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KING

Knowledge for INtegration Governance

EU Integration Policy: between Soft Law and Hard Law

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KING - Knowledge for INtegration Governance

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The KING project's objective is to elaborate a report on the **state of play** of migrant integration in Europe through an interdisciplinary approach and to provide decision- and policy-makers with **evidence-based recommendations** on the design of migrant integration-related policies and on the way they should be articulated between different policy-making levels of governance.

Migrant integration is a truly multi-faceted process. The contribution of the insights offered by different disciplines is thus essential in order better to grasp the various aspects of the presence of migrants in European societies. This is why **multidisciplinarity** is at the core of the KING research project, whose Advisory Board comprises experts of seven different disciplines:

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The project consists in the conduct of a preliminary desk research followed by an empirical in-depth analysis of specific key topics identified within the desk research. To carry out these two tasks, each Advisory Board member chose and coordinated a team of three to four researchers, who have been assigned a range of topics to cover.

The present paper belongs to the series of contributions produced by the researchers of the “EU Policy” team directed by Yves Pascouau:

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EU Integration Policy: between Soft Law and Hard Law

DESK RESEARCH

1. INTRODUCTION

EU competence for migration was established when the Amsterdam Treaty entered into force in 1999. Since then, the transfer of competencies to EU level has taken place through a slow process of “Europeanization”, albeit with major constraints, including: shared initiative between the Commission and Member States; reliance on unanimity in the Council; a very limited consultative role for the Parliament; and significant limitations on the Court’s (CJEU) jurisdiction. The Lisbon Treaty set the scene for a more open and accountable EU by infusing the area of migration with effective parliamentary supervision and judicial scrutiny. Qualified majority voting in the Council and the ordinary legislative procedure have become the norm, thereby upgrading the Parliament to a co-legislative body in this domain. The Commission’s exclusive right of initiative over labour migration policy is now established coupled with the increasing powers of the CJEU to review and interpret EU migration law (Acosta and Geddes, 2013).

The European Commission has always identified integration of third-country nationals (TCNs) as a central element of any migration policy. Leaving aside the difficulty in defining what integration may mean from a sociological, economic or political perspective, the role that law may play in the integration of TCNs is also subject to discussion for at least two reasons. First, Article 79.4 of the Treaty on the Functioning of the European Union (TFEU) states that,

[T]he European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting integration of third-country nationals residing legally in their territories, excluding any harmonization of the laws and regulations of the Member States.

This explicit exclusion of harmonization is however not straight forward in practice. On the one hand, integration policies include a wide range of areas such as access to education, labour market, social security or housing. Many of these matters are now covered by EU directives dealing with different categories of TCNs and hence cannot be any longer considered as an exclusive Member States’ competence. Additionally, integration has also acquired an EU law meaning with its inclusion as a concept in the Long-term Residence and Family Reunification Directives. On the other hand, the European Union has developed various non-binding documents, benchmarks and coordination policies which add to the complexity of the governance of integration and which constitute a sort of soft law influencing the way in which Member States legislate on the matter.

Second, there is an ongoing discussion on the role that law may play in the integration of TCNs. Integration was usually an “implicit policy” in the rights to equal treatment, secure residence status, access to the labour market and family reunification that EU workers first, then EU citizens, obtained from the development of a free movement regime (Groenendijk, 2012:3). This is what Groenendijk describes as

the first meaning of the understanding of the relationship between law and integration: integration would be facilitated by granting secure residence status and equal treatment (Groenendijk, 2004:113). The European Council Tampere Conclusions built on this same rationale when proposing comparable treatment between TCNs and EU citizens.¹ The preambles to the Long-term Residence and Family Reunification Directives are also paradigmatic of this same approach.²

However, the Long-term Residence Directive also introduced a new perspective on the relationship between law and integration. Under this second perspective, secure residence status and the enjoyment of certain rights were considered remuneration for an already completed integration (ibid: 113). Indeed, the Directive establishes in Article 5 that, in addition to other conditions,³ Member States may require TCNs wishing to obtain long-term residence status, “to comply with integration conditions, in accordance with national law”.

Finally, a third understanding of the relationship between law and integration is present in the Family Reunification Directive. This considers that an alleged lack of integration “or the assumed unfitness to integrate are grounds for refusal of admission to the country” (ibid: 113). Article 7(2) of the Directive allows Member States to require TCNs’ family members to comply with integration measures before being granted family reunification. The meaning and limitations of integration measures and conditions will be analysed in Section III.

This report consists of two main parts. Section II investigates the EU Framework on Integration. The framework includes at least a set of common basic principles for immigration integration policy, three handbooks on integration for policy-makers, three Commission annual reports on migration and integration and several other Commission communications, a European integration forum, an integration website, a European integration fund, the setting up of national contact points on integration and the final declarations from the meetings of the European Council and of the Council of Justice and Home Affairs. This Framework has been defined as

an innovative multilevel method of governance in the field of integration of TCNs at EU level, involving the interaction of a package of non-binding or soft-law regulatory tools and diversified supranational networks which have given birth to a quasi-Open Method of Coordination (Carrera, 2009: 7).

Section II has two aims. First, to see the extent to which these non-binding instruments are creating the conditions for the convergence of national policies and rules by building consensus on the way integration must be addressed. Second, this section identifies the main elements forming part of an EU integration policy through the analysis of the various policy documents. This will facilitate reflection on whether these elements are present in the current Directives on EU Migration and will serve to introduce Section III.

Section III assesses the EU Migration law framework. Here, we turn our attention to two central aspects. First, we analyse the various integration policies addressed by EU Directives such as access to the labour market, education or housing. Second, the legal interpretation to be given to the term “integration” in the Long-term Residence and Family Reunification Directives is discussed.

The report concludes by providing some policy recommendations and suggestions which may be of use for the European Commission, the European Parliament, the Council, Member States, national courts, the CJEU, as well as practitioners and stakeholders working in the area.

¹ Paras 18 and 21 of the Tampere Council Conclusions. Para 21 made specific reference to long-term residents.

² See Recitals 4 and 12 of Directive 2003/109 concerning the Status of Third Country Nationals who are Long-term Residents, OJ 2004 L 16/44. See Recital 4 of Directive 2003/86 on the Right to Family Reunification, OJ 2003 L 251/12.

³ These conditions are enshrined in Articles 4, 5 and 6 of Directive 2003/109. Third Country nationals willing to obtain long term residence status need to have resided regularly and continuously for a period of five years in the territory of a Member State, have stable and regular resources as well as sickness insurance and not be a threat to public policy or public security.

2. THE EU FRAMEWORK ON INTEGRATION

This part of the report will adopt a chronological approach to explain the main elements and development of the EU Framework on Integration. This Section will be divided into three parts looking at three different periods (1999-2004, 2004-2009 and 2009-2014) which coincide with each of the multiannual programs in the area of Freedom, Security and Justice: Tampere, the Hague and Stockholm. Each part will be accompanied by a table summarizing each of the main actions taken during that period as well as the actors involved.

2.1 First period: From Tampere to the Hague (1999-2004)

When the EU obtained a clear cut competence to legislate on migration with the entry into force of the Treaty of Amsterdam in 1999, it was obvious that the European Council, as the institution in charge of defining the general political directions and priorities of the EU, would be the first one to express its views on integration.

Tampere European Council Conclusions

In **Tampere, the European Council** provided the basis for any policy on the subject by emphasizing that a more vigorous integration policy should aim at granting TNCs "rights and obligations comparable to those of EU citizens" (Tampere European Council, 1999: para 18). The European Council also acknowledged "the need for approximation of national legislations on the conditions of admission and residence of third country nationals" (ibid, para 20) and that "the legal status of third country nationals should be approximated to that of Member States' nationals" (ibid, para 21).

Commission Communication on a Community Immigration Policy

It is within this framework that the **Commission** adopted a **Communication on a Community Immigration Policy** in 2000 (European Commission, 2000). According to the Commission, there is a common understanding that zero immigration policies are not realistic (ibid: 3). With that premise in mind, the admission of economic migrants should be dealt with in a more flexible approach common to all Member States complemented with measures to facilitate integration. The Commission proposes several actions which have a clear underlying rationale of rights as a facilitator for integration. For example, when presenting its proposal for a Family Reunification Directive, the Commission points out that family reunion "is an essential element in the integration of persons already admitted" (ibid: 11). Also, when discussing TCNs' rights it is argued that "it is clear that a hard-core of rights should be available to migrants on their arrival, in order to promote their successful integration into society" (ibid: 17). Finally, it is mentioned under the Section entitled integration that

the provision of equality with respect to conditions of work and access to services, together with the granting of civic and political rights to longer-term migrant residents brings with it such responsibilities and promotes integration (ibid: 19).

A last important point to highlight is the acknowledgment of the significant role to be played by a variety of actors, including migrants, NGOs, media, the police or social partners (ibid: 20). Such a horizontal approach

required a Community Action Programme “through evaluation of practices, developing benchmarks and other indicators, promoting dialogue between the actors concerned and supporting European networks and the promotion of awareness raising activities” (ibid: 20).

Commission Communication on an Open Method of Coordination

This Communication was soon followed by another one on an **Open Method of Coordination for the Community Immigration Policy (OMC)** (European Commission, 2001). This was a bid to stimulate more dynamic change by encouraging “countries to advance their levels of national policy experimentation and co-ordination through a non-binding yet common governance mechanism” (Caviedes, 2004: 289). This derived from an understanding that the Community method could not regulate every single aspect. The Commission considered that

the use of an open method of co-ordination, specifically adapted to the immigration field, and as a complement to the legislative framework, will provide the necessary policy mix to achieve a gradual approach to the development of an EU policy, based, in a first stage at least, on the identification and development of common objectives to which it is agreed that a European response is necessary (European Commission, 2001: 5).

This may be summarised as the hope that consensus as to the desirability of a particular policy would result from comparison of different national alternatives (Caviedes, 2004: 295). To that aim, the Commission would have presented

proposals for European guidelines, ensuring co-ordination of national policies, the exchange of best practice and evaluation of the impact of the Community policy, as well as through regular consultations with third countries concerned (European Commission 2001: 6).

These proposals would have been based on multiannual guidelines with specific timetables approved by the Council. Member States would have had then to adopt National Action Plans in consultation with civil society actors. One of the areas where these guidelines should have been approved was integration. However, the Council never adopted the proposal for an OMC.⁴ Thus, what we find in the area of migration and integration is a rather “patchy implementation of OMC soft mechanisms” complementing legislation which certainly mirrors “the fragmented legislative framework” in the area (Velluti, 2007: 54). Among these quasi-OMC governance techniques, which are independent from the never adopted OMC, we may mention the national contact points on integration or the common basic principles on integration that will be discussed below.

Justice and Home Affairs Council Meeting

In October 2002, the meeting of the **Justice and Home Affairs Council** addressed for the first time the issue of integration (Council of the EU, 2002). The Council stressed the usual need to approximate the rights and obligations of TCNs to those of nationals and the importance of an effort against discrimination and xenophobia (ibid: 25). It also highlighted the importance for newly arrived immigrants to have, in accordance with national law, access to language courses and information on their host society. Finally, the Council also encouraged the establishment of National Contact Points (NCPs) in order to facilitate the exchange of information which could lead to best practices regarding the integration of TCNs (ibid: 26).

National Contact Points on Integration

⁴ The European Parliament however produced a report in 2003 in which it welcomed the Commission’s work while at the same time regretting the inactivity of the Council in this area. European Parliament, Report on the Commission Communication on an open method of coordination for the Community immigration policy, COM (2001)387, A5-0224/2003, 16 June 2003, Rapporteur: Ana Terrón i Cusí.

As a result of the Council's document, the Commission set up the network of **National Contact Points on integration**. This network organises regular meetings between national officials with the aim of exchanging information and good practice. Depending on each Member State, these national officials come from different ministries including Interior, Labour and Social Affairs or Integration. Its work has led to the adoption of **three handbooks on integration** with the purpose of exchanging information and best practice. The first edition of the handbook, published in 2004, covers introductory courses for newly arrived immigrants and recognised refugees, civic participation and integration indicators. The second edition, released in 2007, focuses on integration mainstreaming and governance, as well as housing and economic participation. The third edition, published in 2010, deals with the role of mass media, the importance of awareness-raising and migrant empowerment, dialogue platforms, acquisition of nationality and practice of active citizenship, immigrant youth, education and the labour market.

Commission Communication on Immigration, Integration and Employment

In 2003, the **Commission** presented a new **Communication on Immigration, Integration and Employment** (European Commission, 2003). The Communication took account of some important developments which had occurred since Tampere, notably the 2000 Lisbon strategy to become the most competitive and dynamic knowledge based economy in the world. In line with this strategy, access to the EU's employment market was considered as the most important priority to facilitate integration (ibid: 3). The Commission understood integration as something to be addressed with a holistic approach taking into account not only its economic and social aspects "but also issues related to cultural and religious diversity, citizenship, participation and political rights" (ibid: 18). Integration was defined as a "two way process based on mutual rights and corresponding obligations of legally resident third country nationals and the host society which provides for full participation of the immigrant" (ibid: 17). The key elements in this holistic approach were identified as access to the labour market and recognition of qualifications, education and language skills, housing and urban issues, health and social services, social and cultural environment and nationality and civic citizenship. Interestingly, the Commission mentioned, in line with a previous suggestion by the Europea Economic and Social Committee (EESC), the possibility of extending to TCNs the scope of the Directive on recognition of qualifications (ibid, p. 27). To date, this has not occurred. Nevertheless, considering the importance that all the documents under analysis grant to the issues of recognition of diplomas, this is something to be reconsidered.

European Parliament's Report on the Commission's Communication on Immigration, Integration and Employment

The **European Parliament**, in turn, supported the idea of civic citizenship since this would, in its view, be important for increasing a sense of belonging in Europe. The Parliament also proposed granting TCNs voting rights for the European Parliament elections.⁵

European Council Thessaloniki Conclusions

Building on this momentum the 2003 **European Council in Thessaloniki** also referred to the matter (European Council, 2003). Integration was understood as a "two way process" to be addressed with a multidimensional policy in order to grant TCNs rights and obligations comparable to those of EU citizens. This policy should cover various aspects including "employment, economic participation, education and language training, health and social services, housing and urban issues, as well as culture and participation

⁵ European Parliament, Report on the Communication from the Commission on Immigration, Integration and Employment, A5-0445/2003, 1 December 2003, Rapporteur: Claude Moraes. It restated its support in another report in 2006: European Parliament, Report on Strategies and Means for the Integration of Immigrants in the European Union, A6-0190/2006, 17 May 2006, Rapporteur: Stavros Lambrinidis.

in social life” (ibid: 8). The European Council also invited the Commission to present an Annual Report on Migration and Integration.

First Annual Report on Migration and Integration

The **First Annual Report on Migration and Integration** was presented in 2004 in the form of a communication (European Commission, 2004). As with the previous reports, lack of access to employment was identified as the most important barrier to integration. The difficulties in the recognition of diplomas as well as lack of language skills were also mentioned as significant elements (ibid: 5). In that regard, the Commission welcomed the commitment by Member States to reduce the unemployment gap between non-EU and EU nationals and emphasized the need to step up the fight against discrimination in the harsh political climate at the time (ibid: 18). It was also mentioned how language tuition and the provision of civic education to newly arrived migrants was growing and how the focus had moved towards an increased responsibility on the newcomers to pay for these courses and to pass exams, as in the case of the Netherlands (ibid: 19). Thus, the Commission acknowledged for the first time this new trend which has then been replicated in various countries (Acosta 2012; Pascouau 2012). The new conceptualisation of integration is notable since it represents a paradigm shift from an understanding of integration policies “as something positive, given their role in promoting social inclusion, non-discrimination and access to rights” towards “a condition in the form of a test, programme or contract within immigration law in order for TCNs to become socially included, to acquire a regular residence status and to have access to family reunion” (Carrera and Wiesbrock 2009). The legality of this conceptualisation of integration from the perspective of the current EU migration law framework will be a matter for discussion in Section III.

Table 1

Year	Institution	Measure	Summary
1999	European Council	Tampere Programme	A more vigorous integration policy should aim at granting TCNs rights and obligations comparable to those of EU citizens.
2000	European Commission	Communication, on a Community Immigration Policy, COM (2000) 757	Several measures for TCNs proposed with an understanding that rights facilitate integration.
2001	European Commission	Commission Communication, Open Method of Coordination for the Community Immigration Policy, COM 2001 (387).	Proposal for the use of an open method of co-ordination as a complement to the legislative framework.
2002	Council	Conclusions of the Justice and Home Affairs Council.	Establishment of National Contact Points on Integration. Need to approximate the rights and obligations of TCNs to those of nationals and the importance of an effort against discrimination. Need for newly arrived immigrants to have access to language courses and information on their host society.
Since 2003	Member States’ Officials	National Contact Points on Integration	Elaboration of three handbooks on integration and regular meetings.
2003	Commission	Communication on Immigration, Integration and	Integration as a two way process based on mutual rights and corresponding obligations of legally resident

		Employment, COM (2003) 336.	TCNs and the host society which provides for full participation of the immigrant. Extending the scope of the Directive on recognition of qualifications.
2003	European Parliament	Report on the Communication from the Commission on Immigration, Integration and Employment, A5-0445/2003, 1 December 2003.	Support for the concept of civic citizenship. TCNs should be allowed to vote in EP elections.
2003	European Council	Thessaloniki Conclusions	Integration as a “two way process” to be addressed with a multidimensional policy covering various aspects including employment, economic participation, education and language training, health and social services, housing and urban issues, as well as culture and participation in social life.
2004	European Commission	Communication, First Annual Report on Migration and Integration, COM (2004) 508.	Lack of access to employment as the most important barrier to integration. Language tuition and the provision of civic education to newly arrived migrants were growing and focus had shifted towards an increased responsibility on the newcomers to pay for these courses and to pass exams.

Own elaboration.

As can be seen from the table above, the picture that emerges from this period is clear. All institutions agree on the fact that TCNs should be granted rights and obligations comparable to those of EU citizens since that will enhance their integration. Also, the various actors understand integration as a two way process. Lack of access to employment and the difficulties in the recognition of diplomas are always mentioned as the main obstacles for that integration, together with language knowledge. Towards the end of this five years period we can however see how some Member States shift the burden on who should facilitate access to language and civic knowledge from the State to TCNs themselves. This is also clear in the introduction of integration measures and conditions in the 2003 Long Term Residence and Family Reunification Directives, as will be investigated below.

2.2 Second period: From the Hague to Stockholm (2004-2009)

The Hague Programme

In November 2004, **the European Council adopted the Hague Programme**, a new multiannual programme in the area of Freedom, Security and Justice (European Council, 2004) Integration was placed at the top of the agenda for the coming years and the European Council restated its previous appeal in Thessaloniki in 2003 (European Council, 2003: para 31) for the elaboration of common basic principles on integration (European Council, 2004: 20) The programme also stressed the need to prevent isolation of certain groups and how obstacles to integration required to be actively eliminated (ibid: 19).

The Common Basic Principles for Immigrant Integration Policy

The Justice and Home Affairs Council adopted the Common Basic Principles for Immigrant Integration Policy in the EU on 19 November 2004 (Common Basic Principles, 2004). As mentioned, they were the

result of previous calls by the European Council. These principles form the foundations of EU initiatives in the field of integration.⁶

The Council begins by acknowledging how "immigration is a permanent feature of European society" from which "many benefits" including "stronger economies, social cohesion and cultural diversity" may be reaped (ibid: 15). At the same time, "immigration policy can contribute to the success of integration policy" although it is acknowledged that "integration can easily span a generation or more" (ibid). This acknowledgement is interesting since it contradicts some practices analysed in Section III by which certain Member States request TCNs to start proving integration as soon as entering the territory or even before in the case of family members.

The rationale behind the adoption of the principles is "to assist Member States in formulating integration policies by offering them a simple non-binding but thoughtful guide on basic principles" (ibid: 16). By the same logic, these principles should guide EU's legislation in the area. From a legal point of view, several aspects may be highlighted, which may indeed help the Commission in its role as legislative initiator and guardian of the Treaties:

Principle 3: *"Employment is a key part of the integration process"*. Having access to employment appears as central in the integration of TCNs. Hence, the Commission could centre its efforts in ensuring that the possibilities enshrined in the different Directives are fully implemented.

Principles 5 and 6: *"Efforts in education and access for immigrants to institutions as well as to public and private goods and services, on a basis equal to national citizens"*. These two principles refer to the central role played by education in preparing "people to participate better in all areas of daily life and to interact with others" and the need to ensure the prohibition of discrimination "on grounds of racial or ethnic origin in employment, education, social security, healthcare, access to goods and services, and housing". Again the Commission needs to fully ensure that whenever EU law guarantees equal treatment, notably under the Long-term Residence Directive, those possibilities are available to TCNs.

Principle 7. This principle refers, among other things, to the need to fully ensure the implementation of active anti-discrimination and anti-racism policies. Again, the respectful observance of the Directives on non-discrimination seems central in this regard.⁷

⁶ The 11 principles are the following:

- CBP 1 'Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States'
- CBP 2 'Integration implies respect for the basic values of the European Union'
- CBP 3 'Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible'
- CBP 4 'Basic knowledge of the host society's language, history, and institutions is indispensable to integration; enabling immigrants to acquire this basic knowledge is essential to successful integration'
- CBP 5 'Efforts in education are critical to preparing immigrants, and particularly their descendants, to be more successful and more active participants in society'
- CBP 6 'Access for immigrants to institutions, as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way is a critical foundation for better integration'
- CBP 7 'Frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration. Shared forums, intercultural dialogue, education about immigrants and immigrant cultures, and stimulating living conditions in urban environments enhance the interactions between immigrants and Member State citizens'
- CBP 8 'The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law'
- CBP 9 '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'
- CBP 10 'Mainstreaming integration policies and measures in all relevant policy portfolios and levels of government and public services is an important consideration in public policy formation and implementation.'
- CBP 11 'Developing clear goals, indicators and evaluation mechanisms are necessary to adjust policy, evaluate progress on integration and to make the exchange of information more effective.'

⁷ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Two further elements which are, by and large, under Member States' exclusive legislative competence demand attention. First, **principle six** admits the importance that the prospect of acquiring Member State citizenship has as an incentive for integration. This reads poorly with the various legislative amendments and proposals which had made it harder in several EU Member States to obtain citizenship (Bauböck et al, 2009; Bauböck et al, 2006). Second, **principle nine** highlights the central role which that the right to vote and joining political parties may play in the integration of TCNs. This is something which needs to be further explored by Member States.

Ministerial Conferences on Integration

Also in November 2004, the Ministers in charge of Integration issues had their **first regular and informal meeting** with the view to discuss integration issues (Groningen, 9-11 November 2004). This meeting was then followed by others in Potsdam in 2007, Vichy in 2008 and Zaragoza in 2010. During the first conference in 2004, the Common Basic Principles for immigrant integration policy were discussed.

In general, these conferences provide the opportunity for political debates on integration and they may improve common understanding but also serve the Member State running the six months' presidency to highlight and push forward certain aspects on the agenda. During the second conference in 2007, Ministers were invited to centre on how intercultural dialogue within the EU could be strengthened. During the third conference in 2008, the attention shifted to other aspects such as language learning, promoting Member States values and access to employment. Finally, the last conference in Spain in 2010, mainly dealt with the development of human capital through employment and education, social cohesion in neighbourhoods and areas with a high rate of immigrant population and the role of civil society in this mutual adaptation process. The Conferences' conclusions were adopted by the Justice and Home affairs Councils respectively in November 2004, June 2007, November 2008 and June 2010. Common to all these documents is the usual emphasis on access to employment, social inclusion and education.

Commission's Agenda on Integration

The Commission adopted in September 2005 its **First Communication on a Common Agenda for Integration** (European Commission, 2005), where it produced a series of proposals for concrete measures to put the CBPs into practice. It is again notable how there is an emphasis on the monitoring of the correct application of the Long-term Residence Directive and of the Directives concerning discrimination in employment under principles 3 and 6, as well as the need to facilitate recognition of qualifications under principle 5 (ibid: 6 and 8). This is also the last document in which the Commission referred to the concept of civic citizenship as a means of promoting the integration of TCNs. It was argued that this concept, introduced in 2000, would have had the Charter as the basic instrument establishing a framework for civic citizenship "with some rights applying because of their universal nature and others derived from those conferred on citizens of the Union" (European Commission, 2003). This would have enhanced a successful settlement in society by granting certain core rights and obligations to migrants (ibid: 23). The concept of civic citizenship may have however been reintroduced through the back door by the recent rulings of the CJEU on the long-term residence Directive (Acosta, 2014). Finally, the Commission also to the importance of minimising obstacles to the use of voting rights as an action which should take place at national level under CBP 9.

European Parliament Report Strategies and Means for the Integration of Immigrants

The European Parliament published another **Report on the integration of immigrants in the EU** on 17 May 2006 (European Parliament, 2006). Crucially, the Parliament urged the Commission to "ensure the effective implementation of the existing Directives linked to integration" (ibid: 6), notably the long-term residence, family reunification and equal treatment Directives. Indeed, the Parliament argued that,

it is critical for the Commission to monitor more rigorously both the transposition of integration-related Directives and the effectiveness of administrative practices that implement the relevant legislation in the day-to-day lives of immigrants (ibid: 6).

Interestingly, the Parliament also acknowledged the need for clarifying the terms of the EU debate on integration, “given that the word ‘integration’ itself is open to many interpretations” (ibid: 7). Recognizing the variety of actors playing a role in this area, it also called on the “Commission to create a permanent contact group of immigrant representatives, experts, NGOs and others to advise it on all policies related to integration” (ibid: 8). Finally, it called “on Member States to encourage the political participation of immigrants” as well as establishing “transparent, humane, fast and reasonable procedures for...naturalization of long-term resident immigrants and their children” (ibid: 9) and for the development of the concept of civic citizenship understood as “a robust package of rights and responsibilities that could serve as a precursor to citizenship” (ibid: 14). A last point to highlight is the way in which the European Parliament linked current integration challenges with previous ones:

The challenge of immigrant integration is one to which we have risen before. In fact, the European Union is arguably the most successful enterprise of immigrant integration in history. A quarter-century ago, most immigrants living in the then European Community were southern Europeans. Today, southern Europe is a thriving part of the Union, its citizens no longer perceived as immigrants—though at the time, many considered them alien and ‘unintegratable’. Their accession to the Union strengthened the EU as a whole. Likewise, eastern Europeans are now full EU members (ibid: 11).

The Parliament recognizes that EU accession has played a central role in this transformation from “unintegratable” migrants into equal citizens. The fact that the Parliament reminds the successful integration of previous groups of migrants and that it defines this process as one which may take some time is however important and reads poorly with the “democratic impatience” by certain Member States which expect “integration to take place within a decade” (Groenendijk, 2012: 5).

Second Annual Commission Report on Migration and Integration

The Commission published its **Second Annual Report on Migration and Integration** on 30 June 2006 (European Commission, 2006). The Commission highlights the “new emphasis on obligatory integration courses, containing both language instruction and civic orientation” (ibid: 5). It also stresses how “in several countries, there is an emphasis on possible sanctions in cases of non-compliance with obligations arising from compulsory integration measures, rather than on incentives in case of compliance” (ibid). Significantly, the Commission refers for the first time to the legal validity of these requirements under the Family and Long-term Residences Directives and states that integration conditions and measures “should not undermine the efficiency (*‘effet utile’*) of the Directive” (ibid). In addition to that, the Commission acknowledges that “careful examination of national transposition measures and concrete practices will be necessary” (ibid: 6) in order to ensure that long-term residents are guaranteed equal treatment in a number of areas such as access to education or housing. Finally, the Commission alludes to the importance of recognition of academic and professional qualifications and expresses that the procedure is often different from that applying to EU/EEA nationals in a number of countries (ibid: 17).

Third Annual Report on Migration and Integration

The Commission published its **Third Annual Report on Migration and Integration** on 11 September 2007 (European Commission, 2007). The report emphasizes the need to mainstream integration across a wide range of EU policies (ibid: 5). As usual, it stresses employment as a key aspect in the integration process and recognizes migrants as “an important pool of potential entrepreneurs in Europe” (ibid: 6). Finally, it refers to the need to promote “fundamental rights, non-discrimination and equal opportunities” as they have a crucial role on integration (ibid).

The European Integration Fund

The European Commission adopted in 2005 a Proposal for a Decision establishing a European Integration Fund for the years 2007-2013.⁸ Council Decision 2007/435/EC finally adopted the **European Fund for the Integration of Third Country Nationals** (EIF) in June 2007 with a financial coverage of 825 million Euros.⁹ The EIF aims at supporting various national and EU initiatives that intend to facilitate the integration of TCNs in the EU. All EU countries except for Denmark participate in the EIF. The EIF supports EU countries and civil society in enhancing their capacity to develop and implement different projects. It also enables exchanges of information and best practices. Some of its concrete actions include programs on diversity management in neighborhoods, promotion of courses or initiatives for sharing best practices and information such as conferences. The EIF primarily targets actions aimed at supporting the integration of newly arrived TCNs. This reflects the political priorities of some Member States with their emphasis on pre-entry measures and integration courses on language and civic knowledge for recently arrived migrants (Pascouau, 2012: 18).

Commission's Communication: A Common Immigration Policy for Europe

The Commission adopted in June 2008 a **Communication on a Common Immigration Policy** for Europe (European Commission, 2008). It begins by expressing the need for an approach on integration “which does not only look at the benefit for the host society but takes also account of the interests of the immigrants” (ibid: 3). The document is articulated around ten common principles grouped under three headings: prosperity, security and solidarity. Under the heading of prosperity the Commission acknowledges the importance of having clear rules promoting legal immigration and of giving TCNs fair treatment in order to approximate their legal status to that of EU nationals (ibid: 5). With regard to integration the Commission points out that it can be supported with different measures, e.g. facilitating the acquisition of language skills or developing specific integration programmes for newly arrived immigrants (ibid: 7). Most importantly, the Commission echoes the necessity of increased participation by TCNs in order to “reflect the multiple and evolving identities of European societies” (ibid: 8). This recognition of Europe as a continent in which identity is not static but evolving represents an interesting feature of this Communication which goes beyond the usual calls for social inclusion, integration in the labour market or non-discrimination which are also present here.

European Pact on Immigration and Asylum

The European Council adopted in 2008,¹⁰ and under French Presidency, the **European Pact on Immigration and Asylum** (European Pact Immigration and Asylum, 2008). Whereas the Pact also focuses on migrants' rights (“in particular to education, work, security, and public and social services” as well as the “need to combat any forms of discrimination to which migrants may be exposed”) (ibid: 6) it shifts its attention towards migrant's obligations, notably the need to “promote language learning” and the stress for the respect needed “for the identities of the Member States and the European Union and for their fundamental values, such as human rights, freedom of opinion, democracy, tolerance, equality between men and women, and the compulsory schooling of children” (ibid).

This was the result of the spirit with which the French government of former President Sarkozy approached integration. This is even clearer if the negotiations leading to the Pact are considered. The original idea in

⁸ Commission's Proposal for a Decision establishing the European Integration Fund for the period 2007-2013 as a part of the General Programme 'Solidarity and Management of Migration Flows', Brussels, COM (2005) 123 final, Brussels, 6 April 2005.

⁹ Council Decision establishing the European Fund for the Integration of Third-Country Nationals for the period 2007 to 2013 as part of the General Programme “Solidarity and Management of Migration Flows”, 2007/435/EC, 27 June 2007, OJ L 168/18, 28.6.2007.

¹⁰ Brussels European Council, 15-16 October, Presidency Conclusions, 14368/08, p. 8.

the Pact was to include a reference to the compulsory imposition of integration contracts for TCNs and only the opposition of the Spanish Government to this measure caused its elimination in the final text (Acosta Arcarazo, 2011: 67). To put it differently, the two-way process called for by the CBPs is endangered by the willingness of some States to link the migrant's residence status to his/her capacity to prove language or civic knowledge. The importance of the Pact cannot be however overstated. Indeed, the Pact is a non-legally binding, political document which principal interest was to try to influence the Stockholm programme (Guild & Carrera, 2008: 1-2). Hence the main political document which needs to guide EU's action in the area is the Stockholm program until the adoption of a new multi-annual one.

The European Integration Forum and the Integration Website

Building on previous documents, notably the Hague programme and the Commission's Communication on a Common Agenda for Integration, where the role played by different stakeholders at various levels had been acknowledged, the Commission decided to develop, in co-operation with the EESC,¹¹ a **European Integration Forum**. The aim of the forum is to provide a voice for various representatives of civil society with the objective of promoting a comprehensive approach to integration involving stakeholders at all levels.

The Forum was launched on 20-21 April 2009 and its functions are to draw up reports, share information or organize into working groups to tackle specific issues. It has a maximum of 100 members and meets twice per year in plenary. Other than organizations, the Forum also comprises representatives of the National Contact Points on Integration, of the Commission, European Parliament, EESC and Committee of the Regions, as well as experts, academics and researchers. The Forum adopts statements after each meeting and provides policy recommendations addressed to governments. After its last 10th meeting on 26 and 27 November 2013, the Forum approved the document "Participation of migrants in the democratic process – Towards inclusive citizenship."

The activities of the Forum are published in the **European Website on Integration**. The website also provides information on integration in all the Member States as well as integration practices, a library and sources of funding.

Table 2

Year	Institution	Measure	Summary
2004	European Council	The Hague Programme	Calls for the establishment of Common Basic Principles on Integration and for the elimination of obstacles to integration.
2004	Justice and Home Affairs Council	Common Basic Principles for Immigrant Integration Policy	Adopts the Common Basic Principles for Integration which forms the foundations of EU initiatives in the field of integration.
2004 (and 2007, 2008, 2010)	National Ministers in charge of Integration	Ministerial Conferences on Migration	These are informal meetings with the view to discuss integration issues and to share information and ideas.

¹¹ The European Economic and Social Committee drawn up an exploratory opinion on the role of civil society in promoting integration policies: "Elements for the structure, organisation and functioning of a platform for greater involvement of civil society in the EU-level promotion of policies for the integration of third-country nationals" (CES1208/2008).

2005	European Commission	Commission's Agenda on Integration	Puts forward a series of proposals for concrete measures to put the CBPs into practice. Emphasis on a correct implementation of EU Migration Law.
2006	European Parliament	European Parliament Report Strategies and Means for the Integration of Immigrants	Urges the Commission to ensure the effective implementation of the existing Directives linked to integration. Calls on the Commission to create a permanent contact group of immigrant representatives, experts, NGOs and others. Recalls how the European Union is arguably the most successful enterprise of immigrant integration in history by looking at previous migration from other European countries in the past.
2006-2007	Commission	Second and Third Annual Reports on Integration	Integration measures or conditions in several Member States need to comply with EU Migration law and cannot undermine the efficiency ('effet utile') of the Directives. Need to mainstream integration across a wide range of EU policies.
2007	Council	European Integration Fund	It aims at supporting various national and EU initiatives that intend to facilitate the integration of TCNs in the EU. All EU countries except for Denmark participate.
2008	European Commission	Communication: A Common Immigration Policy for Europe	Importance of having clear rules promoting legal immigration and of giving TCNs fair treatment in order to approximate their legal status to that of EU nationals. Necessity of increased participation by TCNs in order to "reflect the multiple and evolving identities of European societies".
2008	European Council	European Pact on Immigration and Asylum.	It shifts its attention towards migrant's obligations, in particular the need to "promote language learning" and the stress for the respect needed "for the identities of the Member States and the European Union and for their fundamental values, such as human rights, freedom of opinion, democracy, tolerance, equality between men and women, and the compulsory schooling of children."
2009	Commission in co-operation with European Economic and Social Committee.	European Integration Forum and European Integration Website	Provide a voice for various representatives of civil society on integration issues with the objective of promoting a comprehensive approach to integration involving stakeholders at all levels. The activities of the Forum are published in the European Website on Integration which also provides information on integration practices in all the Member States.

Own elaboration.

As can be seen from the table above, the picture that emerges from this period is twofold. On the one hand, we have an increasing emphasis in some Member States on compulsory integration courses and tests before TCNs are granted rights deriving from the Family Reunification and Long-term Residence Directives. This trend is clearly represented in the European Pact on Immigration and Asylum. On the other hand, there continues to be an emphasis on rights as a facilitator of integration and the European Commission as well as the European Parliament start to stress the need for a correct implementation of all the EU legislation in the area.

2.3 Third period: The Stockholm Programme (2009-2014)

The Stockholm Programme

The **Stockholm programme** has been the last multiannual programme adopted in the area of Freedom, Security and Justice. The program begins its discussion on integration by repeating the Tampere formula that "a more vigorous integration policy should aim at granting [third-country nationals] rights and obligations comparable to those of EU citizens. The program argues that this "should remain an objective of a common immigration policy and should be implemented as soon as possible, and no later than 2014" (Stockholm Programme, 2009: 64). This open recognition that comparable treatment is yet to become a reality comes hand in hand with the invitation to the Commission to submit proposals for the "consolidation of all legislation in the area of immigration, starting with legal migration" and for the inclusion of "amendments needed to simplify and/or, where necessary, extend the existing provisions and improve their implementation and coherence" (ibid: 64). In that regard, access to employment is mentioned as the central element for a successful integration, together with education and social inclusion (ibid: 65). The European Council also referred to the need to "improve skills recognition and labour matching between the European Union and third countries" (ibid: 63).

Finally, the European Council invited the Commission to support Member States' efforts to develop "core indicators in a limited number of relevant policy areas (e.g. employment, education and social inclusion) for monitoring the results of integration policies, in order to increase the comparability of national experiences and reinforce the European learning process" (ibid: 65).

Justice and Home Affairs Council June 2010

Building on the Stockholm programme's request for integration indicators, the matter was discussed in the Zaragoza meeting of Ministers responsible for integration issues in April 2010. The Zaragoza declaration was later approved at the **Justice and Home Affairs Council** in June 2010 (Justice and Home Affairs Council, 2010). The document establishes that "in order to reinforce the European learning process, core indicators will provide a basis for monitoring the situation of immigrants and the outcome of integration policies" (ibid: 15). For that purpose several indicators are provided for four central areas: employment, education, social inclusion and active citizenship.

Commission's Second Communication on an Integration Agenda

The **second "Integration Agenda"** was published nearly 6 years after the first one, in July 2011, and was accompanied by a Commission Staff Working Paper (European Commission, 2011a and 2011b). Both documents contain important insights and build on the Europe 2020 Strategy¹² and the Stockholm Programme in order to set out the effective integration of migrants as a clear political objective underpinned by the respect and promotion of human rights (European Commission, 2011a: 2). The document emphasizes some of the challenges such as the low employment levels of migrants, high levels of "over-qualification", increasing risks of social exclusion or gaps in educational achievement. Some of the

¹² Conclusions of the European Council, 25/26 March 2010, EUCO 7/10, CO EUR 4, CONCL 1.

Commissions' suggestions to tackle these challenges are of interest here since they involve the proper implementation of Directives.

First, on the issue of over-qualification, it proposes that "services should be developed with the aim to enable the recognition of qualification and competences from the country of origin" (ibid: 5). Second, as an overarching principle to all the challenges, the Commission recognizes the need to ensure "the full and correct implementation of existing directives on non-discrimination and in the area of legal migration" (ibid: 8). This restatement of a previous commitment already acquired in 2005 clearly proves the need to do more on ensuring that Member States fulfil their obligation under EU migration law.

The Staff working document goes further in discussing this and mentions the need to ensure proper social protection under Directive 2003/109 for long term residents who shall enjoy equal treatment with nationals as regards social security, social assistance and social protection as defined by national law (European Commission, 2011b: 15). It also refers to the fact that non-EU nationals who have been insured in one national system but then move to another Member State "are protected by the EU social security coordinating rules, meaning for example that social security contributions that they have paid in one Member State should be taken into account by another Member State".¹³

As part of this agenda, the Commission is putting together a flexible "tool-box", from which national authorities will be able to pick the measures most likely to prove effective in their specific context, and for their particular integration objectives.

Commission's Annual Reports on Migration and Asylum

Since 2010, the Commission has prepared a yearly **Report on Migration and Asylum** where integration has always been mentioned and discussed. In its first report the Commission highlighted the need to give priority to indicators for monitoring the results of integration policies (First Annual Report Immigration and Asylum, 2009). In its second report in 2011 it was argued that "the EU needs to recognize and support migrants' contribution to economic growth, while ensuring social cohesion" (Second Annual Report Immigration and Asylum, 2010: 7). This was important in order to counteract some attitudes on immigration and integration which could lead to racism and which were "often disconnected from the realities about migration and its impact on the economy" (ibid: 6). In its third report, it was similarly pointed out that "effective integration benefits our increasingly diversified societies and this can only be achieved through further improvement of our societies' understanding and attitudes towards migrants, as well as for migrants themselves to have the incentives to become fully involved in the society in which they live (Third Annual Report Immigration and Asylum, 2011: 17). In its last report, it was mentioned how family reunification plays a key role in facilitating and promoting integration (Fourth Annual Report on Immigration and Asylum, 2013: 9) and how the implementation of the Single Permit Directive would be important in enabling integration by providing a right to equal treatment in areas such as working conditions and pay, education and vocational training and social security (ibid: 8)

Report on Using EU Indicators of Immigrant Integration

Finally, in 2013, a report prepared for the Directorate-General for Home Affairs on **using EU Indicators for Migrant Integration** was presented (Huddleston et al, 2013). This project was carried by the European Services Network and the Migration Policy Group on behalf of the European Commission. The report provides important insights on the use of indicators and proposes some new ones when compared with the

¹³ Regulation (EC) No 1231/2010 of the European Parliament and of the Council extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.

Zaragoza declaration. It also gives some analysis on various factors influencing integration such as time of residence, gender, policy, context, discrimination or employment.

Table 3

Year	Institution	Measure	Summary
2009	European Council	The Stockholm Programme	A more vigorous integration policy should aim at granting [third-country nationals] rights and obligations comparable to those of EU citizens. Invitation to the Commission to submit proposals for the "consolidation of all legislation in the area of immigration, and for the inclusion of amendments needed to, where necessary, extend the existing provisions and improve their implementation and coherence". Develop core indicators for monitoring the results of integration policies.
2010	Council	Justice and Home Affairs Council Declaration	Core indicators will provide a basis for monitoring the situation of immigrants and the outcome of integration policies
2011	European Commission	Commission Second Communication on an Integration Agenda	Need to ensure the full and correct implementation of existing directives on non-discrimination and in the area of legal migration.
2010-2013	European Commission	Annual Reports on Migration and Asylum	Need to recognize and support migrants' contribution to economic growth, while ensuring social cohesion. Family reunification plays a key role in facilitating and promoting and importance of Single Permit Directive.
2013	European Commission	Using EU Indicators for Migrant Integration	New proposals for indicators following the Zaragoza declaration.
2009	European Council	The Stockholm Programme	A more vigorous integration policy should aim at granting [third-country nationals] rights and obligations comparable to those of EU citizens. Invitation to the Commission to submit proposals for the "consolidation of all legislation in the area of immigration, and for the inclusion of amendments needed to, where necessary, extend the existing provisions and improve their implementation and coherence". Develop core indicators for monitoring the results of integration policies.
2010	Council	Justice and Home Affairs	Core indicators will provide a basis for monitoring the

		Council Declaration	situation of immigrants and the outcome of integration policies
2011	European Commission	Commission Second Communication on an Integration Agenda	Need to ensure the full and correct implementation of existing directives on non-discrimination and in the area of legal migration.
2010-2013	European Commission	Annual Reports on Migration and Asylum	Need to recognize and support migrants' contribution to economic growth, while ensuring social cohesion. Family reunification plays a key role in facilitating and promoting and importance of Single Permit Directive.
2013	European Commission	Using EU Indicators for Migrant Integration	New proposals for indicators following the Zaragoza declaration.

Own elaboration.

As can be seen from the table above, the picture that emerges from this period is clear. Ten years after the adoption of the Stockholm program the objective of comparable treatment between EU citizens and TCNs has not been achieved. The program is strong in setting a deadline by which this needs to be solved: 2014. There is a growing recognition throughout the last five years on the importance of correctly implementing and enforcing the current EU Migration Law framework. As will be seen below the recent and ongoing case law of the Court of Justice, together with the first Commission reports on the implementation of the Directives, provide some important insights on how Member States need to interpret EU law in this area.

3. EU MIGRATION LAW ON INTEGRATION

Since 2003, there have been six Directives on legal migration adopted in which the admission and rights of different categories of TCNs are defined. These Directives apply only in 25 Member States. The UK, Ireland and Denmark are not bound by them or subject to their application. These six Directives are the Family Reunification Directive 2003/86/EC,¹⁴ the Long Term Residents' Directive 2003/109/EC,¹⁵ the Students' Directive 2004/114/EC,¹⁶ the Scientists' Directive 2005/71/EC,¹⁷ the Blue Card Directive 2009/50/EC on highly qualified workers,¹⁸ and the Single Permit Directive 2011/98/EU.¹⁹ There are also two other Directives on Intra-corporate transferees and on seasonal workers which will soon be adopted. Also, TCNs who are family members of an EU national residing in another Member State are covered by Directive 2004/38. There are also various issues concerning the implementation of this Directive which go however

¹⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

¹⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

¹⁶ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

¹⁷ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

¹⁸ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

¹⁹ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a member state and on a common set of rights for third-country workers legally residing in a member state.

beyond the scope of this report.²⁰ Out of the eight Directives on legal migration, three deserve particular attention: the Single Permit, Family Reunification and the Long-term Residence Directives. Hence our analysis will focus on these three since the other ones deal with categories of nationals whose stay in the EU is in principle very short (as for seasonal workers or intra-corporate transferees) or in principle temporary (as in the case of researchers or students) or with those who do a particular type of job (highly skilled). The three Directives under analysis are important for two reasons: First, they provide each category of TCNs with different rights. As it has been discussed in Section II, most of the political documents analyzed consider that access to rights is central in facilitating integration. The meaning and scope of each of these rights, notably access to the labor market, as well as its national implementation needs to be fully assessed. Second, the Family Reunification and Long-term Residence Directives include the concepts of integration measures and conditions as optional clauses. These requirements may need to be satisfied before accessing rights and thus the need to interpret them.

3.1 Access to rights under the current legislative framework on EU Migration

Each of the three Directives contains provisions on access to different types of rights for each category of TCNs. This section will briefly describe the scope of each of the Directives, the particular rights granted, the interpretation to be given to each of those rights and, finally, the problems in their implementation at national level which may endanger the full effectiveness of each Directive.

3.1.1 Directive 2011/98/EU on a single permit

This Directive does not mention integration except for once when referring to the Tampere and Stockholm conclusions on the need for a more vigorous integration policy aiming at comparable treatment with EU nationals (recital 2). In line with this, the Directive provides for “a single application procedure leading to a combined title encompassing both residence and work permits within a single administrative act”. This is said to “contribute to simplifying and harmonising the rules currently applicable in Member States” (recital 3).

The Directive recognizes that “the rights of third-country nationals vary, depending on the Member State in which they work and on their nationality” (recital 19). Hence, it provides for a common set of rights which are applicable to all TCNs legally working and who have not yet obtained long-term residence, “irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State” (Art 1).

In line with this, TCNs shall enjoy equal treatment with nationals of the Member State where they reside with regard to working conditions, freedom of association and affiliation, education and vocational training, recognition of diplomas in accordance with relevant national procedures, branches of social security (as defined in Regulation (EC) No 883/2004), tax benefits, access to good and services and advice services afforded by employment offices (Art 12(1)).

²⁰ The Commission identified among those issues: “the right of entry and residence of third country family members (problems with entry visas or when crossing the border, conditions attached to the right of residence not foreseen in the Directive and delayed issue of residence cards)”. See Commission Report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840 final, Brussels, 10.12.2008, p. 10.

The same Article provides however for several ways in which Member States may restrict equal treatment and which enumeration and analysis goes beyond the objective of this report. Suffice is to say here that the various possible exclusions demand and intensive scrutiny by the Commission on the application of the Directive as well as the possible elaboration of guidelines on how to correctly implement each provision.

Finally, it is notable that when referring to recognition of qualifications the Directive goes a step beyond the Long-term Residence one. Indeed, according to its preamble “a Member State should recognise professional qualifications acquired by a third-country national in another Member State in the same way as those of citizens of the Union and should take into account qualifications acquired in a third country in accordance with Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications” (recital 23).

Other than that, the main differences between this Directive and the Long-term residence one are that the latter extends equal treatment to social assistance and social protection as well as to access to employment and self-employment and it is subject to less potential derogations (Peers et al, 2012: 228).

3.1.2 Directive 2003/86 on Family Reunification

As the Commission has repeatedly argued “family reunification plays a part in facilitating and promoting integration” (Commission Fourth Annual Report Migration and Asylum, 2013:9). In line with this, the objective of the Directive is to promote family reunification and the sponsor is granted an essential right to reside with his/her family. This is something which, according to the Directive, “helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty” (recital 4).

Regarding family members, their integration is enhanced in accordance with the Directive, by granting them “a status independent of that of the sponsor, in particular in cases of breakup of marriages and partnerships, and access to education, employment and vocational training on the same terms as the person with whom they are reunited, under the relevant conditions” (recital 15). Hence there are two aspects facilitating the integration of family members from a legal point of view: access to various rights and obtaining an independent residence status.

Access to rights

Article 14 provides that family members shall be entitled, in the same way as the sponsor, to the following rights:

Access to education: as well as access to vocational guidance, initial and further training and retraining. Here, if the sponsor has a long-term residence permit, the family member will enjoy equal treatment with nationals. E.g. it will not be possible to charge the family member higher fees when accessing the university or any other type of education or vocational training.

Access to employment and self-employment activity: This means that if the Sponsor does not have a right to work in the Member State, nor will the family member under the Directive. Similarly, if the sponsor has a long-term residence status, the family member will enjoy equal treatment with nationals provided such “activities do not entail even occasional involvement in the exercise of public authority” (Art. 11 Directive 2003/109). There are two exceptions which Member States may impose: First, “Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line

or adult unmarried children” (Art 14(3)). Second, “Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity” (Art 14(2)).

According to the 2008 Commission’s report on the implementation of the Directive (Commission, Family Directive, 2008), there are three different types of breaches by Member States:

- First, there are instances where a blanket ban on employment for one year is imposed. This is forbidden by the Directive since the Member State’s possibility to set “conditions” is not equivalent to a complete prohibition (Peers et al, 2012: 263) and the “Directive allows exclusion only on the basis of a labour market test” (Commission, Family Directive, 2008: 14).
- Second, some Member States require the family member to obtain a work permit even if the Sponsor does not require one.
- Finally there seem to be instances where Member States do not provide a right to work in cases of family formation.

Obtaining an independent residence status.

According to the Directive’s preamble, obtaining an independent residence status constitutes another important element facilitating the integration of family members. Member States are obliged to grant an autonomous residence permit after five years to the spouse or unmarried partner and a child who has reached majority. That autonomous residence permit is independent of that of the sponsor (Art 15(1)). Member States are also obliged to lay down provisions “ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances” (Art 15(3)). However, “in the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line”, Member States are not obliged to grant a residence permit since the Directive only provides that such permits “may” be issued. Article 15(4) provides that “the conditions relating to the granting and duration of the autonomous residence permit are established by national law”. Nevertheless, any conditions on the acquisition of an autonomous residence permit can be challenged under the proportionality principle since national conditions cannot make it excessively difficult to obtain a permit (Peers et al, 2012: 266). As in the case of access to rights mentioned before, the Commission’s report identified various problems which could be tackled by means of guidelines or infringement procedures where necessary (Commission, Family Directive, 2008: 13).

3.1.3 Directive 2003/109 on Long-term Residence

According to this Directive, the integration of “long-term residents (...) is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty” (recital 4). In order for the Directive to be a genuine instrument for that integration “long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive” (recital 12).

This right to equal treatment is enshrined in Article 11. Long-term residents shall enjoy equal treatment with nationals as regards:

- access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority. This goes beyond the limitation imposed on EU nationals in Article 45.3 TFEU
- education and vocational training, including study grants in accordance with national law. This means that for example higher enrolment fees for universities are prohibited.

- recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures. This seems a provision of the utmost importance considering all the references to recognition of diplomas in the documents analysed in the first part of the report.
- social security, social assistance and social protection as defined by national law. Member States may restrict social assistance and social protection to “core benefits”. These are defined in the preamble as including at least minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care (recital 13 and Art 11(4)). Once a TCN obtains a LTR permit, his status cannot be withdrawn if he receives social assistance (Art 9). Importantly, in *Kamberaj* the Court interpreted this provision regarding housing benefits by making use of Article 34 of the Charter.²¹ The Court held that “in so far as the housing benefit in regional Italian legislation fulfils the purpose set out in Article 34 of the Charter, under European Union law, it is part of core benefits within the meaning of Article 11(4) Directive 2003/109”.²²
- tax benefits, access to goods and services and to procedures for obtaining housing, freedom of association and affiliation and membership of an organisation representing workers or employers and free access to the entire territory of the Member State concerned.

Long-term residents also enjoy enhanced protection against expulsion (Art 12) and the right to reside in another Member State under certain conditions (Arts 14 and 15).

The Commission identified several issues in its 2011 implementation report (Report application Directive 2003/109, 2011). It first mentioned the regrettable information gap in the area due to the absence of explicit provisions under the law of many Member States. This does not help in generating legal certainty among LTRs TCNs as to the rights they can enjoy. The Commission also acknowledged that “the number of complaints lodged in this area indicates that transposition of this provision may be problematic, especially where the principle of equal treatment has to be implemented by a range of different regional and local authorities” (ibid: 6). Considering the importance that all the documents in the first section have granted to issues such as access to employment, recognition of diplomas or access to education, there is a clear need to have guidelines on this provision and to launch infringement proceedings when necessary.

3.2 Integration requirements under the current legislative framework on EU Migration

Both the Long-term Residence and the Family Reunification Directives allow Member States to introduce integration requirements before accessing the right to a long-term residence permit or the right to family reunification. Article 5(2) of the Long-term Residence Directive reads: “Member States may require third-country nationals to comply with integration conditions, in accordance with national law”. Similarly, Article 7(2) of Directive 2003/86 provides that “Member States may require third country nationals to comply with integration measures, in accordance with national law”. Following our previous typology, it has been mentioned how the preambles in the Directives understand integration as deriving from rights. However, both Articles 5 and 7 seem to go in the direction of granting rights only when the person concerned has proven some sort of integration. Some Member States have introduced integration requirements before

²¹ Article 34 of the Charter of Fundamental Rights reads as follows: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

²² Case C-571/10 *Kamberaj* [2012], judgement of 24 April 2012, not yet reported, para 92.

the TCN is able to obtain long-term residence²³ or in order for family members to enter the territory.²⁴ There exist various differences between the different integration requirements in each country in terms of the content (which always includes language knowledge and sometimes also societal knowledge about, for example, the history, culture, geography or legislation of the country), the level required, the way in which integration is evaluated (e.g. the obligation to attend a course or an exam) or the consequences of not passing such exams (e.g. not obtaining the status, fines or even expulsion) (Acosta Arcarazo 2012; Pascouau 2012b; Carrera and Wiesbrock 2009). Hence, when discussing the legal validity of the integration requirements under both Directives a case by case analysis is necessary. Some integration requirements may be valid whereas others may be in breach of the Directive. Therefore, two aspects need to be clarified: the difference between integration requirements and integration measures and the level at which they can be set.

On the first issue, there is undoubtedly a legal difference between both which needs to be interpreted. This is evident from the fact that Directive 2003/109 refers to conditions in Article 5 but to measures in Article 15(3). According to the most accepted interpretation, that of Groenendijk (2006), integration conditions may include the obligation to pass tests whereas integration measures can only require the TCN concerned to “make a certain effort” rather than to take an exam (ibid: 224).

On the second matter, the key element is to assess whether Member States may require any level of integration requirements they would like or whether they are bound by some limits. In order to answer these two questions we may avail ourselves of the case law of the CJEU as well as several pronouncements by the Commission. First, the Court has made it clear that,

*The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights.*²⁵

Hence, while Member States may certainly introduce integration requirements which a TCN would need to fulfil before being granted long-term residence or family reunification, those requirements shall not run contrary to general principles of Union law, such as fundamental rights. This is consistent with the way in which the Court has understood the objectives of both Directives. In *Chakroun* the Court of Justice clarified that the aim of the family reunification Directive is “to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation”.²⁶ Consequently:

*Since authorisation of family reunification is the general rule, the faculty provided for in Article 7(1)(c) of the Directive must be interpreted strictly. Furthermore, the margin for manoeuvre which the Member States are recognised as having must not be used by them in a manner which would undermine the objective of the Directive, which is to promote family reunification, and the effectiveness thereof.*²⁷

Similarly, when discussing the Long-term Residence Directive in some recent case law the Court argues,

Having regard to the objective pursued by Directive 2003/109 and the system which it puts in place, it should be noted that, where the third-country nationals satisfy the conditions and comply with the procedures laid down in that

²³ 15 out of the 25 Member States bound by the Directive require some integration before granting a long-term residence permit. These are: Austria, Croatia, Czech Republic, Estonia, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania and Slovakia.

²⁴ 4 out of 25 Member States require family members to comply with integration requirements before they are granted a residence permit as a family member. These are: Austria, France, Germany and the Netherlands.

²⁵ Case C-540/03, *European Parliament v. Council*, 27 June 2006, [2006] ECR I-5769, paragraph 70.

²⁶ Case C-578/08, *Rhimou Chakroun v Minister van Buitenlandse Zaken*, [2010], para 41.

²⁷ *Ibid.*, para 43.

directive, they have the right to obtain long-term resident status as well as the other rights which stem from the grant of that status.²⁸

In another case, *Singh*, the Court establishes that

*As is apparent from recitals 4, 6 and 12 in the preamble to Directive 2003/109, the principal objective of that directive is the integration of third-country nationals who are settled on a long-term basis in the Member States (see Case C-508/10 Commission v Netherlands [2012] ECR I-0000, paragraph 66). Similarly, as is also apparent from recital 2 in the preamble thereto, the directive seeks, by granting the status of long-term resident to such third-country nationals, to approximate the legal status of third-country nationals to that of Member States' nationals.*²⁹

And then it continues by arguing that,

*As is observed in Article 4(1) of, and recital 6 in the preamble to, Directive 2003/109, it is the duration of the legal and continuous residence of 5 years which shows that the person concerned has put down roots in the country and therefore the long-term residence of that person.*³⁰

Therefore, since length of residence is the main factor to be considered when obtaining the status and since the objective of the integration of TCNs who are long-term residents is the general rule, any restriction to that general rule must, as in the case of the Family Reunification Directive, be interpreted strictly.³¹

The conclusion is clear. First, Member States are not entitled to use integration as a tool to impede accessing rights deriving from both Directives. They may introduce some integration requirements but they need to comply with general principles of Union law. These include not only respect for fundamental rights but also other principles such as effectiveness,³² proportionality,³³ legal certainty³⁴ and non-discrimination.³⁵

The Commission first referred to the limits of integration measures in its 2008 Report on the implementation of the Family Reunification Directive:

The objective of such measures is to facilitate the integration of family members. Their admissibility under the Directive depends on whether they serve this purpose and whether they respect the principle of proportionality. Their admissibility can be questioned on the basis of the accessibility of such courses or tests, how they are designed and/or organised (test materials, fees, venue, etc.), whether such measures or their impact serve purposes other than integration (e.g. high fees excluding low-income families) (Commission Report on the Right to Family Reunification, 2008: 7-8).

Equally, when evaluating the Long-term Residence Directive, the Commission considered that in order to fulfil the principles of proportionality and effectiveness several elements must be assessed, among others:

[T]he nature and level of knowledge expected from the applicant, also by comparison to the knowledge of the host society, the cost of the exam, the accessibility of the integration training and tests (and) the comparison between the integration requirements imposed on a prospective LTR and those applied to prospective citizens (which are expected to be higher) (...) (Commission Report on Directive 2003/109, 2011: 3).

²⁸ Case C-508/10, *Commission v Netherlands*, judgment of 26 April 2012, not yet reported, para 68.

²⁹ Case 502/10, *Staatssecretaris van Justitie v Mangat Singh* [2012], para 45.

³⁰ *Ibid*, para 46.

³¹ Case 571/10, *Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others* [2012] nyr, para 86. Opinion of Advocate General Bot, *Commission v Netherlands*, para 61.

³² *Commission v Netherlands*, para 65.

³³ *Ibid*, para 75.

³⁴ Opinion of Advocate General *Singh*, paras 29, 30, 45, 58 and 64.

³⁵ Opinion of Advocate General in *Commission v Netherlands*, (C-508/10), para 69.

The Commission has in fact argued that it is not possible under the Family Reunification Directive to refuse a residence permit to a family member on the sole ground of failure to comply with the examination on integration abroad.³⁶

The conclusion is clear. Rights are not considered as a prize for an already successful and completed integration. On the contrary, integration is understood as being enhanced by the rights enshrined in the Directives and underpinned by them – they are not a consequence but a cause or a premise for integration (contrary to what political discourse may lead us to assume). Those who have legally and continuously resided for a period of five years shall enjoy a broader set of rights which, in turn, facilitate their integration. Integration as deriving from rights is also the understanding under the Family Reunification Directive since making family life possible through reunification facilitates integration.³⁷ In fact, the Directives seek “to approximate the legal status of third-country nationals to that of Member States’ nationals”.³⁸

4. CONCLUSION AND RECOMMENDATIONS

The present report has analysed the legal discussion surrounding the concept of integration during the last 15 years in the European Union. Several actors have participated of that discussion including the European Council, the Council, the Commission, Member States, the CJEU, academics, think tanks as well as other various stakeholders. The analysis has centred on both political documents and legislation. These various voices and documents constitute what may be labelled as the EU’s governance on integration. There are two persistent aspects to be highlighted. First, despite certain divergences in the positions of the various actors there are elements which have been constantly present in these last 15 years. Second, and most importantly, these elements are related to legislation already in force in the area. The need to correctly monitor and enforce the legislation in this area has been repetitively acknowledged since 2005 by the Commission, as well as the Parliament, in numerous documents, including the Stockholm programme. There is thus an urgent need to adopt implementing guidelines and to launch infringement procedures where needed. The possibility to launch infringement procedures was already advanced in 2008 by the Commission in its report on the implementation of the Family Reunification Directive. It was then recently repeated in its last annual report on EU immigration and asylum where it was mentioned that the Commission should ensure the full implementation of existing rules, open infringement procedures where necessary and produce guidelines (European Commission, 2013: 16). Despite these intentions, there is no news of any infringement procedure on the Family Reunification Directive in any of the Commission’s annual reports and only one infringement procedure has reached the CJEU on the long-term Residence Directive. Integration is clearly endangered by impeding TCNs accessing rights deriving from EU law, something which may in fact lead to social exclusion.

In order to conclude this report, the main elements of the EU’s framework on integration as made evident from the previous analysis will be presented together with some policy recommendations.

Access to employment and the recognition of qualifications.

Both aspects are intrinsically linked and have been recognized as the most important priority to facilitate integration in several documents, including principle 3 of the CBPs. Access to employment has also been

³⁶ Commission’s written observations to the Court of Justice in Case C-155/11, *Imran* (withdrawn). Brussels, 4 May 2011, Sj.g (2011)540657.

³⁷ Case 540/03, *Parliament v Council*, para 69.

³⁸ *Singh*, para 45.

linked to wider EU's strategies such as Europe 2020. The right to access the labour market, including on certain occasions self-employed activity, as well as the right to equal treatment on working conditions, are present in several directives. Apart from the family reunification and long-term residence ones, the right to access the labour market is also enshrined in the highly skilled workers Directive,³⁹ the Students Directive,⁴⁰ the Researchers Directive⁴¹ and the Directive for the reception of applicants for international protection.⁴² In turn, the Single Permit Directive includes the right to equal treatment on working conditions but not the right to access the labour market.⁴³ These rights need to be properly enforced and monitored in order to tackle cases in which Member States unlawfully deny TCNs job opportunities to which they are entitled under EU law. Access to employment, as well as the right to equal treatment with nationals of the Member State within the scope of the Treaty, for TCNs who are family members of EU citizens under Directive 2004/38, also needs to be properly enforced.

The recognition of qualifications of TCNs differs from EU citizens. Whereas EU citizens are covered by Directive 2005/36/EC which facilitates the mutual recognition of professional qualifications between Member States, TCNs depend on a designated agency in each Member State which evaluates the skills of each applicant (Schuster et al, 2013). There are certain categories of TCNs which do fall within the scope of Directive 2005/36. These are family member of EU citizens residing in a second Member State, long-term residents, refugees and, finally, highly skilled workers holding an EU blue card (Pascouau, 2013: 27). However, Directive 2005/36 does not apply when the diplomas have been obtained in a non-EU Member State. This is covered by national law and there is a variety of practices among Member States. This situation does not only make the EU's labour market unattractive for future potential needed migrants, but also affects the situation of those TCNs already present in the EU and reads poorly with the importance that all political documents under analysis grant to the recognition of qualifications as a critical factor for integration.

Access to education and other rights

Several documents refer to the need to enhance access to education as well as other rights such as housing, social security, healthcare or access to goods and services. This is also the topic of principles 5 and 6 in the CBPs. As in the previous case, the Commission needs to fully ensure that whenever EU law guarantees equal treatment, notably under the Long-term Residence Directive, those possibilities are available to TCNs. This is not the case in many countries which, for example, continue to charge higher fees in order to access education to TCNs who hold a long-term residence permit, hence breaching their obligations under Directive 2003/109.

Access to citizenship

Numerous documents refer to the need to facilitate acquisition of citizenship as an important integration tool. Access to citizenship constitutes a national legislative competence. However, principle 6 of the CBPs for integration refers to its importance as an incentive for integration. This reads poorly with the various legislative amendments and proposals which had made it harder in several EU Member States to obtain citizenship (Bauböck et al 2006; Bauböck et al, 2009). Whereas it is true, that there has been a certain liberalization trend with regards to the extension of jus soli under certain circumstances, the toleration of dual nationality or the establishment of "as of right" approach to naturalisation (Joppke, 2010), the general shift to more demanding integration conditions has nevertheless resulted in the exclusion of large number

³⁹ Arts 12, 14 and 15(6), Directive 2009/50.

⁴⁰ Art 17, Directive 2004/114.

⁴¹ Arts 11-12, Directive 2005/71.

⁴² Art 15, Directive 2013/33.

⁴³ Art 12, Directive 2011/98.

of TCNs from obtaining citizenship in a number of countries (see for example on the Netherlands, Denmark or Austria in Strik et al, 2010).

Policies against discrimination and racism

This is also a recurrent topic in the various documents since it clearly puts obstacles in any integration process. Principle 7 of the CBPs refers to the need to fully ensure the implementation of active anti-discrimination and anti-racism policies. Again, the respectful observance and full implementation of the equal treatment Directives is crucial,⁴⁴ something which was acknowledged by the Commission already in 2006 (European Commission, 2006b: 8).

Integration conditions and measures under the Directives on Long-term Residence and Family Reunification

As argued, Member States are not legally entitled to include all sort of integration requirements but they are quite on the contrary limited by general principles of EU law and by the Directives themselves. National Courts have an important role to play in this regard by correctly interpreting the conditions to the general rule under these Directives.

The increasingly harsh debate with regard to migrant's integration in Europe, coupled with the fast emergence of a model based on compulsory integration in order to access rights directly granted by European Law and which has been quickly replicated in various Member States, demands a clear response by the Commission in the form of guidelines or infringement procedures. The official rhetoric has usually referred to the need to promote integration and make TCNs self-sufficient (Carrera and Wiesbrock, 2009:12) while at the same time arguing that these tests would help in the emancipation of women and the prevention and fight against arranged marriages (Perchinig, 2012: 85). Hence, there needs to be empirical evaluation on whether this official aims are being attained by these tests and integration contracts. Two studies have evaluated the effects on integration of these tests in several Member States: PROSINT⁴⁵ and INTEC.⁴⁶ They have both reached similar conclusions in the sense that several aspects of these tests and requirements may lead to social exclusion rather than to enhance integration. This makes it even more urgent to have a clear response by the Commission.

Voting rights

As in the case of access to citizenship, voting rights for TCNs constitute a national competence. Nonetheless, CBP nine refers to its importance in enhancing integration. The right to vote in municipal elections, but also European Parliament elections, regional or national one, could be further explored and encouraged by looking at the positive initiatives in this regard not only in Europe (Groenendijk 2008) but also in other regions and countries outside the EU.

⁴⁴ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

⁴⁵ <http://research.icmpd.org/1429.html>

⁴⁶ <http://www.ru.nl/law/cmr/projects/intec/>

IN-DEPTH STUDY

The present addendum to the report 'EU Integration Policy: between Soft Law and Hard Law' discusses three main developments which have taken place in the area of EU Integration Policy since the original report was first submitted in December 2013. These developments refer mainly to the European Council Conclusions of 26/27 June which included the strategic guidelines for legislative and operational planning for the coming years within the area of freedom, security and justice (hence replacing the Stockholm programme); the March Commission Communication 'An open and secure Europe: making it happen'; and the Council Conclusions on the integration of third-country nationals legally residing in the European Union. We will also briefly make reference to the Commission Communication from April 2014 on guidance for application of Directive 2003/86/EC on the right to family reunification.

Three interviews were conducted in Brussels in July 2014 with four European Union officials, two from the European Commission and one from the Council and the European Council respectively.

For the sake of clarity, this addendum is divided into three sections. In each of those sections the most recent position of the three main EU institutions when it comes to integration will be analysed. That analysis will be based on the documents mentioned and on the interviews conducted.

European Council Conclusions 26/27 June 2014⁴⁷

The European Council Conclusions from 27 June 2014 define the strategic guidelines for legislative and operational planning for the coming years in the area of freedom, security and justice and, hence, replace the Stockholm programme. The guidelines are adopted within the context of a period of post-economic crisis and thus have a strong emphasis in the understanding of migration as an agent for growth.

Integration is only mentioned in paragraph six. It begins with the usual idea of remaining an attractive destination for talents and skills and maximizing opportunities for legal migration. It then turns its attention to discuss the need to have an informed dialogue not only with social partners, something which had been mentioned in previous documents, but also with the business community. This represents an important innovation which has to be read in line with the post-economic crisis context mentioned earlier.

The last sentence of the paragraph is representative of the vague formulation used in this type of documents. It refers to the need to "support Member State's efforts to pursue active integration policies which foster social cohesion and economic dynamism". It is unclear whether this means more emphasis on compulsory civic and language knowledge integration courses or, whether in line with the reference to economic dynamism, this rather relates to the possibility of facilitating mobility within the internal market for third-country nationals in order to maximize talents and skills matching and to contribute to economic growth. This second interpretation is possibly the correct one and also the only one in line with the current legislative framework on EU Migration Law.

⁴⁷European Council Conclusions 26/27 June 2014, EUCO 79/14, Brussels, 27 June 2014.

Commission Communication on an open and secure Europe: making it happen⁴⁸

This Communication on policies in the field of Home Affairs is also adopted, as it is explicitly mentioned, “at a time when Europe is gradually pulling out of an economic and social crisis that has left its traces...” (European Commission, 2014, 3). Within that post-economic crisis framework, already mentioned earlier, the Commission makes strong emphasis in section 1.1., entitled maximizing the benefits of migration and integration, on access to employment and self-employment and on recognition of qualifications. These two aspects continue to be a problem and its success relies on the equal treatment clauses in the different directives, notably on the long-term residence one. Its correct transposition is of the utmost importance, also in line with the Europe 2020 target of 75% of the 20-64 year-olds to be employed.

The Commission also discusses the need to take steps towards a “single area of migration” with the goal of facilitating intra-EU mobility. Both aspects, mobility and equal treatment, continue to be challenging and read poorly with the construction of an internal market and with the willingness to make the European Union and attractive area for talent in order to enhance economic growth and employment creation. The Commission also refers, as in the case of the European Council, to the need to have a dialogue with businesses, and also with trade unions, so as to ensure a positive impact of migration and mobility on the economy.

Finally, the Commission recognises Europe as a diverse society where integration constitutes a challenge. However, rather than linking such challenge to the need for more integration compulsory courses, as a handful of Member States would like, the Commission refers to the need to enhance equal treatment and effective integration into the labour market. This is in line with the Commission guidelines on the implementation of the family reunification Directive⁴⁹, where integration measures under Article 7.2 of the Directive are very strictly interpreted in line with the opinion of Advocate General Mengozzi in the recent case of *Dogan*⁵⁰.

Conclusions of the Council and the Representatives of the Governments of the Member States on the integration of third-country nationals

The conclusions on the integration of third-country nationals legally residing in the EU adopted in June 2014 reaffirm the Common Basic Principles adopted in 2004 and Member States’ commitment towards them.

In line with the other two institutions, the Council present integration policies as contributing towards achieving the goals of the Europe 2020 growth strategy. The Council indeed recognizes the central role of migration “given the demographic shrinking in Member States and the shortages in certain sectors of the European Labour Market” (Council 2014, 4). In line with previous documents in the last ten years integration is also presented as a dynamic two-way process (*ibid*, 4). Moreover, diversity is accepted as an enriching and permanent feature of European societies and it is acknowledged that integration “is a long-term and multi-faceted process” (*ibid*, 5). All these points are worth highlighting since, as the

⁴⁸ Communication from the Commission on an open and secure Europe: making it happen, COM (2014) 154 final, Brussels, 11. 3.2014.

⁴⁹ Commission communication on guidance for application of Directive 2003/86/EC on the right to family reunification, COM (2014) 210 final, Brussels, 3.4.2014.

⁵⁰ Conclusions of the Council and the Representatives of the Governments of the Member States on the integration of third-country nationals legally residing in the European Union, 9905/14.

Council mentions itself, there has been a rise of intolerance in Europe.

Also in accordance with the other two institutions, the Council gives a prominent role to the private sector in order “to enhance non-discrimination at the work place” (ibid, 6).

Finally, there is a reference to a possible “voluntary cooperation between receiving countries and countries of origin in a pre-departure phase” which could facilitate reception and integration in the destination Member State. The reference to “voluntary” is important in this regard since it seems to slowly become clearer for all actors, even for those Member States who had introduced integration requirements abroad, that compulsory integration abroad impeding family reunification is not in line with EU law.

Conclusions

Several aspects to be highlighted may be inferred from the recent documents under discussion and from the interviews with the various EU officials in the three main institutions dealing with integration: Commission, Council and European Council.

First, there is a certain legislative fatigue in the area of migration law. Several measures have been adopted in the last ten years and the last two important Directives on migration, the one of seasonal workers and the one on intra-corporate transferees took around four years to be negotiated. Other than the recast Directive on students and researchers it might be difficult to see any other instrument proposed in the area of regular migration in the next two or three years.

Second, all institutions, and notably the Commission in its role as guardian of the Treaties, recognize the importance of shifting the focus from the adoption of new legislation to its correct implementation. This is made very clear by the European Council in its strategic guidelines where it mentions under recital three that: “the overall priority now is to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place”. This implicit recognition as to the lack of proper implementation by several Member States will facilitate the task of the Commission. There are indeed a number of conformity studies being conducted by external contractors for the Commission on the long-term residence, family reunification, single permit and highly skilled workers directives. These studies will be assessed by the Commission and a dialogue will be established with individual Member States before launching infringement proceedings where necessary. The Commission’s task will also be simplified by an increasing body of case law from the Court of Justice which will no doubt facilitate the identification of areas where Member States are in breach of EU law. More infringement procedures will be central in order to clarify those aspects where certain Member States’ interpretation seems to dramatically differ from that of the Commission and also from that expressed by scholars in the area.

Third, on the issue of division of competences, it is also clear that integration is not purely a national competence since its inclusion in the Directives on long-term residence and on family reunification. That is also clear from various Court’s rulings including the last one in Dogan where the Court held that: “family reunification constitutes an essential way of making possible the family life of Turkish workers...and contributes both to improving the quality of their stay and to their integration in those Member States”⁵¹.

⁵¹ Case Dogan C-138/13, 10 July 2014, paragraph 34.

Fourth, the new Asylum, Migration and Integration Fund (AMIF) for the period 2014-20⁵², with a total of EUR 3.17 billion for the seven years, will continue to play a central role. The area of legal migration constitutes one of its four objectives and aims at supporting regular migration in line with labour market needs and the effective integration of non-EU nationals.

Finally, the role of the Commission will be central in the task of correctly implementing EU law. Other actors (NGOs, think tanks or scholars) will continue to be key as well in interpreting the various provisions which relate to the integration of third-country nationals in Europe. The ongoing case-law of the Court will dramatically facilitate that task. The role of other actors, notably business organizations, employers and unions will also be central in ensuring the proper enjoyment of the equal treatment clauses and access to employment in the various directives.

⁵² Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund.

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