

# The Nexus between Immigration, Integration and Citizenship in the EU

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**Abstract**

What is the nexus between immigration, integration and citizenship in the EU, and what are the effects emerging from that relationship? The papers presented at the CHALLENGE seminar of 25 January 2006 addressed these questions and offered an overview of the main trends, issues, uncertainties and vulnerabilities surrounding these contested issues.

This collection of papers were presented in the seminar on "Immigration, Integration and Citizenship: The Nexus in the EU" held in Brussels at CEPS on 25 January 2006. The event was jointly organised by CEPS and the Centre for Migration Law (Radboud University of Nijmegen) under the framework of the CHALLENGE project (The Changing Landscape of European Liberty and Security), a CEPS research programme funded by the European Commission's Directorate-General for Research (see About CHALLENGE in the appendices for an overview of the programme).

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# INTRODUCTION

## TOWARDS AN EU FRAMEWORK ON THE INTEGRATION OF IMMIGRANTS

SERGIO CARRERA

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This collection of papers looks at the evolving relationship between the areas of integration, immigration and citizenship. The integration of immigrants seems to be the modern common philosophy behind and the intersecting line between the other two more traditional realms. There is an increasing tendency to link ‘integration’ with immigration policy and law (in terms of admission, residence and length of stay) as well as to citizenship as an ingredient of the naturalisation process for having access to nationality. While this nexus finds its natural habitat in the national arena, it is also taking on a supranational character with profound implications for the development of a common immigration policy in the EU.

The integration of immigrants is considered to be one of the EU’s strategic policy priorities. The second multi-annual programme on freedom, security and justice – The Hague Programme – as agreed by the European Council in November 2004 placed it as one of the most relevant policy areas to be developed in the next five years.<sup>1</sup> This has since been reconfirmed by the European Commission in its Action Plan implementing The Hague Programme of May 2005, in which ‘integration’ represents one of the top 10 strategic priorities for the progressive creation of an Area of Freedom, Security and Justice in the EU.<sup>2</sup> This is therefore a good time to address the strengths and weaknesses shown by this policy in the EU, and its implications for the position of the immigrant.

This publication follows on from the seminar “Immigration, Integration and Citizenship: The Nexus in the EU”, which was jointly organised by the Justice and Home Affairs Section of the Centre for European Policy Studies (CEPS) and the Centre for Migration Law (Radboud University of Nijmegen) in Brussels on 25 January 2006. The seminar took place within the context of the CHALLENGE Research Project (the Changing Landscape of European Liberty and Security), which is funded by the Sixth Framework Research Programme (Theme 6.1.1 of Priority 7, “Citizens and Governance in a Knowledge-based Society”) of the European Commission’s Directorate-General for Research.<sup>3</sup>

Academia, civil society and policy-making are very often separated. On sensitive and complex issues such as those related to immigration and social cohesion, it is nevertheless necessary to bring these approaches together under the same umbrella to have a multifaceted vision and global understanding of the issues at stake. In this sense, the seminar aimed at establishing a dialogue between representatives from these three domains. The papers presented here provide different visions and understandings of integration, immigration and citizenship, and their nexus.

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<sup>1</sup> 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 of 4-5 November 2004, SN 14292/1/04 REV 2, Brussels, 8 December 2004.

<sup>2</sup> 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.

<sup>3</sup> For more information, see the project’s website (<http://www.libertysecurity.org>).

The CHALLENGE seminar mainly addressed the following question: What is the nexus between immigration, integration and citizenship in the EU, and what are the effects (positive or negative) emerging from that relationship? While trying to provide an answer to this key question, the papers that were presented offered an overview of the main trends, issues, uncertainties and vulnerabilities surrounding the issue. Additional topics that were broadly addressed included:

- 1) What are the implications and the nature of the nexus?
- 2) Does the EU have a juridical competence conferred by the Treaties to legislate on policies concerning the integration of immigrants?
- 3) What does integration mean in liberal democracies? What is the philosophy behind the concept of the integration of immigrants (at the national and EU levels)?
- 4) What is the dividing line between an efficient integration policy and a respect for cultural, ethnic and religious diversity, and the multiculturalism that is inherent to the very nature of the EU?

The seminar was intentionally divided into two sessions: the first dealing with the connection between “Integration and Immigration” and the second focusing on the existing link between “Integration and Citizenship”. This publication follows the same structure for reasons of coherency.

## **1. Conceptualising the integration of immigrants?**

Before going into an introductory analysis of ‘the linkage’ at the national and EU levels, it is first necessary to address some of the intrinsic conceptual problems surrounding any attempt to frame a discussion about the integration of immigrants. ‘Integration’ is a term whose common understanding or conceptualisation is far from being realised, and whose real meaning varies to a great extent geographically (in each state) and ideologically (in terms of the political ideology). The vague character of this term allows for its narrow interpretation, which may at times raise human rights considerations and place the immigrant in a more vulnerable position with regard to the state and the EU.

The notion of integration does not seem to involve a process of social inclusion of immigrants, but has rather become a juridical and policy mechanism of control by which the state may better manage who enters and who is included inside its territory. As Leonard F.M. Besselink points out in his paper, integration measures express the move from social policy measures to immigration measures (*process of juridification*). In his view, there has been a shift away from seeing integration as a basis for positive social measures to mainly repressive ones. The process by which the social integration of immigrants is introduced into a legal framework of immigration (i.e. the nexus) reinforces the restrictive nature of the latter. ‘Integration’ then veils the actual conventional setting of assimilation, incorporation or, in its more radical expression, acculturation philosophy. This was also one of the main points raised by Rinus Penninx during his intervention in the seminar. He argued that looking at the connection between immigration and integration in policy practice in a number of north-western European countries the emergence of a new trend can be seen: a perverse inversion of the nexus whereby integration policies, measures and requirements are being deployed as a means to control and further restrict immigration.

Current policy, institutional and juridical frameworks in some EU member states demand that the non-national abandon her/his own roots in favour of the dominant mainstream societal model and identity of the receiving state. Only in this way will the state include the non-citizen,

partly or potentially fully, into the privileged status of ‘citizen’. As Guild (2005)<sup>4</sup> stresses, the hallmark of the categorisation of immigrants and national culture is the integration discourse. Indeed, there even appears to be a duty on the part of those falling under the juridical category of immigrant to abandon some of their cultural expression and identity to become more like the receiving community sees itself.

In our view, when referring to the sociological process by which a non-national is positively included in the different dimensions of the receiving state, instead of perpetuating the use of the narrow term of ‘integration’, the phrase ‘social inclusion’ should be preferred instead. The latter would consist of a compendium of processes of inclusion tackling social exclusion, unequal treatment and discrimination. They would also foster the fair and equal treatment paradigm highlighted in the Tampere European Council Conclusions of 1999, which stipulated in para. 18 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.

In the same vein, Jan Niessen writes in his contribution that equality and the acquisition of a strong legal status (under the headings of long-term resident, family reunion, naturalisation and anti-discrimination) are essential ingredients of immigrants’ integration.

## 2. The nexus at the national level

A recent comparative study carried out by CEPS shows that the mandatory nature of integration programmes and courses is becoming a constitutive element of the majority of immigration legislation in the EU member states.<sup>5</sup> The social inclusion of immigrants is henceforth artificially intertwined with a juridical and policy framework on immigration, residence and length of stay, and at times even admission to the country. This link implies that 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. As the first and third papers explain, two new legislative proposals have been presented in the Netherlands in the fields of immigration and integration. On the one hand is the new Act on Integration Abroad (*Wet inburgering buitenland*), which was approved by the Dutch parliament on 22 March 2005 and is at present in the hands of the Council of State. This Act provides a vision of integration is no longer seen as a process taking place inside the receiving state, but rather as commencing even before an individual emigrates from the country of origin. The bill will provide for a ‘pre-arrival integration’ 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. As Besselink highlights, 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.

A second bill on integration (*Wet inburgering*) was proposed in September 2005, which would oblige half a million naturalised citizens to go to their town hall and prove to the municipal authorities that they have sufficient knowledge of the Dutch language and society. Citizens by

<sup>4</sup> 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*, Routledge Research in Transnationalism, New York: Routledge, 2005.

<sup>5</sup> See S. Carrera, *A Comparison of Integration Programmes in the EU – Trends and Weaknesses*, CHALLENGE Research Paper, Brussels, March 2006.

birth would be exempted from that obligation, but not if they are Antilleans or Arubans. The paper provided by Kees Groenendijk delivers a very interesting analysis regarding this legislative proposal, its implications and compatibility with international and European legal commitments on equal treatment and non-discrimination. On this issue, Annexes 1 and 2 of this publication present an English translation of the note delivered by the Meijers Committee<sup>6</sup> to the Dutch parliament. The note provides solid grounds for questioning the compliance of these measures with five international conventions – the European Convention on Nationality, the UN Convention for the Protection of Human Rights, the International Covenant of Civil and Political Rights (ICCPR), the EEC-Turkey Association Agreement – and three EC Directives (the Race Equality Directive, 2000/43/EC<sup>7</sup> the Directive concerning the status of third-country nationals who are long-term residents, 2003/109, and the Directive on the right to family reunification, 2003/86).<sup>8</sup>

As regards the connection between integration and citizenship, Gerard-René de Groot's paper shows how some EU countries increasingly condition the acquisition of nationality on successfully passing an 'integration test'. The UK in particular is a good example of the new legislation strengthening this link. The Nationality, Immigration and Asylum Act of 2002, which entered into force on 1 November 2005, has added a requirement for naturalisation to the previous British Nationality Act of 1981 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. As de Groot points out, the language and societal/cultural elements of these integration tests are subject to criticism in relation to the naturalisation processes.

### 3. The EU framework on integration

In the evolving EU framework on the integration of immigrants, a fierce struggle is taking place 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.

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). 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".<sup>9</sup> Sandra Pratt explains in her paper that these

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<sup>6</sup> The Meijers Committee, the Standing Committee of Experts on International Immigration, Refugee and Criminal Law was established in 1990 by five NGOs: the Dutch Bar Association, the Refugee Council, the Dutch section of the International Commission of Jurists, the Netherlands Centre for Immigrants/FORUM and the National Bureau against Racism (LBR). The Committee is independent. Most of its members are lawyers, working at law faculties in the Netherlands or in Belgium. The Standing Committee monitors developments in the area of Justice and Home Affairs and presents its opinion to the Dutch parliament, the European Parliament or parliaments in other member states, to the Dutch government, the European Commission and to other public authorities and NGOs. For more information about the Meijers Committee, see the website link (<http://www.commissie-meijers.nl>).

<sup>7</sup> See Council Directive implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin, 2000/43/EC of 19 June 2000, OJ L 180, 19.7.2000.

<sup>8</sup> See also 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; and also Council Directive 2003/86 of 22 September 2003 on the right to family reunification, OJ L 251/12, 3.10.2003.

<sup>9</sup> See the Justice and Home Affairs Council, 2618<sup>th</sup> Meeting, Annex: Common Basic Principles on Immigrants Integration, 14615/04 (Presse 321), 19 November 2004.

principles provide an initial definition of what we mean by integration in the EU, along with setting some objectives and identifying some key actions.

The CBPs are in fact 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”.<sup>10</sup> They are not legally binding for the member states, and therefore fall under the category of what has been labelled as ‘soft law’.<sup>11</sup> As discussed in the seminar that provided the foundations for this publication, the paradigm of a positive, two-way process does not appear to be one that is easily implemented in practice. The openness 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)<sup>12</sup> and on the right to family reunification (2003/86).<sup>13</sup> As Groenendijk rightly highlights, the two Directives should be the centrepieces of any EU integration policy. In his opinion, these instruments will have far more influence on the actual integration of immigrants than any handbooks, lists of good practices, integration websites or National Contact Points.

We acknowledge the clear positive elements inherent to these two Directives towards the progressive development of a common EU immigration policy and the status of the immigrant. That notwithstanding, the philosophy underlying these two Directives seems to strengthen the evidenced trend in a majority of member states in the direction of an increasingly mandatory integration policy. Both acts link access to the rights they confer to compliance by immigrants with a series of restrictive conditions left in the hands of the member states, which are given wide discretion to stipulate national conditions for integration. Thus ‘integration’ becomes the obligatory juridical requirement for having access to the set of rights and liberties that these laws provide and a more secure status. A state may oblige the immigrant 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.<sup>14</sup> Therefore, the common EU immigration policy has thus far negatively provided the means to strengthen the nexus between immigration and integration, and to reinforce particular national philosophies that might make the already-vulnerable position of the immigrant even more so.

The current picture is very complex. Coming back to the central question of the seminar, as to the nexus between immigration, integration and citizenship in the EU, these collected works trace this three-pronged relationship in a way that will facilitate the global understanding of what is really at stake when referring to integration of immigrants and its connection with immigration and citizenship in the EU.

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<sup>10</sup> See the Conclusions of the Justice and Home Affairs Council, 2618<sup>th</sup> Meeting, 14615/04 (Presse 321), 19 November 2004.

<sup>11</sup> See R. Cholewinski, “Migrants as Minorities”, *Journal of Common Market Studies*, Vol. 43, No. 4, November 2005, pp. 695-716.

<sup>12</sup> See the 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.

<sup>13</sup> See also the 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.

<sup>14</sup> See S. Carrera and T. Balzacq, *Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy*, CEPS, Brussels, 2005.

# **PART I.**

## **INTEGRATION AND IMMIGRATION**

# INTEGRATION POLICY AND COMMUNITY LAW

KEES GROENENDIJK

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At a recent seminar on integration policy in Berlin in December 2005, the new German Minister of Interior Wolfgang Schäuble told his audience that Germany should learn from the success and the negative experiences of other European countries. “We do not need to repeat all the mistakes.” In his speech the minister stressed that the large majority of immigrants had integrated themselves well in German society. He repeatedly stated that immigration should not only be perceived as a problem. Most immigrants are an asset to the country. “Successful integration requires that immigration is not perceived as a threat but as enrichment.”<sup>1</sup>

In light of that statement the question arises as to whether it is sheer coincidence that half of the speakers at this seminar and one of the two chairmen come from one member state. Last week the parliament of that member state agreed, as part of the country’s new integration policy, with the introduction of a language and integration test. The test, which is to be conducted by telephone from the embassies and consulates and by a computer system in Europe, is a condition for a visa for a third-country national to live with his or her spouse in that member state, notwithstanding the judgment of all independent experts consulted by the government that the validity of the computer test had not been proven.<sup>2</sup> Concurrently with this seminar, the same parliament is holding a public hearing on a bill that proposes to oblige half a million naturalised citizens to go to their town hall and prove again to the municipal authorities that they have sufficient command of the Dutch language and sufficient knowledge of the society, while citizens by birth are exempted from that test, unless they are of Caribbean origin.<sup>3</sup> The bill stipulates an administrative fine of €1,000 every other year for those citizens who do not fulfil their obligation in time. The same member state has not even made the first public step on the way to implementation of the Directive on the status of long-term resident third-country nationals.<sup>4</sup> This Directive should have been implemented by all 22 member states bound by it three days ago, on 23 January 2006. The approach to integration policy presented by the German minister of interior clearly starts from a different definition of the issue and policy instruments furthering integration, than the perspective and instruments proposed by the present government of the neighbouring Netherlands.

The European Community has a long tradition of facilitating the integration of immigrants. In the first regulation on the free movement of workers, Regulation No. 15 of 1961, the right to family reunification and the equal access of family members to education and employment in the host member state were explicitly recognised, with the aim of assisting the integration of the worker in that state.<sup>5</sup> The right to family reunification was recognised in that regulation without an explicit legal basis in the EC Treaties. Art. 48 (now Art. 39) of the EC Treaty never mentioned the words ‘family reunification’. That term was introduced for the first time in 1997 by the Treaty of Amsterdam in Art. 63 of the EC Treaty. In its case law the European Court of

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<sup>1</sup> The speech was delivered at the seminar “Integration Infrastructure” in Berlin on 19 December 2005: “*Gelingende Integration setzt eben auch voraus, dass man sie nicht als Bedrohung, sondern als Bereicherung empfindet*”.

<sup>2</sup> See the Letter of the Minister of Aliens Affairs and Integration of 11 November 2005 to the Parliament, TK 29700, No. 30.

<sup>3</sup> The bill was introduced in parliament in September 2005 as TK 30308.

<sup>4</sup> See 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.

<sup>5</sup> Art. 11-15 of Regulation No. 15 of 12 June 1961, OJ 26 August 1961.

Justice often has stressed the importance of family reunification for the integration of EU migrants. Similarly, the Court has repeatedly reminded the member states that the aim of Council Decision 1/80 of the EEC-Turkey Association Council is to gradually promote the integration of Turkish workers and their admitted family members in the host country.

The Council Directive on the status of long-term resident third-country nationals and the Directive on the right to family reunification<sup>6</sup> are recent examples of the history of Community law furthering the integration of migrants.<sup>7</sup> Together with Council Decision 1/80 of the EEC-Turkey Association Council of 19 September 1980 and the new Directive on the free movement of EU citizens and their family members,<sup>8</sup> they should be the centrepieces of any EU integration policy. By their provision of a secure residence right, the right family reunification, equal access to employment and education, and free movement within the EU, these four instruments will have far more influence on the actual integration of immigrants in the societies of the member states than the handbooks, lists of good practices, integration websites or National Contact Points, figuring in the most recent EU documents on integration policy. Thus, it is both surprising and disappointing that those four Community law instruments do not receive more attention in the recent Communication of the Commission on A Common Agenda for Integration – A Framework for the Integration of Third-Country Nationals in the European Union.<sup>9</sup> Nevertheless, in its Conclusions on the Common Agenda for Integration adopted in December 2005 the European Council reminded the Community that “the timely transposition and implementation of legislative instruments on the admission and stay of legally residing third-country nationals is an essential component of any credible and successful integration policy”.<sup>10</sup>

The bill for a new Dutch Integration Act to which I referred above and which was introduced in parliament in September 2005, was the third version. In one of the previous versions it determined that every resident of the Netherlands born outside the EU should be obliged to go to the municipal administration and prove sufficient knowledge of the Dutch language and society. That idea was dropped after it became clear to the Minister of Aliens’ Affairs and Integration that 14 of the total 150 members of the Second Chamber of the Dutch parliament would be covered by this obligation, since they were born in Morocco, Turkey, Surinam or the Cape Verde Islands. The measures proposed in the bill are unlawful, considering the international obligations of the Netherlands. They are unfair because they will create higher burdens and barriers for persons with low incomes and education. They are counter-productive because they convey the message that large numbers of naturalised immigrants are second-class citizens. This message will confirm both the prejudices among the majority of the population and the daily experiences of many immigrants.

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<sup>6</sup> See Council Directive 2003/86 of 22 September 2003 on the right to family reunification, OJ L 251/12, 3.10.2003.

<sup>7</sup> See K. Groenendijk, “Legal Concepts of Integration in EU Migration Law”, *European Journal of Migration and Law*, Vol. 6, No. 2, pp. 111-26, 2004. See also K. Groenendijk, “Rechtliche Konzepte der Integration im EG-Migrationsrecht”, *Zeitschrift für Ausländerrecht und Ausländerpolitik*, 2004, pp. 123-30.

<sup>8</sup> See Council Directive 2004/38/EC 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, OJ L 229/35, 30.4.2004.

<sup>9</sup> See the Commission’s Communication, A Common Agenda for Integration – A Framework for the Integration of Third Country Nationals in the European Union, COM(2005) 389 final, Brussels, 1.9.2005.

<sup>10</sup> See the Justice and Home Affairs Council, 2696<sup>th</sup> Meeting of 1-2 December 2005, 14390/05 (Presse 296), 2005, p. 36.

On 20 January 2006 the Meijers Committee (the Standing Committee of Experts on International Immigration, Refugee and Criminal Law) sent a note to the Dutch parliament explaining why the integration measures proposed in the present version of the bill for the Integration Act will violate obligations of the Netherlands under five international conventions and three EC directives. The Committee also pointed to the risks involved by the establishment of two new computerised databases containing personal data of the majority of the non-European population of the country, as proposed in the bill. (A translation of that note and the cover letter are in Annexes 1 and 2.) Several official bodies have issued similar warnings to the government. The State Council warned against the proposed reverse discrimination of Dutch citizens; the Equal Treatment Commission warned of the violation of the non-discrimination clauses in the UN Convention on the Elimination of All Forms of Racial Discrimination, the Dutch Constitution and the Dutch Equal Treatment Act; the Advisory Committee on Aliens Affairs pointed to the high risk that the different treatment of born and naturalised Dutch nationals would violate non-discrimination clauses in human rights treaties; and the European Commission warned of the violation of the Community law rules on free movement and the standstill clause in Council Decision 1/80. Existing international and Community law sets clear limits to the recent trend seen in some member states to use integration tests as an instrument for the selection and exclusion of immigrants.

The way in which the three recent Community law instruments – the Directive on the status of long-term resident of third-country nationals, the Directive on the right to family reunification and the Directive on the free movement of EU citizens and their family members – will be implemented by the member states in their national law, will offer a good indication of the extent to which member states seriously do want to further the integration of immigrants (those from both the inside and outside the EU) in their societies. It will make clear whether integration is a genuine policy aim or whether it is, as indicated by the new integration policy of the Netherlands, primarily a code word for the selection and exclusion of immigrants from their societies.

We really can learn from both the experience of the European Community with rules on the treatment and integration of previous groups of immigrants in the societies of the member states and the experience with national integration policies of other member states. We can learn from the successes, the failures and the counter-productive measures. I am certain that this seminar will offer a good learning experience today.

# IMMIGRATION, INTEGRATION AND CITIZENSHIP: LATEST DEVELOPMENTS AND THE EU'S ROLE

SANDRA PRATT

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## 1. Developing a European framework for integration

Although strengthening integration policies for immigrants was one of the original four priorities of the common immigration policy, the Commission was only able to begin tackling this issue late in the period following the Tampere European Council (1999). It is quite remarkable how quickly integration moved to the top of the political agenda and how it has stayed there ever since. It is also remarkable, given that this is an area where national competence is very clear, how far we have come in agreeing at the EU level what we want to do and how to get there, and how strong has been the pressure from the bottom up for the Commission to take a lead in setting the agenda and in promoting experience and good practice.

The Hague Programme emphasises the need for greater coordination at the EU level of integration policies. It calls for more effective cooperation based on the Common Basic Principles for Immigrant Integration Policy (CBPs) and the development of a coherent EU framework. These principles, adopted by the Council last November, provide a first definition of what we mean by integration in the EU; they set some initial objectives and identify some key actions. The Commission set out its proposals in its Communication on a common agenda for integration for the EU framework including suggestions for implementing the CBPs at both the EU and national levels, an enhanced role for the National Contact Points on integration and the handbook of good practice, an integration website and a European Integration Forum to give a wide range of stakeholders a voice. These will be the priorities for the Commission's work programme in 2006 together with the preparation of the next annual report on migration and integration as an input into a ministerial meeting later in the year.

This is not sufficient, however. Recent terrorist attacks in Europe, the murder of Theo Van Gogh and subsequent incidents, and the sporadic outbursts of social unrest that we have seen in a number of large towns and cities have all contributed to a climate of unease about the impact of migrant communities in our societies and concern about the many complex factors that can lead to radicalisation, especially among young people.

While there is no direct causal link between these issues and immigration, they have underlined the need to review our integration policies and to broaden our understanding of the wide range of elements that are needed to achieve the aim of the CBPs of ensuring a two-way process of mutual accommodation by all immigrants and residents of member states.

Against this background the Commission has an important role in promoting new thinking and new initiatives, particularly with respect to enhancing the rights of immigrants and I would just like to comment on three aspects: citizenship, voting rights and free movement.

## 2. The role of nationality in the integration process

In a number of countries there has recently been a re-evaluation of the role of citizenship as a means of promoting integration by fostering a greater feeling of belonging and of participation. This has been reflected in the development of citizenship ceremonies, preceded in most cases by citizenship tests e.g. in the UK and Germany. These have been features of Canadian and US

policies for many years and have proved valuable there. A number of member states have relaxed citizenship requirements and the granting of citizenship is becoming an increasingly practiced way to foster the integration of third-country nationals.

A report on a comparative research project on dual citizenship, which is due to be published in a few weeks time, also comes to the conclusion that in the long run, and especially taking into account the changing demographic profile of the EU, “dual citizenship can be seen as a basic integrative mechanism for managing the increasing trans-national mobility of people”.

In a report a few years ago, the European Economic and Social Committee and more recently the European Parliament in its Opinion on the 4<sup>th</sup> Report on Citizenship of the Union, raised the notion of EU citizenship and its role in integrating third-country nationals.<sup>1</sup> The Commission is not in favour of developing this concept further at this point in time since it would, of course, involve amending the Treaty. Nevertheless, the Commission has emphasised the importance of involving immigrants more closely in the political and democratic life of the countries in which they live and of aligning their rights with those of nationals, particularly once they have obtained the status of long-term residents. In this context the Council Directive (2003/109) on the status of long-term resident third-country nationals, which came into force on 23 January 2006, is crucial. Together with the Charter of Fundamental Rights, these instruments could be the basis for re-visiting the concept of civic citizenship first put forward in the Commission’s Communication on the development of the common immigration policy in 2000.<sup>2</sup>

### 3. Improving democratic participation

Irrespective of nationality, it has long been the position of the Commission that providing third-country nationals with voting rights at the local level is an important part of the integration process. In recent years this has been repeatedly advocated by all major Commission documents in the field of integration. Some interesting best practices in this area have been presented in the *Handbook on Integration for Policy-makers and Practitioners* elaborated in cooperation with the National Contact Points on integration.<sup>3</sup>

This point was reinforced in the Communication on A Common Agenda for Integration adopted in September last year, when the Commission stressed the importance of voting rights for immigrants and suggested ways to achieve this.<sup>4</sup> In particular, the Communication stated:

- “The participation of immigrants in the democratic process, particularly at the local level, enhances their role as residents and as participants in society.”
- “Providing for their participation and for the exercise of active citizenship is needed. Political rights provide both a means of expression and also bring with them responsibilities.”

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<sup>1</sup> See the Opinion of the European Economic and Social Committee, Access to European Union Citizenship, SOC/141, Brussels, 14 May 2003, Rapporteur: L.M. Pariza Castaños. See also the *Report on the Commission’s Fourth Report on Citizenship of the Union* (1 May 2001 – 30 April 2004), 2005/2060 INI, Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Giusto Catania, 15 December 2005.

<sup>2</sup> See the European Commission’s Communication on a Community Immigration Policy, COM(2000) 757 final, Brussels, 22.11.2000.

<sup>3</sup> See J. Niessen and Y. Schibel, *Handbook on Integration for Policy-makers and Practitioners*, DG Justice, Freedom and Security, European Commission, Brussels, November 2004.

<sup>4</sup> See the 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.

- “In order to increase the participation of third-country nationals in local elections, actions such as awareness-raising campaigns and the removal of obstacles to the use of voting rights such as fees or bureaucratic requirements can be helpful.”

The value of such measures was explicitly recognised by the Justice and Home Affairs Council when it adopted the 11 CBPs on integration, which stress (in No. 9) that “The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration.”<sup>5</sup>

The Council itself went much further with its reflections including the statements that:

- “Allowing immigrants a voice in the formulation of policies that directly affect them may result in policy that better serves immigrants and enhances their sense of belonging.”
- “Wherever possible, immigrants should become involved in all facets of the democratic process. Ways of stimulating this participation and generating mutual understanding could be reached by structured dialogue between immigrants groups and governments.”
- “Wherever possible, immigrants could even be involved in elections, the right to vote and joining political parties. When unequal forms of membership and levels of engagement persist for longer than is either reasonable or necessary, divisions or differences can become deeply rooted. This requires urgent attention by all Member States.”

The value of providing third-country nationals with voting rights at the local level or granting them citizenship (or both) is additionally confirmed by research. In the context of the European Migration Network, a study on *The Impact of Immigration on Europe’s Society* was released at the end of last year in which all the nine country studies address the participation of third-country nationals in elections. Voting rights are often discussed in the context of naturalisation. Where the vote is granted, an impact of immigration on the politics of the locality or region is clear. It is also interesting to note that in many member states, the majority of citizens are in favour of granting such rights to third-country nationals. In Italy, for example, according to various data, 70-80% of citizens support granting voting rights to third-country nationals.<sup>6</sup>

#### **4. Enhancing the free movement of third-country nationals**

The Council Directive on the status of long-term resident third-country nationals already provides the possibility for an immigrant with this status to move to another member state to work or study. In its recent Policy Plan on Legal Migration the Commission emphasises the importance of creating a level playing field of clear and well-defined rights for legal migrants even before they acquire this status.<sup>7</sup> It makes the point that particularly in the case of highly skilled migrants, the EU needs to offer attractive conditions in view of global competition and one of the elements that will be included in the package of legislation to be put forward in the next three years is likely to be either intra-EU mobility or an EU green card for these workers.

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<sup>5</sup> See Justice and Home Affairs Council, 2618<sup>th</sup> Meeting, Annex: Common Basic Principles on Immigrants Integration, 14615/04 (Presse 321), 19 November 2004.

<sup>6</sup> See the European Migration Network (EMN), *The Impact of Immigration on Italy’s Society*, edited by the Centro Studi e Ricerche IDOS (Italian Contact Point in the EMN) with the support of Caritas Italy and the Ministry of Interior, December, Rome: Nuova Anterem, 2004.

<sup>7</sup> See the European Commission’s Communication, Policy Plan on Legal Migration, COM(2005) 669 final, Brussels, 21.12.2005.

The issue is of course very sensitive because of the transitional arrangements still in force for many workers from the new member states, although in practice any new EU legislation is not likely to come into force until after the transitional arrangements have been lifted. So there are a number of difficult issues to be dealt with in the next couple of years and as always in this area the stakes are high!

# UNEQUAL CITIZENSHIP: INTEGRATION MEASURES AND EQUALITY

LEONARD F.M. BESSELINK

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## Introduction

In this paper I briefly discuss some of the aspects and implications of the ‘integration measures’ that are being adopted in the Netherlands at present.<sup>1</sup> These can be brought under three headings:

- *Equality*. The various integration measures proposed, passed and pending raise a host of questions concerning equality, equal treatment and discrimination. Here I focus only on the results as to the degrees of citizenship:
  - a shift from the previously clear and inherent inequality between citizens on the one hand and non-citizens on the other, towards a very complex distinction of various degrees of citizenship attending to different groups of persons, depending on their specific background, which is reminiscent of the various statuses within empires;
  - there is an incidental positive aside, in that distinctions that seemed to exist under EC law, particularly those in which reverse discrimination was allowed (national citizens can be treated less favourably than other EC nationals, who must be granted minimum treatment in the field of, e.g. free movement across borders), has in the discussion on integration measures come to be considered unlawful in the Netherlands; and
  - no longer is citizenship determined by the external territorial borders of a state; it has become personalised (dependent upon the particular background the person happens to have) and leads to ‘internal’ borders between citizens within a national polity.
- *‘Juridification’*. The integration measures express the move from social policy measures to immigration measures.
- *An inversion of form and substance*. An inversion has occurred from conferring a status that entails rights (and duties) to a situation in which duties come first for the entitlement to rights, with only the possibility of formal citizenship status as an eventual consequence.

## 1. The integration measures

What are the integration measures that are at play at the moment? There are three, of which two have been adopted (among these, one has entered into force and the other shall enter into force soon); the third measure is now pending (after the withdrawal of a very drastic proposal). The central aim of all three measures is expressed in the Dutch titles of the Acts. None of them speak of ‘integration’ but rather of *inburgering*, which is very much like the term ‘enculturation’ but having a root of *burger*, which means ‘bourgeois’ or ‘citizen’. So the acts address the entrance into citizenship/civility/civilisation.

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<sup>1</sup> This paper has been written in the framework of the CHALLENGE Research Programme, financed by the DG for Research of the European Commission under the Sixth Framework Programme.

The content of the process imposed is essentially that of acquiring knowledge of Dutch society and the Dutch language. The three acts pose increasingly more obliging requirements on groups of persons wishing achieve entitlement to long-term stay in the Netherlands.

First is the 1998 Act on the Integration of New Immigrants (*Wet inburgering nieuwkomers*). This has entered into force. In essence it prescribes an integration programme of 600 hours of language training and general knowledge of Dutch society for ‘newcomers’, aliens and Dutch nationals born outside the Netherlands who are aged 18 years and older and who have come to the Netherlands to reside for an indefinite period for the first time. Among the exceptions are those persons who come to the Netherlands only for a limited time for a specific reason (for instance, those who work for a limited time), and those “who on the basis of provisions of treaties or decisions of international organisations cannot be obliged to participate in an integration programme”.<sup>2</sup> The sanction for *not participating* in the programme is an administrative fine.<sup>3</sup> The Act entered into force on 30 September 1998 and is still in force.

The second measure is the 2005 Act on Integration Abroad (*Wet inburgering buitenland*). This measure requires third-country nationals who come from countries for which a visa requirement exists<sup>4</sup> to pass an oral test in elementary Dutch (and social knowledge) while still abroad. The test is to be assessed with the use of a computer at a Dutch embassy or consulate general in the country of residence, and will cost approximately €350. The sanction *for failing to pass* the test – which is required for the visa – is that the special visa may be refused. This Act was passed on 22 December 2005 and is to enter into force on 15 March 2006.

The third measure is the bill on Integration (*Wet inburgering*), which was introduced in October 2005 into the Lower House, where it is pending. When adopted, the Act is to *replace* the above-mentioned 1998 Act on the Integration of New Immigrants. Adoption can be expected before the elections of May 2007. In principle the Act is to apply to all third-country nationals and to naturalised Dutch citizens enjoying a social benefit allowance (including unemployment benefits and minimum welfare allowances) or having the care of minors resident in the Netherlands. There are again a series of exceptions, some of which are substantive and others formal. A substantive exception is for persons who have been residing in the Netherlands and have enjoyed eight years of compulsory education; these individuals are assumed to have acquired a sufficient knowledge of the Dutch language and society. Exceptions on formal grounds include EU and EEA citizens and again the broader category of those “who on the basis of provisions of treaties or decisions of international organizations cannot be obliged to participate in an integration programme”. Sanctions for *failing to pass the test* are administrative fines and (for foreigners) prevention of acquiring entitlement to long-term residence (the bill does not provide for expulsion for failing to pass the test).

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<sup>2</sup> *Wet inburgering nieuwkomers*, Art. 1 (1) a: “op grond van bepalingen van verdragen of van besluiten van volkenrechtelijke organisaties niet verplicht kan worden aan een inburgeringsprogramma deel te nemen”.

<sup>3</sup> This fine is in principle 20% of the relevant social assistance benefit (*Bijstandsuitkering*), which is a sum that may vary depending on the family situation from (at the time of writing) approximately €14 to €240; the fine is doubled if within 12 months from the imposition of a first fine, an individual still has not complied with the duty to register and take part in an integration programme; see *Boetebesluit inburgering nieuwkomers*, Staatsblad, 1998.

<sup>4</sup> This concerns the *machtiging tot voorlopig verblijf*, an authorisation for temporary residence that has to be obtained in the country of origin.

## 2. Equality

The integration measures raise many issues of equality and hence bring into play international treaty commitments such as Art. 26 of the International Covenant on Civil and Political Rights, the 12<sup>th</sup> Protocol of the European Convention of Human Rights, along with Art. 1 of the Constitution, which prohibit discrimination and unjustified unequal treatment.<sup>5</sup> A major problem in this respect concerns the exemption of some persons on formal grounds. This exemption has nothing whatsoever to do with the knowledge that such persons have or even can be expected to have of the Dutch language and society. The provision makes for the unequal treatment of aliens who have no such knowledge: some of them may be admitted and acquire an entitlement to (long-term) residence, while others are not. Moreover, the third-country nationals who have to comply with the integration requirements tend not to be white Europeans, and hence indirect discrimination on the grounds of race and ethnic origin also comes into play. Further, the distinction between (some groups of) Dutch nationals who are naturalised and those who are Dutch by birth raises tremendous legal complications regarding equal treatment and legal certainty.

Within the scope of this paper it is not possible to analyse these matters in detail. Here I wish to note the consequences of the integration measures for the types and degrees of citizenship that are being created. In the past, the essential and inherent inequality at issue was that between citizens and non-citizens. To this the category of denizens was added, those who had a right to residence but not to the nationality of the place of residence. But these matters are no longer so easy at all. Even the threefold distinction between citizens, denizens and those non-citizens who cannot be classified as denizens, can no longer be made from the perspective of the integration measures – measures that in the Dutch context are not merely a matter of ‘integration’ but explicitly a matter of ‘citizenship’, *inburgering*. After all, certain Dutch nationals can also be subjected to these measures. This latter point applies to those falling under the 1998 Act, i.e. those Dutch nationals born outside the Netherlands (mainly Antillean and Aruban Dutch nationals), a distinction that the new bill retains as an interim measure,<sup>6</sup> while the new bill also applies to naturalised Dutch citizens with children who are minors or who receive social benefits.

## 3. Imperial citizenship

All this leads to a variegated situation regarding citizenship, which relates to the personal status of each individual. This calls to mind the situation in empires, both those of classic history and those of colonial times. Many classes of citizens existed, depending on where they happened to be born and or the territorial or habitual place of residence within the realm, and of course, on the degree of civilisation inferred from the place they happen to come from. The situation we find ourselves in at present creates a differentiated status defined by substantive rights of citizenship. In this presentation this concerns substantive rights of residence, but one could tell a similar story concerning that other traditional right of citizenship: voting rights.

The number of groups of citizens we can distinguish on the basis of whether one needs to *inburger* – to enter into citizenship and civility by being subjected to integration measures – is at least six, although in reality there are even more groups (for instance the citizens of new

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<sup>5</sup> The first two are justiciable in the Netherlands on the ground that the courts consider these to be directly effective provisions of the treaties, which on the basis of Art. 94 of the Constitution have priority over acts of parliament. An alleged violation of Art. 1 of the Constitution by an Act of Parliament is not justiciable under Art. 120 of the Constitution, which prohibits courts to review the constitutionality of acts of parliament. The latter, however, is bound to review bills against Art. 1 of the Constitution.

<sup>6</sup> See Art. 58 of the bill.

member states who in the Netherlands do not yet enjoy free movement rights, as well as the Turks under the Association Agreement). Further, the nature of the integration measures, particularly the integration test to be undertaken abroad, would alter the picture, but we will try here to keep it somewhat simple.

The six main groups we can distinguish are the following:

- 1) *Dutch citizens by birth.* These persons **cannot** be subjected to integration measures.
- 2) *Dutch citizens who need to become more of a citizen (or a more virtuous citizen).* This group includes those falling under the 1998 Act on the Integration of New Immigrants, mostly Antilleans and Arubans who come to the Netherlands for the first time. The measures in the new bill on integration will also apply to naturalised Dutch persons who receive social benefits or have children who are minors. All these persons **are** subjected to compulsory integration measures.
- 3) *Non-Dutch EU and EEA citizens.* These groups of citizens are privileged, irrespective of whether they have any knowledge of the Dutch language or society – a knowledge that is not generally assumed to exist for most non-Dutch EU and EEA citizens. They **cannot** be subjected to integration measures.
- 4) *Aliens with EC privileges but who require more integration.* These persons are mainly long-term third-country residents and reunified family members falling under the two relevant EC directives. They **are** subjected to integration measures. Notably, long-term resident third-country nationals who have already been subjected to integration measures in another EU member state can only be subjected to the language part of the integration requirements.<sup>7</sup>
- 5) *Aliens who lack EC privileges but benefit from bilateral agreements.* This group comprises citizens from countries with which bilateral agreements have been concluded, which accord them national or most-favoured nation treatment in general as well as with regard to migration issues in particular. This concerns the Japanese, US citizens and Australian citizens. They are exempt and **cannot** be subjected to integration measures.
- 6) *Aliens without privileges.* These persons are the true aliens. They **are** obviously subjected to integration measures.

#### 4. Borders: External and internal, territorial and personal

What becomes apparent from the list above is that personal status as linked to rights of residence is no longer a matter of the borders of the polity in the traditional territorial sense. Territory is no longer decisive. It is presumed knowledge of a country and the virtue of being able (or vice of not being unable) to speak the language, which are substantive elements in the distinction. But the presumption is linked to birth, background and origin. The consequences attached in terms of residence rights also imply that the borders are less geographical and have become personal as well. New borders are being created within the polity, dependent on the personal status of an individual. Some are in the country but not full members of the polity and in a sense outside it.

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<sup>7</sup> See Art. 15(3), final paragraph of 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.

## 5. From social policy measures to legal immigration regimes

What we can notice in the course of the programme for introducing integration measures is a shift away from seeing integration as a positive social measure towards a shift to mainly repressive immigration measures.

Integration programmes in the form of language and general societal knowledge courses, as well as courses on certain social skills aimed at improving the position of certain groups of immigrants for the labour market, existed for quite a few years before the 1998 Act. The pre-1998 legal instruments have to be qualified as ‘soft law’. They involved financial instruments enticing and facilitating courses and programmes to be organised at municipal level for targeted groups. The 1998 Act turned this into ‘hard law’. But in fact the 1998 Act itself was not an immigration measure, although it was exclusively aimed at immigrants. The concept of sanctions was not in the sphere of migration law or residence entitlements.

This decisively changed with the Act on Integration Abroad. The sanction of not passing the test taken abroad is the refusal of a visa for the Netherlands. This aspect turned what could still in essence be viewed as a *social* measure aimed at solving (and preventing) a certain (and very important) social problem, into an *immigration* measure. Such a turning point can be viewed as an epiphenomenon of the present political climate in the Netherlands, coinciding with the rise of the late Pim Fortuyn and his LPF party, which views the huge social and economic problems of groups of persons living in certain (mainly but not only, urban and suburban) areas as a problem of ‘foreigners’ living in the Netherlands – aliens who should be kept out.

What this way of looking at social problems fails to recognise is that these severe and real problems themselves are nowhere near being solved by the kinds of tests imposed. It is, to put it mildly, a rather indirect way to solve a labour market problem by imposing a language test requirement. Nor can computer-steered language tests abroad solve problems of housing and urban planning, or social and cultural isolation. Immigration measures are no substitute for social and economic measures, certainly not if the nature of the problem is mainly social and economic in nature – although this rather simple truth seems to be repressed in the political conscience of national politicians. And even if the problem is viewed not as a social or economic one, but in terms of culture – as with the present war on Islam conducted by politicians such as Hirsi Ali – it is still not solvable through the simplicity of language or other knowledge tests.

If one has a close look at the documents accompanying the various integration measures when they were introduced, then the documents themselves mention the real targets of the measures. They are mainly: Turkish and Moroccan brides imported by second-generation Dutch nationals from Turkish and Moroccan issue; culturally and socially isolated Turkish and Moroccan mothers with children; a well-defined group of unemployed young men coming from the Netherlands Antilles island of Curaçao to find their luck in the Netherlands, who end up in criminal circles here; those who enjoy social and unemployment benefits; and those who have difficulty accessing the labour market.

These problems of these four of five groups can hardly be solved by immigration measures. ‘Keeping them out’ by imposing language requirements upon entrance and admission to the Netherlands is a rather simplistic way of approaching the (again very real) problems of these groups of persons. There is also a legal point to this: where the immigration measures run into issues of unequal treatment and discrimination because they are too broad yet fail to cover all the relevant aspects, targeted social measures will not so easily run into similar problems

## 6. Form and substance inverted

It is quite clear that so far we have been discussing citizenship in substantive terms: citizenship in relation to the qualities one should possess and the rights to which they give access. This quality characterises the full brunt of the integration measures in the Netherlands. This policy direction means a reversal compared with the previous schematic outline of the situation. Once upon a time the relation between status and rights was based on the presumption that the person who acquired a certain citizenship status, in particular nationality, by birth, marriage or adoption, subsequently enjoyed rights of citizenship, such as long-term residence rights. And as a natural consequence one acquired the knowledge of the language and society in which one was living.

The recent integration measures are based on the opposite idea. First one must prove that as a matter of fact one sufficiently knows the language and society before one is allowed to have residence there. One must first prove to be a good citizen, to be worthy of the rights of citizenship, before one can formally acquire such rights. Initially, there are obligations (civic duties), followed by substantive rights and ultimately one may then acquire a formal status like that of nationality.

This trend coincides with a republican view of citizenship, where virtue and duty (*officium*) are the conditions for true citizenship. Are the integration measures in the Netherlands to be viewed as signs of re-kindled republicanism? I think not. Republicanism in the classic sense of civic virtue has not been much of an ideology in the Netherlands since the 19<sup>th</sup> century. Although one cannot exclude the development of some form of consistent neo-republican political thought and practice, I deem it more likely that the integration measures must be viewed as an instrument of political and social pragmatism. Politically, they are mainly a pragmatic response to a populist political correctness that is prevailing throughout the political spectrum since the successes (and tragic demise) of Pim Fortuyn (the necessity of these integration measures as essential elements of a migration policy are supported equally by left wing, right wing and centre parties). Socially, it is in a sense an attempt to address real and urgent social problems. But as such it is a largely misguided attempt, which has a more symbolic nature than the ability to solve the problems it is supposed to address.

## **PART II.**

# **INTEGRATION AND CITIZENSHIP**

# REFLECTIONS ON INTEGRATION AND ACCESS TO NATIONALITY/CITIZENSHIP THROUGH NATURALISATION

## A COMPARATIVE PERSPECTIVE

GERARD-RENÉ DE GROOT

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### Introductory remarks

When speaking about the integration of foreigners the emphasis is normally put on facilitating the integration of newcomers in the receiving country, on the integration process and integration policy. Attention also has to be given to so-called ‘integration requirements’, which in several countries have to be fulfilled by applicants for naturalisation, i.e. for the grant of the nationality of the receiving country and which in turn gives access to full citizenship rights.

Many countries require that the applicant for naturalisation has to be integrated in order to qualify. This is the case in the Netherlands for example, where Art. 8 of the Nationality Act stipulates that the applicant has to be ‘*ingeburgerd*’,<sup>1</sup> which can be translated as ‘integrated’. Several other countries have a similar requirement, such as France<sup>2</sup> and the UK.<sup>3</sup> In the past Belgium also had this requirement, but it was abolished as a condition for naturalisation in March 2000.<sup>4</sup>

In 1984 a discussion took place in the Netherlands on how to interpret this condition of integration on the occasion of the preparation of a new Nationality Act. It was stressed several times and by several authors that this condition should not be misunderstood as ‘assimilation’.<sup>5</sup> This point was and still is important because some countries require a certain degree of assimilation for naturalisation. In France, for instance, an application for naturalisation can be rejected owing to a lack of assimilation.<sup>6</sup>

What is the difference between integration and assimilation? Integration requires participation in the society. Isolation is not permitted. But being a part of a cultural minority is permitted. It is the process whereby migrants acquire full rights and can fully participate in a society without

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<sup>1</sup> The term ‘*ingeburgerd*’ is remarkable, because it includes the word ‘*burger*’, which means ‘citizen’. The word seems to suggest that the person involved already became a *burger* (citizen) (compare the German term ‘*Einbürgerung*’). Within the scope of Art. 8 of the Nationality Act, ‘*ingeburgerd*’ has to be translated as ‘integrated’.

<sup>2</sup> See 21-4, 21-24 and 21-25 of the Code civil.

<sup>3</sup> See Schedule 1 of the British Nationality Act of 1981, which entered into force on 1 January 1983.

<sup>4</sup> See Arts. 15(2), 16(2), 21(2) of the (old) Belgian Nationality Act: “*volonté d’intégration*”.

<sup>5</sup> See G.-R. de Groot, *Handboek Nieuw Nationaliteitsrecht*, Deventer: Kluwer, 2003, pp. 271-76, with further references.

<sup>6</sup> See Art. 21-24 of the Code civil: “*Nul ne peut être naturalisé s’il ne justifie de son assimilation à la communauté française, notamment par une connaissance suffisante, selon sa condition, de la langue française et des droits et devoirs conférés par la nationalité française*” (text as modified by Act No. 2003-1119 of 26 November 2003). Translated on Legifrance as “Nobody may be naturalised unless he proves his assimilation into the French community, and especially owing to a sufficient knowledge of the French language, according to his condition and of the rights and duties conferred by French nationality.”

being forced to assimilate into the mainstream culture. On the other hand, assimilation requires sharing the values of the mainstream culture of a certain society. Of course, it is necessary to take into account that one has to study in detail whether an integration requirement in a certain state really only requests integration or secretly includes elements of assimilation. Finally, the dividing line between assimilation and integration depends completely on the kinds of questions posed during the assessment and the method of assessing.

In this respect, a recent discussion<sup>7</sup> in Germany is interesting, which concerned the list of questions used by naturalisation authorities in Baden-Wuerttemberg in order to assess the attitude of a naturalisation applicant towards the German constitutional order. The requirement of the German nationality law that the applicant must have a positive attitude towards the democratic values of the constitution can – as such – be classified as an integration requirement.<sup>8</sup> The list of questions has been criticised in the press as a “Muslim-test”.<sup>9</sup> I will not elaborate here on the precise content of the questions,<sup>10</sup> but want to stress only that one can observe in the discussion about this list some elements dealing with the borderline between ‘integration’ and ‘assimilation’. Does one want to accept a pluralistic inclusion model leading to a multicultural society or not?

## 1. The assessment of integration as a requirement for naturalisation

In those countries where integration is a requirement for naturalisation an important issue is how to assess whether an applicant for naturalisation is ‘integrated’. In this regard, I focus on two main countries: the Netherlands and the UK.<sup>11</sup>

### 1.1 The Netherlands

Until 2003, assessments of the degree of integration in the Netherlands occurred quite informally at the municipal level. An applicant for naturalisation had an interview with a civil servant of the municipality of his/her place of residence. This civil servant evaluated whether the integration condition was fulfilled. A consequence of this informal approach was that the

<sup>7</sup> See *inter alia* the intervention of the Fraktion Bündnis 90/Die Grünen in the German parliament (Bundestag), No. 16/356.

<sup>8</sup> Compare with para. 11 of the German Nationality Act: *Ein Anspruch auf Einbürgerung nach § 10 besteht nicht, wenn:*

1. *der Ausländer nicht über ausreichende Kenntnisse der deutschen Sprache verfügt,*
2. *tatsächliche Anhaltspunkte die Annahme rechtfertigen, dass der Ausländer Bestrebungen verfolgt oder unterstützt oder verfolgt oder unterstützt hat, die gegen die freiheitliche demokratische Grundordnung, den Bestand oder die Sicherheit des Bundes oder eines Landes gerichtet sind oder eine ungesetzliche Beeinträchtigung der Amtsführung der Verfassungsorgane des Bundes oder eines Landes oder ihrer Mitglieder,*  
*zum Ziele haben oder die durch Anwendung von Gewalt oder darauf gerichtete Vorbereitungshandlungen auswärtige Belange der Bundesrepublik Deutschland gefährden, es sei denn, der Ausländer macht glaubhaft, dass er sich von der früheren Verfolgung oder Unterstützung derartiger Bestrebungen abgewandt hat.*

<sup>9</sup> See “Migration und Bevölkerung”, *Newsletter Ausgabe*, No. 1, February 2006. See also <http://www.migration-info.de> and <http://www.bundestag.de/bic/plenarprotokolle/pp/11/index.html>.

<sup>10</sup> The list with questions is retrievable from [http://www.migration-info.de/dokument\\_und\\_materialien/deutschland.htm](http://www.migration-info.de/dokument_und_materialien/deutschland.htm) (Rubrik Integration Allgemein – Debatte).

<sup>11</sup> It would be very interesting to compare the content of the tests in the Netherlands and in the United Kingdom with the list of questions used in Baden-Württemberg or with the draft *Staatsbürgerchaftsprüfungs-Verordnung* in Austria.

level of integration required for naturalisation differed considerably from place to place.<sup>12</sup> The level required depended enormously on the criteria used by the civil servant in question. A current joke was that in some conservative areas of the country one was required to sing the national anthem, whereas for Amsterdam it would have been enough if one discovered the room in the town hall where the interview would take place.

In light of this it is not surprising at all that the decision was taken to unify the assessment of integration. Since 1 April 2003 applicants have had to undertake two integration tests:

- 1) one test assesses the person's command of the Dutch language; and
- 2) another test assesses the individual's knowledge of society in the Netherlands and its constitutional order ('*staatsinrichting*').

As such, this uniform approach is very welcome. But everything depends of course on the precise method of testing and the kinds of questions that have to be answered. Both tests have to be undertaken electronically through the use of a computer. Elementary IT skills are thus a third requirement for the applicant for naturalisation in the Netherlands. In the language test, oral and written, passive and active command of the Dutch language is tested. The language test (involving 3 hours and 105 questions/tasks) is divided into four parts: listening (40 minutes for 25 questions); speaking (20 minutes for 20 tasks); reading (60 minutes for 25 questions); and writing (60 minutes for 20 tasks).<sup>13</sup> The Life in the Netherlands test takes 60 minutes and consists of 40 questions.

It is notable that the questions in the test for knowledge of the society and the constitutional order of the Netherlands focus intensively on national issues. The applicant is confronted with questions such as how much money one is allowed to receive per month tax-free for work as a volunteer.<sup>14</sup> Another question is even more subject to criticism. The computer produces a sound like 'bananas, bananas for sale', followed by a multiple choice question: Where are you? 1) in a supermarket, 2) at the market place, or 3) in a flower shop. I strongly dislike these types of questions, which have nothing to do with any basic knowledge necessary for living in the Netherlands or the basic values reflected in the constitutional order of the country.

It has to be stressed that these tests have to be undertaken by applicants for naturalisation already living in the Netherlands, but also by applicants who are living abroad (e.g. spouses of Dutch nationals living abroad with their Dutch husband or wife).<sup>15</sup> Particularly in the case of residence abroad, it will be extremely difficult to acquire the required level of knowledge.

## 1.2 United Kingdom

The Nationality, Immigration and Asylum Act of 2002 incorporated provisions into the British Nationality Act requiring those seeking naturalisation in the UK to demonstrate that they have a

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<sup>12</sup> See E. Heijs, *Selectie bij naturalisatie: de rol van taalkennis als eis voor het Nederlanderschap*, Katholieke Universiteit, Faculteit der Rechtsgeleerdheid, Instituut voor Rechtssociologie, Nijmegen, 1988.

<sup>13</sup> This information was derived from *De naturalisatietoets: op weg naar het Nederlanderschap* published by the Netherlands' Ministerie van Justitie, Immigratie en Naturalisatie Dienst, November 2004.

<sup>14</sup> Oral information was provided by Mr H.A. Wolf, leader of the integration test project of the Immigration and Naturalisation Department during a presentation in spring 2003. See also H.A. Wolf, "De vernieuwde naturalisatietoets" [The new naturalisation test], *Migrantenrecht*, Vol. 18, No. 4-5, 2003, pp. 124-25 (but with fewer details).

<sup>15</sup> See G.-R. de Groot, "The Access to European Citizenship for Third Country Spouses of a European Citizen", in C. Biquet-Mathieu (ed.), *Liber Amicorum Paul Delnoy*, Brussels: Larcier, 2005, pp. 93-133.

sufficient understanding of English (or Welsh or Scottish Gaelic) and a sufficient knowledge of life in the UK. These provisions entered into force on 1 November 2005.

Regarding the command of English for speakers of other languages (ESOL), the level of entry 3 or above is required. ESOL entry 3 implies “the ability to hold a conversation on an unexpected topic, which is workable, though not perfect, English”.<sup>16</sup>

The test on Life in the UK consists of 24 multiple choice questions.<sup>17</sup> In order to enable applicants to prepare for the test, a book is published by the UK Home Office – *Life in the United Kingdom: A Journey to Citizenship*.<sup>18</sup> A candidate only has to know in detail the chapters on “A changing society”, “Britain today” and “How is Britain governed”.<sup>19</sup> Together these chapters make up 32 pages.

The kinds of questions used in the Life in the UK test are also published on the Internet on a Life in the UK website.<sup>20</sup> Some questions are slightly strange and require that one has studied the book precisely. For example, one of the questions being posed is how many young people there are in the UK.<sup>21</sup> The question is obviously related to the information provided on p. 45 in the book, where it is mentioned that within the UK there are 15 million children and young persons up to the age of 19. But why does the book mention the number of young persons up to the age of 19, when the age of majority is 18?

Another question concerns where the Geordie, Cockney and Scouse dialects are spoken. The answer can be found on p. 52 in *Life in the United Kingdom*. Geordie is spoken in Tyneside, Cockney in London and Scouse in Liverpool. The relevance of these questions is dubious. Is it really necessary to know these answers if one wants to live as a British citizen in the UK?

Some other questions really matter:<sup>22</sup>

- What are the minimum ages for buying alcohol and tobacco?<sup>23</sup>
- What drugs are illegal?<sup>24</sup>

While a couple of questions are remarkable:<sup>25</sup>

- What are the rules and powers of the main institutions of Europe?<sup>26</sup>
- How is EU law organised?<sup>27</sup>

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<sup>16</sup> See the Home Office for England and Wales, *Life in the United Kingdom: A Journey to Citizenship*, Norwich: HM Stationery Office for Books, 2005, p. 11.

<sup>17</sup> Further information is available online (retrieved from [http://www.lifeintheuktest.gov.uk/textsite/self\\_10.html](http://www.lifeintheuktest.gov.uk/textsite/self_10.html)).

<sup>18</sup> Home Office for England and Wales (2005), op. cit.; the book is also available online (<http://www.tsoshop.co.uk>).

<sup>19</sup> These chapters are available online (retrieved on 25 November 2005 from [http://www.ind.homeoffice.gov.uk/ind/en/home/news/press\\_releases/becoming\\_a\\_uk\\_citizen.html](http://www.ind.homeoffice.gov.uk/ind/en/home/news/press_releases/becoming_a_uk_citizen.html)).

<sup>20</sup> The website for the Life in the UK test is [http://www.lifeintheuktest.gov.uk/htmlsite/background\\_10.html](http://www.lifeintheuktest.gov.uk/htmlsite/background_10.html) (last visited on 23 February 2006).

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Home Office for England and Wales (2005), op. cit., p. 46.

<sup>24</sup> Ibid., p. 47.

<sup>25</sup> See again the Life in the UK test (retrieved from [http://www.lifeintheuktest.gov.uk/textsite/self\\_90.html](http://www.lifeintheuktest.gov.uk/textsite/self_90.html)).

<sup>26</sup> Home Office for England and Wales (2005), op. cit., pp. 70-71.

As such, one has to welcome questions that do not focus on the UK alone but on Europe. Yet these questions are rather vague and not easy even for specialist in EU law. Everything depends on the precise structure of the multiple choice alternatives during the test.<sup>28</sup>

### 1.3 Some critical remarks

It is striking that both the Netherlands and the UK are controlling for the command of their own languages. In the context of an integration condition for naturalisation, this is rather surprising. If a third-country national acquires the nationality of a member state of the EU, s/he is entitled immediately upon naturalisation to move and settle in another member state of the Union, even if s/he does not speak a single word of the official language of that other member state. In light of this situation the question must unavoidably be raised as to whether it should be possible in certain circumstances to substitute a deficient knowledge of the language of the country of residence with knowledge of the language of another member state. This is a sensitive but essential question. If one wants to control for the command of language as a manifestation of integration, then integration in multilingual Europe should be assessed and the naturalisation authorities should no longer completely and exclusively focus on the command of the language of the country of residence.<sup>29</sup>

A similar remark has to be made for the test on the knowledge of the society. The questions focus mainly on knowledge of the life in the country where the person involved applied for naturalisation. That is regrettable. It would be much better if the questions were to focus on integration in European society as a whole – on the basic values and norms in Europe, and the democratic tradition and human rights.

### 1.4 Comparison

#### 1.4.1. Available communication on the content of the tests/materials

In the Netherlands the information available about the content of the tests is extremely poor: questions are mostly kept confidential. There are no specific courses for preparation for the tests that are part of the naturalisation procedure. Of course, there are courses for the integration tests for newcomers. But not all newcomers are obliged to follow these courses.<sup>30</sup> For the naturalisation tests as such detailed information is lacking and no specific preparation is offered. That is not acceptable.

The information available in the UK is detailed. As already mentioned, a book has been published, which one should study as preparation for the questions in the Life in the UK test.<sup>31</sup> Furthermore, the UK Home Office's website indicates the topics the questions concern.

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<sup>27</sup> Ibid., p. 71.

<sup>28</sup> The website only provides an indication of the topics on which questions will be raised during the exam and does not provide precise samples.

<sup>29</sup> G.-R. de Groot, *Towards a European Nationality Law/Vers un Droit Européen de Nationalité*, Inaugural lecture delivered on 13 November 2003 on the occasion of the acceptance of the Pierre Harmel chair of professeur invité at the Université de Liège, Maastricht: Unigraphic, 2004. Also published in: H. Schneider, *Migration, Integration and Citizenship, A Challenge for Europe's Future*, Volume I, Maastricht: Forum Maastricht, University of Maastricht, 2005, pp. 13-54.

<sup>30</sup> This is particularly problematic for those applicants for naturalisation who reside abroad, e.g. the foreign spouses of Dutch nationals.

<sup>31</sup> In this respect the UK follows the examples of Canada and the US. See [www.cic.gc.ca/english/citizen/howto-e.html](http://www.cic.gc.ca/english/citizen/howto-e.html) (with further references) and [http://www.usimmigrationsupport.org/citizenship\\_test.html](http://www.usimmigrationsupport.org/citizenship_test.html) (with further references).

### 1.4.2 Costs

The costs of the tests differ considerably. In the UK the cost of the language and the Life in the UK test is £34 (€50). The naturalisation fee as such is £268 (€93). In the Netherlands the costs for both tests are €260.<sup>32</sup> The naturalisation fee is €51.

## 2. Some conclusions

The following conclusions and suggestions can be made based on the brief comparison presented of the integration tests in the Netherlands and the UK:

- 1) An inventory should be prepared of details of the integration requirements in the different member states of the EU as a condition for naturalisation, in order to obtain a view on good practices. More specifically,
  - a) A comparison should be made of the methods of assessing the integration requirements.
  - b) A detailed<sup>33</sup> comparison has to be made on the precise level of command of the language that is required as a condition for naturalisation.
  - c) A detailed<sup>34</sup> comparison should be made of the types of questions concerning life in the receiving society.
- 2) Transparent and full information on the content of the integration tests should be encouraged.
- 3) The relationship between general integration programmes and integration tests as a part of the naturalisation procedure has to be studied.
- 4) If a member state of the EU requires integration as a condition for naturalisation, integration should be required in EU society and not in the national society. This approach needs to be reflected in:
  - a) the kinds of questions posed; and
  - b) a certain compensation mechanism in respect of command of the language. To some extent, knowledge of the language of another member state of the EU should compensate for a deficient skill in the language of the state in which the individual has applied for naturalisation.<sup>35</sup>

*Summa summarum:* In respect of integration requirements as a condition for naturalisation, the development of an EU policy is desirable.

## 3. Towards European integration tests?

In the first place, at the EU level it would not make sense to develop tests on the command of the different European languages. Nevertheless, it would be desirable to indicate – as precisely as possible – the required level of these language tests. Furthermore, it would be desirable to

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<sup>32</sup> The costs are €168 for the Life in the Netherlands test and €92 for the language test.

<sup>33</sup> Only the details (and not the global reference to certain levels) give an adequate impression of the difficulty of the different tests and allow a comparison.

<sup>34</sup> Again, only the details show the issues (national or European) on which the different tests focus and allow an assessment of whether integration or rather assimilation is required.

<sup>35</sup> See G.-R. de Groot (2004), op. cit.

develop a common EU rule as to how far the knowledge of the language of another member state may compensate for deficient skills in the language of the state in which a person applies for naturalisation.

In view of the foregoing conclusions the question of whether the development of European integration tests ('Life in Europe') would be desirable has to be raised and addressed. In the first instance, one has to underpin the argument that the development of good European tests would be considerably better than continuing bad national tests. But second and unavoidably, the question must be posed as to the goal of a Life in Europe test. As such, a long legal residence in a country should already – in principle – entitle a person to the nationality of that country and (for the EU member states) EU citizenship. A person who has been able to live a long period in the country concerned should be deemed to be integrated in that country. Only in the case of an application for quicker naturalisation (after a shorter period of residence) is it reasonable to require an additional integration test. The core question is then of course after what period – in principle – an entitlement to naturalisation should exist. On this point, Art. 6 of the 1997 European Convention on nationality provides inspiration.<sup>36</sup> In particular, subsection 3 of Art. 6 prescribes:

Each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of the application.

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<sup>36</sup> Already 15 European states have ratified this Convention (of which 9 are member states of the EU) and another 11 states have signed the Convention (7 being EU member states).

# THE RELATIONSHIP BETWEEN INTEGRATION AND CITIZENSHIP

JOANNA APAP

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The presence of immigrants in Europe raises wider questions for government policy in the field of citizenship. As Zolberg (1987) puts it, “immigrants pose a challenge to traditional conceptions of states as self-contained population entities”.<sup>1</sup> With the arrival of immigrants, the traditional definition of membership in a community is no longer so self-evident, and one cannot directly relate such membership to formal citizenship. In an important sense, anyone inside a national territory, including illegal immigrants, is in some way a member of that particular community because he or she takes part in the life of the receiving society by, for instance, participating in the labour market, sending children to school, being a neighbour or paying taxes.<sup>2</sup> Nonetheless, citizenship does mean more than simple presence in or even membership of a community.

Garcia (1993)<sup>3</sup> for example defines “citizenship” as a modern practice of social inclusion by the state, entitling persons of different age, sex, colour and other characteristics to a common set of rights, and at the same time legitimising the state. But where is the line to be drawn? When assessing the boundaries of citizenship in the European context, the distinction that prevails between citizenship of a member state and citizenship of the EU becomes increasingly important.

According to Wiener (1996),<sup>4</sup> “every citizen of the Union enjoys a first circle of nationality rights within a Member State and a second circle of new rights enjoyed in any Member State of the EU”. One of the main questions that arise in this regard is the extent to which the division between EU citizens and third-country nationals will increase, especially if further entrenchment of the idea of ‘us’ and ‘them’ prevails. Until now, to enjoy full EU citizenship rights the only method has been to acquire the nationality of one of the member states. The conditions and procedures for obtaining rights in EU member states vary, as this remains an area of policy that is still very much at the heart of national sovereignty. Yet five general criteria can be cited: citizenship of an EU member state may be acquired through the principles of *jus sanguinis* and *jus solis*, by decree, by marriage to an EU national and by naturalisation.

In most European societies, the treatment of the ‘other’ is an issue extremely high on the political and public agenda. It has often been claimed that there is a need to develop international standards in the field of nationality, and to change citizenship rules and practices. The terms ‘state’, ‘nation’, ‘nationality’ and ‘people’ are imbued with complexity and reflect deep dilemmas inherent to the ways and means of integration at the national, international and supranational levels.

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<sup>1</sup> See A. Zolberg, “Keeping Them Out: Ethical Dilemmas of Immigration Policy”, in R.J. Myers (ed.), *International Ethics in the Nuclear Age*, Lanham, MA: University Press of America, 1987, pp. 261-97.

<sup>2</sup> See U. Levelt, “The European Union as a Political Community through the Lens of Immigration Policy”, in M. Martiniello (ed.), *Migration, Citizenship and Ethno-National Identities in the European Union*, Avebury: Ashgate Publishing Ltd., 1995, p. 199.

<sup>3</sup> See S. Garcia, “Europe’s Fragmented Identities and the Frontiers of Citizenship”, in *RIIA Discussion Papers*, No. 45, The Royal Institute of International Affairs, London, 1993, p. 19.

<sup>4</sup> See A. Wiener, “Rethinking Citizenship: The Quest for Place-Oriented Participation in the EU” in the *Oxford International Review*, Vol. 2, No. 3, 1996, pp. 44-51.

## 1. How is membership in society re-thought through migration processes?

### 1.1. The complex relationship between ‘nationality’ and ‘citizenship’

“Everyone has the right to a nationality” according to Art. 4(a) of the 1997 European Convention on Nationality. But what is nationality and how is this right to be expressed? The Council of Europe defines ‘nationality’ as the legal bond between a person and a state and does not indicate the person’s ethnic origin.<sup>5</sup> The International Court of Justice in the famous *Nottebohm* case in 1955 defined nationality as “a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”<sup>6</sup> Although at *prima facie*, the terms ‘nationality’ and ‘citizenship’ seem to be synonymous, they are epistemologically different.

Citizenship can be divided into two components: nominal and substantive citizenship. In the case of the former, nominal citizenship, de Groot (1989)<sup>7</sup> states that “one’s right to nationality is about a ‘legal bond’ to a State similar to that of a ship or aircraft, or even if one’s right to nationality in the ‘internal, national’ order primarily means – to acquire, to possess – then one has to agree that ‘the individual’s right to nationality has not, as yet, found its final form and application’”.<sup>8</sup> This is nevertheless a fundamental right that gives citizenship its minimal substance: if human beings were to be pushed out of state membership, as long as sovereignty lies essentially with individual states, there would be no conceivable guarantee for human rights.

Nationality is most intricately linked to citizenship, not simply as a group identity, but also as a package of rights and duties. And the very nature of the reciprocity of rights and duties makes it different from other relations between the individual and the state. In this regard, citizenship is a particular kind of status *vis-à-vis* the individual; it distinguishes citizens from other groups of populations within a state who do not enjoy all the same rights and from those who do not have to comply with all the obligations of citizenship. Certain basic rights need to be guaranteed, however, for all the residents of that state.<sup>9</sup> The resultant citizenship is a reflection of the nature of the state concerned.

### 1.2 Nominal *vis-à-vis* substantive citizenship

Nationality therefore needs to be examined in terms of nominal and substantive citizenship.<sup>10</sup> The nominal order of citizenship is not hierarchical, but it does not exclude a ‘rank order’ in its substantive form. From this point it follows that the concept of substantive citizenship is not automatically derived from the nominal one. Nationality is not only a legal but also a political bond. As it entails membership in the *demos* of the polity – *demos* being a link between

<sup>5</sup> See the European Convention on Nationality (Strasbourg, 6 November 1997), ETS No.166, Art. 2(a).

<sup>6</sup> Refer to the Explanatory Report to the European Convention on Nationality (*supra*), Art. 2.

<sup>7</sup> See G.-R. de Groot (1989), as referred to in R. Bauböck, “Changing the Boundaries of Citizenship”, in R. Bauböck (ed.), *From Aliens to Citizens*, Aldershot: Avenbury, 1994, p. 208.

<sup>8</sup> See also Z.W. Galicki, “Does the Right to a Nationality belong to the Catalogue of Human Rights?”, in *Aan de grenzen van het Nederlanderschap*, Ministerie van Justitie, ‘s-Gravenhage, 1998, pp. 69-73.

<sup>9</sup> See T.H. Marshall, “Citizenship and Social Class”, in *Class, Citizenship and Social Development, Essays by T.H. Marshall*, New York: Anchor Books, 1964, pp. 78.

<sup>10</sup> See F. Medved, *Interaction between Nationality and Integration*, [CONF/NAT (2001) Rep1] presented at the 2<sup>nd</sup> European Conference on Nationality, “Challenges to National and International Law on Nationality at the beginning of the New Millennium”, Council of Europe, Strasbourg, 8 and 9 October 2001.

citizenship and democracy – it is related to a belief in equality, liberty and self-governance, which are fundamental values and qualities worth protecting. Yet equally so is citizenship often connected with a belief that the citizen would be superior to an alien and that this inequality of citizens and foreigners is proper and in order as it is reflected in the presumption of international law that citizenship under certain circumstances can be a suitable ground for discrimination. As such citizenship is a membership of a polity rather than of a society.<sup>11</sup>

At the societal level, nationhood involves the drawing of boundaries. The multitude of categories around which boundaries can be drawn are: linguistic, ethnic, geographic, religious and similar lines. The concurrence of the two concepts of nation – the first based on the *ius soli* (territorial/contractual/civic/political) concept of the nation, and the second following the *ius sanguinis* (cultural/ethnic) principle – stems from the older division between *Staatsnation* and *Kulturnation*. Every nation-state has its own ideas about the ‘essence of the nation’ and such deeply rooted ways of thinking continue to govern policy and legislation on migration regulation, aliens and their opportunities for their naturalisation.

## 2. The nexus between policies on immigration, integration and citizenship

### 2.1 Models of integration as historical processes

Simplified divisions regarding the integration of immigrants involve three models: the model of exclusion, the model of assimilation and the multicultural model.<sup>12</sup> In the first model, immigrants are for the most part excluded from the membership of a state, while according to the second model, they are mainly included. There are similarities between these two models – both exclude non-naturalised immigrants from the electoral process. But while countries adhering to the first model exclude immigrants (unless they are willing to assimilate them culturally), those adhering to the second model include immigrants unless the individuals fail to assimilate or assimilation is unlikely. Naturalisation is the ultimate goal of assimilation. Both models foster socio-economic marginalisation or exclusion and racism, and the first model further results in political exclusion.

The multicultural model evolved mainly in countries where immigration has been seen as part of their strategy for nation-building. It is similar to the second model. It admits immigrants to the political community but accepts the maintenance of cultural differences. Membership in civil society and the nation-state are seen as consistent with cultural difference, based on its tolerance or even encouragement, but within the limits set by the rule of law and the acceptance, indeed assimilation, of certain fundamental core political values and institutions.

If the multicultural model offers the best prospects for rapid and conflict-free solutions to problems inherent to the relationship between immigration, integration and citizenship, what does it represent and what does it do to democracy? First, it is connected with the concept of ‘integration’, which was popularised in the 1960s as an alternative to ‘assimilation’. Second, it links to the view of multiculturalism that was in its prime in the 1980s as a ‘formula’ of ‘management of diversity’. Neither notions are used everywhere in the same context. Integration as a term representing the relation between the whole and its parts represents the most sensitive feature of society. As society has been built upon a multitude of complex, hierarchical and

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<sup>11</sup> Ibid.

<sup>12</sup> See among others S. Castles and M.J. Miller, *The Age of Migration: International Population Movements in the Modern World*, Basingstoke: MacMillan, 1993 and S. Castles, “Democracy and Multicultural Citizenship: Australian Debates and their Relevance for Western Europe”, in R. Bauböck (ed.), *From Aliens to Citizens*, Aldershot: Avebury, 1994, pp. 3-27.

parallel subsystems, the organisation of all these parts into a well-functioning unity is the central question of the fundamentals of society. In this sense, integration is a phenomenon that pertains to society as a whole, but also to its parts – groups, institutions and organisations.

## 2.2 A re-defining of citizenship and its implications for its relationship with 'integration'

The interpretation of 'multiculturalism' depends upon the use of the concept of culture, and indeed it is not always clear what is meant by culture in this context.<sup>13</sup> Multiculturalism is sometimes used descriptively, referring to an empirical reality of the presence of cultural diversity, most often of ethnic character relating to recent immigration, but also to other 'minority' and 'subaltern' groups within a state. The term 'multiculturalism' is conceived in most cases in a normative sense, which urges at least recognition and tolerance of difference and sometimes its active stimulation. The first priority of a multicultural model, as suggested by Castles (1988), is to make immigrants 'citizens' without too many delays. This does not yet mean substantive citizenship or actual equality, which can be achieved when a state and society accept that both individuals and groups have the right to cultural differences. The adaptation to the prevailing rules, however, which have been laid down by the dominant group and are culture-specific, is required. The model thus involves recognition of cultures as, in principle, equal. In this manner, a multicultural society gives an individual the possibility to freely choose to belong to either a minority or majority. But it involves more than culture, giving way to a simultaneous concern for political integration, social and economic emancipation. In this view it combines measures against socio-economic inequity along cultural lines with the acceptance of the principle of differential treatment of persons with different characteristics, needs and desires.<sup>14</sup> This is the reason that anti-discrimination legislation, positive action, measures against xenophobia and racism tend to be regarded as aspects of multiculturalism. Integration is a feature of the societal system, yet while the society concerned may be more or less cohesive or converged, that may not necessarily apply to its individuals.

The value of multiculturalism, as is often stressed, is in its potential for achieving social cohesion in diverse societies. In the context of citizenship, multiculturalism makes a new statement about substantive citizenship concerning not only immigrants but all citizens as a new model for national identity in a heterogeneous society.

In the post-Marshallian debate there is an attempt to redefine citizenship in a way appropriate to a social and multicultural democracy that already takes for granted three types of rights (namely civil, political and socio-economic), by adding a new component of cultural rights. The central aim is to achieve equity for all members of society, whereby "equity means resolving the tension between formal equality and real difference by means of mechanisms to ensure participation of disadvantaged groups in decision-making and by means of special policies to break down barriers and meet varying needs and wants".<sup>15</sup>

## Conclusion

Policy objectives are coined differently from country to country with regard to the areas they target, policy debates and intended changes. In the EU, the 'fair treatment' of third-country nationals has been outlined as one of the essential elements of common migration and asylum policy. A good deal of consensus prevails that integration is a two-way process – involving

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<sup>13</sup> See S. Castles, B. Cope, M. Kalantzis and M. Morrissey, *Mistaken Identity: Multiculturalism and the Demise of Nationalism in Australia*, Sidney: Pluto Press, 1988, p. 121.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., p. 16.

adaptation on the part of both the immigrant and society – and on what structural integration implies. Immigrants should benefit from comparable conditions, living and working, to those of nationals, including voting rights for long-term residents. The appreciation of the value of pluralism is based on the recognition that the membership of society is based on a series of rights but also responsibilities for all of its members, nationals or migrants. There should be respect for human rights and human dignity, respect for cultural and social differences and for fundamental shared principles and values.

The Charter of Fundamental Rights of the EU is a basis for the development of the concept of ‘civic citizenship’ in the member states for third-country nationals. Enabling migrants to acquire such citizenship after a minimum period of years might be a sufficient guarantee for many migrants to settle successfully into society or be a first step in the process of acquiring the nationality of the member state concerned. The convergence of the rights and duties of resident aliens and those of citizens demonstrates that the basic democratic norm of legitimacy applies to a resident population rather than only to those individuals who are formally recognised as members of the polity. The boundaries surrounding this concept of society are the result of the exercise of political power and the envisaged ‘civic-residential citizenship’ and the result of the social relationship with the state. This would be a kind of ‘denizenship’, which is distinct from full citizenship notably in the areas of the right to permanent residence and voting rights, particularly at the state parliamentary level.

Most importantly, the norm of inclusiveness thus supports an opposition to restrictive naturalisation rules. Naturalisation, however, is or ought to be an act of consent based on choice. Yet a wish to naturalise (or not) should certainly not be a decisive factor in gaining access to basic services.

The challenging tensions between national, integration and multicultural sensibilities are changing our understanding of national membership or ought to because of our changing understanding of the state and the nation as well as of ourselves. These tensions take place not only within the classical state but also at the international and supranational level. Citizenship is developing beyond the boundaries of the nation-state. EU citizenship goes much further.

# IMMIGRATION, CITIZENSHIP AND THE BENCHMARKING OF INTEGRATION IN THE EU

JAN NIESSEN

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## Introduction

Equality and access are essential for the integration of immigrants. Equal treatment is often a condition for their admission in terms of working and living conditions. Immigrants acquire more rights and assume more responsibilities over time as they become active citizens. Policies can set favourable integration conditions and they include *securing residence, facilitating family reunion, encouraging naturalisation and combating discrimination*.

Governments not only set legal conditions, they also undertake administrative measures for the acquisition of the status of resident (and reuniting family members) and citizen, as well as for protection against discrimination. These measures amount to services to be delivered to immigrants and 'new' citizens. Clearly, these persons are the first to benefit from the correct and timely handling of the necessary formalities for the acquisition of the desired and deserved status. Employers, social and health services also welcome short, simple and transparent procedures for the application of work permits, family certificates and so forth. The way these services are delivered can convey a powerful message of respect for immigrants and of welcoming citizens; it can also work out as a hurdle in the integration process when administrative practices intimidate immigrants or treat them unfairly.

In the three sections that follow, this paper argues that the acquisition of a strong legal status is laying the foundation of immigrant integration (section 1), summarises a comparative overview of civic citizenship policies of the old 15 member states (EU-15) (section 2), and pleads for the adoption of a service charter on the acquisition of statuses (section 3).

## 1. Integration pathways and standards

Residence can be secured by giving immigrants the status of long-term residence, which grants them treatment as equal as possible with EU citizens. The status enables them to contribute to society while maintaining links with their country of origin and to move more freely within the EU. Family reunion is a basic human right and is vitally important for the immigrants' life and planning. It also contributes to family stability and thus to cohesive societies. Naturalisation puts immigrants on a par with EU citizens in terms of rights and obligations, allowing them to become active citizens. Immigrants are to be encouraged to naturalise and policies should provide easy access to nationality while making a distinction between first and subsequent generations of immigrants. Anti-discrimination promotes equality, a basic human right common to all member states. It applies to immigrants and citizens irrespective of their (immigrant) background and to relations between and within various groups in society. It helps to eliminate obstacles for active economic, social and cultural participation in society by all citizens.

Multifaceted immigrant integration policies must address all four areas<sup>1</sup> and within these areas tackle issues of eligibility for a certain status, conditions for its acquisition, the security of a status and the rights associated with it. Immigrants, as legally residing third-country nationals, should obtain a secure residence status as soon as possible, that is within a rather limited

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<sup>1</sup> Sometimes these areas are summarised as 'civic citizenship' – a notion that briefly re-entered the EU policy debates during the previous Commission and that seems to disappear again from the policy agenda.

number of years, during which period they should be allowed to be absent for short periods of time. Immigrants should be entitled to bring in their family members as soon as possible. Family members should include a spouse (and registered partner) and other members in the descending and ascending line. Immigrants and their family members should have access to nationality after a limited number of years and the second and third generation should acquire nationality automatically at birth. The grounds of anti-discrimination should include race and ethnicity, religion and belief, as well as national origin and nationality. It should cover, as a minimum: employment, access to public and private services, and education and training.

The conditions for acquiring the status of long-term residence, family reunion and naturalisation should be limited in number, simple in their application, proportionate in terms of the aims to be achieved and encouraging towards immigrants. The procedures should be short and not entail more costs than is normal for the issuing of identity cards. Immigrants should, just as EU citizens, have access to judicial civil and administrative procedures so as to secure effective protection of their status and against discrimination. They are entitled to financial assistance to pursue complaints and sanctions for discriminatory behaviour, which should include compensation and the restitution of rights. The status of the long-term residents, their family members and naturalised immigrants should be secured. The residence status should be valid for long periods of time, preferably automatically renewable and not be lost as a result of periods of absence. The number of grounds for the withdrawal of the status should be limited and clearly described in law. These could include fraud in the acquisition of the status and a sentence for serious crimes, but not the immigrants' social and economic situation. Long-term residents and family members are to be protected against expulsion. Due account should be taken of personal behaviour, age, duration of residence and links with society and country of origin. There should be legal redress. Anti-discrimination law should be enforced vigorously and equality agencies should play an important role. Long-term residents and members of their families should gradually acquire the same rights and obligations as EU citizens. The residence status is not lost after retirement and family members should acquire an autonomous status after three years. Their professional qualifications should be recognised and their skills assessed and valued accordingly. Participation in economic life should actively be promoted and in order to become attractive as employees or business partners in a competitive environment, immigrants must have equal access to education and training. Equally, they should enjoy the benefits of welfare state arrangements, from social security to maternity leave. Positive action programmes are to promote equality further. Immigrants should be given voting rights and the right to stand for election at least at the local level. Their participation in trade unions and other professional organisations should be encouraged just as these and other organisations should open up for and actively engage immigrants.

## **2. The civic citizenship and inclusion index**

These integration standards can be used to measure current national policies and law and to track changes resulting from the transposition of EU directives (for example, on family reunion, long-term residence and anti-discrimination) and international conventions (such as the Council of Europe's Convention on Nationality). For this purpose a group of organisations and scholars developed the European Civic Citizenship and Inclusion Index.<sup>2</sup> The Index was used to check the policies and law of the EU-15 member states against almost 100 indicators, each relating to specific policies and law concerning labour market inclusion, residence, family reunion, naturalisation and anti-discrimination. For each indicator three policy options were described

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<sup>2</sup> See the British Council, the Migration Policy Group and the Foreign Policy Centre, *The European Civic Citizenship and Inclusion Index*, Research designed and coordinated by A. Geddes and J. Niessen, London and Brussels, 2005.

representing the most to the least favourable policy for immigrant integration. These options were given a score of 1, 2 or 3, to reflect how favourable or unfavourable the policy of a particular member state is.<sup>3</sup> The results were presented in such a way that the strength and weaknesses of the various aspects of policies were demonstrated for each member state. The member states were measured not only against the standards but also against each other.

The results of the exercise are robust and offer an indication of member states' policies with respect to immigrant integration. Although it was inevitable that complex realities were not entirely done justice – a recurring issue in international comparative and policy-oriented research – in practice policies and law work out in quite simple and direct ways: a residence status, permission for family reunion or nationality is acquired after a number of years; there are different levels of protection of the status; and there are specific rights attached to a status while others are not, etc.

The key findings can be summarised as follows:

- Despite the existence of a common legislative framework, basic principles, declarations, statements and good intentions, there is a great deal of variation between member states in all areas of immigrant integration policies.
- There is a clear need to adopt policies that create more favourable conditions for immigrant integration. The Index gives clear indications of what kinds of measures should be taken and by which member state.
- There are no major differences in policies between member states with long and short migration histories. In addition, member states score consistently high or consistently low across all the policy areas.
- Although the statuses (or rights) for immigrants are relatively difficult to acquire and weakly protected, they have significant rights associated with them.
- Naturalisation is one of the most problematic areas for the member states.

### **3. Service charters on naturalisation and other statuses**

In response to increased immigration and as part of developing integration strategies, naturalisation and citizenship law has changed and is still undergoing changes in many European countries. Depending on the political climate this has led to more open and flexible (provisions in) laws or to more restrictive and rigid (provisions in) laws. Laws have to be implemented for which governmental agencies are usually responsible and here the human factor plays an enormous role as well as administrative traditions and bureaucratic cultures. How the laws are interpreted and applied varies considerably across Europe, as research among NGOs in support of immigrants has demonstrated.<sup>4</sup> The research formulated a number of recommendations, which I summarise as follows:

- *Clear procedures.* Clear, detailed and binding guidelines for naturalisation procedures should be given to administrative bodies in order to reduce their discretionary powers.

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<sup>3</sup> For more background on the research and its outcomes, see J. Niessen, M.J. Peiro and Y. Schibel, *Civic Citizenship and Immigrant Inclusion: A Guide for the Implementation of Civic Citizenship Policies*, Migration Policy Group, Brussels, 2005.

<sup>4</sup> See I. Chopin, "Comparing Administrative Practices", in IMISCOE Series, *Acquisition and Loss of Nationality Policies and Trends in 15 European States*, Volume I: Comparative Analyses, Amsterdam: Amsterdam University Press, forthcoming 2006.

- *Training.* The staff of naturalisation agencies at local and national levels should receive continuous training on issues related to immigrants' rights and integration objectives.
- *Outreach.* The authorities should play an active role in providing information on the advantages of citizenship and on the naturalisation procedures (naturalisation campaigns).
- *Communication.* The applicant should be fully informed of the progress of his or her procedure. The agency should answer written requests for information from the applicant, who should also have the option of being heard by the deciding administrative body.
- *Documents.* All documents and certificates should be requested at once so as to avoid the problem that owing to the length of an application procedure, the administration repeatedly asks for the same documents. Which documents are required should be made clear from the start of the procedure.
- *Avoiding bureaucratic delays.* An inter-agency system should be developed of requesting documents that are issued or registered in other administrative and state services. There should be more flexibility in the interpretation of the 'impossibility' of obtaining a birth certificate from certain countries. There should also be leniency given to recognising the identity of applicants from countries with or without a weak government.
- *Reducing costs.* The costs of naturalisation should not exceed those of the acquisition of a national identity card. The costs of renouncing the former nationality – to take place only after naturalisation – should be reduced.
- *Waiting times.* Time spent waiting for a decision on asylum/leave to remain/residency should be taken into account in every situation where residence criteria are relevant to naturalisation applications. Time limits should be reduced and be respected.
- *Tests.* Naturalisation tests, if introduced, should be clear, testing applicants on relevant issues and not on general matters (or matters that are not commonly and widely known) and should be culturally sensitive.
- *Justification and right of appeal.* The naturalisation procedure should be simple, straightforward and transparent. In cases where citizenship is rejected, a justification should be given and there should be a right of appeal.

At a time when immigration is considered as possibly part of the solution to demographic imbalances and labour market frictions, immigrant integration becomes vitally important. The way integration is promoted should reflect the receiving societies' social, cultural and economic interests and its values of openness and inclusiveness. In an inclusive environment immigrants can better contribute to societies' sustainability. Just as they contribute to society and become active citizens, immigrants are entitled to be treated as citizens. The way access and equality is promoted and (residence and citizenship) statuses are acquired is very much about service delivery in a diverse society – services to be rendered to immigrants and to the benefit of society as a whole.

Immigrant integration policies are thus to be complemented by guidelines, codes of conduct or service charters that help public and private agencies to implement policies in a correct way. This could be done by the adoption of voluntary or statutory codes or charters. They would define the mandate of the implementing agency, the working methods and principles, as well as the rights and obligations of the 'beneficiaries' or 'clients', complaint and redress mechanisms, etc. Elements for such a charter for agencies dealing with naturalisation are listed above. Along the same line elements for a service charter in other relevant areas can be designed.

Some countries have a long tradition of service charters; yet it may be new for them to adopt and apply these in the immigration and integration fields. Public and private service providers can adopt charters and where governmental service provision is out-sourced to private organisations the charters can be used to define the terms of reference and made binding. One can find interesting examples of good practices in such a traditional immigration country as Australia.<sup>5</sup>

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<sup>5</sup> See for example, Commonwealth of Australia, Charter of Public Service in a Culturally Diverse Society and Clients Service Charter principles, Department of Immigration and Multicultural Affairs, 1998.

# CONCLUSIONS

## WHERE IS THE NEXUS? SOME FINAL CONSIDERATIONS ON IMMIGRATION, INTEGRATION AND CITIZENSHIP

ELSPETH GUILD

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In this collection of papers we have sought to examine three concepts that are ever more frequently linked in European policy thinking and increasingly in law. How do these three concepts fit together and what is the rationale that permits them to be seen as a continuum? The first supposition is that immigration leads to a permanent presence of persons who have been foreigners and may still be on the territory of our states. In this sense we have moved on from some rather sterile debates that took place in the 1960s and 1970s about whether immigrants could be induced or forced to go back 'home'. The idea of a nexus between immigration and citizenship recognises that those who come to work in the EU may well stay for long periods and through residence become entitled to participation in the state through citizenship.

Citizenship is a concept expressing the relationship between the individual, the state and territory, which is the closest and most embracing of any recognised by the state. In an EU comprised of liberal democracies it denotes those to whom the state belongs, that is to say the citizens who are entitled to vote for the government, and who belongs to the state – the citizen who owes allegiance to the latter. Citizenship, however, has undergone a fundamental transformation in the EU with the creation of citizenship of the Union. While on the one hand there are a number of critics who insist that citizenship of the Union is not a proper citizenship as it can never exist, currently, independently of nationality of a member state, on the other hand the European Court of Justice has stated on numerous occasions that citizenship of the Union is destined to become the main status of the nationals of the member states. What does this mean? As I have noted elsewhere,<sup>1</sup> the rights attached to citizenship of the Union are rights that can only be exercised by the citizen of the Union when he or she is outside his or her country of nationality. Thus the rights of a French national in France are first and foremost the rights of the French constitution. The French national's rights as a citizen of the Union only become relevant when the individual leaves France and goes to another member state. Then his or her rights of entry, residence, employment, equal treatment, voting, etc. are dependent on his or her capacity as a citizen of the Union.

Enlargement of the EU has also transformed the way in which we perceive citizenship of the Union. Before 1 May 2004 only nationals of the 15 member states fell under this privileged status. The following day the nationals of 25 member states were also citizens of the Union (although they did not have full free movement rights).<sup>2</sup> These individuals did not fulfil any specific 'integration requirement' but became citizens because their country had become an EU member state. Whereas these individuals had been 'foreigners' or indeed immigrants in the member states the day before, the next day they were citizens.

Between the two concepts, 'the immigrant' and 'the citizen', comes the concept of 'integration'. In this publication we have been seeking to examine what this term really means and how it is

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<sup>1</sup> See E. Guild, "Citizens, Immigrants, Terrorists and Others" in S. Peers and A. Ward (eds), *The EU Charter of Fundamental Rights, Politics, Law and Policy*, Oxford: Hart, 2004, pp. 231-47.

<sup>2</sup> On the transitional arrangements, 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, pp. 699-721.

used as the point of transition between the immigrant and the citizen (or future citizen). Integration seems to have become a mechanism for describing how the immigrant becomes an integral part of the state and, eventually, no longer an immigrant but a citizen. This discussion, however, also sparks off a reflection on what it means to be a citizen and what are the attributes that are at the heart of citizenship. This reflection has become increasingly polarised as political parties of the far right make claims to a monopoly over the meaning of belonging, which is situated in the idea of integration. NGOs on the left have also sought to tame the concept of integration, proposing various means for testing integration and determining which immigrants are or are not integrated. For the immigrant him or herself, this debate can be quite confusing not least as the other foreigner next to whom he or she may have been working for many years, may be a national of Poland or Lithuania who achieved citizenship of the Union without any effort of integration at all.

While this debate has been taking place, the idea of integration has been moving both in time and space. Where integration began as a concept closely related to ‘becoming a citizen’, it has, in a number of EU member states moved in time to become a concept attached to ‘becoming an immigrant’. The example of the Netherlands arises frequently in this publication where integration tests are not only required of persons who have already been accepted as immigrants but also from those who seek to become immigrants in the future. Integration has also moved in space: it is no longer a concept that is addressed in relation to the presence of the individual on the territory of the state, but it is tested in respect of persons who are abroad and would like to come to the state, as in the case of the Netherlands. The individual is not permitted to approach the physical territory of the state unless he or she can satisfy the state authorities that he or she is already integrated into the state. In this sense the concept of integration has changed quite substantially from a mechanism to identify whether the individual belongs through his or her assumption of the characteristics of the host community to the state to a mechanism to determine whether an individual living abroad who has never lived on the territory of the state is sufficiently integrated into the society of the state as to justify his or her admission to its territory. The relationship between space, time and the individual has changed in this equation.

In light of the above reflections, it is clear that there needs to be much greater clarity on what integration is and how it operates between the individual and the state. Looking at the ways in which the concept is being deployed in some member states, and in particular the Netherlands at the moment, there needs to be a serious attempt to fix the definition of integration and its purposes in the EU. The first thing that becomes clear in this collection of papers is that ‘integration’ is a mechanism to deliver and assure equality of treatment for individuals. At the heart of integration is the principle that the immigrant and the citizen are equal and entitled to the enjoyment of that security of equality. Thus the starting point for the EU in seeking to achieve greater integration for immigrants is through its equal treatment directives, which prohibit discrimination on a wide variety of grounds.<sup>3</sup> A robust monitoring programme to ensure equality of treatment for immigrants in the EU is fully justified in view of the importance to integration.<sup>4</sup>

Second, equality of treatment includes the rights of movement for third-country national immigrants, which are contained in Directive 2003/109 on the status of long-term resident third-

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<sup>3</sup> 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, 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.

<sup>4</sup> See 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.

country nationals.<sup>5</sup> Ensuring that immigrants as well as citizens of the Union are entitled to move freely within the Union and exercise economic rights is central. Pursuing these EU measures will do more for immigrants' integration in the EU than handbooks, Common Basic Principles and the like (soft law).

Third, there needs to be serious discussion about whether an EU framework for integration is necessary beyond the scope of the above. Further than these EU assurances of equality and non-discrimination, is it not for local and regional authorities to put in place positive measures to diminish the effects of earlier discrimination? Funding should be made available through these channels for this work.

Finally, at the heart of the nexus is the problem of social exclusion. The key to integration is social inclusion and all the measures that have been developed to achieve this. Whether the individual is a citizen or an immigrant is less relevant than whether he or she is suffering from social exclusion and its negative effects both on personal development and the society. Integration programmes should be addressed from the perspective of social inclusion and not hived off as immigrant-relevant ghettos where there will always be a risk that the blame falls on the victim for his or her exclusion.

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<sup>5</sup> See 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.

## ANNEX 1.

### **Letter by the Meijers Committee\* (Standing Committee of Experts on International Immigration, Refugee and Criminal law) on the Draft Integration Act (TK 30308)**

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20 January 2006

To the General Commission on Integration Policy of the Lower House

Esteemed Members of the Lower House,

The Permanent Committee has taken notice of the proposal for the Integration Act (*Wet inburgering* TK 30308) with great concern.

The Permanent Committee shares the view that knowledge of the Dutch language is an important part of the integration process of immigrants. However, the Commission is of the opinion that the bill in question fails to appreciate that language skills are merely one element of integration and that integration is a twofold process that will not benefit from a legislative act which, in violation of international obligations, divides immigrants into different categories on the basis of their origin, on which different obligations are imposed.

The Permanent Committee is of the opinion that the contemplated legislation is in violation of the Netherlands' international obligations flowing from five conventions and three EC directives: the European Convention on Nationality, the UN Convention on the Elimination of Racial Discrimination, the European Convention for the protection of Human Rights, the International Covenant on Civil and Political Rights, the EEC-Turkey Association Agreement, the Race Directive, the Directive concerning the right to family reunification and the Directive concerning the status of third-country nationals who are long-term residents. This view is expounded in the accompanying note.

In this note, the Committee restricted itself to three aspects of the legislative proposal: (1) the distinction between three categories of Dutch nationals, (2) the relevant international obligations and (3) the establishment of two databases with personal data on a large part of the immigrant population of the Netherlands.

Our Committee is more than willing to further explain the accompanying note.

Yours faithfully,

**Prof. mr C.A. Groenendijk**  
Chairman

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\* Translated from Dutch to English by Ciara Clerx, a student in the Faculty of Law at the University of Maastricht.

## ANNEX 2.

### **Note of the Meijers Committee (Standing Committee of Experts on International Immigration, Refugee and Criminal Law) on the Draft Integration Act\* (Wet inburgering TK 30308)**

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Utrecht, 20 January 2006

#### **1. Distinction between three categories of Dutch nationals**

The bill makes a difference between three categories of Dutch nationals: those born Dutch, the Antillean and Aruban Dutch and naturalised Dutch nationals. The bill is thus founded on a distinction based on ethnic or national origin, in legal terms a distinction based on race.

The first category, Dutch-born nationals, is deemed to speak Dutch and to know about Dutch society sufficiently, regardless of where in the world they were born and how long or short a period they have lived in the Netherlands. The explanatory memorandum, without factual foundations, departs from the proposition that “it is to be expected that in this category there are practically no people in need of integration for whom an obligation to integrate is necessary” (p. 14 and 68). Obligations are imposed only on the other two categories of Dutch nationals. The authorities will bear the entire costs of the necessary education for Antillean and Aruban Dutch nationals, who are defined in Art. 58 of the bill. Some of the naturalised Dutch nationals, described in Art. 3 of the bill, have to bear those costs entirely or partly themselves.

The distinction between the three categories is directly or indirectly based on the ethnic origin of the Dutch nationals involved.

The fact that on the one hand a small number of the Dutch nationals of Moroccan, Turkish, Surinam or other allochthonous origin who were born in the Netherlands is exempted from the proposed integration obligation and that on the other hand not all naturalised Dutch citizens are subject to that duty, does not detract from the fact that it is being proposed to exempt all Dutch nationals who were born in the Netherlands and only to impose the integration obligation on Antillean, Aruban and naturalised Dutch citizens. A distinction is thus being made on grounds of place of birth and the manner in which Dutch nationality was obtained. That is a distinction based on the origin of the person involved. No obligation is being imposed on a single Dutch national of Dutch origin, whereas obligations are being imposed on the large majority of the (allochthonous) Dutch nationals born outside the Netherlands.

On this point the government is implementing the Sterk motion in which an exemption of the integration duty was requested for autochthonous Dutch nationals (TK 29800, VI, nr. 78). With that motion the Lower House implicitly requested this obligation to be imposed only on Dutch nationals of immigrant origin. At the time the House possibly was insufficiently aware that the imposition of a legal obligation on a group of people primarily determined by their ethnic origin was being requested.

Legally and socially speaking there is an important difference between, on the one hand, a distinction between autochthonous and allochthonous Dutch nationals (and non-Dutch residents) when providing for certain *facilities* for the benefit of groups of persons, such as provided for by the Act on equal representation of immigrants in employment (*Wet samen*) and

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\* Translated from Dutch to English by Ciara Clerx, a student in the Faculty of Law at the University of Maastricht.

the extra financing for primary schools based on the number of pupils of immigrant origin, and on the other hand the imposition of certain *obligations* on individuals based on their ethnic origin. The first case deals with a form of positive action policy for the benefit of certain *groups* which is permissible, under certain circumstances, also according to the international instruments to be mentioned hereafter. In the second case a duty is imposed on *individuals* based on their place of birth or on the manner in which they obtained Dutch nationality and thereby (in)directly based on their ethnic origin. Such a form of discrimination cannot be justified, except in very exceptional cases.

## 2. Relevant international obligations

The Explanatory Memorandum (EM) devotes extensive attention to the limits posed by treaties and EC law to the proposed legal obligation to integrate (pp. 33-55). Remarkably, in practically every instance in which authoritative bodies consulted by the government consider there to be such limits, the government takes the position that these bodies are incorrect. These authorities are, among others, the Council of State (on the reverse discrimination of naturalised Dutch nationals who are treated worse than the citizens of the other EU member states) and the European Commission (violation of EC law), the judgments of the civil chamber of the Hague District Court and the Aliens chamber of the Rotterdam District Court as well as the advice of the statutory Advisory Commission on Aliens Affairs and the University of Tilburg (on the standstill clauses based on the EEC-Turkey Association Agreement). This position is also taken in the governmental Memorandum in response to the report on the bill by the Second Chamber (hereafter Memorandum) with regard to the opinion of the European Commission on three issues; see for instance pp. 129-31.

The Memorandum repeatedly argues that no “adequate framework of reference” in international law exists for the new integration system (pp. 11 and 124). This framework most certainly does exist. It is however being ignored or interpreted as if it would not impose limitations on the government’s intentions. Such an attitude is not in conformity with the duty of the Netherlands to fulfil its treaty obligations in good faith.

### 2.1 European Convention on Nationality

This convention has been adopted within the Council of Europe in 1997. Art. 5(2) states that “Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.” The proposed Act will constitute a far-reaching breach of this principle by imposing obligations on naturalised Dutch citizens and exempting Dutch-born nationals based solely on the grounds of their birth. On this point the Netherlands will become an ‘*Einzelgänger*’ in Europe.

The Minister states in the Memorandum (p. 41) not to have any information on legislation in other EU member states in which a distinction is made between born and naturalised citizens. Recent research into the legislation of the ‘old’ 15 EU member states shows that only four member states make a distinction between born and naturalised citizens in their legislation. In Finland and Portugal only a born national can be elected as president of the republic. The same goes for the guardian of the Spanish kingdom. In Greece a citizen cannot be elected in certain offices for the first few years after naturalisation<sup>1</sup>. These few exceptions to the rule laid down in Art. 5 concern very special cases that concern the organisation of government offices, never entire sections of the population, as provided for by the bill. In these exceptional cases certain

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<sup>1</sup> See H. Waldrauch, “The rights of expatriates, multiple nationals and groups of nationals with restricted citizenship”, ch. 8 in R. Bauböck, Raine, E. Ersbøll, K. Groenendijk and H. Waldrauch (eds), *Acquisition and Loss of Nationality: Policies and Trends in 15 European States*, Amsterdam: Amsterdam University Press, IMISCOE series, forthcoming in 2006.

(mainly symbolic) rights are withheld. No other EU member state imposes special obligations, threatened with legal sanctions, solely on citizens who were naturalised.

The Committee ventures to remark that, in autumn 2002, as a result of a suggestion by the minister for aliens affairs and integration at the time to “deport young Moroccans with a Dutch passport”, the prime minister expressly pointed out that there is only one type of Dutch national and that Dutch nationals have to be treated equally irrespective of the way in which they obtained Dutch nationality (Hand TK 5 September 2002, pp. 5623-48). Here, the prime minister formulated a fundamental principle. The fact that, not even three years later, the government drafted a bill that proposes to define three categories of Dutch nationals and treat them differently, indicates how principles that were considered to be fundamental starting points of the government are being disregarded in the recent discussion on immigration and integration in the Netherlands

## 2.2 UN Convention on the Elimination of Racial Discrimination

The prohibition of racial discrimination in the Convention on the Elimination of all forms of Racial Discrimination (Trb. 1966, 237) covers direct as well as indirect discrimination on grounds of race and ethnic origin. It thus also concerns measures that do not have distinction as a goal, but as an (intentional or unintentional) result, see Art. 1(1). Based on Art. 2(1)(a) of this treaty the Netherlands are obliged “to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation”. The Convention is not applicable to distinctions between citizens and aliens, but it does apply to a difference in treatment between groups of citizens, as proposed in this bill. The treaty allows temporary forms of *positive* discrimination, see Art. 1(4). It does not contain a provision, however, that allows for a justification of other forms of difference in treatment based on race or ethnic origin. Consequently, it is highly questionable whether this Convention allows for an imposition of legal obligations on members of certain ethnic groups (Dutch nationals of immigrant origin).

## 2.3 EC Directive against racial discrimination

The bill is also incompatible with the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Directive 2000/43/EC, OJ L 180/22). This Directive is also applicable to the public sector. It prohibits unequal treatment in, among others, education and social benefits (Art. 3(1)(f) and (g)). The imposition of a duty to integrate solely on Dutch nationals of immigrant origin, as well as the complete refunding of the course costs to Antillean Dutch nationals and only to some of the naturalised Dutch citizens under the duty to integrate are both forms of unequal treatment that are in violation of this Directive. In so far as the bill makes an indirect distinction on grounds of race or ethnic origin, such as that regarding the definition of Antillean Dutch nationals in Art. 58, the Directive offers a limited possibility for the justification of that distinction, namely when “that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary” (Art. 2(2)(b) of the Directive). The Court of Justice will set high requirements on the justification of indirect discrimination on grounds of race or ethnic origin by the government when reviewing conformity with Art. 3 of the Directive.

## 2.4 Non-discrimination provisions in the European Convention on Human Rights (ECHR) and the International Covenant of Civil and Political Rights (ICCPR)

The accessory non-discrimination provision in Art. 14 of the ECHR and the general non-discrimination provisions in Art. 1 of the XII<sup>th</sup> Protocol to the ECHR and Art. 26 of the ICCPR all three name “race, colour...national origin...and birth”, among others, as forbidden criteria.

From the recent case law of the European Court of Human Rights in Strasbourg it follows that the Court leaves little or no room for justification of distinctions on grounds of ‘race’ or ‘ethnic origin’, certainly when that distinction is being made by the government. The Court held: “In any event, the Court considers that no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures” (Case *Timishev v Russia* of 13 December 2005, para. 58). In this connection it is also telling that the Court had already held earlier that under circumstances racial discrimination should be considered “humiliating” or even “inhuman” within the meaning of Art. 3 of the ECHR.

The bill makes a distinction on grounds of race, ethnic origin and birth. In so far as making such a distinction can be justified by the government at all, the Court will set very high requirements to the justification. The bill does not meet these high requirements. In the EM it is repeatedly argued that the aim of the bill is legitimate and that the chosen measures are necessary and proportionate. The fact that integration is a legitimate aim is not in question. The necessity and the proportionality of the proposed measures should indisputably be proven. The Committee points to the following four circumstances in this respect:

- in no single democratic country have such far-reaching obligations been imposed on naturalised citizens up until now, while practically all countries in the world are confronted with the question of the integration of immigrants; nothing shows the situation in the Netherlands to be so exceptional that such exceptional measures are justified;
- the negative side-effects of the proposed integration duty for allochthonous Dutch nationals on the relationship between the various population groups in the Netherlands and on the integration of immigrants are entirely left aside; in the EM these negative side-effects are not mentioned;
- the proposed criteria are less ‘objective’ than the government makes them appear; it follows from the Memorandum (p. 40), for example, that a Dutch person who is “evidently sufficiently integrated” can ask the municipal authorities to relieve him/her of the integration duty; if relief is granted, s/he will nonetheless remain registered in the Integration Information system;
- as the Council of State rightly observed in its advice, a serious weighing of the advantages and disadvantages of the proposed measures in relation to other possible measures to attain the intended integration is lacking (TK 30308, No. 4, p. 2). Should the Court in Strasbourg hold that a distinction such as the one made in the bill could be justified at all, then the exceptional measures, the lack of a serious investigation into alternative measures and the use of measures based on a ‘suspect’ difference in treatment, makes it in the eyes of the Permanent Commission highly unlikely that the Court, in reviewing compatibility with Art. 14 of the ECHR or Art. 1 of the XII<sup>th</sup> Protocol, would accept the requirements of necessity and proportionality to have been fulfilled.

Race and ethnic origin are ‘suspect’ criteria because a person cannot influence his/her origin in any manner whatsoever. Therefore it is also a fundamental starting-point of democracy that all citizens, irrespective of their origin, are treated equally by the government.

## 2.5 EEC-Turkey Association Agreement

The proposed regulation is in violation of both standstill clauses (Art. 13 of Council Decision 1/80 and Art. 41(1) of the Protocol) and in violation of the general non-discrimination provisions of Art. 9 of the Association Agreement. Those provisions are relevant for Turkish citizens who derive rights from the Association Agreement. The rules of the bill constitute new limitations to their right to be self-employed or to reside as family members and be treated equally as Dutch. These provisions also protect those of the Dutch nationals who possess Turkish nationality as well. Concerning the *standstill provisions* this violation has been pointed out, as mentioned above, by all authorities consulted (the European Commission, Advisory Committee on Aliens Affairs and the University of Tilburg).

The district courts in The Hague and in Rotterdam have already declared the introduction of the fees for residence permits to be an illegal new limitation with regard to Turkish workers and their family members. These judgments are relevant, because the bill proposes to introduce a new limitation on obtaining a permanent residence permit and in doing so forces the persons involved to apply for a renewal of their temporary permits, for which fees will have to be paid again, in violation of the standstill clauses. Moreover, the newly proposed grounds for refusal of the permanent residence permit in Arts. 21 and 34 of the Aliens Act of 2000 constitutes an illegal new limitation on access to employment. Currently, possession of a permanent residence permit based on Art. 4(2)(a) of the Alien Employment Act exempts aliens from the duty to have a permit as provided for by that Act. The introduction of a new ground for refusal in the Aliens Act makes it more difficult to obtain such an exemption based on national law.

Contrary to what the EM presupposes, it is irrelevant for the application of the standstill clauses whether or not a new limitation is “appropriate” or “proportionate” or “formal” in nature (p. 51). It follows from the recent case law of the Court of Justice that the Association Agreement does not allow any new limitation of a legal or practical nature. In this regard, contrary to what the Memorandum argues on p. 130, the “appropriate and well-balanced character of the integration duty as an instrument to lessen these arrears” is also irrelevant. It is only relevant whether or not a new limitation is in question.

In the EM it is repeatedly argued that the imposition of the integration duty does not constitute a limitation on access to employment for Turkish employees and their family members. This is remarkable, since the government has taken the opposite view in the EM to the bill for the 1998 Integration of Newcomers Act (INA). There it was held that a Turkish worker who derives a right to residence from Decision 1/80, cannot be asked to participate in the integration course, based on international regulations (TK 25114, No. 3, p. 32). In the current bill, further-reaching obligations and heavier sanctions than the INA contains are proposed and it is nonetheless maintained that there would be no question of a limitation on access to employment. If, in practice, a Turkish worker would only be able to attend the necessary training in an affordable manner during normal working hours, this would definitely constitute a prohibited limitation on access to employment. In Germany, it is also accepted that the integration duty based on the *Aufenthaltsgesetz* (2004) cannot be imposed on Turkish citizens who derive a right to residence from the EEC-Association Agreement.<sup>2</sup>

Furthermore, the EM incorrectly presupposes that the *discrimination prohibition* in the EEC-Turkey Association Agreement is limited to the prohibition of unequal treatment in pay and other working conditions and in employment conciliation (see p. 52). The Association Agreement contains a general non-discrimination provision in Art. 9, which “prohibits, within

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<sup>2</sup> See B. Huber, *Die geplante ausländerrechtliche Pflicht zur Teilnahme am Integrationskurs*, *Zeitschrift für Ausländerrecht und Ausländerpolitik*, 2004, p. 86 and *Integrationsbeauftragte der Bundesregierung*, 6, Bericht über die Lage der Ausländer in der Bundesrepublik Deutschland, Berlin, 2005, pp. 215-16.

the scope of the Agreement...every discrimination on grounds of nationality”. The case law of the Court of Justice shows that the integration of Turkish workers and their family members in the labour market and in the society of the country of residence unmistakably falls within the scope of the Association Agreement. In the Committee’s opinion it does not seem likely that the Court of Justice will hold that the Netherlands can suffice with equal treatment of Turkish citizens and naturalised Dutch citizens. The Community non-discrimination provisions demand equal treatment with ‘full’ Dutch citizens – those Dutch-born citizens who have been exonerated in the bill.

The prohibition on discrimination not only protects all persons who solely possess the Turkish nationality, it equally protects those Turkish citizens who possess Dutch nationality as well. The government presupposes that Dutch nationals who also possess a second nationality are protected by the Community prohibition on discrimination (EM, p. 42). The Committee does not see why this would be different for a Dutch national who also possesses Turkish nationality as well as for a Dutch national who also possesses, for example, Greek nationality. Art. 9 of the EEC-Turkey Association Agreement explicitly refers to the general non-discrimination prohibition in the current Art. 12 of the EC Treaty.

The conclusion therefore is that the standstill clauses and the general discrimination prohibition of Art. 9 of the Association Agreement do not permit the proposed regulation to be applied to Turkish citizens who have a residence right based on that Treaty, irrespective of whether they also possess Dutch nationality.

## **2.6 EC Directive concerning the right to family reunification**

With regard to Art. 7(2) of this Directive (2003/86/EC), the government states that the Directive allows “integration *conditions*” to be required. The government fails to mention, however, that the term ‘conditions’ is only used in the Dutch language version. In all other language versions accessible to the Committee “integration *measures*” are mentioned. During the negotiations on the current and subsequent directive the member states explicitly chose the difference in terminology between “measures” and “conditions”. The Memorandum correctly points to that difference on p. 128: integration measures concern an obligation to make an effort (such as attending a course) and integration conditions concern an obligation of result (for example the passing of an exam). The obligation to participate in the language and integration courses offered by the government may not infringe on the right to equal treatment regarding access to education and employment granted by Art. 14 of the Directive. The bill does not contain a provision that guarantees this right to equal treatment.

## **2.7 EC Directive concerning the status of third-country nationals who are long-term residents**

The government states on p. 45 of the EM that after five years of legal residence in the Netherlands, integration conditions can again be imposed on a third-country national, who previously resided in another member state and fulfilled his/her integration obligations there. This interpretation of Art. 23 of Directive 2003/109/EC is contrary to the ratio and the negotiation records of Art. 15(3) of the Directive. The compromise between the member states was that a non-EU citizen would have to fulfil the integration conditions in one member state only. It is “allowed to require attendance of language courses”, according to the last sentence of Art. 15(3). Therefore, The Netherlands, contrary to what is argued on p. 128 of the Memorandum, cannot after five years of residence in the Netherlands require a third-country national, who has fulfilled the integration obligations in another member state, to pass a language exam again, as a condition for obtaining the right to the EC status of long-term resident. During those five years the imposition of an obligation to make an effort, such as participation in a language course, is permitted.

### 3. Two databases regarding a large number of the autochthonous population of the Netherlands

Finally, the Permanent Committee calls for attention on an entirely different aspect of the bill. The bill provides for the setting up of two large computerised databases: the “Integration Information system” (Art. 45) and the “File on persons potentially in need of integration” (Art. 46). Both systems would be managed by the IB group (the body implementing the Dutch study grants legislation). The first file would contain information on persons who are, will be or have been under the obligation to integrate (EM, p. 102). The second file would contain information on persons for whom the IB Group “cannot establish with certainty that they are not under the obligation to integrate” (Art. 46, para. 1). The Permanent Committee has three comments on the two proposed databases.

First, the necessity of these new elaborate and radical registrations has been insufficiently shown. The government does not sufficiently indicate why the information contained in already existing systems, such as the GBA (a computerised population registration) or the VAS (a computerised registration of aliens) does not suffice for the implementation of this Act. Consequently, the organisation of these systems does not comply with the principles as laid down in Arts. 7 and 8(d) of the Protection of Personal Data Act (PPA). According to these provisions, which are based on EC Directive 95/46 concerning the protection of personal data, personal data may only be collected for well-defined, explicitly described and justified means and this data may only be processed where it is necessary in light of the public function of the relevant institution. This necessity does not follow from the bill nor is it apparent from the explanation. On the contrary, regarding the Integration Information system, the proposed Art. 45(1) only states that this shall be a systematically organised collection of data that is “relevant” with regard to the integration of persons with an integration duty. This description is much wider than “necessary for” and therefore does not comply with the above-mentioned principles.

Second, the Permanent Committee is of the opinion that the proposed systems are covered by the rules on the processing of special data in Art. 16 of the PPA and that the bill concerned does not comply with the much stricter requirements in force with respect to the processing of these personal data. The duty to integrate is directly or indirectly linked to the ethnic origin of the person, with regard to both Dutch nationals and aliens. The Dutch nationals concerned are naturalised Dutch citizens. These are mostly persons of Turkish or Moroccan origin or persons from (other) countries in Africa, Asia and America. The aliens are almost all non-Europeans, since the citizens of the other 24 EU member states are exempted from the duty to integrate. The largest groups of non-Dutch nationals who will be registered in both systems are of Turkish and Moroccan origin or from the countries of origin of larger groups of refugees. Based on figures of the Central Statistical Office, from the beginning of 2003 it is estimated that three-quarters of the registered persons would be of Turkish or Moroccan origin or from other countries with a mainly Islamic population. The large majority of the non-Western immigrant population of the Netherlands and probably the large majority of the Muslim population of the Netherlands would be registered in one or both of these databases. Art. 18 of the PPA only allows the processing of data concerning the race of persons if it is unavoidable for the identification of that person or if it is necessary to “appoint a privileged position to persons of a certain ethnic or cultural minority, in order to eliminate or diminish factual inequalities” and the person in question has not opposed it. In view of the many obligations and sanctions in the bill it is hard to uphold that the Integration Act should be seen as a form of positive discrimination as within the meaning of Art. 18 of the PPA. The contrary holds true. Neither does the current bill comply with the other exceptions to the general prohibition on the processing of special data as laid down in Art. 23 of the PPA.

Third, the Permanent Committee finds it disquieting that the bill itself does not contain clear safeguards for the protection of private life. This is almost entirely left to lower regulations. The bill does not contain time periods for the elimination of the personal data, for example, nor does it specify the persons and authorities to which the data can be made available. The lack of fixed terms of preservation of the data is remarkable, since the personal data of persons who have fulfilled their duty to integrate or of whom it has been established that they are not under an obligation to integrate would probably also be kept in the Integration Information system. With regard to the use of the processed data, Art. 48(2)(d) of the bill merely states that this data may be used for the aim with which it was gathered or in so far as the processing is compatible with that goal. This last expansion is not explained any further in the EM (see p. 109). It is unclear, for example, whether this information can also be used for the benefit of, for example, the tracing of criminal offences or the activities of the Immigration and Naturalisation Service or the General Information and Security Service.

## ANNEX 3.

### Seminar Programme

 <p>Centre for European Policy Studies <i>Thinking ahead for Europe</i></p>	 <p>CMR</p>	 <p>CHALLENGE Liberty &amp; Security</p>
<p><b>SEMINAR</b></p> <p><b>Immigration, Integration and Citizenship</b></p> <p><i>The Nexus in the EU</i></p>		

25 January 2006

- 9:45 Opening Remarks by **Sergio Carrera** (CEPS)
- 10:00-11:15 **Session I. Integration and Immigration**
- Chair: Kees Groenendijk** (Centre for Migration Law, Radboud University of Nijmegen)
- Sandra Pratt** (DG Justice, Freedom and Security, European Commission), *Immigration and Integration: Latest Developments and the European Commission's Role*
- Paul Hickey** (DG Justice and Home Affairs, Council of the European Union), *A Common EU Framework on Integration: The Position of the Council*
- Rinus Penninx** (Institute for Migration and Ethnic Studies, IMES), *The Nexus between Immigration and Integration*
- Leonard F.M. Besselink** (Utrecht University), *Free Movement Rights and Integration Requirements: A Dutch Perspective*
- Discussant: Elspeth Guild** (CEPS and Centre for Migration Law, Radboud University of Nijmegen)
- 11:15-11:45 Open Discussion
- 11:45 Coffee Break
- 12:00-13:00 **Session II. Integration and Citizenship**
- Chair: Sergio Carrera** (CEPS)
- Gerard-René de Groot** (Faculty of Law, University of Maastricht), *Citizenship and Integration Requirements: A Comparative Perspective*
- Joanna Apap** (European Parliament), *The Relationship between Integration and Citizenship*
- Jan Niessen** (Migration Policy Group), *Integration of Migrants, Naturalisation and Civic Citizenship*
- Discussant: Didier Bigo** (Sciences Po, FNSP, Paris)
- 13:00-13:45 Open Discussion
- 13:45 Closing Remarks by **Sergio Carrera** (CEPS)

## ANNEX 4.

### Proceedings of the Seminar

Sergio Carrera & Raphael Muturi

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#### Session I. Integration and Immigration

**Sergio Carrera** (Centre for European Policy Studies, CEPS), *Welcome and Opening Remarks*

Mr Carrera started by explaining that the event was jointly organised by CEPS and the Centre for Migration Law (Radboud University of Nijmegen). The seminar took place in the context of CEPS' policy research in EU justice and home affairs and the CHALLENGE Research Project, which looks closely at the changing landscape of liberty and security in Europe.

CHALLENGE (The Changing Landscape of European Liberty and Security) is a research project funded by the Sixth Framework Research Programme (Theme 6.1.1 of Priority 7, Citizens and Governance in a Knowledge-based Society) of the DG for Research of the European Commission. It runs over a period of five years starting from 1 June 2004. CHALLENGE seeks to facilitate a more responsive and responsible assessment of security rules and practices. It examines the implications of these practices for civil liberties, human rights and social cohesion in an enlarged Europe. The project analyses the illiberal practices of liberal regimes and challenges their justification on the grounds of emergency and necessity. Mr Carrera explained that CHALLENGE is composed of 23 universities and research institutes selected from across the European Union. The project is organised around four types of issues: a) conceptual, b) empirical, c) governance, polity and legality and d) policy. The management structure is broken down into scientific coordination led by Didier Bigo (Fondation Nationale des Sciences Politiques (FNSP), Institut d'Etudes Politiques), and administrative coordination by Elspeth Guild, Thierry Balzacq and Sergio Carrera (CEPS).

Mr Carrera stressed that one of the main tools of CHALLENGE is the Observatory ([www.libertysecurity.org](http://www.libertysecurity.org)), whose purpose is to follow the changes that are occurring to "the concept of security" and the relationship between "danger and freedom" in detail. It maps the different missions and activities of the main institutions that are charged with the function of protection. In addition, he explained that the Observatory traces the major transformations of the relations between these institutions and addresses the question of the merging between internal and external security and between policing and military functions.

Mr Carrera also pointed out that the JHA section at CEPS has an external expert role on immigration and integration for the European Economic and Social Committee and the European Parliament's DG Internal Policies.

He went on to address the main purpose of the seminar: to examine the nexus between immigration, integration and citizenship in the EU. These three concepts have been increasingly linked to each other through the juridical status accorded to immigrants across an important number of EU member states. We are experiencing an increasing link between these three concepts at the national and the transnational level (EU). "Integration" is becoming "the juridical condition" in the other two dimensions. This seminar looks at how the three policy issues have recently come together under a common EU policy on immigration, and seeks to evaluate this development with regard to intrinsic criteria such as effectiveness and proportionality as well as extrinsic criteria such as legitimacy, non-discrimination, fundamental rights and social cohesion.

Mr Carrera pointed out that the Second Multiannual Programme dealing with an Area of Freedom, Security and Justice – The Hague Programme – presents the integration of immigrants as one of the ten strategic priorities for the next five years. The European Commission has recently published a Communication on a common agenda for integration, which represents a key response for the establishment of a coherent EU framework on integration, and provides concrete measures for putting the Common Basic Principles on Integration into practice. It would examine which competences the EU has on integration and the thinking behind national practices in this area. Lastly, he mentioned that the diversity inherent in the EU today had to be borne in mind when considering the purpose of integrating third-country nationals. This seminar will discuss the nexus between immigration, integration and citizenship, and it will, among others, address the following questions:

- 1) What are the implications of that nexus? Are they positive or negative?
- 2) Has the EU a competence conferred by the Treaties to legislate on the integration of immigrants?
- 3) What does integration mean in liberal democracies? What is the philosophy behind the concept of “integration of immigrants” (at national and EU level) and what are the implications for the immigrant?
- 4) What is the dividing line between an efficient integration policy and respect for cultural, ethnic and religious diversity, and the interculturalism that is inherent to the EU?

The programme has been divided into sections: the first deals with the nexus between immigration and integration and the second one focuses on the link between integration and citizenship.

**Kees Groenendijk** (Centre for Migration Law, Radboud University of Nijmegen), *Introduction*

Prof. Groenendijk, who chaired the first panel on immigration and integration, prefaced the contributions with an observation about the problems surrounding the integration discourse in the EU. He noted that in December 2005, the new German Minister of Interior Wolfgang Schäuble told an audience at a seminar on integration policy in Berlin that Germany should learn from the successes and the failures of other European countries. The practices of one particular member state, the Netherlands, however clearly offers an opportunity to learn from negative examples. The parliament of that member state last week agreed to the introduction of a language and integration test by telephone from the embassies and consulates using a computer in Europe as a condition for a visa for a third-country national to live with his or her spouse in that member state, even if the spouse is a Dutch national. The same parliament is holding at the very moment we are speaking at this seminar a public hearing on a bill that would oblige half a million naturalised citizens to go to their town hall and prove to the municipal authorities again that they have sufficient command of the language and sufficient knowledge of that society, while Dutch nationals by birth are exempted from that test, unless they are of Caribbean origin.

Prof. Groenendijk concluded that the approach to integration policy presented by the German minister clearly starts from a different definition of the issue and of policy instruments furthering integration than the perspective and instruments proposed by the present government of the neighbouring Netherlands.

**Sandra Pratt** (Deputy Head of Unit, DG Justice, Freedom and Security, European Commission), *Immigration and Integration: Latest Developments and the European Commission's Role*

Ms Pratt first noted that integration policy has developed through a bottom-up process. Although the European Commission was only able to begin to tackle this issue late in the Tampere period, offering its first Communication on immigration, integration and employment in June 2003, nonetheless integration has risen quickly on the policy agenda. It is clear that it is an area of primarily national competence, yet the Commission has been under pressure to take a lead by setting the agenda and by promoting the sharing of information and good practices on integration. The Hague Programme has provided a clear mandate for the Commission to strengthen integration policy at both the EU and national levels. Based on this mandate the Commission will coordinate and ensure coherence at the EU level by developing a European framework.

Ms Pratt pointed out that there was growing commitment by member states to integration. The adoption by the JHA Council of the Common Basic Principles is a major step in defining the scope of integration throughout the EU, setting objectives and identifying key actions. The Commission Communication of September 2005 on a common agenda for integration has detailed how the Common Basic Principles can be implemented at both the EU and national levels and put forward such cooperation mechanisms as the network of National Contact Points, the Handbook on integration, the annual report on immigration and integration, the integration website and the European Integration Forum.

Ms Pratt went on to state that the framework by itself will not be enough to ensure successful integration policies. As recent events witness, public perception of immigrants is especially sensitive to external developments such as the murder of Theo Van Gogh in the Netherlands and the riots in France at the end of 2005. Although no causal link exists between such events and immigration, integration policy should be constantly reviewed to broaden our understanding of the factors necessary to realise the Common Basic Principles and to ensure it contributes to preventing developments such as radicalisation of particular individuals or groups. In the Commission's view new initiatives to enhance the rights of immigrants in particular by access to citizenship, provision of voting rights and greater freedom of movement for third-country nationals would be useful at this point.

Ms Pratt emphasised that citizenship in particular can contribute to immigrants' sense of inclusion in society. Naturalisation ceremonies currently being introduced in some member states reflect this as well as the positive experience of the US and Canada. She also noted that some member states have relaxed their naturalisation requirements, which fosters the integration of third-country nationals. Recent research on dual citizenship indicates that this can constitute a strong instrument to ensure a transnational identification and integration in the long run. Concerning EU citizenship, Ms Pratt stated that the Commission is not in favour of extending such a status to third-country nationals at the present time given that this would require amendment of the EC Treaties. More promising might be to pursue the idea of a status of civic citizenship to foster the participation of immigrants in economic, social and political life. The long-term residence and family reunification Directives already provide a basis of economic and social rights.

The European Commission also supports the granting of local voting rights as a key to successful integration. The Handbook on integration together with the Communication on a common agenda describes some good practice in this area. The member states have themselves collectively agreed on the importance of such rights and the JHA Council meeting in November 2004 approved the Common Basic Principles that stress the value in the integration process of the right to vote and join political parties for legally resident third-country nationals. Recent

research also shows that the granting of local voting rights has a strong impact on the participation of immigrants in local politics (see the European Migration Network study of December 2005 on *The Impact of Immigration on Europe's Society*).

Concerning free movement of third-country nationals throughout the Union, Ms Pratt pointed out that the Directive on long-term residence constitutes a significant movement in this direction. The policy plan in legal migration emphasises the importance of providing a level playing field of clear and well-defined rights for legal migrants even before they acquire long-term resident status. Following from this Communication the Commission is considering introducing a green-card system to facilitate EU mobility for high-skilled workers.

**Paul Hickey** (DG Justice and Home Affairs, Council of the European Union), *A Common EU Framework on Integration: The Position of the Council*

Mr Hickey addressed the position of the Council on the common EU framework on integration. He began with a history of integration developments since 1999. He characterised the legal framework established by the long-term residence, family reunification and the anti-discrimination Directives as setting a common benchmark for all member states. The future of integration on the other hand lay with the objectives set forth in the Hague Programme.

Concerning the role of the member states, Mr Hickey noted that the European Council meeting at Seville in June 2002 had called for comprehensive policies on integration to be developed. It had also called for the setting up of the National Contact Points on integration. The Commission Communication on immigration, integration and employment of June 2003 had taken up the first theme with its elaboration of a holistic approach to integration.

The Thessaloniki European Council in 2003 emphasised these priorities while stating others. Integration was defined as a continuous and two-way process of mutual rights and corresponding obligations between third-country nationals and the host societies. Primary responsibility for integration was, however, to remain with the member states. The EU could however reinforce the efforts of the member states by providing a common framework. The EU could also facilitate the exchange of information and good practice, to ensure further coherence of integration policies. The possibility of developing a set of Common Basic Principles had also been raised at the time as a basis for the common framework.

The Hague Programme is therefore not radically new, but develops more concretely the objectives for integration that had earlier been agreed among the member states. Mr Hickey emphasised the Council's position that the integration of immigrants is crucial for social cohesion and stability in the EU. The Groningen Ministerial Conference of the Dutch presidency in November 2004 had prepared the Common Basic Principles, which among other things underline that integration is to be a two-way process of which access to employment remains a vital part. The Common Basic Principles are to assist the member states in formulating integration policy and exploring how related objectives can be implemented. They will also serve as a basis for additional instruments on integration should the EU seek to establish these in the future.

Mr Hickey also spoke about the principle of subsidiarity, noting that different roles for the EU and the member states have to be accepted. The fact that member states retain primary responsibility for integration signals an implicit recognition that measures for integration cannot be the same everywhere, but will vary from member state to member state. The reality of the situation is that different values, traditions and legal frameworks operate in different local, regional and national entities. A coherent European framework on the integration of third-country nationals will, however, provide for a common legal framework, Common Basic Principles and the exchange of information and good practices. The recent Justice and Home

Affairs Council meeting in December 2005 emphasised the importance of defining a framework on integration at all levels of society. The National Contact Points will lend their expertise and continue their work on the Handbook on integration. Integration will also continue as a key priority for ministerial meetings.

**Rinus Penninx** (Institute for Migration and Ethnic Studies, IMES), *The Nexus between Immigration and Integration*

Prof. Penninx was the third speaker on the panel, addressing his remarks to the conceptual nexus between immigration and integration. He pointed out that the nexus between migration and integration can be understood at three different levels: in research, in policy frameworks and in current policy practices in the EU. The key questions concerning this nexus are: How does it work? And how can it be manipulated?

In *academic research*, studies of immigration and integration have traditionally come under two historically distinct fields. There has been theory-building and research on the mobility of people across political borders – on international migration. And then there has been a separate field of theory-building and study on the process of settlement of people after migration – on assimilation/integration/incorporation. Between the two fields there is a chronological sequence: immigration precedes integration. Migration was predominantly understood and studied as a one-time movement that would lead to settlement. That process of settlement was supposed to be followed by the assimilation/integration into the new national or local society/culture.

Academic studies have only recently begun to look differently at the more complex nature of the nexus between immigration and integration. Increased globalisation, in which migration movements have become more complex and more of a continuous process, has blurred the predominant idea of migration leading to final settlement: the temporary, circular and sometimes even continuous cosmopolitan nature of contemporary migration movements within globalised systems is receiving more attention. Globalised movements should be conceptualised not only in national frameworks, but in terms of globalising urban areas. This has led researchers away from the formerly strongly national frameworks to conduct more international comparisons and to adopt a transnational perspective (i.e. to give much more attention to migration systems of circulation, and connected to that the continuous transnational ties of immigrants with several places at the same time, even possibly leading to transnational ‘communities’). Such a different conception of migration has direct consequences for integration. A migrant can, apart from his integration in the place of his actual residence at that moment, possibly also be integrated elsewhere, even in such abstractions as a transnational community. The nexus between migration and integration thus becomes a regular topic of study.

As to the nexus between immigration and integration *in policy framing*, Prof. Penninx noted that the national policies may be regarded as implicit theories that function as a framework for policy action. Viewed in this way different policy frames exist, reflecting different assumptions of how immigration and integration are or should be related.

The first is reflected in policies of traditional immigration countries. These generally take a positive, proactive approach to immigration. They recognise that immigrants contribute to nation-building and seek to select the best people to settle in their territories. Such immigration is assumed to lead to full membership in the new society, a process that should be facilitated by the institutions of the receiving society on the one hand and should be earned by the migrants themselves. As a consequence of such assumptions institutional arrangements and policies for both immigration and integration are relatively well developed.

A second quite different frame is that of countries that define themselves as non-immigration countries (irrespective of the factual level of immigration). Most north-western European

countries do not envisage that people will move into and permanently settle in their territories. Selection is not a policy topic for these countries, since that relates to (pro)active immigration policies. Immigration that does take place is inadvertent and seen from the policy system is supply driven. Such immigration is in principle resisted, unless the applicants can make claims on grounds that cannot be refused. Criteria and grounds for selection are thus completely different from those mentioned earlier.

Policy frames for immigration and integration in the two kinds of countries thus reflect basically different orientations. These are reflected in the institutional arrangements and the division of responsibilities for policies. As for the latter, Canada in the first group, for example has concentrated responsibilities for both immigration and integration in one place: a ministry of citizenship and immigration. The order of citizenship first and immigration afterwards is noteworthy and telling. Non-immigration countries, on the other hand, usually divide responsibility for policies on immigration and integration between two ministries, one responsible for immigration (justice) and one for Integration (social affairs/interior). Such separate administrations usually have different priorities when it comes to non-nationals.

Another way in which integration and immigration are dealt with at the national level can be observed in southern European countries – because they were until only recently emigration countries, they have little affinity with either of the above perspectives. In such countries, there seems to be a more ad hoc acceptance of immigration, little institutionalisation in terms of policy and more flexibility when it comes to dealing with immigration and integration.

Finally, one can look at the connection between immigration and integration in *policy practice*. Here it is significant that in a number of north-western European countries where immigration and integration policies are firmly institutionalised and separated, a new trend is emerging: a “perverse inversion” of the nexus where integration policies, measures and requirements are being deployed as a means to control and further restrict immigration. The present policy developments in the Netherlands are but one example – although a telling one – of a trend that is much broader in the EU. Although the Commission currently seeks to reverse this trend through incremental measures, Prof. Penninx concluded that not much will be achieved in immigration and integration policies – and therefore the actual well being of third-country nationals in the EU – as long as the dominant national policy frames outlined above remain in place.

**Leonard F.M. Besselink** (Faculty of Law, Utrecht University), *Free Movement Rights and Integration Requirements: A Dutch Perspective*

Prof. Besselink gave the last presentation of the panel. He noted with interest that most of the previous speakers had already addressed remarks concerning the Netherlands, the country about which he would be speaking in more detail. In particular, he would review the present situation of unequal citizenship in this country, examine the justifications behind the various integration measures currently in force and under discussion, and comment on what he saw as an inversion of form and substance in the official immigration and citizenship policies of the Netherlands.

Three recent legislative developments are contributing to the shaping of different categories of citizenship in the Netherlands. These are the Integration Act of 1998, the Integration Abroad Act of 2005 and a pending bill on integration likely to be adopted in the course of 2006. The three legislations have a similar essence: that all immigrants must take courses on the Dutch language and on Dutch society as part of their integration.

The 1998 Act stipulates that such courses are compulsory for all new immigrants. Failure to attend will result in administrative fines, which the municipalities have the discretion to levy as often as they see fit. The 2005 Act stipulates that any third-country national applying for a visa to enter the Netherlands will be subject to a language test while abroad. The test is oral,

computer-administered and on elementary knowledge of Dutch language and society. Failure to pass this test results in visa not being granted. The pending bill first proposed in October 2005 concerns language and society courses targeted at immigrants. In this case participation will not be enforced, but a test will be administered at the end of the courses. Failure to pass this test will result in an administrative fine together with the rejection of a long-term residence permit. Prof. Besselink offered his opinion that this bill will be adopted much sooner than after the usual two and a half years.

Altogether the personal scope of the three legislations serves to create six unequal categories of citizenship.

- Dutch nationals of native descent are exempt from any of the integration requirements. A recently passed bill seems to be based on considering “reverse discrimination” illegal, thus potentially further strengthening this exempt status.
- Non-Dutch EU nationals are a privileged group, considered not in need of integration.
- Third-country nationals privileged by bilateral agreements such as those between the Netherlands and Japan, and the Netherlands and the US, are presumably considered to be already integrated as they are not subject to integration conditions.
- Dutch nationals currently dependent on social welfare benefits and with children who are minors are considered to be still in need of integration. In his view, this category practically translates into women of Moroccan and Turkish origin holding Dutch citizenship.
- Third-country nationals whose status derives from the family reunification and long-term residents’ Directives are another group for whom taking the courses is mandatory.
- Third-country nationals not granted particular privileges are the last group, whose status as residents is entirely subject to fulfilling integration conditions.

Prof. Besselink observed that such conditions have served to redraw the borders of citizenship in the EU, citizenship being no longer linked to origin in the native territory but instead related to one’s particular juridical status. The present association of integration with *inburgering* in the Netherlands reflects this trend well, as integration is linked to a status of citizen (*burger*).

Another consequence of integration requirements such as those imposed in the Netherlands is to transfer responsibility for integration from instruments of social policy to instruments of migration control. This change from “soft” to “hard” measures, the latter entailing sanctions linked to rights of admission and residence, has meant that what was once a social problem of inclusion has now become a problem of immigration. In the Netherlands it is mostly the unemployed, Turkish and Moroccan brides, and isolated Turkish and Moroccan mothers who will bear the brunt of these developments.

Finally, the very philosophy that Dutch integration policy seems to favour is one that inverts form and substance. Whereas before it was the case that a migrant acquired a formal citizenship status entailing greater rights and responsibilities, to be even allowed into the Netherlands today one has to first prove that one will be a good citizen by fulfilling the integration conditions, and once this has proven to be the case it may entail formal status. In a more theoretical understanding, Prof. Besselink observed that might indicate either a revival of republicanism, in which citizenship becomes a substantive virtue, or a political pragmatism in which integration becomes a policy extension of immigration control.

Discussant: **Elsbeth Guild** (CEPS)

Prof. Guild addressed the final remarks as discussant for the panel. She noted the unspoken consensus among the speakers that “we know who we are”. There is an inherent notion that diversity within the EU constitutes “our” strength, while it at the same time becomes the weakness of those who are not “us”. This calls into question who *we* are, and who *they* are. A sense of history and present reality shows that there is no “we”. Prof. Guild also referred to the fact that the EU itself is based on the respect of diversity according to Art. 151 EC Treaty. Also, enlargement has been a constant feature of the European Community, with the initial 6 member countries having now become 25, and “we” set to increase with the future accession of Bulgaria, Croatia and Romania. The lack of an objective identity therefore calls into question how one is supposed to become *more* of a citizen amidst a Europe of dynamic diversity.

## Session II. Integration and Citizenship

**Gerard-René de Groot** (Faculty of Law, University of Maastricht), *Citizenship and Integration Requirements: A Comparative Perspective*

Prof. de Groot compared citizenship and integration requirements in the EU. He noted that the concept of “*inburgering*” in the Netherlands is defined as the acquisition of citizen traits. “Integration” itself first came up publicly in the Netherlands in 1984 and was not to be confused with “assimilation”. Integration then meant the acquisition of full rights by immigrants without being required to assimilate into the mainstream culture. On the other hand, how integration is now defined not only in the Netherlands but in other member states evokes many aspects of forced assimilation. The “Muslim test” identified earlier as applied in the German state of Baden-Württemberg raises the fundamental question of whether or not Europe will accept a multicultural society.

He then proceeded to compare the integration conditions linked to naturalisation as applied in two EU member states, the Netherlands and the UK. The Netherlands applies a naturalisation test before granting citizenship to third-country nationals. Before 2003, this test had been conducted at municipal level, in the setting of an informal interview given by a civil servant. The conditions to pass this test varied from municipality to municipality. After 2003, conditions for naturalisation have become much more formal and are administered by the central government as a language test with active/passive and written/spoken components. Knowledge of Dutch society and the “constitutional order” is also tested, this part requiring a good familiarity with contemporary national issues. The test moreover is administered via computer, which calls for additional technical skills on the part of the would-be citizen. A fee of €255 is charged.

The UK also requires a naturalisation test to be sat before a third-country national can obtain citizenship. The naturalisation test was inaugurated in November 2005. The test requires that one is fluent in English, Gaelic, Scottish or Welsh. A 32-page guide on “Life in the UK” is available on the Internet and provides information on the material to be tested. A fee of £35 is levied.

Comparing the two national legal systems with the framework for EU citizenship, it can be seen that substantial differences exist between naturalisation in a member state and the status of EU citizen. On the one hand, those nationals from a (second) member state of the EU have direct access to EU citizenship without being required to speak another language or pass any test. “Integration” is therefore not considered a requirement for the naturalisation of member-state nationals even while Europe remains widely multilingual. For third-country nationals, on the other hand, integration is taken as a prerequisite for naturalisation but remains not clearly or objectively defined. The Netherlands represents one extreme, where before taking a

naturalisation test no information is provided about what is to be tested, and no objective criteria exist as the basis for the test.

Prof. de Groot therefore suggested that if integration is to be made a condition for naturalisation, the different practices of member states in this area should be studied in more detail. A comparison should be made of the national requirements for naturalisation, especially concerning language skills and knowledge about society. If integration is to be imposed all around as a condition for obtaining citizenship, then its meaning should be standardised. In particular it would be sufficient if a third-country national could speak any one of the official languages for the purposes of naturalisation, considering that the Union is itself a multilingual entity and that the status of EU citizenship does not require knowledge of a language other than that of one of the member states. This should especially be the case for long-term residents, considering that their status grants free movement rights in the EU. The requirement of a minimum period of residence for naturalisation in a particular member state is also problematic for this group of third-country nationals, whose right to free movement would be set against the possibility to obtain citizenship. An EU policy that standardised the conditions for access to citizenship would therefore be preferable to the current system of different national regulations.

**Joanna Apap** (DG Internal Policies, European Parliament), *The Relationship between Integration and Citizenship*

Dr Apap examined the interaction between nationality and integration in a state versus membership in a society, especially with respect to the membership of long-term immigrants. She first explored the different meanings of nationality as a legal, political and mental bond to the state. She referred to the analytical distinction between nationality as nominal citizenship and substantive citizenship consisting of rights and duties. The deepest hallmark of citizenship is that citizens constitute the demos of the polity – demos being a link between citizenship and democracy. Citizenship is not only about public authority, but also about the social reality of peoplehood and the identity of the polity. However, equally so is citizenship often connected with a belief that the citizen would be superior to an alien and that this inequality of citizens and foreigners is proper and in order as it is reflected in the presumption of international law that citizenship under certain circumstances can be a suitable ground for discrimination. As such citizenship is a membership in a polity rather than in a society. Dr Apap argued that in the modern European nation-state, the most prominent of social forms that modernity has produced is a complete divorce of *ethnos* from *demos*, which has thus far never worked.

Dr Apap then referred to the different models of integration. Well-known analytical and simplified divisions regarding citizenship for immigrants describe three models: the model of exclusion, the model of assimilation or rather differential inclusion and the multicultural or pluralist inclusionary model. In her view, of the three models, the pluralist inclusionary model seems to offer the best prospects for breaking tensions inherent in the relationship between immigration, integration and citizenship. Therefore, meanings of integration and multiculturalism are briefly debated, particularly the potential of multiculturalism for achieving social cohesion and in making a new statement on substantive citizenship.

In recent years, criticism of multiculturalism has mounted sharply, partially due to social trends such as rising unemployment, the scaling down of the welfare state and the influence of right-wing politics. Moves to scale back multicultural policies are sometimes defended by assertions that such policies play into the hands of extremists, giving people the idea that minorities are receiving preferential treatment. Some newer policies are turning back to a moderate assimilationism. Together with critical analyses of multiculturalism in academic circles, there has also been a renewed focus and reappraisal of the notion of assimilation. It would be wrong, however, to view the criticism of multiculturalism purely as conservatism, it is confined neither

to conservatives nor to members of the majority culture. One of the objections raised is that multiculturalism views cultural differences as too absolute and too static and that this encourages reification of culture and a cult of difference. It may also give rise to competition for status and power and even to conflict between ethnic groups. It even triggers an “us-too” reaction because it allocates rights to some and not to others. Or it can unnoticeably stray into new racism.

Dr Apap concluded that in the European Union “fair treatment of third-country nationals” has been outlined as one of the essential elements of a common migration and asylum policy. A good deal of consensus prevails that integration is a two-way process, involving adaptation on the part of both the immigrant and society, and on what structural integration implies. Immigrants should benefit from comparable conditions, living and working, to those of nationals, including voting rights for long-term residents. In her view, the appreciation of the value of pluralism, is based on the recognition that membership of a society is based on a series of “rights but also responsibilities” for all of its members, nationals or migrants. There should be respect for human rights and human dignity, respect for cultural and social differences and for fundamental shared principles and values.

Finally, she said that the Charter of Fundamental Rights of the European Union is seen as to provide a reference for the development of the concept of “civic citizenship” in a particular member state for third-country nationals. Enabling migrants to acquire such citizenship after a minimum period of years might be sufficient guarantee for many migrants to settle successfully into society or be a first step in the process of acquiring the nationality of the member state concerned.

**Jan Niessen** (Migration Policy Group, MPG), *Integration of Migrants, Naturalization and Civic Citizenship*

Mr Niessen presented the main lines of the research carried out in the study *European Civic Citizenship and Inclusion Index*. The Index was conceived to fill in the gap on civic citizenship policies and inclusion at the EU level. It sets out a formulation of inclusion based on labour market inclusion and civic citizenship. It presents data that illustrates to what extent member states are living up to the commitment they have made in the areas of immigrant inclusion. He explained how the study constructs a common analytical framework informed by a set of normative criteria. This framework allows comparing countries in two respects: 1) against the framework of desirable policy, and 2) against each other’s performance.

Mr Niessen expressed that the Index is built up from almost 100 indicators. Each country is giving a score of 1, 2 or 3 for each indicator depending on which option – least favourable, less favourable or favourable – is selected. The indicators are grouped into five strands (labour market inclusion, long-term residence, family reunification, naturalisation and anti-discrimination).

Mr Niessen stated that citizenship could not only be considered as a prize for integration, but more importantly could allow for the fuller inclusion of immigrants into European societies. Together with more open conditions for admission and a secure legal status of residence for third-country nationals, citizenship constituted an additional pathway for integration.

In his view, equality and access are essential for the integration of immigrants. Equal treatment is often a condition for their admission in terms of working and living conditions. Immigrants acquire more rights and assume more responsibilities over time as they become active citizens. Policies can set favourable integration conditions and they include securing residence, facilitating family reunion, encouraging naturalisation and combating discrimination.

Mr Niessen said that governments not only set legal conditions, they also take administrative measures for the acquisition of the status of resident (and reuniting family members) and citizen, as well as for protection against discrimination. These measures amount to services to be delivered to immigrants and “new” citizens. Clearly, these persons are the first to benefit from the correct and timely handling of the necessary formalities for the acquisition of the desired and deserved status. Employers, social and health services also welcome short, simple and transparent procedures for the application of work permits, family certificates, etc. The way these services are delivered can convey a powerful message of respect for immigrants and of welcoming citizens; it can also work out as a hurdle in the integration process when administrative practices intimidate immigrants or treat them unfairly.

Discussant: **Didier Bigo** (Sciences Po, Paris)

Prof. Bigo noted that all the panellists had so far implicitly accepted the concepts of “immigration”, “integration” and “citizenship” and referred to the prevalence of nationalist ideology as an obstacle to open and fair policies on integration and citizenship. Concerning access to citizenship, he posed the question to the panellists on whether it was a good integration test that was desired or no test at all. On the historical dimension to the division between ethnos and the demos, and the present recrudescence of ethnic nationalism in some member states, he stated his view that this development would have to be openly questioned and resisted. Finally, concerning integration generally, he summarized the different statements to mean the inclusion of the excluded – which should be the ultimate goal of the national policies. In the same respect, granting fairer access to citizenship should be equated to laying the foundations for migrant democracy.

**Sergio Carrera** closed the seminar with a summary of the main points:

- It was widely agreed that integration as it was currently formulated in national policies and laws did not coincide with its more genuine meaning of “social inclusion” with regard to immigrants. As such there is currently a perverse inversion of the nexus between immigration and integration in the national and EU arenas.
- The fundamental philosophy behind integration is still open to debate. What does “integration” mean? Any concept of integration has to settle the questions of “who belongs to us”, “who we are” and what “the boundaries of belonging” are.
- Current national practices and programmes linking integration to immigration and citizenship will negatively impact on the social inclusion of immigrants in European society. An EU framework on integration, if it is to be developed, should not provide a venue for some restrictive national philosophies concerning immigrants to influence the European mainstream.

Any policy measure should be accompanied by a detailed impact assessment of its consequences. No EU framework should provide the means to strengthen particular national immigration and integration philosophies that might make the already-vulnerable position of the immigrant more vulnerable. This needs to be prevented for the sake of social cohesion, human rights and freedom. Instead, the EU should advocate a policy based on the equal and fair treatment paradigm emphasised at the Tampere European Council. This would also be in accordance with Art. 151 EC Treaty.

## ABOUT THE CONTRIBUTORS

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## About CHALLENGE

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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](http://www.libertysecurity.org)).

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