further marginalisation of the immigrant communities. Instead the EU needs to focus on the correct application of EU measures facilitating the inclusion and equal participation of immigrants in the different societal sectors of the receiving states (education, employment, housing, etc), prohibiting discrimination and unequal treatment. Such efforts will represent a critical step forward for eliminating social exclusion.

¹ By 'secure juridical status' we understand having access to the rights and freedoms provided in the legislation on immigration and citizenship, and to be treated equally and in a non-discriminatory manner.

² Art. 151.1 EC Treaty provides that "The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore".

1. Integration programmes in the EU

This section offers a typology of integration programmes for immigrants in a selection of EU member states: Austria, Belgium, Denmark, France, Germany, Poland, Spain and the Netherlands. It outlines their main trends and focuses on the scope (personal and material) and the nature of these programmes, as well as their implications (positive or negative) for the position of the immigrant. Some of the integration developments in Latvia and the UK are also discussed.

1.1 National models and programmes for the integration of immigrants

The academic literature has often distinguished among three main national models for the integration of immigrants:³

- The first is the multicultural model, which is based on the respect and protection of cultural diversity and aims at explicitly guaranteeing the identity of the immigrant community. Countries that have traditionally followed this model are the Netherlands and Sweden.
- The second one, the assimilationism model (also called the republican or universalistic model), has equality at its root, but only for those few individuals who fall within the privileged category of 'citizens'. It is based on the complete assimilation of the immigrant into the dominant, traditional national values and perceived common identity. France is the classic example of this approach.⁴
- Finally, there is the separation or exclusionist model, which is characterised by restrictive and rigid immigration legislation and policies. In this context, 'rigid' refers mainly to the legal conditionality that must be satisfied in order to have access to and reside in the territory. It consists of policies aimed at artificially maintaining the temporary character of an immigrant's settlement. Germany, Austria and Belgium (Flanders) could fall within this model.

In our view, these traditional models of integration no longer exist. Societies and their public philosophies towards immigrants and their integration are continuously changing. National models and integration programmes have often been rendered moot by evolving contemporary realities, political and economic priorities, and dramatic events. Also, the content and structure of these programmes vary widely in terms of their scope, goals, target groups and the institutional actors involved. Member states differ considerably in their approaches and political priorities *vis-à-vis* 'the integration of migrants'. This diversity mainly derives from the different historical backgrounds, societal models, and patterns and traditions of migration flows.⁵

³ See H. Entzinger and R. Biezeveld, *Benchmarking in Immigration Integration*, European Research Centre on Migration and Ethnic Relations, Erasmus University of Rotterdam, August, 2003.

⁴ See C. Bertossi, "Politics and Policies of French Citizenship, Ethnic Minorities and the European Agenda", in A. Górný and P. Ruspini (eds), *Migration in the New Europe: East-West Revisited*, Basingstoke: Palgrave, 2004. See also C. de Wenden, "Conceptual and political approaches to integration: The French perspective", in R. Süßmuth and W. Weidenfeld (eds), *Managing Integration: The European Union's Responsibilities towards Immigrants*, Migration Policy Institute, Washington, D.C. and Bertelsmann Foundation, Brussels, 2005.

⁵ For a discussion on the experience and policies of different countries concerning integration see R. Penninx, *Integration of Migrants: Economic, Social, Cultural and Political Dimensions*, Background paper for the European Population Forum 2004: Population Challenges and Policy Responses, held in Geneva, 12-14 January 2004.

The dynamic nature of national legislation and programmes related to the integration of immigrants makes any comprehensive comparative analysis in this field difficult. Over the last few years, new juridical frameworks for immigration and integration have either been put into place or are being debated in most of the EU member states. In Germany, for instance, a new Immigration Act (*Zuwanderungsgesetz*) regulating the entry and stay of immigrants entered into force on 1 January 2005. Austria has also adopted a new Settlement and Residence Act (entering into force on 1 January 2006) and regulates long-term residence and labour migration in conjunction with the Alien's Employment Act (*Ausländerbeschäftigungs-gesetz*) of 1975.⁶ As from 1 January 2004 new versions of the Act on Integration of Aliens in Denmark, Act No. 643 of 28 June 2001, and the Act on Danish Courses for Adult Aliens and Others have entered into force. In the Netherlands, the Newcomers Integration Act (*Wet Inburgering Nieuwkomers* or WIN) of 1997 is undergoing revision by the Dutch parliament. Similar situations can be found in other member states, where legislative proposals providing a brand new juridical framework on the integration of immigrants are under consideration. Spain, for example, has been elaborating a framework for integrating immigrants since the election of the new Spanish government in March 2004 and a new strategy on integration is expected to be officially presented during 2006.

Integration programmes tend to share some very general elements, such as language classes, civic courses familiarising immigrants with the receiving country's norms, history, values and cultural traditions, and labour market orientation/vocational training. In Germany, the new Immigration Act provides a compulsory integration programme consisting of language training aimed at giving participants a good command of German together with an orientation course in which immigrants learn about the German legal system, history and culture.⁷ The stated aim of the integration policy is to make the newcomer autonomous in everyday life. Knowledge of the German language is viewed as key to integration, in order to enable migrants to participate in the social, economic and cultural life. The local foreigners' authority will evaluate the immigrant's language competence and decide if s/he is liable to participate in the integration programme. The language aspect consists of a language course tailored to fit the individual's skills and knowledge. Language training is divided into two components: 300 hours for acquiring basic language abilities and another 300 hours for advanced learning. An additional 30 hours is provided for orientation on German culture and society. The state's integration policy is supplemented by a system of social counselling for immigrants during their first three years of residence in Germany.⁸

⁶ The new Settlement and Residence Act primarily intended to transpose into Austrian law the new package of EU measures being adopted so far under the umbrella of a common immigration policy.

⁷ The new Immigration Act (*Zuwanderungsgesetz*), and its Residence Act (*AufenthG*) regulate the entry and stay of immigrants in Germany. It entered into force on 1 January 2005. The unified language policy for third-country nationals (*Gesamtsprachkompetenz*) became effective in January 2003. Also relevant are the federal law on the residence of foreigners (*Aufenthalts-gesetztes*) of 30 June 2004 and the federal ordinance on integration courses for foreigners and late-settlers (*Integrationskurs-verordnung-IntV*) of 13 December 2004. See N. Cyrus and D. Vogel, "Germany", in J. Niessen, Y. Schibel and C. Thompson (eds), *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue*, Migration Policy Group, Brussels, 2005.

⁸ See the Bundesamt für Migration und Flüchtlinge [German Federal Office for Migration and Refugees], "The Impact of Immigration on Germany's Society", in Berlin Institute for Comparative Social Research (BIVS) (eds), *The Impact of Immigration on Europe's Society: A Pilot Research Study undertaken by the European Migration Network*, BIVS, Berlin, 2005(a). See also Bundesamt für Migration und Flüchtlinge [German Federal Office for Migration and Refugees], *Concept for a Nation-wide Integration Course*, Federal Office for Migration and Refugees, Nuremberg, English edition April 2005(b) (retrieved from <http://www.bamf.de>).

In Belgium (Flanders),⁹ following the Civic Integration Decree of the Flemish government, the first step of the integration programme is an audit of the third-country national at the reception office (*onthaalbureau*), which determines eligibility to participate in the integration programme.¹⁰ The Decree presents two different routes for the integration of newcomers to take place. The first one is a 'training/educational programme' composed of a Dutch language course, along with social orientation and career guidance, which should ease the way towards the educational system and employment. The second route consists of linking the immigrant with the different institutions and actors of common law (or one-on-one study-path guidance).¹¹ A rather similar approach can be seen in the Netherlands, where the 'integration course' foreseen by the Newcomers Integration Act (WIN) is mainly focused on proficiency with the Dutch language and social orientation.¹² Sufficient abilities in these two areas are seen as key preconditions for full social participation. The civic integration programme/course is divided into three parts, comprising an educational element, general programme coaching and social counselling.¹³

The new Settlement and Residence Act in Austria divides the 'integration agreement' (*integrationsvereinbarung*) into two modules, the first dealing with literacy and the second focusing on language training and social, economic and cultural aspects.¹⁴ Two other countries among those under analysis apply the 'integration contract' to formalise the obligation between the immigrant and the state as regards integration, namely Denmark and France.

In Denmark, the content and scope of the integration programme are outlined by an integration contract concluded between the immigrant and the municipality where s/he resides. The contract is based on the immigrant's background with the general goal being the introduction into the labour market or relevant education. Along these lines, the programme comprises language courses that include a basic social and cultural orientation element and, since 1 January 2004, a series of offers of 'active involvement', such as vocational training and other labour market-oriented measures. These measures involve counselling and upgrading, job training with a private or public company and employment with a wage supplement (the immigrant is hired by a company receiving a supplement to do so). The total duration of the programme is 37 hours

⁹ There is no nation-wide strategy for integration in Belgium. The communities or the regions hold most of the competences dealing with this field. The similarities in the 'integration philosophy' advocated by Belgium (Flanders) and the Netherlands are very interesting, especially regarding the nature, objectives and target/exempt groups in the integration programmes.

¹⁰ The Flemish government's Civic Integration Decree (*Decreet betreffende het Vlaamse inburgeringsbeleid*) of 28 February 2003 came into force on 1 April 2004.

¹¹ See S. Gsir, M. Martiniello, K. Meireman and J. Wets, "Belgium", in J. Niessen, Y. Schibel and C. Thompson (eds), *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue*, Migration Policy Group, Brussels, 2005.

¹² See the book used to prepare the integration test in the Netherlands by I. van Baalen and W. Coumou, *Denkend aan Holland: Een programma Maatschappij-oriëntatie voor nieuwkomers*, Utrecht: Nederlands Centrum Buitenlanders, 2004.

¹³ See V. Marinelli, "The Netherlands", in J. Niessen, Y. Schibel and C. Thompson (eds), *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue*, Migration Policy Group, Brussels, 2005.

¹⁴ See I. Michalowski, *An Overview on Introduction Programmes for Immigrants in Seven European Member States*, Adviescommissie voor Vreemdelingenzaken, The Hague, 2004(a).

per week during three years. Danish municipalities must conclude an integration contract with those individuals who fall under the scope of the law (newcomers and refugees) within a month of their registration.¹⁵

The integration contract (*contrat d'accueil et d'intégration* or CAI) in France equally seeks to formalise the obligation between the immigrant and the state.¹⁶ The latter will undertake to provide quality newcomer support services while the former will have to complete training integration requirements consisting of: a language course, vocational training, and civic and social orientation.¹⁷ The integration contracts, which last for one year, will specify language courses (between 200 and 500 hours) covering one-year periods and are renewable twice (for a total of three years). During this time the newcomer will have to improve his/her language ability by one level at the minimum, but otherwise to the level required for naturalisation.¹⁸

On the other hand, it is important to acknowledge that a number of EU member states do not yet have in place a nation-wide integration policy for immigrants. For example, the autonomous communities hold the main competences for the social integration of immigrants in Spain.¹⁹ A series of 'integration plans' are being implemented by Cataluña, Madrid and Andalucía, which have the larger foreign populations. The integration plans, which have been applied since 2001, aim at promoting the principle of equal treatment, respect for multiculturalism and non-discrimination and the protection of cultural plurality.²⁰ These plans provide orientation, juridical guidance, education and language courses as well as support by the social services.²¹

¹⁵ See the following publications by the Danish Ministry of Refugee, Immigration and Integration Affairs (retrieved from <http://www.inm.dk>): *Immigration and Integration Practices in Denmark and Selected Countries*, The Think Tank on Integration in Denmark, Copenhagen, 2004; *A New Chance for Everyone: The Danish Government's Integration Plan*, Copenhagen, 2005(a); *Integration of Foreigners into Danish Society*, The Think Tank on Integration in Denmark, Copenhagen, 2001; and the *Sopemi Report – Denmark 2005*, Copenhagen, November 2005(b). See also the Danish Government, *The Government's Vision and Strategies for Improved Integration: Summary of Report submitted by the Group of Ministers on Improved Integration*, Copenhagen, 2003 (also retrieved from <http://www.inm.dk>).

¹⁶ See the Law on the control of immigration and residence of foreigners in France, *Loi relative à la maîtrise de l'immigration et au séjour des étrangers en France et à la nationalité* (MISEFEN), no. 2003-1119, 26 November 2003.

¹⁷ For further information, refer to the *Ministère de l'emploi, de la cohésion sociale et du logement* (retrieved from <http://www.cohesionsociale.gouv.fr>), the *Ministère de l'Intérieur* (<http://www.interieur.gouv.fr>), and the prime minister/government portal (<http://www.premier-ministre.gouv.fr>).

¹⁸ See the International Centre for Migration Policy Development (ICMPD), *Integration Agreements and Voluntary Measures: Compulsory or Voluntary Nature – Comparison of compulsory integration courses, programmes and agreements and voluntary integration programmes and measures in Austria, France, Germany, the Netherlands and Switzerland*, ICMPD, Vienna, May 2005.

¹⁹ See A. Serra, P. Mas, A. Xalabarder and G. Pinyol, "Spain", in J. Niessen, Y. Schibel and C. Thompson (eds), *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue*, Migration Policy Group, Washington, D.C., September, 2005. See also J. Arango and R. Sandell, *Immigración: Prioridades para una Nueva Política Española*, Informes Elcano, Real Instituto Elcano de Estudios Internacionales y Estratégicos, Madrid, 2004.

²⁰ For a comparative and comprehensive study of the different integration strategies advocated by these three Spanish autonomous communities, see M. Pajares, *La Integración Ciudadana: Una Perspectiva para la Inmigración*, Barcelona: Icaria Antrazyt, 2005.

²¹ The Catalan government has recently adopted a new Citizenship and Immigration Programme (*Pla de Ciutadania i Immigració*), 2005-08, Generalitat de Catalunya, Departament de Benestar i Família, Secretaria per a la Immigració.

A framework for integrating immigrants has been under preparation since the election of the new Spanish government in March 2004, and a new strategy on integration will be officially presented in early 2006.

Poland is also lacking a national legal and policy framework on the integration of immigrants. Only a few categories of immigrants have access to integration programmes, e.g. recognised refugees and immigrants of Polish ethnicity. Refugees are entitled to receive Polish language instruction, vocational training and subsistence support. Ethnic Polish immigrants have similar entitlements in addition to community support, but their repatriation and subsequent integration are subject to the availability of funds.²²

1.2 The mandatory nature of integration programmes and courses

In those member states where a nation-wide juridical and policy framework on integration does exist, there seems to be an increasing trend towards conceiving 'integration' as an obligation by the immigrant in order to be included and to have access to the different societal dimensions of the receiving state. The mandatory character of integration programmes has progressively become the rule in a majority of EU-15 states.²³

Integration is increasingly being transformed into a one-way process in which the responsibilities or duties are placed exclusively on the immigrant's side. The non-nationals are forced 'to integrate' in order to have access to a secure juridical status and to be treated as members of the club. Modern tendencies, approaches and policies in the national arena at times show that what is behind the term 'integration' is in fact mandatory assimilation or acculturation into the receiving society. Integration thus becomes the non-territorial (functional or organisational) border dividing the "inside" and the "outside", who is in and who is out, who has rights and who has only obligations.²⁴

As Joppke and Morawska argue,²⁵ the concept of "integrating migrants" rests on the subjective idea of an already-integrated receiving society. In their view, any vision of unity or any discourse advocating integrated societies is inherently subjective and false. Today any attempt to conceptualise national identity is open to subjective interpretations of 'us' and 'our' supposed identity and social values.²⁶ Into what exactly are immigrants supposed to integrate or incorporate? Traditional stereotypes of how to be 'national' are taken as the test model to evaluate if the 'other' is, or can successfully be, well-integrated into a particular conception of community. These nationalistic claims also call for the necessity to 'normalise', 'modernise', 'civilise' and 'assimilate' into their societal vision of themselves those persons not holding their

²² See K. Iglicka, P. Kazmierkiewicz and A. Weinar, "Poland", in J. Niessen, Y. Schibel and C. Thompson (eds), *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue*, Migration Policy Group, Brussels, 2005.

²³ See ICMPD (2005), *op. cit.*, which provides a comprehensive comparison of compulsory integration courses, programmes, and agreements and voluntary integration measures.

²⁴ For a study about the relationship between the different kinds of borders and the identification of organisational borders associated with work and welfare in the light of changes to the labour market, population and welfare-state, see A. Geddes, "Europe's Border Relationships and International Migration Relations", *Journal of Common Market Studies*, Vol. 43, No. 4, 2005, pp. 787-806.

²⁵ See C. Joppke and E. Morawska, "Integrating Immigrants in Liberal Nation-States: Policies and Practices", in C. Joppke and E. Morawska (eds), *Toward Assimilation and Citizenship: Immigrants in Liberal Nation-States*, Basingstoke: Palgrave Macmillan, 2003.

²⁶ See S. Carrera, "Integration as a Process of Inclusion for Migrants? The Case of Long-term Residents in the EU", in H. Schneider (ed.), *Migration, Integration and Citizenship: A Challenge for Europe's Future*, Forum Maastricht, Maastricht University, 2005(b), pp. 109-38.

nationality. Looking back at our recent history, this is a very worrying political game, which on the one hand might put at risk liberty, liberal democracies and the rule of law, and on the other may foster the emergence of social exclusion.

Our societies are increasingly experiencing a wide variety of lifestyles that profoundly enrich and diversify the very concept of 'community'. They also call into question conservative claims of 'we' and a homogeneous society of shared cultural values, which needs to be defended against a supposed threat posed by those negatively labelled as 'aliens', 'immigrants' and the 'non-modern' who come from the outside.²⁷ Many EU states need to go through a painful process of readjusting their own conceptualisation of their perceived national identities and values from one that emphasises a mythical national unity to one that is heterogeneous, diverse and multicultural.²⁸

In a number of member states, the notion of integration as incorporated in their respective national immigration laws is often restrictive in nature, mostly related to "cultural aspects" (such as courses on the acquisition of the language, history, culture, and civic and social aspects of the receiving country).²⁹ It bears little resemblance to policies facilitating immigrants' social inclusion or the "fair and equal treatment" paradigm emphasised at the Tampere European Council of 1999,³⁰ which placed, in a rather utopian way, fair treatment and equality, non-discrimination and respect for diversity at the heart of a common immigration policy in the EU.³¹

The majority of member states under study have introduced mandatory or forced integration programmes. In particular, as Table 1 shows, Germany, the Netherlands, Austria, Belgium (Flanders) and Denmark currently apply obligatory integration courses, which must be successfully completed before the immigrant has the (permanent) right to residency and has full access to social and welfare benefits (i.e. secure juridical status in the receiving society).

²⁷ See E. Balibar, *We, the People of Europe, Reflections on Transnational Citizenship*, Princeton, NJ: Princeton University Press, 2004.

²⁸ See R. Erzan and K. Kirişçi, "Turkish Immigrants: Their Integration within the EU and Migration to Turkey", *Turkish Policy Quarterly*, 2004, pp. 61-68. See also the Parliamentary Assembly Recommendation on "The concept of nation", 1735/2006 of 26 January 2006, point 12, which states:

The Assembly believes it necessary to strengthen recognition of every European citizen's links with his identity, culture, traditions and history, to allow any individual to define himself as a member of a cultural "nation" irrespective of his country of citizenship or the civic nation to which he belongs as a citizen, and, more specifically, to satisfy the growing aspirations of minorities which have a heightened sense of belonging to a certain cultural nation. What is important, from both a political and a legal standpoint, is to encourage a more tolerant approach to the issue of relations between the State and national minorities, culminating in genuine acceptance of every individual's right to belong to the nation which he feels he belongs to, whether in terms of citizenship or in terms of language, culture and traditions.

²⁹ See Pajares (2005), op. cit.

³⁰ See the Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/1/99, Brussels, 1999, paras. 18 and 21. In particular, para. 18 stipulates that

The European Union must ensure fair treatment of third-country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.

³¹ Concerning the importance of the "fair and equal treatment" paradigm in the progressive development of a common EU immigration policy see S. Carrera and M. Formisano, *An EU Approach to Labour Migration: What is the Added Value and the Way Ahead?*, CEPS Working Document No. 232, October 2005.

Table 1. Integration programmes in selected EU member states

EU member state	General framework on integration programmes for immigrants	Mandatory/voluntary nature
Austria	Yes	Mandatory
Belgium	Wallonia	Voluntary
	Flanders	Mandatory
Denmark	Yes	Mandatory
France	Yes	Voluntary
Germany	Yes	Mandatory
Poland	No	—
Spain	No	—
The Netherlands	Yes	Mandatory

Source: Author's compilation.

In particular, the new Austrian Settlement and Residence Act establishes the mandatory nature of integration for those third-country nationals who wish to obtain a residence permit and are included in the scope of the programme.³² The nature of the integration programmes is also mandatory in the Newcomers Integration Act (WIN) of the Netherlands where the integration course must be successfully completed in order to obtain a right to residency.³³ In the same vein, the Civic Integration Decree of the Flemish government in Belgium conceives 'integration' as mandatory for all newcomers being registered in a Flemish municipality. Participation is mandatory if immigrants are to have access to social and welfare services. The new version of the Act on Integration of Aliens in Denmark and the Act on Danish Courses for Adult Aliens and Others equally stipulates that the foreigner is obliged to participate in the "integration programme" in order to obtain a permanent residence permit and any other benefits.³⁴

Latvia represents another example where there has been a clear tendency towards the mandatory nature of integration programmes for immigrants. A new amendment of the Immigration Law (*Imigrācijas Likums*) was adopted on 28 April 2005. It provided that those 'foreigners' applying for a temporary residence permit would need to submit an integration declaration, which would oblige them to pass an integration exam consisting of Latvian language, traditions and culture.³⁵ The President of Latvia, however, did not sign the amendments of the law because of her serious doubts over what 'integration' really means and the personal scope of the programme.

³² See K. König and B. Perchinig, "Austria", in J. Niessen, Y. Schibel and C. Thompson (eds), *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue*, Migration Policy Group, Brussels, 2005. See also the European Migration Network, National Contact Point Austria, "The Impact of Immigration on Austria's Society: A Survey of Recent Austrian Migration Research", in Berlin Institute for Comparative Social Research (BIVS) (eds), *The Impact of Immigration on Europe's Society: A Pilot Research Study undertaken by the European Migration Network*, BIVS, Berlin, 2005.

³³ See A. Fermin, *The Justification of Mandatory Integration Programmes for New Immigrants: Summary of the Dutch report "Verplichte inburgering van nieuwkomers"*, European Research Centre on Migration and Ethnic Relations, University of Utrecht, 2001.

³⁴ Any other benefits might include an 'introduction allowance', which is offered to those immigrants who are not self-supporting or maintained by others.

³⁵ The example of Austria was mentioned during the debates in the Latvian parliament.

At present, the Latvian parliament continues discussing the aims, contents and scope of the declaration. It is now difficult to predict what it is going to happen because the pre-election campaign has already begun in preparation for the elections to take place in October 2006.

Another case where a more restrictive trend is taking place is Austria, where the new Settlement and Residence Act appears to present a more binding framework around the integration of immigrants. The new Act has widened the integration agreement applied there.³⁶ Previously, the agreement mainly consisted of the need to attend a language course of 100 hours and to acquire a basic knowledge of the German language (European level A1), as well as the ability to participate in Austrian social, economic and cultural life (a civic education course). The new Act requires that the integration agreement is organised into two different modules: a first one consisting of literacy and the second of a language course. For the latter, the immigrant is now asked to attend a number of 300 hours and to achieve an A2 level of German language.³⁷

In the light of this, the term 'integration' hides the actual conventional models of assimilation, incorporation or acculturation. In the words of Joppke and Morawska,³⁸ the true scope of "official multiculturalism" has been exaggerated in public and academic perception. Further, those countries in which multicultural policies have been in place or were being implemented have recently abandoned them. The "return to assimilation" advocated by Brubaker,³⁹ is exemplified by the experience of the Netherlands. The traditionally multicultural position on integration that characterised that country has been substituted by an assimilationist doctrine – i.e. a policy of obligatory integration.⁴⁰

At present only Belgium (Wallonia) and France apply 'voluntary' integration programmes. In Belgium the Decision of the Walloon government of 6 March 1997 concerning the integration of aliens and persons of foreign origin⁴¹ establishes that the immigrant is solely responsible for his/her integration and proclaims its voluntary nature. In the case of France, while as a premise integration is seen as voluntary, once the integration contract is signed by the newcomer, there is a contractual obligation by the latter to attend the civic training and language courses, as well as to go to any interviews that may be set for the monitoring of the contract.⁴² The non-attendance of civic and language courses will have negative consequences for the official

³⁶ See König and Perchinig (2005), op. cit.

³⁷ See paras. 14-16 of the Settlement and Residence Act, which regulates long-term residence and labour migration in conjunction with the Alien's Employment Act (*Ausländerbeschäftigungsgesetz*) of 1975.

³⁸ See Joppke and Morawska (2003), op. cit.

³⁹ See R. Brubaker, "The Return to Assimilation? Changing Perspectives on Immigration and its Sequels in France, Germany and the United States", in C. Joppke and E. Morawska (eds), *Toward Assimilation and Citizenship: Immigrants in Liberal Nation States*, Basingstoke: Palgrave Macmillan, 2004, pp. 39-58.

⁴⁰ See I. Michalowski, "Integration Programmes for Newcomers – A Dutch model for Europe?", in A. Böcker, B. de Hart and I. Michalowski, *Migration and the Regulation of Social Integration*, IMIS-Beiträge Special Issue, IMIS, Universität Osnabrück, 2004(b).

⁴¹ *Arrête du Gouvernement wallon portant exécution du décret, relatif à l'intégration des personnes étrangères ou d'origine étrangère*, 4 July 1996, M.B. 10/04/1997, p. 8452; the *Arrête* and the *Décret* foster a major and stronger cooperation between authorities and regional centres. These two laws establish six regional centres for the integration of immigrants in French-speaking areas: Charleroi, La Louvière, Liege, Mons, Namur and Verviers. These centres seek "to provide for the development of integration activities on the social, socio-economic, cultural and educational levels, in the area of accommodation and health, preferably in the framework of agreements concluded with the local authorities and associations". The *Décret* created the Walloon Consultative Council for the Integration of Foreigners and of Persons of Foreign Origin, which gives advice to immigrants about the possibilities to access social, cultural, economic, legal and political rights.

⁴² The Office of International Migrations is responsible for the performance of the integration contract.

decision on whether to grant long-term residence status.⁴³ It is interesting to note that a *project de loi de programmation pour la cohésion sociale* was proposed by the *Ministère d'emploi, du travail et de la cohésion sociale* on 15 September 2004, which would make the fulfilment of the integration contract mandatory.⁴⁴

1.3 The personal scope

The target groups of the integration programmes are mainly those qualified as 'newcomers' of adult age, immigrants with an insufficient knowledge of the specified language and immigrants interested in acquiring permanent residence. In some cases 'settled immigrants' who may still have integration needs might also be subject to integration programmes.

In Belgium (Flanders) the main target groups are immigrants registered in one municipality of the Flemish part of Belgium or Brussels who are refugees, travelling population groups, newcomers speaking other languages and undocumented immigrants.⁴⁵ Further, in order to participate, a foreigner must be at least 18 years old and must have recently – within a year – and for the first time registered at the local Flemish municipality or in Brussels.⁴⁶

The federal ordinance on integration courses for foreigners and late-settlers of 13 December 2004 in Germany establishes that persons subject to 'integration programmes' are those immigrants who have insufficient knowledge of the German language, those already residing in Germany for a longer period who may still have integration needs, newcomers and ethnic German immigrants (*Aussiedler*).⁴⁷ The first group specifically comprises regular workers, independent workers, individuals admitted for family reunification and recognised refugees. In particular circumstances, for instance when an individual receives social and welfare benefits, participation can be made mandatory for immigrants already living in Germany for a longer period of time.⁴⁸

The exempted groups are usually, among others, EU citizens and European Economic Area (EEA) nationals, immigrants in possession of a short-term work permit, long-term settled immigrants, highly skilled workers, scientists and professors, students, researchers and asylum seekers. In this regard, it is striking to see the types of individuals who are excluded in the new bill revising the WIN in the Netherlands from the obligation to integrate: nationals from the US,

⁴³ See Michalowski (2004a), op. cit.

⁴⁴ *Le projet de loi de programmation pour la cohésion sociale*, *Ministère d'emploi, du travail et de la cohésion sociale* (15 September 2004) foresees in Chapter IV, Art. 61 the mandatory nature of the integration contract in order to have a right of permanent residence. The decision will also be conditional on the newcomer fulfilling the "republican integration conditions". See H. Samuel, "Sarkozy unveils new laws to expel foreign workers", 7 February 2006 (retrieved from *news.telegraph*, <http://www.telegraph.co.uk>).

⁴⁵ See Gsir et al. (2005), op. cit. See also M. Martiniello and A. Rea, *Belgium's Immigration Policy brings Renewal and Challenges*, Migration Information Source, Migration Policy Institute, Washington, D.C., 2003 (retrieved from <http://www.migrationinformation.com>); and Michalowski (2004a), op. cit.

⁴⁶ The Civic Integration Decree of the Flemish Government of 28 February 2003 came into force on 1 April 2004.

⁴⁷ *Integrationskurs-verordnung-IntV* – see Bundesamt für Migration und Flüchtlinge [Federal Office for Migration and Refugees] (retrieved from <http://www.bamf.de>). On how German statutory law entails barriers to integration see also U. Davy, "Integration of Immigrants in Germany: A Slowly Evolving Concept", *European Journal of Migration and Law*, Vol. 7, No. 2, 2005, pp. 123-44.

⁴⁸ See ICMPD (2005), op. cit.

Canada, New Zealand, Australia, Japan, etc.⁴⁹ In Belgium (Flanders), the group of persons exempted are among others: EU and EEA citizens, asylum seekers and foreigners who have a temporally-limited residence permit (three months or less), students, interns, researchers, academics, highly skilled workers who intend to stay for no more than four years, persons who work under international contracts, foreigners who have finished a PhD, persons who have a position of responsibility in the tourist service of their country, au pairs and employees with a foreign country employer.⁵⁰

As Guild points out,⁵¹ the linkage between integration and poverty is apparent. If immigrants do not claim state benefits in certain forms, such as income or family support, then they are not targeted by integration programmes and the consequences of failure to comply. The poor will always face far more obstacles to integrate successfully than all of the 'others' who are financially accommodated and not dependent on the public policies of the receiving state.

The compatibility of these exclusionary measures with the prohibition of discrimination as included, among others, in Protocol No. 12 of the European Convention of Human Rights,⁵² and Arts. 2 and 26 of the International Covenant on Civil and Political Rights remains very much open to discussion.⁵³

1.4 Enforcement of integration programmes and related sanctions

The enforcement of integration programmes involves a series of sanctions if they are not attended or successfully completed. Penalties range from those of a financial character to the loss of the right of residency and expulsion from the country. Austria represents an interesting case concerning the enforcement attached to a failure to integrate. Under Austrian law, when the integration programme is not completed within the first year, the residence permit can only be renewed for another year; if it is not completed within the first 18 months, state financing is reduced to 25% of costs; and if the first two years have passed without completion, state

⁴⁹ See L.F.M. Besselink, *Inburgering, gelijke behandeling en verblijfsrecht van vreemdelingen in Nederland, Staats-en Bestuursrecht, Faculteit Rechtsgeleerdheid*, University of Utrecht, 2005 (retrieved from <http://www.libertysecurity.org>).

⁵⁰ See Art. 3 of *Voorontwerp van besluit van de Vlaamse regering betreffende het Vlaamse inburgeringsbeleid* of 18 July 2003.

⁵¹ See E. Guild, "Cultural and Identity Security: Immigrants and the Legal Expression of National Identity", in E. Guild and J. van Selm (eds), *International Migration and Security: Opportunities and Challenges*, New York: Routledge Research in Transnationalism, Routledge, 2005.

⁵² Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedom, E.T.S. 177, opened for signature on 11 April 2000, Art. 1.1 stipulates that "The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

⁵³ Art. 2.1 of the International Covenant on Civil and Political Rights stipulates that

Each State Party to the present Covenant undertakes to respect and to ensure to all individual within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Further, Art. 26 states that

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

financing is withdrawn and a fine of €100-200 is charged. Finally, after three years without having begun, or after four years without having completed the programme, the immigrant can be expelled from Austria after the state has produced proof of his or her unwillingness to integrate.⁵⁴

Other countries, such as the Netherlands and Belgium (Flanders), also apply fines to those newcomers who have failed to successfully integrate. In the Netherlands, the WIN provides sanctions for those newcomers who do not apply for an 'integration enquiry', cooperate with the integration enquiry, register with the educational institution, attend all parts of the educational programme (including taking the evaluation test) as well as cooperate with the other parts of his/her integration programme.⁵⁵ Under the new revision of the WIN, lack of integration could be seen as a ground for refusal of admission to the country. Also, under the new bill, municipalities will have the discretion to impose fines on those immigrants who do not successfully pass the integration examination in the expected period of time, which is three and a half years for those who successfully completed the pre-arrival exam, and five years for all other third-country nationals.

The Civic Integration Decree of the Flemish government in Belgium provides a specific list of reasons permitted for failing to attend the programme.⁵⁶ Beyond these, the reception offices can and are encouraged to enforce sanctions. The sanctions may take the form of restrictions on access to common law services, e.g. social and welfare benefits. The reception offices, which facilitate such access for immigrants, are directly responsible for ensuring the overall success of integration programmes. It is therefore reasonable to expect that access to social or welfare benefits would be used as a condition to ensure abiding participation in the integration programme. Financial sanctions can also be applied when the third-country national has failed to report to a reception office within three months of registration with the municipality. These entail fines of between €1 and €25.

In Denmark, the 'introduction allowance', which might be offered to those immigrants who are not self-supporting or maintained by others, could be withdrawn upon non-fulfilment of the integration contract.⁵⁷ In the case of Germany, negative sanctions entail withholding permanent residence status or the right of residency. Those immigrants who were already living in Germany for a longer period of time but are required to participate because their knowledge of the language is deemed insufficient might be subject to a reduction in social benefits if they do not attend the integration courses.

1.5 The nexus between immigration, integration and citizenship

Mandatory participation in integration programmes and courses is therefore a constitutive element of the majority of immigration legislation in the EU member states under analysis. The 'social inclusion of immigrants' (open and positive) is henceforth artificially intertwined with a juridical and policy framework of immigration (rigid, obligatory and negative) in terms of

⁵⁴ Unsubstantiated absences result in unemployment benefits being withdrawn for six to eight weeks at a time. If the immigrant passes the course before the end of the first 18 months, the government will refund 50% of the costs incurred.

⁵⁵ See for example Arts. 2, 4.4, 8 and 9.1 of the Act.

⁵⁶ See Art. 25 of the *Decreet betreffende het Vlaamse inburgeringsbeleid*.

⁵⁷ See the Act on Integration of Aliens in Denmark, Act No. 643 of 28 June 2001 and the Act on Danish Courses for Adult Aliens and Others. Since 1 January 2004 new versions of both laws have entered into force.

admission, residence and length of stay. Policies on admission are therefore paradoxically converging with those of social inclusion.

The ultimate expression of the nexus between integration and immigration might be seen in the Netherlands, where a new legislative proposal on the integration of migrants has been presented by the Integration and Immigration Minister Rita Verdonk.⁵⁸ The draft law was approved by the Dutch parliament on 22 March 2005 and is now in hands of the Council of State. Integration is no longer seen as a process taking place inside the receiving state, but rather as commencing even before an individual emigrates from his/her country of origin. The bill will provide for a 'pre-arrival integration' process or 'integration of immigrants abroad' (*Wet Inburgering in het buitenland*). The level of integration of the would-be immigrant will be tested in the Dutch embassy by a computer. Lack of progress in becoming more 'like a citizen' will be among the grounds for refusal of admission – being granted a visa – into the country.

As regards the linkage between integration and citizenship, it is notable that some EU countries are increasingly conditioning the naturalisation process leading to the acquisition of the nationality to successfully passing an integration test. The UK offers a good example of the new legislation strengthening this tie.⁵⁹ The Nationality, Immigration and Asylum Act of 2002, which entered into force on 1 November 2005, has added to the previous British Nationality Act of 1981 a requirement for naturalisation that the person "has sufficient knowledge about life in the United Kingdom". In addition to the English language requirement (knowledge of English, Welsh or Scottish Gaelic), applicants for naturalisation need to pass the "Life in the UK" test.⁶⁰

The link between integration and citizenship does not, however, apply to Belgium, where the last amendment to the Belgian citizenship law in March 2000 removed the condition imposed on the immigrant to express the willingness to integrate during the naturalisation process.⁶¹

2. An EU framework on the integration of immigrants: A two-level struggle

This section addresses the evolving EU framework on integration of immigrants where a fierce struggle is taking place on two parallel battlefields: the first between the overall approach presented under the EU framework for the integration of immigrants and the actual legally binding acts produced by a common immigration policy; and the second concerning whether the competence over this area is held at the national or European level. The struggle starts when comparing the role and function of integration in what is being proposed by the Council and the European Commission (soft policy approach), and what finally ends up being officially adopted by the Council of Ministers as proper European Community law (hard policy approach).

The second multiannual programme on freedom, security and justice – The Hague Programme, which was agreed by the European Council in November 2004 – placed "the integration of

⁵⁸ See Marinelli (2005), op. cit.; see also J. van Selm, *The Netherlands: Death of a Filmmaker Shakes a Nation*, Migration Information Source, Migration Policy Institute, Washington, D.C., 2005 (retrieved from www.migrationinformation.org).

⁵⁹ See A. Favell, "Britain: The Paradoxical Triumph of Multicultural Race Relations", ch. 4 in *Philosophies of Integration: Immigration and the Idea of Citizenship in France and Britain*, London: Macmillan, 1998, pp. 94-149.

⁶⁰ See the publication by the Home Office for England and Wales, *Life in the United Kingdom: A Journey to Citizenship*, Norwich: HM Stationery Office for Books, 2005.

⁶¹ See Gsir et al. (2005), op. cit.

immigrants” as one of the most relevant policy areas to be developed in the next five years.⁶² Then in May 2005, the European Commission published its Action Plan implementing The Hague Programme, where integration was reconfirmed as one of the top ten strategic priorities for the creation of an Area of Freedom, Security and Justice in the EU.⁶³ Meanwhile, based on The Hague Programme, on 19 November 2004 the Justice and Home Affairs Council adopted the Common Basic Principles for Immigrant Integration Policy (CBPs), which provided a first decisive move towards the progressive establishment of a common “EU framework on integration” by specifying what the concept of integration means in the EU context.⁶⁴ The eleven principles could be summarised as follows:

1. Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of member states.
2. Integration implies respect for the basic values of the EU.
3. Employment is a key part of the integration process.
4. Basic knowledge of the host society’s language, history and institutions is indispensable for integration.
5. Efforts in education are critical for preparing immigrants to be more successful and active.
6. Access for immigrants to institutions, as well as to public goods and services, on a basis equal to national citizens and in a non-discriminatory way is an essential foundation.
7. Frequent interaction between immigrants and member state citizens is a fundamental mechanism.
8. The practices of diverse cultures and religion as recognised under the Charter of Fundamental Rights must be guaranteed.
9. The participation of immigrants in the democratic process and in the formulation of integration policies, especially at the local level, supports their integration.
10. Integration policies and measures must be part of all relevant policy portfolios and levels of government.
11. Developing clear goals, indicators and evaluation mechanisms to adjust policy, evaluate progress and make the exchange of information more effective is also part of the process.

This wide list of principles is primarily intended “to assist Member States in formulating integration policies for immigrants by offering them a simple non-binding but thoughtful guide of basic principles against which they can judge and assess their own policies”.⁶⁵

In fact, they are not legally binding for the member states, and therefore fall within the category of what has been labelled as ‘soft law’.⁶⁶ They provide a soft policy approach for the integration

⁶² See Annex I of The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, point 1.5 (European Council, 2004).

⁶³ See the European Commission’s Communication on The Hague Programme: Ten priorities for the next five years – The partnership for European renewal in the field of Freedom, Security and Justice, COM(2005) 184 final, Brussels, 10.5.2005(a).

⁶⁴ See Justice and Home Affairs Council, 2618th Meeting, Annex: Common Basic Principles on Immigrants Integration, 14615/04 (Presse 321), 19 November 2004.

⁶⁵ Ibid.

⁶⁶ See R. Cholewinski, “Migrants as Minorities”, *Journal of Common Market Studies*, Vol. 43, No. 4, November 2005, pp. 695-716.

of immigrants in the EU. The facultative nature has been further reinforced by the Commission Communication, A Common Agenda for Integration, which was published in September 2005.⁶⁷ This Communication, which puts forward concrete measures to put the CBPs into practice, stipulates that the package of actions it entails “is indicative and not exhaustive and it leaves the Member States to set priorities and select the actions as well as the way in which they are to be carried out within the context of their own national situations and traditions”.

The majority of the CBPs are indeed of a purely symbolic nature. As shown in this paper, the paradigm of a positive, two-way process does not appear to be one that is easily implemented in the national arena. The CBP that considers knowledge of the host society’s language, history and institutions as indispensable to integration seems to be taking undue precedence over all the other principles, and its application across the EU indicates that it is being interpreted a straight one-way process on the immigrant’s side.

The openness and apparent positive connotations underlying the CBPs as regards the social inclusiveness of immigrants has not formed the foundation of the few legal acts being adopted as part of the common EU immigration policy, i.e. the Council Directives on the status of long-term residents (2003/109)⁶⁸ and on the right to family reunification (2003/86).⁶⁹ The philosophy underlying these two Directives, which provide the hard policy approach towards the integration of immigrants, seems to strengthen the evidenced trend in a majority of member states in the direction of an increasingly mandatory integration policy. Both acts negatively link access to the rights they bestow (inclusion) to compliance by immigrants with a series of restrictive conditions left in the hands of the member states (exclusion), which are given wide discretion to stipulate national conditions for integration (conditionality of integration). Thus ‘integration’ is used as the obligatory juridical requirement for having access to the set of rights and liberties that these laws confer.

For instance, Art. 5 of Directive 2003/109 on the long-term resident status specifically points out that “Member States may require third-country nationals to comply with integration conditions, in accordance with national law”.⁷⁰ No definition of “integration conditions” is provided. The final interpretation and practical scope of these conditions will be defined according to the variety of national immigration and integration legislation, political priorities

⁶⁷ See the European Commission’s Communication, A Common Agenda for Integration – Framework for the Integration of Third Country Nationals in the European Union, COM(2005) 389 final, Brussels, 1.9.2005(b). In the words of the Commission, this Communication represents

the Commission’s first response to the invitation of the European Council to establish a coherent European framework for integration. The cornerstones of such a framework are proposals for concrete measures to put the CBPs into practice, together with a series of supportive EU mechanisms. Taking into account existing EU policy frameworks, the Communication provides new suggestions for action both at EU and national level.

⁶⁸ See the European Council Directive 2003/109 of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16/44, 23.1.2004.

⁶⁹ See also the European Council Directive 2003/86 of 22 September 2003 on the right to family reunification, OJ L 251/12, 3.10.2003. For an analysis of this Directive and Directive 2003/109 (*supra*), see J. Apap and S. Carrera, *Towards a Proactive Immigration Policy for the EU?*, CEPS Working Document No. 198, CEPS, Brussels, December 2003.

⁷⁰ The objective of the measure is to provide a European Community status of long-term resident to those immigrants who have resided regularly for five years in the territory of a member state. Art. 4 of the Directive states that “Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously for five years immediately prior to submission of the relevant application”.

and philosophies of each member state.⁷¹ Member states will also be the arbiters testing whether the immigrant is successfully integrated into their societal models. A state may oblige the 'other' to pass a forced integration test, and cover the financial costs of it, before having secure access to the benefits and rights conferred by the EC status of long-term resident.⁷² It is striking to note that the introduction of these conditions for an immigrant to acquire the EC status of long-term resident was the result of strong lobbying by Austria, Germany and The Netherlands during the negotiations of the Directive.⁷³ The way in which integration is (mis)used in this Council Directive is open to substantial criticism not least on the grounds of fundamental rights.⁷⁴

The European Parliament has challenged three provisions of Directive 2003/86 on family reunification, on the ground that they do not conform to Art. 8 of the European Convention on Human Rights (ECHR), which guarantees the right of family life.⁷⁵ Among the specific provisions being contested there is Art. 4.1, which allows the member states to exclude the family reunification of children over 12 if they have not complied with an "integration requirement".⁷⁶ It seems that the common EU immigration policy is negatively providing the means to strengthen the nexus between immigration and integration, and to reinforce particular national immigration and integration philosophies that might make the already-vulnerable position of the immigrant even more so.

⁷¹ For a study on whether Council Directive (2003/109) on the status of third-country nationals who are long-term residents facilitates the integration of immigrants see Carrera (2005b), op. cit.

⁷² On how the wording of Art. 5 changed from the original proposal presented by the European Commission (which referred to "integration measures") to the final text adopted by the Council of Ministers (which now includes "integration conditions") and its negative effects, see K. Groenendijk, "Legal Concepts of Integration in EU Migration Law", *European Journal of Migration and Law*, Vol. 6, No. 2, 2004, pp. 111-26.

⁷³ See L. Halleskov, "The Long-Term Residents Directive: A Fulfilment of the Tampere Objective of Near-Equality?", *European Journal of Migration and Law*, Vol. 7, No. 2, 2005, pp. 181-201.

⁷⁴ See S. Carrera and T. Balzacq, *Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy*, CEPS, Brussels, 2005. See also S. Peers, "New Minorities: What Status for Third-Country Nationals in the EU System?", in G.N. Toggenburg (ed.), *Minority Protection and the Enlarged European Union: The Way Forward*, Local Government and Public Service Reform Initiative/Open Society Institute, Budapest, pp. 151-62. Peers raises the potential conflict between the 'assimilation' provisions included in the Directive 2003/109 and the guarantees in Art. 27 of the International Covenant on Civil and Political Rights, which provides that

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

⁷⁵ Action brought on 22 December 2003 by the European Parliament against the Council of the European Union, Case 540/03, *European Parliament v. Council*, OJ C47/21, 21.2.2004. See the Opinion of the Advocate General Ms Juliane Kokott of 8 September 2005. See also J. Apap and S. Carrera, *Family Reunification – A case for annulment before the ECJ?*, CEPS Commentary, January 2004; and H. Schneider and A. Wiesbrock, "The Council Directive on Family Reunification: Establishing Proper Rights for Third Country Nationals?", in H. Schneider (ed.), *Migration, Integration and Citizenship: A Challenge for Europe's Future*, Vol. II, Forum Maastricht, University of Maastricht, 2005, pp. 35-70.

⁷⁶ Art. 4.1 of Directive 2003/86/EC provides that

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

The merging of integration and citizenship has also contaminated the freedoms attached to the status of EU citizenship as established by the Maastricht Treaty (Treaty on European Union). If we look at the most recent Council Directive (2004/38) on the rights of citizens of the Union and their family members to move and reside freely within the territory of the member states,⁷⁷ we find that integration is among the grounds that prevent a non-national EU citizen from being expelled.⁷⁸ In comparison to the previous juridical EC regime on the free movement of persons, the Directive 2004/38 now confers greater protection for the EU citizen against expulsion, more procedural guarantees/safeguards and judicial redress depending on how long the individual concerned has resided in the territory,⁷⁹ her/his social and cultural integration into the host country, state of health, age, family and economic situation.⁸⁰ One may wonder, however, at the ways in which the receiving member state will evaluate the degree of integration achieved by the EU citizen involved. The Directive does not give any indication regarding the content or nature of the social and cultural integration test. The legislation of the member state concerned shall determine the threshold for granting more legal protection against expulsion. This could potentially lead to divergent national practices concerning the integration conditions applicable to Union citizens. The new integration element could also result in direct discrimination and unequal treatment in an enlarging EU and violate EU and international EU legal commitments.⁸¹

Meanwhile, a parallel struggle is taking place over the competence for immigrant integration policy – at the national versus EU level. The respective legal services of the Commission and the European Council are undertaking discussions about the correct legal basis of an EU framework for the integration of immigrants. The European Commission holds that the juridical basis is implied in Art. 63.3.a of the EC Treaty, which states that “The Council shall within a

⁷⁷ See Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004, on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158/77, 30 April 2004.

⁷⁸ See S. Carrera, “What does free movement mean in theory and practice in an enlarged EU?”, *European Law Journal*, Vol. 11, No. 6, November 2005(a), pp. 699-721.

⁷⁹ Following Art. 28.3(a) of the Directive, a decision of expulsion will not be taken “except on imperative grounds of public security”, if the person involved has resided in the host member state for the previous 10 years.

⁸⁰ Art. 28 stipulates that

Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

See Chapter VI of the Directive, entitled “Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health”, Arts. 27-33.

⁸¹ Art. 12 of the EC Treaty states that “Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited”. See Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, pp. 0016-0022 and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, pp. 0022-0026. See also E. Guild, *The Legal Elements of European Identity: EU Citizenship and Migration Law*, The Hague: European Law Library, Kluwer Law International, 2004, pp. 201-14; and also footnote 53 (*supra*).

period of five years after the entry into force of the Treaty of Amsterdam adopt: measures on immigration policy within the following areas: (a) conditions of entry and residence".⁸²

The Council, however, strongly sustains that according to the principle of subsidiarity, policies concerning the integration of immigrants remains under the main competence of the member states. Apart from issues of juridical competence, the competition between the European Commission and the Council seems to be mostly related to the financial allocation that will be agreed for the progressive development of a common framework on the integration of immigrants under the European Fund for the Integration of Third-Country Nationals.⁸³ In the Commission's Communication presenting the first framework programme on Solidarity and Management of Migration Flows,⁸⁴ the Directorate-General for Justice, Freedom and Security advocated an ambitious allocation of funds for the integration of immigrants.⁸⁵ The total amount of funding that was presented under the European Integration Fund was too ambitious in the eyes of the Council, which has substantially reduced the total amount of the budget allocated to the Area of Freedom, Security and Justice.⁸⁶ The direct effects of the cut in the EU budget on the integration of immigrants are not publicly known, yet it is expected that the integration fund will be the main victim.

The debate around the legal basis would have been easily solved with the entry into force of the Treaty establishing a Constitution for Europe, which would have provided a solid legal foundation for the development of a "common policy on the integration of immigrants".⁸⁷ Art. III-267.4 provides that

European laws or framework laws may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

⁸² Title IV of the EC Treaty, "Visas, asylum, immigration and other policies related to the free movement of persons", Arts. 61-69 (the 'EC First Pillar'). This would also be consistent with the objectives adopted under the first multi-annual programme on Justice and Home Affairs policies, the Tampere Programme (European Council, 1999), in which para. 18 stipulates that

The European Union must ensure fair treatment of third-country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.

⁸³ See H. Urth, "Building a Momentum for the Integration of Third-Country Nationals in the European Union", *European Journal of Migration and Law*, Vol. 7, No. 2, 2005, pp. 163-80.

⁸⁴ See the European Commission's Proposal for a Decision establishing the European Integration Fund for the period 2007-2013 as a part of the General Programme 'Solidarity and Management of Migration Flows', Brussels, COM(2005) 123 final, Brussels, 6 April 2005(c).

⁸⁵ Art. 4 of the Communication, COM(2005) 123 final (ibid.), reads as follows:

The general objective of the Fund is to support the efforts of Member States in enabling third-country nationals of different cultural, religious, linguistic and ethnic backgrounds to settle and take actively part in all aspects of European societies as regards admission procedures, basic introduction programmes and activities, participation in civic and political life and respect for diversity and civic citizenship.

⁸⁶ The European Commission requested a total amount of €1.7 billion for the period 2007-13. With regard to the annual distribution, see Art. 14.1 of the Communication, COM(2005) 123 final, which states that "Each Member State shall receive a fixed [amount] of EUR 300.000 from the Fund's annual allocation. This amount shall be fixed at EUR 500.000 per annum for the period of 2007-2013 for the states which acceded to the European Union on 1 May 2004".

⁸⁷ See the Treaty establishing a Constitution for Europe as signed in Rome on 29 October 2004 and published in the *Official Journal of the European Union* on 16 December 2004 (C Series, No. 310).

The future of the Constitutional Treaty, however, is now very much in doubt after the blows received from the French and Dutch referenda. It is at present difficult to imagine that the Treaty, at least in its current form, will ever enter into force.⁸⁸

Conclusions

This paper has broadly assessed the main trends and vulnerabilities shared by integration programmes for immigrants in a selected group of EU member states. In this way it has provided evidence on the reactions and practices of liberal political regimes to the challenges posed by immigration, diversity, heterogeneity and the plurality of values and interests.⁸⁹ In our view, the traditional national models on immigrants' integration are no longer valid, but under constant evolution. There are, however, some commonalities in integration programmes and philosophies in the EU. National programmes tend to share some very general aspects, such as language and civic courses, familiarisation with the receiving state's history, values and cultural traditions, as well as labour market orientation. Further, trends in some of these states indicate that the notion of 'integration' is becoming more restrictive in nature and mostly related to cultural aspects. The mandatory character of integration programmes has progressively become a common practice.

As regards the personal scope of application, the linkage between integration and poverty is clear. The economic status and the level of dependency of the non-national seem to be the key factors determining whether the immigrant is targeted by the forced integration programme. Thus, the compatibility of some of aspects of national legislation and policies with the prohibition of discrimination as included in Protocol No. 12 of the European Convention of Human Rights and in Arts. 2 and 26 of the International Covenant on Civil and Political Rights remains very much at stake.

Concerns need to be raised about some of these policy developments in the national arena. In our view, there is a general need for analysis and debate about the modern conceptualisation, discourse and use of the term 'integration'. The currently popular notion of the integration of immigrants does not correspond with other positive ones on social inclusion and non-discrimination. The former has rather become a juridical, policy-oriented and institutional tool of control by which the state may manage who is 'included' and who is 'excluded'. This conception of integration veils the actual processes of incorporation and assimilation that such a philosophy entails.

The social conflicts from which some EU member states are currently suffering represent a direct expression of opposition to a conservative notion of 'we' and a homogeneous and anchored 'national identity'. They are also an intense reaction towards restrictive immigration, citizenship and integration policies and discourses. Nationalistic claims about a perceived social commonality of cultural and social values that need to be defended and preserved have to be seriously questioned. Societies are continuously experiencing an increasing variety of lifestyles and identities that positively enrich, challenge and diversify the 'we'. There is an urgent need to dismantle the multifaceted links between integration, (in)security, immigration and citizenship. When referring to the sociological process by which a non-national is included in the different dimensions of the receiving state, instead of perpetuating the use of the word 'integration', the

⁸⁸ See S. Carrera and E. Guild, *No Constitutional Treaty? Implications for the Area of Freedom, Security and Justice*, CEPS Working Document No. 231, CEPS, Brussels, October 2005.

⁸⁹ A. Favell (1998, op. cit.) refers to "the problem of integration" in terms of a question of "how can a political system achieve stability and legitimacy by rebuilding communal bonds of civility and tolerance – a moral social order – across the conflicts and divisions caused by the plurality of values and individual interests".

phrase 'social inclusion' should be used instead. The latter would consist of a compendium of processes of inclusion tackling social exclusion, unequal treatment and discrimination.

The nexus between integration, immigration and citizenship in the domestic realm is having a cascade of effects and influence at the supranational level. The link between integration and immigration in the hard policy approach and the development of a common immigration policy in the EU is critical. Integration acts as the legal conditionality for having access to a secure juridical status. It therefore increases the vulnerability of the immigrant *vis-à-vis* the state, the receiving society and the EU. For the sake of social cohesion, human rights and freedom, no EU juridical or financial framework should provide the means to strengthen particular national immigration and integration philosophies that might make the already-precarious position of the immigrant even more so. Instead, the EU should advocate a policy based on "the equal and fair treatment paradigm" as emphasised at the Tampere European Council.⁹⁰

The EU's contribution should focus on a more effective monitoring of the correct application of anti-discrimination legislation in the national realm. Although it might be true that the inclusion of immigrants takes place mostly at the local and regional levels, it is the governments and the EU that have the political, financial and operational instruments necessary for it to take place in a coherent, respectful and efficient framework. As Kostakopoulou has rightly expressed, "the real test of the European integrative project is the determination to build a democratic, inclusive and heterogeneous European polity which gives these values explicit political as well as legal status".⁹¹ The EU should indeed primarily address the root causes of failure by giving priority to tackling multifaceted social exclusion and promoting the equal and fair social inclusion of immigrants in the European polity.

⁹⁰ See Carrera and Balzacq (2005), *op. cit.*

⁹¹ See T. Kostakopoulou, "Invisible Citizens? Long-term Resident Third-Country Nationals in the EU and their Struggle for Recognition", in R. Bellamy and A. Warleigh (eds), *Citizenship and Governance in the European Union*, Continuum Studies in Citizenship, London, 2001, pp. 180-205.

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About CHALLENGE

The familiar world of secure communities living within well-defined territories and enjoying all the celebrated liberties of civil societies is now seriously in conflict with a profound restructuring of political identities and transnational practices of securitisation. CHALLENGE (Changing Landscape of European Liberty and Security) is a European Commission-funded project that seeks to facilitate a more responsive and responsible assessment of the rules and practices of security. It examines the implications of these practices for civil liberties, human rights and social cohesion in an enlarged EU. The project analyses the illiberal practices of liberal regimes and challenges their justification on the grounds of emergency and necessity.

The objectives of the CHALLENGE project are to:

- understand the convergence of internal and external security and evaluate the changing character of the relationship between liberty and security in Europe;
- analyse the role of different institutions in charge of security and their current transformations;
- facilitate and enhance a new interdisciplinary network of scholars who have been influential in the re-conceptualising and analysis of many of the theoretical, political, sociological, legal and policy implications of new forms of violence and political identity; and
- bring together a new interdisciplinary network of scholars in an integrated project, focusing on the state of exception as enacted through illiberal practices and forms of resistance to it.

The CHALLENGE network is composed of 21 universities and research institutes selected from across the EU. Their collective efforts are organised under four work headings:

- *Conceptual* – investigating the ways in which the contemporary re-articulation and disaggregation of borders imply a dispersal of practices of exceptionalism; analysing the changing relationship between new forms of war and defence, new procedures for policing and governance, and new threats to civil liberties and social cohesion.
- *Empirical* – mapping the convergence of internal and external security and transnational relations in these areas with regard to national life; assessing new vulnerabilities (e.g. the ‘others’ targeted and critical infrastructures) and lack of social cohesion (e.g. the perception of other religious groups).
- *Governance/polity/legality* – examining the dangers to liberty in conditions of violence, when the state no longer has the last word on the monopoly of the legitimate use of force.
- *Policy* – studying the implications of the dispersal of exceptionalism for the changing relationship among government departments concerned with security, justice and home affairs, along with the securing of state borders and the policing of foreign interventions.

The CHALLENGE Observatory

The purpose of the CHALLENGE Observatory is to track changes in the concept of security and monitor the tension between danger and freedom. Its authoritative website maps the different missions and activities of the main institutions charged with the role of protection. By following developments in the relations between these institutions, it explores the convergence of internal and external security as well as policing and military functions. The resulting database is fully accessible to all actors involved in the area of freedom, security and justice. For further information or an update on the network’s activities, please visit the CHALLENGE website (www.libertysecurity.org).

An Integrated Project Financed by
the Sixth EU Framework Programme

