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Civic Integration of Third-Country Nationals

Nationalism versus Europeanisation in the Common EU Immigration Policy

October 2009

Sergio Carrera and Anja Wiesbrock

Abstract

'Civic integration' programmes and tests for third-country nationals (TCNs) have increasingly become part of member states' legislation implementing EC immigration law and the EU Framework on Integration. The civic dimension of integration consists of various programmes and tests requiring TCNs to demonstrate that they know and respect the receiving society's history, institutions and values. This paper assesses the tensions inherent in the relationship between civic integration programmes and the principles of legal certainty, proportionality and non-discrimination. This paper compares national immigration legislation in four member states – Denmark, France, Germany and the Netherlands. It studies the personal and material scope of civic integration provisions as well as the political justifications promulgated by their governments for introducing these kinds of policies. This comparison enables us to identify the common deficits of these member states' policies. We argue that by providing a supranational venue for the transferring and legitimising certain national policies that use civic integration to restrict immigration, the legitimacy and coherency of the EU immigration policy is profoundly affected by the same deficits. The consequences endanger some of the key principles upon which the EU legal system and its immigration policy have been built. That notwithstanding, we conclude that owing to the progressive Europeanisation of immigration policy, member states are no longer free to use integration as a derogative clause for TCNs to have access to rights and protection in the EU.

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CIVIC INTEGRATION OF THIRD-COUNTRY NATIONALS

NATIONALISM VERSUS EUROPEANISATION IN THE COMMON EU IMMIGRATION POLICY

CEPS 'LIBERTY AND SECURITY IN EUROPE'/OCTOBER 2009

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1. Introduction

The relationship between human mobility, diversity and the politics of identity in Europe has undergone profound transformation in legal and policy terms during the last phases of European integration. After the transfer in 1999 of the immigration domain to (shared) competence between the European Community (EC) and the member states, the European Commission has practised different modes or strategies of governance aimed at moving Europeanisation forward in an area traditionally embedded in national prerogatives and the principle of subsidiarity. Ten years later, the EU already offers a transnational body of law regulating several aspects of conditions for the entry and residence of third-country nationals (TCNs)[1] and their integration in Europe.

While immigration falls within the remits of the legal and institutional provisions of Title IV of the EC Treaty, the extent to which the Community has an officially recognised competence to legislate on the integration of TCNs has been subject to much contestation between the European Commission and the member states. The struggle between nationalism and Europeanisation has been a major factor in the emergence of a dual normative framing of integration at the EU level, consisting of EC immigration law on the one hand and the Framework for the Integration of TCNs in the EU (henceforward the EU Framework on Integration) on the other. The latter has developed since 2002 through the traditional Community method of cooperation. The EU Framework on Integration makes use of soft-policy (non-legally binding or enforceable) instruments and networks, with the Commission playing a coordinating role in the exchange of national practices and experiences on the integration of TCNs among member states representatives.

In developing a common EC immigration policy, some member states have managed to transfer to the common body of EC law a number of normative mechanisms aimed at preserving 'their last word' or power in the decision on who is included or excluded from security of residence and social solidarity. The *sine qua non* for having 'more Europe' in the area of immigration has been the incorporation of ingredients from member states' own public philosophies and domestic policies on the integration of TCNs into European public responses. These ingredients allow member states to have even wider discretion than that already provided by EC directives when conferring rights and guarantees to TCNs. They also constitute tools in the hands of the nation-state to retain sovereignty over the regulation of migration and identity. This strategy has been applied particularly in the negotiations on legislative proposals on immigration within the Council and through the exchange of information on national integration policies. Integration

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[1] The term TCNs refers to those not holding the nationality of a member state and therefore not enjoying the status EU citizenship or derivative rights from it.

measures and conditions for TCNs are paradigmatic examples in this regard. Their introduction into EC law and policy has left the door open for member states to apply civic integration programmes, courses and tests when transposing EC immigration law in their domestic legal systems.

The dynamics characterising the development of an EU immigration policy have favoured the emergence of a new understanding of the integration of TCNs. This new conceptualisation of integration and the functionality given to it is fundamentally transforming assumptions in this field, which have traditionally viewed integration policies for TCNs as something positive, given their role in promoting social inclusion, non-discrimination and access to rights. What we see now, however, is a certain official use of integration that is challenging these mainstream considerations and moving towards policies purporting goals and effects of a rather unexpected nature. In this context, integration has become 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. Thus, paradoxically, integration has come to mean a mandatory requirement in immigration law that TCNs be socially integrated. The integration of TCNs has become part of a restrictive immigration policy aimed at limiting the number of immigrants having access to security of entry, residence and family life. This concept of integration is therefore progressively mutating into a mechanism of social exclusion and insecurity of TCNs in the EU.

'Civic integration' programmes, courses and tests have increasingly become part of countries' national legislation implementing EC immigration law (e.g. Directives 2003/109/EC on the status of TCNs who are long-term residents and 2003/86/EC on the right to family reunification). They have also come to form part of the Common Basic Principles (CBPs) on immigrants' integration, which intend to provide a shared definition of the integration of TCNs in the scope of the EU Framework on Integration. The civic dimension of integration requires TCNs to demonstrate that they know, understand and respect the receiving society's history and institutions, as well as its common shared values and way of life (and even in some cases that they adhere to these latter aspects). The predominantly nationalistic, and to a certain extent patriotic, and subjective (indeterminate) juridical nature of the concept of civic integration allows member states to exercise even more discretion when deciding whether to grant EC rights and freedoms to TCNs as envisaged in EC immigration law.

This paper assesses the tensions in the relationship between the civic integration of TCNs and the general principles seeking to guarantee the rule of law and fundamental rights in the common EC immigration policy. After outlining some conceptual clarifications of the 'civic integration of TCNs' in section 2, section 3 examines the ways in which the civic dimension of TCNs' integration is currently framed in EC immigration law and the EU Framework on Integration, and offers some reflections about the origins and driving factors behind the proliferation of civic integration at the EU level. Section 4 moves on to study a selection of four EU member states (Denmark, France, Germany and the Netherlands), all of which currently apply civic integration measures in their respective immigration regimes. These member states have also proven to be among the most influential during negotiations on Directives 2003/109/EC and 2003/86/EC, and in the exchange of practice on integration programmes through the National Contact Points (NCPs) on integration.[2] The national comparison addresses the internal and external dimensions of civic integration. It is structured around two main topics: first, the official and political justifications promulgated by each government for introducing these kinds of policies; and second, the personal and material scope of civic integration

[2] The NCPs are a network for member states' exchange of integration practices in the EU Framework on Integration.

provisions. This enables us to identify common dilemmas and deficits shared by the four member states in light of the principles of legal certainty, proportionality and non-discrimination. Section 5 argues that by providing a supranational venue for transferring and legitimising certain national policies that use civic integration as a basis for a stringent immigration policy, the legitimacy and coherency of the EU approach is being profoundly affected by the very same deficits that characterise member states' laws. This tension endangers some of the key principles upon which the EU legal system has been built and the very foundations of its immigration policy. That notwithstanding, we conclude that as a consequence of the progressive Europeanisation of immigration policy, member states are no longer completely free to use integration as a derogative clause for TCNs to have access to EU rights and guarantees.

2. The internal and external dimensions of civic integration

What do we mean by 'civic integration'? Our working definition of civic integration simultaneously refers to two aspects. First is the use of integration as a norm in immigration law. Second is the organisation of integration courses or introductory/orientation programmes, tests and contracts. These compel TCNs to demonstrate that they know, understand and respect the host society's history and institutions, along with the common shared values (and symbols) of the nation-state and in some cases even those of the EU.[3] Civic integration therefore confers strong cultural and identitarian connotations on the juridical framing of the phenomena of human mobility and diversity. It can be considered a new discursive line intending to hide the much-contested classical logics of assimilation or acculturation.[4] This concept of integration is new, and it is assuming a role formerly played by nationality laws, chiefly as a condition for naturalisation.[5]

The adjective 'civic' illustrates the degree of integration that the state requires from the TCN in order to be legal, i.e. that of citizenship. Indeed, the functional aspects of integration as something related to a civic (citizenship) status have been transferred from nationality per se to immigration as a fundamental condition for regularity and access to rights and freedoms by non-EU nationals. Immigrants are presented as the 'abnormal ones' in need of a process of normalisation or naturalisation into the imagined canon viewed as the 'normal' (and majority) way of life and identity.[6] Differences and complexities are presented as being and regarded as beyond the normality of life and the nation. Therefore, even though TCNs may not wish to renounce their own national identities and 'naturalise' into the perfect citizen,[7] the state will demand allegiance to a set of perceived values, customs and principles (rules of the game) for the person to be legal in accordance with national administrative law. TCNs will need to show

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[3] Our conceptual framework does not include requirements related to language knowledge or proficiency, but rather focuses exclusively on the civic-related elements of this term.

[4] See C. Joppke and E. Morawska (eds), *Toward Assimilation and Citizenship: Immigrants in Liberal Nation-States*, Basingstoke: Palgrave Macmillan, 2003; see also R. Bauböck, *From Aliens to Citizens*, Aldershot: Avebury, 1994.

[5] R. Bauböck, E. Ersboll, K. Groenendijk and H. Waldrauch (eds), *Acquisition and Loss of Nationality, Volumes I and II: Comparative Analysis – Polices and Trends in 15 European Countries*, IMISCOE Research, Amsterdam: Amsterdam University Press, 2006.

[6] See M. Foucault, *Les Anormaux, Cours au Collège de France: 1974 – 1975*, Hautes Études, Paris: Gallimard Le Seuil, 1999; see also D. Bigo, "Security: A Field Left Fallow", in M. Dillon and A. Neal (eds), *Foucault on Politics, Security and War*, Basingstoke: Palgrave Macmillan, 2008.

[7] S. Carrera, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU*, Leiden: Martinus Nijhoff Publishers, 2009(a).

that they meet the juridical conditions that previously were only applied as requirements (and tests) for those wanting to cross the bridge towards national citizenship. Such conditions have now become central for being entitled to a regular status of residence.

When assessing the use that some EU member states make of integration in immigration law, it is clear that there is both an internal and an external dimension:

1) **The internal dimension** takes the form of a programme, course, test or contract applying when a TCN has 'newly' entered the state's territory and seeks to reside there legally. Here civic integration is used in relation to those labelled as 'newcomers' and those applying for permanent residence, as well as in the scope of family reunification. Civic integration often constitutes a condition or additional layer for holding a temporary residence permit or being granted permanent residence and therefore benefiting from a higher degree of security against expulsion. For TCNs, the internal dimension actually means the need to pass a programme or exam (or both) about history, institutions and values (symbols) to avoid a precarious and insecure residence status. The emphasis of the internal dimension is on access to social protection and security of residence. One of the most powerful sanctions for failing integration tests is the non-renewal of a temporary residence permit (and refusal to grant permanent residence) and therefore expulsion from the country.

2) **The external dimension (or integration abroad)** consists of an evaluation and a course administered by the consular and diplomatic authorities of the EU member states in non-EU countries about the way of life and values of the nation-state involved. Integration is being subjected to a process of externalisation by which the state's requirement for the individual to be integrated moves beyond its territorial borders towards the country of origin. The civic integration test acts as another immigration control and selection measure "at a distance",[8] displaying its full managerial effects even before a person is actually allowed to move and enter the destination country. Hence, that person formally becomes an immigrant in accordance with the national immigration law of the destination country. The emphasis of the external dimension is on access to territory and reducing the number of entries based on family reunification. For the would-be migrant, civic integration abroad is another discretionary condition for having access to a visa and the right to move to EU territory. As later discussed, this dimension is the one that might raise some fundamental human rights implications.

In both its internal and external facets, integration is configured as an additional criterion on the path towards legality and the entitlement to claim rights, security and protection. It performs the function of an additional rule for the state to manage, limit and select the regular channels of migration and the community of beneficiaries legitimised to claim social security and social solidarity. Access to rights and the politics of identity are therefore closely interlinked by the state immigration policy. This link calls upon the TCN to show adherence to national identity (the perceived way of life, values, symbols and traditions of the nation). Integration therefore is not regarded as a process of social inclusion and equalisation of rights and freedoms, but rather as a state requirement for the TCN to disappear into the homogenous national wholeness and another way for the state to promote national identity and nationalism within and beyond its territorial borders. In this sense, civic integration and the respect for diversity become opposing concepts. This opposition to diversity also challenges some of the principles upon which the

[8] See D. Bigo and E. Guild (eds), *Controlling Frontiers*, Aldershot: Ashgate, 2005; see also D. Bigo and E. Guild, *La Mise à L'Écart des Étrangers: La Logique du Visa Schengen*, Cultures & Conflits, Paris: L'Harmattan, 2003.

liberal democracies making up the EU, and the EU itself, are supposed to be based.[9] This version of integration conflicts with a rights-based approach to migration. It furthermore runs counter to social inclusion by fostering social exclusion and increasing the vulnerability and insecurity of individuals on the move and those non-EU nationals already resident in the Union.

3. Civic integration: The EU context

Since the transfer of immigration to shared competence between the EC and the member states by the Amsterdam Treaty in 1999,[10] and based on the political guidelines and policy priorities of the Council's multi-annual programmes,[11] the Commission has managed to develop a supranational, normative framework in this domain. This framework provides a common (yet 'minimal') legislative setting for the conditions of TCN entry and residence. Europeanisation in this area has not been immune to multifaceted difficulties, however. These have mainly entailed member states' hesitations about the added value of having 'more Europe' in migration policy, their resistance to transferring more of their domestic competences and discretionary powers to the EU, and the application of the unanimity voting rule in the Council in order for any legal migration initiative to be formally adopted.[12] Adding to these factors has been the lack of political will on the part of some member states to recognise formally that the EC has competence to legislate in the field of TCN integration based on the Treaties.[13] Such struggles have led to the emergence of alternative governance strategies by the Directorate-General of Justice, Freedom and Security (DG JFS) of the European Commission, which have materialised in a bifurcated regulatory framework where integration is subject to EU cooperation: EC immigration law and the EU Framework on Integration. It is important to underline that, unlike EC immigration law, the EU Framework on Integration does not fall into the category of law, but rather constitutes a soft-law/policy mechanism lacking any legally binding force upon the member states.

The strategy pursued by certain member states representatives has been to transfer to the EU level some elements of their national immigration legislation, using integration as a norm in immigration law to retain even greater discretionary power when granting rights, security of residence and social solidarity to TCNs. Integration measures and conditions are key parts of this strategy, which has been implemented during negotiations on the legislative initiatives for legal immigration within the Council and through the exchange of practice on integration policies in the scope of the EU Framework on Integration. This has favoured certain member states' transposition of the integration provisions included in EC immigration law in the form of civic

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[9] E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Aldershot: Ashgate, 2009(b).

[10] Refer to Art. 63 EC Treaty.

[11] See European Council, Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/99, Brussels, 1999; see also European Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, OJ C 53/1, 3.3.2005.

[12] With the exception of policies dealing with legal migration, the Council agreed in 2004 to move to the co-decision procedure all the remaining fields falling within the scope of Title IV of the EC Treaty (such as asylum, irregular immigration and border policies). See Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure set out in Art. 251 of that Treaty, OJ L 396/45, 31.12.2004.

[13] Nevertheless, this situation did not prevent the Council from adopting an entire financial framework at the EU level covering the integration of TCNs based on Art. 63 of the EC Treaty. See the Council Decision 2007/435/EC of 27 June 2007 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", OJ L 168/18, 28.6.2007.

integration programmes, tests and courses, and their promotion as 'good practices' and 'lessons learned' in the EU Framework on Integration. The result has also been a profound change in the traditional understandings of the integration of TCNs in EC law and policy, which now allow room for nationalism to play a role when determining the allocation of EU rights and freedoms to TCNs.

The European Pact on Immigration and Asylum (October 2008) – aimed at providing the general principles for the common EU immigration policy that will be implemented in the years to come – pointed out the need to develop integration policies in the EU stressing "respect for the national identities of the member states and the European Union and for their fundamental values".[14] This point was echoed by the Vichy Declaration adopted at the European Ministerial Conference on Integration in November 2008 (also under the French presidency), which called for the development of "information material featuring content common to the member states on European values to be defined by each member state, which could also include their own values".[15] The Vichy Declaration recalled the importance of developing European Modules for Migrant Integration (EMMI), which in the words of the European Commission would be regarded as "the building blocks for comprehensive integration strategies" and which would "start by addressing organization of language and civic courses on the host society's history, institutions and the common shared values of the EU".[16] Both the Pact and the Vichy Declaration are illustrative of the above-mentioned dynamics affecting the normative understandings of the integration of TCNs in EC law and policy, and of their origins. They first demonstrate how civic integration is increasingly gaining ground in the various EU approaches to integration within EU immigration policy. Second, they evidence the main foundations of the change, which too often originate in influential member states and are then progressively transferred to and spread across the EU level.

Although the European Pact on Immigration and Asylum and the Vichy Declaration could be considered over-casuistic examples, they nonetheless reflect a general trend seen more widely in both EC immigration law and the EU Framework on Integration. A mapping of the different discursive approaches or conceptual perspectives of integration in EU law and policy from the 1970s until now has been carried out elsewhere.[17] The results of that mapping exercise show different dynamics affecting the evolution of the concept and the official discourses of EU institutions on the integration of TCNs during the last three decades. The predominant EU approaches to the integration of TCNs have altered substantially from an understanding of integration as the security of residence, family reunification, access to economic and societal spheres, equal participation, fair treatment and non-discrimination. They have moved towards integration as an immigration rule and a derogative clause (exception) in the hands of member states conditioning the access of TCNs to socio-economic inclusion, rights and membership.[18]

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[14] See European Council, 2887th meeting of the Justice and Home Affairs Council, 11653/08, Presse (205), Brussels, 24 and 25 July 2008(a); see also European Council, European Pact on Immigration and Asylum, 13440/08, Brussels, 24 September 2008(b); and also S. Carrera and E. Guild, *The French Presidency's European Pact on Immigration and Asylum: Intergovernmentalism vs. Europeanism? Security vs. Rights?*, CEPS Policy Brief No. 170, Centre for European Policy Studies, Brussels, September 2008.

[15] See European Council, European Ministerial Conference on Integration (Vichy 3-4 November 2008) – Declaration, 14898/08, 9 December 2008, Brussels.

[16] European Commission, *Strengthening actions and tools to meet integration challenges*, Report to the 2008 Ministerial Conference on Integration, Commission Staff Working Document, SEC(2008) 2626, Brussels, 8 October 2008(b).

[17] S. Carrera (2009a), op. cit.

[18] S. Carrera, *Benchmarking Integration in the EU: Analysing the Debate on Integration Indicators and Moving it Forward*, Bertelsmann Foundation, Berlin, 2008.

This point has been sustained by Kostakopoulou, Carrera and Jesse (2009),[19] who state that "there has been a shift from equal treatment to conditioned membership as national conceptions of integration, and neo-national narratives seeking to preserve social cohesion and national values have been uploaded at the European level". These new conceptions and official EU discursive lines on integration now include a civic dimension as a constitutive element.

Two directives have been of especial importance when regulating the conditions for the entry, residence and family reunion of TCNs in the EU: the Directive concerning the status of third-country nationals who are long-term residents (2003/109/EC)[20] and that on the right to family reunification (2003/86/EC).[21] The Directive on TCNs who are long-term residents recognises an EC status of long-term resident for those who have resided for a period of five years in the territory of a member state in a regular status, and provides a set of social rights and freedoms attached thereto and protection against expulsion.[22] Art. 5 presents the conditional aspects of integration by saying that "Member States may require third-country nationals to comply with integration conditions, in accordance with national law". The Directive on the right to family reunification establishes common standards and criteria for TCNs residing lawfully in a member state to be reunited with their family members.[23] It creates a subjective right to family reunification,[24] but Art. 7.2 stipulates that "2. Member States may require third-country nationals to comply with integration measures, in accordance with national law". With regard to refugees or their family members, the integration measures referred to in this article may only be applied *once* the persons concerned have been granted family reunification. In stating that the integration measures will only apply to refugees and their family members after they have been granted family reunification, Art. 7.2 has left the door open for some member states to apply integration measures to all other TCNs not falling within this legal category – even *before* they have been granted family reunification and while they are still *abroad* in their country of origin (i.e. integration abroad).

Moreover, Directive 2003/109/EC recognises a right to move to and reside in a member state other than that which has granted the EC status to the TCN. Those persons meeting the conditions for acquiring the EC status of long-term resident in a member state shall be recognised as

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[19] See D. Kostakopoulou, S. Carrera and M. Jesse, "Doing and Deserving: Competing Frames of Integration in the EU", in E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Aldershot: Ashgate, 2009; refer also to K. Groenendijk, "Legal Concepts of Integration in EU Migration Law", *European Journal of Migration and Law*, Vol. 6, No. 2, 2004, pp. 111–126.

[20] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16/44, 23.1.2004.

[21] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251/12, 3.10.2003.

[22] K. Groenendijk, "The Long-Term Residents Directive, Denizenship and Integration", in A. Baldaccini, E. Guild and H. Toner (eds), *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy*, Oxford: Hart Publishing, 2007, pp. 429–450.

[23] H. Oosterom-Staples, "The Family Reunification Directive: A Tool Preserving Member State Interest or Conducive to Family Reunification Unity?", in A. Baldaccini, E. Guild and H. Toner (eds), *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy*, Oxford: Hart Publishing, 2007, pp. 451–488.

[24] K. Groenendijk, "Family Reunification as a Right under Community Law", *European Journal of Migration and Law*, Vol. 8, No. 2, 2006(a), pp. 215–230.

beneficiaries of the freedom to move and reside for a period exceeding three months in the territory of member states other than the one that granted the status in the first place.[25] Art. 15.3 provides that

> Member States may require third-country nationals to comply with integration measures, in accordance with national law. *This condition shall not apply where the third-country nationals concerned have been required to comply with integration conditions in order to be granted long-term resident status*, in accordance with the provisions of Article 5(2). Without prejudice to the second subparagraph, the persons concerned may be required to attend *language courses*. (Emphasis added.)

Therefore, those TCNs holding an EC long-term residence permit will be allowed to move and reside in a second member state without being subject to civic integration measures. The second member state can only apply the requirement for TCNs to attend language courses and will therefore have to recognise that s/he is already well integrated 'civically' into its receiving society. This provision therefore represents a *de jure* mutual recognition of civic integration decisions among the EU member states, and TCNs who are long-term residents in light of Directive 2003/109/EC cannot be asked to fulfil integration requirements in the second member state when moving and residing there.

A similar move can be also seen within the EU Framework on Integration.[26] Here again, integration functions as a programme, course or module (within the country or abroad) that includes knowledge of and respect for national (and European) values, fundamental norms, principles and 'ways of life'. This policy direction is illustrated when looking at the CBPs on integration.[27] The CBPs aim at

- assisting member states in formulating integration policies by offering them a simple, non-binding guide against which they can judge and assess their own policies, and which can serve as a basis for the EU to explore how existing EU instruments on integration can be developed further;
- serving as a foundation for the member states to explore how EU, national, regional and local authorities can interact in the development and implementation of integration policies; and
- helping the Council to reflect and agree on EU-level policies intended to support national and local integration policy efforts, particularly through EU-wide learning and knowledge sharing.

The civic dimension of integration can be seen particularly in CBPs 2 and 4. CBP 2 states that integration implies respect for "the basic values of the EU". This principle involves the obligation of "every resident in the EU" to adapt and adhere closely to the basic values of the Union and the laws of the member states. It also compels member states to ensure that all residents "understand, respect, benefit from, and are protected on an equal basis by the full scope of values, rights, responsibilities, and privileges established by the EU and Member State laws".[28] CBP 4.1 emphasises that "basic knowledge of the host society's language, history and institutions is indispensable for integration". Both CBPs therefore justify the introduction or legitimise the

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[25] See Chapter III of the Directive, Arts. 14-23.

[26] H. Urth, "Building a Momentum for the Integration of Third-Country Nationals in the European Union", *European Journal of Migration and Law*, Vol. 7, No. 2, 2005, pp. 163–180.

[27] European Council, 2618th meeting of the Justice and Home Affairs Council, "Common Basic Principles on Immigrants Integration", 14615/04, Brussels, 19 November 2004.

[28] Ibid.

existence of civic orientation programmes at the national level. They also seek to establish the basis upon which the EMMI could be developed in the future.

This justification for national civic integration programmes was confirmed later on by the DG JFS of the European Commission. The 2005 Communication on a Common Agenda for Integration (COM(2005) 389) put forward concrete measures to strengthen the practical applicability of the CBPs.[29] It also identified as cornerstones of this framework a series of "suggested actions or a road map" intending to provide some guidance to put the CBPs into practice at the national and EU levels. The Commission clarified that the package of actions was only "indicative and not exhaustive", and left it to the member states "to set priorities and select the actions". The following two proposed actions may be highlighted. First, in relation to CBP 2, the Commission called for "[e]mphasising civic orientation in introduction programmes and other activities for newly arrived third-country nationals with the view of *ensuring that immigrants understand, respect and benefit from common European and national values*". (Emphasis added.) Second, as regards CBP 4.2, it suggested the organisation of introduction programmes for newcomers, offering courses and "*previous knowledge of the country*", and it recommended

> [s]trengthening the integration component of admission procedures, e.g. through *predeparture measures* such as information packages and language and civic orientation courses in the country of origin…[o]rganising introduction programmes and activities for newly arrived third-country nationals to acquire basic knowledge about *language, history, institutions, socioeconomic features, cultural life and fundamental values*. (Emphasis added.)

What could have been the major driving factors behind the progressive incursion of civic integration in EC immigration law and the EU's integration policy?

The role of certain member states during the negotiations in the Council on the Directives pertaining to legal immigration has been decisive.[30] The first version of the legislative proposals for Directives 2003/86/EC and 2003/109/EC presented by the European Commission closely followed the principles guiding the classical inclusionary vision of the integration of TCNs in EC law and policy. Yet the outcome of the negotiations in the Council led to the introduction of express references to integration measures and conditions within the body of both Directives. Austria, Germany and the Netherlands managed to transfer to the EU level integration policies and legal measures existing in their respective national immigration laws (or which were being debated in their parliaments) at the time of the negotiations. These policies and measures have later on offered the possibility, during transposition in the national arenas, to reinvigorate the civic dimension of integration and to use it as a condition for rights and security.

The influence of specific member states is evidenced when looking at the discussions that took place in the Council rooms. Austria, Germany and the Netherlands were clearly in favour of adding the term 'integration conditions' to the main text. In response to doubts raised by other member state representatives about the difficulty of finding objective criteria to evaluate whether this requirement was fulfilled by TCNs, representatives from these three countries drafted a joint suggestion on 25 September 2002.[31] Their joint suggestion stresses that "[t]he primary aim of integration is the promotion of the self-sufficiency of so-called 'newcomers' and one of the main parts of integration policy is an integration programme". The joint suggestion argued that

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[29] European Commission, Communication on a Common Agenda for Integration – Framework for the Integration of Third Country Nationals in the European Union, COM(2005) 389, Brussels, 1 September 2005.

[30] For a detailed study of the negotiations within the Council, see S. Carrera (2009a), op. cit.

[31] See European Council, Document 12217/02, Brussels, 23 September 2002.

introducing the need to pass these integration programmes would constitute the actual 'condition' for granting long-term resident status. Furthermore, it stated that "sufficient knowledge of the country" should be an essential criterion for granting the status. In their opinion, this stipulation would be compatible with their respective national laws, under which newcomers were obliged to follow mandatory integration programmes from the moment such persons were legally residing in the member state, and the degree of integration was used as one of the conditions for granting the settlement permit. Moreover, it was pointed out that at that time the Netherlands was working on a legislative proposal to impose on specific groups of immigrants the obligation to cover the costs of integration programmes "before entering the Netherlands", which later on materialised in the Integration Abroad Act (see section 4.1 below).[32]

In addition, the EU Framework on Integration has attributed great significance to the network of national ministerial officials – the NCPs – in the exchange and promotion of national policies incorporating civic integration measures in immigration law.[33] The NCPs have played a very important role in the exchange of information about national practices and policies on integration, as well as in the identification of best practice and knowledge sharing. The NCPs have become influential in the ways in which the Framework has been constructed and in the thinking around the kinds of policies to be developed in the future. They have participated in the drafting of three Commission annual reports on migration and integration,[34] and the two editions of the *Handbook on Integration*.[35] They have also provided a supranational forum prioritising certain policies, programmes and practices at the national level considered 'good' or in need of promotion across the entire EU.

The Framework represents an innovative, multilevel method of governance on the integration of TCNs at the EU level, involving a package of non-binding or soft-law/policy elements and diversified supranational networks, which have given birth to a "quasi-open method of coordination"[36] that includes benchmarking and indicators as central tools. While the EU Framework on Integration lacks any legally binding effect for the member states, in

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[32] L.F.M. Besselink, "Unequal Citizenship: Integration Measures and Equality", in S. Carrera (ed.), *The Nexus between Immigration, Integration and Citizenship in the EU*, CHALLENGE Collective Conference Volume, Centre for European Policy Studies, Brussels, 2006.

[33] The establishment of the European network of NCPs was one of the first results of the JHA conclusions of October 2002. The European Commission created this transnational forum of experts from national administrations responsible for the integration of immigrants, which includes, depending on the member state, representatives from ministries of interior, ministries of labour and social affairs, ministries of integration, etc. The network is chaired by the DG JFS.

[34] See European Commission, Communication on the Third Annual Report on Migration and Integration, COM(2007) 512, Brussels, 11 September 2007; see also European Commission, Communication on the First Annual Report on Migration and Integration, COM(2004) 508, Brussels, 16 July 2004; and also European Commission, *Second Annual Report on Migration and Integration*, Commission Staff Working Document SEC(2006) 892, Brussels, 30 June 2006.

[35] See J. Niessen and Y. Schibel, *Handbook on Integration for Policy-makers and Practitioners*, DG Justice, Freedom and Security, European Commission, Luxembourg: Office for Official Publications of the European Communities, November 2004; see also J. Niessen and Y. Schibel, *Handbook on Integration for Policy-makers and Practitioners*, Second Edition, DG Justice, Freedom and Security, European Commission, Luxembourg: Office for Official Publications of the European Communities, May 2007.

[36] S. Carrera, *The Role and Potential for Local and Regional Authorities in the EU Framework on the Integration of Immigrants*, study commissioned by the Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice of the Committee of the Regions, Brussels, 2009(b).

combination with a sound financial framework through the European integration fund, it is slowly (yet progressively) making possible policy ambitions (through implementation of the CBPs and the exchange of practices) and actual legislative results (projects and programmes) across the various national arenas. In this way, the EU is financially supporting certain national approaches and public philosophies that conceive of integration from a 'civic' and 'conditional' perspective. It is also worth remembering that while the UK, Ireland and Denmark enjoy an opt-out status from all the legislative measures adopted under Title IV of the EC Treaty,[37] and therefore are not bound or obliged to transpose Directives 2003/86/EC and 2003/109/EC, the three of them nevertheless participate in the exchange of practices. Ireland and the UK have opted to take part in the European integration fund.

Finally, the conceptual features of the CBPs adopted by the Council raise a whole series of concerns in relation to the respect of cultural diversity and the heterogeneous identities of TCNs. Spain was actually the only member state that presented an amendment within the Council to the finally-agreed list of 11 CBPs in 2004. It appears that the Spanish proposal, which sought to include an express reference to support for the maintenance of the languages and cultures of TCNs' origins (recognition of the cultural identity of TCNs), was not very well received by the other member states.[38]

4. Civic integration: The national context

This section presents a comparative account of civic integration programmes and legal measures in four EU member states: Denmark, France, Germany and the Netherlands. All of them are paradigmatic examples of the use of civic integration measures in immigration law. As shown in the previous section, they also happen to be very influential at EU-level discussions about immigration and integration policies. Indeed, their significant role in relation to the final output of the most relevant EU policies and legal measures so far adopted on immigration and integration further justifies our geographical selection. It also makes the comparison relevant when assessing the implications of the transfer of nationalistic integration policies into the common EU immigration policy in what concerns, most crucially, the rule of law and non-discrimination.

4.1 The external dimension of civic integration: Integration abroad

The four EU member states under analysis present different versions of civic integration abroad in their immigration laws. In a nutshell, Denmark and the Netherlands use 'in full' the concept of civic integration abroad as a mandatory condition for the grant of a visa and lawful entry to would-be immigrants. French immigration law also presents integration abroad as a (in principle non-mandatory) requirement when granting a visa and includes programmes and an evaluation of not only language but also knowledge about the 'values of the Republic'. Germany practises integration abroad as an obligatory condition, but only as regards German language proficiency and does not formally include a civic element.

4.1.1 Purpose

In this subsection, we address the official purpose and objectives presented by the governments of the four EU member states for the introduction of integration abroad tests.

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[37] See the Special Protocols attached to the Amsterdam Treaty, OJ C 340, 10.11.1997, pp. 92–114.

[38] P. López Pich, "La Política de Integración de la Unión Europea", *Revista Migraciones*, Vol. 22, December 2007, pp. 221–256.

The Netherlands was the first EU country to introduce integration abroad requirements. On 22 December 2005, the Dutch parliament adopted an Integration Abroad Act (*Wet inburgering in het buitenland*), which entered into force on 15 March 2006.[39] Since 2006, immigrants have been required to demonstrate basic knowledge of the Dutch language and society when entering the Netherlands.[40] To justify the introduction of a new immigration requirement for family migrants, the explanatory memorandum[41] to the Integration Abroad Act refers to the marginalisation and lack of integration of a growing number of migrants in the Netherlands, among which a third come for the purpose of family reunification or family formation.[42] The government points out that the two largest groups of family migrants, Turkish and Moroccan nationals, often only possess a basic level of education, are frequently unemployed and are over-represented in low-skilled jobs.[43] These characteristics are especially prominent among female family migrants from Morocco and Turkey, who are even less likely to be employed than their male counterparts are.[44] Family migrants from these groups are deemed to be in a disadvantaged position at the point of arrival in the Netherlands, *inter alia*, owing to their lack of Dutch language skills. The government refers to a repetitive phenomenon of chain migration (*repeterende verschijnsel van volgmigratie*) that has the effect of placing a continually growing number of ethnic minority groups in a disadvantaged position.

The cabinet intends to put an end to this 'process of marginalisation' by requiring immigrants who are likely to face difficulties in integrating after arrival to start the integration process prior to departure.[45] The main official purpose of the Integration Abroad Act is thus to render the integration process of newcomers in the Netherlands more efficient and effective. In addition, the law was intended to have a motivating and emancipating effect. It places great emphasis on the individual responsibility of the potential newcomers and their partners. By making potential immigrants aware of the norms and values of the Netherlands, along with the importance of knowledge about Dutch society and language skills before entry, the newcomers are expected to be better prepared for a new life in the Netherlands. Still, behind the official objective of facilitating the integration process of newcomers is the more implicit aim of reducing the

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[39] L.F.M. Besselink, "Integration and Immigration: The Vicissitudes of the Dutch 'Inburgering'", in E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Aldershot: Ashgate, 2009.

[40] See Art. 16(1)(h) *Vreemdelingenwet*.

[41] See *Memorie van Toelichting*, Kamerstukken II, 2003–2004, 29 700 nr. 3.

[42] As opposed to the process of family reunification, the concept of family formation refers to the entry of a spouse or partner in cases where the marriage/partnership was only concluded after the sponsor was already living in the country. For further information about the different categories of family migration in the Netherlands, see E.M. Naborn, *Gezinshereniging. De overkomst van gezinsleden van migranten en Nederlanders*, Ministrie van Justitie, Wetenschappelijk onderzoek- en documentatie centrum (WODC), The Hague, 1992, pp. 5–6.

[43] According to a report of the Social and Cultural Planning Office, around 40% of Turkish and almost 60% of Moroccan family migrants have at the most a basic level of education. Unemployment among Turkish and Moroccan family migrants is around 12% (in comparison with 3% of the native population). In 2002, 35% of Turkish and 42% of Moroccan family migrants who were employed had a low-skilled job; see J. Dagevos, M. Gijsberts and C. van Praag, *Rapportage minderheden 2003*, Sociaal en Cultureel Planbureau (SCP), Den Haag, 2003.

[44] For instance, 80% of Turkish women between the ages of 40 and 65 and 90% of Moroccan women in this age group have at most a basic level of education; see M. Gisberts and A. Merens, *Emanciaptie in estafette: De positie van vrouwen uit etnische minderheden*, Sociaal en Cultureel Planbureau (SCP)/ISEO, Den Haag and Rotterdam, 2004.

[45] See *Memorie van Toelichting*, Kamerstukken II, 2003–2004, 29 700 nr. 3.

number of family migrants to the Netherlands. It follows from the explanatory memorandum to the Integration Abroad Act that the requirement to pass an integration exam abroad is intended to stimulate potential immigrants to carefully consider whether it is worth applying for admission to the Netherlands.[46]

This clearly illustrates the hidden objective of reducing the number of persons who are willing to undertake the effort and financial risk (the fee for the integration abroad test is €350, which must be borne entirely by the applicant) involved in taking the test to qualify for a provisional residence permit. A similar position was taken by the Council of State (*Raad van State*) when commenting on the introduction of the Integration Abroad Act in its advisory report.[47] According to the Council of State, as it will lead to a reduction of family migrants, the new requirement constitutes a selection mechanism, which is not entirely plain from the explanatory memorandum. The purpose of the Integration Abroad Act as a tool for immigration control was reinforced by the government's decision to raise the level of the test on 15 March 2008.[48] Based on an assessment carried out in 2007,[49] which showed that candidates had a higher level of language proficiency than expected and that a majority of applicants passed the test, the number of questions that must be answered correctly to pass the test increased. The conclusion that the level of the test must be raised if 'too many applicants' pass it reveals that a reduction in the number of family migrants entering the Netherlands was a crucial objective behind the introduction of a civic integration exam.

The **Danish** parliament adopted a bill introducing an integration test for spousal reunification in April 2007.[50] When it enters into force as foreseen in 2010, the Act will require spouses applying for family reunification as well as foreigners seeking admission as religious preachers to have passed a Danish language proficiency test and a test on Danish society. According to amendments to the original bill agreed by the Danish government and the Danish People's Party in 2008, the immigration test (*indvandringsprøven*) will have to be taken in Denmark and will be preceded by a pre-recognition assessment regarding the fulfilment of all other conditions for family reunification.[51] In the explanatory memorandum[52] to the bill, the minister for refugees, immigration and integration affairs explicitly referred to the Dutch integration test as a model to follow. The memorandum stated that the purpose of the pre-entry immigration test is to strengthen the individual migrant's potential for a successful and rapid integration into Danish society. According to the Danish government, it must be assumed that foreigners who have passed the immigration test will be better equipped to participate in the integration process and that foreigners who are not able to pass the immigration test are likely to face substantial difficulties in integrating into Danish society. The immigration test is seen as a supplement to the international dimension of integration in Denmark that will help ensure that each person wishing to reside in Denmark makes an effort towards his/her integration at an early stage and

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[46] Ibid.

[47] *Wijziging van de Vreemdelingenwet 2000 in verband met het stellen van een inburgeringsvereiste bij het toelaten van bepaalde categoriëen vreemdelingen (Wet inburgering in het buitenland), Advies Raad van State en nader rapport*, Kamerstukken II, 2003–2004, 29 700 nr. 4.

[48] See Kamerstukken II, 2006–07, 29 700, nr. 40.

[49] P.F. Sanders, *Onderzoek naar de kwaliteit van het inburgeringsexamen buitenland*, TNO-rapport TNO-DV 2007 C053, Research Center voor Examinering en Certificering, Cito en Universiteit Twente, Arnhem, 2007.

[50] See *Lov no. 379 of 25 April 2007 om ændring af udlændingeloven og lov om aktiv socialpolitik.*

[51] E. Ersbøll, "On Trial in Denmark", in R. Van Oers, E. Ersbøll and D. Kostakopoulou (eds), *A re-definition of belonging? Language and integration tests in Europe*, Leiden: Brill, 2009 (forthcoming).

[52] See *Lovforslag no. L 93 om lov om ændring af udlændingeloven og lov om aktiv socialpolitik.*

demonstrates the motivation and desire to become part of Danish society. With regard to religious preachers, it is expected that the immigration test will help them acquire a better understanding of the 'social environment' in Denmark for the pursuit of their religious activities.[53]

When looking at the implicit objective of introducing an external dimension for civic integration, it is notable that the government refers to the example of the Netherlands, where the introduction of an integration abroad requirement has led to a dramatic decrease in the number of applications for family reunification. According to a note of the Danish Institute for Human Rights,[54] it can be expected that the introduction of the pre-entry integration test in Denmark will equally lead to a decrease in the number of applications for family reunification. More specifically, many foreigners (and especially those who are poorly educated) are likely to refrain from attempting to pass the test because they doubt whether they will be able to do so and are unwilling or unable to assume the necessary expenses. Yet, in response to a question from the Standing Committee on Foreigners and Integration Policy, the minister for integration claimed that the test was not aimed at reducing the number of family migrants.[55]

The external dimension of civic integration was introduced in **France** by Law No. 2007-1631 of 20 November 2007.[56] This law represented a major transformation of the classical, republican integrationist philosophy.[57] One of the main official justifications offered by the French government for this legislative reform to take place was the need to transpose into French law the Council Directive 2003/86/EC on the right to family reunification. In particular, the original explanatory memorandum of the first version of the proposed law stated that the integration requirements applied to applicants for family reunification above 16 years of age are in line with Art. 7.2 of Directive 2003/86/EC, which offers member states the possibility to introduce integration measures in the country of origin in accordance with national law:

> *fait application de ce dispositif de préparation au parcours d'intégration républicaine aux étrangers de plus de seize ans pour lesquels est sollicité le bénéfice du regroupement familial.* Ces dispositions sont dans le droit fil de la directive *2003/86/CE du 22 septembre 2003 relative au droit au regroupement familial qui, dans son article 7, paragraphe 2, prévoit que* les États membres peuvent exiger des ressortissants de pays tiers qu'ils se conforment aux mesures d'intégration dans le respect du droit national. (Emphasis added.)

The case of the Netherlands was also referred to as a model during the debates preceding the adoption of the law. Similar to the Dutch and Danish cases, the first paragraph of the explanatory memorandum of the original *Projet de Loi* also made reference to the high number of residence permits granted so far in France based on family reunification in comparison with other channels

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[53] Ibid., pp. 8–9.

[54] E. Ersbøll and E.M. Lassen, "Notat vedrørende lovforslag nr. L 93 om lov om ændring af udlændingeloven og lov om aktiv socialpolitik", Danish Institute for Human Rights, Copenhagen, 2007.

[55] See Ersbøll (2009), op. cit.

[56] *Loi no. 2007-1631, 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile*, J.O. *no. 270, 21 novembre 2007*, and also the other versions, *Projet de Loi relatif à la maîtrise de l'immigration, à l'intégration et à l'asile, Assemblée Nationale no. 57, 4 juillet 2007*; and *Projet de Loi relatif à la maîtrise de l'immigration, à l'intégration et à l'asile, no. 11, Sénat, adopté le 23 octobre 2007*. See also V. Guiraudon, "Integration Contracts for Immigrants: Common Trends and Differences in the European Experience", Commentary, Real Instituto Elcano, 7 May 2008 (retrieved from www.realinstitutoelcano.org).

[57] C. Laborde, "The Culture(s) of the Republic: Nationalism and Multiculturalism in French Republican Thought", *Political Theory*, Vol. 29, No. 5, 2001, pp. 716–735.

of 'legal' immigration.[58] That notwithstanding, according to the official data offered by Secrétariat général du comité interministériel de contrôle de l'immigration,[59] there has been a decline in the number of entries to the country on this basis since 2006, prior to the application of the new immigration law and civic integration abroad (Table 1). The same report acknowledges that the "strong and spectacular" decrease in the number of residence permits granted for the purposes of family reunification (down by 10.6%)[60] has been a consequence of the government's enactment of important legislative amendments limiting the past "misuses and abuses" that had apparently occurred in the scope of family reunification.[61] The report also states that it is expected that the number will fall even further during 2008 and 2009 in light of making the grant of a visa for family reunification subject to the examination of the applicant's knowledge of the French language and republican values.

Table 1. Number of entries granted in France for family reunification, 2003–07

	2003	**2004**	**2005**	**2006**	**2007**
No. of entries	23,423	23,310	22,994	19,419	18,891

Source: Secrétariat général du comité interministériel de contrôle de l'immigration (2008).

In **Germany**, a language test as a precondition for spousal reunification was introduced in 2007.[62] According to Section 30(1) No. 2 of the Residence Act (as amended), incoming spouses must be able to demonstrate basic knowledge of the German language to be granted a residence permit for the purpose of family reunification. As the pre-entry language requirement does not contain any civic element, however, a discussion of its official and implicit objectives goes beyond the scope of this paper.[63]

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[58] C. Borrel, "Enquêtes Annuelles de Recensement 2004 et 2005: Près de 5 million d'immigrés à la mide de 2004", Cellule Statistiques et études sur immigration, INSEE Première No. 1098, INSEE, Paris, August 2006.

[59] Secrétariat général du comité interministériel de contrôle de l'immigration, *Les orientations de la politique de l'immigration – Cinquième rapport établi en application de l'article L.111-10 du code de l'entrée et du séjour des étrangers et du droit d'asile*, La Documentation française, Paris, 2008 (retrieved from www.ladocumentationfrancaise.fr).

[60] This data corresponds with the total number of residence permits falling within the category of family reunification: *famille de Français* (–8.8%), *regroupement familial* (–2.7%), *carte de séjour portant la mention "Vie privée et familiale" – autre que celle attribuée pour raisons médicales* (–21.8%).

[61] More specifically, the report explicitly states that "*La diminution du nombre de titres délivrés pour motifs familiaux est d'une telle ampleur qu'elle peut être regardée comme marquant une véritable rupture. Elle est le fruit des réformes importantes engages par le gouvernement pour limiter les détournements de procédure et les abus auxquels donnait lieu l'application du droit de l'immigration familiale*" (p. 13).

[62] *Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäische Union*, BGBl. I, p. 1970.

[63] For insight into the objectives for introducing a pre-entry language test in Germany, see Gesetzentwurf zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union, *Bundestag Drucksache* 16/5065, 23 April 2007, p. 173; see also R. Hofmann and H. Hoffmann, *Ausländerrecht: Handkommentar*, Baden-Baden: Nomos, 2008, § 30, Rn. 26; and A. Wiesbrock, "Discrimination instead of Integration? Integration Requirements in Denmark and Germany", in E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Aldershot: Ashgate, 2009.

4.1.2 Material scope

This section examines the ways in which civic integration is tested and the content/questions asked. It looks at how far national rules can be considered in accordance with the law and necessary in a democratic society from the perspectives of principles on proportionality and legal certainty.

In **the Netherlands**, according to Art. 16(1)(h) of the Aliens Act (*Vreemdelingenwet*), an application for a temporary residence permit may be denied if a foreigner, who is categorised as a 'newcomer' pursuant to the Integration Act (*Wet inburgering*) and who does not fall within one of the exceptions, fails to demonstrate a basic knowledge of Dutch language and society. Passing the test is a precondition for the acquisition of a provisional residence permit (*Machtiging tot voorlopig verblijf*, MVV). It follows from the preparatory documents for Art. 16(1)(h) *Vreemdelingenwet*[64] and Art. 3.71a of the Aliens Decree (*Vreemdelingenbesluit*)[65] that the legislator intended to apply the integration requirement in the context of the MVV procedure, therefore granting the minister of justice the competence to deny authorisation for temporary stay for the purpose of family reunification if the integration condition has not been fulfilled. A challenge to the requirement of integration abroad based on the fact that the integration condition referred to in Art. 16 *Vreemdelingenwet* is not explicitly contained in the *Vreemdelingebesluit* was annulled by the Administrative Judicial Division of the Council of State (Afdeling Bestuursrechtspraak van de Raad van State, ABRvS) on 2 December 2008.[66] The requested knowledge has to be proven by way of passing an integration test abroad, as specified in the Integration Abroad Act. The test is carried out in Dutch embassies, where potential immigrants talk on the telephone with a language computer. The test consists of two components, namely a civic one and a language one.

As regards the content of the component on knowledge of Dutch society (*Kennis van de Nederlandse samenleving),* applicants are asked a number of questions on the following topics: 1) the geography of the Netherlands, along with Dutch housing and transport; 2) Dutch history; 3) the Dutch constitution, government, democracy and legislative system; 4) the Dutch language (and why it is important to learn it); 5) parenting and education; 6) the health care system; and 7) work and income. The civic part of the test takes approximately 15 minutes, followed by a Dutch language test of another 15 minutes. Applicants have to obtain at least 70 points in the civic test and 16 points in the language test to pass. The necessary preparation for the test is entirely the responsibility of the potential applicants, who may acquire a 'practice pack' costing approximately €70 from retailers in the Netherlands or online bookstores. The practice pack contains a CD with all 100 questions that could be asked during the exam, a film about the Netherlands, a book with pictures from the film and three practical language tests. The video has been criticised for drawing a stereotypical picture of the Netherlands and apparently targeting Muslim migrants.[67]

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[64] *Memorie van toelichting, Kamerstukken II, 2003–2004, 29 700,* No. 3, p. 8*; Nota naar aanleiding van het verslag*, Kamerstukken II, 2004–2005, 29 700, No. 6, p. 52.

[65] *Nota van toelichting*, pp. 5 and 15, Stb. 2006, 94.

[66] See *Afdeling bestuursrechtspraak van de Raad van State*, 2 December 2008, nr. 200806120/1 (retrieved from www.raadvanstate.nl); see also the following judgment, in which the reasoning of the ABRvS was applied: *Rechtbank 's-Gravenhage, zittingsplaats 's-Hertogenbosch*, 12 January 2009, AWB 08/7556, LJN: BG9517, paras. 8 and 9.

[67] See A. Etzioni, "Citizenship Tests: A Comparative, Communitarian Perspective", *Political Quarterly*, Vol. 78, No. 3, 2007, pp. 353–363; see also Human Rights Watch, "The Netherlands: Discrimination in

The **Danish** *indvandringsprøven* contains a civic and a Danish language element. The civic part will test family migrants on their knowledge about Denmark and Danish society. This implies that the foreigner must have acquired an insight into Danish norms, values and fundamental rights, including knowledge about Danish democratic principles, individual freedoms and personal integrity, belief and expression, gender equality and women's rights. The same applies to more practical issues, such as the prohibition of violence and false marriages, parenting/parental responsibilities, health and work.[68] The applicant will be required to assume responsibility for obtaining the necessary skills and preparing for the test. Consequently, the Danish authorities will not offer preparatory courses but potential family migrants will be able to prepare for the test based on a training package, which can be purchased from the Danish authorities. The costs for the immigration test will have to be entirely covered by the applicant, who can have several chances to pass. The test has to be passed prior to submitting an application for a residence permit, however, and as such forms an additional immigration condition.[69]

The French Decree 2008-1115 implementing Law 2007-1631 includes all the details for the practical application of the **French** programme on civic integration abroad.[70] The competent public authority in charge of organising the courses and the evaluation is the Office français de l'immigration et de l'intégration (OFII).[71] Art. R. 311-30-1 provides that the latter can delegate all or some of these functions to third parties (*organismes*), something that leaves the door open for the involvement of the private sector in the delivery and testing of civic integration.[72] Art. 1 of Law 2007-1631 added a new Art. L. 411-8 in the Code for the entry and residence of foreigners and the right to asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*, CESEDA). It states that 60 days after the presentation of an application for family reunification, every TCN over 16 and under 65 years old will be subject to an evaluation carried out by the OFII about his/her knowledge of the French language and the values of the Republic.

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the Name of Integration, Migrants Rights under the Integration Abroad Act", Human Rights Watch, New York, 14 May 2008 (retrieved from http://www.hrw.org/en/news/2008/05/14/netherlands-discrimination-name-integration).

[68] *Lovforslag nr. L 93 om lov om ændring af udlændingeloven og lov om aktiv socialpolitik*, pp. 8–9.

[69] Ibid., pp. 9–10.

[70] *Décret no. 2008-1115 du 30 octobre 2008 relatif à la préparation de l'intégration en France des étrangers souhaitant s'y installer durablement*, J.O. *du 1 novembre 2008*.

[71] The mission of the office is two-fold: first, reception and assistance for foreigners during their migration process towards France and second, assistance to French nationals when migrating abroad (see the website http://www.ofii.fr). The office was established by *Décret no. 2009-331 du 25 mars 2009 substituant la dénomination « Office français de l'immigration et de l'intégration » à la dénomination Agence nationale de l'accueil des étrangers et des migrations, NOR: IMIC0828706D, 27 mars 2009*. It was previously called the Agence nationale de l'accueil des étrangers et des migration, which was first established on 25 July 2005. This agency has centralised two previous administrative bodies that formerly dealt with these fields: l'Office des migrations internationales (OMI) and le Service social d'aide aux émigrants (SSAE).

[72] I. Michalowski, "Liberal States – Privatized Integration Policies?", in E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Aldershot: Ashgate, 2009.

How is the knowledge of 'republican values' examined in practice? Art. R. 311-30-2 states that the test will take the form of a series of oral questions in a language that the applicant will understand. Reference is made to Art. R. 311-22 of the CESEDA, which stipulates that the civic curriculum consists of "the presentation of French institutions and the values of the Republic, especially in relation to the equal treatment between men and women, secularism, rule of law, fundamental liberties, security of persons and goods as well as the exercise of citizenship, which allows most especially access to obligatory and free education". The duration of the training is later on specified in an *Arrêté* of 1 December 2008.[73] The participation of the foreigner in the programme is approved by the issue of a registration certificate by the OFII, which is distributed by the actor that delivered the programme abroad. The level of knowledge about the values of the Republic is considered satisfactory when the foreigner correctly answers five out of six questions. If the applicant fails the values part of the first-level evaluation, a further course of three hours will be prescribed according to Art. 3 of the *Arrêté*.

The evaluation results concerning knowledge of French republican values are then communicated to the foreigner and the relevant consular or diplomatic office in the country of origin. If the results are deemed insufficient, the foreigner would, according to Art. R. 311-30-4 of the CESEDA, "benefit from training in relation to the field or fields in which the insufficiency has been found". This training would be organised by the OFII or a 'delegated actor' (*l'organisme délégataire*). The training would start no later than two months after the official notification of the evaluation results and cannot exceed two months. The training regarding the values of the Republic would last for a minimum of half a day (Art. R. 311-30-5).

The foreigner would be then subject to a second evaluation similar to that which was conducted in very first instance as provided in Art. 311-11-2 of the CESEDA. After the training takes place, the OFII or the delegated actor will deliver a certificate of course attendance. This document is official proof of attendance. A copy will be transmitted to the consular or diplomatic authorities for consideration when handling the visa application (Art. R. 311-30-7). In a departure from the cases of the Netherlands and Denmark, the law does not expressly specify the extent to which unjustifiable absence from the training might negatively affect the decision by the consular authorities to grant a visa – which adds to the already high level of discretion held by authorities abroad when deciding on visa applications. There are indeed very few formal references implying any kind of obligation or compulsory aspects in this process. It is nonetheless worth underlining that Art. 411-8 explicitly provides that the grant of the visa, and hence family reunification, is subject to the presentation of a certificate of attendance at the training or integration course. Therefore, in our view it is clear that the certificate of attendance will actually become another indirect condition for obtaining the visa.

As stated above, **Germany** does not require any civic knowledge from potential migrants while abroad, although the passing of a language test at level A1 of the Common European Framework of Reference (CEFR) represents a requirement for spousal reunification.[74]

Table 2 gives an overview of the fees related to integration abroad requirements in the countries studied.

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[73] *Arrêté relatif à l'évaluation dans leur pays de résidence du niveau de connaissance, par les étrangers, de la langue française et des valeurs de la République et aux formations prescrites dans ces domaines conformément aux articles R. 311-30-1 à R. 311-30-11 du code de l'entrée et du séjour des étrangers et du droit d'asile, NOR: IMIC0827547A, Version consolidée au 28 mars 2009.*

[74] Section 30(1) No. 2 *Aufenthaltsgesetz*.

Table 2. Financial costs of integration abroad

Country	Costs
Denmark	Covered by the applicant
France	Covered by the state
Germany	Covered by the applicant, depending on the country of origin; the fee for the test is €40-80; the fee for a (voluntary) preparatory course is around €600
The Netherlands	€350 covered by the applicant

Source: Authors' compilation.

4.1.3 Personal scope

This section covers the personal scope of civic integration measures abroad and the extent to which national immigration laws cover all foreign nationalities equally or whether the laws envisage exemptions and if so, what kinds.

The integration abroad test in **the Netherlands** must be passed by foreign citizens between the ages of 16 and 65 who are planning to apply for permanent residence. This means that migrants entering for temporary purposes, such as study, *au pair* jobs or medical treatment, will not have to comply with the integration abroad requirement. Moreover, the test applies exclusively to those persons who 1) require a provisional residence permit (MVV) to enter the Netherlands and 2) are obliged to comply with integration conditions pursuant to the Integration Act (*Wet inburgering*) after arrival.[75] Thus, citizens of several developed countries, from whom an authorisation for temporary stay is not required, are exempt from the integration test. Apart from EU/EEA nationals, this includes migrants from Switzerland, the US, Canada, Japan, South Korea, Lichtenstein, Monaco, Australia and New Zealand. According to the explanatory memorandum to the Integration Abroad Act, this distinction on grounds of nationality is justified on the basis that countries whose citizens are exempt have a comparable level of economic, social and political development to EU countries.[76] Therefore, the argument goes, with respect to their admission there is no risk of an inflow of migrants that will result in problems for integration or social cohesion. Even so, it has also been argued that the tests discriminate indirectly based on ethnic origin, as they apply only to migrants from certain non-Western countries.[77] Surinamese nationals who can submit written proof of having followed at least lower secondary education in the Dutch language in Suriname or in the Netherlands are also free from the integration test. Further exemptions apply to persons with a work permit, self-employed persons, knowledge migrants (*kennismigranten*) and family members of persons with an asylum residence permit.[78]

In **Denmark**, the pre-entry integration requirement will apply in principle to any foreigner seeking a residence permit for family reunification or as a religious preacher.[79] In respect of family migrants, exemptions to this rule can be made in special cases. According to the

[75] Art. 16(1)(h) *Vreemdelingenwet jo.* Arts. 3 and 5 *Wet inburgering*.

[76] *Memorie van Toelichting bij de Wet inburgering in het buitenland*, Kamerstukken II, 2003–2004, 29 700, No. 3, p. 19.

[77] Human Rights Watch has argued that the integration test abroad is apparently directed at potential family migrants of Moroccan and Turkish origin, which are the two largest immigrant groups in the Netherlands; see Human Rights' Watch (2008), op. cit.

[78] Art. 17(1) *Vreemdelingenwet*.

[79] *Lovforslag nr. L 93 om lov om ændring af udlændingeloven og lov om aktiv socialpolitik*, pp. 8–9.

explanatory memorandum to the bill introducing the immigration test, such special grounds include cases where the family member already living in Denmark cannot be expected to join the applicant in another country because of a persisting risk of persecution or a serious illness. An exemption from the general requirement of passing the immigration test will always be made if this is required on the basis of Denmark's international obligations, in particular Art. 8 of the European Convention on Human Rights (ECHR). There are no possibilities of derogation from the immigration test when granting a residence permit to religious preachers.

In accordance with Law 2007-1631 and Decree 2008-1115 in **France**, certain categories of persons are exempt from civic integration abroad. First are those providing evidence of having followed a minimum of three years of secondary studies in a French school abroad or in a francophone educational establishment. Second are those having followed a minimum of one year of superior studies in France. Third are those who, for reasons of public order, a state of war or a natural or technological disaster, the training would entail serious difficulties, displacement or endanger the security of the foreigner, or those for whom following the training involves constraints that are incompatible with their physical or financial capacities, or their professional obligations (Art. 311-30-10 of the CESEDA). No further exemptions are included.

Even though the **German** pre-entry test does not contain a civic element, it is interesting to note that the exemptions and their justifications under German law are very similar to those applied in the Netherlands. The categories of persons exempt from taking the pre-entry language test include highly qualified workers[80] and those who are not required to obtain a visa in order to enter Germany on the grounds of their nationality:[81] citizens of the EU/EEA, Switzerland, Australia, Israel, Japan, Canada, South Korea, New Zealand, the US, Andorra, Honduras, Monaco and San Marino.[82] If the sponsor holds one of the requisite nationalities, this exemption applies irrespective of the nationality of the incoming spouse. According to the German government, the difference in treatment on the grounds of nationality is justified, as it is in the particular interest of Germany to encourage the immigration of nationals from these countries.[83] This argument has been supported by the Administrative Court of Berlin in a case of December 2007, where it was concluded that the principle of equal treatment enshrined in Art. 3(1) of the German Basic Law (*Grundgesetz,* GG) is not infringed if citizens of selected countries enjoy an exemption from the language requirement.[84] To identify a violation of Art. 3(1) GG, it must be concluded that there are no reasonable grounds related to the nature or the facts of the case that could justify the difference in treatment.[85] The privileged treatment of some nationals is considered permissible in view of commitments arising out of bilateral agreements and the protection of public interests. In the Court's view, the Basic Law allows for a privileged treatment of nationals of certain countries, even if such a difference in treatment does not appear from the assessment of individual applications.[86]

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[80] Section 30(1), second sentence, No. 1 jo. 19 *AufenthG*.

[81] Section 30(1), third sentence, No. 4 *AufenthG*.

[82] Sections 41(1) and 41(2) *AufenthV*.

[83] *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Sevim Dagdelen, Ulla Jelpke, Karin Binder, weiterer Abgeordneter und der Fraktion DIE LINKE – Drucksache 16/5201 „Geplante Regelungen zum Familiennachzug"*, Bundestag Drucksache 16/5498, Berlin, p. 6.

[84] *Verwaltungsgericht Berlin*, judgment of 19 December 2007, VG 5 V, 22.07.

[85] See also *Bundesverfassungsgericht,* judgment of 24 September 2007, 2 BvR 1673/03, ZBR 2007, p. 416.

[86] *Verwaltungsgericht Berlin*, judgment of 19 December 2007, VG 5 V, 22.07, p. 9.

4.2 The internal dimension of civic integration

The four EU member states under analysis present different 'internal' versions of the civic integration applicable to newcomers as well as those TCNs applying for long-term residence status and family reunification. It is here where the function of integration as a derogative clause for having access to security of residence (protection from expulsion) and social solidarity becomes more stringent and critical. We follow a similar structure of analysis as that used in section 4.1 when addressing civic integration in the host country.

4.2.1 Purpose

France has framed civic integration as a contractual obligation on the part of TCNs. The so-called 'welcome and integration contract' (*contrat d'accueil et d'intégration*, CAI) seeks to institutionalise and formalise the contractual rationale in relation to the integration of TCNs to enable them to gain access to security of residence.[87] The contract used to be of a facultative nature,[88] but with the entry into force of the Sarkozy Law II of 24 July 2006 (*Loi relative à l'immigration et à l'intégration*, No. 2006-911),[89] it became mandatory.[90] According to the explanatory memorandum for the *Project de loi* (No. 2986), which was presented in April 2006, one of the main purposes behind the introduction of the conditionality of integration was to reinforce the route towards '*intégration républicaine*' and to better evaluate three main elements of an immigrant's integration. More specifically, these are the personal commitment of foreigners to French republican principles, the effective respect for these principles and sufficient knowledge of the French language. Integration is not judged solely on the basis of knowledge but on grounds of a stronger involvement of the foreigner:

> *l'engagement personnel de l'étranger à respecter les principes qui régissent la République française, le respect effectif de ces principes et la connaissance suffisante de la langue française. L'intégration ne sera plus uniquement jugée sur des connaissances, mais* sur une implication plus forte *de l'étranger*. (Emphasis added.)

It was determined that the permanent settlement of TCNs in the country should be reserved for those who have chosen to respect "French values".[91] Similar to the strategy used by the French government in relation to civic integration abroad for family reunification, and following the same position taken by the Dutch government, the conditional (obligatory) nature of the CAI was introduced when transposing Directive 2003/109/EC into the French legal system.[92]

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[87] S. Carrera, *A Comparison of Integration Programmes in the EU: Trends and Weaknesses*, CHALLENGE Research Paper No. 1, Centre for European Policy Studies, Brussels, March 2006.

[88] *Loi relative à la maîtrise de l'immigration, au sejour des étrangers en France et à la nationalité, novembre 2003.*

[89] See JORF, No. 170, 25 July 2006, p. 11047. The law was presented before the Conseil Constitutionnel, which only presented one reservation to Art. 45 of the law, and which declared the rest of the provisions in conformity with the Constitution. See Conseil Constitutionnel, 20 *juillet* 2006, No. 2006-539 DC, J.O. 25 *juillet* 2006, p. 11066. See also N. Guimezanes, "Loi de 24 juillet 2006 relative à l'immigration et à l'intégration", *La Semaine Juridique – Édition Générale*, No. 36, 6 September 2006, pp. 1623–1624.

[90] See Uni(e)s contre une immigration jetable, « Analyse du projet de loi modifiant le code de l'entrée et du sejour des Étrangers et du droit d'asile » (CESEDA), Uni(e) contre une immigration jetable, Paris, 11 April 2006 (retrieved from http://www.contreimmigrationjetable.org).

[91] This was stated in the report (No. 3058) by Thierry Mariani (député) of 26 April 2006: "*De plus, l'installation durable en France doit être réservée à ceux qui ont choisi de respecter les valeurs de notre pays et d'en apprendre la langue*" (retrieved from http://www.senat.fr/dossierleg/pjl05-362.html).

[92] See Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16/44, 23.1.2004; see also Chapter V of the law, entitled *Dispositions*

In **Denmark**, immigrants also have to conclude an individual integration contract with the responsible local authorities within their first months of residence in the country.[93] The law introducing the obligation to conclude an integration contract entered into force on 1 July 2002.[94] Previously, immigrants were covered by an individual 'action plan', which was rather similar to the current contract. The contract clearly specifies the rights and obligations of the person concerned, typically including the obligation to participate in language classes and other integration measures and to become economically self-sufficient as soon as possible.[95] The signature of such an integration contract is not just a formal commitment – compliance will be closely supervised by the responsible municipality, with a follow-up taking place every three months. Even though signature of the integration contract is not mandatory, refusal will delay the acquisition of a permanent residence permit. The integration contract expires the moment at which a permanent residence permit is acquired (usually after seven years). In addition to the integration contract, immigrants are obliged to sign a declaration of integration, attesting to their willingness to participate actively in all activities offered within the context of the integration programme. The official objectives of the Danish integration programme as stated in Section 1 of the Danish Integration Act are the participation of newcomers in all areas of Danish society, a rapid process of becoming economically self-sufficient and a sound understanding of the fundamental values and norms of Danish society. Similar to the French case, the official goal is to ensure that only those meeting the civic integration criteria will have access to a residence permit and legal settlement in the country. It is arguable that the implicit objective is to reduce the number of immigrants who will be able to meet the integration (civic) threshold and will therefore have access to residence permits and security of residence.

The purported official objectives for the application of an integration test in **the Netherlands** have been the acquisition by foreigners residing permanently in the Netherlands of sufficient knowledge of the Dutch language and society to enable them to participate in society.[96] The Integration Act (*Wet inburgering*) that entered into force on 1 January 2007[97] has the additional purpose of increasing the speed and effectiveness of the integration process. The civic integration regulations that previously applied were considered to have failed in this respect, falling short of the desired integration results.[98] Consequently, the government adopted a new

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relatives aux étrangers bénéficiant du statut de résident de longue durée au sein de l'Union européenne, which establishes the provision implementing this Directive between Arts. 24 and 29. Refer also to GISTI, *Le guide de l'entrée et du séjour des étrangers en France*, Paris: La Découverte, 2008, pp. 95–105.

[93] See Art. 3 of the Executive Order on individual contracts and introduction programmes in the Integration Act.

[94] *Lov om ændring af integrationsloven (Individuelle kontrakter)* nr. 364 of 6 June 2002.

[95] Details on the drafting of the contract are regulated in the decree on the preparation of individual contracts and the introduction programme (*Bekendtgørelse om udarbejdelse af individuel kontrakt og om introduktionsprogrammet efter integrationsloven*).

[96] See *Memorie van toelichting bij het wetsvoorstel Wet inburgering*, Kamerstukken II, 2005–2006, 30 308; see also Adviescommissie voor vreemdelingenzaken (ACVZ), *De Contourennota getoets; juridische mogelijkheden tot een meer verplichtend inburgeringsstelsel*, ACVZ, Den Haag, 2004.

[97] *Wet van 30 november 2006, houdende regels inzaken inburgering in de Nederlandse samenleving* (*Wet inburgering*).

[98] See Tijdelijke Commissie Integratiebeleid, *Eindrapport: Bruggen Bouwen*, Kamerstukken II 2003–04, 28 689, nrs. 8-9, p. 524. The Committee concluded that the results of the integration courses were disappointing. It considered that the lessons offered where not sufficiently adapted to each applicant and that only a few newcomers managed passed to a higher level within the 600 lessons provided. The committee stressed that the desired level of language proficiency to be achieved actually varied from case to case, and suggested the need to adopt more realistic expectations.

integration policy that has a larger target group (also including 'old-comers' (*oudkomers*)), which is focused on results rather than participation and emphasises individual responsibility.[99] The Dutch legislator referred, *inter alia*, to the EU's CBPs on integration and the explicit possibility granted to member states in Directives 2003/86/EC and 2003/109/EC to impose integration conditions upon TCNs to justify the application of an integration test.[100] Even though there is no explicit 'contractual' obligation required from migrants in the integration process of newcomers, the latter will be closely supervised by the responsible municipality. Starting with an intake interview directly upon arrival and successive progress checks, the municipality will continually evaluate the extent to which the migrant has complied with his/her integration requirements.

As regards the official purpose of the **German** orientation course, Section 43(3) of the Residence Act (*Aufenthaltsgesetz*) refers to the acquisition of knowledge of the legal order, the culture and the history of Germany.[101] The Ordinance on Integration Courses (*Integrationskursverordnung*) contains in Section 3(1) a more precise definition of these areas of knowledge, referring in particular to the principles of the rule of law, equal treatment, tolerance and religious freedom. According to Section 3 of the Ordinance, the content of the orientation course illustrates that integration goes beyond the mere acquisition of language proficiency. Along these lines, the overall objectives of the orientation course, as formulated in the concept paper for a federal integration course (*Konzept für einen bundesweiten Integrationskurs*), are the acquisition of an understanding of the German state system (including principles such as federalism, the welfare state and the party system). The objectives also entail the development of a positive attitude towards and identification with the German state, knowledge of the rights and duties as residents and citizens, the development of the ability to acquire information independently, participation in social life and the acquisition of intercultural competences (the ability to operate in a foreign cultural context).[102]

4.2.2 Material scope

Compliance with the integration requirements in **Denmark** is a precondition for the acquisition of a permanent residence permit pursuant to Section 11(9) of the Aliens Act (*Udlændingeloven*). The so-called 'integration examination' to be passed in order to obtain a permanent residence permit consists of a Danish language test at level 2 (level B1 CEFR) or level 1 (level A2 CEFR) together with an English language test at level 2 (level B1 CEFR) and the requirement to have been in full-time employment in Denmark for at least two and a half years.[103] A particularly successful integration process may lead to obtaining a permanent residence permit in less time than is usually the case (after five instead of seven years). This opportunity appears in Section 11(4) *Udlændingeloven*, which provides for the possibility to grant a permanent residence permit after five years to foreigners who have been continuously employed for at least three years, have not relied on Danish social assistance and have established a "meaningful connection to Danish society" (*væsentlig tilknytning til det danske samfund*).

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[99] *Memorie van toelichting bij het wetsvoorstel Wet inburgering*, Kamerstukken II, 2005–2006, 30 308.

[100] Ibid.

[101] It needs to be underlined that the rules on integration have been introduced together with rules concerning the regulation and limitation of immigration (official title of the law: *Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern*).

[102] Bundesamt für Migration und Flüchtlinge (2009), *Konzept für einen bundesweiten Integrationskurs. Überarbeitete Neuauflage*, pp. 24–25.

[103] Section 11(9)(iii), (iv) *Udlændingeloven.*

Within the Danish introduction programme, the civic element of integration is built into the linguistic element. Hence, there is no separate, civic educational programme or civic integration test. The language courses comprise intensive language tuition as well as the provision of information on Danish culture and society. In addition, the Danish introduction programme contains integration measures related to the labour market, such as traineeships with private or public employers.[104] Danish language courses are conducted at three levels, depending on the educational background of the participant. Each course is finalised with a test at the specific level pursued.[105] Throughout each of the courses, information on Danish society, especially on the Danish labour market, education system and democratic principles are provided. Indeed, in contrast to the other three EU member states under analysis, a specific feature of the Danish introduction programme is its focus on labour market and social integration. Immigrants are to participate in so-called 'activation measures', ranging from counselling and educational activities with a labour market focus to traineeships and wage supplement programmes.[106]

The application of the CAI in **France** means that the grant of legal residency and the right of permanent residence will be subject to fulfilment of the 'republican conditions' of integration and the requirements outlined in the contract. Yet, no formal civic integration test is being applied. Arts. L. 311-9 and 314-2 of the CESEDA establish that the grant of the first residence permit (*carte de resident*) is contingent on the TCN's fulfilment of the republican aspects of integration into French society. The degree of integration will be evaluated taking into account the commitment of the individual to respect the principles governing the French Republic and to acquire French language skills. Art. L. 314-2 further stipulates that in this regard the competent public authority will need to consider the commitment of the applicant to the CAI itself (as provided in Art. L. 311-19 of the code) and the favourable opinion of the mayor in the TCN's place of residence (*maire de la commune de residence*).

The OFII is now in charge of monitoring the performance of the CAI. Decree No. 2006-1791 of 23 December 2006 fine-tuned and developed the features, objectives, procedures and scope of the CAI, as well as the precise functions of the OFII in this context.[107] The latter presents the contract to the TCN in a language that s/he understands during the course of a personal interview (*entretien individuel*), in which the contract is to be signed. The duration of the CAI is one year, which is a substantially shorter period than the Danish contract. The interview will also serve to determine the TCN's French language skills through use of a multiple-choice exam.[108] The *Arrêté* of 19 January 2007 has specified the official model for this multiple-choice exam and the ways in which the capacities of oral and written expression and comprehension are to be evaluated.[109]

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[104] Section 3, *Lov nr. 259 af 18 marts 2006 om danskuddannelse til voksne udlændinge m.fl* (*danskuddannelsesloven*).

[105] Section 9 *Danskuddannelsesloven*.

[106] See for more details, see Wiesbrock (2009), op. cit.

[107] *Décret n° 2006-1791 du 23 décembre 2006 relatif au contrat d'accueil et d'intégration et au contrôle des connaissances en français d'un étranger souhaitant durablement s'installer en France et modifiant le code de l'entrée et du séjour des étrangers et du droit d'asile (partie réglementaire), NOR: SOCN0612582D*, J.O. *n° 303 du 31 décembre 2006 page 20346, texte n° 39.*

[108] Art. R. 311-23 of the Decree.

[109] *Arrêté du 19 janvier 2007 relatif aux formations prescrites aux étrangers signataires du contrat d'accueil et d'intégration et à l'appréciation du niveau de connaissances en français prévues aux articles R. 311-22 à R. 311-25 du décret no 2006-1791 du 23 décembre 2006 relatif au contrat d'accueil et d'intégration et au contrôle des connaissances en français d'un étranger souhaitant s'installer durablement en France et modifiant le code de l'entrée et du séjour et du droit d'asile (partie réglementaire) NOR : SOCN0710178A,* J.O. *du 30 janvier 2007, Texte 13 sur 103.*

In addition to the language dimension,[110] the CAI foresees a civic training course and an informative session about 'life in France'. The civic training, as provided in Art. L. 311-9 of the code and according to Art. R. 311-22 of Decree No. 2006-1791, will specifically entail the presentation of the French institutions and the values of the Republic. Again, these topics mainly refer to equality between men and women, secularism, the rule of law, fundamental freedoms and the safety of individuals and goods, as well as the exercise of citizenship, which includes mandatory and free access to education. The total duration of this training will be six hours.[111] Participation in this course will be validated with a certificate of regular attendance granted by the OFII.[112] The session concerning life in France, as stipulated in Art. R. 311-25 of the Decree, aims at providing the signatory of the CAI 'sufficient knowledge' about practical life in France. It incorporates information about access to public authorities and relevant services, which mainly include training, employment, housing, health, education and minor policies, as well as community life. The session will last a minimum of one hour and a maximum of six hours.[113] Attendance will also be validated by the OFII with a certificate (*attestation d'assiduité*).

The CAI will end on the month following the finalisation of the compulsory period of training, regardless of the successful or negative nature of the validation, or at the latest one day after the exam leading to the presentation of the diploma.[114] Art. R. 311-28 of Decree No. 2006-1791 provides that the contract may be declared terminated by the prefect of the TCN's place of residence, following the advice of the OFII, if there is evidence of non-attendance or non-compliance with the contractual obligations and there is no legitimate reason exempting the person from them. The prefect will inform the TCN of the termination and its negative consequences on granting or renewing the residence permit (*carte de séjour*) as provided in Art. L. 311-9 of the CESEDA. The prefect will also communicate the evaluation results related to the republican conditions of integration that are stipulated in Art. L. 314-2 of the same code. At the end of the contract, the OFII will verify whether the TCN has complied with all the obligations included in the CAI; the obligations will be considered fulfilled if the TCN has been granted all the above-mentioned certificates.

The OFII will then issue a certificate recapitulating compliance with the provisions of the CAI and the ways in which they have been evaluated and graded. This certificate (*attestation*) will be sent to the prefect of the TCN's place of residence. Failure to integrate into French society, understood as a violation by the TCN of the obligations of the CAI, will justify the application of sanctions by the state, which will in turn lead to an insecure residence status for the TCN. The sanctions may entail the latter not being granted a permanent residence permit or a negative decision regarding the renewal of the temporary administrative status of stay and hence expulsion from the country.

Law 2007-1631 also invented another version of the welcome and integration contract, this time related to the official conception of republican integration of the family into French society (*Contrat d'accueil et d'intégration pour la famille*, CAIF). The new Art. 311-9-1 of the CESEDA compels TCNs holding a permanent residence permit and their family members benefiting from family reunification (and "if one or more children have benefited from the family reunification procedure") to conclude a contract with the French state, obliging them to follow a course on "the rights and duties of parents in France" and to ensure the proper schooling of their children. Decree No. 2008-1115 stipulates that the training will last for a minimum of one day, organised and

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[110] For an in-depth analysis, refer to Carrera (2009a), op. cit.

[111] Art. 1 of the *Arrêté* of 19 January 2007.

[112] Art. R. 311-21.

[113] Art. 2 of the *Arrêté* of 19 January 2007.

[114] Art. R. 311-27 of Decree 2006-1791.

financed by the OFII. Art. R. 311-10-14 of the CESEDA states that the training focuses especially on parental authority, equality between men and women, child protection and the principles governing their schooling in France. In cases where the contractual conditions are not respected either by the TCN or her/his spouse, the measure foreseen in Art. 222-4-1 of the relevant code (*code de l'action sociale et de familles*) consists of a financial sanction through the cessation of family social benefits (*allocations familiales*) granted by the French state and eventually administrative sanctions – refusal to renew the *carte de séjour* or grant the *carte de resident*, and hence eventual expulsion from the country.

Le Haut Conseil à l'intégration (HCI) issued an opinion entitled "Making known the values and symbols of the Republic and organizing the modalities of evaluating their knowledge" (*Faire Connaitre Les Valeurs et Symboles de la République et organiser les modalités d'évaluation de leur connaissance*) in April 2009, in response to a request by Brice Hortefeux (head of the ministry of immigration, integration, national identity and development). The request concerned the modalities for implementing and evaluating the civic elements of integration (knowledge of shared values and symbols of the Republic) of foreigners who wish to settle in France and the exact content of these elements, as well as the conditions under which the national anthem could be better known and understood by 'migrants'. It should be highlighted that the HCI has been a key actor in supporting the idea of the contract and the mandatory nature of civic integration. In a report of 2004, the HCI sustained the need to couple the CAI with a "component of civic education" (*volet de formation civique*). Indeed, as Lochak (2006) has also underlined,[115] the HCI has played an important role in building the neo-republican French 'model' of integration, according to which the Republic performs an integrationist function by its own nature, and reciprocally, integration cannot be anything but republican. It is in this particular context that we need to understand the 2009 opinion.

The HCI report calls for and legitimises the need for TCNs not only 'to know', but also to understand, respect and adhere[116] to what it refers to as "our common civic heritage" (*notre patrimoine civique commun*). This patrimony comprises, the report argues, the following republican symbols and values: Marianne, La Marseillaise, the three-colour flag, the republican ideals of *liberté, egalité, fraternité et laïcité*, the national holiday of 14 July and the Universal Declaration of the Rights of the Man and of the Citizen of 1789 (which became the Preamble of the French Constitution). Among the full range of policy recommendations put forward by the report, we highlight two. First is the further strengthening of values and symbols in the civic integration training under the CAI, through the creation of a specific module dealing exclusively with them in addition to two other modules that would respectively cover history and institutions. Second is the use of a civic training film or documentary about republican values and the way of life in France, especially in the external dimension of integration, but also in the CAI training (reminiscent of the films used first by the Netherlands and Denmark).

In **Germany**, the acquisition of a permanent right of residence also depends on the fulfilment of an integration requirement. It is a precondition for the acquisition of a settlement permit under Section 9(2) *Aufenthaltsgesetz* that the applicant conveys basic knowledge of the legal and social order and living conditions in the Federal Republic. This requirement can only be fulfilled by successfully completing an integration course, unless one of the exemptions applies.

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[115] D. Lochak, "L'intégration comme injonction. Enjeux idéologiques et politiques liés à l'immigration", in *Identifier et Surveiller: Les Technologies de Sécurité*, Cultures & Conflits, No. 64, Hiver, Paris: L'Harmattan, 2006, pp. 131–147.

[116] The report states, "*c'est pourquoi il est important de distinguer respect et adhésion, le premier étant obligatoire pour s'intégrer et vivre dans la société d'accueil, la seconde résultant d'une longue imprégnation avec les codes de cette société*", p. 9.

In addition, ordinary participation in integration courses is one of the considerations to be taken into account when prolonging a temporary residence permit. According to Section 8(3) *Aufenthaltsgesetz*, repetitive and clear violation of the obligation to participate in integration courses can lead to a refusal to extend the temporary residence permit of a foreigner who does not have a right to acquire a residence permit. Where the right to extend the residence permit does exist, refusal is still possible unless the foreigner can submit proof that his/her integration into society and social life has occurred by other means. If this provision is applied, in line with Art. 8 of the ECHR, the foreigner's period of legal residence, his/her ties with Germany and the consequences of a termination of residence for legally resident family members of the foreigner must be taken into account.

Concerning the structure of the integration programme, it starts with a German language proficiency test for immigrants (*Deutsch für Zugewanderte: Einstufungstest*), to assign newcomers to their suitable level of language instruction. Persons who already convey sufficient language skills will automatically proceed to take the German language examination (*Zertifikat Deutsch*) at level B1, followed by the civic element of the integration programme. All other immigrants are required to follow a basic language course or a follow-up course until they reach the required level of language proficiency.

Subsequently, all persons falling under the obligation to integrate must participate in a civic orientation course (*Orientierungskurs*) of 45 hours. The content of the orientation course builds upon the objectives of the acquisition of knowledge about the German legal system, history and culture, including the principles of the rule of law, equal treatment, tolerance and religious freedom. The curriculum for a uniform federal orientation course was developed in 2007.[117] It forms a legally binding foundation for federal orientation courses, which have been in place since 1 January 2008. The curriculum specifies the content and learning objectives, and forms the basis for the standardised test that must be passed after completion of the course.[118] The following subjects are dealt with in the integration course: politics in a democracy (module 1, covering the fundamental principles of the German state, rights and duties of citizens, the party system, etc.); history and responsibility (module 2 on Nazi Germany, the country's post-war history, German reunification and the EU); and people and society (module 3 on the German education system, religious diversity and intercultural communication, etc.).[119]

Section 13 of the Ordinance on integration courses envisages the provision of specialised orientation courses for specific target groups. In terms of content, young migrants under the age of 27 are to follow the general mandatory curriculum, as they have to pass the standardised integration test at the end of the orientation course. The same applies to orientation courses targeted at women and parents. At the same time, the teaching material and methods may be selected with a particular view of the interests of the specific target group. The uniform curriculum is not binding with respect to participants in a so-called '*Alpha-Orientierungskurs*', which is offered to persons with an insufficient ability to read or write.[120]

A uniform, standardised test for evaluating the civic knowledge of foreigners was introduced in January 2009.[121] The test consists of 25 multiple-choice questions, 13 of which have to be answered correctly. The 25 questions are derived from a catalogue of 250 questions based on

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[117] Bundesamt für Migration und Flüchtlinge (BAMF), *Curriculum für einen bundesweiten Orientierungskurs*, BAMF, Nürnberg, 2007.

[118] Section 17 *Integrationskursverordnung.*

[119] Bundesamt für Migration und Flüchtlinge (2007), op. cit., pp. 9–10.

[120] Section 13(1) *Integrationskursverordnung*.

[121] Section 17(1) *Integrationskursverordnung*.

the three modules of the curriculum of the orientation course.[122] Successful participants of both the language test at level B1 and the test following the orientation course are provided with an integration course certificate (*Zertifikat Integrationskurs*).[123] The civic orientation test can also be taken without following the courses by applicants for settlement permits, and it will serve as proof of having the required level of civic knowledge.

Pursuant to Art. 21(1)(k) *Vreemdelingenwet*, foreigners wishing to acquire a permanent residence permit in **the Netherlands** must have passed an integration exam (*inburgeringsexamen*). In January 2007, the obligation for foreigners to participate in a language course and an orientation course (*maatschapij orientatie*) was abandoned, giving way to a requirement to acquire Dutch language skills and knowledge Dutch society by individual study.[124] Failure to pass the test will lead to the refusal to grant a residence permit. At the same time, the holding of a temporary residence permit is restricted to a period of five years at most.[125] This means that a TCN's unwillingness or inability to comply with the integration requirement will inevitably lead to his/her expulsion from the Netherlands. The civic element of this obligation to integrate requires immigrants to acquire knowledge on Dutch society, in particular on the following topics: work and income, behaviour, values and norms, living, health and health care, history and geography, administration, the state and the rule of law and education.[126] According to Art. 7(1) *Wet inburgering*, an integration test has to be passed within three and a half years by persons who have passed the integration exam abroad based on Art. 16 *Vreemdelingenwet* and within five years in all other cases where a duty to integrate exists (see below). The test consists of a central part and a practise part.[127]

The central part contains three components, namely an electronic practise test, a Dutch oral language test and test for knowledge about Dutch society.[128] The electronic practise component and the knowledge component embody the civic nature of the central part of the integration test. The test is taken in the form of an interview with a computer, which asks the candidate questions on Dutch society and gives him/her assignments to complete. Most electronic practise tests consist of 43 questions (or less) in a period of 60 minutes, 73% of which must be answered correctly. The second civic component of the integration test, the test on knowledge of Dutch society (*examen Kennis van de Nederlandse samenleving*) is also conducted by a computer. During a period of 45 minutes, applicants are shown a number of short films. They must subsequently answer 62% of around 43 questions correctly to pass.

In the second part of the integration exam, the practise test, immigrants are examined on a number of practical situations they might encounter in the Netherlands.[129] The practise test contains a linguistic as well as a civic element, as language proficiency and the ability to get by in everyday life in the Netherlands are tested simultaneously. Assessment takes place through a practise test, the submission of a portfolio or a combination of both.[130] The test involves six different role plays, during which the applicant must show that s/he can deal with all sorts of

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[122] Bundesamt für Migration und Flüchtlinge (BAMF), *Konzept für einen bundesweiten Integrationskurs: Überarbeitete Neuauflage*, BAMF, Nürnberg, 2009, p. 29.

[123] Section 17(4) *Integrationskursverordnung*.

[124] Art. 7 jo. 13(2) *Wet inburgering*.

[125] Art. 14(2) *Vreemdelingenwet*.

[126] Art. 2.10(1) *Besluit inburgering*.

[127] Art. 13(3) *Wet inburgering*.

[128] Art. 3.9(1) *Besluit inburgering*.

[129] Art. 3.7 *Besluit inburgering*.

[130] Art. 3.7(2) *Besluit inburgering*.

practical situations related to working life, health care or education. Alternatively, a portfolio can be submitted, containing at least 30 documents that prove the applicant's ability to cope with daily life in the Netherlands, such as a letter of application or a document demonstrating that the person had a conversation with his/her child's schoolteacher.

The overall costs for the test amount to €230, i.e. €126 for the central part plus €104 for the practise part.[131] Successfully passing all parts of the test will be certified with a diploma.[132] It is notable that the civic knowledge test and the language test are conducted at the same level as the previous citizenship test and that the diploma obtained serves as proof of being integrated for naturalisation. This means that the level of integration that is required by immigrants after three and a half years of residence in the Netherlands is the same as that demanded of potential citizens. It illustrates the extent to which foreigners are already expected to have become 'Dutch' within a relatively short period of time.

4.2.3 Personal scope

The **Danish** Integration Act (*Integrationsloven*) and a corresponding obligation to participate in integration measures applies to all aliens (refugees and immigrants) of 18 years or more who are lawfully residing in Denmark.[133] Citizens of other Nordic countries as well as EU/EEA nationals and their family members fall outside the scope of the Act.[134] Apart from them, an exemption applies to immigrants and refugees who have already been resident in Denmark prior to 1 January 1999. The Act on Danish courses for adult aliens and others (*Lov om danskuddannelse til voksne udlændinge*) confers a right to be offered Danish courses by the municipality where they are registered to all adult aliens legally residing in Denmark and minor aliens in case it is considered unreasonable or impossible for them to make use of other relevant offers of education.[135] Thus, whereas the mandatory civic integration condition applies exclusively to TCNs, EU/EEA citizens also have the right to participate in Danish language instruction.

In **France**, the following categories of persons are exempt from signing the CAI according to Art. L. 311-9 of the CESEDA:

i) those foreigners providing evidence of having followed a minimum of three years of secondary studies in a French school abroad or in a francophone educational establishment;

ii) those having followed a minimum of a year of superior studies in France (Art. R. 311-19);

iii) those holding residence permits (as well as their family members and children older than 16) who fall into the category of intra-corporate transferees (Art. L. 313-10 of the CESEDA);

iv) those holding a residence permit mentioning competences and skills (*La carte de séjour portant la mention compétences et talents*) as stipulated by Art. L. 315-1; and

v) foreigners between the ages of 16 and 18 who meet the conditions for the acquisition of French nationality foreseen in Art. 21-7 of the civil code (Art. L. 314-12 of the CESEDA).

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[131] See the IND website (http://www.ind.nl)

[132] Art. 14 *Wet inburgering*.

[133] Sections 2(1) and (2) *Integrationsloven*.

[134] Section 2(3) *Integrationsloven*.

[135] Section 2(1)–(3) *Lov om danskuddannelse til voksne udlændinge*.

Participation in integration courses in **Germany** is mandatory for all newly arriving immigrants who are permanently residing in Germany[136] based on a residence permit or a settlement permit and who are not able to communicate in the German language at a basic level.[137] In addition, resident foreigners who receive 'unemployment benefit II' or have 'special integration needs' are obliged to follow an integration course.[138] Participation is open on a voluntary basis (provided there are enough places for other resident TCNs) to EU citizens and German nationals in special need of integration.[139] The 'entitlement' (*Anspruch*) to participate in integration courses does not apply to children, juveniles or young adults who are taking up or continuing their school education in Germany and foreigners who are evidently in little need of integration (*geringer Integrationsbedarf*). In addition, the following categories of foreigners are exempt from the obligation (*Teilnahmeverpflichtung*) of attending an integration course: those undergoing any form of education or vocational training in Germany; those who have attended comparable education courses in Germany; those for whom such continuous participation is considered unfeasible or unreasonable; and finally, long-term residents who have already attended integration courses in other member states.[140]

In **the Netherlands**, the obligation to integrate (*inburgeringsplichting*) applies to legal foreigners in the sense of Arts. 8(a-e) or (l) *Vreemdelingenwet* who are residing in the Netherlands for non-temporary purposes or who are religious preachers.[141] Thus, all non-EU/EEA immigrants[142] between the ages of 18 and 65, whose purpose of stay is of a non-temporary nature must pass an integration exam.[143] The requirement applies to both newcomers and *oudkomers* who were already living in the Netherlands at the point of entry into force of the Integration Act. Exemptions apply to several categories of foreigners. First, immigrants who have followed at least eight years of compulsory education in the Netherlands are presumed to have sufficient Dutch language skills.[144] Second, foreigners who are able to present special diplomas or certificates, proving that their knowledge of the Dutch language and society is already adequate are exempt.[145] Acceptable means of proof are secondary or higher educational diplomas obtained in the Netherlands, Belgium or Suriname as well as level A2 certificates from integration courses followed in accordance with the 1998 *Wet inburgering nieuwkomers*. Foreigners with prior knowledge of the Dutch language also have the possibility to take a short exemption test, consisting of the electronic practise test and the societal knowledge test conducted at a higher level of language proficiency (B1) than the regular test. Third, certain vulnerable groups are exempt from the integration requirement, including illiterates and persons suffering from a physical or mental illness who can demonstrate that they have made an effort to

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[136] A permanent stay is generally presumed if the foreigner holds a residence permit with a validity of more than one year or has been in possession of a residence permit for more than 18 months, unless the residence is of a temporary nature.

[137] Section 44(1) jo. 44a(1) *Aufenthaltsgesetz*.

[138] Section 44a(2) *Aufenthaltsgesetz*.

[139] Section 44(4) *Aufenthaltsgesetz*.

[140] Section 44a(1)–(2a) *Aufenthaltsgesetz*.

[141] Art. 3(1) *Wet inburgering*.

[142] The exemption of EU/EEA and Swiss nationals and family members of persons who are entitled to enter and reside in the Netherlands on the basis of their free movement rights is laid down in Section 5(2) *Wet inburgering*.

[143] See Sections 3 and 5(1) *Wet inburgering*. Religious leaders and spiritual counsellors have to pass an integration exam even if their stay is merely temporary.

[144] Section 5(1)(b) *Wet inburgering*.

[145] Section 5(3) *Wet inburgering*.

learn Dutch and can prove based on an independent assessment that they will not be able to learn Dutch within the next five years.[146] The Integration Act also includes a broader exemption for persons who cannot be expected to pass the integration test owing to the country's international human rights obligations.[147]

5. Common deficits of national civic integration measures

This section identifies common vulnerabilities stemming from the application of civic integration measures in the immigration laws of Denmark, France, Germany and the Netherlands. The two main deficits affecting the internal and external dimensions of civic integration relate to the principles of proportionality and non-discrimination.

5.1 Proportionality[148]

Proportionality has become one of the most important aspects of the general principles of EC law.[149] The European Court of Justice (ECJ) has deemed this principle particularly appropriate when reviewing the legality of administrative actions adopted by EU member states in the scope of EC law. The proportionality test comprises a three-level evaluation: suitability, necessity and proportionality *stricto sensu*.[150] The sub-principle of necessity consists of the examination as to whether the measure is necessary to achieve the intended goal and the extent to which there are other less restrictive options (in other words, the search for the least onerous option) to achieve the same end. The sub-principle of proportionality *stricto sensu* looks at the extent to which the measure has imposed an excessive burden upon a recognised right when taking into account the public objective in view. The subjectivity, mandatory nature and intended public goals of civic integration measures in our four EU member states can be identified as the most crucial factors when evaluating their compatibility with the rule of law.

5.1.1 Subjectivity

A certain tension arises when looking at the inherently subjective nature of civic integration next to the principle of proportionality. Civic integration functions as an exception or a derogative clause for TCNs to have access to security of residence and rights as provided by national immigration legislation and at times EC immigration law. The indeterminate character of the civic dimension leaves too much discretion to the imagination of the national public authority or private actor conducting the evaluation of whether the applicant is integrated into the 'national' set of values and symbols or is 'at the margins' of the perceived national model. Some could argue that this subjectivity would be to some extent better justified in the context of nationality law and naturalisation procedures, where the end goal is citizenship. Yet, when moving to immigration legislation, and particularly those administrative features that have been subject to Europeanisation (see section 6 below), the disproportionate character of civic

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[146] Section 6 *Wet inburgering*.

[147] Section 5(2)(d) *Wet inburgering*.

[148] See P. Craig, *EU Administrative Law*, Oxford: Oxford University Press, 2006. For a study of the application of this principle to member states' action in the scope of EU immigration law, refer to Carrera (2009a), op. cit.

[149] T. Trimidas, *The General Principles of EU Law*, Second Edition, Oxford: Oxford University Press, 2006.

[150] See J. Schwarze, *European Administrative Law*, London: Sweet and Maxwell, 1992; see also N. Emiliou, *The Principle of Proportionality in European Law: A Comparative Study*, The Hague: Kluwer Law International, 1996.

integration conditions becomes a domestic mechanism endangering the legal certainty and foundations of the common EU immigration policy.

After surveying the ways in which civic integration is tested and practised across the four EU member states, it remains difficult to ascertain the existence of any objective criteria or procedure that could be described as meeting the principle of legal certainty. National immigration law does not seem to provide a sufficiently clear and precise definition of 'civic integration' that is accessible to all persons concerned and which prevents illiberal interferences by state authorities or private actors when granting (temporary or permanent) residence permits or visas to TCNs. The principle of legal certainty requires that individuals know the legal consequences of their actions and that the quality of the law is as high and objective as possible to prevent exceptionalism by public authorities beyond any remits of legality.[151] The category of 'values' is by definition vague and subject to divergent interpretations and ideologies. There is a presumption by the nation-state and certain officials, however, of the existence of a clear meaning of 'national identity' and a commonly shared understanding of what national values and symbols actually are and mean. Any attempt to provide a legal definition of what 'national' means (customs, traditions, ways of life, symbols, values, etc.) would lead to huge conflicts going beyond any migration-related debate, spreading across the entire citizenry. Such a definition would face the challenge of trying to meet ever-evolving social practices and incorporating a plurality of identities across the constructed nation, as well as different interpretations and visions of the scope and limits of nationalism. This civic integration dilemma becomes even more relevant in those EU member states presenting decentralised (or multi-governance) domestic settings, where a plurality of identities and feelings of belonging have been institutionalised within their constitutional frameworks.

Furthermore, what are the legal mechanisms and judicial guarantees provided in national immigration law for TCNs to mount a legal challenge against a decision rejecting family reunification on the basis that they are not civically integrated? The answer to this question is especially unclear in the context of integration abroad requirements, but the internal dimension of civic integration also raises similar concerns. The answer, however, has profound implications for the respect of the fundamental right to an effective remedy as enshrined in Art. 47 of the Charter of Fundamental Rights.[152]

Finally, across the national arenas we see a progressive privatisation of immigration control. As highlighted by Guild, Groenendijk and Carrera (2009), trust in the discretion of local officers has been progressively replaced by confidence in and reliance upon private actors that develop and administer integration tests and programmes, and promote 'nationalism' in the form of integration exams obliging TCNs to have knowledge (of the values and way of life) of the receiving society.[153] The possibility envisaged by some national laws for the involvement of private actors in the integration examination procedure (within the country or abroad) ever widens the scope for debate as regards the ways in which fundamental rights and the rule of law

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[151] Refer to Art. 49 of the Charter of Fundamental Rights of the European Union, OJ C 303/01, 14.12.2007. For a brief analysis of relevant ECJ case law on the principle of legal certainty, see P. Craig and G. de Búrca, *EU Law: Text, Cases and Materials*, Fourth Edition, Oxford: Oxford University Press, 2007, pp. 551–558.

[152] See Craig and G. de Búrca (2007), pp. 551-558. On the right of TCNs to effective remedies in EU law, see E. Brouwer, *Digital Borders and Real Rights: Effective Remedies for Third-Country Nationals in the Schengen Information System*, Leiden: Martinus Nijhoff Publishers, 2007.

[153] E. Guild, K. Groenendijk and S. Carrera, "Understanding the Contest of Community: Illiberal Practices in the EU?", in E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Aldershot: Ashgate, 2009(a).

principles are being met. Under which conditions are non-discrimination and ethical standards guaranteed when services and policies are provided by private actors?

5.1.2 Mandatory nature

Another point of contention in light of the principle of proportionality relates to the mandatory nature of civic integration and the effects of non-compliance by the applicant (the sanctions). It is our view that national civic integration measures fail to pass the 'less restrictive and onerous test' and therefore can be viewed as unnecessary. In all the countries under consideration, pre-entry integration tests and compliance with integration conditions or participation in state-organised integration courses are obligatory. This, we have argued, is also the case in France even though at a first glance one could be erroneously inclined to think that integration abroad is 'facultative' for the actual delivery of a visa. The degree of civic knowledge is also an issue of concern in this respect. TCNs are required to acquire a more comprehensive understanding of the receiving state's institutions, history and values than many citizens in order to enter the country, have access to security of residence, and in the case of France, enjoy the fundamental right of respect for family life.[154] The proportionality of the civic integration test is highly questionable in the Netherlands, where the requirements to acquire a secure residence status are as high as those applied to future citizens.[155] In the case of Denmark and Germany, one might wonder whether the obligation to participate in time-consuming introduction programmes is the least restrictive (and most effective) means available to foster TCNs' social integration.[156]

If the applicant fails to be civically integrated, national immigration laws foresee a set of (indirect and direct) sanctions. The failure to comply with the integration requirement can lead to the denial of a permanent residence status. In three of the four countries (not including Denmark, which as stated above has an opt-out on Title IV of the EC Treaty), TCNs who do not comply with national integration conditions will not be able to acquire an EC long-term residence permit in light of Directive 2003/109/EC. Furthermore, even though it is not always explicitly stated in national immigration law, non-compliance with integration conditions will in all four countries result in the expulsion of TCNs, as the holding of a temporary residence permit is generally limited to a certain period of time prior to the acquisition of a permanent residence permit. In Germany, an unsatisfactory integration process can in extreme cases even lead to a refusal to extend a temporary residence permit. A similar situation occurs in the Netherlands, where failure to pass the test will lead to a refusal to grant a residence permit and expulsion from the country. Along with residence-related sanctions, the legislation in all four countries envisages the application of fines in the event of non-compliance with the obligation to integrate. In the context of family reunion, the CAIF in France foresees that if the contractual obligations are not met, including those of a civic nature, the family will be penalised with a

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[154] As noted earlier, TCNs are obliged as a first step to show evidence of integration according to the concept of the perfect French citizen in order to have access to security of residence and long-term residence status (the CAI). As a second step, they will also need to show their absorption into the concept of 'the perfect French republican family' to enjoy the fundamental right to respect of family life and the EU rights linked to family reunification (the CAIF). Refer to Art. 7 of the Charter of Fundamental Rights.

[155] G.R. de Groot, J. Kuipers and F. Weber, "Passing Citizenship Tests as a Requirement for Naturalization: A Comparative Perspective", in E. Guild, K. Groenendijk and S. Carrera, *Illiberal Liberal States*: *Immigration, Citizenship and Integration in the EU*, Aldershot: Ashgate, 2009.

[156] See for instance, T. Liebig, *The labour market integration of immigrants in Denmark*, OECD Social, Employment and Migration Working Paper No. 50, OECD, Paris, March 2007, which shows that the way in which the Danish integration programme has been conducted is too lengthy and extensive, something that undermines its effectiveness.

financial sanction freezing access to family social benefits, the eventual refusal to renew the temporary residence permits and expulsion.

5.1.3 The intended public goal

Is civic integration necessary to achieve the intended public goal pursued by national immigration legislation? When looking at the political justifications put forward by most of the governments across the EU member states analysed in this paper, it is clear that one of the main intended public goals behind its use is better management of migration and diversity. Civic integration functions as an instrument for migration control, as a selection mechanism for the kinds of immigrants who will be allowed to enter and reside in the state. As shown in section 4.1.1 above, the general purpose of civic integration abroad has been a reduction in the number of entries (through legal channels) for the purposes of family reunification. The introduction of a requirement to pass a civic integration exam has primarily aimed at reducing the number of residence permits granted for these very purposes. In Denmark, it is expected that the test will lead to a decrease in the number of applicants for family reunion. Integration abroad in France has already proved to be quite effective towards that goal and it appears that the application rates will fall even further. This is also evident when looking at the case of the Netherlands, where the integration test introduced by the Integration Abroad Act was later on thought of as too easy because of the high success rate of candidates passing the exam, which in turn led to increasing the degree of difficulty of the questions. Therefore, making family reunion more difficult, with the prospect that family migrants may delay or even cancel their intended settlement, appears to be the predominant intended public goal driving civic integration abroad.

It is interesting to note that the arguments substantiating the legislative measures making use of civic integration have often alluded to practices already existing in other EU member states as well as to the obligation to transpose EC immigration law. For instance, in Denmark the proposal putting forward the integration test abroad expressly referred to the Dutch integration test as the model of inspiration. Similarly, the French government mentioned the Dutch integration policy before making the CAI mandatory and introducing integration abroad. Germany's language requirement abroad also found a source of inspiration in the Netherlands. Here we refer back to the effects of the exchange of ideas among EU member states representatives taking place within the scope of the NCPs' network in the EU Framework on Integration. The Dutch approach to integration has indeed become a model for other countries in the EU in the development of civic integration measures and programmes for TCNs.[157] What is more, the transposition of EC immigration law has often been instrumentalised by certain governments to pass new amendments in their national legislation making use of civic integration measures as a tool for a restrictive immigration policy. In France, for instance, the introduction of civic integration abroad and the obligatory nature of the CAI and the CAIF were justified in light of the transposition of Directives 2003/109/EC and 2003/86/EC.

5.2 Non-Discrimination

What is the target group of civic integration measures? Who is covered by civic integration? The examination of the personal scope purported by the internal and external dimensions of civic integration shows a highly diverse picture of the persons covered or exempt from taking the programmes, tests or contracts. There appears, however, to be a common presumption that certain categories of foreigners are already very well integrated or do not need to be integrated into the

[157] Here we can refer also to the example of the UK. For a detailed study, see R. Van Oers, "Justifying Citizenship Tests in the Netherlands and the UK", in E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Aldershot: Ashgate, 2009.

nation and its perceived values, symbols and way of life. This is most prominently the case for nationals of EU member states (EU citizens according to Art. 17 EC Treaty), who cannot be subject to any civic integration tests or measures as a condition for exercising their freedom to move and reside in another member state of the Union. There are additionally certain migrants who are not obliged to pass a civic integration evaluation on a completely different basis. For example, among the group of TCNs who are exempt from taking the CAI and the CAIF in France are those benefiting from the residence permit mentioning competences and skills (*La carte de séjour portant la mention compétences et talents*). These persons are thus considered 'highly skilled' following the logic of a selective immigration approach (*immigration choisie*), which has driven French immigration policy during the last few years. In respect of pre-entry integration requirements, the same holds true for 'knowledge migrants' in the Netherlands and 'highly qualified migrants' in Germany. Moreover, both countries provide an exemption from the integration abroad requirement for nationals of selected countries, who do need a visa/provisional residence permit to enter the country. Nationals from the US, Canada, Japan, South Korea, New Zealand, Monaco and Lichtenstein are held to be perfectly integrated into the values and symbols of the receiving country. Civic integration measures and conditions are not used when the nation-state wants to encourage immigration from some countries by granting their nationals a privileged treatment for entry and residence or when attracting those labelled as 'highly skilled immigrants'.[158] On the other hand, these exemptions implicitly provide further evidence for the argument that civic integration is primarily intended to make the immigration of certain immigrants more difficult.

In 2008, Human Rights Watch published a report entitled, *The Netherlands: Discrimination in the Name of Integration*,[159] which dealt with the Dutch integration test abroad. The report argued that by providing a "blanket exemption" for some "Western" nationalities and not others, the test was disproportionate in its aims and nature, constituting a violation of Art. 14 of the ECHR and Protocol 12 of that Convention. It also stated,

> In addition to the discriminatory impact on foreign national family migrants from non-western countries, the overseas integration test also indirectly discriminates against individual Dutch citizens and residents from non-western migrant communities, particularly those of Turkish and Moroccan origins…members of these communities are also disproportionately impacted by financial requirements for sponsoring family training and reunification….Members of "non-western" migrant communities are more likely to bring family members from abroad to the Netherlands than "native" Dutch persons, and far more likely to bring family members from "non-western" countries than migrants from "western" countries living in the Netherlands.[160]

The question of who pays for the costs of the civic integration programmes (the state or TCNs themselves) is also of special importance from a non-discrimination perspective. The financial risks and cover pertaining to the civic integration tests within the host country and abroad is

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[158] Following the same selection logic, the so-called 'EU blue card' has not included either integration conditions or measures for having access to it or for family reunification purposes. See 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, OJ L 155/17, 18.6.2009; see also E. Guild, *EU Policy on Labour Migration: A First Look at the Commission's Blue Card Initiative*, CEPS Policy Brief No. 145, Centre for European Policy Studies, Brussels, November 2007.

[159] Human Rights Watch (2008), op. cit.

[160] Ibid., pp. 26–30. The Administrative Jurisdiction Division of the Council of State maintained in December 2008 that the civic integration abroad exam for family reunification purposes is lawful (opinion case number 200806120/1) (see http://www.ind.nl/en/inbedrijf/actueel/Eis_basisexamen_inburgering_buitenland_voor_mvv_gezinshereniging_blijft_van_kracht.asp).

another factor reinforcing the exclusionary implications for certain categories of migrants. As explained in section 4.1.1, the pre-entry civic integration test in Denmark was expected to decrease the applications of 'poorly educated' foreigners, who would think twice before taking the exam given their low chances of passing it as well as their inability to cover the financial expenses. A similar comment can be made in relation to the Netherlands, where the financial costs for preparing and taking the overseas integration test and the *inburgeringsexamen* represent a very important barrier for TCNs having the opportunity to become civically integrated.

Who does the nation-state have in mind when testing for its 'national values'? In respect of whom is it saying that 'their values' are not 'our values' and are even contrary to fundamental rights? Civic integration tests follow an axiom according to which certain categories of immigrants, particularly Muslims, by definition do not comply with fundamental rights and 'our liberal democratic values'.[161] The debate around civic integration does not always relate to those perceived as rich, wealthy and highly skilled migrants, neither to the nationals of EU member states. These privileged categories of persons on the move are not those targeted or perceived as a threat to the identity and social welfare system of the receiving state. Instead, civic integration measures are primarily destined for certain immigrant groups and in practice affect those categories in a rather disproportionate manner. These factors open up an interesting debate about the link between the economic interests of the state as a requirement for the non-national to fit into (and not be perceived as a threat to) its perceived national identity and set of values. The exemption of citizens from certain countries and of highly skilled migrants opens up questions of non-discrimination based on nationality, religion, ethnic origin and wealth status.[162]

6. Europeanisation and the civic integration of TCNs

As illustrated in section 3, EC immigration law and the EU Framework on Integration provide supranational venues for the transfer of certain national immigration policies and legislation using civic integration (in its internal and external facets) as a mechanism for migration control, and as a condition or exceptional measure restricting TCNs' access to security of residence, social solidarity and inclusion. Having 'more Europe' in policies for the migration and integration of TCNs has meant that the common EU policy is now a vehicle for legitimising and promoting certain member state policies and programmes, which use integration in a civic and conditional fashion. The 'EU approach' to integration is therefore profoundly affected by the very same deficits characterising member states' civic integration laws – something that puts at stake the principles upon which the EU legal system has been built and which are intended to safeguard the legitimacy and coherency of its very foundations. The use of civic integration

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[161] J. Cesari, *The Securitisation of Islam in Europe*, CHALLENGE Research Paper No. 15, Centre for European Policy Studies, Brussels, April 2009.

[162] On the prohibition of discrimination, see for instance Art. 21.1 of the Charter of Fundamental Rights on 'non-discrimination', which states that "Any discrimination based on any ground such as gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited". Refer also to the provision in Art. 27 of the International Covenant on Civil and Political Rights: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." For an interpretation in relation to integration policies in Europe refer to S. Peers, "New Minorities: What Status for Third-Country Nationals in the EU System?", in G.N. Toggenburg (ed.), *Minority Protection and the Enlarged European Union: The Way Forward*, Local Government and Public Service Reform Initiative/Open Society Institute, Budapest, 2003, pp. 151–162.

(within and outside the destination country) as one of the derogative clauses in the hands of the EU member states for the attribution of EC rights and freedoms provided by the EC directives (especially Directives 2003/109/EC and 2003/86/EC) endangers the proportionality, legitimacy and ambitions of EC immigration law.

That notwithstanding, are the member states completely 'free' in the use of civic integration measures and conditions now falling within the scope of EC immigration law? One of the immediate consequences of the progressive Europeanisation processes in immigration law is that member states' discretionary powers in the allocation of rights and security of residence to TCNs are diminished and subject to the EC rule of law. In contrast to the policy developments in the EU Framework on Integration, member states' actions within the scope of EC law are subject to the supervision carried out by the European Commission and the judicial control and interpretation provided by the ECJ (and the development through its jurisprudence of the general principles of EC law).[163] The foundations and institutional arrangements characterising the EU legal system increasingly demarcate the boundaries for the legality of member states' discretion in the context of EC immigration law. They aim at ensuring the essence of the rights and procedural guarantees that EC law grants to individuals (including TCNs) do not mutate in the national arena through some sort of transposition against its principles and guiding parameters. As Groenendijk (2006) has pointed out, "many special administrative techniques and barriers applied only in immigration law, such as extremely high fees, exclusion of judicial control, or excessively one-sided interpretations of general rules of administrative law…are no longer possible".[164]

By inserting integration measures and conditions into some of the articles of Directives 2003/109/EC and 2003/86/EC, member states' action must now not only comply with the objectives and provisions thereby stipulated, but also with the general principles of EC law developed by the ECJ jurisprudence, such as that of proportionality. Both the Directive on long-term resident status and that on family reunification offer an EU framework of rights, freedoms and guarantees to TCNs that all participating EU member states need to uphold in practice. Any exceptions applicable to those rights will be closely monitored by the Commission and the ECJ. This oversight has been confirmed by the ruling in the ECJ case *European Parliament v. Council*.[165] In the case ruling, the ECJ offered a fundamental contribution to the interpretation of the limits of member states' action with respect to fundamental rights while implementing EC immigration law, and the discretion that Directive 2003/86/EC leaves them in relation to derogations from these rights. This ruling also reduced the exceptions and margin of appreciation that the main body of the Directive on the right to family reunification might have offered to member states in the phase of national implementation, including the use of civic integration measures and conditions.[166] The Court ruled that any integration should have, according to Recital 12 of the Preamble of this Directive, the general objective of "facilitating the integration of third-country nationals in Member States by making family life possible through reunification".

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[163] Art. 226 EC Treaty sets out the infringement procedure applied by the European Commission in those cases where it considers that a member state has failed to fulfil an obligation under the Treaties. Art. 234 TEC outlines the preliminary ruling procedure. See respectively chapters 12 on "Enforcement Mechanisms against Member States" and 13 on "Preliminary Rulings" in Craig and de Búrca (2007), op. cit.

[164] K. Groenendijk, "Citizens and Third Country Nationals: Differential Treatment or Discrimination?", in J.Y. Carlier and E. Guild (eds), *The Future of Free Movement of Persons in the EU*, Collection du Centre des Droits de L'Homme de la'Université Catholique de Louvain, Brussels: Bruylant, 2006(b), pp. 79–101.

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

[166] D. Martin, "Comments on *European Parliament v. Council* (Case C-540/03 of 27 June 2006)", *European Journal of Migration and Law*, Vol. 9, No. 1, 2007, pp. 144–153.

The limited degree of discretion held by member states when transposing EC immigration law in their domestic legal systems has also been confirmed by the European Commission report on the application of Directive 2003/86/EC on the right to family reunification (COM(2008) 610).[167] Here the Commission confirmed that "[t]he objective of such (national integration) measures is to facilitate the integration of family members. Their admissibility under the main text and preamble of the Directive depends on whether they serve this purpose." The same Commission Report on the application of Directive 2003/86/EC stated that

> The admissibility of integration measures under the Directive depends on 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). The procedural safeguards to ensure the right to mount a legal challenge should also be respected.

In light of the comparative analysis of selected member states in section 4, we conclude that the conditions highlighted by the ECJ and the Commission for the admissibility of integration measures (including most pertinently those of a civic nature) remain questionable and pose a series of deficits in relation to the general principles of proportionality and non-discrimination. These deficits, we argue, undermine the goals of Directives 2003/109/EC (ensuring security of residence and that the main criterion for acquiring the status of long-term resident is the length of residence)[168] and 2003/86/EC (making family life possible)[169] and the substance of EC rights that they provide for TCNs in the EU. It is finally worth remembering that Recital 5 of the Explanatory Memorandum of Directive 2003/86/EC on the right to family reunification states that

> Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

7. Conclusions

Civic integration measures and conditions for TCNs are illustrative of the struggles underway between nationalism and Europeanisation in immigration and integration policies in Europe. Certain EU member states have managed to fundamentally transform some of the traditional conceptual understandings of the integration of immigrants in EC law. These understandings have moved away from focusing on TCNs' social inclusion, security of residence and access to

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[167] European Commission, *Report on the Application of the Directive 2003/86/EC on the Right to Family Reunification*, COM(2008) 610, Brussels, 8 October 2008(a).

[168] According to Recital 12 of the Explanatory Memorandum of Directive 2003/109/EC, "[i]n order to constitute a genuine instrument for the integration of long-term residents into society in which they live, 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". See also Recital 6.

[169] Recital 4 of the Explanatory Memorandum of Directive 2003/86/EC states, "[f]amily reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State." Also Recital 12 stipulates, "[t]he possibility of limiting the right to family reunification of children over the age of 12, whose primary residence is not with the sponsor, is intended to reflect the children's capacity for integration at early ages and shall ensure that they acquire the necessary education and language skills in school".

rights to seeing integration as an instrument of a restrictive immigration policy, in the form of conditions in immigration law for having access to a visa or a residence permit. This change is particularly apparent in the introduction of integration conditions and measures within the body of Directives 2003/109/EC and 2003/86/EC, which mainly represent derogative clauses in the hands of national administrations when determining the allocation of EC rights and procedural guarantees to TCNs. It has been particularly during the phase of national transposition of these Directives that the civic dimensions of integration have been reinforced and have further proliferated across the national arenas in Europe. The promotion of civic integration policies by some EU member states has also taken place through the exchange of 'good practices' and 'lessons learned' among member states representatives in the scope of the EU Framework on Integration as well as the financial support provided by the European integration fund. The common EU immigration policy is thus granting an increasingly prominent role to civic integration programmes and policies for TCNs.

This paper has conducted a comparative assessment of the deficits inherent to the intended public goals, personal and material scope of civic integration programmes in Denmark, France, Germany and the Netherlands. Both the internal and external dimensions of these programmes, which require TCNs to demonstrate knowledge of the values, way of life, history and institutions, pose major issues with respect to the principles of proportionality and non-discrimination. The relationship between civic integration and proportionality is a special cause for concern, given the intrinsically subjective nature of civic integration examinations, their mandatory nature and the sanctions applied in the event of an applicant's non-compliance. The disproportionate nature of a majority of these measures is exacerbated by the intended public goal pursued, i.e. limiting the entries of TCNs for family reunion and of reducing the number of long-term residence permits. Furthermore, the differential treatment applying to the personal scope and the exemption of certain categories of ('Western', highly skilled and rich) foreigners from the obligation to pass the civic test leads to the incompatibility of civic integration measures with the principle of non-discrimination.

This paper has also sought to examine the implications of using civic integration as a condition for TCNs to have access to the rights provided in EC immigration law and the multifaceted effects emerging from an increasing Europeanisation of migration law at the EU level. It has argued that by subjecting the access to EC rights and guarantees granted by EC immigration law to civic integration programmes and tests, the member states' strategies have been to gain back their national sovereignty when determining who is entitled to rights and liberty, and who is included and can claim membership of the EU polity. The deficits identified in the four EU member states analysed have thus been transferred to the common EU immigration policy – something that endangers its compatibility with the general principles of the rule of law and fundamental rights. Yet, the results of Europeanisation in immigration law also make integration conditions subject to supervision by the European Commission and judicial oversight by the ECJ, which are there to ensure that the substance and goals of the EU rights and freedoms of individuals are respected and not subject to exceptional public measures beyond the remits of the rule of law.

The nexus between a secure immigration status and adherence to national/European identity leads to the stigmatisation of the vulnerable foreigner who is in search of security of residence and social solidarity. Integration paradoxically contributes to social exclusion and insecurity of the vulnerable migrant who is required to know and understand (and in some cases disappear into) national values and identity for legal entry and residence in the EU. Europeanisation processes do not bring legitimacy to nationalistic approaches to the integration of TCNs rooted in conservative perceptions and stereotypes, which view heterogeneity and diversity as

deviations in need of correcting or as threats to 'social cohesion'. The common EU immigration policy should not legitimise the continuance of these critical national practices and restrictive immigration policies by adding a 'European identity' dimension to civic programmes/tests. Instead, a post-national approach should be favoured. This approach should continue fostering the more traditional approaches to integration in EU law and policy, which considered the integration of TCNs a process of social inclusion leading to equality and membership of all individuals (independent of their nationality and citizenship) in Europe.

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