



'Integration' as a Process of Inclusion for Migrants?

The Case of Long-Term Residents in the EU

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Abstract

At a time when the development of a common EU immigration policy remains far from a reality, the integration of migrants has been placed at the very top of the EU agenda. In this report we critically assess what integration may involve at the EU and national levels. Although the Council has agreed on a set of common basic principles underlying a coherent European framework on integration, the bulk of directives so far adopted on regular migration have not followed the two-way approach, where both the state and the migrant have a role in successful integration. The way in which integration conditions have been included by the Council of Ministers in these legal measures may be considered restrictive. Looking in particular at Directive 2003/109 on the long-term resident status, member states will have overly wide discretion to ask migrants to comply with mandatory integration requirements. Immigrants will first need to pass an integration test and cover the financial costs of it before having secure access to the benefits and rights conferred by the status of long-term resident. These provisions should hence be revised. Otherwise, by using this restrictive conditionality, such provisions may negatively affect social cohesion and inclusion, and undermine the fundamental rights of immigrants. Integration is by nature an elusive concept. Instead of worrying about the need to conceptualise this term, any policy intending to frame this field should instead look at it as a *compendium of processes of inclusion* tackling social exclusion. These processes should seek to guarantee equal rights and obligations to those not holding the nationality of the receiving society. Facilitating equality of treatment and full access to a set of economic, political, social and cultural rights and duties should be the real goal pursued.

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1. Introduction

This report analyses the extent to which the development of a common European framework on integration may positively contribute towards the fair and equal treatment of immigrants. It particularly explores whether the Council Directive on the status of third-country nationals who are long-term residents facilitates the integration of immigrants in a *de facto* multicultural European Union. This Directive forms one of the few legal steps towards an EU approach on regular immigration. We look critically at its content and scope, as well as its legislative progress and restrictive amendments since it was first proposed by the European Commission until its final adoption by the Council of Ministers. The Directive offers the member states wide discretion to ask migrants to comply with mandatory integration conditions stipulated by national law. The final interpretation and scope of *the conditionality of integration* will be defined according to the variety of immigration legislation and philosophies of each EU member state.

What does integration mean in liberal democracies? At the national level, states differ greatly in their programmes, philosophies and political priorities towards the integration of immigrants. We assess the extent to which the mandatory character of integration tests may undermine the values of multiculturalism and the respect of fundamental rights of those broadly labelled as ‘third-country nationals’. What is the dividing line between an efficient integration policy and the respect of cultural, ethnic and religious diversity? Integration may in some particular cases become a process of excluding the ‘others’ who fail to pass the ‘integration test’. In order to prevent that, the rigid conditionality (the lack of integration as a ground for refusal of the secure status) envisaged by the Directive on the long-term resident status should be revisited to facilitate a more open and inclusive integration policy for immigrants and the receiving societies in the EU that truly promotes social cohesion.

Integration is by nature an elusive concept. Instead of worrying about the need to conceptualise this term, any policy intending to frame this field should instead look at it as a *compendium of processes of inclusion* tackling social exclusion. These processes should seek to guarantee equal rights and obligations to those not holding the nationality of the receiving society. Facilitating equality of treatment and full access to a set of economic, political, social and cultural rights and duties should be the real goal pursued.

2. Towards a common integration strategy for migrants?

The globalisation process and the incipient increase of large-scale migration will continue to have profound economic, political, social and cultural consequences all around the world. The EU is not immune to all these processes and it must be prepared to face them with comprehensive, vigorous and globally oriented responses. Immigration is taking on a new profile and political rhetoric inside the EU. It is now widely recognised that the ongoing demographic ageing of society, labour shortages, the functioning of the labour market as well as the need for more competitiveness of EU enterprises cannot be properly addressed without greater attention to comprehensive policies on ‘regular

migration'.¹ While the latter is indeed a necessity for Europe's development and future, five years after the Presidency Conclusions at Tampere² a common EU migration policy continues to be an unmet goal. A sound immigration and integration policy that addresses these issues, while fully guaranteeing cultural and religious diversity, human rights and social cohesion, remains a policy challenge. The road ahead will not be an easy ride.

The meeting of the European Council at Tampere represented a turning point after the 'Europeanisation' of immigration policies with the entry into force of the Amsterdam Treaty.³ For the very first time, a multiannual programme was established on policies as sensitive as justice and home affairs (JHA), and particularly in the field of immigration. Among the package of objectives and deadlines presented in the Tampere milestones, fair treatment of those identified as third-country nationals was an essential ingredient in an area of freedom, security and justice (AFSJ). The Council agreed in para. 8 of the Presidency Conclusions 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 these individuals 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 (European Council, 1999).

To what extent has this ambitious political statement towards the inclusiveness of migrants really taken shape? In the line with the Tampere agenda, the European Commission progressively started to establish some important elements for the achievement of a common framework on immigration. If we look at the progress achieved so far, however, the record has remained rather poor (European Commission, 2004a). The Commission has encountered serious barriers to developing some very preliminary legislative steps in this field (Apap & Carrera, 2004a). Few directives have been adopted by the Council of Ministers concerning a common policy on what has been officially qualified as a 'legal framework on the admission and conditions for stay of third-country nationals' or 'regular migration'.⁴ Among others, we especially highlight the Council Directive on the right to family reunification (2003/86/EC), and the one on the status of third-country nationals who are long-term residents (2003/109/EC).⁵ Both instruments have direct and multiple consequences on the actual integration processes of immigrants. Surprisingly, the one dealing with the right to family

¹ Under the concept of 'regular migration' we may include policies dealing with admission, stay/residence and inclusion (fair and equal treatment) of those not holding the nationality of an EU member state. This wide range of areas has at times been wrongly qualified as 'legal migration'.

² See the Presidency Conclusions of the Tampere European Council (European Council, 1999).

³ The Treaty of Amsterdam entered into force in May 1999. Visas, asylum, immigration and other policies related to the free movement of persons came under the first pillar (i.e. Community governance); see Title IV of the EC Treaties, Arts. 61-69. In particular, Art. 63.3 of the EC Treaties has become the main legal basis for all the acts dealing with regular migration. This provision establishes that "The Council, acting in accordance with the procedure referred to in Article 67, shall within a period of five years after the entry into force of the Treaty of Amsterdam adopt: 3. measures on immigration policy within the following areas: (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion, (b) illegal immigration and illegal residence, including repatriation of illegal residents".

⁴ If we look at the latest semi-annual scoreboard published by the European Commission in the first half of 2004 reviewing the progress to date, the political agreement reached by the Council on the proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of studies, vocational training or voluntary service (COM(2002) 548, 7.10.2002) can be highlighted. Moreover, the Commission has recently issued a proposal for a Directive and two proposals for recommendations on the admission of third-country nationals to carry out scientific research in the European Union (COM(2004) 178, 16.03.2004). For any other measures falling within the scope of this policy, see European Commission (2004b).

⁵ See the Council Directive on the right to family reunification, 22 September 2003, 2003/86, [2003] OJ L 251/12, 3.10.2003 and the Council Directive concerning the status of third-country nationals who are long-term residents, 2003/109, [2004] OJ L 16/44, 23.1.2004.

reunification is currently being challenged before the European Court of Justice (ECJ). On 16 December 2003, the European Parliament brought an action for annulment before the ECJ in Luxembourg, following the procedure stipulated in Art. 230 of the EC Treaties.⁶ This action was based on the existence of substantial doubts that this Directive, and particularly Art. 4.1,⁷ respects fundamental freedoms as guaranteed in the European Convention of Human Rights (ECHR) (Apap & Carrera, 2004b). In addition to these two laws, in December 2004 the Council formally adopted the Directive on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.⁸

What are the main reasons justifying the low level of convergence of EU policy in this field? The explanations are of a multidimensional character. In brief, we can point to, for example, the current institutional/structural and legal frictions of the traditional EC Treaties as regards immigration policies. At present the unanimity rule in the Council continues to apply.⁹ This makes the final adoption of sensitive initiatives a rather complicated process. When the EU Constitution will enter into force, the application of qualified majority voting (QMV) to these areas will surely increase the possibility of adopting new legislation.¹⁰

Yet QMV will not solve the wider problem of legitimacy, from which this policy is suffering. This *problematique* is shown for example by the substantial disagreement among the member states regarding the basis on which migrants should be admitted to the territory and labour market. In 2001, the Commission presented a proposal for a Directive on the conditions of entry and residence for the purpose of paid employment and self-employment activities (COM(2001) 0386 final, 11.07.2001). This initiative intended to lay down the basic conditions and rules of admission of migrants for employment purposes.¹¹ It is well known that the admission procedures for the economic migration of non-EU citizens are particularly sensitive for both the member states as well as EU publics. An agreement on this Directive would have formed a core element for the facilitation of the actual processes of inclusion of migrants into the labour markets of the member states. This proposal is currently lost somewhere behind the scenes of the Council. Bearing in mind the urgent need to revisit the debate on economic migration, the Commission presented a Green Paper on an EU approach to managing economic migration, which will pave the way for a more formal action plan on a common approach to labour migration and an economic migration strategy.¹² A greater consensus among the Member State has been found concerning the treatment of immigrants already lawfully residents

⁶ Art. 230 of the EC Treaties provides that "The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB".

⁷ Art. 4.1 stipulates 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 authorizing 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".

⁸ See the Council Directive on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, 2004/114, [2004] O.J L 375, 23.12.2004.

⁹ According to Art. 67.1 of the EC Treaties, "During a transitional period of five years following the entry into force of the Amsterdam Treaty, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament".

¹⁰ See the Provisional consolidated version of the Draft Treaty establishing a Constitution for Europe, CIG 86/04, Brussels, 25 June 2004.

¹¹ Following Art. 1 of the proposal, the main goal of the measure was to establish common definitions, conditions and a single national application procedure leading to one combined title for both residence and work permits.

¹² See the Green Paper on an EU approach to managing economic migration (European Commission, 2004c). The Commission will organise a public hearing in July 2005 to discuss this matter among all the different stakeholders involved, which will facilitate the presentation of a policy plan on legal migration at the end of 2005.

inside the European Union. This is evidenced by the adoption of the Council Directive on the status of third country nationals who are long term residents which will be considered in depth below.

Further, a number of events and dramatic changes in the international and European arenas have substantially (re)shaped and taken over the political agenda. One of the pivotal factors has been the changing dynamic and conceptions of internal security issues after the events of 11 September 2001 in New York, Washington D.C. and Pennsylvania. These acts considerably shifted the political discourses and policy priorities at the international, European and national levels. They also gave a significant boost to the development of a package of measures dealing with the security realm (control) design to fight against a new, invisible and international enemy.¹³ This ‘new enemy’ seems to include a wide range of actors, categories and spheres, spilling over from acts of political violence commonly labelled as ‘terrorism’, to transnational organised crime, illegal immigration in general and “un-integrated” Muslim migrant communities in particular. The categorization as unassimilated and inassimilable of certain immigrant groups is also very much at stake. The acts of political violence in the US and the 11 March 2004 events in Madrid continue to be the ground for justifying the over-securitisation of migration, asylum and freedom of movement policies (Apap et al., 2004). The security rationale has become predominant. There appears to be a reinforcement of the ‘security continuum’ (Bigo, 1994). The anti-terrorism security package has almost entirely taken over the JHA Council meetings and discussions (Anderson & Apap, 2002). There is also a clear tendency towards negative (restrictive) measures rather than positive ones strengthening the liberties and rights of individuals. Consequently, policies dealing with the freedom realm (liberty), such as measures facilitating the admission, stay and mobility of migrants (regular migration) in the EU have been put aside.

In a parallel development, there seems to be a wide political understanding that the EU is facing a dramatic economic and social change characterised by labour shortages and accelerating demographic change through the increase in average age of the EU population.¹⁴ The launch of the Lisbon strategy in March 2000 identified as a goal for the next decade that the EU “becomes 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, a Union where the economic and social aspects of the ageing population become more evident and where the labour market for immigrants and refugees represents a crucial component of the integration process”.¹⁵ Many research studies have focused on the hypothesis of using replacement immigration to solve Europe’s demographic needs.¹⁶ Using immigration alone as a tool to fully meet these economic challenges is not a realistic option.¹⁷ Nevertheless, common immigration policies facilitating sustained immigration flows are likely and necessary.¹⁸ Thus, the European Commission advocated the development of a new approach to the management of migration flows and in particular a common policy on admission for economic reasons.¹⁹ This official message was reinforced in its 2003 spring report on the Lisbon strategy, which

¹³ See the Declaration on Combating Terrorism by the European Council (2004a).

¹⁴ See the Draft Multiannual Programme, *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union* (European Council, 2004b), point 1.4 on legal migration.

¹⁵ See the Lisbon Presidency Conclusions (European Council, 2000); see also the European Commission (2002) Communication to the European Council in Barcelona, *The Lisbon Strategy – Making Change Happen*.

¹⁶ The United Nations (2000), has advocated replacement immigration as a way to counterbalance the inevitable population decline in Europe and other parts of the world.

¹⁷ Policies on regular migration of labour should also be coupled with other broader labour market reforms, such as promoting the employment of minorities and women, longer participation in the labour market and modifying pension plans (see Apap, 2001).

¹⁸ On the economic integration of immigrants, see the set of recommendations given by Ray (2004).

¹⁹ See the Communication on a Community Immigration Policy (European Commission, 2000); see also the Communication on an Open Method of Coordination for the Community Immigration Policy (European Commission, 2001), which states that “The use of an open method of coordination will provide the necessary policy mix to achieve a gradual approach to the development of an EU policy, based in a first stage at least, on

stressed the need for better integration of migrants in order to guarantee high levels of employment and productivity as the population balance changes dramatically.²⁰ In fact, as the Commission has lately confirmed, even if the Lisbon employment targets are met by 2010, overall employment levels will fall as a result of demographic change. Between 2010 and 2030, at current immigration flows, the EU-25's working age population will suffer a decrease in the number of employed persons of some 20 million. Following this reasoning, a successful and efficient integration strategy of migrants would serve as a fundamental element that not only addresses the challenge of maintaining social cohesion, but also enhances the EU's overall economic welfare, the functioning of the internal market and the competitiveness of EU enterprises (Kok, 2004).

At times when ethno-cultural and religious diversity is an essential feature of European societies, one can find several anachronistic discourses and attitudes that show the struggle between security and liberty in the EU. On the one hand, there are the current institutional constraints in these areas and the call for more security in the age of preventive war against international terrorism. On the other hand, the EU is increasingly facing serious economic and demographic problems that need to be urgently tackled, by, among other measures, opening and facilitating more regular (economic) migration channels as well as developing comprehensive and effective integration strategies for immigrants.

In this blurred scenario, the progressive establishment of a common framework on the integration of migrants has therefore become a top priority. A "successful integration" of those legally residing third-country nationals and their descendants is seen on an official level as a paramount goal for the benefit of EU social cohesion and economic welfare, as well as the European Employment Strategy.²¹ At present, a major area of debate concerns the nature of integration programmes and the type of integration measures that should be provided. Another key issue is whether such measures should be mandatory or not and the effect that non-compliance could have in terms of legal and financial consequences, including a possible impact on the migrant's residential status. In the following sections, we assess the current state of play at the national and EU levels as regards integration of immigrants.

2.1. A glance at national philosophies on the integration of migrants

States differ considerably in their approaches, programmes and political priorities towards the integration of migrants (European Commission, 2003c). There are indeed a variety of images, stereotypes and philosophies on what immigrant integration should or should not be (Favell, 1998). Over the last few years, a series of new integration conditions have arisen that place increasing demands on new (newcomers) and long-term resident immigrants. The category of immigration and the juridical label of 'foreigner' are often uncritically linked to integration problems or crises.²² These approaches take for granted that those not holding the nationality of the receiving state are the only ones facing problems of inclusion, identity and participation in the system and the 'life world'.²³

the identification and development of common objectives to which it is agreed that European response is necessary".

²⁰ See the Commission Staff Working Paper, *Choosing to grow: Knowledge, innovation and jobs in a cohesive society* (European Commission, 2003a).

²¹ The European Employment Strategy is a key component of the Lisbon strategy. It provides employment guidelines, priorities and objectives. Within this framework the Commission stressed that "The contribution of immigrants to employment and economic growth will depend on their integration in the labour market and their successful inclusion in the society". See the Communication on the Future of the European Employment Strategy: A Strategy for Full Employment and Better Jobs for All (European Commission, 2003b) and the one on Strengthening the Implementation of the European Employment Strategy (European Commission, 2004d).

²² In several EU member states, these new integration programmes have been politically presented as the solution to the integration crisis that has seemed to exist from the 1990s until the present.

²³ By 'life world' we mean the person's involvement in the different social sectors and environments of ordinary life (social integration). This term was first advocated by Habermas (1987).

A wide range of programmes intending to promote and facilitate the integration processes of lawful migrants have been put in place in a majority of EU states. These programmes tend to include, for example, language abilities, orientation courses that familiarise migrants with the receiving country's norms, values and cultural customs. It is well known that all these integration strategies involve a significant financial as well as political investment. Their content and structure vary widely in terms of scope, target groups and actors. The diversity derives from the different historical backgrounds, societal models and self-perception, along with the patterns and traditions of migration flows in each state.²⁴ They usually focus on three general dimensions in which the integration process of immigrants may take place in the receiving society: the socio-economic dimension, which may include priority areas such as access to the labour market, education, housing and health; the legal/political dimension, which refers to the question of the extent to which immigrants are effectively members of a political community in their receiving state; and the cultural/religious dimension, which relates to the cultural and religious rights of immigrants.²⁵ The different attitudes of recipient societies also play a paramount role in each of these dimensions (Entzinger & Biezeveld, 2003).

In addition, the literature has traditionally distinguished among three main, national theoretical models of immigrants' integration. First, there is the multicultural model, which is based on respect and protection of cultural diversities. In contrast to *de facto* multiculturalism, official multiculturalism has not been widely shared. It aims at explicitly guaranteeing the identity of the immigrant community. Countries that have traditionally followed this model are Canada, the Netherlands and Sweden.²⁶

Second, the assimilationism model, also called the 'republican' or 'universalist' model, can be highlighted. Equality is at the root of this approach; individuals are citizens and citizens are equals before the law (civic individualism). It is based in the complete assimilation or integration of the 'foreigner' into the dominant traditional national values and perceived common identity. France is the usual example cited as following this approach.²⁷

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 a territory (the right of residence is granted temporarily and conditionally). Access to nationality is very much limited, whereby the acquisition is based on *jus sanguinis* (the blood right to citizenship). It consists of programmes and policies that aim at a temporary character of immigrants' settlement in their societies (the guest-worker system). Immigrant workers are often denied political citizenship. Germany, Switzerland and Belgium fall within the list of countries that are inspired by this model.

No country strictly follows any of these theoretical models. In fact, the current existence of the models has been seriously debated. It is true that societies and their attitudes towards immigrants and their integration are not static, but are undergoing transformation. National models of integration and citizenship have been frequently mooted by evolving contemporary realities, as well as by events at international and national levels.

The EU itself is based on a multicultural or intercultural model, where the respect for the cultural diversity of European populations is enshrined in Art. 151 of the EC Treaties. This provision expressly stipulates 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

²⁴ That notwithstanding, it seems that most of the current national programmes on integration take the Dutch model as the example to follow in their respective national *fora*.

²⁵ For an analysis of these three dimensions see Penninx (2004).

²⁶ The programme of integration of migrants existing in Sweden is positively characterised by its non-obligatory nature and its understanding of integration as non-discrimination. The point of departure is equal rights, opportunities and duties for all irrespective of ethnic origin. See *Swedish integration policy for the 21st century*, *Regeringskansliet*, Ministry of Industry, Employment and Communications, June 2002 and also *Migration 2002*, Ministry for Development Co-operation, Migration and Asylum Policy, June 2002, Stockholm.

²⁷ For an analytical understanding of the French citizenship and integration policy, see Bertossi (2004).

cultural heritage to the fore". Official multiculturalism is very close to disappearing in practice almost all over the world. This model is also seriously declining inside the European Union.

An interesting example of this ongoing change in attitudes towards migrants and their integration, and of the precariousness of official multiculturalism may be the case of the Netherlands. Since the introduction in the 1970s of the Memorandum on Foreign Workers²⁸ a substantial evolution in its legal system and mentality has occurred as regards the aims of policies on immigrants' integration. The traditionally open and multicultural position on how integration is achieved that characterised the Dutch multiculturalism model has been substituted by a rather restrictive assimilationist doctrine – i.e. a policy of obligatory integration. The Integration of Newcomers Act (WIN), which entered into force in September 1998,²⁹ is the main legal tool regulating the policy on the integration of migrants (*integratiebeleid*). The Act imposes an increasing number of obligations and skills on the migrants' part. The newcomer is first required to apply for an integration inquiry,³⁰ which will determine whether or not s/he needs an integration programme.³¹ Proficiency with the Dutch language and social orientation (familiarity with Dutch society) are key preconditions for full social participation (equal access to rights).

The main goal of the WIN is to promote the self-sufficiency of newcomers.³² Immigrants are therefore responsible for their own incorporation. The Act even foresees the possibility of applying economic sanctions and fines to those 'newcomers' who do fail to meet their integration obligations (pass successfully integration courses).³³ Furthermore, integration is no longer seen as process taking place inside the receiving state, but as commencing even before emigrating from the country of origin. Policies on admission (exclusion) are therefore paradoxically converging with those of integration (inclusion). The lack of integration could be seen as a ground for refusal of admission to the country. Most surprisingly, the WIN does not seem to differentiate between asylum seekers and other migrants as regards integration (De Heer, 2004). The concept of 'newcomer' is rather broad under the Act, including every foreigner with a residence permit for a fixed period (*verblijfsvergunning voor bepaalde tijd* – VBT),³⁴ asylum or a regular residence permit. It may also apply to newcomers of Dutch nationality who are born outside the Netherlands.³⁵ Exceptions are persons who come to the Netherlands for employment or self-employment activities or who come for a temporary purpose, as well as European citizens³⁶ A new proposal on the integration of migrants has been presented by Rita

²⁸ This Memorandum (Nota Buitenlandse Werknemers, Kamerstukken II, 1969/70, 10 504, No. 2) was first published as a policy reaction to the increasing immigration flows from southern European countries.

²⁹ See *Wet Inburgering Nieuwkomers*, WIN, Staatsblad 1997, 604.

³⁰ The integration inquiry will be composed of a series of processes seeking to establish the starting level of the integration programme and its key aims. For instance, there will be a personal interview and a test of knowledge and skills (educational background and work experience), including knowledge of Dutch society and language.

³¹ The municipality where the newcomer is registered is responsible for carrying out the integration policy. It will also be responsible for supervising the newcomer's compliance with the obligations of the Act.

³² 'Self-sufficiency' has been also mentioned by the *Handbook on Integration* (see footnote 34) as one of the key elements of introduction programmes; see p. 14 of the *Handbook*, which states that "Introduction programmes are an investment in the future which both the immigrant and society should be willing to make. They give immigrants a start, enabling them to acquire vital skills to become self-sufficient and are therefore well worth the effort".

³³ The WIN provides sanctions for those newcomers who do not: apply for an integration inquiry, 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; see for example Arts. 2, 4.4, 8 and 9.1 of the Act.

³⁴ See Arts. 9 and 10 of the Aliens Act of 2000 (Vreemdelingenwet 2000), Wet van 23 november 2000 tot algehele herziening van de Vreemdelingenwet, Staatsblad van het Koninkrijk der Nederlanden, 495.

³⁵ This is mainly aimed at Dutch citizens who are not from the Netherlands, but from other parts of the Kingdom, such as the Antillian and Aruban populations.

³⁶ See the Regulation for referring newcomers due to stay with temporary purpose, Staatsblad 1998, 185.

Verdonk, the Dutch Minister for Aliens' Affairs and Integration (Verdonk, 2003). This initiative further enhances the position on migrants having the sole responsibility for their own integration. It advocates for instance that each migrant needs to bear the financial costs of his/her integration courses. Only if s/he successfully passes the integration test will a partial refund be possible. A new proposal on this topic is being debated by the Dutch Parliament. Lately, public and political debate on integration has shifted considerably in the country as a consequence of the dramatic events that have occurred since the murder of the filmmaker Theo van Gogh.³⁷ The impact that these dramatic events may have on the policy agenda and general attitudes towards immigrants' communities in this country and beyond will definitely be an interesting piece of analysis.³⁸

2.2. An EU strategy on the integration of immigrants?

The European Council at Thessaloniki revisited the open call given at Tampere to develop a comprehensive and multidimensional policy on "how to efficiently manage the integration of migrants".³⁹ The heads of state and government stressed that while primary responsibility for the elaboration and implementation of integration strategies remains with the member states, these policies should be developed within a coherent EU framework establishing common basic principles and standards that would re-enforce policy coordination.

On this same occasion, the Commission's Directorate-General on Freedom, Security and Justice as well as the one on Employment and Social Affairs presented a Communication on Immigration, Integration and Employment (COM(2003) 336 final; see European Commission, 2003d). The Commission called for a proactive EU immigration policy paralleled by a holistic integration policy of immigrants into the receiving state. It restated that the successful integration of immigrants would be both a matter of social cohesion and a prerequisite for economic efficiency in Europe. What are the main themes presented by the Commission in this key document? Below we underline four.

First, the integration mechanism is a two-way process. Integration should be based on reciprocal rights and obligations for both sides, and on the existence of a truly welcoming society. Following this approach, the burden of adjustment does not fall solely on the immigrants' side. Integration may be seen as a continuous two-way street. Migrants and their receiving societies need to progressively adapt to each other in order to foster social cohesion, economic welfare and prosperity for all in a short-term as well as long-term perspective. The Commission also stresses that the final goal of a successful integration policy would be to guarantee the inclusive participation of the migrant communities in the economic, social, political and cultural life while respecting the values and fundamental norms of the host member state.

Second, the Commission advocates a holistic approach towards the integration of both established and future immigrants. A series of elements should be taken into account in this holistic strategy such as having access to employment, education, language training, health and social services, along with involvement in the social and political life in the EU member states.

Third, the Commission sees a need to improve the overall policy coherency and synergies between immigration, integration and employment policies. This would lead to better and increased cooperation among all the relevant actors at the EU, national, regional and local levels.

³⁷ Several acts of violence have occurred inside the country against Muslim targets since the murder of the filmmaker on 2 November 2004; see "Attacks on Muslims raise Dutch fears over integration", *Financial Times*, 10 November 2004.

³⁸ See the opening speech delivered by Minister M.C.F. Verdonk at the integration conference on Turning Principles into Action in Groningen on 10 November 2004.

³⁹ See the Thessaloniki European Council Conclusions (European Council, 2003) paras. 28-35, under the heading "The development of a policy at European Union level on the integration of third-country nationals legally residing in the territory of the European Union".

Finally, the Commission uses the traditional categorisation of migrants as provided by European Community law. The only group of migrants who would benefit from integration strategies are: labour migrants, family members admitted under family reunion arrangements, refugees and persons enjoying international protection.⁴⁰ Furthermore, length of stay plays a fundamental role in the inclusion process, along with access to the basic set of rights, “the longer a third country national resides legally in a Member State, the more rights and obligations such a person should have” (European Commission, 2003d, p. 18).

Some authors have qualified Communication 2003/336 as a positive tool for a break with the immediate past of control-oriented migration regulation after the events of 11 September 2001. Since the June 2002 Seville European Council most of the migration-related debates and policy developments mainly focused the fight against irregular immigration, readmission agreements, the trafficking and smuggling of human beings as well as enhancing border controls and security.⁴¹

The prominent role given by the Greek presidency of the EU to the development of a coherent framework on the integration of migrants has indeed positively re-opened discussions on the freedom rationale of migration. Yet it also raised major areas of debate concerning the nature and scope of integration programmes, the type of integration measures that should be applied and whether or not they should be of mandatory character as well as the legal and financial consequences of non-compliance. Furthermore, it questioned what integration means in liberal democracies. In this regard, a wide variety of terms and categories have been used by immigration theories while trying to describe and study the actual interplay between migrant communities and the receiving societies: assimilation, incorporation, absorption, adaptation, acculturation and, lately, integration.⁴²

As regards the latest EU developments in this field, the setting up of the National Contact Points on Integration in March 2003 was an initial step in establishing an EU dimension of knowledge and exchange of information on national integration strategies. In order to structure the exchange of information, a handbook on integration was presented in November 2004.⁴³ The *Handbook* seeks to identify priority areas and give policy recommendations and general lines on integration policies. While policy-makers and practitioners are the main target group of this publication, the *Handbook* primarily aims at acting as a driver for the exchange of information and what they call “best practice” among current EU member states.⁴⁴

The Council additionally invited the European Commission to present an Annual Report on Migration and Integration (European Commission, 2004e). The report provides an overview of migration trends in Europe and describes policies on the admission and integration of immigrants at national and European levels. The Commission expresses in the report that “The development of comprehensive integration policies requires effectively mainstreaming immigration concerns in all relevant policy fields as well as actions to combat discrimination while at the same time developing specific measures and instruments to tackle the needs of immigrants”.

Further, if we look at the second multiannual programme on freedom, security and justice (the so-called ‘Hague Programme’), which was agreed by the European Council in November 2004 for the

⁴⁰ The European Commission first used this definition of immigrant in the Communication on a Community Immigration Policy (European Commission, 2000).

⁴¹ See para. 30 of the Presidency Conclusions from the Seville European Council (European Council, 2002).

⁴² McAndrew and Weinfeld (1996) have found over 300 different possible conceptualisations of immigrants’ integration.

⁴³ The *Handbook on Integration for Policy-Makers and Practitioners* (Niessen & Schibel, 2004) was based on the conclusions of a number of seminars that were held in Copenhagen, Lisbon and London during 2004. See for example the concluding document from the first technical seminar on the introduction of newly arrived immigrants and refugees held in Copenhagen on 5-6 February 2004, Immigration and Asylum Committee, National Contact Points on Integration, March 2004, MIGRAPOL-Integration, 22 final.

⁴⁴ A second edition is being planned for the year 2006.

next five years,⁴⁵ the integration of migrants was placed among the most relevant policy areas. The Council reconfirmed the need for greater coordination of national integration policies and European Union initiatives in this field.⁴⁶ Unfortunately, however, the previously described institutional and legal frictions of the current EC Treaties' structures, which often block progress on policies of regular migration, have not been overcome by this new programme. Further, qualified majority voting in the Council and the co-decision procedure provided by Art. 251 of the EC Treaties will continue to be not applicable to those areas.⁴⁷

Finally, a set of common basic principles underlying a coherent European framework on integration has also been agreed by the Council.⁴⁸ These 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 to integration.
5. Efforts in education are critical to preparing immigrants.
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 a critical foundation for better integration.
7. Frequent interaction between immigrants and member state citizens is a fundamental mechanism.
8. The practices of diverse cultures and religions, if guaranteed under the Charter of Fundamental Rights, must be guaranteed by the framework.
9. The participation of immigrants in the democratic process and in the formulation of integration policies and measures should be encouraged.
10. Mainstreaming integration policies and measures in all relevant policy portfolios is an important consideration.
11. Developing clear goals, indicators and evaluation mechanisms are necessary to adjust policy.

This compendium of shared goals is primarily intended to assist member states in formulating integration policies for immigrants by offering a simple, non-binding guide against which they can judge their own policies. Most of them are of a rather symbolic nature. 'Openness' as regards inclusiveness of migrants has certainly not formed the foundations of the Directives on the status of long-term residents and on the right to family reunification. The positive two-way process paradigm seems to be far from easy to apply in practice. The philosophy followed by these measures as regards the conditionality of integration is of a restrictive nature.⁴⁹ The inclusion of mandatory integration requirements, or forced assimilation, in order to have full access to the package of rights and benefits that the member states confer is very unfortunate indeed.

⁴⁵ See Annex I, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, point 1.5 in the Presidency Conclusions of the Brussels European Council (European Council, 2004c).

⁴⁶ This strong political signal that a successful integration policy is vital was reinforced by the Dutch presidency of the EU at a conference on integration policy, Turning Principles into Action, held in Groningen on 11 November 2004.

⁴⁷ The Presidency Conclusions of the Brussels European Council (European Council, 2004c) state that "The European Council asks the Council to adopt a decision based on Article 67.2 TEC immediately after formal consultation of the European Parliament and no later than 1 April 2005 to apply the procedure provided for in Article 251 TEC to all Title IV measures to strengthen freedom, subject to the Nice Treaty, except for legal migration".

⁴⁸ See the Justice and Home Affairs Council Meeting 2618th, 14615/04, Brussels, 19 November 2004.

⁴⁹ See for example Art. 4.1 of the Directive on the right to family reunification and Art. 5 of the one on the long-term resident status.

Into what exactly are migrants supposed to integrate? Today to be really 'French', 'German' or 'Spanish' (*national identity*) is nothing but open to a variety of subjective interpretations and visions of our perceived social reality. This is even more acute when we talk about being genuinely 'European' (*European identity*). Yet traditional stereotypes and (unreal) conservative myths of how to be French, German or Spanish are taken as 'the model test' to evaluate if the 'other' is successfully integrated (or rather civilised) and hence can be accepted as an equal member of the club. Some political discourses tend to advocate a homogeneous and pure image of 'us' (and our common cultural traditions) in comparison with the wider 'them'. These discourses have been particularly misused during the stages preceding every new EU enlargement process (i.e. the question of whether or not to open negotiations for EU accession with Turkey has once again raised these discourses on the non-European and non-Christian cultural background of this country). They also call for the necessity to 'normalise', 'civilise' and 'assimilate' into their modern societal vision of themselves those not holding their nationality. Defending the essence of European culture from aliens is also at the heart of these illiberal claims. Looking back at our recent history, this is indeed a dangerous political game. Many EU states need to go through a painful process of readjusting their conceptualisation of their perceived national identities and fundamental values from one that emphasises a mythical national homogeneity and culture to another one that is diverse and *de facto* multicultural (Erzan & Kirişçi, 2004).

The EU and a majority of national policies have often foreseen as the main target group of integration policies those migrants who are lawfully long-term residents.⁵⁰ The length of stay plays a fundamental role on any integration process as well as the access to rights, freedoms and duties. The Council Directive concerning the status of third-country nationals who are long-term residents (2003/109/EC) is the product of that belief and deserves special attention. This Directive is of paramount importance as regards its impact on the inclusion processes of immigrants inside the EU.⁵¹ Does it truly contribute towards a fair and equal treatment of immigrants, and their integration processes in the receiving societies?

3. The Directive on long-term resident status: Towards equal treatment?

In this section the material and personal scope as well as the conditions for the acquisition of the status of long-term resident are critically assessed. Special attention is paid to the package of rights and requirements conferred on those migrants who may qualify to acquire this status. While doing so, the legislative progress and restrictive amendments are reviewed since the Directive was first proposed by the European Commission until its final adoption by the Council of Ministers. What are the main transformations suffered by the proposal during the negotiations compared with the original version?

The European Commission proposed the measure as early as March 2001,⁵² having as a legal basis Art. 63.4 of the EC Treaties. This provision stipulates that "the Council shall adopt...measures defining the rights and conditions under which nationals of third countries who are legally resident in a member state may reside in other Member States". After long discussions in the Council of Ministers and its working groups,⁵³ the Directive was adopted in November 2003 after being significantly

⁵⁰ This has especially been the approach at the EU level since the adoption of the Council Resolution on the status of third-country nationals residing on a long-term basis in the territory of the Member States, 96/C80/02, [1996] O.J. C080 , 18.03.1996.

⁵¹ See the Council Directive concerning the status of third-country nationals who are long-term residents, 2003/109, [2004] OJ L 16/44, 23.1.2004.

⁵² See the Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, COM/2001/0127 final, CNS 2001/0074.

⁵³ The Council first politically agreed on the text of the initiative at the 2514th Council Meeting JHA, Luxembourg, 5-6 June 2003, 9845/03 (Press 150). See the Proposal for Council Directive concerning the status of third-country nationals who are long-term residents, 10501/1/03, REV 1, MIGR 48, Interinstitutional File: 2001/0074 (CNS), Brussels, 24 July 2003; see also the previous version of the proposal of 7 July 2003, Brussels, Council of the European Union, Doc. 2001/0074, MIGR 48.

watered down. The increasing restrictions it gathered as it moved towards final agreement could be seen to show a multiplicity of elements inherent in overall attitudes to the immigration and integration of migrants (Apap & Carrera, 2003). Relevant features of the attitudes of some member states towards the ‘other’ and the acquisition by the ‘other’ of secure residence and mobility rights are revealed in the amendments made to the first proposal by the Council during negotiations (Guild, 2004).

The Directive seeks to confer free movement and residence rights to migrants (who are lawfully long-term residents) inside the EU territory comparable to EU citizens. Traditionally, under European Community (EC) law most immigrants only had residence, or other related rights in the member state where they were first admitted. They did not hold the right to move to a second member state inside the Union, unless they belonged to the group of privileged non-EU citizens who benefited from derived rights.⁵⁴ Before the adoption of this Directive, only those enjoying a legally recognised relationship with an EU citizen (for instance family ties) would mainly have the opportunity to benefit from the rights and freedoms conferred under EC law (Barret, 2003). To what extent does this legal measure truly guarantee fair treatment of immigrants? Does it confer a set of rights and obligations comparable to those of EU citizens?

3.1. Material and personal scope

The measure’s objective is to grant an EC status of long-term resident to those third-country nationals who have legally resided for five years in the territory of a member state.⁵⁵ Following Art. 4,⁵⁶ member states need to grant this status to those migrants who have resided legally for a period of five years immediately prior to the submission of the application. The period of five years was also the one used by the ILO Convention No. 97 on Migration for Employment, the European Convention on Establishment as well as the 2000 Council of Europe Committee of Ministers Recommendation concerning the security of residence of long-term residents.⁵⁷

Art. 1 provides that the Directive determines “the terms for conferring and withdrawing long-term resident status granted by a member state in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto”. It also states the terms of residence in member states other than the one conferring the long-term status. It is striking to see how the former reference to a ‘right to reside’ in other member states has been omitted in the last version of the measure.⁵⁸ The final text establishes that the Directive will determine “the terms of residence” in member states other than the

⁵⁴ The concept of derived rights has been used by the European Court of Justice in several instances: see for instance, Case 40/76 *Kermaschek v. Bundesanstalt für Arbeit* [1976] ECR 1669; Case 243/91 *Belgian State v. Taghavi*, [1992] ECR I-4401; and the opinion of the Advocate General La Pergola in Case 356/98 *Kaba v. Secretary of State for the Home Department*, [2000] ECR I-2623.

⁵⁵ For a detailed comparative study on the situation of third-country nationals lawfully resident in EU member states, see Groenendijk, Guild & Bazilay (2000).

⁵⁶ Concerning the duration of residence, Art. 4, 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 the submission of the relevant application”.

⁵⁷ See the Convention concerning Migration for Employment (Revised 1949), which came into force on 22.01.1952, the Council of Europe Convention on Establishment, European Treaty Series No. 19, which came into force on 20.03.1990 and Recommendation (2000) 15; see also the Recommendation (1988) 1082 of the Parliamentary Assembly on the right of permanent residence for migrant workers and members of their families.

⁵⁸ The former Art. 1 of the Proposal (COM(2001) 0127 final) provided that the Directive would determine “(b) the terms on which third-country nationals enjoying long-term resident status have the right of residence in Member States other than the one which conferred that status on them”. Additionally, the new version of Chapter III, now styled “Residence in the other Member State”, again omits the reference to a right of residence.

one that conferred the status of long-term resident on the third-country national.⁵⁹ The question as to whether or not the Directive is then conferring such a right remains open to interpretation.

Who is included and who is excluded from the status conferred by the Directive? One of the positive elements originally contained in the 2001 proposal was the broad scope of persons who could qualify and benefit from that secure status. The final text stipulates, however, that the Directive will exclusively apply to those migrants legally residing in the territory of an EU member state for at least five years.⁶⁰ Therefore, it will exclude the following categories of non-nationals:

- students and those following vocational training;⁶¹
- the beneficiaries of temporary or subsidiary forms of protection;
- refugees and those who have applied for the recognition of this status;
- temporary residents; and
- those holding diplomatic or consular protection.⁶²

The persons to whom the Directive may apply are fewer in number than what may initially appear at the first sight. Including refugees among those who fall outside the personal scope may be considered an unfortunate choice. The Commission is, however, intending to present a Directive extending this Directive to refugees and persons with subsidiary protection.⁶³

Also, in comparison with the Commission’s initial proposal, the new Art. 3.2.e has negatively excluded migrants who either “(e) reside solely on temporary grounds such as au pair or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited”.

3.2. Conditions for the acquisition and loss of the status

Among the list of requirements that need to be fulfilled in order to benefit from the package of rights linked to the status of long-resident, we highlight several in this section. First, during the negotiations of the proposal a new paragraph was inserted into Art. 5 dealing with the integration conditions of the migrant as an additional requirement for the acquisition of the status. This key requirement – proposed mainly by Austria, Germany and the Netherlands – is one of the more important amendments in comparison with the initial version of the Directive proposed by the European Commission in 2001.⁶⁴ The wording “to comply with integration measures” was also strategically replaced during the negotiations by “to comply with integration conditions”. This new wording will allow EU states to ask immigrants to cover the financial costs of integration measures rather than requiring them to attend

⁵⁹ The new Art. 1, concerning subject matter states that the Directive determines “(b) the terms of residence in Member States other than the one which conferred long-term status on them for third-country nationals enjoying that status”.

⁶⁰ Art. 3, concerning the scope states that “This Directive applies to third-country nationals residing legally in the territory of a Member State”; Art. 4, concerning the duration of residence stipulates that “Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application”.

⁶¹ In the original version of the Directive students were exclusively covered concerning advanced studies and their continuous residence counted for half that of others.

⁶² This category would include persons enjoying a legal status governed by the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention of 1969 on Special Missions or the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 1975.

⁶³ See the report on application of the Tampere programme, SEC(2004) 680 final, 2.6.2004 (European Commission, 2004b), pp. 4 and 8, as well as Peers (2004).

⁶⁴ See for example Council Documents 12217/02 and 11360/02 of July 2002.

courses organised and funded by the receiving country's authorities (Groenendijk, 2004). This wording has been the subject to heated discussions and criticism all over the EU. There seems to be no clarification about its real limits, leaving wide room for discretion for each of the member states to freely determine, through their respective national immigration laws, the real scope and content of these conditions. A similar, yet not identical requirement was also introduced in Art. 15(3), by stating that "Member States may require third-country nationals to comply with integration measures, in accordance with national law". A critical view of these provisions is carried out in Section 3.3 below.

Second, another modification is contained in Art. 6, which foresees the possibility for the member states to refuse granting long-term resident status on the grounds of public policy or public security (or both). In that respect two main changes may be perceived in comparison with the terminology used in the original version of the legal instrument: first, the former concepts of 'public order or domestic security' do not appear in the new language used. And second, the member states will examine the "severity or type of offence against public policy or public security, or the danger that emanates from the person concerned".⁶⁵ In this way, the scope of this provision has been extended considerably. It is worrying to see the flexibility given to the member states' authorities to determine whether a particular person may or may not constitute a threat or danger to public security and policy.

Third, Art. 4 establishes the obligation by the migrant to prove that they have for themselves and for dependent family members stable and regular resources.⁶⁶ They will need to show that they are in possession of sickness insurance in order to avoid becoming a burden for the particular state.⁶⁷ Additionally, they must present evidence of appropriate accommodation.⁶⁸

If the immigrant fulfils all the above-mentioned requirements s/he will be granted the "long-term resident's EC residence permit".⁶⁹ In contrast with the initial version, the new period of validity of the residence permit has generously been reduced from ten years to five years.⁷⁰ It will be renewable only upon application of the person involved and not automatically.⁷¹ Art. 7 of the Directive stipulates the obligation by the specific competent national authorities to notify the applicant of the decision taken as regards the acquisition of this status "as soon as possible" and "in any event" no later than six months from the date on which the application was lodged. Although the final version of this article may be welcome in some concerns, it is unlikely that the national authorities will make the final decision in such a short period.

⁶⁵ See also para. 2 of Art. 6, which stipulates that "the refusal referred to in paragraph 1 shall not be founded on economic considerations".

⁶⁶ Art. 5 provides that "Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application of long-term resident status".

⁶⁷ This requirement has been softened by Council Regulation 859/2003 of 14 May extending the provisions of Regulation (EEC) No. 1408/71 and Regulation (EEC) No. 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality.

⁶⁸ As regards appropriate accommodation see Case 249/86 *Commission v. Germany* [1989] ECR 1263.

⁶⁹ Art. 8.3 states that "A long-term resident's EC residence permit may be issued in the form of a sticker or of a separate document. It shall be issued in accordance with the rules and standard model as set out in Council Regulation (EC) 1030/2002, [2003] of 13 June 2003 laying down a uniform format for residence permits for third-country nationals. Under the heading type of permit, the Member States shall enter long-term resident – EC".

⁷⁰ Art. 8.2 reads as follows: "Member States shall issue a long-term resident's EC residence permit to long-term residents. The permit shall be valid at least for five years; it shall, upon application if required, be automatically renewable on expiry".

⁷¹ See also the new Art. 9.6, which provides that the expiry of a long-term resident's EC residence permit shall in no case entail withdrawal or loss of long-term status. The resident permit is to follow the patterns provided by the Council Regulation laying down a uniform format for residence permits for third-country nationals, (EC) 1030/2002, [2002] OJ L 157, 15.6.2002, as well as the Proposal for a Council Regulation amending Regulation (EC) 1030/2002, COM(2003) 0558 final, 24.9.2003.

What is the package of rights conferred to those migrants holding the status of long-term residents? Those migrants meeting all the legal conditionality contained by the Directive will hold a right to move and reside in the territory of member states other than the one that granted the status in the first instance. They will also enjoy comparable treatment (yet not equal) with the nationals of the receiving state in a number of dimensions specified by Art. 11 (see section 3.3).

Art. 9, which provides the grounds for withdrawal or loss of the status, establishes that member states shall withdraw long-term resident status when one of the following circumstances has been detected:

- fraudulent acquisition of the status;
- grounds related to the expulsion measures based on Art. 12 of the Directive. The new categories of public security and specifically public policy have also been introduced to this article during the negotiations phase. These grounds seem to be wider in scope than the ones of public order or domestic security that were used in the former version. This is further exemplified by the national authorities’ discretion to withdraw the status even though the threat to public policy is not a reason for expulsion within the meaning of Art. 12.⁷² Moreover, as stated in the Explanatory Memorandum of the Directive, “the notion of public policy may cover a conviction for committing a serious crime”;
- absence from the territory during 12 consecutive months. Member states may not consider that period of absence as a ground for the withdrawal or loss of status;⁷³ however, Art. 9.2 professes that by way of derogation, member states may provide that the absences exceeding this period of time shall not entail withdrawal of the status on the basis of specific or exceptional reasons. As De Groot (2003) highlights, this is indeed a rather weak point in the final wording of the Directive. The fact that each member state will have different legislation on the ways in which the long-term resident status can be lost will certainly have profound consequences on equal treatment at times of national implementation throughout the EU; and
- acquisition of the status pursuant Art. 23, which deals with the acquisition of the long-term resident status in a second EU member state.⁷⁴

3.3. Some critical aspects in the Directive

The adoption of this Directive was a beneficial step in the whole debate about the need to develop a common EU immigration policy. Nevertheless, some critical open questions need to be addressed.

First, the long-term resident’s EC residence permit and the rights attached to it are confined to the particular member state in which the ‘other’ is legally residing for a period of five years. Therefore, this residence permit cannot validly be used in a second member state if that status is not also granted there.⁷⁵ Art. 15 of the Directive says that after a period of three months since entry into the territory of the second member state the migrant will have to follow the same administrative procedures in order to (re)check whether s/he fulfils the conditions to receive or not a residence permit in that particular

⁷² Art. 9.3 stipulates that a “Member State may provide that the long-term resident shall no longer be entitled to maintain his/her long-term resident status in cases where he/she constitutes a threat to public policy, in consideration of the seriousness of the offences he/she committed, but such threat is not a reason for expulsion within the meaning of article 12”.

⁷³ Art. 9.4 provides that a six-year period of absence will represent the loss of the status, even though the member states will have the possibility to maintain this status.

⁷⁴ Art. 23 states that “1) Upon application, the second Member State shall grant long-term residents the status provided for by Article 7, subject to the provisions of Articles 3, 4, 5 and 6. The second Member State shall notify its decision to the first Member State. 2) The procedure laid down in Article 7 shall apply to the presentation and examination of applications for long-term resident status in the second Member State. Article 8 shall apply for the issuance of the residence permit. Where the application is rejected, the procedural guarantees provided for by Article 10 shall apply”.

⁷⁵ See the current version of Chapter III of the Directive, “Residence in the other Member States”, Arts. 14-23.

state.⁷⁶ It is quite unfortunate that the competent national authorities of the second member state will have another period of four months to process the application.⁷⁷ The length of waiting time since the person entered the territory of the second member state until the final decision is actually made seems to be too long.

Second, as noted above, after having received the residence permit, Art. 11 provides that the person will enjoy an equal treatment similar to the one that the migrant had in the first state (Handoll, 2002). But the wording of the latter version of this article needs to be scrutinised carefully. While it is true that Art. 11 establishes that long-term residents shall enjoy equal treatment with nationals in a number of areas,⁷⁸ member states will nevertheless have the possibility significantly to restrict this apparent equality. The five grounds on which this equality in treatment may be restricted by the receiving state are:

- 1) access to employment or self-employed activities where these posts are reserved for nationals of the state, EU citizens and European Economic Area (EEA) nationals;
- 2) education (including study grants) and vocational training;⁷⁹
- 3) social security, tax benefits, social assistance and social protection; access to and the supply of goods and services made available to the public and to procedures for obtaining housing, as well as freedom of association may also be restricted “where the registered or usual place of residence of the long-term resident, or that of family members for whom s/he claims benefits, lies within the territory of the member state concerned” (Art. 11.2). The exact meaning of this paragraph is far from transparent;
- 4) public policy and public security considerations covered by national provisions; these factors will apply, for example, to the free access to the totality of the territory of the state; and
- 5) social protection and assistance falling outside the ‘core benefits’.

After reviewing all these grounds for exclusion, it would not be easily arguable that the Directive confers true equal treatment in comparison with EU citizens, either in the member state where the application was first lodged, or in the second state where the migrant may move and reside at a later stage. The status of long-term resident is therefore a status with rights and benefits comparable but not fully equal to those of EU citizens.

Third, the Directive does not guarantee a homogeneous EC statute of long-term resident throughout the EU. Each member state may even keep their bilateral agreements with third countries or more favourable legislation concerning specific categories of immigrants, even after this Directive is implemented into their national legal system.⁸⁰ Therefore, all the association and cooperation agreements adopted under Arts. 308 and 310 of the EC Treaties will remain valid. For example, the ‘standstill clauses’ that are part of the Association Agreement, Additional Protocol and the Decisions of the Association Council between the EEC and Turkey (Apap, Carrera & Kirişçi, 2004) will continue to be applicable (Groenendijk, 2001). These provisions preclude the introduction into the

⁷⁶ This article establishes that “Member States may require the persons concerned to provide evidence that they have: (a) stable and regular resources...(b) sickness insurance...”.

⁷⁷ As specified by Art. 19 on examination of applications and issue of residence permit.

⁷⁸ These areas are: access to employment and self-employment activities, education and training (including study grants), recognition of diplomas and other qualifications, social security, social assistance and social protection as defined by national law, tax benefits, access to goods and services, freedom of association and free access to the entire territory of the member state.

⁷⁹ According to Art. 11.3.b, “Member States may require proof of appropriate language proficiency for access to education and training. Access to university may be subject to the fulfilment of specific education prerequisites”.

⁸⁰ Art. 13 (formerly Art. 14) states that “Member States may issue residence permits of permanent or unlimited validity on terms that are more favourable than those laid down by this Directive. Such residence permits shall not confer the right of residence in the other Member States as provided by Chapter III of this Directive”.

national legislation of a member state of new and more restrictive conditions treating legally resident Turkish nationals less favourably than they were treated at the time of the entry into force of the Additional Protocol.⁸¹

Fourth, Art. 10 covers the procedural safeguards that may be exercised against a decision rejecting the issue or withdrawal of the status. The rights to appeal against a decision of expulsion and the procedural safeguards in general for the migrant involved as well as his/her respective family members are not as strong as those available to EU citizens. Art. 10 expressly states that “the person concerned shall have the right to mount a legal challenge in the member state concerned”. Yet the real meaning behind the concept of legal challenge is not clarified by the Directive. Its practical content will be defined at a later stage by the member state in which the application is lodged. A clear statement on the possibility of having access to appeal (or a right to legal remedies as originally proposed by the Commission in the first version of the initiative) should have been expressly included in the articles of the Directive, and not only inside its Explanatory Memorandum, which lacks legal effect.⁸² A legislative proposal on minimum guarantees for individual freedom, security and justice in relation to decisions regarding the removal of persons (and immigrants in particular) should be put in place in order to ensure proper juridical protection (effective legal remedy against a negative decision).⁸³

Finally, the Directive offers wide discretion to the member states to ask migrants to comply with mandatory integration conditions. This new requirement was not present in the initial proposal of the European Commission in 2001. It was included afterwards during the long Council negotiations. As signalled above, the way in which integration conditions are used here may be qualified as being of a restrictive nature. Art. 5 points out that “Member States may require third-country nationals to comply with integration conditions, in accordance with national law”. No definition of “integration” is hereby provided. The final interpretation and practical scope of these conditions will be defined according to the variety of national immigration legislation, political priorities and philosophies of each member state. They will also be the ones testing and scrutinising whether the migrant is successfully integrated into their receiving societies. Most surprisingly, Art. 15 provides that those migrants holding the status of long-term resident will need to (re)pass a second, forced integration test in the second member state where they intend to move and reside in order to acquire equal rights and benefits.⁸⁴ The need to comply a second time with integration measures in the second state may become an effective barrier to one of the main objectives of the Directive, i.e. freedom of movement and residence of long-term residents inside the EU.

The use of an obligatory integration test as a potential ground for refusal of the status of long-term resident deserves strong criticism. Member states will even have the possibility of introducing in their

⁸¹ The direct effect of Art. 41.1 of the Additional Protocol and Art. 13 of Decision No. 1/8 has been made clear by the European Court of Justice in Joined Cases 37/98 *Savas* [2000] ECR I-2927 and Case 192/89 *Sevince* [1990] ECR I-3461. Art. 41.1 of the Additional Protocol provides that “The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services”. In addition, Art. 13 of the Decision No. 1/80 stipulates that “the Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories”; see also Case 317/01 *Eran Abatay and Others* and Joined Cases 317/01 and C-369/01 *Nadi Sahin*, 21 October 2003, not yet reported.

⁸² Point 16 of the Explanatory Memorandum stipulates that “Long-term residents should enjoy reinforced protection against expulsion. This protection is based on the criteria determined by the decisions of the European Court of Human Rights. In order to ensure protection against expulsion, Member States should provide for effective legal redress”.

⁸³ See the proposal for a directive on minimum guarantees for individual freedom, security and justice in relation to decisions regarding movement of persons, presented by Boeles et al. (2003).

⁸⁴ Integration conditions shall not be applicable to those persons who had already complied with these conditions in order to obtain the long-term resident status, yet the requirement to attend language courses will still be necessary following Art. 15.3.

legal systems (if they do not yet have it) the need for the migrant to cover the financial costs of the integration measures and programmes. Behind this policy there is a clear link between the financial status of the migrant concerned and her/his ability to integrate. Following this discourse, the poor (those migrants who lack sufficient resources to cover themselves) will always face far more obstacles to integrate successfully in the EU than all the ‘others’ who are financially accommodated and not dependent on the public policies of the receiving state. Moreover, a process of inclusion of migrants may rather become an effective process of exclusion of those identified as not having integrated successfully into the mainstream society. Cultural, religious and ethnic diversity, as well as social cohesion may be endangered. The integration test may also become a dangerous tool for excluding those non-EU citizens labelled as ‘different’ compared with the existing traditional images/stereotypes of nationals or Europeans. Integration seems to be perceived as a one-way process by which a migrant is seen as an alien who needs to become normalised. Only after all that may the ‘others’ have access to the package of privileges that the nationals of the state concerned usually have. Integration becomes the line test by which one individual may move from the category of ‘them’ to one of ‘us’. It also sets aside the two-way process paradigm (of mutual adaptation between the receiving society and the immigrant community) as pointed out by the common basic principles for immigrant integration policy agreed by the Council.

The introduction of the conditionality of integration in order to have access to basic economic, social, cultural and political rights may equally undermine the prohibition of discrimination and unequal treatment. At the EU level, the Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Race Discrimination Directive) and the one on equal treatment in employment and occupation are at the centre of the EU human rights framework on combating discrimination.⁸⁵ All the member states have now implemented the two Directives. Nevertheless, a close watch will certainly be needed during the practical transposition of the EU framework on the protection against discrimination in their respective legal systems. In addition, an apparent generalised amnesia continues to exist at EU governmental level in relation to the obligations undertaken by all the member states under the European Convention of Human Rights.⁸⁶ Member states need to respect and protect the human rights framework foreseen under the Convention, particularly Art. 14.⁸⁷ National practices, however, tend to be different. All these facts show a worrying lack of political will and courage at the national level towards these fundamental issues. There is certainly an urgent need to doubly protect and further strengthen these values and freedoms in an enlarging EU.

The Directive 2003/109 on the long-term resident status could in these ways undermine, instead of facilitate, an open process of inclusiveness and integration of migrants in the receiving societies. The values of multiculturalism and the respect of fundamental rights of third-country nationals may also suffer from its practical implementation. The dividing line between an efficient integration policy and the respect of cultural, ethnic and religious diversity becomes very thin indeed. In light of this, the provisions contained in the Directive as regards integration conditions should be revisited.⁸⁸ Otherwise

⁸⁵ The Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000/43, [2000] OJ L 180, 19.7.2000 states in Art. 1 that “The purpose of this Directive is to lay down a framework for combating discrimination on grounds of racial and ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment”; see also the Council Directive establishing a general framework for equal treatment in employment and occupation, 2000/78, [2000] OJ L 303, 2.12.2000.

⁸⁶ Convention for the protection of human rights and fundamental freedoms, 1950, as amended by Protocols Nos. 3, 5, 8 and 11, which entered into force on 21 September 1970, 20 December 1971, 1 January 1990 and 1 November 1998 respectively.

⁸⁷ Art. 14 provides that “The enjoyment of the rights and freedoms set forth in this Convention 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”.

⁸⁸ See the Joint submissions to the European Commission by the Immigration Law Practitioners’ Association and the Standing Committee of Experts on International Immigration, Refugee and Criminal Law (2004), in which they propose deleting the provisions contained in this Directive as well as inside the one on the right to family

the fair treatment realm promised at Tampere and the creation of equal opportunities to participate fully in society as professed by the Hague Programme will not be achieved.⁸⁹ The Council Directive does not go far enough to guarantee a comparable (equal) treatment between migrants and EU citizens, leaving too much room for member states' discretion to restrict the set of rights covered. For all these reasons, and as provided by Art. 24 of the Directive,⁹⁰ the legal conditionality (the lack of integration as a ground for refusal of the secure status) that is present in the wording of the Directive on the long-term resident status should be amended and made more inclusive.

4. Conclusions

At a time when the development of a common EU immigration policy remains far from a reality, the 'integration' of migrants has been placed at the very top of the EU agenda. In this report we have critically addressed what integration may involve at the EU and national levels, looking in particular at Directive 2003/109 on the long-term resident status. The current call for the establishment of a common EU framework on the integration of migrants may be considered positive. Yet the real meaning and scope given to the very concept of the integration of migrants behind these official positions and legislative proposals needs to be carefully and transparently assessed.

The Council has agreed on a set of common basic principles underlying a coherent European framework on integration. The bulk of directives so far adopted on regular migration have not followed the two-way paradigm approach. The way in which integration conditions have been included by the Council of Ministers in these legal measures may be viewed as having a restrictive nature. The Directive on the status of long-term residents offers the member states overly wide discretion to ask migrants to comply with mandatory integration requirements. The 'other' will first need 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 status of long-term resident. These provisions should hence be revised and deleted. Otherwise, by using this restrictive conditionality, such provisions may negatively affect social cohesion and inclusion. The values of a multicultural society and the respect of the fundamental rights of third-country nationals could be seriously undermined. The dividing line between an efficient integration policy and the respect of cultural, ethnic and religious diversity may become dangerously thin.

Integration is by nature an elusive concept. Instead of worrying about the need to conceptualise this term, any policy intending to frame this field should instead look at it as a *compendium of processes of inclusion* tackling social exclusion. These processes should seek to guarantee equal participation, rights and obligations to those not holding the nationality of the receiving society. Facilitating equality of treatment and full access to a set of economic, political, social and cultural rights and duties similar to the nationals of the receiving state should be the real goal pursued. Such a coherent policy on the inclusion of migrants would, however, require a very significant financial and political investment by the EU as well as the member states. Whether all the parties involved are willing to make this investment remains an open question.

reunification by stating that "The negative sanctions provided in those provisions will weaken the legal status of the legal immigrants and hence, not facilitate their integration in the receiving society but create obstacles to that integration".

⁸⁹ See the Presidency Conclusions of the Brussels European Council (European Council, 2004c), point 1.5 on integration of third-country nationals, p. 19.

⁹⁰ Art. 24 of the Directive states that "Periodically, and for the first time no later than 23 January 2011, the Commission shall report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose such amendments as may be necessary. These proposals for amendments shall be made by way of priority in relation to Articles 4, 5, 9, 11 and to Chapter III".

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